

# **Previous Draft EIS**

**(December 2006)**



STATE OF HAWAII  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
LAND USE COMMISSION  
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February 21, 2007

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

Subject: LUC Docket No. A06-764/Moloka'i Properties Limited  
Draft Environmental Impact Statement ("DEIS")  
Lā'au Point, Moloka'i, Hawai'i  
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), Hawai'i 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]

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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 Kākahale 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 Kākahale 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 Kākahale 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 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.

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 *hieaus* 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 EISPN 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.



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- Question #111: Please indicate what the saline content of the brackish Kākalahale Well is and when that data was gathered.
- 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.
- Question #113: Please indicate what transmission alternatives for the Kākalahale 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 Kaluako'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 Pala'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, Moloka'i 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 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. ~~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-homes 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 'Īlio 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 'Īlio Point that will also be donated to the Land Trust as shown in the attachment titled, "First Land Trust Donation: Mokio 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 "Mokio parcel") of on the coastline between Mo'omomi and 'Īlio 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 Mokio 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 Mokio 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-striped 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 Master 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 homes 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:
  - A 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 Maunaloa community. This will be conducted under the guidance of the Moloka'i Land Trust. The CC&Rs have been strengthened to protect the environment and resources at Lā'au Point. Enforcement and substantial penalties will be put in place to ensure that the covenants are respected and upheld. Although the CC&Rs are currently under development, because of the Master Plan process (Section 2.1.6), MPL does have a general idea of what the CC&Rs and some of the key provisions and concepts will be.

The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point (the Board), affected lot owners, and in certain circumstances, the Moloka'i Land Trust as a signatory and 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:

Table 1. Lā'au Point Community Land Use Summary

Land Use	Acreage
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
<b>TOTAL</b>	<b>1,432 acres</b>

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 (land 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 will utilize re-use water (treated effluent) from the wastewater treatment plant, or collected in catchments 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 document. Certain covenants and restrictions in the CC&Rs are derived from the provisions of the Master Plan that represent the Land Trust and community concerns on protection of subsistence and cultural practices and the protection of cultural/archaeological and environmental resources. These are designated Master Plan Covenants under the terms of the CC&Rs. The CC&Rs provide that the Land Trust may prosecute breaches of the Master Plan Covenants and take legal action to ensure their enforcement.

Some provisions of CC&Rs will be able to be changed by a 75 percent majority vote of homeowners. These are operational in nature or concern and involve the management of the Association common areas. They bear no relationship to the covenants that are designed to implement the vision of the 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 Moloka'i 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 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]

**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 Moloka'i EC will ensure that the Lā'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 Moloka'i 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 Moloka'i. 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 Lā'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 Hawa'i and what has been observed at Kaluako'i, it is expected that most Lā'au Point residents will be empty nesters, and in pre-retirement or retirement. The average number of persons per household at Lā'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 Lā'au Point. At final build-out in 2023, preliminary estimates project that the population of Lā'au Point will be approximately 174 permanent residents (persons staying at Lā'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 Lā'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 Lā'au Point homes will be individually owned (time-share or vacation

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 Kāalahale 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 Kāalahale Well."

*How will the withdrawal of an additional 1,000,000 gpd brackish water from the Kāalahale 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 Kāalahale Well," and "Recent Studies by USGS Indicate Pumping Kāalahale 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

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 Kāalahale 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 Kākahale 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 Kākahale 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 Kākahale Well," and "Alternatives to the Use of Kākahale-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

Hawai'i 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 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, 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 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 Hawai'i 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 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 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 <sub>5</sub> (mg/L)	240	< 5	< 5
Average SS (mg/L)	240	< 5	< 5
Fecal Coliform – median (CFU/100 mL)	10 <sup>8</sup>	< 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.

**POTENTIAL IMPACTS AND MITIGATION MEASURES**

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 §15-20, 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 §15-15-20, HAR, the reclassification to the Rural District will facilitate implementation of park improvements (such as a comfort station, a parking lot, a Resource Manager's residence, an individual wastewater system, a drainage system, and footpaths) without the need for a Conservation District Use Application (CDUA). In their comment letter dated February 23, 2007, the DLNR Office of Conservation Coastal Lands confirmed that a petition to re-district the nine acres from Conservation to Rural for the park development would not require a Conservation District Use Application (CDUA).

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]*

**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 homeowners 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 Kaluako'i Hotel; and 2) affordable housing projects elsewhere. To the extent that the development of Lā'au Point facilitates the reopening of the Kaluako'i Hotel, this reopening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

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 response to your request to provide additional information in response to a question from Mr. David Kimo 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 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 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 Kaluako'i, Maunaloa, and Pāpōhaku that could be developed in the future. Cumulative and secondary impacts resulting from these projects and further development in the region are likely to include increased population and traffic, and greater demand on public infrastructure systems and services. Residents of Pāpōhaku Ranchlands and Kaluako'i would have a direct relationship with the Lā'au Point project. These areas are currently fairly isolated, and the project would bring increased activity due to the shared access road with Lā'au Point residents and those using the public shoreline access. These residents that live in the Kaluako'i and Pāpōhaku areas recognize that the Upgraded roadways in the Kaluako'i and Pāpōhaku areas as a result of Lā'au Point project's infrastructure improvements should help to balance the impacts related to increased users and activities in the areas and could be considered to be a positive impact.

Regarding other MPL lands, currently, MLP 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 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 Moloka'i'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 Kākahale 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 intrusives between the Kākahale and DHHL/DWS well sites, namely Pu'u Kākahale 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. Those 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 Kākahale," and "Alternatives to the Use of Kākahale-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 Kākahale 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 Kākahale Well.; and
2. In the event Kākahale 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) desalinization 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 ~~three~~ 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 Kualapu'u Aquifer and surface water from the Molokai Ranch Mountain Water system. The constructed, but currently unused, Kākahale well in the Kamiloloa Aquifer is being proposed as a new non-potable water source. The Kākahale 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 Kākahale 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 Kākahale Well is unlikely to have any adverse impact on existing wells in the Kualapu'u aquifer, on DHHL's ability to withdraw its 2,905 mgd reservation amount from the Kualapu'u aquifer, or the development of potable water in the Kamiloloa 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 Waiola 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 Moloka'i to irrigate farmlands in central and western parts of the island. The MIS originally served large-scale pineapple

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 Pāpōhaku 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 Hawai'i 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

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 Lā'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 Lā'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 Lā'au Point project. Therefore, the decisions made with respect to continued use of the MIS may have to be made without consideration of the Lā'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 Lā'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 Lā'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 Lā'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 will work 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 Kākahale 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 Kākahale 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 Kākahale 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 Hawai'i 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 Kākahale.

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 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 Kākahale 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 homesteads. 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 Kākahale 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, 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 specifics of the water resource issues and modeling analysis have yet to be 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 Kākahale 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 Kākahale Well.

In the event Kākahale Well water is not available, however, there are alternative sources of non-potable water. Reclaimed water from the Pāla'au Shrimp Farm could be treated to make it suitable for irrigation purposes. Additionally, desalinization 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 La'au Point project because:

1. It is highly unlikely that pumping 1.0 mgd from the Kākahale 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 Kākahale Well; and
2. In the event Kākahale Well water is not available, there are alternative sources of non-potable water available to MPL: a) reclaimed water from the Pāla'au Shrimp

Farm could be treated to make it suitable for irrigation purposes; and b) desalinization 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
- Department of Business, Economic Development & Tourism, Energy - Resources & 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:

La'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 La'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 Tsunami Inundation Zone (Figure 45 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.

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 Kaluako'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 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, 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 chipped 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

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 chipped 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 Nāmu'o]*

**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 Kamāka'ipō Gulch (see Figure # 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.

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 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 (Pāpōhaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpōhaku Ranchlands parcels that will be affected by the road corridor through the area. This commitment does not extend into TMK 5-1-02-030. Prior to construction, the archaeologist will re-examine the road corridor and verify descriptions of known sites, gather additional data if possible, and search for unrecorded archaeological deposits or features observable due to changes in surface visibility. After the road corridor re-survey re-examination and supplemental data collection, the proposed subdivision lots and coastal zone will be also be re-surveyed, following the same methods for investigating and recording sites as described for the road corridor. Additional survey work will be done prior to designation of the road corridor in order to design the corridor to avoid significant sites. Inventory work will be performed in accordance with the Preservation and Monitoring Plans during the road construction period.

Archaeological sites will be treated in one of three ways: preservation, data recovery, or no action. Preservation means avoiding damage to the site whether treatment is passive (avoidance) or active (stabilization, interpretation, and other measures). Data recovery

pertains to sites that are significant for their information only, and covers actions such as mapping, excavation, and surface collection that adequately gather that information. No action is planned for those sites that were deemed not significant in the 1993 Bishop Museum inventory report, such as sites that had been so badly damaged as to eliminate the possibility of determining their original form or salvaging meaningful data.

After the re-surveys of the road corridor and project site, short-term site preservation measures will be implemented, such as establishing protective buffers and emergency stabilization. Then, data recovery and long-term preservation measures will be implemented. During construction, monitoring by an approved archeologist will occur. In their July 5, 2006 comment letter on the EISPN, OHA requested that "an archaeological monitor be on-site during all excavation and ground disturbances for this project." The archaeological mitigation plan has been submitted to the State Historic Preservation 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 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.

**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 Pāpōhaku 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 EISPN, 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 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.

**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 Kākahale 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 Kākahale 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 Kākahale Well."

- 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.

**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 Kākahale 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. Those residents that live in the Kaluako'i and Pāpōhaku areas recognize that the Upgraded roadways in the Kaluako'i and Pāpōhaku areas as a result of Lā'au Point project's infrastructure improvements should help to balance the impacts related to increased users and activities in the areas and could be considered to be a positive impact.

Regarding other MPL lands, currently, MPL does not have plans for developing any of the other MPL lands, including land adjacent to Hale O Lono Harbor and Kaluako'i. The Community-Based Master Land Use Plan for Molokai Ranch states that if demand for accommodation at the Kaluako'i Hotel warranted it, MPL at some time in the future, may seek to use some zoned land for an extension of the hotel, for a cultural center, and for hotel staff housing. However, as the currently proposed renovations of the hotel are not complete it will be many years before further expansion is contemplated. Therefore, plans for developing any other MPL lands cannot be said to be reasonably foreseeable for the purposes of this EIS.

- *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 Kaluako'i. The distribution system terminates approximately 9,000 feet north of the Lā'au Point project site. With the Kaluako'i Hotel closed, current use of the Kaluako'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	Kaluakoi Land, LLC	0901-01	Well #17	1.018	Moloka'i Public Utilities, Inc., Well Municipal Use
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 Kaluako'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 Moloka'i Ranch that profits generated from the Project will be used to revitalize the Kaluako'i Hotel represents a firm commitment or guarantee.*

**Response:** It is both a firm commitment and guarantee. Pending the approval of permits for Lā'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 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.*

**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 Kākahale 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 Kākahale Well."

- What impacts will pumping Kākahale 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 Kākahale 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 Kākahale 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 Kākahale 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

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 Pālā'au Prawn Farm brackish well (864,000 gallons per day, of which 500,000 gallons is recoverable), it would, along with its current surpluses from its mountain system and from Well 17, be able to meet the needs of the 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 Kākahale 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 Kākahale 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 Kākahale 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 Pālā'au and desalinization. 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).

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]*

**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 Kākahale Well and Waiola site is incorporated into the attachment. We note that the correct distance is 1.5 miles. See the section of the attachment titled, "The Waiola case and the Kākahale 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 Kaluako'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 kupuna 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 EISPN 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 Molokai 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 Molokai Ranch* and the commitments it has made as part of the *Community-Based Master Land Use Plan for Molokai 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 Molokai Ranch*) of the Draft EIS. The complete *Community-Based Master Land Use Plan for Molokai Ranch* is included as Appendix A of the Draft EIS.

- *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  
SUBJECT: LĀ'ĀU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
Page 46 of 47

- *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 Kaluako'i residents and how will these rates be restructured in the future.*

**Response:** As stated in the Water Plan, the current water rate for Kaluako'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 Kaluako'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.

Mr. Anthony Ching, Executive Officer  
SUBJECT: LĀ'ĀU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
Page 47 of 47

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

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LINDA LINGLE  
GOVERNOR



RUSS K. SAITO  
COMPTROLLER

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
P.O. BOX 119, HONOLULU, HAWAII 96810

(P)1019.7

FEB - 1 2007

**MPL** Molokai  
Properties  
Limited

November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Lau:

Thank you for your letter dated February 1, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). We acknowledge that you have no comments to offer at this time.

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

Sincerely,

Peter Nicholas  
President and CEO  
Molokai Properties Limited

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

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

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,

ERNEST Y. W. LAU  
Public Works Administrator

DD:mo

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



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

STRATEGIC INDUSTRIES DIVISION  
235 South Beretania Street, Laloape A Kamehameha Bldg., 5<sup>th</sup> Floor, Honolulu, Hawaii 96813  
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Web site: www.hawaii.gov/dbedt

LINDA LINGLE  
GOVERNOR  
THEODORE E. LIU  
DIRECTOR  
MARK K. ANDERSON  
DEPUTY DIRECTOR

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.

PBR Hawaii  
January 12, 2007  
Page 2

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 LEED, energy efficiency, and renewable energy resources.

Sincerely,

Maurice H. Kaya  
Chief Technology Officer

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



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

Mr. Maurice Kaya, Chief Technology Officer  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
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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'an 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,

A handwritten signature in cursive script, appearing to read 'Peter Nicholas'.

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



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

**OFFICE OF PLANNING**  
235 South Beretania Street, 8th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

LINDA LINGLE  
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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 Waiola 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  
Page 2  
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 mauka 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. Thielen  
Director

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



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

Director  
State of Hawai'i  
Department of Business, Economic Development & Tourism  
Office of Planning  
235 South Beretania Street, 6<sup>th</sup> 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 Moloka'i 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

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 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 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

Director, State Office of Planning  
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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. 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: LĀ'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 96793

Dear Ms. McPherson:

Subject: Draft Environmental Impact Statement (DEIS) for La'au Point, Moloka'i,  
Hawaii, TMK: 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 Meecker of the Facilities Development Branch at 733-4862.

Sincerely yours,

Duane Y. Kashiwai  
Public Works Administrator

DYK:jmb

c: Ron Okamura, CAS, Hana/Lahainaluna/Lanai/Molokai Complex Areas  
✓ Thomas S. Witten, PBR Hawaii  
John Sabas, Molokai Properties Limited  
Anthony Ching, State Land Use Commission  
Genevieve Salmonson, 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: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Kashiwai:

Thank you for your letter dated February 2, 2007 regarding the Lā'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 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 multipliers<sup>1</sup> for new communities, it is estimated that the Lā'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 Lā'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 (KBCGa 2006):

- Only approximately 30 percent of Lā'au Point residents are expected to be permanent residents.
- Lā'au Point residents will be somewhat older than the general population.
- About 25 percent of the Lā'au Point permanent residents are expected to have children under 18.
- Expected school age population of Lā'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 Lā'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 Lā'au Point residents will home school or send their children to private schools off island.

<sup>1</sup> Elementary: 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: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
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~~Under these conditions, it would appear that the Lā'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 Lā'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

LINDA LINGLE  
GOVERNOR  
STATE OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOMELANDS  
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 Laau 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)

MICAH A. KANE  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

BEN HENDERSON  
DEPUTY TO THE CHAIRMAN

KAULANA K. PARK  
EXECUTIVE ASSISTANT

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 Kāalahale 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 Kāalahale 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: 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

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



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

CHIYOME L. FUKINO, 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-Kaluakoi 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

Mr. Witten  
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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

Mr. Witten  
January 31, 2007  
Page 4

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](http://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/LAQ  
Molokai Properties Limited, Peter Nicholas  
State Land Use Commission, Anthony Ching  
OEQC  
County of Maui Planning Department, Nancy Mcpherson



Mr. Kelvin Sunada, Manager  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
Page 2 of 6

November 1, 2007

Kelvin Sunada, 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. Sunada:

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 Kaluako'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.

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 systems; 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 Kaluako'i from Public Water System No. 231, Maunaloa-Kaluako'i, 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 Kaluako'i 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 Kaluako'i 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 MII 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:
- 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 systems; 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.

#### **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 Lā'au Point experience episodic "red water" events following periods of heavy rainfall. Turbidity, suspended solids and nutrient concentrations may be significantly elevated during these events. Sediment delivery to coastal waters is exacerbated by soil loosened by natural causes, including the effects of deer and livestock 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 Moloka'i investigations are those of the USGS. Because of the well-documented "red water" plumes that appear along South Moloka'i 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 Lā'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 drainway and also to induce gravitational settling of water borne silt and debris before it enters the culverts. Energy dissipators will be constructed at the outlets of these drainage culverts to keep the velocities equal to or less than pre-development velocities, in accordance with the provisions of Article 15-04-06 subparagraph (8) of Title NC-15, "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 ft<sup>3</sup>. Since the increase in runoff due to the roadway pavement is estimated at  $(53/111) = 48\%$ , approximately 52% is attributable to

the imperiousness in each lot. The required storage in the roadway and lots are  $(0.48 \times 152,390) = 73,147 \text{ ft}^3$  and  $79,243 \text{ ft}^3$  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&Rs 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 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.

- 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 Pāpōhaku 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 Kaluako'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

LINDA LINGLE  
GOVERNOR OF HAWAII



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

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DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

CHYOME 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

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](http://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.



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.

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,

A handwritten signature in black ink, appearing to read 'Peter Nicholas', is written over a light blue horizontal line.

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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LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
235 SOUTH BERETANIA STREET  
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TELEPHONE (808) 586-4185  
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E-mail: oeqc@health.state.hi.us  
February 15, 2007

GENEVIEVE SALMONSON  
DIRECTOR

RECEIVED  
FEB 22 2007  
PBR HAWAII

**MPL** Molokai  
Properties  
Limited

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

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

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

Dear Mr. Ching:

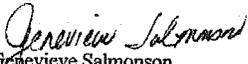
Subject: Draft EIS for Lā'au Point, Island of Molokai

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

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 Moloka'i, and who support conservation, cultural site protection, and coastal resource management. Residents of Lā'au Point will be educated and informed about the environment and culture, and taught to "mālama'āina," take care of the land

and sea, through strict Conditions, Covenants, & Restrictions (CC&Rs) attached to the subdivision. The CC&Rs provide that every person whose name is on the property title must commit to undergo a certain amount of education about the Moloka'i community and its desires and aspirations with kupuna and the Maunaloa community. This will be conducted under the guidance of the Moloka'i Land Trust. The CC&Rs have been strengthened to protect the environment and resources at Lā'au Point. Enforcement and substantial penalties will be put in place to ensure that the covenants are respected and upheld. Although the CC&Rs are currently under development, because of the Master Plan process (Section 2.1.6), MPL does have a general idea of what the CC&Rs and some of the key provisions and concepts will be.

The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point (the Board), affected lot owners, and in certain circumstances, the Moloka'i Land Trust as a signatory and 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  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
P.O. BOX 621  
HONOLULU, HAWAII 96809

January 10, 2007

PETER T. YOUNG  
CHAIRPERSON  
MEREDITH J. CHING  
JAMES A. FRAZIER  
NEAL S. FUJIMURA  
CHYOME L. FUKINO, M.D.  
LAWRENCE H. MIKE, M.D., J.D.  
STEPHANIE A. WHALEN  
DEAN A. NAKANO  
ACTING DEPUTY DIRECTOR

REF: LaauPtDr

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/cwrn>.

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/cwrn/forms.htm](http://www.hawaii.gov/dlnr/cwrn/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 Interim 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 (0901-01) to serve Laau Point will require a modification of the water use permit.

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

Sincerely,

DEAN A. NAKANO  
Acting Deputy Director

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



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 Kākalahale 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).

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

"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." (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 Kaluako'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,

A handwritten signature in cursive script, appearing to read 'Peter Nicholas'.

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

O:\JOB17\1733.10 Molokai Ranch-LaaU Pt EIS\EIS\DEIS\Comment letters\Responses\Agencies\Final\DLNR CWRM.doc

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

February 7, 2007

PETER T. YOUNG  
CHIEF DEPUTY DIRECTOR  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF COAST GUARDS  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
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PBR HAWAII

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

PETER T. YOUNG  
CHIEF DEPUTY DIRECTOR  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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COMMISSION ON WATER RESOURCE MANAGEMENT  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

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: 1/24/07

RECEIVED  
LAND DIVISION  
2007 JAN 25 A 11:30

DEPARTMENT OF LAND AND NATURAL RESOURCES  
ENGINEERING DIVISION

**Division of Forestry & Wildlife**

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

LD/RYT

Ref.: DEISLauPoint  
Maui.353

February 1, 2007

2007 FEB -5 A 9:41

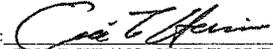
COMMENTS

- (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: \_\_\_\_\_

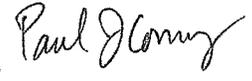
Should you have any questions, please call Ms. Alyson Yim of the Planning Branch at 587-0259.

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 (Mabl) 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) 587-4158, if you have questions to our review.

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

LINDA LINGLE  
 GOVERNOR OF HAWAII



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

POST OFFICE BOX 621 06  
 HONOLULU, HAWAII 96809

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 DEC 27 P 3:47

PETER T. YOUNG  
 CHAIRPERSON  
 BOARD OF LAND AND NATURAL RESOURCES  
 COORDINATOR ON WATER RESOURCES MANAGEMENT

ROBERT K. MASUDA  
 DEPUTY DIRECTOR

DEAN MAKANO  
 ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
 BOATING AND OCEAN RECREATION  
 BUREAU OF CONSERVANCIES  
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 HISTORIC PRESERVATION  
 KAROOLAWA ISLAND RESERVE COMMISSION  
 LAND  
 STATE PARKS

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 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: [Signature]  
 Date: 1/2/07

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 LAND DIVISION  
 JAN -9 P 3:22  
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 JAN -9 P 3:22



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

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 Moloka'i Land Trust will be charged jointly with managing the Lā'au Point shoreline and Conservation District areas. They have agreed on

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](http://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.

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  
Molokai Properties Limited

Attachment: Revised Section 3.7 (Fauna)

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

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/Kelth

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; 5-1-8:4,3,6,7,13-16,21,25  
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.  
(X) Comments are attached.

Signed: *[Signature]*  
Date: 2/22/07

MO-07-140  
Maui

RECEIVED  
OFFICE OF CONSERVATION  
& COASTAL LANDS  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII  
2006 DEC 28 A 1 53

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF WATER RESOURCE MANAGEMENT  
ROBERT K. MASUDA  
DEPUTY DIRECTOR  
DEAN MAICANO  
ACTING DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
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KAOIOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

LINDA LINGLE  
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

Dear Mr. Witten,

SUBJECT: Request for Comments regarding Draft Environmental Impact Statement for Laau 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 Laau 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, gulches, 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.

Correspondence: MO-07-140  
FEB 23 2007

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF WATER RESOURCE MANAGEMENT  
ROBERT K. MASUDA  
DEPUTY DIRECTOR  
DEAN MAICANO  
ACTING DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONSERVATION  
COMMISSIONER OF WATER RESOURCE MANAGEMENT  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAOIOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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.

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.

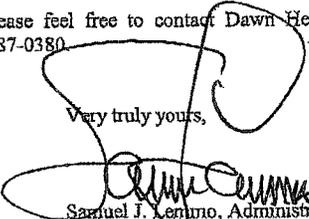
We acknowledge that the proposed 254 acres of expanded Conservation District will not have a subzone designation. The landowner will need to petition the Board of Land and Natural Resources for a new subzone. This will require an Administrative Rule Amendment per the requirements of Section 13-5-16, 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.

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 Ching - Land Use Commission

Mr. Samuel Lemmo, Administrator  
SUBJECT: LĀ'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 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 Hawai'i 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 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

Mr. Samuel Lemmo, Administrator  
SUBJECT: LĀ'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

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

March 6, 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 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

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
  
ROBERT K. MAUDA  
DEPUTY DIRECTOR  
  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BIOMASS AND ENVIRONMENT  
COMMISSION ON WATER RESOURCE MANAGEMENT  
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PBR HAWAII

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: 2/15/07



RECEIVED  
LAND DIVISION

2007 FEB 22 P 3: 21

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
  
ROBERT K. MAUDA  
DEPUTY DIRECTOR  
  
DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER  
  
AQUATIC RESOURCES  
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AQUATIC RESOURCES:	06-6621
DIRECTOR	
COMM. FISH	
AQ RES/ENV	
AQ REC	
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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 appending "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 TEC 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 fallouts with disgruntled Molokai residents should they agree to the project only to learn later that DLNR/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 breaches;
- (g) Should spell out in detail the mitigation plan should the CC&R be violated instead of leaving it so ambiguous.

And finally, DLNR/DAR should:

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

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 March 6, 2007 which included comments from the Division of Aquatic Resources regarding the Lā'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 Maunaloa community. This will be conducted under the guidance of the Moloka'i Land Trust. The CC&Rs have been strengthened to protect the environment and resources at Lā'au Point. Enforcement and substantial penalties will be put in place to ensure that the covenants are respected and upheld. Although the CC&Rs are currently under development, because of the Master Plan process (Section 2.1.6), MPL does have a general idea of what the CC&Rs and some of the key provisions and concepts will be.~~

The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point (the Board), affected lot owners, and in certain

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

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 Lā'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 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 *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 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 *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 Moloka'i Land Trust.

Mr. Russell Tsuji, Administrator  
SUBJECT: LĀ'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

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

January 11, 2007

Mr. Alan Suwa  
PBR Hawaii  
100 Bishop Street  
ASB Tower, Suite 650  
Honolulu, Hawaii 96813

LOG NO: 2006.4323  
DOC NO: 0701NM20  
Archaeology

Dear Mr. Suwa:

**SUBJECT: Chapter 6E-42 Historic Preservation Review (County/Molokai Properties Limited)  
EISPN 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 the revised mitigation plan (Majors, Cultural Landscapes Hawaii, 2006) which covers 875 acres for a residential community comprised of mixed residential uses, cultural preserves, parks and shoreline access. This plan combines preservation, data recovery, monitoring and burial treatment. Although we understand the concept of why you combined them (after several community meetings), these plans should be submitted separately, since each plan will need to have the appropriate review processing fee submitted. One copy of each plan should be submitted to our Oahu office and one copy to our Molokai archaeologist who is based on Kauai. The burial treatment plan will need to be approved by our Burial Staff which is located in the Oahu office.

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. Please have your consultant contact Ms. Nancy McMahon of my staff to discuss the proposed scope of work. Ms. McMahon may be reached at (808) 742-7033.

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.

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.

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR - LAND

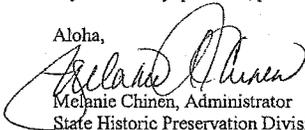
DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
COASTAL AND OCEAN DEVELOPMENT  
BUREAU OF CONSERVATION  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCE ENHANCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Page 2  
Mr. Alan Suwa

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. We assume these reports will contain detailed site descriptions which were not include in this mitigation plan.

If you have any questions, please call Nancy McMahon, our Molokai Archaeologist.

Aloha,  
  
Melanie Chinen, Administrator  
State Historic Preservation Division

NM:

c: Anthony Ching, State Land Use Commission P.O. Box 2359, Honolulu, HI 96804  
OEQC, 235 S. Beretania St. Suite 702, Honolulu, HI 96813  
Peter Nicholas, Molokai Properties Limited 745 Fort Street Mall, Suite 600, Honolulu, HI 96813  
Mo Majors, Cultural Landscapes  
Michael Foley, Planning Department County of Maui  
Jessie Yorck, OHA



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 Pāpōhaku 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 Pāpōhaku ranch lands, MPL and their archaeologist have recognized since the beginning that the TMK 5-1-008 subdivision (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, 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 Pāpōhaku 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 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 (Pāpōhaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpōhaku Ranchlands parcels that will be affected by the road corridor through the area. This commitment does not extend into TMK 5-1-02-030. Prior to construction, the archaeologist will re-examine the road corridor and verify descriptions of known sites, gather additional data if possible, and search for unrecorded archaeological deposits or features observable due to changes in surface visibility. After the road corridor re-survey re-examination and supplemental data collection, the proposed subdivision lots and coastal zone will be also be re-surveyed 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 Kamāka'ipō Gulch (see Figure 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 McMahan, 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

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LINDA LINGLE  
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  
CHAIRPERSON  
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COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
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AQUATIC RESOURCES  
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CONSERVATION AND RESOURCE ENFORCEMENT  
ENTRANCE  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIKOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Mr. Tom Witten  
Page 2

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.

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

NM:jen

c: Anthony Ching, State Land Use Commission P.O. Box 2359, Honolulu, HI 96804  
OEQC, 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



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 IARII during 2000; however, this report was never accepted by the State Historic Preservation Division. (Burchard and Athens, IARII, 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 Pāpōhaku ranch lands, MPL and their archaeologist have recognized since the beginning that the TMK 5-1-008 subdivision (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, 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

Ms. Melanie Chinen  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
Page 2 of 3

Archaeological Mitigation Plans for those properties. She recognized that the inventory had been accepted, and that only the Pāpōhaku 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 (Pāpōhaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpōhaku Ranchlands parcels that will be affected by the road corridor through the area. This commitment does not extend into TMK 5-1-02-030. Prior to construction, the archaeologist will re-examine the road corridor and verify descriptions of known sites, gather additional data if possible, and search for unrecorded archaeological deposits or features observable due to changes in surface visibility. After the road corridor re-survey re-examination and supplemental data collection, the proposed subdivision lots and coastal zone will be also be re-surveyed 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: LĀ'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

LINDA LINGLE  
GOVERNOR

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

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  
250 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.

BARRY FUKUNAGA  
INTERIM DIRECTOR

Deputy Directors  
FRANCIS PAUL KEENO  
BRENNON T. MORIOKA  
BRIAN H. SEKIYUCHI

IN REPLY REFER TO:

STP 8.2405

Messrs. Witten, Nicholas, Sabas and Hunt

Page 2

February 6, 2007

STP 8.2405

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 Hunt  
Page 3  
February 6, 2007

STP 8.2405

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 Theilen)

November 1, 2007

Barry Fukunaga  
State of Hawai'i  
Department of Transportation  
869 Punchbowl Street  
Honolulu, Hawai'i 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 TIAR 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 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.

Mr. Barry Fukunaga, Director

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 1, 2007

Page 2 of 2

- 5b. Based on the request and determination of the Highways Maui District Engineer, the traffic consultant has monitored the traffic at the intersection of Kaluako'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 EISPN, the Maui County Department of Public Works and Environmental Management stated: "We note that roads for the development will be built to County standards. We also note that access for these roads are from a private road. As such, the roads for the development shall remain under private ownership and maintenance." After build-out, should the roads will remain private, and the Lā'au Point homeowners' association will be responsible for maintenance. In addition, MPL will plan, design, and construct, at no cost to the State: 1) a left-turn deceleration lane and right-turn deceleration lane at the intersection of the proposed project access road (Kaluako'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 KAP'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

Thomas S. Witten  
PBR Hawaii  
February 23, 2007  
Page 2

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 gathering; 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]

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 kīpuka, 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'ulaokalani 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. I-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 descendents 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 Kaua'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.

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 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.cr.nps.gov/nr/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 Moloka'i represents – a rural stronghold and reserve of Native Hawaiian culture, a cultural kipuka. If Moloka'i 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 Moloka'i 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 Moloka'i, Moloka'i. 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 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).

#### **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.

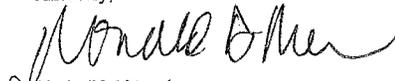
Additionally, OHA hopes that the comments, concerns and questions elicited from the public about the current Draft EIS, which is a springboard for public comment, will be fully considered before the publication of the Final EIS. If you have further questions or require more



Thomas S. Witten  
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information regarding OHA's comments, please contact Heidi Guth at (808) 594-1962 or e-mail her at [heidig@oha.org](mailto: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

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 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."...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 Kaluako'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." Kaluako'i Hotel is a renovation of an existing development, and has already started processing its entitlements. Proposed community housing, to be developed by the Community Development Corporation (CDC), will be addressed when the CDC is ready to develop those homes.

#### 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*

*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 Kauai 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 inadequate (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.

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 TMK 5-1-008 (Pāpōhaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpōhaku Ranchlands parcels that will be affected by the road corridor through the area. This commitment does not extend into TMK 5-1-02-030. Prior to construction, the archaeologist will re-examine the road corridor and verify descriptions of known sites, gather additional data if possible, and search for unrecorded archaeological deposits or features observable due to changes in surface visibility. After the road corridor ~~re-survey~~ re-examination and supplemental data collection, the proposed subdivision lots and coastal zone will be also be ~~re-surveyed~~ 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

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 Kaula'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)*

**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 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. (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

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.~~

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 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

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 La'au Point, notably at Kamaka'ipo, Kapukuwahine and Kanalukaha. The proposed 128-acre Kamāka'ipō Gulch will be gifted to the Moloka'i Land Trust.

We note your suggestion regarding the TCP model.

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)*

**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 Molokai 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 Molokai 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.

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 toppling 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 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.~~

#### 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

*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 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. (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 protecting 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.

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 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 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 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.* (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

testimony filed in the Waiola Case. The statement refers to Moloka'i as a whole and not specifically to the Lā'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 Hawai'i."

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

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 an 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.

- 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 (Kalaipahoa-'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 Maunaloa community shall be integrally involved in the management and monitoring of access within the Kaluako'i 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 Pālā'au, outside of the proposed project area. Therefore, we disagree that this specific testimony needs to be addressed in the EIS.

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, Limu, 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 malihini from locales outside of Hawai'i, in looking at comparable luxury projects throughout the islands, a portion of the purchasers 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 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.* (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 they or 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 congregate.

These informants and others identified the coastal area off of the proposed residential development as having abundant lobster, uhu, enenue, moi, aholehole, squid, 'opihi, loli, 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 page 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*

*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 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. (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 Kāalahale 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 (Kāalahale 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 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. (Page 16)*

**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 EC/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

Mr. Clyde Nāmu'ō, Administrator  
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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 ETS, 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.

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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-Nui, 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 other 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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**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?

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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).**

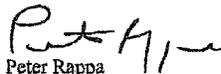
The use of permeable materials for the parking lots and road in the park should be considered. Sea Grant held a workshop on the use of permeable materials on Maui in 2006. Perhaps you might contact the Maui Sea Grant Extension office for information of the workshop.

**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 Moncur  
Zoe Norcross-Nuu



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.

Mr. Peter Rappa  
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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 desalinization, 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 Kaupoa Beach Camp Road, connecting with Kaluako'i Road and Kulawai Loop. ~~The mauka 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'

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 Lā'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. [W]ho 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 'ihi 'ihilauakea (*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 'ihi 'ihilauakea population is not within the proposed residential houselot 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 deeded to the Land Trust, is also covered by the SAMP. This with The provisions of the SAMP include managing this the significant 'ihi 'ihilauakea population, including possible opportunities to use for private landowner "safe harbor" conservation programs. The 'ihi 'ihilauakea might also benefit from habitat created by any settling ponds planned for the site. The key to protecting the 'ihi 'ihilauakea 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:

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 undertaking 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 Brierly 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 2001.

**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 Kamāka'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.

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'au Point will change with the creation of the rural- residential community. To mitigate visual impacts, the houselots, roadways, and infrastructure of the Lā'au Point project will occupy only seven ~~eight~~ percent of the entire 6,348-acre Lā'au 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 ~~aeres~~ 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 10 12).

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'au 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 Hawai'i at Manoa  
United States Department of Agriculture Cooperating

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 Haruyoshi 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.

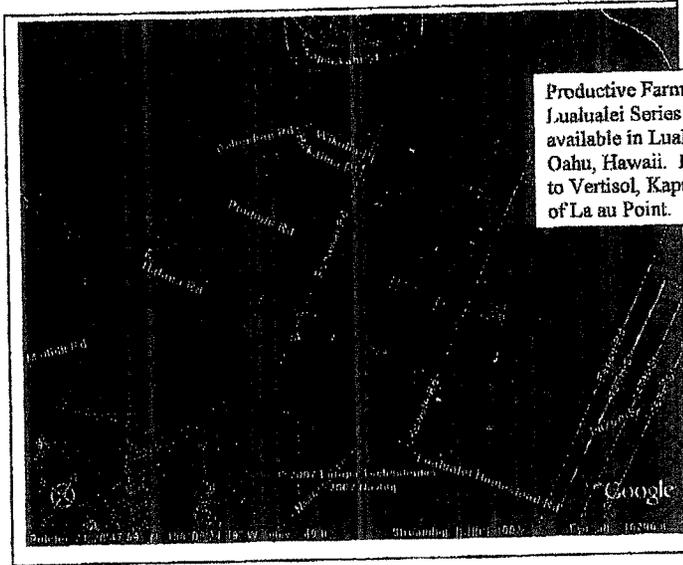
I would project that when irrigation is provided to Kapuhikani, it will be highly productive. This projection is based on similar Vertisol, like the Lualualei Soil Series that is farmed in Lualualei Valley on the Waianae Coast and the existence of Lualualei (LuA) Soil Series on the eastern property of Lono Harbor within the geographical and climatic conditions of Laau Point. Attached is Google arial photo of Lualualei Valley farms on Lualualei soil series, Lualualei Valley Soil Series map and map of Lualualei Soil Series in the vicinity of La au and Lono Harbor on Molokai. With irrigation Lualualei 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.

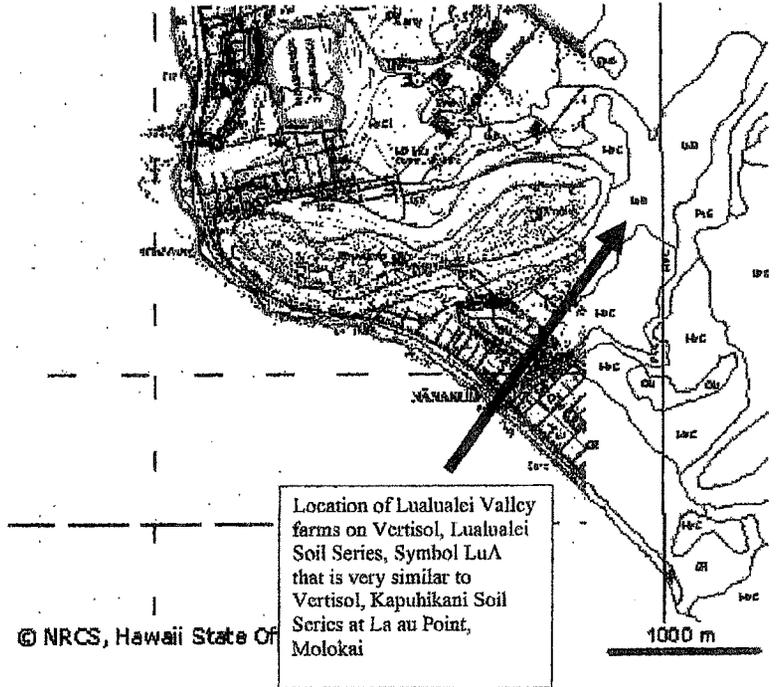
Working with farmers and crops in semi arid areas like in Hoolehua, Molokai requires me to have knowledge of crop water requirements and designing irrigation delivery systems that will meet crop needs and sustain production system. The EIS fails to present a clear picture of how the integrity of projected daily water figures for the project will actually be maintained. A ½ 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 ¾ 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 indicate 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



Productive Farms on Vertisol, Lualualei Series with irrigation available in Lualualei Valley on Oahu, Hawaii. Lualualei is similar to Vertisol, Kapuhikani Soil Series of La au Point.



Location of Lualualei Valley farms on Vertisol, Lualualei Soil Series, Symbol LuA that is very similar to Vertisol, Kapuhikani Soil Series at La au Point, Molokai

© NRCS, Hawaii State Of



November 1, 2007

Alton S. Arakaki  
 Cooperative Extension Service  
 College of Tropical Agriculture and Human Resources  
 University of Hawaii at Mānoa  
 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.

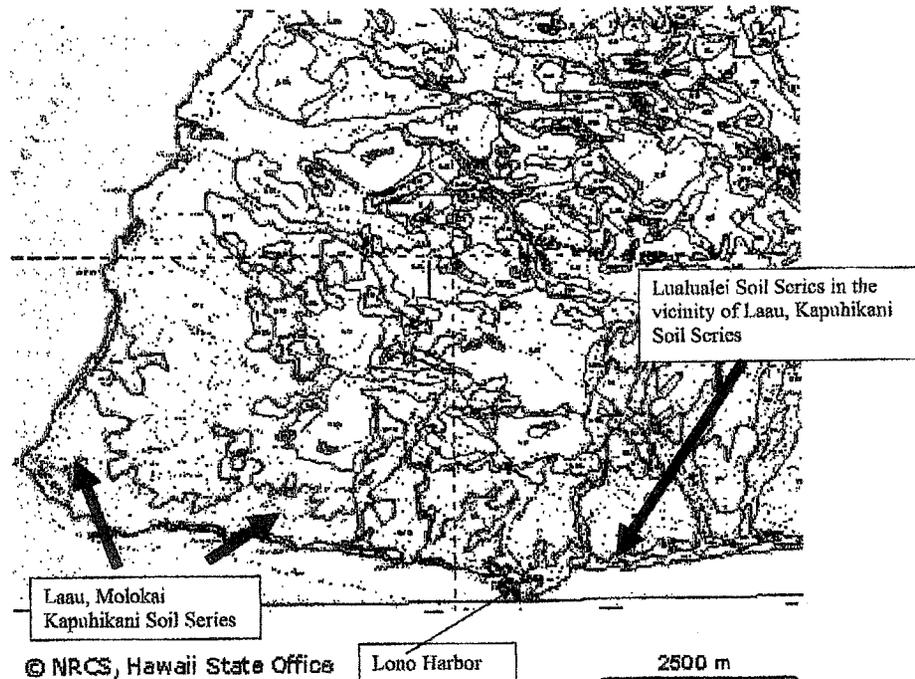
1. *The EIS fails to mention that the only limitation associated with this Soil Series is the lack of irrigation and this limitation is the only reason it is placed in Land Suitability Classification VII...*

**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 very 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 Luaualei Soil Series that is farmed in Luaualei Valley on the Waianae Coast and the existence of Luaualei (LuA) Soil Series on the eastern property of Lono Harbor within the geographical and climatic conditions of Laau Point...With irrigation Luaualei is Class I and Class VI or VII without irrigation. Thus the EIS conclusion that Laau Point soils is "poorly suited for soil-based agriculture" is not accurate.*

**Response:** We note your comments.



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 montmorillite 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

Kamāka'ipō 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 La'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: LĀ'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

**MAUI COMMUNITY COLLEGE**

Molokai Education Center

Office of the Coordinator

RECEIVED

FEB 23 2007

PBR HAWAII

February 22, 2007

Molokai Properties, Limited  
745 Fort Street Mall, 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 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-Paoa, Professor/Coordinator  
Maui Community College on Molokai

C: State Land Use Commission  
PBR Hawaii  
Office of Environmental Quality Control



Molokai  
Properties  
Limited

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, Hawai'i 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 far 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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U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Pacific Islands Regional Office  
1601 Kapiolani Blvd., Suite 1110  
Honolulu, Hawaii 96814-4700  
(808) 944-2200 • Fax (808) 973-2941

FEB 0 5 2007

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

Dear Mr. Sabas:

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

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

#### Use of La`au Point area by Hawaiian monk seals

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

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

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



#### Favorable characteristics of the La`au Point area as monk seal habitat

A number of features of the La`au Point area seem to make it especially good monk seal habitat.

#### Remoteness and limited access

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

#### Sandy beach substrate

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

#### Proximity to foraging areas

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

#### Potential deleterious effects of proposed action

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

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

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

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

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

#### Concerns regarding proposed mitigating measures

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

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

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

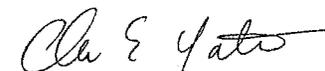
The DEIS states that "A State Land Use District Boundary Amendment is proposed to protect and expand the existing Conservation District (shoreline area) by 254 acres, thereby increasing the amount of shoreline and habitats, such as for monk seals, put into permanent protection" (p. 17). This statement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

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

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

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

Sincerely,



Chris E. Yates  
Assistant Regional Administrator  
for Protected Resources

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

## REFERENCES

- Stewart, B.S. et al. (2006):  
Foraging biogeography of Hawaiian monk seals in the Northwestern Hawaiian Islands.  
Atoll Research Bulletin 543(0): 131-145.
- Littnan, C.L. et al. (2006):  
Survey for Selected Pathogens and Evaluation of Disease Risk Factors for Endangered Hawaiian  
Monk Seals in the Main Hawaiian Islands. *EcoHealth* 3(4): 232-244.
- Baker J.D., Johanos T.C. (2004) Abundance of the Hawaiian monk seal in the main Hawaiian  
Islands. *Biological Conservation* 116:103-110.



November 1, 2007

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

### SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Yates:

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

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

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

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

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

**Concerns regarding proposed mitigating measures**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Response:** We acknowledge your comment.

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

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

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

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

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

Sincerely,



Peter Nicholas  
President and CEO  
Molokai Properties Limited

Attachment: Revised Section 3.7 (Fauna)

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



REPLY TO  
ATTENTION OF

Regulatory Branch

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

Dear Ms. McPherson:

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

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

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

Sincerely,

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

Copy Furnished:

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



November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Young:

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

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

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

Sincerely,

Peter Nicholas  
President and CEO  
Molokai Properties Limited

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

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U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander  
Maintenance & Logistics  
Command Pacific (s)

Chief, Civil Engineering Division  
1301 Clay Street, Suite 700N  
Oakland, CA 94612-5203  
Staff Symbol: (sls)  
Phone: (510) 637-5505  
Fax: (510) 637-5513

11011  
March 19, 2007

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

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

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

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

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

Ladies and Gentlemen:

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

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

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

SUBJ: LA'AU POINT PARCEL RE-ZONING

11011

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

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

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

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

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

Sincerely,

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

Copy: CGD Fourteenth



November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Wallis:

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

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

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

We offer the following responses to your comments:

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read 'Peter Nicholas', is written over a light-colored background.

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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CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

COLLEEN M. SUYAMA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

February 23, 2007

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

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

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

Dear Sirs:

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

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

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

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

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

Mr. Peter Nicholas  
Mr. John Sabas  
Mr. Thomas A. Witten  
Mr. Anthony Ching  
February 23, 2007  
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highly sensitive to our history on Moloka'i. Also, whether or not these houses are going to be post and pier, whether or not they're going to be on slabs. Can you comment on how these houses are going to be built and where the cesspool plant is going to be, the water treatment area, all of those kinds of things, and whether or not it's going to be in a rural area?

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

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

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

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

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

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

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

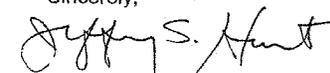
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Comments from the General Public at the February 14, 2007 CRC Special Meeting including the following:

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

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

Sincerely,



JEFFREY S. HUNT  
Planning Director

JSH:SCS:jlp  
Attachments

c: Colleen M. Suyama, Deputy Planning Director  
Clayton I. Yoshida, AICP, Planning Program Administrator  
Nancy M. McPherson, Staff Planner Molokai  
Stanley Solamillo, Cultural Resources Planner  
OEQC  
Molokai Planning Commission  
Cultural Resources Commission  
Project File  
General File  
C:\Documents and Settings\scsof\Desktop\DEIS Comments



November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Hunt:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As discussed in Section 4.9.1 of the Draft EIS, all Lā'au Point lots will be required to retain runoff of their lot in surface or subsurface retention basins onsite. This requirement ensures additional runoff generated by the project is kept within the project limits in accordance with Maui County Storm Drainage Standards.

To address the above comment in the Final EIS, Section 4.9.1 (Drainage) has been revised as shown:

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

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

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

The current runoff from the proposed lots is 512 cubic feet per second (c.f.s.) for a 50-year 1-hour storm. This is expected to increase by 111 c.f.s. to 623 c.f.s. The total volume needed to store this increase is 152,390 ft<sup>3</sup>. Since the increase in runoff due to the roadway pavement is estimated at  $(53/111) = 48\%$ , approximately 52% is attributable to

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the imperviousness in each lot. The required storage in the roadway and lots are  $(0.48 \times 152,390) = 73,147 \text{ ft}^3$  and  $79,243 \text{ ft}^3$  respectively. It is estimated that approximately 20 feet of 5 feet diameter perforated pipe buried in each lot or a retention basin of equal capacity will be required to handle the additional runoff generated during a 50-year 1-hour storm event. See Exhibit 6 in Appendix R for details of subsurface systems on road and in lots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Response:** Your suggestions have been noted.

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

**Response:** Your comment is noted.

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

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

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

**Response:** Your comment is noted.

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

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

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

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

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

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

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

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

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

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

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

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

**Response:** We agree with your comment.

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

**Response:** We agree with your comment.

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

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

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

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

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

**Response:** Your comment is noted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Traditional wisdom among archaeologists has also concluded that this region would have been settled only after sweet potato was available, and after population densities had risen in the wetter areas, probably no earlier than about AD 1500 (Kirch 1985). Radiocarbon dates suggest somewhat earlier occupation may be possible, although the limited data make it hard to discern sporadic early use from a stable early habitation. An inland quarry yielded a radiocarbon date of AD 1260-1440, and the south Kamāka'ipō coastal site was dated between AD 1410-1955. A subsequent, unpublished date from the 1991 excavations at Site 654, in a coastal imu that Weisler originally recommended dating, provided an even earlier date of AD 1019-1211, confirming the suspicion that coastal areas were used much earlier than they were permanently settled.

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

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

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

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

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

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

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

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

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

Captain George Vancouver:

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

Archibald Menzies, naturalist on Vancouver Voyage:

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

Fornander in History of Kualii:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lā'au Point will include its own private wastewater treatment system to be maintained through homeowners' association dues. In their July 6, 2006 comment letter on the 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, the State Department of Health stated: "we have no objections to the proposed construction of an R-1 wastewater facility." MPL will build the onsite sewer collection system within Lā'au Point. A centrally-located site of 14 acres has been designated for the wastewater treatment system, which will accommodate the projected full development flow. The proposed sewage system will be designed to County of Maui standards. In addition, all wastewater plans will conform to applicable provisions of HAR, Chapter 11-62, "Wastewater Systems."

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

**Response:** As discussed in Section 3.8 (Marine Environment) of the Draft EIS, the marine waters surrounding Lā'au Point experience episodic "red water" events following periods of heavy rainfall. Turbidity, suspended solids and nutrient concentrations may be significantly elevated during these events. Sediment delivery to coastal waters is exacerbated by soil loosened by natural causes, including the effects of deer and livestock 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.

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

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

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

Sincerely,



Peter Nicholas  
President and CEO  
Molokai Properties Limited

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

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

ALAN M. ARAKAWA  
MAYOR



CARL M. KAUPALOLO  
CHIEF  
NEAL A. BAL  
DEPUTY CHIEF

**MPL** Molokai  
Properties  
Limited

**COUNTY OF MAUI**  
DEPARTMENT OF FIRE AND PUBLIC SAFETY

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

December 28, 2006

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

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

Dear Mr. Witten,

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

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

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

Sincerely,

Valeriano F. Martin  
Captain  
Fire Prevention Bureau

November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Captain Martin:

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

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

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

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

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

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

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

Mr. Valeriano Martin, Captain  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
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the access road will be paved, improving the road conditions, which may reduce emergency response times.

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

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

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

Fire and rescue emergency services will be able to access Lā'au Point and the shoreline from the new paved access road from Kaluako'i ~~and the existing emergency access dirt 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.

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

Sincerely,



Peter Nicholas  
President and CEO  
Molokai Properties Limited

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

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



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

January 23, 2007

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

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

Dear Gentlemen:

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

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

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

Mr. Peter Nicholas  
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January 23, 2007  
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Based on the foregoing, the Department provides the following comments on the Draft Environmental Impact Statement (EIS):

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

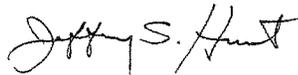
Mr. Peter Nicholas  
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4. Expand discussion of current Maui County General Plan update and its relationship to long range planning for Molokai. Discussion begins with section 5.2.1, "Maui County General Plan" on p. 120, and describes the update process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

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

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

Sincerely,



JEFFREY S. HUNT, AICP  
Planning Director

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Mr. John Sabas  
Mr. Thomas Witten  
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JSH:NMM:bv

c: Colleen M. Suyama, Deputy Planning Director  
Clayton I. Yoshida, AICP, Planning Program Administrator  
Nancy M. McPherson, Staff Planner Molokai  
Stanley Solamillo, Cultural Resources Planner  
Nina Kawano, Molokai Planning Office  
OEQC  
Molokai Planning Commission  
Cultural Resources Commission  
Project File  
General File  
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November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT;  
EAC 2006/0017; CPA 2006/0009; CIZ 2006/0015; SMI 2006/0040; & CUP 2006/0005**

Dear Mr. Hunt:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

McNeill & Libby Company had begun raising pineapple in the Maunaloa area on lands leased from Molokai Ranch. They continued operations until selling to the Dole Corporation in 1972. Del Monte, then known as California Packing Corporation, arrived in 1927 and made their headquarters at Kualapu'u. They soon commenced large-scale pineapple cultivation, mostly on land leased from Molokai Ranch. Dole ceased its Moloka'i operations on January 1, 1976. Del Monte phased out its operations in the mid-1980s.

In the early 1970s 1968, Molokai Ranch, then owned by the Cooke family, entered into a partnership with Louisiana Land and Exploration Company for the development of the Kaluako'i Hotel and Resort. Louisiana Land and Exploration Company was provided a contingency for the Ranch's West End lands. The Kaluako'i Resort opened in 1977 and included a hotel, a golf course, and condominiums. In 1978, the Moloka'i Ranch Wildlife Park opened for safari-like tours on the ranch lands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Jeff Hunt, Director  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
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Moloka'i Community Plan is a public document, and therefore, is available directly from the County of Maui Planning Department, and accessible directly from the Maui County website.

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

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

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

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

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

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

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

Sincerely,



Peter Nicholas  
President and CEO  
Molokai Properties Limited

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

O:\JOB17\1733.10 Molokai Ranch-Laa Pt EIS\EIS\DEIS\Comment letters\Responses\Agencies\Final\Planning Dept.doc

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

January 22, 2007

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



November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Arakawa:

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

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

Sincerely,

Peter Nicholas  
President and CEO  
Molokai Properties Limited

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

MEMO TO: JEFFREY S. HUNT, DIRECTOR OF PLANNING

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

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

We reviewed the subject application and have no comments to offer at this time.

If you have any questions regarding this memorandum, please call Michael  
Miyamoto at 270-7845.

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CHARMAINE TAVARES  
Mayor



DEPARTMENT OF WATER SUPPLY  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793-2155  
www.mauewater.org

JEFFREY K. ENG  
Director  
ERIC H. YAMASHIGE, P.E., L.S.  
Deputy Director

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

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

February 20, 2007

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

RE: Draft Environmental Impact Statement  
Project Name: La'au Point  
TMK: 5-1-002:030, 5-1-006:157, 5-1-008:003, 004, 006, 007,013, 014, 015, 021, and  
25

Dear Mr. Hunt:

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

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

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

*"By Water All Things Find Life"*

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)

Printed on recycled paper



Sincerely,

Jeffrey K. Eng, Director  
ayi

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



November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Eng:

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

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

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

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

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

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

Mr. Jeffrey Eng  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
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We will, however, continue to actively work with all stakeholders to develop a water solution for Moloka'i. To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that such uses will not interfere with DWS's existing permits.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Nicholas', is written over a light blue horizontal line.

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

CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

COLLEEN M. SUYAMA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

February 21, 2007

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

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

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

Dear Sirs:

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

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

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FEB 23 2007

PBR HAWAII

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

Public Comment, by Draft EIS chapter/category:

**1 INTRODUCTION AND SUMMARY**

Comment #1:

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

**2 PROJECT DESCRIPTION**

**2.1 BACKGROUND INFORMATION**

**2.1.5 Detailed Land Use History**

Comment #1:

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

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

Comment #1:

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

Comment #2:

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

Comment #3:

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

**Comment #4:**

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

**Comment #5:**

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

**Comment #6:**

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

**Comment #7:**

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

**Comment #8:**

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

**2.3.6 Covenants**

**Comment #1:**

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

**Comment #2:**

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

**Comment #3:**

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

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

**Comment #1:**

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

**3.1 CLIMATE**

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

**3.2 GEOLOGY AND TOPOGRAPHY**

**3.3 SOILS**

**Comment #1:**

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

**Comment #2:**

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

**3.4 AGRICULTURAL IMPACT**

**Comment #1:**

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

Peter Nicholas & John Sabas  
Thomas S. Witten  
Anthony Ching  
February 21, 2007  
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Discuss how island is in a severe water crisis and suffers from drought. The water for a 2.905 million gallons per day reservation from Kualapuu doesn't exist. Discuss how no water can be taken from Kaunakakai. Include mandate to keep good data, records on water usage and supply. Include reference to requests that the State Water Commission monitor the situation. There is currently only 10% build out at Kaluakoi – base water usage assessment on Kaluakoi at buildout. Include discussion of projected water usage – 3,000 gallons per day per house.

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

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

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

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

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

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

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

**Comment #8**  
The main issue is water -- provide discussion of assurance that taro farming in Halawa and Waialua valleys can be maintained by preventing additional diversions of water from mountain sources.

### **3.5 NATURAL HAZARDS**

#### **3.6 FLORA**

[See comments under 3.3, Soils]

**Comment #1:**  
Provide additional information on endangered species, including the Ihi lau kea.

**Comment #2:**  
Expand discussion of 'ihi'ahi fern -- it is a special fern with sacred and cultural significance, and needs to have critical habitat protection.

**Comment #3:**  
Draft EIS needs to expand discussion of 'ihi'ahi (*Versilia memrosa*). This endangered plant has the highest level of federal protection -- it is critically endangered. There are only five known occurrences, and two occur on the west end of Molokai. Occurrences can be spaced out for several years -- spores are in the ground. If found, the USFWS is mandated to protect it with critical habitat. Kamakaipo Guich and Moki'o are likely places, but it needs a major flood, then the waters have to subside. There needs to be scarification of the spores. This is not addressed in the EIS. You can go out and look for it and find it -- it doesn't even look like a fern.

**Comment #4:**  
Ihi'ahi habitat at La'au was originally registered with the US Fish and Wildlife Service and was on the Critical Habitat list -- in 2003 it was delisted as critical habitat. Provide discussion of why this happened.

### **3.7 FAUNA**

**Comment #1:**  
Expand discussion of endangered monk seal population, and their current status and biological viability statewide. Discuss how important remote areas with quiet beaches are to their life cycle.

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

Comment #2

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

Comment #3:

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

### 3.8 MARINE ENVIRONMENT

Comment #1:

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

Comment #2:

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

Comment #3:

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

## 4 ASSESSMENT OF THE HUMAN ENVIRONMENT, POTENTIAL IMPACTS, AND MITIGATION MEASURES

### 4.1 ARCHAEOLOGICAL AND HISTORIC RESOURCES

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

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Comment #1:

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

Comment #2:

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

### 4.2 CULTURAL RESOURCES

#### Burials and Handling of Kupuna

Comment #1:

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

Comment #2:

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

Comment #3:

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

Comment #4:

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

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

#### 4.2.4 Cultural Assessment

**Comment #1:**

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

**Comment #2:**

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

**Comment #3:**

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

**Comment #4:**

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

**Comment #5:**

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

**Comment #6:**

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

**Comment #7:**

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

**Comment #8:**

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

**Comment #9:**

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

**Comment #10:**

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

**Comment #11:**

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

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#### 4.3 TRAILS AND ACCESS

##### Comment #1 – Public Access:

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

#### 4.4 ROADWAYS AND TRAFFIC

##### Comment #1 – Traffic Impacts:

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

#### 4.5 NOISE

#### 4.6 AIR QUALITY

#### 4.7 SCENIC RESOURCES

#### 4.8 SOCIAL AND ECONOMIC CHARACTERISTICS

##### Comment #1:

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

##### Comment #2:

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

##### Comment #3:

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

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##### Comment #4:

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

##### Comment #5:

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

##### Comment #6:

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

##### Comment #7:

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

##### Comment #8:

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

##### Comment #9:

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

#### 4.8.1 Population

#### 4.8.2 Housing

##### Comment #1:

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

#### 4.8.3 Community Character

Comment #1:  
Molokai Ranch/MPL over the years has made a lot of promises to the community, yet kept very few of them. Discuss trust issues with the Ranch that have developed, and how MPL's recent actions have or have not served to divide a once tightly knit community, by creating insiders and outsiders, people who are invited to Ranch events and people who are not, etc.

#### 4.8.4 Economy

Comment #1:  
Discussion of economic impacts and tourism are inadequate. Expand discussion on how project impacts tourism and on what economic engine is that will drive desired outcomes of project and Master Plan.

Comment #2:  
Discussion of economic impacts needs to be focused more on local community -- it was never explained exactly how the project will benefit the local community directly. Discuss how the proposed strategy is or is not the best way to help an economically depressed community.

### 4.9 INFRASTRUCTURE AND UTILITIES

#### 4.9.2 Water

[Also see comments under 3.4, AGRICULTURAL IMPACT]

Comment #1:  
Provide discussion of contingency plans if the water wells go salty. Discuss how the agencies make adjustments to water allocations, and whether or not those allocations can be reduced once they are given and development has occurred.

Comment #2:  
I lived on a ranch, then the well ran dry. Colorado River water doesn't even reach Mexico anymore. Aquifers are going dry in the Southwest, because water is being diverted to areas of development. Hydrology is not an exact science. The monitoring well that was drilled is no longer in use. Provide expanded discussion of hydrological issues, status of monitoring well, and where water is going to come from if and when the wells run dry, or salty as the case may be.

Comment #3:  
Information on water availability is inadequate or inaccurate -- include latest water studies, and/or discuss whether or not there is enough data on water on Molokai to make sound planning decisions.

Comment #4:  
Discuss how important it is for La'au residents to have access to fresh water, when the rest of us have to wait a year to get a water meter and can't even wash our kids off at the fish pond. Discuss how limu and baby fish need fresh water from coastal springs, and how additional withdrawals from aquifer could threaten that ecosystem.

Comment #5:  
Clarify how MPL is in negotiations with DHHL -- DHHL water rights are non-transferable and nonnegotiable.

### 4.10 PUBLIC SERVICES

Comment #1:  
Discuss how this project will provide badly needed improvements in community facilities, bridges and roads.

#### 4.10.2 Police Protection (see 4.10.3 Fire Protection)

#### 4.10.3 Fire Protection

Comment #1:  
Data on response times is inaccurate and understated. It takes at least 25 minutes for fire trucks to respond to Maunaloa from the Hoolehua station, as reported by a firefighter, so it will take additional time to get to the development. Provide more accurate response times, and provide discussion on how impacts to demands on fire protection services will be mitigated.

#### 4.10.5 Recreational Facilities

Comment #1:  
Discuss how this project will help Molokai build a new gym in Maunaloa, as well as help create youth programs.

## 5 RELATIONSHIP TO LAND USE PLANS AND POLICIES

### 5.1 STATE OF HAWAII

#### DHHL

##### Comment #1:

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

## 5.2 COUNTY OF MAUI

##### Comment #1:

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

##### Comment #2:

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

### 5.2.2 Molokai Community Plan

##### Comment #1:

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

##### Comment #2:

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

##### Comment #3:

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

## 5.3 APPROVALS AND PERMITS

##### Comment #1:

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

## 5.4 APPROVALS AND PERMITS

##### Comment #1:

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

##### Comment #2:

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

##### Comment #3:

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

##### Comment #4:

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

## 6 ALTERNATIVES TO THE PROPOSED ACTION

##### Comment #1:

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

##### Comment #2:

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

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**Comment #3:**

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

**Comment #4:**

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

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

[Also see written testimony submitted by Matt Yamashita]

**Comment #1:**

Community participation, exploration of alternatives misrepresented in DEIS

**Comment #2:**

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

**Comment #3:**

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

**Comment #4:**

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

**Comment #5:**

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

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**Comment #6:**

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

**Comment #7:**

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

**Comment #8:**

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

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

**Comment #1:**

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

**Comment #2:**

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

**Comment #3:**

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

**Comment #4:**

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

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To: Molokai Planning Commission  
 From: Commissioner Chaikin

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

Comment #5:

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

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

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

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

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

Is Laau Point already subdivided?

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

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

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

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

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

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

Documentation that needs to be included in FEIS

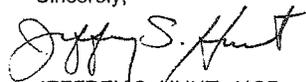
- 1) Molokai Land Trust Agreement
- 2) Partnership Agreement between MRL and MLT
- 3) Articles of Incorporation and Bylaws of the Molokai Community Development Corporation
- 4) CC&Rs of the Laau Point development
- 5) Bylaws of the Laau Point Homeowners Association
- 6) Deed Restrictions on the 26200-acre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

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

END OF PUBLIC COMMENTS

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

Sincerely,

  
 JEFFREY S. HUNT, AICP  
 Planning Director

JSH:NMM:bv

Attachments

c: Colleen M. Suyama, Deputy Planning Director  
 Clayton I. Yoshida, AICP, Planning Program Administrator  
 Nancy M. McPherson, Staff Planner Molokai  
 Stanley Solamillo, Cultural Resources Planner  
 Nina Kawano, Molokai Planning Office  
 OEQC  
 Molokai Planning Commission  
 Cultural Resources Commission  
 Project File  
 General File  
 K:\WP\_DOCS\PLANNING\EAC\2006\0017\_Laau\_Point\_Molokai\DEIS Comments MoPC\_Trans2.wpd

Chaikin Comments p.1

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

END



U.S. DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 NATIONAL MARINE FISHERIES SERVICE  
 Pacific Islands Regional Office  
 1601 Kapiolani Blvd., Suite 1110  
 Honolulu, Hawaii 96874-4700  
 (808) 844-2200 • Fax (808) 979-2941

FEB 0 5 2007

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

Dear Mr. Sabas:

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

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

Use of La'au Point area by Hawaiian monk seals

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

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

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

Chaikin Comments p.2

Ritte Comments p.1



Favorable characteristics of the La'au Point area as monk seal habitat

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

Remoteness and limited access

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

Sandy beach substrate

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

Proximity to foraging areas

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

Potential deleterious effects of proposed action

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

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

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

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

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

Concerns regarding proposed mitigating measures

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

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

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

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

2  
Rite Comments p.2

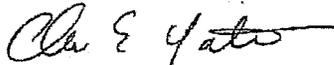
3  
Rite Comments p.3

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

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

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

Sincerely,



Chris E. Yates  
Assistant Regional Administrator  
for Protected Resources

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

4

Riffe Comments p.4

DeGray

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

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

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

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

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

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

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

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

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

*Molokai Properties Limited (i.e Molokai Ranch)*

Vanderbilt Comments p.1

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

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

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

The current Draft Plan meets all these criteria outlined below.

**1. Kaluakoi Hotel Rebuild:**

Hotel opened in December 2006

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

**2. Kaluakoi Golf Course**

Return course to resort standard to attract visitors

(a) Capital – new irrigation system, CAPEX for starter shack, Maintenance shed, cart barn, reduce turf to 80 acres	8.77	
(b) Losses until end of YR 4	1.79	10.56

(c) Financing:

\$8.77m for 1 year @ 7.5%	0.66	
\$1.79m for 1 year @ 7%	0.38	1.04

**3. Repair Kaluakoi Infrastructure**

Requirements – must be completed

(a) Meet Health Dept compliance order for drinking water	2.00	2.00
(d) Fund infrastructure CAPEX for 7 years until profitability of core operations can repay debt (7% rate)	0.98	0.98

**MPL Losses**

Plan must meet MPL losses and capital requirements for 5 years

Current losses per annum, in cash requirements

(a) \$4 million for annum, reducing to 2.2m in Yr. 5	16.70
--	-------

Vanderbilt Comments p.2

(b) Capital requirements for 5 years	1.98	18.68
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(c) Funding:

Potential sale of current lots to fund losses run out in Dec 2005		
Need therefore to fund \$14.25m for four years @ 7%	3.99	3.99

**5. Land Trust**

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

(a) Costs as per above	0.44	
(b) Funding @ 7% for one year	0.04	0.48

**6. Land Trust Evergreen Income**

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

10.00	10.00
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**7. Restoration of La'au Coastal Strand, Marine Resources, archeological sites preservation**

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

(a) \$600,000 pa from other sources x 5 year timeframe	3.00	3.00
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**Alternative Project Total Funds Needed:**

90.24

**8. Return for MPL**

MPL has \$110 m of depreciated assets employed. This is not BIL's equity investment in the company.

This includes lands at historic cost, Lodge and BV, Infrastructure costs, Maunaloa town, affordable housing project, industrial park costs, Kaluakoi hotel and golf course; all assets depreciated.

With the addition of the capital for the Kaluakoi Hotel, the golf course and other capital projects over the five year period, these assets Will increase by \$56 million

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

???

Criteria that must be used when reviewing alternatives:

Vanderbilt Comments p.3

These criteria are met in current Draft Plan

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

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

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

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

#### BEGIN COMMENTS:

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

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

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

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

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

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

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

What is the net worth of Brierley Investments Limited?

What is the net worth of The Gucco Group?

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

- a) Around the time his financial objectives proforma was being prepared, MPL presented materials to the community showed that MPL was seeking an investor to put up \$45 million. Please explain where the \$45 million figure and uses of those funds are listed in the eight financial objectives presented herein.
- b) What costs are included in the \$19.58 million "Capital" cost?
- c) Please provide a breakdown of how the \$3.85 million is divided up between "start up costs", the cost of the "initial marketing blitz" and the cost of the "losses to breakeven". What is included in "start up costs"?
- d) What collateral and/or loan guarantees are anticipated to be required by the lender(s) underwriting the construction loan?
- e) When did MPL anticipate the 8-year loan begin?  
When the hotel breaks even in Year 4, what occupancy and average room rates did MPL assume?  
Are there any other costs associated with the design, renovation, construction and reopening of the hotel?

Vanderbilt Comments p. 4

Vanderbilt Comments p. 5

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

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

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

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

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

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

- (a) Year 1 of the 5-year period of losses was anticipated to begin when?  
What did MPL estimate its losses would be for each of the 5-years?  
Did MPL assume its losses would be \$0 in Year 6?
- (b) What items make up capital requirements for each year of the 5-year period?
- (c) How many lots make up the inventory of lots that MPL anticipated would run out in December 2,005?

How many lots at Papohaku Ranchlands and the Moana Makani subdivisions were still owned by MPL when this financial objective proforma was prepared?

Vanderbilt Comments p6

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

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

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

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

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

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

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

Vanderbilt Comments p.7

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

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

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

Explain what is meant by "depreciated assets employed".

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

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

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

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

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

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

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

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

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

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

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

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

End of comments on Financial Objectives document.

Vanderbilt Comments p. 8

Vanderbilt Comments p. 9

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

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

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

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

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

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

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

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

COMMENTS:

Section 6.0 ALTERNATIVES TO THE PROPOSED ACTION

Section 6.4 Other MPL Land Development Alternatives:

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

- Revenue per lot
- Total Revenue
- Cost to develop

*Vanderbilt Comments p. 10*

- Financial return
- Water Use
- Population increase
- Land requirement

Section 6.52

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

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

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

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

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

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

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

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

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

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

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

*Vanderbilt Comments p. 11*



November 1, 2007

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

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Hunt:

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

**1 INTRODUCTION AND SUMMARY**

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

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

**2.1.5 Detailed Land Use History**

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

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

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

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

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

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

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

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

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

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

To clarify the lands that the Moloka'i Land Trust will own, manage, and administer, the Final EIS will contain a figure showing the locations of the various parcels as shown on the attachment titled, "Land Trust Land Donations and Easements." In addition, in the Final EIS, Section 2.1.8 (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.

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

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

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

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

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

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

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

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

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

The Moloka'i Land Trust will provide for the community's self-determination and protection of the island's resources with a mission "to protect and restore the land, natural and cultural resources of Molokai, and to perpetuate the unique Native Hawaiian traditions and character of the island, for the benefit of the future generations of all Molokai, particularly Native Hawaiians" (EC 2006). The Land Trust's unique goals are:

- Protecting historic cultural archeological sites.
- Preserving the precious natural and environmental resources.
- Enhancing indigenous rights through the protection of subsistence gathering.

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

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

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

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

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locations have been provided in the Draft EIS (Appendix A). In addition, the Final EIS will contain a figure showing the locations of the various parcels as shown on the attachment titled, "Land Trust Land Donations and Easements." In addition, Section 2.1.8 (Moloka'i Land Trust) in the Final EIS 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.

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

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

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

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

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

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

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

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

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

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

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

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

#### 2.3.6 Covenants

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

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

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

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

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

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

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

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

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

*Comment #1: The wealth of this island is in its natural resources. We cannot give up the water because that is what supports the subsistence and homesteader lifestyles. Describe how the natural resource wealth of Molokai will be protected by this project.*

**Response:** We are not clear if this comment pertains specifically to water or natural resources in general. Section 3.0 of the Draft EIS provides a description of the natural environment, potential impacts, and mitigation measures. Regarding water, as discussed in Section 4.9.2 (Water) of the Draft EIS, MPL has committed to using only existing sources, at currently permitted amounts, to meet all of the potable water needs for its current water customers and MPL's future developments proposed under the *Community-Based Master Land Use Plan for Molokai Ranch*. A new non-potable source is being proposed. Existing irrigation uses that are now supplied with potable water will utilize the new non-potable source, thus freeing up sufficient potable water to meet the demands of the future.

#### 3.1 Climate

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

**Response:** MPL believes that there is ample ground and surface water to meet current needs while still supporting MPL's plans for all of its lands. The total sustainable yield for groundwater resources on Moloka'i is 81 mgd. For planning purposes, the Moloka'i Water Working Group used 33.5 mgd as the developable yield of potable water on the island. Of the 81 mgd, less than 10 mgd is currently used. Additionally, there are 36 perennial streams on Moloka'i, but surface water usage on Moloka'i amounts to an average of about 3 mgd. The issue on Moloka'i is not the lack of water resources but accessibility, as the bulk of the resources are on the eastern side of the island whereas development and large scale agriculture is on the western and central parts of the island.

Under MPL's water plan, currently permitted ground and surface water withdrawals, plus the development of an additional 1 mgd of brackish water from the Kākahale Well will meet the current and future needs for all of MPL's developments.

DHHL has a reserved 2.905 mgd from the Kualapu'u aquifer, the bulk of which is targeted for agricultural use. MPL's water plan recognizes DHHL's future needs and MPL's water development plans will not interfere with DHHL's ability to develop its water reservation. MPL is currently working with DHHL, the County of Maui Department of Water Supply, and USGS to comprehensively evaluate Moloka'i's long-term water demands and resources.

To reflect the above information in the Final EIS, as well as other comments regarding water issues, Section 4.9.2 (Water) has been revised as shown in the attachment titled, "Revised Section 4.9.2 (Water)."

### 3.3 SOILS

**Comment #1:** *There are problems with the soils in the area. The soils will erode, and impact plants and agriculture in the area. If the soil type is unstable and can't support native plants, how will the proposed revegetation be successful? Expand discussion of problems with certain soil types in the project area, and how those will be mitigated.*

**Response:** Revegetation in unstable or very poor soils is possible by utilizing "pioneer" native species that can grow under very poor conditions. For example, using bales of the native grasses emoloa and pili and wood chips (created from kiawe trees being removed on site), the soil can be restored so it can support a diverse native shrubland.

Since the Draft EIS publication, a Geotechnical Engineering Reconnaissance (Survey) was completed by Geolabs, Inc., in the project area. This Survey has been appended to the Final EIS. In the Final EIS Section 3.3 will be revised to include the following summary:

#### 3.3.4 Geotechnical Engineering Reconnaissance

A Geotechnical Engineering Reconnaissance (Survey) was performed by Geolabs, Inc., in July and August of 2007 within the project area. The Survey, which is provided as Appendix D, provides a general study of the predominant soil characteristics of the project area.

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 Kamāka'ipō Gulch), basalt rock formation is encountered at the ground surface and partly exposed at the ground surface mixed with the soils mentioned previously.

**Comment #2:** *Molokai Ranch destroyed the land originally — explain why now it is up to the Molokai Community to restore it.*

**Response:** We disagree with your assertion that "Molokai Ranch destroyed the land originally." It is not stated or implied in the Draft EIS that "it is now up to the Moloka'i Community to restore it." Section 3.3 (Soils) of the Draft EIS contains discussion related to potential impacts to soils due to the project and proposes mitigation measures.

### 3.4 AGRICULTURAL IMPACT

**Comment #1:** *Data on issue of water availability is incomplete and inaccurate.*

**Response:** We disagree with your statement that "Data on issue of water availability is incomplete and inaccurate;" however, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

*Add discussion of increasing salinity of wells on Molokai, especially Kualapuu.*

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Prior Studies by USGS on the Capacity of the DHHL Wells."

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*Discuss alternatives for minimizing water usage, revise underestimations of demand.*

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Water Working Group Task Force 2007" and "Lā'au Project Issues."

*Use more up to date water data —Alpha USA data is 13 years old.*

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Additional Information on the Kāalahale Well," "USGS Modeling of Kualapu'u Aquifer," and "Water Working Group Task Force 2007."

*Discuss how DHHL water rights are nonnegotiable.*

**Response:** MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2 (Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water."

*Discuss how island is in a severe water crisis and suffers from drought.*

**Response:** MPL is cognizant that West Moloka'i and Ho'olehua have been identified as drought risk areas in the Drought Risk and Vulnerability Assessment and GIS Mapping Project prepared for the CWRM.

In to incorporate drought mitigation measures into the Final EIS, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Drought Mitigation."

*The water for a 2.905 million gallons per day reservation from Kualapuu doesn't exist.*

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Additional Information on the Kāalahale Well," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

*Discuss how no water can be taken from Kaunakakai.*

**Response:** We are unaware of what this refers to. We have never stated that water will be taken from Kaunakakai.

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*Include mandate to keep good data, records on water usage and supply. Include reference to requests that the State Water Commission monitor the situation.*

**Response:** A standard condition in all water use permits issued by the State Commission on Water Resource Management is that all permittees must record withdrawal amounts, salinity, temperature, and pumping time and report these data to the Commission on a monthly basis on forms provided by the Commission. As this is a standard condition of the State Commission on Water Resource Management, mention of this condition is not warranted in the Final EIS. MPL is in compliance with this requirement.

*There is currently only 10% build out at Kaluakoi — base water usage assessment on Kaluakoi at buildout. Include discussion of projected water usage —3,000 gallons per day per house.*

**Response:** When MPL's predecessor was granted a permit to pump the 1.018 million gallons from Well 17 for the Kaluako'i area, the CWRM acknowledged that that water allocation would not be sufficient to meet the needs of a full build-out of the residential lots, the operation of the Kaluako'i Hotel, and the operation of the golf course and any other development plans.

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

However, if MPL were to use the brackish water permitted from the Pālā'au Prawn Farm brackish well (864,000 gallons per day, of which 500,000 gallons is recoverable), it would, along with its current surpluses from its mountain system and from Well 17, be able to meet the needs of the 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 Kāalahale well meets all the needs of the *Community-Based Master Land Use Plan for Molokai Ranch* developments.

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

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Additional Information on the Kāalahale Well," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

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

**Response:** The Draft EIS discusses the impact on agriculture from the Lā'au Point project. The Draft EIS also addresses water issues as related to the Lā'au Point project. It is beyond the scope of the EIS to discuss that the continued viability of agriculture on Molokai depends on long-term availability of water. However, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding issues related to other's use of water on Moloka'i, please refer to sections of the attachment titled, "Additional Information on the Kākalahale Well," "DHHL's Future Water Needs," "MIS Issues," "Water Working Group Task Force 2007," and "Other Issues Raised."

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

**Response:** The use of water in regard to the Lā'au Point project is discussed in the Section 4.9.2 (Water) of the Draft EIS. In the Draft EIS, reference is made to the Water Plan, which is included as Chapter 6 in Appendix A (Master Plan) and in Appendix P (Water Plan Analysis) of the Draft EIS. The Water Plan does not prioritize one water use over another.

In addition, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding issues related to other's use of water on Moloka'i, please refer to sections of the attachment titled, "Additional Information on the Kākalahale Well," "DHHL's Future Water Needs," "MIS Issues," "Water Working Group Task Force 2007," and "Other Issues Raised."

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

**Response:** MPL is working within their existing water permit allocation; they are not requesting additional potable water.

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

**Response:** This question is similar to comment #4 above. MPL is not taking water away from farms. In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding issues related to other's use of water on Moloka'i, please refer to sections of the attachment titled, "Additional Information on the Kākalahale Well," "DHHL's Future Water Needs," "MIS Issues," "Water Working Group Task Force 2007," and "Other Issues Raised."

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

**Response:** MPL's Peter Nicholas has never used the phrase "agriculture is a dead horse." Peter Nicholas, however, has said that cattle ranching is a difficult business on Moloka'i, as evidenced by the ever-diminishing numbers of cattle on the island.

*Comment #8 The main issue is water-- provide discussion of assurance that taro farming in Halawa and Waialua valleys can be maintained by preventing additional diversions of water from mountain sources.*

**Response:** Molokai Ranch's mountain water system relies on surface water diverted from the upper Kawela and Kamakou watersheds, both of which are separate from and distantly removed from the streams serving the Halawa and Waialua taro activities.

To incorporate the above information into the Final EIS, in the Final EIS Section 4.9.2 (Water) will be revised as follows:

The Molokai Ranch Mountain System is the initial ranch water system. It is over 100 years old and relies totally on surface water delivered by gravity, which makes it cheaper to deliver to customers. The Ranch system moves surface water approximately 20 miles from the central mountains of Moloka'i to Pu'u Nana. The system relies on surface water diverted from the upper Kawela and Kamakou watersheds, both of which are separate from and distantly removed from streams serving the Halawa and Waialua taro activities. From Pu'u Nana, the water is either treated to potable for Maunaloa and the Industrial Park or used in the Molokai Ranch irrigation system. In addition, the system provides water for landscaping at Maunaloa Village, the Molokai Lodge, Kaupoa Camp, and Molokai Ranch's livestock.

### 3.6 FLORA

*Comment #1: Provide additional information on endangered species, including the Ihi lau kea.*

*Comment #2: Expand discussion of 'ihi'ihī fern -- it is a special fern with sacred and cultural significance, and needs to have critical habitat protection.*

*Comment #3: Draft EIS needs to expand discussion of 'ihi'ihī (Versilia memrosa). This endangered plant has the highest level of federal protection -- it is critically endangered. There are only five known occurrences, and two occur on the west end of Molokai. Occurrences can be spaced out for several years -- spores are in the ground. If found, the USFWS is mandated to protect it with critical habitat. Kamakaipo Gulch and Moki'o are likely places, but it needs a major flood, then the waters have to subside. There needs to be scarification of the spores. This is not addressed in the EIS. You can go out and look for it and find it -- it doesn't even look like a fern.*

**Response:** In response to your comments regarding the 'ihi'ihīlauakea (*Marsilea villosa*), Section 3.6 (Flora) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.6 (Flora)." We note that "Versilia memrosa" is not the correct scientific name for 'ihi'ihīlauakea (as stated in your Comment #3 above); it should be "Marsilea villosa."

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*Comment #4: Ihi'ihii habitat at La'au was originally registered with the US Fish and Wildlife Service and was on the Critical Habitat list -- in 2003 it was delisted as critical habitat. Provide discussion of why this happened.*

**Response:** The 'ihi'ihilauakea (*Marsilea villosa*) was never "delisted as critical habitat." Although 'ihi'ihilauakea was proposed for critical habitat in 2002, it was not designated in the USFWS final rule (USFWS Federal Register/Vol. 68, No. 52, 2003). It is beyond our purview to respond on behalf of the USFWS as to the reason "why this happened." Instead, we provide a statement from USFWS's final rule:

In April 5, 2002, revised proposal, we [USFWS] stated that there was critical habitat for *Marsilea villosa* within Molokai A1. Upon further inspection, we discovered that the actual areas that contain the suitable habitat for this species were inadvertently left out of the proposed unit Molokai A1. We are unable at this time to publish proposed critical habitat for *Marsilea villosa* in this final rule. Critical habitat is proposed for this species on the island of Oahu. We plan to publish a proposed rule to designate critical habitat for *Marsilea villosa* on Molokai subsequent to publication of this final rule for 41 plants on Molokai. (p. 13017)

### 3.7 FAUNA

*Comment #1: Expand discussion of endangered monk seal population, and their current status and biological viability statewide. Discuss how important remote areas with quiet beaches are to their life cycle.*

**Response:** In response to your comment, as well as to address other questions and concerns regarding Hawaiian monk seals, Section 3.7 (Fauna) of the Final EIS has been revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)."

*Comment #2 Provide improved studies on natural resources at La'au Point, especially marine life and birds, using local researchers who are knowledgeable on the presence and habitat of endemic species.*

**Response:** The biologists who performed the surveys in the Draft EIS are recognized experts in Hawai'i; they are knowledgeable of the taxonomy and habitats of endemic species. Each has conducted research for many years throughout the Hawaiian Islands and other Pacific Islands as well. It is not necessary to provide new studies using local researchers.

*Comment #3: The draft EIS stated that there were no land birds, mice or rats. Therefore, there must be pueo (owl), because otherwise there would be a lot of mice and rats. Provide additional data from other researchers as to the likelihood of the presence of owls at La'au.*

**Response:** In the avifaunal and feral mammal field survey report (provided as Appendix C in the Draft EIS; Appendix E in the Final EIS) the biologist, states that Pueo are likely to forage in the area, but no Pueo were observed during the survey.

To address the above information into the Final EIS, Section 3.7 (Fauna) of the Final EIS has been revised as shown:

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No native land birds, native water birds, or seabirds were observed at the project site during an avifaunal and feral mammal survey (Appendix E) conducted in August 2006. The only native land bird species likely to forage in this area is the Hawaiian Owl or Pueo (*Asio flammeus sandwichensis*). This species is listed by the State of Hawaii as endangered on O'ahu but not elsewhere in the State. They hunt in grasslands, agricultural fields and forests and nest on the ground in habitats with tall grass.

### 3.8 MARINE ENVIRONMENT

*Comment #1: The fish ponds need fresh water. Include a discussion of how fresh water springs along the coastline provide ideal conditions for fish and how these water sources are needed to do successful fishpond restoration.*

**Response:** In response to your comment, and the comments of others regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Impact of Pumping Kākalahale on the Coastal Environment, Limu, and Fishponds."

*Comment #2: Expand discussion of subsistence fishing to include impacts on rest of island, not just La'au Point --how will subsistence fishing pressure likely be displaced to other areas of the island? How will this displacement be handled?*

**Response:** Section 4.2 (Cultural Resources) of the Draft EIS discusses cultural resources, including subsistence fishing, potential impacts, and mitigation measures. Section 4.2 of the Draft EIS is a summary of the cultural impact assessment contained in Appendix F of the Draft EIS. In addition, Section 4.3 (Trails and Access) of the Draft EIS provides discussion on trails and access to the area, potential impacts, and mitigation measures. The Draft EIS and the cultural impact assessment adequately address concerns related to subsistence fishing. With the increased access to the area as a result of the La'au Point project, subsistence fishing pressure is not likely to be displaced to other areas of the island. In addition, with the Land Trust's plans to open all of its gifted lands (26,200 acres of MPL's 50,000 + acres) to subsistence fishing and hunting, no displacement is also anticipated from this decision.

*Comment #3: Provide improved assessment of underwater resources -- people from O'ahu did a study, and dove the reef, but they didn't see all the life down there such as sea cucumbers, coral, and wana, as well as lobster and he'e, moi and opihi. Explain how there could be such a discrepancy between local reports and the reports of outside researchers. Research needs to be done by people in the community-- the limu expert didn't find many species, but local people found lots of kinds of limu.*

**Response:** The marine survey represents a snapshot in time. However, the conditions observed represent the integration of historic influences on that coast. While there are likely some annual, seasonal, diurnal, and perhaps longer-term fluctuations in the apparent abundance and diversity of marine biota, the intent of the survey was to characterize the area in comparison with a range of other coastal habitats around the Hawaiian Islands to determine its uniqueness and/or special qualities. The results indicated that the area was not remarkable in comparison with other areas around the Main Hawaiian Islands.

As stated earlier, the marine biologists who performed the in the Draft EIS are recognized experts in Hawai'i; they are knowledgeable of the taxonomy and habitats of endemic species. Each has conducted research for many years throughout the Hawaiian Islands and other Pacific Islands as well. One of the researchers, Dr. Alan Friedlander, has been instrumental in development of the community-based management regime in place at Mo'omomi, and is intimately familiar with the marine biota of Moloka'i.

#### 4.1 ARCHAEOLOGICAL AND HISTORIC RESOURCES

*Comment #1: There are many known burials and sites along the route of the proposed roadway, and 20% to 40% of the lot have known burials and artifacts -- what are the CC&Rs exactly? How are they guaranteed to protect all of these cultural resources?*

**Response:** In response to your comment regarding archaeological sites along the route of the proposed roadway, in the Final EIS Section 4.1 (Archaeological and Historic Resources) will be revised as follows :

MPL has committed to maintain or expand upon previous preservation measures as the landowner's plans have changed in response to the community becoming more involved in the process. It is recognized by MPL that TMK 5-1-008 (Pāpōhaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpōhaku Ranchlands parcels that will be affected by the road corridor through the area. This commitment does not extend into TMK 5-1-02-030. Prior to construction, the archaeologist will re-examine the road corridor and verify descriptions of known sites, gather additional data if possible, and search for unrecorded archaeological deposits or features observable due to changes in surface visibility. After the road corridor re-survey re-examination and supplemental data collection, the proposed subdivision lots and coastal zone will be also be re-surveyed, following the same methods for investigating and recording sites as described for the road corridor. Additional survey work will be done prior to designation of the road corridor in order to design the corridor to avoid significant sites. Inventory work will be performed in accordance with the Preservation and Monitoring Plans during the road construction period.

Archaeological sites will be treated in one of three ways: preservation, data recovery, or no action. Preservation means avoiding damage to the site whether treatment is passive (avoidance) or active (stabilization, interpretation, and other measures). Data recovery pertains to sites that are significant for their information only, and covers actions such as mapping, excavation, and surface collection that adequately gather that information. No action is planned for those sites that were deemed not significant in the 1993 Bishop Museum inventory report, such as sites that had been so badly damaged as to eliminate the possibility of determining their original form or salvaging meaningful data.

After the re-surveys of the road corridor and project site, short-term site preservation measures will be implemented, such as establishing protective buffers and emergency stabilization. Then, data recovery and long-term preservation measures will be implemented. During construction, monitoring by an approved archeologist will occur. In their July 5, 2006 comment letter on the EISPN, OHA requested that "an archaeological monitor be on-site during all excavation and ground disturbances for this project." The archaeological mitigation plan has been submitted to the State Historic Preservation

Division (SHPD) for review. The monitoring plan submitted to SHPD includes a provision for an archaeological monitor to be on-site during all construction activities, including excavation and/or ground disturbances.

CC&Rs stands for "Conditions, Covenants, & Restrictions." The Section 2.3.6 of the Draft DEIS contains information regarding the CC&Rs. The CC&Rs provide for easements granted to the Land Trust for preservation of natural and cultural resources. To more fully explain the CC&Rs and the Land Trust's enforcement rights, in the Final EIS Section 2.3.6 (Covenants) will be revised as shown on the attachment titled, "Revised Section 2.3.6 (Covenants)."

Individual lot owners will be required to adhere to State law regarding archaeological resources.

*Comment #2: The Plan says they will protect these areas - Na'iwa, Kaana -- that's a given --they are not really part of the package" [too many cultural/archaeological sites]. Sacred sites under those kiawe trees are not destroyed. Discuss why these areas need protection and/or restoration.*

**Response:** These areas, to be donated to the Land Trust, contain culturally-sensitive sites worthy of protection and/or restoration. It is not true that the 26,200 acres of land that is being donated to the Moloka'i Land Trust is otherwise safe from development. For example, Nā'iwa was once threatened by the development of a golf course. Moreover, these lands are vulnerable to use for commercial activities, such as for ecotourism, as they have been in the past.

#### 4.2 CULTURAL RESOURCES

##### Burials and Handling of Kupuna

*Comment #1: Discuss how families on Molokai will be able to protect their ancestors' burials in the project area. Discuss how the impact of having burials disturbed can be mitigated for those descendants.*

**Response:** As stated in Section 4.1 of the Draft EIS, MPL and its contractors will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites. Should historic remains such as artifacts, burials, concentrations of shell or charcoal be encountered during the construction activities, work will cease immediately in the immediate vicinity of the find and the find will be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division, which will assess the significance of the find and recommend appropriate mitigation measures, if necessary.

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

A major part in the planning and design of the Lā'au Point project has been the placement lots and infrastructure in locations where disturbance of known sites burials will be minimized or eliminated.

*Comment #2: Discuss plans for a Burial Council for West Molokai, and how the Master Plan will provide for the handling of burial issues and discovery of human remains in the project area, including the use of hooponopono. Discuss how there currently is no active Burial Council on Molokai.*

**Response:** We are unaware of any plan for a burial council specific to West Moloka'i, and note that the other burial councils are island-wide. Regarding burial issues the burial treatment plan included as Appendix E in the Draft EIS commits MPL to protect known burials in the project area so that disturbance is not an issue.

*Comment #3: Discuss how disturbing the land where ancestors are buried is considered desecration by Native Hawaiians. Discuss the sensitivity of such areas, and how the sense that they are threatened with desecration causes stress to all Hawaiians, but especially the lineal descendants of those kupuna. Discuss how the presence of ancestors, whether in the form of 'iwi or of cultural artifacts and other archeological remains, makes an area sacred in the minds of Native Hawaiians as well as non-native Hawaiians who are often long term residents of the island. Discuss how disturbing these areas is considered "not pono" and requires mitigation and remediation, both spiritual and physical.*

**Response:** As set forth in the Burial Treatment Plan, all known burials will be preserved in place, and all sites of unknown function for which burial is a possibility will be preserved. The development area avoids features associated with settlements that appear to have had stable, long-term occupations where most people lived and died. Discussion of the importance of ancestral burials and their protection is discussed in the Burial Treatment Plan, which is included in Appendix E of the Draft EIS.

*Comment #4: Discussion of moololo of La'au needs to be expanded. I am Maka'iwi --testifying on behalf of kupuna. There are ancient chants that are 900 years old. John Ka'imikaua preserved them -- they tell of how La'au is a sacred place. It was a place of fishing for local people, and that was the place where the kahuna closed the Makahiki, which began with the rise of Makali'i, the constellation of Pleiades. Kapuupo'i -- began at east end of island. The end of the Makahiki was at La'au --this place was not randomly chosen -- it is sacred. Kapukai o Lono --there was a heiau underwater in front of every ahupuaa -- the heiau attracted the fish. The area from Laau to Palaau attracts fishes. It has mana, a lot of moi holes, kole, aholehole. That place was called Po'o Lo'ulo'u, a word special to Molokai. It means turbulent -- a metaphor for the wealth of Molokai -- a place for the gathering of fishes. It was a special place for Ku and Hina -- Kane and Wahine. There were heiau. The fish spawning begins at Palaau. The 'iole, the hatchlings would stock the fish ponds --there is a cultural record. It is untrue that the fishing grounds are not as plentiful there. It is a wahi pana [sacred place]. It is significant. The mana goes into asking for fertility, then the fish would be abundant.*

**Response:** The Draft EIS (Section 4.2, Cultural Resources) and the Cultural Assessment (Appendix F of the Draft EIS) discuss mo'olelo of Lā'au Point. To supplement the information in the Draft EIS with the information provided above, the Final EIS Section 4.2 (Cultural Resources) will be revised as follows:

It is also noted that the area from Lā'au to Pālā'au attracts fish. It has a lot of moi holes, kole, aholehole. That place was called Po'o Lo'ulo'u, a name special to Moloka'i which means turbulent - a metaphor for the wealth of Moloka'i—a place for the gathering of

fishes. It was a special place for Ku and Hina—Kane and Wahine. There were heiau. The fish spawning begins at Pālā'au. The 'iole, the hatchlings would stock the fishponds.

#### 4.2.4 Cultural Assessment

*Comment #1: Discuss how Hawaiians were obedient and took care of the land. Add discussion of how life on Molokai is about balance - people lived in the places that had water. Rivers were bigger before. Discuss how Native Hawaiians' connections to the land help them to survive.*

**Response:** We believe Section 4.2 (Cultural Resources) of the Draft EIS provides a succinct summary of the cultural impact assessment (Appendix F of the Draft EIS) conducted for the EIS regarding the issue of how Native Hawaiians took care of the land. For a detailed discussion of this topic see Section 3.4 (Cultural Zones of Kaluako'i) of the cultural impact assessment.

*Comment #2: Cultural impact study is incomplete, as informants were not qualified. Families who support the land should have been interviewed. Discuss how social and economic issues for Native Hawaiians stem from loss of land. Discuss how C.R. Bishop, who was not Hawaiian, gave the land away to non-Hawaiians.*

**Response:** We disagree that the Cultural Impact Assessment is incomplete and that informants were not qualified. The 18 informants with whom Professor McGregor conducted in-depth semi-structured interviews were eminently qualified as kama'āina of Maunaloa, employees or relatives of Molokai Ranch employees, employees or relatives of employees of the former plantation, a descendant of the lighthouse keeper, and a descendant of the Cooke family who owned Molokai Ranch. Professor McGregor also met with the Maunaloa kūpuna during a meeting with the social impact study consultant and with the committee responsible for the MPL beach access policies. In addition, a total of 250 persons attended community meetings. Careful notes were taken and their input included in the Cultural Impact Assessment.

*Comment #3: Expand discussion of how many Hawaiians on Molokai depend on subsistence resources and intangible spiritual benefits of La'au to survive.*

**Response:** The Draft EIS discusses dependence on subsistence resources in great length (see Sections 2.3.7, Access for Subsistence, 4.2.2, Focus on Subsistence; and 4.3 Trails and Access) and the intangible spiritual resources of Lā'au (see Section 4.2.3, Oral History and Interviews; 4.2.4, Cultural Assessment; and 7.3 Irreversible and Irrecoverable Commitments of Resources). These topics are also addressed in further detail in the Cultural Impact Assessment (Appendix F of the Draft EIS), see sections 2.1.2, 2.1.3, 2.1.4, 2.1.5 (pp. 30 - 42); 3.6 (pp. 78 - 102); 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 (pp. 102 - 111); 5.1, 5.2, 5.3, 5.4, 5.5, 5.6 (111 - 125); 6.2 (pp. 126 - 130); 7 (pp. 130 - 134); 8 (PP. 134 - 136); 10.1, 10.2, and 10.3 (pp. 142 - 154).

*Comment #4: Add research on sacredness of La'au as an 'uhane lele, legend of Kane and Kanaloa, how they came there by canoe and Kane plunged his ko'o into the sand to create water there. Discuss how this 'uhane lele is rich in cultural importance to the Hawaiian people.*

**Response:** Informants were asked if Lā'au is a leina or 'uhane lele and no one knew of this phenomenon or occurrence in relation to Lā'au. Nor did they know of a Kane and Kanaloa mo'olelo in relation to the area proposed for development.

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*Comment #5: Discuss the cultural and social impacts of local people with low incomes being exposed to luxury homes — how does the impact of looking at all that wealth affect how the young people here see their simpler island way of life?*

**Response:** As discussed in Section 4.8.3 of the Draft EIS, the Lā'au Point project is not adding a new element (affluent people) to Moloka'i's social environment. East Moloka'i, in particular, has been experiencing affluent people buying homes. Interaction between existing residents and affluent newcomers is therefore already occurring. From accounts in interviews and meetings, Moloka'i Style is still persistent and resilient in spite of these new residents.

As the Social Impact Assessment (Appendix M of the Draft EIS) suggests, there needs to be social integration on a regional level, and this is also already occurring. In the various positions regarding Lā'au Point, for example, various levels of economic strata are represented on all sides of the issue. Young Moloka'i residents seem to be able to join with wealthier newcomers in advocating their position on the project.

*Comment #6: Discuss how high end marketing of land, and the internal conflicts caused by controversy over the Master Land Use Plan for Molokai Ranch and the proposed project, is causing stress to Native Hawaiians, who have already lost most of their land to questionable land sale practices in the past.*

**Response:** We disagree that conflicts that contribute to the controversy surrounding the *Community-Based Master Land Use Plan for Molokai Ranch* and Lā'au Point are causing stress to Native Hawaiians related to the past loss of land to questionable sales practices. Neither the Lā'au Point project nor the *Community-Based Master Land Use Plan for Molokai Ranch* involves questionable sales practices.

However, as discussed in Section 4.8.3 of the Draft EIS, the social impact assessment (Appendix M of the Draft EIS) found that a significant impact on the social environment is the embodiment of negative expectations related to Lā'au Point residents and the public controversy. The heated nature of this controversy has a detrimental effect on the social environment. It causes social disharmony and stress. Kūpuna were concerned that this type of behavior was becoming more common. The mitigation to offset this already existing impact has been to give people the opportunity to learn about the Lā'au Point project and the *Community-Based Master Land Use Plan for Molokai Ranch* in a non-confrontational setting so that they can make an informed decision on their own.

*Comment #7: Expand discussion of cultural and social impacts to Native Hawaiians and other local Molokai people due to increased exposure to Mainland or off-island ways when buyers of the La'au development start to arrive.*

**Response:** We believe the Section 4.8.3 of the Draft EIS provides a succinct summary of the social impact assessment conducted for the EIS; however, in response to your comment, we direct you to the full social impact assessment (Appendix M of the Draft EIS), which contains a detailed discussion of potential impacts related to increased exposure to Mainland or off-island ways when buyers of Lā'au Point arrive on Moloka'i.

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First, the Lā'au development is proposed on an island that is already growing and exposure to non-Molokai people is part of the Molokai social environment. Section 2 of the social impact assessment presents detailed information regarding population trends and demographics. The information indicates that the island has experienced steady growth since the 1970s for an overall 43 percent increase by 2000. Significantly, East Maui's population grew by 82 percent between 1970 and 2000.

Second, as discussed in Section 5.4.4 of the social impact assessment, the Lā'au Point project does not add a new element on luxury housing on Moloka'i. The purchase of Moloka'i housing by people of affluence is already occurring, particularly in East Maui, where the mean selling price of homes exceeded those in West Maui by over \$100,000. Interaction between people of different economic status is already occurring. As the social impact assessment suggests, there needs to be social integration on a regional level, and this is also already occurring. In the various positions regarding Lā'au Point, for example, various levels of economic strata are represented on all sides of the issue. Young Moloka'i residents seem to be able to join with wealthier newcomers in advocating their position on the project.

Third, the level of new population due to Lā'au Point is not significant to cause major social impact. As discussed in Section 5.1 of the social impact assessment, the Lā'au Point project permanent population at build-out is estimated at 174 persons, which is only two percent of the forecasted 2025 population. On the average Lā'au Point residents will make up three percent of the island 2025 population. Further, the new Lā'au Point residents will not be the only new Moloka'i residents. In contrast, the residents in proposed new DHHL projects would account for 13 percent of the forecasted population in 2025.

*Comment #8 Expand discussion of how the development pressure on Molokai, and the confusion caused by this very process, is impacting Molokai residents now, even before any development begins. Discuss how the numerous meetings on the DEIS and later, the various permit applications could be stressing the community.*

**Response:** We believe Section 4.8.3 of the Draft EIS provides a succinct summary of the social impact assessment conducted for the EIS regarding the issue of the heated nature of development on Moloka'i. As stated in Section 4.8.3 of the Draft EIS, the heated nature of this controversy has a detrimental effect on the social environment. It causes social disharmony and stress. The mitigation to offset this already existing impact has been to give people the opportunity to learn about the Lā'au Point project and the *Community-Based Master Land Use Plan for Molokai Ranch* in a non-confrontational setting so that they can make an informed decision on their own.

In focus group sessions and interviews conducted for social impact assessment, people repeatedly said that they do not go to meetings because of confrontational behavior. Kūpuna were concerned that this type of behavior was becoming more common. One conclusion of this could be that the current level of controversy on Moloka'i is a reflection of the existing social environment and not unique to Lā'au Point.

We understand people are passionate about Moloka'i, and equally passionate about protecting their island and perpetuating the Moloka'i Style. Regardless of their position on the Lā'au Point

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project, people want to protect Moloka'i from detrimental change. The controversy stems from a divergence in the approach on how to protect and perpetuate. The heat and intensity in meetings related to the project stem from this passion, and are not unique to Lā'au Point.

*Comment #9: Expand discussion of adequacy of cultural easements that will be put in place. Include John Ka'imikaua's comments on how the Land Trust must be pono, made right before his death. Discuss how hidden agendas will make this project "not pono."*

**Response:** The Draft EIS provides discussion of "Cultural Protection Zones" (see Sections 2.13, Protected Areas and 4.1, Archaeological & Historic Resources) and also provides a Cultural and Historic Resources Map (see Figure 10 of the Draft EIS), denoting the location of the Cultural Protection Zones. In addition the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A of the Draft EIS) provides discussion on Cultural Protection Zones. Discussion of proposed ownership of various areas denoted in the *Community-Based Master Land Use Plan for Molokai Ranch* is provided in Draft EIS Sections 2.1.7 (Key Points of the *Community-Based Master Land Use Plan for Molokai Ranch*), 2.1.8 (Moloka'i Land Trust), 2.1.9 (Moloka'i Community Development Corporation (CDC)). Therefore we believe this subject is well-explained in the Draft EIS.

MPL believes the easements to be put in place will reflect cultural values that are important to all Molokai residents. There are no "hidden agendas" as you assume.

To incorporate updated information regarding the Land Trust and the CDC into the Final EIS, Section 2.1.8 in the Final EIS will be revised as shown on the attachment titled, "Revised Section 2.1.8 (Moloka'i Land Trust)," and Section 2.1.9 will be revised as shown on the attachment titled, "Revised Section 2.1.9 (Moloka'i Community Development Corporation (CDC))."

*Comment #10 Section 4.2.4 Cultural Assessment is inadequate. The true sense of the community was not accurately portrayed. An unscientific survey of 100 residents revealed that 70% of those polled would not support a master plan that depended on a development at La'au Point. A full public vote was denied by the EC, because a majority of the community isn't for the plan, and that would have been revealed. Almost everyone was in favor of reopening Kaluakoi hotel, however. Expand discussion of these issues.*

**Response:** We disagree that the cultural impact assessment is inadequate. We cannot comment on the conclusion of an unscientific survey. In reference to the validity of the EC vote on the *Community-Based Master Land Use Plan for Molokai Ranch*, this was only raised as an issue by some people once the vote went contrary to their opinions. The EC vote holds no legal status and State and County regulatory approvals still must be obtained for various land use approvals necessary to implement the *Community-Based Master Land Use Plan for Molokai Ranch*. In addition, we believe the social impact assessment (summarized in Section 4.8.3 (Community Character) and contained in Appendix M of the Draft EIS) accurately examines community sentiments toward the Lā'au Point project and of reopening Kaluako'i Hotel.

*Comment #11: Draft EIS didn't discuss spiritual connection of people to place -- place is 'ohana -- your family -- we are tied to the land. Hawaiians have a covenant and a kuleana. We are not in good shape -- our health is bad -- because we are disconnected from our ohana lands. Our health is*

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*compromised, because what you do to the land you do to the place and to the people. Expand discussion of this spiritual connection to the land and how impacts to it affect Native Hawaiian health and well being.*

**Response:** We believe the Section 4.2 (Cultural Resources) of the Draft EIS provides a succinct summary of the cultural impact assessment conducted for the EIS. Further details regarding 'ohana kuleana are discussed in the cultural impact assessment Sections 2.1.2, 2.1.3, 2.1.4 (pp. 30 - 40); 3.6.4 (pp. 84 - 94); 3.6.7 (pp. 99 - 102); and 6.2 (pp. 126 - 130). Further detail regarding spiritual beliefs, customs and practices are discussed in the cultural impact assessment Sections 3.6.7 (pp. 99 - 102); 4.6 (pp. 110 - 111); and 5.6 (pp. 124 - 125).

#### 4.3 TRAILS AND ACCESS

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

**Response:** Section 4.3 (Trails and Access) of the Draft EIS discusses shoreline access. The project will create two public access points at each end of the project. Homeowners may access the shoreline from the residential area; however, they will be required to adhere to the rules of the Shoreline Access Management Plan (SAMP). The lack of infrastructure and paths through to the shoreline, and the density of the foliage and rough terrain as a practical and natural barrier, will support adherence to the SAMP and serve to limit widespread access to the shoreline.

To incorporate the relevant above information into the Final EIS, in the Final EIS Section 4.2 will be revised as follows:

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

#### 4.4 ROADWAYS AND TRAFFIC

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

**Response:** Section 4.4 (Roadways and Traffic) of the Draft EIS discusses traffic impacts relative to the Lā'au Point project and provides a succinct summary of the Traffic Impact Analysis

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Report (TIAR) (contained in Appendix G of the Draft EIS) prepared for the project. The TIAR analysis takes into account traffic generated by other proposed projects in the vicinity. A discussion of the traffic situation on Kaua'i is not relevant to this EIS.

In response to your comment regarding traffic infrastructure improvements, in the Final EIS, Section 4.4 (Roadways and Traffic) will be revised as follows:

MPL will fund the construction costs of all Lā'au Point roads which will be built using County standards to keep the option for future dedication. In their June 21, 2006 comment letter on the EISPN, the Maui County Department of Public Works and Environmental Management stated: "We note that roads for the development will be built to County standards. We also note that access for these roads are from a private road. As such, the roads for the development shall remain under private ownership and maintenance." After build-out, should the roads will remain private, and the Lā'au Point homeowners' association will be responsible for maintenance. In addition, MPL will plan, design, and construct, at no cost to the State: 1) a left-turn deceleration lane and right-turn deceleration lane at the intersection of the proposed project access road (Kaluako'i Road) with Maunaloa Highway; and 2) highway improvements recommended as mitigation measures as required by the Highways Division.

#### 4.8 SOCIAL AND ECONOMIC CHARACTERISTICS

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

**Response:** Section 4.8.2 of the Draft EIS discusses the potential impact of Lā'au Point on property taxes for other Moloka'i homeowners. Appendix L (Hallstrom Letter) of the Draft EIS contains a complete analysis of this issue. As stated in 4.8.2 of the Draft EIS, assessments of existing property that is not adjacent (and thus not competing in the same market or market area), and/or that has different highest and best use potentials, will not be directly affected. This finding is based on analysis of paired assessment trends over time between expanding development and non-adjacent land holdings, an understanding of value trends and influences, and discussion with Maui County and O'ahu tax offices concerning this specific matter. The Lā'au Point project is physically separated from the rest of Moloka'i by hundreds of acres of Ranch land, and will be a unique market unto itself.

We acknowledge your comment regarding "how for many Hawaiians, there is no other place to go—Hawaii is home for us," but find this issue beyond the scope of this EIS. However, we note that as discussed in Section 4.8.2 (and various other sections) of the Draft EIS the Lā'au Point project will address affordable housing in the implementation of *Community-Based Master Land Use Plan for Molokai Ranch*. Throughout the community planning process, the vesting of land back into community hands and ensuring the development returns (Lā'au Point income) be shared by the community was part of a larger vision by the Moloka'i community to plan and finance housing for themselves without the involvement of MPL.

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

**Response:** In response to your comment, and comments from others regarding jobs, Section 4.8.4 (Economy) of the Final EIS will be revised as follows:

Proceeds from the sale of the Lā'au Point lots will fund the renovations and upgrading of the Kaluako'i Hotel and Golf Course. These facilities are crucial to revitalizing the Moloka'i tourism economy and are projected to provide over 100 jobs for Moloka'i residents. By outsourcing various hotel functions such as laundry, gift shop, beach shack and spa, and by committing to use local produce, small business opportunities will also be created for the community. However, the direct impact of Lā'au Point on tourism will be limited since no vacation rentals are allowed under the Lā'au Point CC&Rs.

MPL is now totally managed on the island by members of the community, with many Native Hawaiians in key roles. Over the past 5 years there has been a conscious effort to promote local people into management positions within the Molokai Ranch Lodge and Beach Village. Local people, including a majority of Native Hawaiians, now hold all key management positions at the hotels and within the MPL management structure for maintenance and other on-island activities. Those individuals will form the core nucleus of the future management team in other MPL enterprises such as the Kaluako'i Hotel.

Regarding specific new jobs created by the Lā'au Point project, these jobs will be a mix of construction, maintenance, and service jobs at prevailing wages. Some will be short-term, depending on the length of time for full build-out, and some will be permanent and long-term. Many jobs will be contracted, therefore, for the contracted jobs during construction or after build-out. MPL will not be providing direct training and employment opportunities. Several positions also will be available for the operation and maintenance of the wastewater treatment plant. As mentioned above there will also be jobs re-created upon the re-opening of the Kaluako'i Hotel.

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

**Response:** MPL will adhere to all State contracting laws and require Lā'au Point homeowners to do the same.

**Comment #4:** *Discuss what kinds of jobs will be created as a result of implementation of the Master Plan, how well they will pay, who they will be for, and how long they may last.*

**Response:** See response to Comment #2 above.

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*Comment #5: Social impacts are not adequately detailed or addressed. Expand discussion of possible social impacts due to project development and influx of new residents.*

**Response:** We disagree that social impacts are not adequately detailed or addressed. We believe Section 4.8.3 of the Draft EIS provides a succinct summary of the social impact assessment conducted for the EIS. Section 4.8.3 (Community Character) of the Draft EIS and Section 5.4 of the social impact assessment (Appendix M of the Draft EIS) discuss impacts due to development and the in-migration of new residents. In the social impact analysis two models of growth were analyzed in terms of their relevance to the Moloka'i social environment, and discussions of conflicting values, community conflict, social interactions and relationships, community experience at Lā'au Point are presented as well. In addition, impacts on certain public services and facilities are presented in Section 5.5 of the social impact assessment.

*Comment #6: Expand discussion of grief and resentment being experienced in the community right now due to the controversy over La'au Point. Discuss how it is dividing families and how it is putting the soul of Molokai at stake.*

**Response:** We disagree that the project is "dividing families" and "putting the soul of Moloka'i at stake." However, as discussed in Section 4.8.3 of the Draft EIS, the social impact assessment (Appendix M of the Draft EIS) found that a significant impact on the social environment is the embodiment of negative expectations related to Lā'au Point residents and the public controversy. The heated nature of this controversy has a detrimental effect on the social environment. It causes social disharmony and stress.

As discussed in Section 5.4.4 of the social impact assessment, people repeatedly said that they do not go to meetings because of confrontational behavior. These were not just meetings related to the *Community-Based Master Land Use Plan for Molokai Ranch* or the Lā'au Point project, but included meetings on recent controversies, such as the proposal to allow cruise ships to land in Molokai and the University of Hawai'i patent applications for genetically-modified taro. Kūpuna interviewed for the social impact assessment were concerned that this type of behavior was becoming more common.

*Comment #7: Describe exactly who the "1,000 people who participated" in the Master Plan process were. Discuss exactly how many people really supported the Plan, and provide a breakdown of how many of those were either Ranch/MPL employees directly, or family members of Ranch/MPL employees.*

**Response:** MPL estimates that there were around 1,000 participants in the Master Planning process based on attendance sheets and other documents. MPL makes this assertion in good faith. It is possible that as the attendance sheets for the many meetings held during the community planning process do have several individuals listed more than once, or errors were made in counting the attendees; however, the variance in total number of participants is minimal. Detailed information on the participant "breakdown" is not available.

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*Comment #8: Expand discussion of how the addition of 200 to 400 new millionaire homes will impact the people of Molokai. Discuss if and how these new residents, with political savvy and possibly much more conservative politics, could begin to sway political outcomes to their own favor and dominate the local residents.*

**Response:** As a clarification to the statement regarding "200 to 400 new millionaire homes," the Lā'au Point project includes 200 lots, each of which would contain one home and possibly one ohana unit. However, all dwellings on any single lot must, in the aggregate, comply with the maximum square footage and building envelope restrictions for each lot.

Regarding the potential for the new residents, "with political savvy and possibly much more conservative politics," to "sway political outcomes and...dominate the local residents," we disagree with this statement for two reasons. First, the expectation for a certain line of political persuasion is unfounded. People of many walks of life and from different economic strata often join forces to promote their values and views, and there are numerous examples of effective political collaborations based on diversity. As stated in Section 4.8.3 (Community Character) of the Draft EIS, interaction between existing residents and affluent newcomers is already occurring. From accounts in interviews and meetings, Moloka'i Style is still persistent and resilient in spite of these new residents.

Second, the level of population increase is not likely to change the political climate on Moloka'i. As discussed in Section 5.1 of the social impact analysis, the Lā'au Point permanent population at build-out is estimated at 174 persons, which is only two percent of the forecasted 2025 population. On the average Lā'au Point residents will make up three percent of the island 2025 population. Further, the new Lā'au Point residents will not be the only new Moloka'i residents. In contrast, the residents in proposed new DHHL projects, who would account for 13 percent of the forecasted population in 2025, have a more likely political influence.

*Comment #9: Include discussion of who was on the EC Land Use Committee, and a breakdown of the 140 names listed, whether they are from Molokai or from other islands. I counted 36 for the plan and 46 against out of 140 names listed.*

**Response:** This comment should be directed to the EC; MPL cannot respond on its behalf. However, the decision of the Land Use Committee to support the Master Plan was a majority vote of the committee's 29, not 140, members. To MPL's knowledge there were only two persons on the Land Use Committee who resided off-island. If those people had abstained from voting, the Land Use Committee would still have been the same result, but by a lesser majority.

#### 4.8.2 Housing

*Comment #1: Discuss how DHHL is planning to build more homes for Hawaiians in Kamiloloa and Hoolehua, and how water is reserved for DHHL and cannot be negotiated away. Provide thorough discussion of DHHL Island Plan for Molokai and possible impacts to that Plan caused by the project.*

**Response:** Section 7.2 (Cumulative and Secondary Impacts) of the Draft EIS discusses cumulative impacts related to DHHL's known plans contained in their *Moloka'i Island Plan*. MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2

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(Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water."

In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Regarding DHHL's future water needs and DHHL's *Molokai Island Plan*, see the section of the attachment titled, "DHHL's Future Water Needs."

#### 4.8.3 Community Character

**Comment #1:** *Molokai Ranch/MPL over the years has made a lot of promises to the community, yet kept very few of them. Discuss trust issues with the Ranch that have developed, and how MPL's recent actions have or have not served to divide a once tightly knit community, by creating insiders and outsiders, people who are invited to Ranch events and people who are not, etc.*

**Response:** Section 2.1.5 (Detailed Land Use History) of the Draft EIS provides a historical summary of West End land use and ownership. MPL's history is well-known to the Molokai community. We do not agree that discussion of MPL's "track record" or that of its predecessors is warranted in the EIS.

MPL's recent actions are the result of a unique community process discussed in Section 2.1.6 (The Planning Process for the *Community-Based Master Land Use Plan for Molokai Ranch*) of the Draft EIS. The complete *Community-Based Master Land Use Plan for Molokai Ranch* is included as Appendix A of the Draft EIS.

#### 4.8.4 Economy

**Comment #1:** *Discussion of economic impacts and tourism are inadequate. Expand discussion on how project impacts tourism and on what economic engine is that will drive desired outcomes of project and Master Plan.*

**Response:** Section 4.8.4 (Economy) of the Draft EIS discusses economic impacts and tourism. As discussed in Section 4.8.4 (Economy) of the Draft EIS, proceeds of the sale of Lā'au Point lots will fund the renovations and upgrading of the Kaluako'i Hotel. The re-opening of Kaluako'i Hotel is crucial to revitalizing Molokai's tourism economy and is expected to provide over 100 jobs for Molokai residents. As noted in Section 4.8.4 (Economy) of the Draft EIS, the *Molokai Responsible Tourism Initiative Report* indicates Kaluako'i resort development is essential to the island's tourism economy. Implementing the tourism industry plan set forth in the *Molokai Responsible Tourism Initiative Report* will be the economic engine for driving the outcomes of the *Community-Based Master Land Use Plan for Molokai Ranch*. However, in response to your comment Section 4.8.4 (Economy) of the Final EIS will be revised as follows:

Proceeds from the sale of the Lā'au Point lots will fund the renovations and upgrading of the Kaluako'i Hotel and Golf Course. These facilities are crucial to revitalizing the Molokai tourism economy and are projected to provide over 100 jobs for Molokai residents. By outsourcing various hotel functions such as laundry, gift shop, beach shack and spa, and by committing to use local produce, small business opportunities will also be created for the community. However, the direct impact of Lā'au Point on tourism

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will be limited since no vacation rentals are allowed under the Lā'au Point CC&Rs.

**Comment #2:** *Discussion of economic impacts needs to be focused more on local community -- it was never explained exactly how the project will benefit the local community directly. Discuss how the proposed strategy is or is not the best way to help an economically depressed community.*

**Response:** In response to your comment, Section 4.8.4 (Economy) of the Final EIS will be revised as follows.

MPL is now totally managed on the island by members of the community with many Native Hawaiians in key roles. Over the past five years there has been a conscious effort to promote local people into management positions within the Molokai Ranch Lodge and Beach Village. Local people, including a majority of Native Hawaiians, now hold all key management positions at the hotels and within the MPL management structure for maintenance and other on-island activities. Those individuals will form the core nucleus of the future management team in other MPL enterprises such as the Kaluako'i Hotel.

Regarding specific new jobs created by the Lā'au Point project, these jobs will be a mix of construction, maintenance, and service jobs at prevailing wages. Some will be short-term, depending on the length of time for full build-out, and some will be permanent and long-term. Many jobs will be contracted, therefore, for the contracted jobs during construction or after build-out, MPL will not be providing direct training and employment opportunities. Several positions also will be available for the operation and maintenance of the wastewater treatment plant. As mentioned above there will also be jobs re-created upon the re-opening of the Kaluako'i Hotel.

#### 4.9 INFRASTRUCTURE AND UTILITIES

##### 4.9.2 Water

**Comment #1:** *Provide discussion of contingency plans if the water wells go salty. Discuss how the agencies make adjustments to water allocations, and whether or not those allocations can be reduced once they are given and development has occurred.*

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Discussions regarding salinity of wells and alternative water sources are incorporated into the attachment. See the sections of the attachment titled, "The Punakou Aquifer," "Molokai Designated a Ground Water Management Area," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Alternatives to the Use of Kākalahale-sourced Water."

As discussed in the attachment titled, "Revised Section 4.9.2 (Water)," in the unlikely event that MPL's identified water sources cannot meet its needs, brackish water from the Prawn Farm and desalination have been identified as alternative sources of non-potable water.

Regarding agency adjustments to water allocations, CWRM, before it issues any pump installation permit, requires that a pump test be conducted to determine the impacts before long-term pumping is permitted. Depending on the results of the pump test, the size of the pump may

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be modified or other changes made. By conducting a pump test before a permanent pump is installed, most of the risk that the well will go salty can be avoided.

In the long-term, if pumping has a more adverse impact than anticipated on the aquifer or on other wells, adjustments to pumping, including shutting down the well, may be required.

By conducting a pump test before a permanent pump is installed, most of the risk of unacceptable impacts can be avoided.

By way of a standard condition imposed on all water use permits, CWRM has the right to reduce the amount of water allocated for any of the following reasons:

- Protect the water sources (quantity or quality);
- Meet other legal obligations including correlative rights;
- Insure adequate conservation measures;
- Require efficiency of water uses;
- Reserve water for future uses;
- Meet legal obligations to DHHL;
- Carry out such other necessary and proper exercise of the Commission's powers.

Since the above is a standard condition imposed on all water use permits, this information has not been provided in the Final EIS.

*Comment #2: I lived on a ranch, then the well ran dry. Colorado River water doesn't even reach Mexico anymore. Aquifers are going dry in the Southwest, because water is being diverted to areas of development. Hydrology is not an exact science. The monitoring well that was drilled is no longer in use. Provide expanded discussion of hydrological issues, status of monitoring well, and where water is going to come from if and when the wells run dry, or salty as the case may be.*

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Explanation of Moloka'i Aquifer Systems Geology," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Alternatives to the Use of Kāalahale-sourced Water."

*Comment #3: Information on water availability is inadequate or inaccurate-- include latest water studies, and/or discuss whether or not there is enough data on water on Molokai to make sound planning decisions.*

**Response:** We disagree with your statement that "Information on water availability is inadequate or and inaccurate;" however, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." 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 Kāalahale Well," and "USGS Modeling of Kualapu'u Aquifer," and "Water Working Group Task Force 2007."

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*Comment #4: Discuss how important it is for La'au residents to have access to fresh water, when the rest of us have to wait a year to get a water meter and can't even wash our kids off at the fish pond. Discuss how limu and baby fish need fresh water from coastal springs, and how additional withdrawals from aquifer could threaten that ecosystem.*

**Response:** We acknowledge the importance of water. In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled: "Impact of Pumping Kāalahale on the Fresh Water Transition Zone," and "Impact of Pumping Kāalahale on the Coastal Environment, Limu, and Fishponds."

*Comment #5: Clarify how MPL is in negotiations with DHHL -- DHHL water rights are non-transferable and nonnegotiable.*

**Response:** MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2 (Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water."

#### 4.10 PUBLIC SERVICES

*Comment #1: Discuss how this project will provide badly needed improvements in community facilities, bridges and roads.*

**Response:** In response to the portion your comment pertaining to bridges and roads, in the Final EIS, Section 4.4 (Roadways and Traffic) will be revised as follows:

MPL will fund the construction costs of all 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 EISPN, the Maui County Department of Public Works and Environmental Management stated: "We note that roads for the development will be built to County standards. We also note that access for these roads are from a private road. As such, the roads for the development shall remain under private ownership and maintenance." After build-out, should the roads will remain private, and the Lā'au Point homeowners' association will be responsible for maintenance. In addition, MPL will plan, design, and construct, at no cost to the State: 1) a left-turn deceleration lane and right-turn deceleration lane at the intersection of the proposed project access road (Kaluako'i Road) with Maunaloa Highway; and 2) highway improvements recommended as mitigation measures as required by the Highways Division.~~

In response to the portion your comment pertaining to community facilities, as discussed in Section 2.1.9 of the Draft EIS, the *Community-Based Master Land Use Plan for Molokai Ranch* proposes the creation of the Moloka'i Community Development Corporation (CDC). The CDC will have the following tasks:

- Develop affordable homes for the Moloka'i community.
- Promote economic development.
- Expand educational opportunities that will build capacity among the island's youth.

- Assist the Land Trust with project funding.

In addition, as stated in Section 4.10.5 (Recreational Facilities) the Draft EIS, the Lā'au Point project will include two public parks.

Regarding school facilities, in the Final EIS Section 4.10.1 (Schools) will be revised as follows:

MPL will make a monetary contribution to the development funding, and/or construction of school facilities on a fair-share basis pursuant to the Education Contribution Agreement for Lā'au Point between MLP and the DOE dated August 3, 2007.

#### 4.10.3 Fire Protection

*Comment #1: Data on response times is inaccurate and understated. It takes at least 25 minutes for fire trucks to respond to Maunaloa from the Hoolehua station, as reported by a firefighter, so it will take additional time to get to the development. Provide more accurate response times, and provide discussion on how impacts to demands on fire protection services will be mitigated.*

**Response:** In their comment letter on the Draft EIS, the County of Maui Department of Fire and Public Safety did not comment on the response times provided in Section 4.10.3 (Fire Protection) of the Draft EIS. However, in response to your comment and other information from the County of Maui Department of Fire and Public Safety, in the Final EIS Section 4.10.3 (Fire Protection) will be revised as follows:

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

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

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

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

Fire and rescue emergency services will be able to access Lā'au Point and the shoreline from the new paved access road from Kaluako'i and the existing emergency access dirt

~~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.~~

#### 4.10.5 Recreational Facilities

*Comment #1: Discuss how this project will help Molokai build a new gym in Maunaloa, as well as help create youth programs.*

**Response:** The Draft EIS does not state the project will help Moloka'i build a new gym in Maunaloa. However the re-opening of the Kaluako'i Hotel, more activity and spending power of residents on the west end and in Maunaloa as a result of the Lā'au Point project, and more county income from the taxes these projects create, will enable the county, and the business community in Maunaloa, to have the confidence to invest in capital improvements and other community benefits.

Regarding youth programs, as discussed in Section 2.1.9 of the Draft EIS, the *Community-Based Master Land Use Plan for Molokai Ranch* proposes the creation of the Moloka'i Community Development Corporation (CDC). The CDC will have the following tasks:

- Develop affordable homes for the Moloka'i community.
- Promote economic development.
- Expand educational opportunities that will build capacity among the island's youth.
- Assist the Land Trust with project funding.

#### 5.1 STATE OF HAWAII

##### DHHL

*Comment #1: Hawaiian Homesteaders are often not allowed to subdivide so they can build additional homes for their children, and the reason given is because of the limitations on water. Explain how the project's water requirements takes into account the fact that Hawaiian homesteaders cannot intensify the agricultural uses of their land, or densify residential uses, because water is so limited on the island.*

**Response:** It is beyond the scope of the EIS to discuss the Department of Hawaiian Homelands' policies and restrictions on subdivision of Hawaiian Homestead lots. If this comment is related to the project's impact regarding DHHL's water rights, MPL is not negotiating, or seeking to negotiate, DHHL's water rights. As stated in Section 4.9.2 (Water) of the Draft EIS: "MPL has long acknowledged publicly that its water use would yield to DHHL's priority first rights to water." In addition, in response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." For issues related to DHHL and water, see the sections of the attachment titled, "Prior Studies by USGS on the Capacity of the DHHL Wells," "Additional Information on the Kākalahāe Well," "DHHL's Future Water Needs," and "USGS Modeling of Kualapu'u Aquifer."

#### 5.2 COUNTY OF MAUI

*Comment #1: Discuss status of SMA boundaries on Molokai, and how putting the entire island into the SMA is one of implementing actions of the Molokai Community Plan.*

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**Response:** In response to your comment, in the Final EIS portion of Section 5.2.2 (Moloka'i Community Plan) under the heading "Environment" will be revised as follows:

**IMPLEMENTING ACTION**

*1A. Review and revise the Special Management Area boundary to include the entire island of Molokai except Department of Hawaiian Homes lands and Kalawao County.*

**Discussion:** This implementing action is listed under the "Environment" section of the Molokai Community Plan (Community Plan). Also in the Community Plan, Table 1 lists implementation responsibilities. We note that the Planning Department is responsible to implement this action. As of September 2007, the Planning Department has stated that a SMA Boundary study is currently under way, but there are no reportable results as of this date.

*Comment #2 Discuss current efforts to enact a water moratorium and put the entire island into the SMA.*

**Response:** MPL has no knowledge of efforts to enact a water moratorium, but understands there was some discussion of this issue at EC meetings in mid-2007. See the above response regarding putting the entire island into the SMA.

**5.2.2 Molokai Community Plan**

*Comment #1: Molokai is one big ahupua'a — what happens on one part of the island affects the rest of the island. Discuss how the Master Land Use Plan, including the Lā'au Point project, serves the rest of the island — was it done with the Molokai Community Plan in mind? Is it intended to coordinate activities with what is happening on the rest of the island?*

**Response:** Section 5.2.2 (Moloka'i Community Plan) of the Draft EIS discusses the project's conformance with the Moloka'i Community Plan.

The Community-Based Master Land Use Plan for Molokai Ranch limits development on the West End, and protects more than 85 percent of MPL's property from future development through Land Trust donations and restrictive easements. This provides certainty for the future for the entire Moloka'i community.

*Comment #2: The Molokai Community Plan is not the same as the Master Land Use Plan for Molokai Ranch — provide detailed discussion of how the Master Plan interface with the Community Plan.*

**Response:** Section 5.2.2 of the Draft EIS discusses the project's conformance with the Moloka'i Community Plan. As stated in Section 5.2.2 of the Draft EIS, MLP is seeking a Community Plan Amendment to facilitate the Lā'au Point project.

In response to your comment, and the comments of others, regarding the general plan update process, the Moloka'i Community Plan update process, and the Community-Based Master Land Use Plan for Molokai Ranch, in the Final EIS Section 5.2.2 (Moloka'i Community Plan) will be revised as follows:

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In conjunction with the Maui County General Plan Update process noted in Section 5.2.1, the 2001 Moloka'i Community Plan will also be updated. As of September 2007, the Moloka'i General Plan Advisory Committee (GPAC) was reviewing the Maui County General Plan. MPL has submitted information regarding Lā'au Point to the GPAC. In addition, this EIS, including the Community-Based Master Land Use Plan for Molokai Ranch (Appendix A of the Draft EIS), has been submitted to the Maui Planning Department. Further, the Lā'au Point project and the Community-Based Master Land Use Plan for Molokai Ranch have been widely discussed within the Molokai community.

It is expected that after the General Plan update process, the GPAC will transition into the Moloka'i Citizen Advisory Committee (CAC) to review and update the 2001 Moloka'i Community Plan. Per conversation with the Maui County Long Range Division (phone call February 1, 2007), the updated Community Plan may not reach approval stages until 2009. Therefore, the goals, objectives, and policies of the 2001 Molokai Community Plan are still in effect and are discussed below.

*Comment #3: Expand discussion of how the project is or is not in conformance with the Molokai Community Plan. Describe conflicts and how they will be mitigated or avoided.*

**Response:** Section 5.2.2 (Moloka'i Community Plan) of the Draft EIS discusses the project's conformance with the Moloka'i Community Plan. As stated in Section 5.2.2 of the Draft EIS, MLP is seeking a Community Plan Amendment to facilitate the Lā'au Point project.

**5.3 APPROVALS AND PERMITS**

*Comment #1: Discuss how concurrent processing of permit applications could create pressure on the community and serve to dampen community participation. Discuss how concurrent processing serves or does not serve the Molokai community.*

**5.4 APPROVALS AND PERMITS**

*Comment #1: Discuss how concurrent processing of permit applications could create pressure on the community and serve to dampen community participation. Discuss how concurrent processing serves or does not serve the Molokai community.*

**Response:** We disagree that "concurrent" processing of permit applications could create pressure on the community, serve to dampen community participation, and does not serve the Moloka'i Community.

To implement the Lā'au Point project, MPL submitted a petition to the State Land Use District Boundary to amend the State Land Use District boundary and applications to the County of Maui to amend the community plan, change the zoning, and obtain other necessary approvals. While the State petition and county applications were submitted within the same timeframe, the State petition and County applications will be processed by each government branch as appropriate. State and County hearings will not be combined; and the public will be afforded all opportunities to provide input as required by State and County law.

*Comment #2: If Maui County does not wait to process its applications until after the State Land Use Commission has decided on the District Boundary Amendment, there will be simultaneous meetings on project applications of the LUC and the Molokai Planning Commission. Discuss why concurrent processing was requested, and whether this serves the applicant or the community.*

**Response:** See response above. We find it highly unlikely that the State Land Use Commission and the Molokai Planning Commission would hold simultaneous meetings on the Lā'au Point project.

*Comment #3: Permits for water use should come first before all other permits. The farmers and homesteaders should not have to go to court with DLNR over water because of development applications. Discuss the issue of getting land use entitlements before the supply of water for the development has been secured. Why is that logical, or why not? Maui County is drilling wells to look for water just to serve existing development on the island — discuss how MPL proposes to coordinate with the State and County to identify sustainable and adequate sources of water for the development.*

**Response:** MPL does not determine the order in which permits must be obtained. As stated in Section 4.9.2 (Water) of the Draft EIS: MPL has long acknowledged publicly that its water use would yield to DHHL's (homesteaders') priority first rights to water. Regarding coordinating with the State and County regarding water resources, in Section 4.9.2 (Water) of the Draft EIS it is stated that MPL is currently working with the DHHL, the County of Maui DWS, and USGS to comprehensively evaluate Molokai's long-term water demands and resources. In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." For additional information regarding the USGS study see the section of the attachment titled, "USGS Modeling of Kualapu'u Aquifer."

*Comment #4: Bring decision making power back to Molokai, and to the Molokai Planning Commission. Discuss why going for the District Boundary Amendment first and having the Land Use Commission as the accepting authority was better for Molokai, or not. Explain why home rule was not respected in this application process.*

**Response:** The State Land Use Commission is the first agency to process a permit (the State Land Use District Boundary Amendment) for the project; therefore, under State law (Chapter 343, Hawai'i Revised Statutes), the State Land Use Commission is the accepting agency for the EIS. In general the County usually will not change zoning if State Land Use designation is not consistent with the proposed zoning. State and County law was followed in filing the State Land Use District Boundary Amendment petition and the County of Maui applications.

## 6 ALTERNATIVES TO THE PROPOSED ACTION

*Comment #1: Everyone on the island supports the reopening of the Kaluakoi Hotel. Expand the discussion of economic alternatives with realistic and frank information on MPL's current financial condition and what it would take to get it "out of the red."*

**Response:** It has been stated throughout the EIS that MPL's funding for the re-opening of the Kaluako'i Hotel will be from the sale of Lā'au Point lots.

To further address your concerns and the concerns of others in relation to alternatives, MPL conducted further analysis of all the alternatives, and in particular the options relating to Kaluako'i and developments that were proposed at least half a mile and one mile mauka of the Lā'au coastline. In addition, the Final EIS has been revised to include:

- Conclusions from further analysis of mauka Lā'au lots and the Kaluako'i Condominium Option;
- Analysis supporting the conclusion that the higher the price achieved per unit or lot, the less number of lots that need to be developed.
- The above conclusion, along with the high cost of funding, and the lack of water resources, is the principal reason MPL still believes the current Lā'au development is the best alternative. Water use is a major barrier to larger-scale developments.

To incorporate the above information into the Final EIS, Section 6.0 (Alternatives to the Proposed Action) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

*Comment #2: The La'au Point project is a luxury subdivision that will be unavailable to most if not all long time Molokai residents. Discuss why this alternative was explored so much more thoroughly than the other alternatives, and why other ways to develop were not given as much time, energy or thought.*

**Response:** As discussed extensively in Section 6.0 of the Draft EIS, prior to recommending the Lā'au Point development, MPL's current management examined the information on the previous development plans by the previous management, and also undertook exhaustive reviews of all other alternatives suggested by community members and others such as Professor Minerbi from the University of Hawai'i. It also reviewed other alternatives not suggested by third parties. Please also see response to Comment #1 immediately above.

*Comment #3: The people of Molokai can come up with something much much better, if we work together, and preserve what we love best about our island, after all the debates and discussion. Discuss why the process has not yet been reopened to public debate and an island-wide vote or referendum.*

**Response:** The planning process for the Master Plan and this project has spanned four years now (since 2003). All known alternatives have been canvassed fully by MPL, the ALDC, and other concerned community members. MPL believes it has gone to extraordinary lengths in this area. Debate can go on forever. It is time to implement

To further address your concerns and the concerns of others in relation to alternatives, MPL has conducted further analysis of all the alternatives, and in particular the options relating to Kaluako'i and developments that were proposed at least half a mile and one mile mauka of the Lā'au coastline. To include this further analysis into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

*Comment #4: Whole families have been hired into the ranch. MPL originally paid \$6 million for the Tokyo Kosan 600 acres [Alpha parcel]. The island is only 10 miles wide. In Keawanui, people wanted*

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*to build a traditional structure and project -- they had to get an SMA permit for it, but these big new houses don't need one? Add discussion on the aspect of single-family dwellings being "not development" under SMA.*

**Response:** The Lā'au Point home lots are not within the SMA. This is noted in Section 4.2.4 of the Draft EIS.

#### 6.5 ALDC ALTERNATIVES

*Comment #1: Community participation, exploration of alternatives misrepresented in DEIS*

**Response:** We respectfully disagree with this statement. We have given factual information in the EIS.

To further address your concerns and the concerns of others in relation to alternatives, MPL has conducted further analysis of all the alternatives, and in particular the options relating to Kaluako'i and developments that were proposed at least half a mile and one mile mauka of the Lā'au coastline. To include this further analysis into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

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

*Comment #2: There was a lack of genuine search for alternatives, and the discussion of the La'au development was held to the very end of the process.*

**Response:** We respectfully disagree with this statement. MPL outlined fully at the commencement of the process on January 28 and 29, 2003, of its future needs to become economically viable. This is evidenced by the speech MPL's CEO, Peter Nicholas, gave at the start of the planning process. During the planning process, there was little, if any objection to the way Project #47 was conducted as many current opponents were at the table right through to the end. To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding the validity of the community-based planning process, Section 2.4 will be revised as shown on the attachment titled, "Revised Section 2.4 (Community Meetings and Involvement)."

*Comment #3: Molokai Properties Ltd. went through the motions in order to meet the requirements of community participation for the EIS process.*

**Response:** We respectfully disagree with this statement. As shown in Section 2.4 (Community Meetings and Involvement) of the Draft EIS, MPL participated in over 100 community meetings for the *Community-Based Master Land Use Plan for Molokai Ranch* and the Lā'au Point project. In addition, the Draft EIS was widely distributed and MPL voluntarily extended the Draft EIS public comment period from 45 days to over 60 days. Previous to the Draft EIS, the Environmental Impact Statement Preparation Notice (EISPN) was widely distributed for public comment.

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*Comment #4: Corrections need to be made to facts and dates in Section 6.4. The nine alternatives were submitted by MPL and were not ALDC-generated alternatives.*

**Response:** MPL did not say the nine alternatives were ALDC-generated, but were suggestions made by LUC members, others, and MPL itself. The ALDC-generated alternatives are discussed in Section 6.5 of the Draft EIS.

To clarify information in Section 6.0 (Alternatives) in the Draft EIS, in April 2005, MPL reported to the Land Use Committee and the ALDC on its review of 10 alternatives that had been proposed over the previous 14 months by a variety of community members and planners. Later after the ALDC consultant delivered his report to the EC, MPL evaluated each of the consultant's recommendations and included evaluations in the draft EIS document.

In addition, the following statements from Mr. Matt Yamashita will be included in the Final EIS:

*"...the ALDC was formed by frustrated members of the community who had to petition the EC for the ALDC to become a part of the "community" process."*

*"The ALDC was not formed until November of 2004. EC funding to support the work of the ALDC was not secured until June 2006!"*

*"The reason the ALDC formed was because no action was being taken by the EC to allow the community to address potential alternatives to La'au Point. While there was a Tourism Committee, Economics Committee, Environment Committee, & Cultural Committee -- no Committee was formed to look at the La'au development and other potential economic engines."*

To include the above information into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

*Comment #5: The way the alternatives are framed is like apples and oranges --there is no way to directly compare the La'au alternative to the other alternatives.*

**Response:** We believe Section 6.0 (Alternatives) of Draft EIS presents a thorough discussion of the alternatives. However, to include further analysis regarding alternatives into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

*Comment #6: The alternatives submitted in the ALDC's last report to the Now of the EC should be included in EIS. These alternatives should be looked at in a more legitimate way.*

**Response:** The only alternative finally recommended by the ALDC related to finding a conservation buyer for Lā'au Point. MPL agrees this is a potential alternative and is open to this approach, itself having discussed this option with three potential purchasers, but currently with no positive outcome.

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*Comment #7: Expand the discussion on a the general price for the Alpha parcel that would meet MPL's needs*

**Response:** MPL will not discuss this with the general public, but will give, and has given, specific information to two of the three parties it has discussed a purchase of the parcel with.

*Comment #8: Discuss cost to fund other aspects of the project and break them down in the draft EIS.*

**Response:** The only costs MPL believes are relevant to and which were already discussed in the EIS are: 1) A cost of between \$30 million to \$35 million to fund the refurbishment of the Kaluako'i Hotel and fund its initial losses; and 2) The on-going operational losses for MPL of in excess of \$3.7 million per annum.

To include further analysis regarding alternatives, including costs and revenue information, into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

#### 7.2 CUMULATIVE AND SECONDARY IMPACTS

*Comment #1: Assess cumulative impacts based on current zoning out at West End -- true cumulative impact of project being ignored. Include in discussion all subdivisions that were part of the original Kaluakoi master plan --6 hotels, condos, rural, single-family dwellings, another golf course -- 1538 total dwelling units at buildout. Assess true cumulative impacts based on existing zoning in the area, and do not exclude "resort area".*

**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 Kaluako'i Hotel; and 2) affordable housing projects elsewhere. To the extent that the development of Lā'au Point facilitates the reopening of the Kaluako'i Hotel, this reopening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

The Lā'au Point project is also a part of the *Community Based Master Land Use Plan for Molokai Ranch* (Master Plan). To this extent, each component of the Master Plan really facilitates each other component of the Master Plan. In an overall context, the Master Plan preserves and protects large amounts of acreage on the West end of Moloka'i. The development of Lā'au Point to some degree facilitates this protection and preservation.

There is no need to discuss the original Kaluako'i Master Plan because the development plans set forth in the *Community-Based Master Land Use Plan for Molokai Ranch* supercede the Kaluako'i Master Plan. There are no plans to develop the area north of the Kaluako'i Resort.

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Analysis and discussion of cumulative impacts are restricted to those future actions that are reasonably foreseeable. The actual development of the area north of the Kaluako'i Resort zoned for hotels and multi-family units cannot be said to be reasonably foreseeable for the purposes of this EIS. MPL has not proposed any new development for Kaluako'i, Maunaloa, or Pāpōhaku that is not addressed already in the Master Plan. Therefore, speculation on unplanned future development cannot be said to be reasonably foreseeable for the purposes of this EIS.

To include the relevant information above in the Final EIS, in the in the Final EIS, Section 7.2 (Cumulative and Secondary Impacts) will be revised as follows:

The re-opening of the Kaluako'i Hotel will add 152 hotel rooms to the West End. To the extent that the development of Lā'au Point facilitates the reopening of the 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 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. Those residents that live in the Kaluako'i and Pāpōhaku areas recognize that the Upgraded roadways in the Kaluako'i and Pāpōhaku areas as a result of Lā'au Point project's infrastructure improvements should help to balance the impacts related to increased users and activities in the areas and could be considered to be a positive impact.

Regarding other MPL lands, currently, MLP does not have plans for developing any of the other MPL lands, including land adjacent to Hale O Lono Harbor and Kaluako'i. The Community-Based Master Land Use Plan for Molokai Ranch states that if demand for accommodation at the Kaluako'i Hotel warranted it, MPL at some time in the future, may seek to use some zoned land for an extension of the hotel, for a cultural center, and for hotel staff housing. However, as the currently proposed renovations of the hotel are not complete it will be many years before further expansion is contemplated. Therefore, plans for developing any other MPL lands cannot be said to be reasonably foreseeable for the purposes of this EIS.

*Comment #2: Discuss how each lot on the West End can subdivide, and how 75% of homeowners are needed to change CC&Rs and bylaws.*

**Response:** Simply because other West End lots are able to be subdivided does not mean they will be. This comment is speculative. At least 70 percent of homeowners have submitted votes against further subdivision. Analysis and discussion of cumulative impacts are restricted to those future actions that are reasonably foreseeable.

As stated in Section 2.3.6 of the Draft EIS, Lā'au Point covenants prevent further subdivision of its lots. This is a provision set by the Master Plan. To include this discussion in the Final EIS, Section 2.3.6 has been revised to include the following:

The Land Trust is a signatory to the CC&Rs and is given specific enforcement rights under the terms of the document. Certain covenants and restrictions in the CC&Rs are derived from the provisions of the Master Plan that represent the Land Trust and community concerns on protection of subsistence and cultural practices and the protection of cultural/archaeological and environmental resources. These are designated Master Plan Covenants under the terms of the CC&Rs. The CC&Rs provide that the Land Trust may prosecute breaches of the Master Plan Covenants and take legal action to ensure their enforcement.

Some provisions of CC&Rs will be able to be changed by a 75 percent majority vote of homeowners. These are operational in nature or concern and involve the management of the Association common areas. They bear no relationship to the covenants that are designed to implement the vision of the Master Plan.

*Comment #3: Expand discussion of how the project will not serve to open the door to additional development on the island.*

**Response:** Under the *Community-Based Master Land Use Plan for Molokai Ranch*, more than 55,000 acres will be protected from future development either by donation to the Land Trust or by existing or new protective easements. Essentially, the donated lands and easement lands will no longer be under MPL control.

*Comment #4: Discuss guarantees that will be in place to assure the community that this will be "the last development" on MPL property. Discuss how secure these guarantees are or are not.*

**Response:** MPL is committed to adhere to the provisions of the *Community-Based Master Land Use Plan for Molokai Ranch* and is working through the numerous agreements with the Land Trust to ensure its compliance once the LUC application and other regulatory applications are approved.

*Comment #5: Discuss how a piecemeal review of the master land-use plan that only focuses on the La'au Point development satisfies environmental review requirements. Discuss why the applicant does not have to accept comments on all of the master plan, but only on the Laau Point development portion.*

**Response:** The EIS has been prepared in accordance with all laws, rules, and requirements. The *Community-Based Master Land Use Plan for Molokai Ranch* was included as an appendix (Appendix A) to the Draft EIS and was the subject of numerous public meetings on Molokai. We believe the public has been provided with tremendous opportunities to participate in the creation of, and comment on, all aspects of the *Community-Based Master Land Use Plan for Molokai Ranch*.

**FURTHER COMMENTS FROM COMMISSIONER CHAIKIN**

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

**Response:** In response to many comments regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." Discussions regarding salinity of wells and alternative water sources are incorporated into the attachment. See the sections of the attachment titled, "The Punakou Aquifer," "Moloka'i Designated a Ground Water Management Area," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Alternatives to the Use of Kālahale-sourced Water."

As discussed in the attachment titled, "Revised Section 4.9.2 (Water)," in the unlikely event that MPL's identified water sources cannot meet its needs, brackish water from the Prawn Farm and desalinization have been identified as alternative sources of non-potable water. This could include re-captured or re-circulated water from the Prawn Farm.

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

**Response:** The agricultural lands are currently supplied with non-potable water; the source depends on where the land is located. Under the current Water Plan, MPL does not have spare capacity to provide more water than it currently uses for cattle-rearing.

Future uses for the agricultural easement land will be dependent on developing non-groundwater from other sources.

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

**Response:** Neither *The Community-Based Master Land Use Plan For Molokai Ranch* or the Final EIS are permits to implement the project. Any conditions imposed on the project by the State Land Use Commission or County of Maui Council will be the legally binding conditions of approval and will prevail.

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

**Response:** The current Land Trust directors are: Colette Machado (chair), Davianna McGregor, Richard Cooke, Clarence Kaopuiki, David Lunney, Cheryl Corbiell, Stacy Crivello, Ed Misaki, and Billy Akutagawa. We note that the Land Trust is currently seeking additional membership.

The Molokai CDC has not been legally formed, and therefore, currently has no "Board of Directors." A steering committee is currently investigating future membership, structure, and tax-exempt issues. The CDC was to be incorporated in October 2007.

*Is Laau Point already subdivided?*

**Response:** No.

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

**Response:** MPL knows of at least one other plan by a previous owner, and once under previous management regimes during BIL's ownership of the parcel.

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

**Response:** Previous landowners sold the land and did not proceed with their plans. In relation to the specific proposal under BIL ownership, when Peter Nicholas was appointed CEO and the community began the *Community-Based Master Land Use Plan for Molokai Ranch* process, that proposal, (which was for a greater number of lots, and had development close to the shoreline) was taken off the table.

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

**Response:** As stated in the *Community-Based Master Land Use Plan for Molokai Ranch*, MPL has no plans to develop the entitled lots north of the Kaluako'i Hotel. However, as stated clearly in the *Community-Based Master Land Use Plan for Molokai Ranch*, some of those lands may be needed at some distant time in the future, for extending the Kaluako'i Hotel if demand requires it; some land for a Cultural Center adjacent to the hotel; and some land for community housing for Kaluako'i Hotel staff. At this point there are no plans to do any of that, but MPL believes it should be up-front about this remote possibility. In any case, under its Water Plan, MPL has no water available for such a remote possibility.

The *Community-Based Master Land Use Plan for Molokai Ranch* also states that if ever there is a demand for a second golf course on Moloka'i, (and replacing the Moloka'i community plan-approved course below the Lodge at Maunaloa) then it should be sited in this area. These parcels are within the SMA and construction of any sort is subject to approval by the Moloka'i Planning Commission. Desalinated water would be needed in this case.

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

**Response:** We cannot speak for other peoples' reasons. To date there have been no public hearings to support the *Community-Based Master Land Use Plan for Molokai Ranch* within the regulatory process that facilitates the *Community-Based Master Land Use Plan for Molokai Ranch*.

However in relation to some previous public meetings, our information is that members of the community who support the *Community-Based Master Land Use Plan for Molokai Ranch* did not turn up because they are concerned about abuse, threats, and the antagonistic behavior of some opponents.

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

**Response:** Appeal and make necessary changes to re-submit. Otherwise, the scenario outlined in Section 6.1 (No Action Alternative) of the Draft EIS will happen, and MPL will be forced to over time sell off its land piecemeal in parcel to the highest bidder.

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

**Response:** In response to your comment, and the comments of others, regarding the general plan update process, the *Moloka'i Community Plan* update process, and the *Community-Based Master Land Use Plan for Molokai Ranch*, in the Final EIS Section 5.2.2 (Moloka'i Community Plan) will be revised as follows:

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

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

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

*Documentation that needs to be included in FEIS*

- 1) *Molokai Land Trust Agreement*
- 2) *Partnership Agreement between MPL and MLT*
- 3) *Articles of Incorporation and Bylaws of the Molokai Community Development Corporation*
- 4) *CC&Rs of the Laau Point development*
- 5) *Bylaws of the Laau Point Homeowners Association*
- 6) *Deed Restrictions on the 26200-acre land gift*

- 7) *Language that will make the Agricultural Easements run in perpetuity*
- 8) *Deed restriction language that will make the land a rural landscape reserve*

**Response:** The following is the status of the documents to which you refer:

- 1) Land Trust agreement. The Moloka'i Land Trust has received its federal non-profit status. Documents relating to its incorporation are private, but reflect its inability to sell donated land and its mission as a land protection organization.
- 2) Partnership Agreement and 26,200-acre donated land's Deed restrictions. The agreements between MPL and the Land Trust on implementation of the Master Plan are in process and will be signed concurrently with the regulatory agreements concerning the La'au development.
- 3) The CDC mission statement has now been defined by a steering committee as follows: "A community-based non-profit organization working to enhance the quality of life for residents primarily in the area of affordable homes for the community, as well as economic development, education, health care, leadership, culture and the environment, while preserving Moloka'i's rural character." We believe the CDC's Articles and By-laws are private. In response to your question, as well as other comments regarding the CDC; Section 2.1.9 (CDC) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 2.1.9 (CDC)."
- 4) As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in this EIS (see Section 7.5). The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition. This is reflected in the Final EIS as shown in the attachment titled, "Revised Section 2.3.6 (Covenants)."
- 5) The Homeowners' Association's Articles and By-laws will be private documents.
- 6) See #2 above regarding Land Trust deed restrictions.
- 7) Easement documents and restrictions relating to the 14,390 agricultural easements are being drafted and must be reviewed by the Moloka'i Land Trust and will be available at LUC petition hearings.
- 8) Easement documents and restrictions relating to the 10,560 acre under Rural Reserve are being drafted and must be reviewed by the Moloka'i Land Trust and will be available at LUC petition hearings.

**What is an agricultural easement?**

**Response:** An agricultural easement is a covenant that is agreed to by the owner, affixed to the property title of the land, and held by a third party (the Land Trust in this case), restricting activities that can take place on the land under covenant to agriculture. The Land Trust can enforce the restriction in a court of law.

**How long will the agricultural easements be managed by MLT?**

**Response:** In perpetuity.

**Who will pay the property taxes on the agricultural easement during the time the MLT manages the easements?**

**Response:** MPL, as the landowner, will pay the property taxes.

**Will the MLT have an option to extend their management of the agricultural easement at the end of the management term?**

**Response:** This is not necessary because the Land Trust's management of the agricultural easements will have no expiration. It is envisioned that the easement, and therefore the Land Trust's control over the activities under the easement, will be in perpetuity.

#### **FURTHER COMMENTS FROM RITTE**

**Response:** We note that Ritte's comments that were submitted with the Moloka'i Planning Commission comments are a duplication of the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) comment letter on the Draft EIS. Therefore, we have attached our response letter to NOAA NMFS as response to Ritte's comments.

#### **FURTHER COMMENTS FROM VANDERBILT**

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

**Response:** This document was prepared by MPL CEO, Peter Nicholas, following the receipt of initial quotation estimates to reconstruct and re-open the property.

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

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

**Response:** The Kaluako'i Hotel was not re-opened by December 2006, and as stated in responses to other questions of a similar type, MPL's re-opening the Kaluako'i Hotel as a hotel is contingent on obtaining the funds arising from this Lā'au Point project.

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

**Response:** This is commercially-sensitive information. However, an investor would need assurance that the Lā'au project has been approved.

*How long has MPL been pursuing an investor and what is the current status (as of February 23, 2007) of MPL's investor search?*

**Response:** MPL is still hoping to attract an investor to either assist it in funding the Lā'au Point development costs or invest in its entire land holdings. MPL has been discussing investment in Lā'au and in its property with a number of potential investors both from Hawai'i and the US mainland over the past three years.

Over the past five years, MPL has never been contacted by an investor who is interested in re-opening the Kaluako'i Hotel without the potential returns from the Lā'au Point development.

The structuring of either a joint venture in the Lā'au development or in its total property assets, or the structuring of a relationship between MPL and that potential investor is commercially sensitive.

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

**Response:** MPL does not anticipate it will be able to pre-sell lots, and also probably will not wish to because of the huge discount usually associated with such pre-sale events. It is not unusual for pre-sale prices to be discounted as much as 30% which would make this project uneconomic.

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

**Response:** BIL has not supported MPL financially since 2002. BIL has a policy of ensuring that each of its operations is self-sufficient. If MPL is not self-sufficient and has no sustainable future, then BIL will seek its liquidation.

*What is the net worth of Brierley Investments Limited?*

**Response:** BIL Group's latest financial results are published on its website at [www.bilgroup.com](http://www.bilgroup.com). The June 30, 2007 balance sheet shows BIL has shareholders equity of \$1,067 million, but debt of \$718 million and cash only of \$47 million. Most of BIL's assets, a total of \$2,062 million, are in hotel land and buildings in London, England.

*What is the net worth of The Guocco Group?*

**Response:** The financial statements of the Guoco Group, a shareholder in BIL, but by no means the majority shareholder of the BIL Group, are available on its website [www.guocogroup.com](http://www.guocogroup.com).

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

**Response:** The question ignores the economic reality of those who invest money and must obtain a return on their funds that is higher than just placing it in a bank or in government stock. What the question presumes is that an investor will also be a poor manager of his/her/their finances. It would be folly to suggest that MPL would be able to find an investor who would be willing to forego a reasonable financial return on funds. What MPL hopes for is to provide a reasonable return on funds, not a super return as is available to many shrewd investors today.

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

**Response:** MPL has not indicated that it was seeking an investment of \$45 million. If this figure was concluded for any information previously supplied by MPL, then the figure is incorrect.

MPL did not include this information in the draft EIS and the information being referred to is now outdated, being more than three years old.

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

**Response:** That capital cost for the hotel reconstruction mentioned was an estimate given prior to receiving updated costs to renovate and open the hotel. The current \$25 million to \$30 million estimate is also increasing by the month while this project is delayed and is now anticipated to be between \$30 million and \$35 million, inclusive of start-up losses.

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

**Response:** It is anticipated that at least \$500,000 will be needed for the initial marketing blitz. It is anticipated the hotel will be cash negative for up to three years. Start-up costs include hiring of staff prior to opening the hotel, testing and running the hotel without guests, training, and the cost of services without income. MPL considers that other details are commercially sensitive.

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

**Response:** MPL considers this information commercially sensitive.

*e) When did MPL anticipate the 8-year loan begin? When the hotel breaks even in Year 4, what occupancy and average room rates did MPL assume? Are there any other costs associated with the design, renovation, construction and reopening of the hotel?*

**Response:** MPL considers detailing further information to the public would be commercially disadvantageous to its interests.

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

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

**Response:** All the information relative to the golf course renovation will be made available at the time of a submission to the Moloka'i Planning Commission. The further financial information requested is commercially sensitive.

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

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

**Response:** MPL met the Health Department requirements for the Kaluako'i Water System in 2005. Other information requested is commercially sensitive.

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

- (a) Year 1 of the 5-year period of losses was anticipated to begin when? What did MPL estimate its losses would be for each of the 5-years? Did MPL assume its losses would be \$0 in Year 6?
- (b) What items make up capital requirements for each year of the 5-year period?
- (c) How many lots make up the inventory of lots that MPL anticipated would run out in December 2, 2005?

How many lots at Papohaku Ranchlands and the Moana Makani subdivisions were still owned by MPL when this financial objective proforma was prepared?

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

**Response:** MPL noted in previous answers to similar questions, which the information it believes the questioner is referring to, is not included in the Draft EIS information, and is now three years old.

The information that MPL gave at the time was all the information of a financial nature concerning its future projections, which it is able to supply.

MPL has already given as much financial information as it both legally able to give and can supply commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

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

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

**Response:** MPL has already given as much financial information as it both legally able to give and can supply commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

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

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

**Response:** MPL has stated in the Draft EIS that it is committed to 5 percent of net lot sale revenue. MPL has already given as much financial information as it both legally able to give and can supply commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

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

What repairs to marine resources were envisioned and what was the estimated cost of these repairs? What repairs to coastal resources were envisioned and what was the estimated cost of these repairs?

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*Were there any costs assumed for any repairs of archeological sites or did MPL envision that these sites would just be maintained in their existing condition? What annual costs did MPL assume to maintain and protect archeological sites?*

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

**Response:** Repairs to the coastal areas will include slow removal of alien trees and restoration of coastal shrubland, and creation of predator-free areas for seabirds nesting.

The Preservation Plan calls for a limited amount of stabilization, which could be regarded as "repair." However, restoration, including full repair of sites, landscaping, and perhaps interpretive efforts, would involve additional planning, and is not proposed at this time. Precise estimates for the cost of maintenance are not possible now, given the lack of a definite scope, the degree to which the Land Trust staff might be involved, and other factors. A single employee could handle maintenance, and that a budget in the range of \$10,000 per year for the first couple of years, likely to decrease over time, would cover the materials and program expenses of maintaining the "status quo." If there are additional elements, such as interpretive programs, landscaping (and hence, water), and restoration, there would be additional annual and single-instance expenses.

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

*Explain what is meant by "depreciated assets employed". Is the \$110m total for depreciated assets employed meant to reflect \$110,000 or \$110,000,000 total dollar amount? MPL states that "depreciated assets employed" is not BIL's "equity investment in MPL. What book value does BIL report for its MPL investment.*

**Response:** The accounting standards of the USA and other countries enforce rules that assets must be depreciated annually. The answer to the question as to what depreciated assets are, is the value of the assets at a point in time after allowing for depreciation.

MPL has already given as much financial information as it both legally able to give and give commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

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

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**Response:** MPL has already given as much financial information as it both legally able to give and can give commercially. Further information is of a sensitive nature and may harm future negotiations with banks and other potential investors.

Also, as a public-traded company it is unable to give information to the public that it has not disclosed to shareholders. Detailed financial information as requested has not and will not be supplied to shareholders.

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

**Response:** This information is not disclosed to shareholders and is commercially sensitive.

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

**Response:** This information is not disclosed to shareholders and is commercially sensitive.

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

**Response:** This information is not disclosed to shareholders and is commercially sensitive.

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

**Response:** It has stated a number of times in many answers to the same question that it will be forced to sell the property piecemeal over a period of time to those who offer the highest price.

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

**Response:** This information is not disclosed to shareholders and is commercially sensitive.

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

**Response:** BIL has never stated to its shareholders that MPL has \$110 million of depreciated assets employed, and furthermore the figure is inaccurate.

*In the DEIS for La'au Point, MPL estimates the gross value of lots sales will exceed project costs (including \$ 10.5mm earmarked for the Land Trust) by approximately \$100,000,000. If an alternative proposal included an upfront cash offer of \$100,000,000 payable to MPL to purchase the proposed La'au Point project lands and the 26,000 acres of land MPL intended to donate to the Trust, assuming La'au Point would not be developed and the 26,000 acres would be donated to a community land trust along with at least \$10,500,000 invested in a community land trust and/or community development corporation to fund the objectives of these community organizations?*

**Response:** MPL has stated on many occasions that it would be willing to negotiate with a potential purchaser of the Lā'au Point parcel. However, it will not have a public discussion on price prior to any such negotiations, preferring to treat any such discussions as private between a potential buyer and itself as a potential seller.

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

**1. How many full-time, part-time and on-call employees are included in the 140 staff positions projected by MPL?**

**Response:** MPL's staff numbers fluctuate depending on occupancy at its tourism properties. Its tourism properties are of a seasonal and event-dependant nature. Currently, MPL employs 104 full-time employees and 30 part time and casual employees.

**2. Is the community unanimous in what type of operation the hotel will house when it reopens (i.e. standard, full-service hotel, educational center, wellness center, community-owned facility, etc.)? What type of hotel operation is MPL planning for in its projection to breakeven in 5 years? In its DEIS, MPL has mentioned a "put option to the community for the hotel, Please explain the details of the "put option".**

**Response:** MPL has stated that the hotel will be owned by MPL and targeted as a mid-range kama'āina hotel that is full service. A put-option will give the Community Development Corporation the right, at some future point in time, to have the option to own a minority shareholding if it is successful.

**3. MPL has stated it will need to find an investor to put up the money needed to reopen the Kaluakoi Hotel. How long after a Master Development Plan is accepted by MPL in principal, does MPL estimate it will be before all the documents and entitlements are legally secured to the point where an investor will be willing to release his investment to fund the renovation of the hotel?**

**Response:** MPL has been discussing investment in Lā'au and in its property with a number of potential investors both from Hawai'i and the US mainland over the past three years. All investors, who are also keen to invest in the re-opening of the Kaluako'i Hotel, are awaiting the outcome of the entitlement process.

Over the past five years, MPL has never been contacted by an investor who is interested in re-opening the Kaluako'i Hotel without the potential returns from the Lā'au Point development.

The structuring of either a joint venture in the Lā'au development or in its total property assets, or the structuring of a relationship between MPL and that potential investor is commercially sensitive.

**4. How many rooms will the renovated hotel include? What mix of full-time, part-time and on-call jobs is being projected for the 130 jobs planned at the hotel during each of its first five years of operations? Please provide a copy of MPL's financial budget for the hotel that will lead to breakeven in hotel operations in five years.**

**Response:** 152 rooms. Further information requested is considered to be commercially sensitive and not considered relevant for the EIS.

**5. Is the Evergreen funding earmarked for the Land Trust or a Community Development Corporation?**

**Response:** The Community Development Corporation, although its first priority will be to ensure that the Land Trust is adequately funded if grants and the Land Trust's fund raising efforts are not enough to fund its conservation and cultural projects.

**6. MPL projects drinking water use at La'au Point 500 gpd per lot and an equivalent amount for irrigation water per lot must be used? Are these projected water uses still applicable as of February 23, 2007. Will MPL make the water it projects providing for its La'au development available to the development plans associated with an alternative plan to La'au?**

**Response:** MPL believes its estimates are still accurate. MPL has found no sustainable alternative to the project from any alternative proposed either in terms of its economics or proposed water use, so the question is moot.

To further address your concerns and the concerns of others in relation to alternatives, MPL has conducted further analysis of all the alternatives, and in particular the options relating to Kaluakoi and developments that were proposed at least half a mile and one mile mauka of the La'au coastline. To include this further analysis into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

**7. This figure cannot be controlled by CCR's or otherwise and therefore seems to be an arbitrary criteria that holds little weight.**

**Response:** Comment noted, but MPL's advice is that this is not a correct statement and that water use can be controlled via adherence to the CC&Rs that will be legally enforceable.

**8. Is MPL prepared to restrict the future development of timeshare projects on the lands that currently owns at the Kaluakoi Resort and elsewhere on Molokai by applying deed restrictions or other appropriate means to insure this restriction is perpetuated into the future?**

**Response:** There are no timeshares proposed.

**Section 6.4 Other MPL Land Development Alternatives:**

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

Revenue per lot  
Total Revenue  
Cost to develop  
Financial return  
Water Use

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**Population increase  
Land requirement**

**Response:** We believe Section 6.0 (Alternatives) of Draft EIS presents a thorough discussion of the alternatives. Many of the items listed above have been included in the Draft EIS for many of the alternatives; however because of the variation in the types of alternatives is not possible to provide a direct comparison for each item listed above. However, to include further analysis regarding alternatives into the Final EIS, in the Final EIS Section 6.0 (Alternatives to the Proposed Action) will be revised as shown on the attachment titled, "Revised Section 6.0 (Alternatives to the Proposed Action)."

**Section 6.52**

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

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

**Response:** Further financial information that is requested is considered commercially sensitive. It is considered that the proposed income from the Lā'au development earmarked for the Moloka'i Land Trust and CDC will meet its future needs for affordable housing, education, Land Trust funding.

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

**Response:** MPL has stated on many occasions that it would be willing to negotiate with a potential purchaser of the Lā'au Point parcel, and in fact has had discussions with two potential purchasers. However it will not have a public discussion on price prior to any such negotiations, preferring to treat any such discussions as private between a potential buyer and itself as a potential seller.

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

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

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

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

**Response:** The Guoco Group is the largest investor in BIL through "associated person" rules. However it does not control the BIL Group as BIL is a public company with a board of directors who made decisions independently.

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MPL is not prepared to divulge likely sale proceeds from a break-up and sell off, however a valuation under such a scenario done by the Hallstrom Group in 2005 indicated a break-up valuation of \$203 million

A representative of the Guoco Group has visited Moloka'i.

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

**Response:** Many representatives of BIL have visited Moloka'i since 2003 when the community process commenced, and at least one attended Land Use Committee meetings. Peter Nicholas is the "on-the ground representative" of BIL.

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

**Response:** MPL has sold a considerable amount of property, mainly lots at Kaluako'i and Maunaloa and some agricultural land.

As has been outlined in the Economics and Fiscal Impacts report (Appendix J of the Draft EIS), accumulated cash deficits between 2001 and 2007 total \$42 million. Land sales in that period have enabled MPL to remain cash positive and not seek to debt fund its operations or seek funding from its parent.

MPL's parent will no longer fund MPL's operations. If MPL is unable to fund its own operations, MPL will be forced to sell its property piece meal over time to the highest bidders as this will obtain maximum cash returns.

MPL would be unable to meet interest payments on debt funding and not have the necessary interest cover to give comfort to a bank.

MPL can shut many of its loss making operations now. However the cost in terms of human turmoil may be unnecessary with an economic future that is proposed by the Master Plan.

MPL and its staff believe it is operating the company in a fiduciary and proper manner for the benefit of its stakeholders.

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

**Response:** This was a business decision and was funded from advances by the BIL parent company.

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

**Response:** This is commercially sensitive information, but it has enabled the company to fund cash losses, the entitlement process and much needed capital replacement items.

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

Sincerely,



Peter Nicholas  
President and CEO  
Molokai Properties Limited

Attachments:

- FEIS Figure 10: Land Trust Land Donations and Easements
- Revised Section 2.1.8 (Moloka'i Land Trust)
- Revised Section 2.4 (Community Meetings and Involvement)
- Revised Section 2.3.6 (Covenants)
- Revised Section 4.9.2 (Water)
- Revised Section 3.6 (Flora)
- Revised Section 3.7 (Fauna)
- Revised Section 2.1.9 (Moloka'i Community Development Corporation (CDC))
- Revised Section 6.0 (Alternatives to the Proposed Action)
- Revised Section 2.4 (Community Meetings and Involvement)
- NOAA NMFS Draft EIS response letter (for Ritte's comment)

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



**The Senate**  
STATE CAPITOL  
HONOLULU, HAWAII 96813

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED & FACSIMILE TRANSMITTAL**

February 21, 2007

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**Re: Comments on La'au Point Draft Environmental Impact Statement**

Dear Mr. Nicholas, Mr. Sabas, Mr. Witten, Mr. Ching, and Ms. Salmonson:

La'au Point, on the southern and western shorelines of Moloka'i, is one of the most sacred places in the state of Hawai'i. Mo'olelo reveal the area's cultural significance, and present day subsistence practices portray active customary and traditional fishing, hunting, and gathering. Native Hawaiian culture is alive at La'au, which is surrounded

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by 10-miles of the "most pristine and cherished fishing grounds on Moloka'i." (Walter Ritte, Maui News, September 21, 2006). The Draft Environmental Impact Statement ("DEIS") by PBR Hawai'i acknowledges that "La'au Point has become an icon of what Moloka'i represents – a rural stronghold and reserve of Native Hawaiian culture, a cultural kipuka." (DEIS, p. 54).

Despite the sacredness of the area and its abundance of natural resources, the landowner/developer Moloka'i Properties Ltd. ("MPL") insists on transforming the culturally sensitive and resource rich La'au Point into a multi-million dollar luxury shoreline development, which as a practical matter no Moloka'i resident could afford to purchase.

The majority of long-time Moloka'i residents have expressed grave concerns and widespread resistance to the type of environmental desecration and destruction that will be caused by the La'au Project. During the planning of the Community-Based Master Land Use Plan for Moloka'i Ranch ("Master Plan"), community meetings were filled with individuals and families alike consistently voicing their opposition to the multi-million dollar development. Video footage at meetings and local newspaper articles clearly demonstrate that the overwhelming majority of attendees do not support the proposed MPL La'au Point Project. In testimony at those meetings, island residents continuously expressed serious concerns detailing a wide range of issues, specifically including limited water resources, adverse social impacts, and Native Hawaiian culture and resources. The community again voiced their concern two weeks ago in an election for the Moloka'i Economic Community Board, the same organization that voted to approve the Master Plan. The ballots cast this year were significantly higher than last year – 1,275 ballots compared with a mere 103 in 2006, and the community spoke volumes when two La'au Point project opponents "overwhelmingly defeated" two project supporters. (Dicus, Howard, Pacific Business News, "Parched Moloka'i land becomes fertile ground for disagreement," February 16, 2007).

In response to this widespread opposition, Peter Nicholas, MPL President, has consistently stated that it will be the Moloka'i community that will decide whether this project will go through. The majority of the community has already spoken and continues to speak loudly and clearly: they do not want and do not approve of the La'au Point development. To the extent that MPL truly believes that the island of Moloka'i is one of the "last untouched Native Hawaiian places" on "[t]he Last Hawaiian Island," it should focus on the preservation, not desecration of this unique, untouched, and precious resource in the State of Hawai'i. (DEIS, p. 54).

Governor Linda Lingle opined in her State of the State Address on January 22, 2007, "[w]hile we all want a higher standard of living for ourselves and our children [we also] want to preserve everything that makes Hawai'i unique...especially our cultural and natural resources." The Governor also stated that in order to accomplish preserving Hawai'i's unique resources, we need to shift from dependence on land development and

change our economy to one fueled by science, mathematics, innovation, and high technology.

If there is any place in Hawai'i that can be described as rich in cultural and natural resources it is La'au Point. Its unique abundance of endangered species, marine resources, and cultural and subsistence resources should be preserved for future generations.

#### **I. MPL'S PUBLIC REVIEW PERIOD WAS INADEQUATE**

The limited time provided for public review of and comment on the DEIS was not sufficient to enable adequate review. The lengthy DEIS was originally released during the 2006 holiday season, which was problematic as family and friends properly focused their attention on celebrating Christmas and New Years. Although a short extension was finally granted after numerous requests, the response and eventual extension approval inexplicably took over two weeks, and thus did not provide a full and fair opportunity for concerned community members to offer input on the inadequacy of MPL's incomplete and pejorative analysis.

#### **II. THE SCOPE AND IMPACTS COVERED WITHIN THE DEIS IS INADEQUATE**

##### **A. Inappropriate Scope**

The DEIS is convoluted, including irrelevant and false information that is confusing and misleading to the public and the Land Use Commission ("LUC"). According to the Project Profile, the Project Name is La'au Point and the Project Area consists of 1,432 acres. (DEIS, p.1). If the applicant is preparing an Environmental Impact Statement ("EIS") for the La'au Point Project, the focus of the EIS should be limited to the impacts and mitigation efforts directly related to the La'au Point development, including its deleterious impacts to the island of Moloka'i. The DEIS constantly refers to the Master Plan, which MPL claims mitigates the overall impacts to the La'au area.

If MPL insists that the Master Plan truly mitigates the impacts to the petition area, the entire plan should be subject to HRS § 343, the Hawai'i Environmental Impact Statement law, which would require disclosure of "the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects."

Despite the efforts of those involved in creating the overall Master Plan, the granting of other lands to the Land Trust and the Moloka'i Community Development Corporation will not mitigate the environmental, cultural, and spiritual impacts at La'au. La'au Point is used by traditional and customary practitioners, and contains cultural and natural

resources unique to La'au. Protecting similar rights and resources in other areas will not change the inevitable and devastating impacts that will occur if the development is approved. Further, highlighting only the benefits of the overall plan serves to distort and confuse the environmental and cultural impacts that will result from the proposed multi-million dollar development.

##### **B. Cumulative Impacts**

If MPL insists that the La'au Project is crucial to the economic viability of the Master Plan, and its specific plans for the Kaluako'i Hotel re-opening, developments in Kaluako'i, Maunaloa, and Papohaku, and the CDC's affordable housing and community development projects, all cumulative impacts from these projects must and should be detailed in the DEIS. This will assist the public to understand the relationship of one to the other, as well as to understand the true impacts of a project of this size and scale.

Pursuant to HAR § 11-200-17(2), an EIS must examine all "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)." Cumulative impacts are those

"impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

HAR § 11-200-2.

MPL's empty claim that implementation of the Master Plan "may result in increases in demand for police, fire, medical, education, and other public services," and that the community character of Moloka'i will experience change, is wholly inadequate and does not adequately address the cumulative impacts on the environment. (DEIS, p. 161). What are MPL's plans for future development in Kaluako'i, Maunaloa, and Papohaku? What specific environmental, social, cultural, and infrastructure impacts will result from these future developments, the re-opening Kaluako'i hotel, and the community development projects?

Overall, the objectives of the La'au Point project and the Master Plan should be separated. Regardless of MPL's interest in creating a sustainable future for Moloka'i, it is misleading and inaccurate to claim that establishing a land trust and securing the community's role in land management are objectives of the proposed luxury development. (See e.g. DEIS, p. 4).

**III. THE DEIS LACKS CRITICAL INFORMATION PERTAINING TO MOLOKA'I'S CURRENT WATER CRISIS & DOES NOT ADDRESS IMPACTS TO DHHL'S PRIORITY RESERVATION**

A. Moloka'i does not have enough water to meet existing uses and already approved developments, and MPL's plans for La'au will only serve to worsen the already heavy burden on Moloka'i and its existing water users.

- Current demand for water has increased as a result of a "growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from existing wells." (USGS Scientific Investigations Report 2006-5177). Although Moloka'i is thought to have more than 30 million gallons per day ("gpd") of sustainable water supplies, completion of approved developments would result in a 54 million gpd deficit. (Dicus, Howard, Pacific Business News, "Parched Moloka'i land becomes fertile ground for disagreement," February 16, 2007).
- Both federal and state agencies have taken action which serves to protect the limited water resources of Moloka'i island. The EPA designated Moloka'i as a Sole Source Aquifer (59 FR 23063) under the Safe Drinking Water Act § 1424(e). This designation recognizes that Moloka'i has a sole source of drinking water for the entire island, and that water withdrawals from one part of the aquifer affects the water level and quality in other parts. Further, in 1992, the State Commission on Water Resource Management ("CWRM") designated the entire island of Moloka'i a "Ground Water Management Area," which acknowledges that current withdrawals are threatening Moloka'i's water quality and aquifer levels. This threat has been further compounded since the 1992 designation due to increased water demands and withdrawals.
- The water crisis on Moloka'i makes it very difficult for users to obtain water use permits. Even the Department of Hawaiian Homelands ("DHHL"), which has a priority reservation (see further explanation below), has not been granted a water permit it applied for in 1999.

B. The community on Moloka'i, including Hawaiian homesteaders, have expressed concern that MPL's proposal to pump additional water from the Kakalahale Well will strain and diminish the water table on Moloka'i and interfere with DHHL's priority water reservation.

- Based upon the current and future water needs of DHHL, the homesteaders are properly concerned about MPL's water plan. DHHL currently pumps 569,000 gpd for its consumers at Ho'olehua and Kalama'ula, 202,000 gpd more than authorized by the CWRM. Future homestead lots in the area will require an additional 366,000 gpd, bringing total consumption to 985,800 gpd. DHHL also has plans for future homestead lots in 'Ualapu'e and Kamiloloa, which will require another 418,500 gpd of water. Pursuant to its obligations to fulfill the State of Hawaii's trust responsibilities to native Hawaiians, DHHL has set a goal to provide every qualified native Hawaiian beneficiary on the waiting list an

opportunity for home ownership or land stewardship in the next five years. (DHHL's Strategic Plan, 2003-2008). Upon completion of the 'Ualapu'e and Kamiloloa homesteads there will be at least 167 residential, 547 agricultural, and 173 pastoral applicants on the waiting list. Thus, in fulfilling its trust duty to benefit and rehabilitate native Hawaiians, and in achieving its strategic plans, DHHL should be planning to increase homesteading in Moloka'i, and more homesteading inevitably means increased water needs.

- DHHL has a priority water reservation of 2,905,000 gpd in the Kualapu'u aquifer. Its reservation rights are guaranteed by the Hawaiian Homes Commission Act (HHCA), the state Constitution, the State Water Code, and the public trust doctrine. *In Re Wai'ola O Moloka'i, Inc.*, 103, Hawai'i 401, 423 (2004). The HHCA mandates that "sufficient water shall be reserved for current and foreseeable" needs of Hawaiian home lands. (HHCA § 220). Thus, in applying for a water use permit, MPL has the burden of establishing that its proposed water use will not interfere with DHHL's reservation in the Kualapu'u aquifer. *In Re Wai'ola O Moloka'i, Inc.*, 103, Hawai'i 401, 425 (2004).

C. "MPL's 'advice' is that drawing water from the Kakalahale Well will have no impact on the yield of the Kualapu'u aquifer." (DEIS, Appendix P, p. 119). That "advice" contradicts and conflicts with the 2006 USGS Report, which establishes that increased "ground-water withdrawals will affect ground-water levels, discharge of fresh and brackish water to the near shore environment, and possibly salinity of the water pumped from existing wells." The report further finds that pumping water from one well will affect the salinity of nearby wells and the discharge of fresh water to stream mouths and fishponds. (USGS Scientific Investigations Report 2006-5177, p. 4 & 47). The USGS report supports and justifies the public's concern.

- What is the "advice" that MPL references? Has the MPL performed a study which contradicts the USGS report? If so, why hasn't it been included in the DEIS?

D. Even in the unlikely event that MPL's withdrawal from the Kakalahale Well will not interfere with the yield of the Kualapu'u aquifer, MPL still fails to show that its Water Plan will not interfere with DHHL's water reservation, which as a public trust purpose is "entitled to the full panoply of constitutional protections afforded other public purposes." *In Re Wai'ola O Moloka'i, Inc.*, 103, Hawai'i 401, 431 (2004).

- Delwyn Oki, a USGS hydrologist, and expert in this area, has openly stated that he doesn't think that DHHL will be able to get their water reservation from Kualapu'u. (Findings of Moloka'i Water Group - January 2007).
- If DHHL is unable to get their water reservation from Kualapu'u it will need to seek its water from the next sector - Kamiloloa. MPL's Water Plan consists of a permit to pump 1,000,000 gpd from the Kakalahale Well, which is in the Kamiloloa sector.
- MPL admits in its DEIS that implementation of its Water Plan will require findings that the withdrawal from the Kakalahale Well will not impact DHHL's

water reservation. (DEIS, Appendix P, p. 23). Why hasn't MPL conducted a study to determine whether or not the La'au Project will interfere with DHHL's reservation or other existing uses? Isn't it more likely to have impacts on DHHL's water reservation if DHHL begins to seek water from Kamiloloa?

- If MPL stands by its public announcements that its water use will yield to DHHL's priority reservation, it must first confirm that its project plans will not interfere with DHHL's water reservation before it proceeds with the La'au Point project. It must also establish that it has some other source of water to support its project. To do otherwise is patronizing to the LUC, the Moloka'i community, and the people of Hawai'i.
- In 1999, when DHHL applied for a water use permit within the limits of its water reservation for its Ho'olehua and Kalama'ula consumers, MPL opposed the application. Although MPL eventually withdrew its opposition, its past actions regarding DHHL's water reservation evidences a position on the limited water resources of Moloka'i. The LUC should be wary of approving a project conditioned upon MPL's empty promise to yield to DHHL's priority reservation.

E. MPL does not indicate how it plans to transport the water from the Kakalahale Well to the project site.

- Currently MPL transports its potable water using the MIS distribution system, however this system would not be appropriate for the brackish water that would come from the Kakalahale Well even assuming its water use permit is approved. MPL states it will not propose transmission by the MIS system, and the company has already failed in past attempts to build a new line on DHHL property.
- MPL should provide the LUC with a transmission line other than the MIS system and the DHHL pipelines, the costs to construct the alternative line, and an evaluation of any cultural and environmental impacts that may result from the line, prior to any LUC decisions regarding this proposal.

F. MPL contends it will sign covenants preventing it from ever seeking further potable water permits from the State Commission on Water Resource Management (CWRM). However, nothing prevents the new owners of the individual lots and subsequent assignees from applying. Who will be party to the covenants? Who will be able to enforce these covenants?

G. MPL has rightly conceded that the specifics of the water resource issues have yet to be sufficiently identified. MPL should not proceed with a project that will require 1,000,000 additional gpd to be pumped from the Kamiloloa aquifer, heavy water use during construction, and additional water for proposed public parks, until there is more certainty regarding the current water sources and issues on Moloka'i.

H. The State of Hawai'i and its agencies have a continuing public trust obligation to "ensure the continued availability and existence of water resources for present and future generations." *In Re Wai'ola O Moloka'i, Inc.*, 103, Hawai'i 401, 431 (2004), *citing In*

*Re Water Use Applications ("Waihole I")*, 94 Hawai'i 97, 139 (2000). The State and its agencies, including the LUC, also have a special trust responsibility to native Hawaiians pursuant to the Hawaiian Homes Commission Act and the Admissions Act. In deciding MPL's application the LUC should ensure it fulfills its constitutional and statutory mandates.

#### IV. THE DEIS DOES NOT SUFFICIENTLY ADDRESS IMPACTS TO AND MITIGATION OF NATIVE HAWAIIAN TRADITIONAL & CUSTOMARY RIGHTS

MPL's promise to "recognize" Native Hawaiian subsistence rights insults Native Hawaiian practitioners who do not need the MPL to validate their rights to exercise traditional and customary practices protected by the Hawai'i State Constitution, other state laws, and Hawai'i common law.

Addressing the effects on Hawai'i's culture and traditional and customary rights and practices is of vital importance in an EIS. In 2000, the Hawai'i state legislature specifically recognized that Native Hawaiian culture plays a vital role in the preservation of Hawai'i's 'aloha spirit' and that Articles IX and XII of the state constitution, other state law, and Hawai'i's courts, impose on government agencies a duty to promote and protect cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. Additionally, and most importantly, the legislature "observed that the past failure to require native Hawaiian cultural impact assessments resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 47, fn 28 (2000).

Pursuant to Haw. Const. art XII § 7, the LUC is obligated to "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible" when granting a petition for reclassification of district boundaries. *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 35 (2000). To protect traditional and customary Native Hawaiian rights, the LUC is, at a minimum, required to make specific findings and conclusions regarding

"(1) the identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action; and (3) the feasible action to be taken by the state to reasonably protect native Hawaiian rights if they are found to exist."

*Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 35 (2000).

The DEIS lacks necessary data to enable the LUC to make its required findings and conclusions:

A. Identity and Scope

- What is the extent to which traditional and customary native Hawaiian rights are exercised at La'au Point? How often is La'au used by gatherers? Fishermen? Hunters? Those seeking spiritual solace? How many gatherers, fishermen and hunters use the area?
- The Cultural Impact Assessment claims that La'au Point is so isolated that most of the residents of Moloka'i have never been there and thus have had no direct experience with the place. This statement can be confusing and misleading to the public. What data justifies this statement? What percentages of long-time residents and/or traditional and cultural practitioners use the area? What percentage of the residents who have not been to La'au benefit from its cultural, historical, or natural resources?
- The Cultural Impact Statement identifies coastal and cultural subsistence resources found at La'au Point, but what is the size and significance of these resources?

B. Impairment

- What are the realistic impairments to traditional and customary rights? The DEIS' 160-page cultural assessment points out some of the real and practical concerns of Moloka'i community members. Specifically, concerns recorded in the Cultural Assessment include the following: fishermen will lack privacy, throw net subsistence fishers require an undisturbed beach that allows fish and to forage closer inshore, gatherers of 'a'ama crabs require dark silent nights to ensnare their nocturnal prey, and subsistence practitioners are likely to be confronted by insensitive newcomers intolerant of extractive activities. What will be the impact to these practitioners? How does the DEIS address these specific concerns?
- As disclosed in the Cultural Impact Assessment, a 1993 Subsistence Sites map indicates *intensive* fishing and ocean gathering in the exact area of the proposed La'au Project. (DEIS, Appendix F, p. 40). If La'au and its shores serve as an "icebox" for fishermen, what effects will the development have on the families who rely upon the fishermen for a significant source of their food? What affects will be had on the families who do not "engage in subsistence practices but benefit through the sharing and exchange among family members and neighbors?"
- The DEIS acknowledges more than once that the overall cultural concern is that the La'au Point Project "will destroy the special quality of La'au as a special place of spiritual mana and power." (See e.g. DEIS, Appendix F, p. 149). Residents have stated it is the overall isolation of the area that is the foundation

for exercise of an individual's spiritual connection. What impact will the development have on spiritual practitioners?

- The DEIS does not adequately address the impacts that pumping 1,000,000 gpd will have on traditional and customary gathering rights. According to the 2006 USGS Report, ground-water withdrawals will affect the discharge of ground water discharge to the near shore environment. Significantly, this near shore environment is "essential to the livelihood" of several species of fish and limu. *In Re Wai'ola O Moloka'i, Inc.*, 103, Hawai'i 401, 413 (2004). Why doesn't the DEIS address the findings of USGS' most recent report, which has significant bearing on the same contested issues brought forth by interveners in the Wai'ola litigation? What impact will MPL's water plan have on limu (e.g., ogo, manaua, ele'ele), fish (e.g., mullet, holehole, milkfish), and other coastal resources? How will these impacts affect traditional and customary practitioners? What ground-water models are referred to in the Cultural Impact Statement? (DEIS, Appendix F, 131).

C. Feasible Action

The DEIS' feasible action does not adequately address the concerns of the community.

- As disclosed by the Cultural Impact Assessment, subsistence practitioners have been faced with challenges from newcomers and new residents from the Continental U.S. and the Philippines. (DEIS, Appendix F, p. 37). How will the new residents, many likely to be from outside of Hawai'i be any different? MPL insists that the homes at La'au Point will be a vacation/second home for the new landowners and only 30% of the homes will be occupied by permanent residents. What practical effects will attending educational classes have on the majority "vacationing" landowners who are less likely to have a genuine interest to learn about the Moloka'i lifestyle and culture?
- The DEIS states that the CC&Rs and additional guidelines will mitigate identified impacts to the cultural and natural resources. What is the exact language of these CC&Rs and additional guidelines? What are the enforcement and substantial penalties mentioned in the Master Plan that will "ensure" that the covenants are respected and upheld? (DEIS, Appendix A, p. 101). Who will be able to enforce these CC&Rs?
- If the Conservation Zone and other "protected" areas within the subdivision will be controlled equally by the homeowners and the Land Trust, what happens when there is a dispute? How will leaving decisions relating to subsistence protection and archaeological site protection to the new homeowners, who will not likely have any understanding of traditional and cultural practices, serve to mitigate and reasonably protect Native Hawaiian rights? (DEIS, Appendix F, p. 18).

The State and its agencies, specifically the LUC has an affirmative duty to protect traditional and customary rights and cannot delegate its trust obligations to the Molokai

Land Trust, a proposed, and not yet existing private entity. See e.g. *Ka Pa'akai*, 94 Haw. 31 (2000).

V. THE DISCUSSION OF ENDANGERED SPECIES WITHIN THE DEIS IS WHOLLY INADEQUATE

Hawai'i is often called the endangered species capital of the world. According to the Bishop Museum, there are more endangered species per square mile in Hawai'i than any other place in the world. Survival of the many endangered species found in Hawai'i is critical to maintaining our heritage, and thus it is our *kuileana* to protect our State's rich and vast array of unique species.

A. Hawaiian Monk Seal

The DEIS fails to adequately consider and measure the significance of La'au Point as a habitat of the Hawaiian Monk Seal. The DEIS also fails to assess the impacts the project will have on the monk seal population and its feeding grounds at the La'au Point fishery.

- The Hawaiian Monk Seal has been designated by the National Marine Fisheries Services ("NMFS") and the U.S. Fish and Wildlife Service ("USFWS") to be an endangered species pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). According to the NMFS:

"The Hawaiian Monk Seal is in crisis; the population is in a decline that has lasted 20 years and only around 1,300 monk seals remain. Modeling predicts the species' population will fall below 1,000 animals in the next five years. [T]he Hawaiian monk seal is headed to extinction."

National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006.

- The NMFS' Recovery Plan considers it very important to increase the number of monk seals in the Main Hawaiian Islands for its recovery, and a part of the recovery strategy is to ensure the natural growth of the monk seal in these islands. It notes that the Main Hawaiian Islands "represents a large amount of under-occupied habitat, which could support a larger population of seals if appropriate management actions were in place." (National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006).
- In addressing the La'au Point DEIS, the NMFS has concluded that La'au Point is an important habitat for the seals based upon the high number of documented monk seal sightings and the significant number of animals that use the area. (DEIS Commentary Letter, written by Chris E. Yates, on behalf of the National Marine Fisheries Services, February 5, 2007). It is known by many in the community that Hawaiian Monk Seals frequent the La'au Point area because of its isolation. The NMFS' commentary letter supports this, and in addition points out

that La'au's sandy beach and proximity to foraging areas also make it an especially good monk seal habitat.

- The DEIS fails to address the following: What effects will the development have on La'au as a habitat for monk seals? What impact will the increased human interaction have on the monk seals? How will domestic animals and humans impact the monk seals health and its population at La'au Point?
- The field study's statement that "[m]onk seals haul out to rest on beaches as deserted as this beach or as heavily used as public beaches on Oahu," is misleading. (DEIS, Appendix C p. 5). It is well known that monk seals do not frequent heavily populated beaches. To the contrary the USFWS has stated that remote areas with little impact by humans are the ideal habitat for the easily disturbed monk seals, and the NMFS' commentary letter describes monk seals that are tolerant of human presence to be the exception rather than the rule.

B. Endangered Sea Turtles

- MPL has been put on notice that native species of turtles and turtle nesting areas can be found in the La'au Point area. (DEIS, p. 57 & Appendix F, p. 145). The U.S. Fish and Wildlife Service established the Green Sea Turtle (*Chelonia mydas*), Leatherback Sea Turtle (*Dermochelys Coriacea*), and the Hawksbill Sea Turtle (*Eretmochelys imbricata*), all found in Hawai'i, to be endangered pursuant to the Endangered Species Act of 1973. (U.S. Fish & Wildlife Service Threatened and Endangered Species System).
- The DEIS is completely absent of any data on how the La'au Point development will impact these endangered species.

C. 'Ihi'ihilauakea (*Marsilea villosa*)

- The U.S. declared the 'ihi'ihilauakea an endangered species pursuant to the Endangered Species Act of 1973. (50 CFR Part 17). The Federal Register notes that "the extremely small number and size of the populations and their restricted distribution makes the species more vulnerable to stochastic events," and that "a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals" of the species. (50 CFR Part 17). The species has been known to exist in three small populations, one of which can be found at La'au Point. However, upon visiting La'au Point this past weekend, two populations, approximately 12 feet by 12 feet were found and documented at Kamakaipo by Walter Ritte and Scarlett Ritte Camara.
- The DEIS discloses that a management plan is to be developed by the Land Trust within the proposed development area. (DEIS, p. 43). Nothing in the DEIS speaks to protecting the 'ihi'ihilauakea in the management plan. What requires MPL and future La'au residents from complying with the Land Trust's management plan? How might the 'ihi'ihilauakea benefit from habitat created by

settling ponds and human habitation and intrusion into its natural habitat? (DEIS, p. 70).

VI. MANY OF SUPPOSED BENEFITS OF THE MASTER PLAN ARE MISLEADING TO THE PUBLIC AND THE LUC

A. One Last Development

The MPL has attempted to sell the La'au Point Project to the Moloka'i community by promising that La'au Point will be the last major development on ranch lands outside of the resort area. Such public statements are false and unenforceable, and are consistent with the history of MPL making disingenuous pronouncements to the Moloka'i island community. Moreover, such scurrilous statements are non-binding and are further evidence of MPL's efforts to move this project forward regardless its distorted representations.

B. Land Donation

The Land donation of 26,200 acres to the Moloka'i Land Trust doesn't change one iota the irreversible effects of a large luxury development at La'au Point to the island's ecosystem, its severely limited water supply, and its natural and cultural resources.

C. Agricultural Easement

MPL also promises to forever "protect" 14,390 acres of land by creating an Agricultural Easement. The promise that this easement will protect these lands from development is false, misleading, and difficult to enforce. Under this agricultural easement, MPL is still permitted to construct "farm dwellings." The definition of a farm dwelling is the subject of ongoing litigation. While one would imagine a farm dwelling to be a single-family home situated on an agricultural lot, yet many of the large homes located at Kaluako'i have been justified as "farm dwellings". One need only be reminded of the multi-million dollar farm dwellings constructed at the Hokuli'a development on the west side of the island of Hawai'i to appreciate the abuse of large landowner developers in Hawai'i.

VII. CONCLUSION

It is not the Master Plan that will set the stage for Moloka'i's future or assure its residents self-determination. It is the steadfast adherence of the community to what is pono. A massive luxury shoreline development is not pono for La'au Point, which is "regarded as a special place of spiritual mana and power." (DEIS, Appendix F, p. 144).

As the LUC reviews this EIS it must balance the loss of natural resources and risk to the Moloka'i Community and the larger Native Hawaiian community, with the economic

benefit to foreign land owners of developing 200 multi-millionaire lots in a sacred and revered area where the community has loudly and consistently voiced its opposition.

The DEIS is consistent with MPL's longstanding tradition and effort to maximize its profits regardless of the cost to the people and limited natural resources of the island of Moloka'i. MPL continues to shroud its profiteering efforts with entitlements which engender wide-spread opposition and criticism were they to develop historically and culturally significant areas like Ka'ana.

There is not likely a single resident of the island of Moloka'i who could purchase a proposed unit in the La'au Point Development, and by its own admission within the DEIS, the development is intended to be a vacation/second home for the super rich. Longtime local people who have lived on Moloka'i since time immemorial would likely be considered trespassers or engaged in menial tasks for the newly minted landowners' property, not unlike every other Hawaiian island where second homes for the super rich and famous have been constructed at irreversible costs to the Hawaiian island environment and her people.

Sincerely,



Clayton Hee  
State Senator  
Member, Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs



November 1, 2007

The Honorable Senator Clayton Hee  
State of Hawai'i  
State Capitol  
415 South Beretania Street, Room 228  
Honolulu, Hawai'i 96813

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Senator Hee:

Thank you for your letter dated February 21, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). Below, we respond to your comments.

1. *La'au Point, on the southern and western shorelines of Molokai, is one of the most sacred places in the state of Hawai'i... The majority of long-time Moloka'i residents have expressed grave concerns and widespread resistance to the type of environmental desecration and destruction that will be caused by the La' au Project. During the planning of the Community-Based Master Land Use Plan for Moloka'i Ranch ("Master Plan"), community meetings were filled with individuals and families alike consistently voicing their opposition to the multi-million dollar development. Video footage at meetings and local newspaper articles clearly demonstrate that the overwhelming majority of attendees do not support the proposed MPL La'au Point Project. In testimony at those meetings, island residents continuously expressed serious concerns detailing a wide range of issues, specifically including limited water resources, adverse social impacts, and Native Hawaiian culture and resources. The community again voiced their concern two weeks ago in an election for the Moloka'i Economic Community Board, the same organization that voted to approve the Master Plan. The ballots cast this year were significantly higher than last year — 1,275 ballots compared with a mere 103 in 2006, and the community spoke volumes when two La'au Point project opponents "overwhelmingly defeated" two project supporters. (Dicus, Howard, Pacific Business News, "Parched Moloka'i land becomes fertile ground for disagreement," February 16, 2007). (pages 1-2)*

**Response:** With the diversity of the island, we are aware that not everyone will agree on everything. We acknowledge your comment about the EC election and results; however, we respectfully disagree with your conclusion that there is a direct correlation between the election results and the project. The EC Board election was not a mandate for the Lā'au Point project, and the election should not be construed as the sole indicator of support for or against the Lā'au Point project.

The election held on January 31, 2007 was for two board members the Moloka'i Enterprise Community (EC) Governance Board. While some candidates ran on platforms that included stances on the proposed development at Lā'au Point, the proposed development at Lā'au Point is not a project of the EC.

The EC facilitated the Master Plan community-based planning process (as discussed in Section 2.1.6 of the Draft EIS), and later voted to support the Master Plan based on the strong

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recommendation from the Land Use Committee. The EC has also stated that the Master Plan represents the fulfillment at the highest levels of the key principles of the USDA's Empowerment Zone/ Enterprise Community program, which are: 1) Economic Opportunity; 2) Sustainable Community Development; 3) Community-based Partnerships; and 4) Strategic Vision for Change.

A total of 1,284 voters turned out for the January 31, 2007 EC election, casting a total of 2,541 votes (2 votes per person minus 27 abstentions and voided ballots). This turnout, while record-setting for EC elections, represents only 25.6% of Moloka'i residents over 18 (According to the 2000 Census, the Moloka'i population over 18 years of age is 5,015) Bridget Mowat and Leila Stone, who won the two seats and campaigned on an "anti-Lā'au" platform, received a combined 1,683 votes, or 65.5%, equivalent to 841.5 voters. A total of 841.5 voters represent only 16.8% of Moloka'i's eligible voting age population.

To assume that an election for Board Directors of a private nonprofit corporation is equivalent to a referendum on the Master Plan or a mandate for the Lā'au Point project, no matter what the candidates' platforms, is not only a misrepresentation of fact on many levels, but could also be seen as disenfranchising the other 3,731 eligible Moloka'i residents (74.4%) who did not turn out to vote.

A community vote on the Master Plan never occurred; there is no provision for one. Regulatory organizations are charged with making the decisions on entitlement issues such as with Lā'au Point. The EC election was for the Board of Directors that has no such regulatory power.

2. *In response to this widespread opposition, Peter Nicholas, MPL President, has consistently stated that it will be the Moloka'i community that will decide whether this project will go through. The majority of the community has already spoken and continues to speak loudly and clearly: they do not want and do not approve of the La'au Point development. To the extent that MPL truly believes that the island of Moloka'i is one of the "last untouched Native Hawaiian places" on "[t]he Last Hawaiian Island," it should focus on the preservation, not desecration of this unique, untouched, and precious resource in the State of Hawai'i. (DEIS, p. 54). (page 2)*

**Response:** We respectfully disagree with your comments regarding the community's decision about the project. There is clearly support for the project and the Master Plan. The Master Plan was created by participating community members who volunteered their time at numerous meetings (see Section 2.4 of the Draft EIS) to plan a sustainable future for Moloka'i. The Master Plan is a thoughtful and comprehensive compilation of the many visions community members have for Moloka'i. The Lā'au Point project and the Master Plan, is the product of more than 150 community and special interest group meetings over a three-year span. The Master Plan participants have made it clear their support through the creation of the Master Plan document.

3. *Governor Linda Lingle opined in her State of the State Address on January 22, 2007, "[w]hile we all want a higher standard of living for ourselves and our children [we also] want to preserve everything that makes Hawai'i unique... especially our cultural and natural resources." The Governor also stated that in order to accomplish preserving Hawai'i's unique resources, we need to shift from dependence on land development and change our economy to one fueled by science, mathematics, innovation, and high technology. (page 3)*

**Response:** We acknowledge your comments about Governor Lingle's State of the State Address. We note that Governor Lingle has also publicly supported the Master Plan and the community-based process to create the Master Plan (See August 18, 2006 article, "Linda Lingle Endorses Master Plan; Criticizes Lā'au Opposition," The Molokai Dispatch).

4. *If there is any place in Hawaii that can be described as rich in cultural and natural resources it is La'au Point. Its unique abundance of endangered species, marine resources, and cultural and subsistence resources should be preserved for future generations.* (page 3)

**Response:** We agree. The many benefits afforded by the Master Plan and the Lā'au Point project ensure the preservation of these resources for future generations (see Section 2.1.7 of the Draft EIS).

#### I. MPL's Public Review Period Was Inadequate

5. *The limited time provided for public review of and comment on the DEIS was not sufficient to enable adequate review. The lengthy DEIS was originally released during the 2006 holiday season, which was problematic as family and friends properly focused their attention on celebrating Christmas and New Years. Although a short extension was finally granted after numerous requests, the response and eventual extension approval inexplicably took over two weeks, and thus did not provide a frill and fair opportunity for concerned community members to offer input on the inadequacy of MPL's incomplete and pejorative analysis.* (page 3)

**Response:** The EIS law provides a 45-day review period for Draft EIS. We provided 63 days.

#### II. The Scope And Impacts Covered Within The DEIS is Inadequate

##### A. Inappropriate Scope

6. *The DEIS is convoluted, including irrelevant and false information that is confusing and misleading to the public and the Land Use Commission ("LUC"). According to the Project Profile, the Project Name is La'au Point and the Project Area consists of 1,432 acres. (DEIS, p.1). If the applicant is preparing an Environmental Impact Statement ("EIS") for the La'au Point Project, the focus of the EIS should be limited to the impacts and mitigation efforts directly related to the La'au Point development, including its deleterious impacts to the island of Moloka'i. The DEIS constantly refers to the Master Plan, which MPL claims mitigates the overall impacts to the La'au area.* (page 3)

**Response:** The Lā'au Point Project is one of the elements in the Master Plan. Successful implementation of the overall Master Plan depends on the project's completion. A discussion of the Master Plan is necessary to place into context the breadth of measures available to mitigate the environmental, social and cultural impacts of the project. The State Land Use District Boundary Amendment petition on Lā'au Point before the Land Use Commission, if approved, would not represent approval of the Master Plan.

7. *If MPL insists that the Master Plan truly mitigates the impacts to the petition area, the entire plan should be subject to HRS § 343, the Hawai'i Environmental Impact Statement law, which would require disclosure of "the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects."* (page 3)

**Response:** See response to #6. The application before the LUC does not ask for the approval of all the Master Plan elements. Furthermore, other aspects of the Master Plan, such as the 50,000+ acres being donated or put into agricultural and open space easements, will not create development; therefore, an environmental review (Chapter 343, HRS) of this action is not "triggered." Kaluako'i Hotel is a renovation of an existing development, and has already started processing its entitlements. Proposed community housing, to be developed by the Community Development Corporation (CDC), will be addressed when the CDC is ready to develop those homes.

8. *Despite the efforts of those involved in creating the overall Master Plan, the granting of other lands to the Land Trust and the Moloka'i Community Development Corporation will not mitigate the environmental, cultural, and spiritual impacts at La'au. La'au Point is used by traditional and customary practitioners, and contains cultural and natural resources unique to La'au. Protecting similar rights and resources in other areas will not change the inevitable and devastating impacts that will occur if the development is approved. Further, highlighting only the benefits of the overall plan serves to distort and confuse the environmental and cultural impacts that will result from the proposed multi-million dollar development.* (page 4)

**Response:** Master Plan participants felt that the proposed donated lands and easement lands also hold the same, if not more, significant environmental, cultural, and spiritual value to Lā'au Point's value. In addition, Lā'au Point will still be open to traditional and customary practitioners. The Conservation District will be expanded with this project.

##### B. Cumulative Impacts

9. *If MPL insists that the La'au Project is crucial to the economic viability of the Master Plan, and its specific plans for the Kaluako'i Hotel re-opening, developments in Kaluako'i, Maunaloa, and Papohaku, and the CDC's affordable housing and community development projects, all cumulative impacts from these projects must and should be detailed in the DEIS. This will assist the public to understand the relationship of one to the other, as well as to understand the true impacts of a project of this size and scale. Pursuant to HAR § 11-200-17(2), an EIS must examine all "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)." Cumulative impacts are those "impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." HAR § 11-200-2. MPL's empty claim that implementation of the Master Plan "may result in increases in demand for police, fire, medical, education, and other public services," and that the community character of Moloka'i will experience change, is wholly inadequate and does not adequately address the cumulative impacts on the environment. (DEIS, p. 161). What are MPL's plans for future development in Kaluako'i, Maunaloa, and Papohaku? What specific environmental, social, cultural, and infrastructure impacts will result from these future developments, the re-opening Kaluako'i hotel, and the community development projects? (page 4)*

**Response:** We concur that the Draft EIS must address cumulative impacts, the secondary and non-physical effects of a proposal and the socio-economic consequences of a proposed action. We have done so to the greatest extent possible in this EIS.

First, the Lā'au Point project was analyzed. The environmental impacts and benefits of this project have been addressed based upon the construction of this project in West Moloka'i.

Second, the Lā'au Point project has been addressed as one component that permits other actions to take place such as (1) the reopening of the Kaluako'i Hotel and (2) affordable housing projects elsewhere. To the extent that the EIS must discuss the impacts of re-opening of the Kaluako'i Hotel, this re-opening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

The impact of not increasing tourism on the island is more relevant as most tourism establishments and tour operators are in serious financial difficulties. This is evidenced by the continual change in ownership at Hotel Molokai, the lack of retained earnings to fund capital improvements, and the losses sustained by the Molokai Lodge and Beach Village.

The impact of the re-opening of the Kaluako'i Hotel will produce no more of an impact than when it was open up until right before the tragic events of 9-11-01, providing jobs and a stable economy on the West End of the Island, including a viable Maunaloa elementary school and a viable commercial heart for Maunaloa.

Third, the Lā'au Point project is also a part of the *Community Based Master Land Use Plan for Molokai Ranch* (Master Plan). To this extent, each component of the Master Plan really facilitates each other component of the Master Plan. In an overall context, the Master Plan preserves and protects large amounts of acreage on the West end of Moloka'i. The development of Lā'au Point to some degree facilitates this protection and preservation.

Cumulative impacts are restricted to those future actions that are reasonably foreseeable. MPL's development plans are clearly outlined in the Master Plan. MPL has not proposed any new development for Kaluako'i, Maunaloa, or Pāpōhaku that is not addressed already in the Master Plan. Therefore, your speculation on unplanned future development is not reasonably foreseeable for the purposes of this EIS.

10. Overall, the objectives of the Lā'au Point project and the Master Plan should be separated. Regardless of MPL's interest in creating a sustainable future for Moloka'i, it is misleading and inaccurate to claim that establishing a land trust and securing the community's role in land management are objectives of the proposed luxury development. (page 4)

**Response:** As previously stated in #6 above, the Lā'au Point project is linked to the implementation of the overall Master Plan.

**III. The DEIS Lacks Critical Information Pertaining To Molokai's Current Water Crisis & Does Not Address Impacts To DHHL's Priority Reservation**

11. A. Moloka'i does not have enough water to meet existing uses and already approved developments, and MPL's plans for Lā'au will only serve to worsen the already heavy burden on Moloka'i and its existing water users.

**Response:** MPL believes that there is ample ground and surface water to meet DHHL's and the County's needs while still supporting MPL's plans for all of its lands. MPL's Water Plan does

not adversely affect either DHHL's or the County's ability to develop the water resources they need for future uses.

MPL has committed to using only existing sources, at currently permitted amounts, to meet all of the potable water needs for its current water customers and MPL's future developments proposed under the Master Plan. A new non-potable source is being proposed. Currently permitted uses for potable water from Well 17 include more than 600,000 gpd for irrigation uses. When non-potable water from the Kāalahale Well becomes available, those irrigation uses that are now supplied with potable water will utilize the new non-potable source, thus freeing up sufficient potable water to meet the demands of the Lā'au Point development.

To ensure water availability to all, MPL, DHHL, and Maui County DWS are working cooperatively to coordinate future water development plans with the assistance of the USGS. It is anticipated that by proper placement of wells, the needs of DHHL, the County, and MPL for the foreseeable future can all be met at reasonable costs to the respective parties.

In response to your comments regarding water issues, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

12. Current demand for water has increased as a result of a "growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from existing wells." (USGS Scientific Investigations Report 2006-5 177).

**Response:** Rising salinity in certain Moloka'i wells appears related to local phenomena associated with particular wells. In particular, the concentrated pumpage of the two DHHL wells (Well Nos. 0801-01 & 02), the County DWS well (Well No. 0801-03) appear to be the cause of chloride rise in these wells.

The DHHL and DWS wells are closely grouped and poorly located relative to each other. All three wells have upgradient/downgradient effects when the DWS well is running while one or the other of the DHHL wells is also operating. A 20 mg/L chloride rise – to levels of about 100 mg/L – in the DHHL wells was an almost immediate response to the start of pumping of the DWS Kualapu'u well in 1991. Chloride levels appear to have been stabilized in all three wells at the higher level.

Well 17 has been in use from 1952 to the present. There has never been a chloride response in the DHHL wells since they began operating in 1961 and 1981, or in DWS well since it began operating in 1991 as a result of pumping the Well 17, even during periods of extended (continuous) pumpage of Well 17 at a 1750 gpm pumping rate (2.5 mgd). The fact that chloride levels for Well 17 have remained stable at about half (or less) the levels in the DHHL and DWS wells is further evidence that pumpage of Well 17 is not producing a chloride response in the DHHL/DWS wells, and vice versa.

The rising chloride levels in Kawela Shaft and 'Ualapu'e Shaft appear to be the result of localized phenomena, and the USGS and Maui County are exploring redistributing and

increasing withdrawals to other locations, including locations within the Kawela and 'Ualapu'e aquifers.

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

13. *Although Moloka'i is thought to have more than 30 million gallons per day ("gpd") of sustainable water supplies, completion of approved developments would result in a 54 million gpd deficit. (Dicus, Howard, Pacific Business News, "Parched Moloka'i land becomes fertile ground for disagreement," February 16, 2007).*

**Response:** The numbers referred to in Mr. Dicus' article appear to have been from the Moloka'i Water Working Group's 1996 Report. Some clarification about these numbers is warranted. In considering available water supplies on Moloka'i, the Water Working Group limited its analysis to groundwater. Although the island's ground water sustainable yield is 81 mgd (it was 83 at the time the Water Working Group's report was written), the Group decided to work with a conservative 41.5 mgd of developable yield. Of that amount, 33.5 mgd was considered "sweet" or potable water.

On the demand side, the Water Working Group projected a 2010 potable water demand of 11.55 mgd. That included 2.14 mgd for the Kaluako'i Resort and 2.0 mgd for the Alpha USA property. Since the Water Working Group report, MPL acquired Kaluako'i Resort and the Alpha USA property. MPL's current projected potable water demand for all of its existing and future developments is less than 1.5 mgd, significantly less than the 4.14 mgd projected need for just the Kaluako'i Resort and Alpha property that was utilized in the Water Working Group's analysis.

The big gap between water supply and demand, however, is reflected in the Water Working Group's non-potable water use projections. Total projected long-term non-potable water demand amounted to 42.9 mgd. Included within this amount was 10.6 mgd for Molokai Ranch's agricultural activities. Existing agricultural activities on Ranch lands are supplied with irrigation water from the Ranch's mountain system, not from ground water. There are no plans to convert these uses to ground water sources. Additionally, the Water Working Group projected that 5.8 mgd of non-potable water would be required for Kaluako'i Resort and the Alpha USA property. Under MPL's current ownership, and as identified in the Water Plan for the EC/Molokai Ranch Community-Based Master Land Use Plan, the total long-term demand for non-potable ground water will be less than 1.5 mgd.

In other words, the gap between water availability and water need as identified in the Water Working Group's Report is, under present conditions, overstated, and the conclusion that "projections of water use exceed supply" is probably inaccurate.

The State Commission on Water Resource Management is reconvening the Moloka'i Water Working Group in 2007 in order to, among other things, update demand projections.

Nevertheless, MPL is keenly aware that water is our most precious resource, and, therefore, has incorporated into its plans water system improvements to increase efficiencies and decrease system losses and aggressive water conservation strategies to minimize water demands.

When MPL acquired the Moloka'i Public Utilities water system, inadequate maintenance had resulted in significant system losses amounting to approximately 200,000 gallons per day. MPL has already begun to implement system improvements and anticipates that system losses can be cut in half.

To minimize water demands, MPL will use a number of different strategies. Conservation rates that provide financial incentives to customers to conserve water have already begun to be implemented and its effectiveness has already been manifested. Additionally, covenants on Lā'au Point lots will limit further subdivision of the lots, restrict disturbance of each lot to no more than 30 percent (approximately half-acre, require catchment systems for each residence for irrigation use, requiring drip irrigation systems, double flush toilets and other water conservation devices.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

14. *Both federal and state agencies have taken action which serves to protect the limited water resources of Moloka'i island. The EPA designated Moloka'i as a Sole Source Aquifer (59 FR 23063) under the Safe Drinking Water Act § 1424(e). This designation recognizes that Moloka'i has a sole source of drinking water for the entire island, and that water withdrawals from one part of the aquifer affects the water level and quality in other parts.*

**Response:** In response to this comment, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Molokai's "Sole Source Aquifer" Designation."

15. *Further, in 1992, the State Commission on Water Resource Management ("CWRM") designated the entire island of Moloka'i a "Ground Water Management Area," which acknowledges that current withdrawals are threatening Moloka'i's water quality and aquifer levels. This threat has been further compounded since the 1992 designation due to increased water demands and withdrawals.*

**Response:** In response to this comment, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Moloka'i Designated a Ground Water Management Area."

16. *The water crisis on Moloka'i makes it very difficult for users to obtain water use permits. Even the Department of Hawaiian Homelands ("DHHL"), which has a priority reservation (see further explanation below), has not been granted a water permit it applied for in 1999. (page 5)*

**Response:** To the contrary, applicants have largely been successful in obtaining permits from the Water Commission since designation of the entire island of Moloka'i as a ground water management area in 1992. The Water Commission granted Waiola o Moloka'i an allocation for approximately 650,000 gpd from the Kamiloloa aquifer in 1998 (which was vacated and remanded by the supreme court); in 2001, Kukui Moloka'i was granted a water use permit for 1.018 mgd from Well 17 for existing and new uses; and Pu'u O Hoku obtained a water use permit for 0.235 mgd in 1998.

DHHL's lack of success in obtaining a permit for additional pumping was due to the fact that it wanted to increase 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.

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

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

17. B. *The community on Moloka'i, including Hawaiian homesteaders, have expressed concern that MPL's proposal to pump additional water from the Kakalahale Well will strain and diminish the water table on Moloka'i and interfere with DHHL's priority water reservation. ¶Based upon the current and future water needs of DHHL, the homesteaders are properly concerned about MPL's water plan. DHHL currently pumps 569,000 gpd for its consumers at Ho'olehua and Kalama'ula, 202,000 gpd more than authorized by the CWRM. Future homestead lots in the area will require an additional 366,000 gpd, bringing total consumption to 985,800 gpd. DHHL also has plans for future homestead lots in 'Ualapu'e and Kamiloloa, which will require another 418,500 gpd of water. Pursuant to its obligations to fulfill the State of Hawaii's trust responsibilities to native Hawaiians, DHHL has set a goal to provide every qualified native Hawaiian beneficiary on the waiting list an opportunity for home ownership or land stewardship in the next five years. (DHHL's Strategic Plan, 2003-2008). Upon completion of the 'Ualapu'e and Kamiloloa homesteads there will be at least 167 residential, 547 agricultural, and 173 pastoral applicants on the waiting list. Thus, in fulfilling its trust duty to benefit and rehabilitate native Hawaiians, and in achieving its strategic plans, DHHL should be planning to increase homesteading in Moloka'i, and more homesteading inevitably means increased water needs. ¶DHHL has a priority water reservation of 2,905,000 gpd in the Kualapu'u aquifer. Its reservation rights are guaranteed by the Hawaiian Homes Commission Act (HHCA), the State Constitution, the State Water Code, and the public trust doctrine. In Re Wai'ola O Moloka'i, Inc., 103, Hawaii 401, 423 (2004). The HHCA mandates that "sufficient water shall be reserved for current and foreseeable" needs of Hawaiian home lands. (HHCA § 220). Thus, in applying for a water use permit, MPL has the burden of establishing that its proposed water use will not interfere with DHHL's reservation in the Kualapu'u aquifer. In Re Wai'ola O Moloka'i, Inc., 103, Hawaii 401, 425 (2004). (page 5-6)*

**Response:** As provided for under Hawaii law, and as MPL has consistently reiterated, DHHL's priority rights to water will be recognized.

MPL concurs that any ground water withdrawals on Moloka'i must consider the impact it would have on DHHL's ability to develop its reservation of 2.905 mgd from the Kualapu'u aquifer.

For DHHL to develop its 2.905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kāalahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kāalahale Well will be down- and across-gradient, and on the downstream side of known intervening intrusive structures, from any wells that DHHL is likely to develop to access any part of its 2.905 mgd reservation. Therefore, an adverse impact on future DHHL wells is highly unlikely.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

18. C. *"MPL's 'advice' is that drawing water from the Kakalahale Well will have no impact on the yield of the Kualapu'u aquifer." (DEIS, Appendix P, p. 119). That "advice" contradicts and conflicts with the 2006 USGS Report, which establishes that increased "ground-water withdrawals will affect ground-water levels, discharge of fresh and brackish water to the near shore environment, and possibly salinity of the water pumped from existing wells." The report further finds that pumping water from one well will affect the salinity of nearby wells and the discharge of fresh water to stream mouths and fishponds. (USGS Scientific Investigations Report 2006-5177, p. 4 & 47). The USGS report supports and justifies the public's concern. ¶What is the "advice" that MPL references? Has the MPL performed a study which contradicts the USGS report? If so, why hasn't it been included in the DEIS? (page 6)*

**Response:** First, we do not know where the first quoted sentence comes from. We note that there is no page 119 in Appendix P, and the statement is not found on page 119 of the Draft EIS. We respond to the remainder of your comment below.

The Water Commission has established separate sustainable yields for each aquifer system. The Kāalahale Well is within the Kamiloloa aquifer; therefore a withdrawal of 1 mgd from the Kāalahale Well will not affect the remaining sustainable yield of the Kualapu'u aquifer.

In response to your comment, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Additional Information on the Kāalahale Well."

19. *D. Even in the unlikely event that MPL's withdrawal from the Kālahale Well will not interfere with the yield of the Kualapu'u aquifer, MPL still fails to show that its Water Plan will not interfere with DHHL's water reservation, which as a public trust purpose is "entitled to the full panoply of constitutional protections afforded other public purposes." In Re Wai'ola O Moloka'i, Inc., 103, Hawaii 401, 431 (2004). ¶Delwyn Oki, a USGS hydrologist, and expert in this area, has openly stated that he doesn't think that DHHL will be able to get their water reservation from Kualapu'u. (Findings of Moloka'i Water Group -- January 2007).*

**Response:** As provided for under Hawai'i law, and as MPL has consistently reiterated, DHHL's priority rights to water will be recognized, and MPL will not interfere with DHHL's water reservation.

MPL's understanding is that Mr. Oki's statement was made in reference to a ground water model simulation that he conducted in 2006. USGS simulated the withdrawal of 2.905 mgd from four arbitrarily sited wells within the Kualapu'u aquifer. These arbitrarily chosen sites were spaced relatively close together and not far distant from the existing Kualapu'u well field. Under that scenario, USGS concluded that DHHL could not develop the full amount of its reservation from the Kualapu'u aquifer.

For DHHL to develop its 2.905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kālahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kālahale Well will be down- and across-gradient, and on the downstream side of known intervening intrusive structures, from any wells that DHHL is likely to develop to access any part of its 2.905 mgd reservation. Therefore, an adverse impact on future DHHL wells is highly unlikely.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

20. *If DHHL is unable to get their water reservation from Kualapu'u it will need to seek its water from the next sector -- Kamiloloa. MPL's Water Plan consists of a permit to pump 1,000,000 gpd from the Kālahale Well, which is in the Kamiloloa sector.*

**Response:** DHHL's 2.9 mgd reservation is for the Kualapu'u aquifer. The reservation is not easily transferred to the "next sector--Kamiloloa" as you assume. DHHL does not have a reservation in Kamiloloa.

The sustainable yield for the Kamiloloa aquifer is 3 mgd. Current allocations total 0.211 mgd. If MPL is granted a permit for 1 mgd for the Kālahale Well, 1.789 mgd of sustainable yield will still be available.

The Kālahale well site is hydrogeologically isolated also from other areas within the Kamiloloa aquifer where there is a potential for developing potable water, such as the proposed Waiola well site. Thus, withdrawing 1 mgd from the Kālahale well is unlikely to decrease the potential for developing potable water sources in the Kamiloloa aquifer in the future.

21. *MPL admits in its DEIS that implementation of its Water Plan will require findings that the withdrawal from the Kālahale Well will not impact DHHL's water reservation. (DEIS, Appendix P, p. 23). Why hasn't MPL conducted a study to determine whether or not the La'au Project will interfere with DHHL's reservation or other existing uses? Isn't it more likely to have impacts on DHHL's water reservation if DHHL begins to seek water from Kamiloloa?*

**Response:** For DHHL to develop its 2.905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kālahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kālahale Well will be down- and across-gradient, and on the downstream side of known intervening intrusive structures, from any wells that DHHL is likely to develop to access any part of its 2.905 mgd reservation. Therefore, an adverse impact on future DHHL wells is highly unlikely.

The Kālahale well site is hydrogeologically isolated also from other areas within the Kamiloloa aquifer where there is a potential for developing potable water, such as the proposed Waiola well site. Thus, withdrawing 1 mgd from the Kālahale well is unlikely to decrease the potential for developing potable water sources in the Kamiloloa aquifer in the future.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

22. *If MPL stands by its public announcements that its water use will yield to DHHL's priority reservation, it must first confirm that its project plans will not interfere with DHHL's water reservation before it proceeds with the La'au Point project. It must also establish that it has some other source of water to support its project. To do otherwise is patronizing to the LUC, the Moloka'i community, and the people of Hawai'i.*

**Response:** To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that such uses will not interfere with DHHL's reservation. MPL has further acknowledged that its proposed use of 1 mgd from the Kālahale Well is premised upon a showing that it will not interfere with DHHL's reservation rights.

The DEIS, on page 82, identified brackish water from the Prawn Farm and desalinization as alternative sources of non-potable water.

23. *In 1999, when DHHL applied for a water use permit within the limits of its water reservation for its Ho'olehua and Kalama'ula consumers, MPL opposed the application. Although MPL eventually withdrew its opposition, its past actions regarding DHHL's water reservation evidences a position on the limited water resources of Moloka'i. The LUC should be wary of approving a project conditioned upon MPL's empty promise to yield to DHHL's priority reservation. (page 6-7)*

**Response:** When DHHL applied for a water use permit to increase pumpage from its Kualapu'u wells in 1996 (not 1999), DHHL was a party in a contested case proceeding on Waiola o Molokai's application for a new well and water use permit in the Kamiloloa aquifer. In the Waiola contested case, DHHL took the position that pumping 1.25 mgd from the proposed Waiola well, which was more than 3 miles away from the Kualapu'u well field, would adversely affect existing pumping from the DHHL wells. According to DHHL, the transition zone was close to the bottom of its wells, thus the additional pumping by Waiola would result in an unacceptable increase in chloride levels in the DHHL Kualapu'u wells. At the same time, DHHL contradicted itself by filing an application to pump more out of its existing wells. Waiola/Molokai Ranch did not oppose DHHL's application, but sought to explore this blatant contradiction that through a contested case proceeding on DHHL's application.

DHHL did not receive a permit for additional pumping because the Water Commission staff recommended that the application be denied because DHHL was proposing to increase pumpage from wells that were already showing indications of localized upconing due to the close proximity of the two DHHL wells and the County well. Water Commission staff recommended that any increased withdrawals should be from new wells strategically located elsewhere in the Kualapu'u aquifer so as not to interfere with water quality in the existing wells. DHHL proposed reducing the amount of increased pumpage, but was not willing to consider a new well site.

That MPL will yield to DHHL's priority reservation is not an empty promise, but a requirement of law. MPL's agreement to withdraw its Waiola application under the terms of this Plan, and its offer to DHHL to use the resources of Well 17, should be evidence of MPL's sincerity in relation to the DHHL reservation for water in the Kualapu'u aquifer.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

24. *E. MPL does not indicate how it plans to transport the water from the Kāalahale Well to the project site. ¶Currently MPL transports its potable water using the MIS distribution system, however this system would not be appropriate for the brackish water that would come from the Kāalahale Well even assuming its water use permit is approved. MPL states it will not propose transmission by the MIS system, and the company has already failed in past attempts to build a new line on DHHL property. ¶MPL should provide the LUC with a transmission line other than the MIS system and the DHHL pipelines, the costs to construct the alternative line, and an evaluation of any cultural and environmental impacts that may result from the line, prior to any LUC decisions regarding this proposal. (page 7)*

**Response:** Kāalahale Water will be transmitted through one of the existing pipelines used to transport water from the Mountain system and not mixed in with the MIS system.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

25. *F. MPL contends it will sign covenants preventing it from ever seeking further potable water permits from the State Commission on Water Resource Management (CWRM). However, nothing prevents the new owners of the individual lots and subsequent assignees from applying. Who will be party to the covenants? Who will be able to enforce these covenants? (page 7)*

**Response:** Individual owners would not apply to the CWRM. MPL is the water company for the West End.

26. *G. MPL has rightly conceded that the specifics of the water resource issues have yet to be sufficiently identified. MPL should not proceed with a project that will require 1,000,000 additional gpd to be pumped from the Kamiloloa aquifer, heavy water use during construction, and additional water for proposed public parks, until there is more certainty regarding the current water sources and issues on Moloka'i. (page 7)*

**Response:** MPL has been working diligently with DHHL and the County of Maui Department of Water Supply (DWS) to find water solutions for Moloka'i's future needs.

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

USGS recently undertook a two-dimensional modeling exercise of the Kualapu'u and adjacent aquifers for the Army Corps of Engineers. This study included modeling of the impact of the Kāalahale Well on the DHHL wells. The results, which were preliminarily released in August 2007, indicate that the pumping of 1.0 mgd from the Kāalahale Well would have a negligible effect on the DHHL wells and the Kualapu'u aquifer as a whole. This study is extremely conservative in nature.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

27. *H. The State of Hawai'i and its agencies have a continuing public trust obligation to "ensure the continued availability and existence of water resources for present and future generations." In Re Wai'ola O Moloka'i Inc., 103, Hawai'i 401, 431 (2004), citing In Re Water Use Applications ("Waihole I"), 94 Hawai'i. 97, 139 (2000). The State and its agencies, including the LUC, also have a special trust responsibility to native Hawaiians pursuant to the Hawaiian Homes Commission Act and the Admissions Act. In deciding MPL's application the LUC should ensure it fulfills its constitutional and statutory mandates. (page 7-8)*

**Response:** We acknowledge your comment, and note that it is directed to the LUC, not MPL.

**IV. The DEIS Does Not Sufficiently Address Impacts To And Mitigation Of Native Hawaiian Traditional & Customary Rights**

28. Addressing the effects on Hawaii's culture and traditional and customary rights and practices is of vital importance in an EIS. In 2000, the Hawaii state legislature specifically recognized that Native Hawaiian culture plays a vital role in the preservation of Hawai'i's 'aloha spirit' and that Articles IX and XII of the state constitution, other state law, and Hawaii's courts, impose on government agencies a duty to promote and protect cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. Additionally, and most importantly, the legislature "observed that the past failure to require native Hawaiian cultural impact assessments resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 31, 47, fn 28(2000). (page 8) ¶Pursuant to Haw. Const. art XII § 7, the LUC is obligated to "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible" when granting a petition for reclassification of district boundaries, *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 31, 35 (2000). To protect traditional and customary Native Hawaiian rights, the LUC is, at a minimum, required to make specific findings and conclusions regarding ¶"(1) the identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (2) the extent to which those resources- including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action; and (3) the feasible action to be taken by the state to reasonably protect native Hawaiian rights if they are found to exist." ¶*Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 31, 35 (2000). (page 8)

**Response:** Your comment is noted, but should be directed to the LUC as it concerns its fiduciary duty when making land use reclassification decisions. MLP has complied with Hawai'i's EIS law by conducting a cultural impact assessment (CIA) identifying cultural resources and potential impacts at Lā'au. It is the State's duty to identify a feasible action to reasonably protect native Hawaiian rights. However, MLP has taken a proactive stance by proposing certain covenants and restrictions running with the land to protect sites identified as culturally sensitive. The CIA is included as Appendix F in the DEIS.

#### A. Identity and Scope

29. What is the extent to which traditional and customary native Hawaiian rights are exercised at La'au Point? How often is La'au used by gatherers? Fishermen? Hunters? Those seeking spiritual solace? How many gatherers, fishermen and hunters use the area? ¶The Cultural Impact Assessment claims that La'au Point is so isolated that most of the residents of Moloka'i have never been there and thus have had no direct experience with the place. This statement can be confusing and misleading to the public. What data justifies this statement? What percentages of long-time residents and/or traditional and cultural practitioners use the area? What percentage of the residents who have not been to La'au benefit from its cultural, historical, or natural resources? ¶The Cultural Impact Statement identifies coastal and cultural subsistence resources found at La'au Point, but what is the size and significance of these resources? (page 9)

**Response:** The cultural impact assessment was a qualitative rather than quantitative study. Of the 250 persons who attended the community meetings held in Summer 2006, very few indicated that they access the area projected for development by land. Some indicated that they access the area by boat. The key informants who were interviewed indicated that their families have accessed the coastal areas proposed for development to gather marine resources for large family gatherings for occasions such as graduations, baby lu'au, weddings, and funerals.

The 1994 subsistence study reported that 23 percent of the respondents in the random sample telephone survey fish in the area from Pālā'au to Lā'au Point and from Lā'au to 'Īlio Point, while 19% gather in the ocean off of the same area. By comparison, fishing and ocean gathering areas with the largest percentages of multiple responses (above 30%) was on the South-East end coast from Makakupa'ia to Honouliwai (40% for fishing and 35% for ocean gathering) and from Honouliwai to Halawa (30% for fishing and 33% for ocean gathering).

Employees of MPL are allowed access along the west coast at areas called Egusa, Kamāka'ipō, Sam Wights, and Shipwreck, all of which are located in the area proposed for development. Maunaloa Ahupua'a Tenants can access Pu'u Hakina, Halena Camp, and Kolo on the South coast; however, only Pu'u Hakina is in the area proposed for development. From April 2006 through May 2007, a total of 214 different persons accessed these areas located on west and south coastal areas which are proposed for development. Many of these persons camped as 'ohana, as there were only 85 distinct family names among these 214 persons. In addition, some of these persons accessed these areas more than once, as there were a total of 375 persons who were granted a day pass or permission to camp in these areas from April 2006 through May 2007. The months of May 2006 and May 2007, right before graduation, had the highest use. January, February, and March 2007 also had high use.

#### B. Impairment

30. What are the realistic impairments to traditional and customary rights? The DEIS' 160-page cultural assessment points out some of the real and practical concerns of Moloka'i community members. Specifically, concerns recorded in the Cultural Assessment include the following: fishermen will lack privacy, throw net subsistence fishers require an undisturbed beach that allows fish and to forage closer inshore, gatherers of 'a'ama crabs require dark silent nights to ensnare their nocturnal prey, and subsistence practitioners are likely to be confronted by insensitive newcomers intolerable of extractive activities. What will be the impact to these practitioners? How does the DEIS address these specific concerns? ¶As disclosed in the Cultural Impact Assessment, a 1993 Subsistence Sites map indicates intensive fishing and ocean gathering in the exact area of the proposed La'au Project. (DEIS, Appendix F, p. 40). If La'au and its shores serve as an "icebox" for fishermen, what effects will the development have on the families who rely upon the fishermen for a significant source of their food? What affects will be had on the families who do not "engage in subsistence practices but benefit through the sharing and exchange among family members and neighbors?" (page 9)

**Response:** Extraordinary measures will be taken by the Moloka'i Land Trust in cooperation with the homeowners, to work with the longtime residents of Maunaloa and longtime ranch cowboy and employee families to protect optimum conditions for subsistence hunting and fishing. These measures will also protect the quality of the cultural sites, complexes and resources.

During the planning process that resulted in the Master Plan, the persistence of subsistence on Moloka'i was of central significance. The Cultural Impact Assessment (CIA), provided as Appendix F in the Draft EIS, refers to the measures outlined in the Master Plan to protect subsistence fishing on pp. 113, 118-121. In addition, access will be managed to protect subsistence resources as discussed in section 5.2 of the CIA, pp. 116 - 118.

31. The DEIS acknowledges more than once that the overall cultural concern is that the La'au Point Project "will destroy the special quality of La'au as a special place of spiritual mana and power." (See e.g. DEIS, Appendix F, p. 149). Residents have stated it is the overall isolation of the area that is

*the foundation for exercise of an individual's spiritual connection. What impact will the development have on spiritual practitioners? (page 9)*

**Response:** In responding to your comment regarding the spiritual quality of Lā'au point, it is first important to note that Lā'au Point, itself, can be considered a significant cultural property. Hawaiians named specific sites according to their natural resources and features. Looking at historic and contemporary maps of Moloka'i, Ka Lae O Ka Lā'au is within the 51 acres owned by the federal government. This property will not be disturbed or developed on by the proposed project.

The west and south shorelines adjacent to Lā'au Point, Keawakalani on the southeast and Kamāka'ipō on the northwest, is where the proposed development is projected. According to the archaeological surveys and ethnographic documents, there were settlement clusters around protected bays, such as at Kapukuwahine and Kanalukaha on the south shore. In addition, the Master Plan identified Kamāka'ipō as an important cultural and spiritual place.

Molokai Ranch has applied to the State Land Use Commission to re-district these areas from Agricultural to Conservation district in order to protect the significant settlement areas and clusters along the west and south shores adjacent to Lā'au Point, notably at Kamāka'ipō, Kapukuwahine, and Kanalukaha. These proposed conservation zones will be gifted to the Moloka'i Land Trust under the Master Plan.

A Shoreline Access Management Plan, to be appended to the Final EIS, sets out management guidelines for the Lā'au shoreline area, which includes an expanded conservation district zone between the makai boundary of the proposed residential lots and the shoreline, and two parks at the culturally significant Kamāka'ipō Gulch and Pu'u Hakina areas. Access will be limited to foot travel in these areas to limit the amount of traffic and disturbance.

In addition, a cultural management plan will guide protection, access to and use of the cultural and spiritual sites. These cultural guidelines are provided on pages 116-117 of the Cultural Impact Assessment report (provided as Appendix F of the Draft EIS).

32. *The DEIS does not adequately address the impacts that pumping 1,000,000 gpd will have on traditional and customary gathering rights. According the 2006 USGS Report, ground-water withdrawals will affect the discharge of ground water discharge to the near shore environment. Significantly, this near shore environment is "essential to the livelihood" of several species of fish and limu. In Re Wai'ola, O Moloka'i, Inc., 103, Hawai'i 401, 413 (2004). Why doesn't the DEIS address the findings of USGS' most recent report, which has significant bearing on the same contested issues brought forth by interveners in the Wai'ola litigation? What impact will MPL's water plan have on limu (e.g., ogo, manaua, ele'ele), fish (e.g., mullet, holehole, milkfish), and other coastal resources? How will these impacts affect traditional and customary practitioners? What groundwater models are referred to in the Cultural Impact Statement? (DEIS, Appendix F, 131). (page 10)*

**Response:** The CIA discusses this on pp. 130 – 131 (Appendix F of the Draft EIS), with regard to the potential impact of withdrawing 1 mgd of brackish water from the Kākalahale well, in part, as follows:

#### Impact on the Ocean

Marine resources need infusion of fresh water to spawn. The findings in the Wai Ola Case provide relevant information on the potential impact of the pumping of 1,000,000 gallons of brackish water a day can have on the marine resources makai of Kākalahale. The findings were based on the pumping of 1.25 mgd of ground water and thus the impact would be less than that projected in the Wai Ola Case.

Ground-water models used in the Waiola Contested Case showed that pumping 1.25 mgd of ground water would reduce ground-water flux to the nearshore area by about 3% to 15%. At that magnitude, the resultant change in salinity in the fishponds would be virtually indistinguishable from the initial values.

Native Hawaiians gather limu and other marine resources all along the southern and eastern coastline of Molokai, including the shoreline area of the Kamiloloa Aquifer, downgradient of the Kākalahale well site. They do not confine their gathering activities to areas within their ahupua'a of residence.

Interestingly, the shoreline area of the Kamiloloa aquifer is not a prime habitat for edible limu. Limu may occur in quantities sufficient for personal use, but the edible species are not abundant. Edible limu is salinity tolerant, i.e., can tolerate wide ranges of salinity. However, limu is more productive in brackish water than in pure seawater, probably because of the nutrients contained in groundwater and surface water discharges.

There is a variability in the nutrient concentration of groundwater along the south coast of Molokai, varying as much as 18-fold between Kawela and Kamiloloa. Human activities, primarily agriculture, probably subsidize the groundwater with nitrates. Assuming that these human subsidies remain unchanged, the effect of groundwater pumpage on nutrient loading to the ocean becomes insignificant. Thus, the reduction of groundwater discharge from the pumping of 1 mgd from the Kākalahale well is unlikely to have a significant impact on limu production.

#### C. Feasible Action

33. *The DEIS' feasible action does not adequately address the concerns of the community. ¶As disclosed by the Cultural Impact Assessment, subsistence practitioners have been faced with challenges from newcomers and new residents from the Continental U.S. and the Philippines. (DEIS, Appendix F, p. 37). How will the new residents, many likely to be from outside of Hawaii be any different? MPL insists that the homes at La'au Point will be a vacation/second home for the new landowners and only 30% of the homes will be occupied by permanent residents. What practical effects will attending educational classes have on the majority "vacationing" landowners who are less likely to have a genuine interest to learn about the Moloka'i lifestyle and culture? (page 10)*

**Response:** Moloka'i is a unique community and island. Those who choose to buy a lot and build a house at Lā'au Point will likely be attracted to the beauty and mystique of the area.

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

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

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

34. *The DEIS states that the CC&Rs and additional guidelines will mitigate identified impacts to the cultural and natural resources. What is the exact language of these CC&Rs and additional guidelines? What are the enforcement and substantial penalties mentioned in the Master Plan that will "ensure" that the covenants are respected and upheld? (DEIS, Appendix A, P.101). Who will be able to enforce these CC&Rs? (page 10)*

**Response:** The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point, affected lot owners, and in certain circumstances, 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 Maunaloa community. This will be conducted under the guidance of the Moloka'i Land Trust. The CC&Rs have been strengthened to protect the environment and resources at Lā'au Point. Enforcement and substantial penalties will be put in place to ensure that the covenants are respected and upheld. Although the CC&Rs are currently under development, because of the Master Plan process (Section 2.1.6), MPL does have a general idea of what the CC&Rs and some of the key provisions and concepts will be.

The CC&Rs will be monitored and enforced by the Board of the Association of Owners of Lā'au Point (the Board), affected lot owners, and in certain circumstances, the Moloka'i Land Trust as a signatory and 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.

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

Burial grounds and other historically and/or archaeologically significant sites existing within the Project are set forth in Figure 10 to the Draft EIS. These sites, as well as other historical sites yet to be discovered and located on lots to be sold to third parties, will be defined as "Historic Sites" in the CC&Rs. Each Historic Site will be under the joint management and operation of the Association and the Moloka'i Land Trust, a community based land stewardship organization entrusted with the ownership and management of certain portions of the Project.

The Historical Sites and the Conservation District Areas (collectively the "Cultural Protection Zone") shall be under the joint stewardship of the Association and the Land Trust pursuant to the terms of the Grant of Easement and Joint Use Agreement. The governing council of the Land Trust shall be charged to develop a cultural plan to permit and protect Native Hawaiian archaeological and cultural sites and practices for the Cultural Protection Zone, including but not limited to the following: a) Subsistence fishing; b) subsistence hunting; and c) access to the private shoreline and restricting vehicular parking and pedestrian traffic.

The cultural plans will also incorporate programs to identify indigenous species in coordination with qualified governmental agencies and in consultation with qualified Moloka'i experts.

35. *If the Conservation Zone and other "protected" areas within the subdivision will be controlled equally by the homeowners and the Land Trust, what happens when there is a dispute? How will leaving decisions relating to subsistence protection and archaeological site protection to the new homeowners, who will not likely have any understanding of traditional and cultural practices, serve to mitigate and reasonably protect Native Hawaiian rights? (page 10)*

**Response:** Decisions relating to subsistence protection and archaeological site protection will be based upon management plans developed in conjunction with subsistence and cultural practitioners and kupuna. While the Shoreline Access Management Plan (SAMP) will be overseen by a Council with equal representation of the homeowners and the Moloka'i Land Trust, decisions shall be made by consensus. Disputes will be submitted to arbitration.

36. *The State and its agencies, specifically the LUC has an affirmative duty to protect traditional and customary rights and cannot delegate its trust obligations to the Molokai Land Trust, a proposed, and not yet existing private entity. See e.g. Ka Pa'akai, 94 Haw. 31 (2000). (page 10-11)*

**Response:** MLP does not intend for the Moloka'i Land Trust to wholly assume the state's affirmative duty to protect cultural resources, and maintain traditional and customary rights. However, MLP recognizes it has a responsibility as a member of the community to help maintain

these rights as well. MLP views its role with the Moloka'i Land Trust, and Trust's respective enforcement powers over certain actions outlined in the covenants and restrictions, as an effort to supplement the State's constitutional duty. The Moloka'i Land Trust certainly exists and is a private, non-profit corporation organized under Hawaii State Statute HRS-414D and with a determination from the Internal Revenue Service as a public charity under code 509(a)3. It is governed by a board of directors, who will act within the rules and regulations established by these two state and federal codes. They will also be bound under state law to adhere to their Articles of Incorporation and Bylaws. The Board of Directors includes, as of June 1, 2007: Colette Machado, Richard Cooke III, Cheryl Corbiell, William Akutagawa, Stacy Crivello, Clarence Halona Kaopoiki, Edwin Misaki, Davianna McGregor and David Lunney. The Land Trust will be required to adhere to all mitigation plans approved in the SAMP. A copy of the SAMP has been appended to the Final EIS.

**V. The Discussion Of Endangered Species Within The DEIS is Wholly Inadequate**

37. *Hawai'i is often called the endangered species capital of the world. According to the Bishop Museum, there are more endangered species per square mile in Hawai'i than any other place in the world. Survival of the many endangered species found in Hawai'i is critical to maintaining our heritage, and thus it is our kuleana to protect our State's rich and vast array of unique species.* (page 11)

**Response:** We acknowledged your comment. Below we respond to your specific comments regarding endangered species.

**A. Hawaiian Monk Seal**

38. *The DEIS fails to adequately consider and measure the significance of La'au Point as a habitat of the Hawaiian Monk Seal. The DEIS also fails to assess the impacts the project will have on the monk seal population and its feeding grounds at the La'au Point fishery. ¶The Hawaiian Monk Seal has been designated by the National Marine Fisheries Services ("NMFS") and the U.S. Fish and Wildlife Service ("USFWS") to be an endangered species pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). According to the NMFS: "The Hawaiian Monk Seal is in crisis; the population is in a decline that has lasted 20 years and only around 1,300 monk seals remain. Modeling predicts the species' population will fall below 1,000 animals in the next five years. [T]he Hawaiian monk seal is headed to extinction." National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006. ¶The NMFS' Recovery Plan considers it very important to increase the number of monk seals in the Main Hawaiian Islands for its recovery, and a part of the recovery strategy is to ensure the natural growth of the monk seal in these islands. It notes that the Main Hawaiian Islands "represents a Large amount of under- occupied habitat, which could support a larger population of seals if appropriate management actions were in place." (National Marine Fisheries Services, Recovery Plan for the Hawaiian Monk Seal, November 2006). ¶In addressing the La'au Point DEIS, the NMFS has concluded that La'au Point is an important habitat for the seals based upon the high number of documented monk seal sightings and the significant number of animals that use the area. (DEIS Commentary Letter, written by Chris E. Yates, on behalf of the National Marine Fisheries Services, February 5, 2007). It is known by many in the community that Hawaiian Monk Seals frequent the La'au Point area because of its isolation. The NMFS' commentary letter supports this, and in addition points out that La'au's sandy beach and proximity to foraging areas also make it an especially good monk seal habitat.¶The DEIS fails to address the following: What effects will the development have on La'au as a habitat for monk seals? What impact will the increased human interaction have on the monk seals? How will domestic animals and humans impact the monk seals health and its population at La'au Point?¶The field study's statement that "[m]onk*

*seals haul out to rest on beaches as deserted as this beach or as heavily used as public beaches on Oahu," is misleading. (DEIS, Appendix C p. 5). It is well known that monk seals do not frequent heavily populated beaches. To the contrary the USFWS has stated that remote areas with little impact by humans are the ideal habitat for the easily disturbed monk seals, and the NMFS' commentary letter describes monk seals that are tolerant of human presence to be the exception rather than the rule.* (page 11-12)

**Response:** 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 (SAMP) contains a plan and recommendations developed in conjunction with the National Oceanic and Atmospheric Administration (NOAA) Monk seal program and elements were taken directly from their draft *Recovery Plan for the Hawaiian Monk Seal* (November 2006). The SAMP reiterates the rules required to ensure non-disturbance of Monk seal habitat and the promotion of Lā'au Point as an area for Monk seals to frequent and "haul out."

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding monk seals, Section 3.7 (Fauna) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)," and the SAMP has been included as an Appendix to the Final EIS.

**B. Endangered Sea Turtles**

39. *MPL has been put on notice that native species of turtles and turtle nesting areas can be found in the La'au Point area. (DEIS, p. 57 & Appendix F, p. 145). The U.S. Fish and Wildlife Service established the Green Sea Turtle (*Chelonia mydas*), Leatherback Sea Turtle (*Dermochelys Coriacea*), and the Hawksbill Sea Turtle (*Eretmochelys imbricata*), all found in Hawai'i, to be endangered pursuant to the Endangered Species Act of 1973. (U.S. Fish & Wildlife Service Threatened and Endangered Species System). ¶The DEIS is completely absent of any data on how the La'au Point development will impact these endangered species.* (page 12)

**Response:** Leatherback turtles are a highly pelagic species that does not nest in Hawai'i. They do not frequent shallow waters in Hawai'i and are not found at Lā'au Point. They will not be affected by the proposed development.

Green turtles may be found throughout the Hawaiian Islands but their main nesting beaches are in the NWHI. Given that most of the nesting of this species occurs in the NWHI, increased activity at Lā'au Point will have a negligible effect on the population trajectory of this species.

Hawksbill turtles are extremely rare in Hawai'i, but nests have been observed on isolated beaches on Moloka'i and the Big Island. The following information is from the Pacific Hawksbill Recovery Plan.

In Hawaii, hawksbills nest only on main island beaches, primarily along the east coast of the island of Hawaii. Kamehame Point on Hawaii and a black sand beach at the river mouth of Halawa Valley at the east end of Molokai are the most consistently used beaches. In surveys from 1989-1993, eighteen hawksbills were tagged and 98 nests documented. Nesting occurred from late May with hatching completed by early December. Peak nesting activity occurs from

late July to early September (Katahira et al. 1994). There are no measurable trends in stock numbers, either up or down.

Hawksbill nesting has not been recorded at Lā'au Point, but such nests, if they occurred, would be subject to the same threats present elsewhere including non-native predators of eggs and hatchlings and perhaps human takes of eggs and/or shells. Increased human activity at Lā'au Point could reduce the threats from non-native predators, but increase the threats of human interactions. On the other hand, increased human presence could be a deterrent to illegal harvest if nesting were to occur at Lā'au Point.

The SAMP also addresses other biological and endangered species protection. A long term monitoring program will be developed to adapt to changing circumstances and to measure the effectiveness of the mitigation measures. To include this information in the Final EIS, Section 4.3 (Trails and Access) has been revised to include the following about the SAMP:

- Biological/Endangered species protection – Similar to the Hawaiian monk seal requirements, rules for access and designation of closed areas are set forth in the SAMP. The Resource Manager will be responsible for monitoring the health of any significant organisms, designating closed areas, and enforcing regulations designed to protect the resource including fires and limitations on access to the area. A long term monitoring program will also be developed to adapt to changing circumstances and to measure the effectiveness of the program.

**C. 'Ihi'ihilaaukea (*Marsilea villosa*)**

40. The U.S. declared the 'ihi'ihilaaukea an endangered species pursuant to the Endangered Species Act of 1973. (50 CFR Part 17). The Federal Register notes that "the extremely small number and size of the populations and their restricted distribution makes the species more vulnerable to stochastic events," and that "a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals" of the species. (50 CFR Part 17). The species has been known to exist in three small populations, one of which can be found at La' au Point. However, upon visiting La' au Point this past weekend, two populations, approximately 12 feet by 12 feet were found and documented at Kamakaipo by Walter Ritte and Scarlett Ritte Camara. ¶The DEIS discloses that a management plan is to be developed by the Land Trust within the proposed development area. (DEIS, p. 43). Nothing in the DEIS speaks to protecting the 'ihi'ihilaaukea in the management plan. What requires MPL and future La'au residents from complying with the Land Trust's management plan? How might the 'ihi'ihilaaukea benefit from habitat created by settling ponds and human habitation and intrusion into its natural habitat?(DEIS, p.70). (page 12)

**Response:** Section 3.6 of the Draft EIS discussed impacts and mitigation measures for flora, including 'ihi'ihilaaukea (*Marsilea villosa*). We confirm that 'ihi'ihii has been found around Kamāka'ipō Gulch. This area is slated for re-districting into Conservation use and designated a cultural protection zone, where no development will occur. The area will also be owned and managed by the Land Trust, who has developed a resource management plan for area.

This fern was federally listed as endangered on June 22, 1992. *Marsilea villosa* is the only federally listed endangered plant known from the Lā'au Point area. The Kamāka'ipō population of this rare fern is not a new discovery. This population is known from historic accounts and recent surveys. Flora collections were reported to state and federal agencies as part of required

collection permit reporting. In the past, collections from this population have also been distributed to botanical gardens in Hawai'i with programs dedicated to endangered plant conservation.

A proposed rule to designate critical habitat for listed species on the island of Moloka'i was published in the Federal Register in December 2000. We also note that the map indicating the general locations for the 46 endangered plant species on Molokai from USFWS (retrieved from <http://www.fws.gov/pacificislands/CHRules/molokai.reproposal.fs.pdf>) does not indicate Lā'au Point as a "critical habitat." According to the USFWS map, the critical habitat areas are along the northern coastline and East end of Moloka'i.

As noted in the Draft EIS, this is one of five known populations of this fern. Due to its unique requirement for flooded areas, 'ihi'ihii can be very difficult to find. Hence, the survey for the 'ihi'ihii was specifically conducted over a six month period (28 November 2005 to 6 June 2006), including surveys after the heavy rains of 2006, so that the populations could be found and mapped under the best possible conditions. The biologist checked all potential habitat in the area multiple times this year and no additional 'ihi'ihii populations were observed.

The 'ihi'ihii population at Kamāka'ipō is currently expanding vegetatively, despite some impact from occasional foot traffic. Samples are being preserved in three endangered plant collections around the state. The surrounding habitat is no longer the intact native shrubland that would have existed there hundreds of years ago.

All plants observed in the Kamāka'ipō population were found within the coastal setback area identified for special management and the adjacent area designated public recreational access (Conservation District and Public Park/Shoreline Accesses shown on Figure 1 in the Draft EIS). Possible management activities to protect this endangered plant include: 1) rerouting the coastal trail; 2) creating a boardwalk through the 'ihi'ihii habitat, which would discourage deer; 3) fencing if the boardwalk is not sufficient to restrict deer access, and 4) some alien plant removal to help stabilize the site. The key to protecting this population is the development and implementation of a management plan to protect the fern from grazing, trampling, erosion, fire or other habitat changes.

Mr. Garnett's collections were reported to state and federal agencies as part of required endangered species collection permit reporting to the Division of Forestry and Wildlife (DOFAW). A copy of this report must be requested from the State Botanist at DOFAW, if needed.

Specifically, the updated status of this *Marsilea* population was reported to the State Botanist at the DLNR Division of Forestry and Wildlife and the USFWS Rare Plant Recovery Coordinator.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding 'ihi'ihilaaukea (*Marsilea villosa*), Section 3.6 (Flora) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.6 (Flora)."

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**VI. Many Of Supposed Benefits Of The Master Plan Are Misleading To The Public And The LUC**

**A. One Last Development**

41. The MPL has attempted to sell the La'au Point Project to the Moloka'i community by promising that La'au Point will be the last major development on ranch lands outside of the resort area. Such public statements are false and unenforceable, and are consistent with the history of MPL making disingenuous pronouncements to the Moloka'i island community. Moreover, such scurrilous statements are non-binding and are further evidence of MPL's efforts to move this project forward regardless its distorted representations. (page 13)

**Response:** The rest of MPL's lands will be either donated or have easements to the Land Trust on them.

**B. Land Donation**

42. The Land donation of 26,200 acres to the Moloka'i Land Trust doesn't change one iota the irreversible effects of a large luxury development at La'au Point to the island's ecosystem, its severely limited water supply, and its natural and cultural resources. (page 13)

**Response:** We respectively disagree with your statement and characterization of the Lā'au Point project. The land donation and easements off 51,000 acres of open space in perpetuity to the community is a benefit unprecedented by any other landowner in Hawai'i.

**C. Agricultural Easement**

43. MPL also promises to forever "protect" 14,390 acres of land by creating an Agricultural Easement. The promise that this easement will protect these lands from development is false, misleading, and difficult to enforce. Under this agricultural easement, MPL is still permitted to construct "farm dwellings." The definition of a farm dwelling is the subject of ongoing litigation. While one would imagine a farm dwelling to be a single-family home situated on an agricultural lot, yet many of the large homes located at Kaluako'i have been justified as "farm dwellings". One need only be reminded of the multi-million dollar farm dwellings constructed at the Hokuli'a development on the west side of the island of Hawai'i to appreciate the abuse of large landowner developers in Hawaii. (page 13)

**Response:** The easements will be in the Land Trust's name. MPL will not determine the leasing or construction of farm dwellings.

In addition, MPL is not affiliated or familiar with the Hokulia development on the island of Hawai'i. We do not believe it is reasonable to make a comparison between that project and Lā'au Point.

**VII. Conclusion**

44. It is not the Master Plan that will set the stage for Moloka'i's future or assure its residents self-determination. It is the steadfast adherence of the community to what is pono. A massive luxury shoreline development is not pono for La'au Point, which is "regarded as a special place of spiritual mana and power." (DEIS, Appendix F, p. 144). ¶As the LUC reviews this EIS it must balance the loss of natural resources and risk to the Moloka'i Community and the larger Native Hawaiian community, with the economic benefit to foreign land owners of developing 200 multi-millionaire lots in a sacred and revered area where the community has loudly and consistently voiced its opposition. ¶The DEIS is consistent with MPL's longstanding tradition and effort to maximize its profits regardless of the cost to the people and limited natural resources of the island of Moloka'i. MPL continues to shroud

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its profiteering efforts with entitlements which engender wide-spread opposition and criticism were they to develop historically and culturally significant areas like Ka'ana. ¶There is not likely a single resident of the island of Moloka'i who could purchase a proposed unit in the La'au Point Development, and by its own admission within the DEIS, the development is intended to be a vacation/second home for the super rich. Longtime local people who have lived on Moloka'i since time immemorial would likely be considered trespassers or engaged in menial tasks for the newly minted landowners' property, not unlike every other Hawaiian island where second homes for the super rich and famous have been constructed at irreversible costs to the Hawaiian island environment and her people. (page 13-14)

**Response:** We acknowledge your comments. We note that MPL is opposed to developing Ka'ana as evidenced by the Master Plan's provisions to donate the area to the Moloka'i Land Trust.

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

Sincerely,



Peter Nicholas  
President and CEO  
Molokai Properties Limited

**Attachments:**

Revised Section 4.9.2 (Water)  
Revised Section 3.7 (Fauna)  
Revised Section 3.6 (Flora)

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

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December 7, 2006

Mr. Thomas Whitten  
PBR Hawaii  
ASB Tower, Suite 650  
Honolulu, HI 96813-3484

Dear Mr. Whitten:

**SUBJECT: DRAFT EIS COMMENT PERIOD**

My office has received numerous inquiries regarding the impending draft environmental impact statement for La'au Point, Molokai. It is my understanding that this draft statement will be completed and submitted by December 23, 2006 with a 45-day comment period to follow. I am requesting that the submittal of the draft EIS be delayed until the beginning of 2007.

My justification for this request is due to the holiday season all interested parties may have holiday plans and may not be able to review the EIS and comment on it in the time period allowed. I feel postponing the matter a couple of weeks or increasing the comment period by two weeks would allow maximum input by the community who has a vested interest.

In the interest of the welfare of our community and it's future I urge your full consideration. I thank you in advance for your attention to this matter. If you have any questions you can contact me at (808) 270-7678.

Respectfully,

DANNY A. MATEO  
Council Member - Molokai District

DAM:aas

cc: Molokai Council Office  
Peter Nicholas - Molokai Properties Limited  
Stacy Crivello - Molokai Enterprise Community  
Walter Ritte

TO: JOHN SABAS  
Director of Council Services  
Ken Fukuoka

**MPL** Molokai  
Properties  
Limited

January 19, 2007

Councilmember Danny Mateo  
County of Maui Council  
200 S High Street  
Wailuku, Hawaii 96793

Aloha Councilman Mateo:

Subject: Lā'au Point Draft Environmental Impact Statement (DEIS) Public Comment Period

Thank you for your letter dated December 7, 2006, addressed to Thomas Witten of PBR Hawaii regarding the Lā'au Point Draft Environmental Impact Statement (DEIS). As the project applicant, we are responding to your letter.

The DEIS was submitted to the Office of Environmental Quality Control on December 13, 2006, and the public comment period for the DEIS started on December 23, 2006. By state law (Chapter 343, Hawaii Revised Statutes) a 45-day public comment period is required. Following this requirement, the end of the public comment period would have been February 6, 2007.

However, in response to your concerns and the concerns of others, Molokai Properties Limited voluntarily extended the public comment period by over two weeks to end on February 23, 2007. The extension to February 23, 2007 provides for a public comment period of 63 days, 17 more days than what is required by law.

We appreciate your interest in the project and I look forward to working with you.

Sincerely,

John R. Sabas  
General Manager of Community Affairs  
Molokai Properties Limited

cc: Anthony Ching, State Land Use Commission  
Genevieve Salmonson, Office of Environmental Quality Control

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February 23, 2007

Peter Nicholas/Harold Edwards  
Molokai Properties Limited  
745 Fort Street Mall, Ste. 600  
Honolulu, HI 96813

RE: COMMENTS & QUESTIONS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS) FOR LĀ'AU POINT (MOLOKA'I)

Dear Mr. Nicholas & Mr. Edwards:

After reviewing the voluminous Draft EIS, relevant laws of the State of Hawaii and County of Maui, pertinent USGS reports and the minutes of various community meetings on Moloka'i, I believe the Draft EIS fails to meet the legal standards required of a Draft EIS.

Specifically, the following comments and questions will focus on: (1) Lack of disclosure of potential environmental impacts of the proposed action; (2) Lack of full disclosure of all relevant and feasible consequences of the action; and, (3) Failure to provide the relevant data, necessary studies, and other information necessary "in order that the public can be fully informed and the agency can make a sound decision based upon the full range of responsible opinion on environmental effects." (*See*, HAR, Title 11, Chapter 200, § 11-200-16)

#### **I. COMMENTS & QUESTIONS**

USGS, in cooperation with the County of Maui Department of Water Supply, recently prepared a study entitled "Numerical Simulation of the Hydrologic Effects of Redistributed and Additional Ground-Water Withdrawal, Island of Molokai, Hawaii." (Report No. 2006-5177, by Delwyn Oki of USGS).

According to this study,

"Because of increased demand for water associated with a growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from some existing wells, the County of Maui Department of Water Supply (DWS) is currently (2006) considering drilling additional wells to replace or supplement existing wells on the Island of Molokai, Hawaii. Redistributed and additional ground-water withdrawals will affect ground-water levels, discharge of

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ground water to the nearshore environment, and, possibly, salinity of the water pumped from existing wells." (Oki, pg. 1)

The Draft EIS fails to address a majority of the concerns raised by USGS and the County of Maui. Specifically, the following issues are inadequately addressed, or not addressed at all:

#### **A. Lack of Pertinent Information to Address Island-wide Water Impacts**

The Draft EIS fails to provide sufficient information to access the impacts of the proposed water withdrawal on water levels, water quality, coastal discharge, and surface water-ground water interactions in other aquifer systems.

##### **1. Withdrawals from one aquifer system can impact other aquifer systems.**

In a previous report prepared by the USGS ("Geohydrology and Numerical Simulation of the Ground-Water Flow System of Molokai, Hawaii," (Report No. 97-4176, by Delwyn S. Oki) it was stated that:

"Given that withdrawals from one aquifer system can affect water levels, water quality, coastal discharge, and surface water-ground water interactions in other aquifer systems, a better understanding of the ground-water flow system of Molokai is needed for water-resource management purposes."

If, according to Oki, the Island of Moloka'i is a "one aquifer system" (or, essentially a "sole-source aquifer") where withdrawals from one system will affect water levels, water quality, coastal-discharge, salinity, etc. in other areas, then the Draft EIS is significantly lacking the information it needs to meet the legal standards that an EIS must contain to be accepted.

For instance, the Draft EIS, at page 80, refers to "an analysis of the Water Plan" prepared by Morihara Lau & Fong LLP that is provided as Appendix P of this EIS. This analysis (Appendix P, "Analysis of the Water Plan for the Community-Based Enterprise Community/Moloka'i Ranch Master Land Use Plan,") in relevant part, states:

"A water use permit would be required before the Kakalahale Well can be put into production. While the current available yield of the Kamiloloa Aquifer can accommodate a withdrawal of 1 mgd from this well, the Water Commission will have to analyze whether pumpage of this amount at this location will adversely impact other existing wells, and whether it would jeopardize DHHL's ability in the future to access its reservation of 2.905 mgd from the Kualapu'u Aquifer." (*See*, Draft EIS, Appendix P, at 22-23) (emphasis added).

This Analysis of the Water Plan for Moloka'i Ranch further states, in relevant part:

"4. Consistency with Rights of DHHL As discussed above, implementation of the Water Plan will require a finding by the Water Commission that the withdrawal of 1 mgd from the Kakalahale Well will not impact DHHL's existing wells in Kualapu'u, nor jeopardize DHHL's ability to access its reservation in the Kualapu'u Aquifer." (Appendix P, at 23) (emphasis added).

Based on the reports prepared by Delwyn Oki of USGS and specific acknowledgements of unknown impacts contained in the Draft EIS, it would be irresponsible to accept an EIS without knowing (1) whether the proposed withdrawal of 1 mgd from the Kakalahale Well will not impact DHHL's existing wells in Kualapu'u and, (2) whether it will jeopardize DHHL's ability in the future to access its reservation of 2.905 mgd from the Kualapu'u Aquifer.

Such key findings should have been made and taken into account in the Draft EIS.

Please provide in detail all proposed alternatives and/or mitigation measures the applicant will take should the Water Commission find that the withdrawal of 1 mgd from the Kakalahale Well will impact DHHL's existing wells in Kualapu'u.

Please provide in detail all proposed alternatives and/or mitigation measures the applicant will take should the Water Commission find that the withdrawal of 1 mgd from the Kakalahale Well will jeopardize DHHL's ability in the future to access its reservation of 2.905 mgd from the Kualapu'u Aquifer.

As USGS has determined that withdrawals from one aquifer system can affect other aquifer systems on Moloka'i, please provide all relevant data, studies, and other information showing that applicant's proposed potable and non-potable use plans will not negatively impact water levels, water quality -- including salinity levels, coastal discharge, and surface water-ground water interactions in other areas on Moloka'i.

2. The Comprehensive Modeling Analysis should be Completed Prior to Acceptance.

The applicant (MPL) has acknowledged that they are actively working with the DHHL, USGS, and the Department of Water Supply (DWS), on a comprehensive evaluation of Moloka'i's cumulative water demands and resources through a comprehensive modeling analysis. Specifically, the Draft EIS states that,

"MPL is currently working with the DHHL, the County of Maui DWS, and the USGS to comprehensively evaluate Moloka'i's long-term water demands and resources. It is expected that many of Moloka'i's water issues will be addressed by a comprehensive modeling analysis." (Draft EIS, at pg. 127)

It has already been determined that an EIS cannot be accepted if it fails to take into account water issues under the premise that water issues "will be addressed by a comprehensive

modeling analysis" at some time in the future. As was determined by the Hawai'i Supreme Court in the Waiola case, an EIS cannot be accepted until after the USGS completes the comprehensive modeling analysis. The Draft EIS should take these findings into account.

Please provide a detailed explanation the "comprehensive modeling analysis" being referred to, including:

- (a) The name of all participants and parties "currently working" on the "comprehensive modeling analysis".
- (b) A time-line from start to projected completion date of the "comprehensive modeling analysis".
- (c) Citation of all law, rules, regulations or other authority relied upon authorizing the use and reliance of the "comprehensive modeling analysis" to address Moloka'i's water issues instead of Maui County's Updated Water Use and Development Plan.

3. Whether sufficient water is available for DHHL and residents served by DWS.

The applicant asserts that they have publicly acknowledged that their water use would yield to DHHL's priority rights to water. Delwyn Oki, a US Geological Survey water expert, declared at a meeting in Kaunakakai in August 2006 that he doesn't believe Hawaiian Homes will be able to withdraw their reservation of 2.905 million gallons per day from Kualapu'u because he doesn't think that much water exists there.

Please address and provide all relevant data, studies, and other information showing that applicant's proposed potable and non-potable use plans will not negatively impact water prioritized for DHHL.

Please affirm or negate the accuracy of Delwyn Oki's statement that there may not be enough water for DHHL at the present time.

While stating that they would yield to DHHL's water needs first, the applicant has not acknowledged that the DWS's water system serves a significant portion of Moloka'i's residents and that it would yield to the department's water use demands.

Please affirm or deny that the applicant will yield to the water needs of Moloka'i's residents currently being served, and projected to be served, by DWS.

4. **Whether amounts of potable and non-potable water put forward by the applicant are accurate and will actually meet the needs of the proposed project.**

The Draft EIS fails to provide information to substantiate that the water-use as projected by the applicant will satisfy the actual potable and non-potable water demands of the development. The Draft EIS, at page 80 – 81, provides:

**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. 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.

The existing distribution infrastructure at Kaluako'i will be extended to service Lā'au Point. When customer demand in Kaluako'i 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 Kaluako'i 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.

**Non-Drinking (Non-potable) Water** – Initially, water for irrigation and fire protection will be provided from surplus mountain system water. In the long-term, MPL's water plan calls for drawing 1,000,000 gpd of brackish water from the Kākahalahale Well for future non-drinking water needs. Of that amount, 340,000 gpd is for the proposed Lā'au development, 200,000 gpd is proposed for future expansion of Maunaloa and Kualapu'u, and the balance is needed to address (page 81) future demands from existing developed lots, the renovation of the Kaluako'i Hotel, and existing Ranch uses. The Kākahalahale Well sits at elevation 980 feet, and 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.

A storage tank or reservoir will be constructed above the project site to provide adequate pressure and to meet the storage requirements for fire protection. All lots will be metered. Fire flows are proposed to be provided from the non-drinking water system due to the larger pipe and reservoir sizes that will be associated with this system. Fire hydrants will be installed along the road spaced at intervals between 450 to 500 feet. At full build-out, some 20 years hence, non-drinking (non-potable) water use is projected to be 300,000 gpd for the 200 Lā'au Point rural residential lots and associated common areas, plus 40,000 gpd for the two parks within the project area. Various alignments are under consideration with respect to bringing non-drinking (non-potable) water to the project

site. A water use permit would be required before the Kākahalahale Well can be put into production.

When Kākahalahale 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 Kākahalahale water.

The Draft EIS fails to state where and how it came up with the amounts of potable and non-potable water necessary for the project. Two hundred high-end, luxury homes are proposed to be developed on the west end of Moloka'i, which is generally hot and dry year around. Luxury second homes in the Waialea area on Maui, similar in climate and topography to the Lā'au Point area, use between 1,500 and 2,000 gpd.

**Please provide all relevant data, studies, and other information showing where and how applicant came up with the amounts of potable and non-potable water necessary for the project. Please provide figures based on full occupancy of total build-out, not no an assumption of 80% occupancy of lots.**

**What is "surplus mountain system water?" Please quantify how much surplus water will be utilized and for how long? How will this affect recharge of underlying aquifer?**

**Please provide all relevant data, studies, and other relevant information that substantiates whether the applicant's projected water-use demand is accurate and will satisfy the actual potable and non-potable water demands for the development. Such information should include, but not be limited to, actual potable and non-potable use in comparable developments in Maui County.**

**B. Lack of Information Regarding Water Reporting Compliance**

The Hawaii State Water Code requires any person making a use of water in any area of the State shall file a declaration of the person's use with the commission. (*See*, HRS §174C-26). The declarations are required to include the quantity of water used, the purpose or manner of the use, the time of taking the water, and the point of withdrawal or diversion of the water.

Each declaration is also required to contain a statement, signed and sworn to by the person required to file the declaration, or by some other person duly authorized in the person's behalf, to the effect that the contents thereof are true to the best of the person's knowledge and belief. HRS §174C-26 (c)

Similarly, the Maui County Code, § 2.90A.050 requires private water users to report their use of water to the director of the Department of Water Supply. Specifically, this section provides:

A. Whenever a report of water use in the County of Maui is required to be submitted to the commission pursuant to section 13-168-7, Hawaii Administrative Rules, the same

report shall be simultaneously submitted to the department. The director shall transmit received reports on a monthly basis to the council and the mayor.

- B. Where a well or stream diversion works is part of a battery of interconnected water sources or distribution system (such as part of a ditch system), each report of water use shall list the following for each period of record:
1. Total and average inflow to the system in million gallons per day;
  2. Total and average metered usage for the system (including kuleana uses) in million gallons per day;
  3. Total and average amounts delivered to each kuleana user, if any;
  4. A description of each individual site and user (including kuleana uses) serviced by the system, including all crop types;
  5. Acres in actual cultivation by each individual user at each individual site (including kuleana uses);
  6. Total and average metered usage for each individual user and site (including kuleana uses) in million gallons per day;
  7. Total and average system loss by type of loss (such as evaporation, leakage, seepage, and ditch overflows) in million gallons per day;
  8. The capacity and levels of each storage facility (such as a tank or reservoir) at the beginning and end of the period of record in million gallons per day;
  9. The location and status (active, inactive, or abandoned) of any and all gauges; and
  10. The location and status (active, inactive, or abandoned) of any and all ground and surface water intakes.

At a January 24, 2007, Molokai Planning Commission meeting, a Moloka'i resident – Glenn Teves – testified that:

"Their present water application before the Water Commission since 2001 is false because they're showing a large part of the water being used for the hotel, and the hotel was closed all this time. Their water application needs to reflect existing use, so they're in violation of their water application with the state."

**Please provide detailed information showing that applicant is in full compliance and not in violation of the State Water Code and Maui County's water reporting laws, including, but not limited to any and all reports submitted to the State Water Commission as required by HRS §174C and the DWS as required by Maui County Code, § 2.90A.050.**

**C. Failure to Take into Account that the Moloka'i Water Use and Development Plan Needs to be Updated**

The laws of the State of Hawaii and the County of Maui are clear regarding the adoption and updates to the Water Use and Development Plan (WUDP).

The Hawaii State Water Code requires each county to adopt a WUDP, and then update and modify its plan "as necessary to maintain consistency with its zoning and land use policies." (Hawaii Revised Statutes, § 174C-31(q)). Further, in revising each county's WUDP, it states: "each county and the commission shall incorporate the current and foreseeable development and use needs of the department of Hawaiian home lands for water as provided in section 221 of the Hawaiian Homes Commission Act." (HRS, § 174C-31(q)).

The Charter of the County of Maui mandates that the department of water supply shall prepare and annually update the county WUDP. Chapter 11 of the Charter provides, in relevant part:

Section 8-11.2 (3) The department of water supply shall implement the county's general plan and community plans in the administration of its affairs. The department of water supply shall prepare and annually update a long-range capital improvement plan and an updated water use and development plan, which shall be subject to the approval of the council, as provided by law. (Amended 2002) (emphasis added)

The Charter also mandates that the "up-to-date" WUDP be reviewed by the board of water supply and enacted by the council by ordinance. It provides, in relevant part:

Section 8-11.6 (2)(3) The director of the department of water supply shall:

2. Prepare long-range capital improvement plans and up-to-date water use and development plans for review by the board of water supply and enactment by the council by ordinance.
3. Implement enacted long-range capital improvement plans and water use and development plans. (emphasis added)

The Maui County Code, § 2.88A.040, provides:

The plan shall serve as a guideline to the council, the board and all other agencies or departments of the County (a) in approving or recommending to other agencies the use or commitment of the water resources in the county and (b) in using public funds to develop water resources to meet existing or projected future demands on the public water system as set forth in the plan. (Ord. 1948 § 2, 1990)

Based on the pertinent provisions of the State Water Code, the County of Maui Charter, the Maui County Code, and the current stress on the water system due to increasing salinity the Draft EIS should not be accepted until the 1990 Maui County (Molokai) WUDP has been updated. It would be irresponsible to commit public water resources to a project of this size (200 multi-million dollar homes on at least two-acres each) before the Moloka'i WUDP can be updated and adopted by Council ordinance.

Please provide citation of all law, rules, regulations or other authority relied upon that would allow the acceptance of the Draft EIS without taking into account an Updated County of Maui Water Use and Development Plan (Moloka'i) that would provide a comprehensive analysis of all current and future water needs for Moloka'i.

Please provide citation of all law, rules, regulations or other authority relied upon or authorizing the use and reliance of the "comprehensive modeling analysis" to address Moloka'i's water issues instead of Maui County's Updated Water Use and Development Plan.

**D. Failure to Address and Account for the Cumulative Impacts of the Proposed Project on the Moloka'i Community, Environment, and Resources**

**1. Cumulative Impacts**

It is well-established that an EIS should address, and the LUC should consider, the potential cumulative impacts of a proposal prior to agency approval. A "cumulative impact" has been defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (*See*, HAR §11-200-2). Moreover, HAR 11-200-17 requires that an EIS discuss "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)."

**2. Increased Build-out**

The resident population of the Island of Molokai, Hawaii, has grown by more than 20 percent from 1980 (population 6,049) to 2000 (population 7,404) (Hawaii Department of Business, Economic Development & Tourism, 2006).

The existing lots at Kaluakoi can now be subdivided with two houses per lot. According to testimony submitted, there is the potential for up to 784 lots with two structures on each lot (1,568 homes total) in the Kaluakoi area that will require a water source. At full occupancy, total water needed for these subdivided lots would be 2.4 mgd (3,000 gallons per household). (Source: Molokai Ranch LUC application Draft EIS, page 150)

How are the water needs for the homes in this area substantially different from the homes proposed at La'au Point, whose water use is projected to be 600 gpd?

The Draft EIS fails to paint a complete and thorough picture of what the applicant's past, present, and future development plans are. Instead, the Draft EIS appears to be parceling out the La'au Point project from the applicant's other past and

future projects in order to minimize the significant impacts to the community, environment, and infrastructure of Moloka'i, and could be considered segmentation. The growing demand for water is in direct correlation with the growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from some existing wells.

Therefore, please provide a detailed plan of what Moloka'i Properties Limited's plans are for the other lands it owns on Moloka'i, as well as any future additional water obligations for Kaluakoi Resort, including lots yet undeveloped.

**E. Failure to Address and Account for the Increased Salinity of Existing Wells**

According to 2006 USGS Report (Oki), redistributed and additional ground-water withdrawals will affect ground-water levels and may cause the salinity of water pumped from existing wells to increase. (2006 USGS Report, pg. 47). It is also settled that the County of Maui, DWS, is preparing data and planning to begin development of new wells on Moloka'i due to concerns of rising chloride levels. Possible new well sites that have been presented to the public for consideration include: Manawainui, Kawela I, Kamiloloa, Kawela II and Ualapue.

Molokai Ranch is applying for one million gallons per day of brackish water from the Kakalahale Well, which is located in the vicinity of the county's proposed Manawainui Well. Although the DWS has stated publicly that the affect of pumping one million gallons per day of brackish water from Molokai Ranch's Kakalahale Well is unknown, DWS Planning Program Manager Ellen Kraftsow has also stated that one of the reasons for adding the Manawainui Well and reducing the dependency on Kualapu'u is because of the perceived effect the heavy pumping on Kualapu'u was having on the current DHHL well, which is located relatively close by.

The Department of Hawaiian Homelands (DHHL) has announced its intentions to develop new residences on Moloka'i and begin using some of its reserved 2.905 million gallons per day.

At a public meeting on Moloka'i, (Aug. 9, 2006) a concerned resident asked: "How much time do we have before we're in a difficult situation?" Delwyn Oki, a hydrologist with the United States Geologic Survey (USGS) answered: "It appears, with Kawela, you're already there."

As Hawaiian Homes have priority use status, please provide a detailed analysis addressing the serious concerns of how the proposed additional pumping from the Kakalahale Well might impact the salinity levels of other wells (including water used by DHHL) on the island.

Please provide a detailed plan of alternatives, and proposed measures to be taken to avoid, minimize, rectify, or reduce adverse impacts relating to rising salinity levels, pursuant to HAR §11-200-14.

**F. Failure to Address and Account for the Impacts to the Nearshore Environment, including Fishponds**

The information provided in the Draft EIS fails to adequately substantiate that the pumping of water from the proposed well will not affect 'practicing traditional and customary native Hawaiian rights'. It is well-established that a substantial population of native Hawaiians on Moloka'i practice subsistence living by fishing, diving, hunting, and gathering land and marine flora and fauna as a sustainable food source for their families. Aside from the nutritional and affordable benefits, subsistence living is essential to maintaining native Hawaiians' religious and spiritual relationship to the land and nearshore environment.

The Draft EIS fails to adequately assess and analyze the potential adverse impacts to Native Hawaiian subsistence living.

The Draft EIS, while recognizing the Hawaiian Homes priority to water, fails to show that the proposed additional pumping of water will not impact DHHL wells.

According to the 2006 USGS Report (Oki), redistributed and additional ground-water withdrawals will affect discharge of fresh and brackish water to the nearshore environment.

Oki reminds us that,

"Along the south coast, Native Hawaiians built dozens of fishponds in shallow coastal waters by constructing rock-wall enclosures extending from the shoreline. References to fishpond construction on Molokai date back to the 16th century, and the most recently constructed fishpond on the island was built about 1829 (Farber, 1997). Members of the community on Molokai have identified 31 fishponds that they would like to restore and maintain in a traditional manner for subsistence and small-business ventures (Farber, 1997)."

The 2006 USGS study states that, "discharge of fresh or brackish ground water to these fishponds may be a factor controlling productivity by providing nutrients for algae on which the fish feed (Farber, 1997)." It also states that, "additional ground-water withdrawal may affect fishpond productivity."

The Draft EIS fails to sufficiently address the serious concerns of how the proposed additional pumping from the Kakalahale Well might impact the fishponds that members of the Moloka'i community hope to restore and maintain in a traditional manner for subsistence and economic benefit.

HAR, Title 11, Chapter 200, § 11-200-17(g), provides, in relevant part:

"The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions." (emphasis added)

**Please affirm or deny the accuracy of the statement in the 2006 USGS Report (Oki) that: "redistributed and additional ground-water withdrawals will affect discharge of fresh and brackish water to the nearshore environment."**

**If denying the statement referred to immediately above, please provide a detailed explanation with all relevant data, studies, and other information that the applicant has relied upon for making this assertion.**

**Please affirm or deny the accuracy of the statement in the 2006 USGS Report (Oki) that the: (1) "Discharge of fresh or brackish ground water to these fishponds may be a factor controlling productivity by providing nutrients for algae on which the fish feed (Farber, 1997);" and, (2) "Additional ground-water withdrawal may affect fishpond productivity."**

**If denying the statement referred to immediately above, please provide a detailed explanation with all relevant data, studies, and other information that the applicant has relied upon for making this assertion.**

**Please provide all relevant data, studies, and other information that the applicant relied upon to address and account for the impacts that proposed water use (potable and non-potable) will have on the "practicing traditional and customary native Hawaiian rights, including, but not limited to:**

- i. Impacts to fishing, diving, hunting, and gathering land and marine flora and fauna that Moloka'i residents use to provide food for their families;**
- ii. Impacts to the Moloka'i community's ability to maintain native Hawaiian religious and spiritual relationship to the land and nearshore environment;**

**Please provide a detailed plan of alternatives, and proposed measures to be taken to avoid, minimize, rectify, or reduce these adverse impacts on these fishponds.**

February 23, 2007  
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## II. CONCLUSION:

HAR, Title 11, Chapter 200, § 11-200-14, provides, in relevant part:

“Consequently, the EIS process shall involve at a minimum: identifying environmental concerns, obtaining various, relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.” (emphasis added)

The EIS document is a valuable tool for decision makers and should disclose all aspects of a proposal, its cumulative impacts and environmental consequences, in order to assist in making an informed decision. Thank you for your consideration of my comments.

Sincerely,

  
MICHELLE ANDERSON  
Councilmember

cc:

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State Land Use Commission  
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November 1, 2007

Michelle Anderson, Councilmember  
County Council  
County of Maui  
200 South High Street  
Wailuku, Hawai'i 96793

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Ms. Anderson:

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

**Withdrawals from one aquifer system can impact other aquifer systems.**

I. *Please provide in detail all proposed alternatives and/or mitigation measures the applicant will take should the Water Commission find that the withdrawal of 1 mgd from the Kāalahale Well will impact DHHL's existing wells in Kualapu'u.*

**Response:** It is highly unlikely that pumping 1 mgd from the Kāalahale Well will have any measurable impact on the existing DHHL and DWS wells in Kualapu'u for several reasons. First, the Kāalahale Well is down- and across-gradient from the DHHL and DWS wells. Second, the Kāalahale 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 mgd will create a measurable effect. Third, there are known subsurface intrusives between the Kāalahale and DHHL/DWS well sites, namely Pu'u Kāalahale and Pu'u Luahine, which are barriers to ground water flow.

The Kāalahale Well was developed in 1969 as a drinking water well for the Kaluako'i Resort. However, due to the brackish quality of the water, the well was never put into production. Relative to its distance inland, chlorides of the Kāalahale Well are anomalously high. This anomaly is explained, however, by the presence of upgradient subsurface intrusives, i.e., the subsurface “plumbing” of Pu'u Kāalahale, which function as barriers to normal mauka-to-makai flow of groundwater. The upgradient intrusives, which create the brackish result in the Kāalahale Well, also function to limit the effect of pumping the Kāalahale Well on other wells upgradient of the intrusives, such as the DHHL and DWS wells in Kualapu'u.

If the unlikely event occurs that DHHL and MPL must compete for the same water, MPL will recognize DHHL's priority rights to water and will seek alternative sources of water, including, but not limited to, desalinization of brackish or salt water. Desalinization is an alternative source of water that becomes increasingly viable with technological advances. The DEIS, on page 82, identified brackish water from the Prawn Farm and desalinization as alternative sources of non-potable water.

To ensure water availability to all, MPL, DHHL, and Maui County DWS are working cooperatively to coordinate future water development plans with the assistance of the USGS. It is anticipated that by proper placement of wells, the needs of DHHL, the County, and MPL for the foreseeable future can all be met at reasonable costs to the respective parties.

In response to your comments above, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Additional Water Information and Analysis." See the section of the attachment titled: "Additional Information on the Kākahale Well."

2. *Please provide in detail all proposed alternatives and/or mitigation measures the applicant will take should the Water Commission find that the withdrawal of 1 mgd from the Kākahale Well will jeopardize DHHL's ability in the future to access its reservation of 2.905 mgd from the Kualapu'u Aquifer.*

**Response:** MPL has often reiterated its recognition of DHHL's priority rights to water, which is a priority established by law. For DHHL to develop its 2.905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kākahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kākahale 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.

As previously stated in #1 above, if the unlikely event occurs that DHHL and MPL must compete for the same water, MPL will recognize DHHL's priority rights to water and will seek alternative sources of water, including, but not limited to, desalinization of brackish or salt water. Desalinization is an alternative source of water that becomes increasingly viable with technological advances. The DEIS, on page 82, identified brackish water from the Prawn Farm and desalinization as alternative sources of non-potable water.

In response to your comments above, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Additional Water Information and Analysis." See the section of the attachment titled: "Additional Information on the Kākahale Well."

3. *As USGS has determined that withdrawals from one aquifer system can affect other aquifer systems on Moloka'i, please provide all relevant data, studies, and other information showing that applicant's proposed potable and non-potable use plans will not negatively impact water levels, water quality – including salinity levels, coastal discharge, and surface water-ground water interactions in other areas on Moloka'i.*

**Response:** The impact of withdrawing 1 mgd from Kākahale Well on existing DHHL and DWS wells in Kualapu'u and the impact of withdrawing 1 mgd from Kākahale Well on DHHL reservation in Kualapu'u Aquifer were previously answered in #1 and #2 above.

In response to your comments above, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled: "Explanation of Moloka'i Aquifer Systems Geology," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Additional Information on the Kākahale Well."

**The Comprehensive Modeling Analysis should be Completed Prior to Acceptance.**

4. *Please provide a detailed explanation the "comprehensive modeling analysis" being referred to, including: (a) The name of all participants and parties "currently working" on the "comprehensive modeling analysis".*

**Response:** MPL has been working diligently with DHHL and the County of Maui Department of Water Supply (DWS) to find water solutions for Moloka'i's future needs.

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

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

In response to your comments above, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled: "USGS Modeling of Kualapu'u Aquifer."

5. *(b) A time-line from start to projected completion date of the "comprehensive modeling analysis".*

**Response:** Initial discussions indicate that the full project could take close to three years to complete.

6. *(c) Citation of all law, rules, regulations or other authority relied upon authorizing the use and reliance of the "comprehensive modeling analysis" to address Moloka'i's water issues instead of Maui County's Updated Water Use and Development Plan.*

**Response:** It is not anticipated that the comprehensive modeling analysis will conflict with the Maui County's Updated Water Use and Development Plan (WUDP). The participants in the

comprehensive modeling analysis are the primary stakeholders who will surely be consulted in preparing the updated WUDP. Thus, much of the inputs into the updated WUDP and the comprehensive modeling analysis should be the same. Moreover, the Maui County Department of Water Supply, which is responsible for producing the WUDP, is one of the main stakeholders involved in the comprehensive modeling effort. Based on other WUDPs that have been prepared, it is anticipated that the modeling analysis will involve greater detail than the WUDP, but not conflict with the WUDP.

**Whether sufficient water is available for DHHL and residents served by DWS.**

7. *Please address and provide all relevant data, studies, and other information showing that applicant's proposed potable and non-potable use plans will not negatively impact water prioritized for DHHL.*

**Response:** To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that the use of 1.018 mgd from Well 17 and water collected in Molokai Ranch's Mountain Water System will not interfere with DHHL's existing permits and reservation.

The impact of withdrawing 1 mgd from Kākahale Well on existing DHHL and DWS wells in Kualapu'u and the impact of withdrawing 1 mgd from Kākahale Well on DHHL reservation in Kualapu'u Aquifer were previously answered in #1 and #2 above. Also, refer to the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled: "DHHL's Future Water Needs."

8. *Please affirm or negate the accuracy of Delwyn Oki's statement that there may not be enough water for DHHL at the present time.*

**Response:** MPL's understanding is that Mr. Oki's statement was made in reference to a ground water model simulation that he conducted in 2006. USGS simulated the withdrawal of 2.905 mgd from four arbitrarily sited wells within the Kualapu'u aquifer. These arbitrarily chosen sites were spaced relatively close together and not far distant from the existing Kualapu'u well field. Under that scenario, USGS concluded that DHHL could not develop the full amount of its reservation from the Kualapu'u aquifer.

MPL believes that for DHHL to develop its 2.905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kākahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kākahale 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.

Also, please refer to the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled: "Additional Information on the Kākahale Well."

9. *Please affirm or deny that the applicant will yield to the water needs of Moloka'i's residents currently being served, and projected to be served, by DWS.*

**Response:** To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that such uses will not interfere with DWS's existing permits.

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

**Whether amounts of potable and non-potable water put forward by the applicant are accurate and will actually meet the needs of the proposed project.**

10. *Please provide all relevant data, studies, and other information showing where and how applicant came up with the amounts of potable and non-potable water necessary for the project. Please provide figures based on full occupancy of total build-out, not no an assumption of 80% occupancy of lots.*

**Response:** Potable water amounts are based on County of Maui standards.

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 the effectiveness of these rates have already been manifested. Additionally, covenants on Lā'au Point lots will limit further subdivision of the lots, restrict disturbance of each lot to no more than 30 percent (approximately 1/2-acre), require catchment systems for each residence for irrigation use, and require drip irrigation systems, double flush toilets, and other water conservation devices.

Under the Water Plan, MPL will have approximately 1.5 mgd of potable water: 1.018 mgd from Well 17 plus 500,000 gpd from the Mountain water system.

Total anticipated long-term potable water needs amounts to 1,089,520 gpd. This includes 96,000 gpd for the Lā'au Point lots, which is based on 600 gpd for 200 lots at 80 percent occupancy.

If MPL were to increase the Lā'au Point potable allocation to 100 percent (i.e. all 200 homes used 600 gpd), the amount would be 120,000 gpd, an increase of 24,000 gpd. That would raise the total long-term potable water needs to 1,113,520 gpd, which can still be accommodated with the 1.5 mgd available.

The estimated use of 600 gpd for each Lā'au Point residence relates to potable water use only. This is the Maui County Department of Water Supply Water Demand Standard per residential unit.

Additional non-potable water is anticipated for irrigation uses.

Also, please refer to the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled: "Lā'au Project Issues."

11. *What is "surplus mountain system water?" Please quantify how much surplus water will be utilized and for how long? How will this affect recharge of underlying aquifer?*

**Response:** The term "surplus" is confusing and will be amended in the Final EIS Section 4.9.2 to "available" as shown below:

**Non-Drinking (Non-potable) Water** – Initially, water for irrigation and fire protection will be provided from surplus available mountain system water.

In this context, MPL will have access to water that is not being used by users of the Mountain System for emergency (fire fighting) and irrigation on a temporary basis. MPL will endeavor to bring the Kākahāhale Well system online as soon as possible so that it can begin use of this separate system. This will not affect the underlying aquifer as no more than the current allocation will be utilized.

12. *Please provide all relevant data, studies, and other relevant information that substantiates whether the applicant's projected water-use demand is accurate and will satisfy the actual potable and non-potable water demands for the development. Such information should include, but not be limited to, actual potable and non-potable use in comparable developments in Maui County.*

**Response:** The water use and demand were based on Maui County standards. No direct comparisons were done with projects on Maui as the design standards and requirements for the subdivision include substantial and unique water conservation methods. These include:

- Landscaping irrigation systems will be from re-use water from the wastewater treatment plant or collected in catchments systems; only drip irrigation systems will be permitted. 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.
- All houses will be required to have at least a 5,000-gallon storage tank for water captured from roofs.
- Requirement of a dual-water system split into safe drinking and non-drinking water; safe drinking water will be limited to 500-600 gpd. Homes will be required to use double flush toilets and specially-designed showerheads for water conservation.
- Minimal lot impact with zero runoff.
- Increased rate structures.

Also, please refer to the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled: "Lā'au Project Issues."

**B. Lack of Information Regarding Water Reporting Compliance**

13. *Please provide detailed information showing that applicant is in full compliance and not in violation of the State Water Code and Maui County's water reporting laws, including, but not limited to any and all reports submitted to the State Water Commission as required by HRS §174C and the DWS as required by Maui County Code, § 2.90A.050.*

**Response:** This information is readily available at the appropriate agencies.

**C. Failure to Take into Account that the Moloka'i Water Use and Development Plan Needs to be Updated**

14. *Please provide citation of all law, rules, regulations or other authority relied upon that would allow the acceptance of the Draft EIS without taking into account an Updated County of Maui Water Use and Development Plan (Moloka'i) that would provide a comprehensive analysis of all current and future water needs for Moloka'i.*

**Response:** Maui County has not yet completed or adopted an Updated Water Use and Development Plan in accordance with HRS §174C-31 and the Statewide Framework For Updating the Hawai'i Water Plan. Nothing in the State Water Code (HRS Chapter 174C) or the Hawai'i EIS laws (HRS Chapter 343) imposes a moratorium on acceptance of environmental disclosure documents pending finalization of any water use and development plan.

15. *Please provide citation of all law, rules, regulations or other authority relied upon or authorizing the use and reliance of the "comprehensive modeling analysis" to address Moloka'i's water issues instead of Maui County's Updated Water Use and Development Plan.*

**Response:** DWS is a party to the modeling analysis, which will be used to update the Water Use and Development Plan.

**D. Failure to Address and Account for the Cumulative Impacts of the Proposed Project on the Moloka'i Community, Environment, and Resources**

**1. Cumulative Impacts**

16. *It is well-established that an EIS should address, and the LUC should consider, the potential cumulative impacts of a proposal prior to agency approval. A "cumulative impact" has been defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (See, HAR §11-200-2). Moreover, HAR 11-200-17 requires that an EIS discuss "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)."*

**Response:** We have made a good faith effort to prepare an EIS in compliance with Chapter 343 and the underlying regulations found in HAR §11-200-1 et. seq. 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. Section 7.2 of the Draft EIS provides analysis of cumulative and secondary impacts.

**Increased Build-out**

17. *How are the water needs for the homes in this area substantially different from the homes proposed at La'au Point, whose water use is projected to be 600 gpd?*

**Response:** Analysis and discussion of cumulative impacts are restricted to those future actions that are reasonably foreseeable. The actual subdivision of every Kaluako'i lot cannot be said to be reasonably foreseeable since there are no definitive plans on the planning horizon that this will happen. Therefore, cumulative impacts of this scenario do not have to be analyzed for the purposes of this EIS.

Regardless, we could expect the Lā'au Point lots, which are two acres, will have some requirement for irrigation water. This is different than homes at Kaluako'i with little or no land.

18. *The Draft EIS fails to paint a complete and thorough picture of what the applicant's past, present, and future development plans are. Instead, the Draft EIS appears to be parceling out the La'au Point project from the applicant's other past and future projects in order to minimize the significant impacts to the community, environment, and infrastructure of Moloka'i, and could be considered segmentation. The growing demand for water is in direct correlation with the growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from some existing wells. Therefore, please provide a detailed plan of what Molokai Properties Limited's plans are for the other lands it owns on Molokai, as well as any future additional water obligations for Kaluakoi Resort, including lots yet undeveloped.*

**Response:** The principal development plans of MPL's management predecessors (under BIL ownership) involved a Highlands golf course at Nā'iwa, a series of agricultural "gentlemen's estates" on 25-acre lots on land south of Maunaloa (both parcels now being donated to the Land Trust under the *Community-Based Master Land Use Plan for Molokai Ranch*).

All of MPL's future development plans are outlined in the *Community-Based Master Land Use Plan for Molokai Ranch* (provided as Appendix A in the Draft EIS; hereafter referred to as "Master Plan"), and there are no other development plans.

MPL accepts the growing demand for water resources and believes its Water Plan (Chapter 6 of the Master Plan) for the future of its property is a responsible attempt to preserve water on the island for DHHL constituents who have priority water reservations. It also asserts that the rising salinity of some wells on the island has been proven to be caused by their location (close to the ocean) and (in the case of the Kualapu'u aquifer with the DWS's Well and DHHL's wells) by their close proximity to each other.

As far as the Kaluako'i entitled lots are concerned:

- As stated in the Master Plan, MPL has no plans to develop the entitled lots north of the Kaluako'i Hotel.
- However, as stated clearly in the Master Plan, some of those lands may be needed at some distant time in the future, for extending the Kaluako'i Hotel if demand requires

it; some land for a Cultural Center adjacent to the hotel; and some land for community housing for Kaluako'i Hotel staff. At this point there are no plans at all to do that, but MPL believes it should be up-front about this remote possibility. Also under its Water Plan, MPL has no water available for such a remote possibility.

- The Master Plan also states that if ever there is a demand for a second golf course on Moloka'i (and replacing the Moloka'i Community Plan-approved course below the Lodge at Maunaloa), then it should be sited in this area.
- These parcels are within the SMA zone and construction of any sort is subject to approval by the Moloka'i Planning Commission. Desalinated water would be needed in this case.

**E. Failure to Address and Account for the Increased Salinity of Existing Wells**

19. *As Hawaiian Homes have priority use status, please provide a detailed analysis addressing the serious concerns of how the proposed additional pumping from the Kakalahale Well might impact the salinity levels of other wells (including water used by DHHL) on the island.*

**Response:** The impact of withdrawing 1 mgd from Kākalahale Well on existing DHHL and DWS wells in Kualapu'u and the impact of withdrawing 1 mgd from Kākalahale Well on DHHL reservation in Kualapu'u Aquifer were previously answered in #1 and #2 above. Also, please refer to the attachment titled, "Additional Water Information and Analysis." 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 "DHHL's Future Water Needs."

20. *Please provide a detailed plan of alternatives, and proposed measures to be taken to avoid, minimize, rectify, or reduce adverse impacts relating to rising salinity levels, pursuant to HAR §11-200-14.*

**Response:** The Water Commission, 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. By conducting a pump test before a permanent pump is installed, most of the risk that the well will go salty can be avoided.

If, however, long-term pumping has a more adverse impact than anticipated on the aquifer or on other wells, adjustments to pumping, including, if necessary, shutting down the well, may be required.

By way of a standard condition imposed on all water use permits, the State Commission on Water Resource Management reserves the right to reduce the amount of water allocated for any of the following reasons:

- Protect the water sources (quantity or quality);
- Meet other legal obligations including correlative rights;
- Insure adequate conservation measures;
- Require efficiency of water uses;
- Reserve water for future uses;
- Meet legal obligations to DHHL;
- Carry out such other necessary and proper exercise of the Commission's powers.

In the unlikely event that MPL's identified water sources cannot meet its needs, brackish water from the Prawn Farm and desalinization have been identified as alternative sources of non-potable water.

**F. Failure to Address and Account for the Impacts to the Nearshore Environment, including Fishponds**

21. Please affirm or deny the accuracy of the statement in the 2006 USGS Report (Okī) that: "redistributed and additional ground-water withdrawals will affect discharge of fresh and brackish water to the nearshore environment." If denying the statement referred to immediately above, please provide a detailed explanation with all relevant data, studies, and other information that the applicant has relied upon for making this assertion.

**Response:** MPL does not dispute the accuracy of the above-quoted statement. Also, please refer to the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled: "Additional Information on the Kākalahale Well."

22. Please affirm or deny the accuracy of the statement in the 2006 USGS Report (Okī) that the: (1) "Discharge of fresh or brackish ground water to these fishponds may be a factor controlling productivity by providing nutrients for algae on which the fish feed (Farber, 1997);" and, (2) "Additional ground-water withdrawal may affect fishpond productivity." If denying the statement referred to immediately above, please provide a detailed explanation with all relevant data, studies, and other information that the applicant has relied upon for making this assertion.

**Response:** The effect of pumping 1 mgd from Kākalahale on ground water discharge along shoreline was previously discussed in #3 above. Also, please refer to the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled: "Additional Information on the Kākalahale Well."

23. Please provide all relevant data, studies, and other information that the applicant relied upon to address and account for the impacts that proposed water use (potable and non-potable) will have on the "practicing traditional and customary native Hawaiian rights, including, but not limited to: i. Impacts to fishing, diving, hunting, and gathering land and marine flora and fauna that Moloka'i residents use to provide food for their families; ii. Impacts to the Moloka'i community's ability to maintain native Hawaiian religious and spiritual relationship to the land and nearshore environment; Please provide a detailed plan of alternatives, and proposed measures to be taken to avoid, minimize, rectify, or reduce these adverse impacts on these fishponds.

**Response:** In granting the water use permit for withdrawal of 1.018 mgd from Well 17, the State Commission on Water Resource Management determined that the allocation does not abridge or deny traditional and customary rights of native Hawaiians.

Native Hawaiians gather limu and other marine resources all along the southern and eastern coastline of Molokai, including the shoreline area downgradient of the Kākalahale well site. The shoreline area of the Kamiloloa aquifer, however, is not a prime habitat for edible limu. Limu may occur in quantities sufficient for personal use, but the edible species are not abundant.

Edible limu is salinity tolerant, i.e., can tolerate wide ranges of salinity. However, limu is more productive in brackish water than in pure seawater, probably because of the nutrients contained in groundwater and surface water discharges. There is a variability in the nutrient concentration of groundwater along the south coast of Moloka'i, varying as much as 18-fold between Kawela and Kamiloloa. Human activities, primarily agriculture, probably subsidize the groundwater with nitrates. Assuming that these human subsidies remain unchanged, the effect of groundwater pumpage on nutrient loading to the ocean becomes insignificant. Thus, the reduction of groundwater discharge from the pumping of 1 mgd from the Kākalahale well is unlikely to have a significant impact on limu production.

Downgradient from the Kākalahale Well site are two fishponds, Kalokoeli and Ali'i, which are slated for restoration, but are, to the best of our knowledge, not currently in use. Fishponds were often built around coastal springs and discharge points for streams for the brackish environments that are important for juvenile fish. However, it is unknown whether springs or seeps contribute to the environment of the Kaloko'eli or Ali'i fishponds.

The effect of pumping 1 mgd from Kākalahale on ground water discharge along shoreline was previously discussed in #3 above. Given the unlikely impact on fishponds and the associated marine environment, we do not believe the proposed water use will have any impact on "practicing traditional and customary native Hawaiian rights."

Also, please refer to the attachment titled, "Additional Water Information and Analysis." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled: "Additional Information on the Kākalahale Well."

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: Additional Water Information and Analysis

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



January 22, 2007

County of Maui – Planning Department  
Attn: Ms. Nancy McPherson, Staff Planner  
250 South High Street  
Wailuku, Hawaii 96793

Dear Ms. McPherson,

Subject: La'au Point – Draft Environmental Impact Statement (DEIS)  
West Molokai, Hawaii  
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 allowing us to comment on the (DEIS) and it's appendices for the subject project.

In reviewing our records and the information received, Maui Electric Company (MECO) would like to clarify statements made within pages 9 and 86 of the DEIS under "Electrical and Communication Systems" and page 6 of Appendix N. MECO has not formally analyzed an electrical line extension from the existing underground system on Kaluakoi Road within Papohaku Subdivision. Previous preliminary plans observed a line extension from the existing overhead line which is located East-northeast of the project's location.

Since the addition of this project's anticipated electrical load demand will have a substantial impact to our electrical system, we highly encourage the customer's electrical consultant to submit electrical drawings and a project time schedule as soon as practical so that service can be provided on a timely basis. Upon receipt of the electrical demand, we could study the impacts to the existing system for an extension from Kaluakoi Road or from the overhead line.

To reiterate previous response comments, access and electrical easements for our facilities to serve the subject project site will be required. Other substantial upgrades may also be necessary to accommodate this project.

La'au Point – Draft Environmental Impact Statement (DEIS)  
Jan. 22, 2007  
P. 2

Should you have any questions or concerns, please call Ray Okazaki at 871-2340.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Shinyama".  
Neal Shinyama  
Manager, Engineering

NS:ro

c:\PBR Hawaii – Thomas Witten  
Molokai Properties Limited – Peter Nicholas and John Sabas  
State Land Use Commission – Anthony Ching  
Office of Environmental Quality Control





November 1, 2007

Neal Shinyama  
Maui Electric Company, Ltd.  
210 West Kamehameha Avenue  
P.O. Box 398  
Kahului, Hawai'i 96733-6898

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Shinyama:

Thank you for your letter dated January 22, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS).

We acknowledge that MECO has not formally analyzed an electrical line extension from the existing underground system on Kaluako'i Road within the Pāpōhaku Subdivision.

Once there is more certainty to the project, MPL's electrical consultant will meet with MECO so the electrical service can be provided on a timely basis. MPL acknowledges that, in addition to an electrical line extension, other substantial upgrades may be necessary.

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

Sincerely,

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

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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Kāko'o 'Ōiwi

"Māfa paha he iti 'unu, pā 'a ka pōhaku nui 'a 'ole e ka 'a."  
"Perhaps it is the small stone that can keep the big rock from rolling down."

PBR Hawaii  
1001 Bishop Street  
ASB Tower, Suite 650  
Honolulu, HI 96813  
Attention: Thomas Witten  
Telephone: (808) 521-5631  
Fax: (808) 523-1402

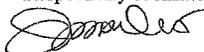
February 23, 2007

Aloha kakou:

Kāko'o 'Ōiwi is a non-profit organization dedicated to the perpetuation and protection of Native Hawaiian cultural practices. In reviewing the DEIS and hearing concerns from the community, we are particularly concerned as to the inadequate discussion of Native Hawaiian burial sites located at Lā'au Point. There are many iwi and moepū buried at Lā'au Point according to families from Moloka'i. It is a sacred site and should not be disturbed. For these reasons, we are adamantly opposed to this development. Further, in consideration of Lā'au Point as a sacred site, MPL has made no assurances that iwi or moepū discovered at Lā'au Point will be left undisturbed. They absolutely should not be removed from their original site of discovery. And it appears that this development will fully disregard and destroy any sacred sites within the construction path.

The master plan promises to protect sacred places. What about protecting the sacred place of Lā'au Point?

Respectfully submitted,



Jonathan K. Osorio, PhD  
President, Board of Directors

PO Box 62092  
Honolulu, Hawai'i 96839

[www.nativehawaii.org](http://www.nativehawaii.org)

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MPL Molokai  
Properties  
Limited

November 1, 2007

Jonathan K. Osorio  
Kāko'o 'Ōiwi  
P.O. Box 62092  
Honolulu, Hawai'i 96839

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Osorio:

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

The burial treatment plan for Lā'au Point was included in Appendix E of the Draft EIS. The archaeological inventory survey found 9 burial sites and 21 possible burial sites around the project area. As stated in the burial treatment plan, construction will be planned to avoid any burials or suspected burials recorded in previous studies and during the supplemental road corridor survey. Therefore, it is very unlikely that any burials will be disturbed. Should it prove extremely difficult to plan around a possible burial, then (as a last resort) that feature may be tested to determine its actual function. If it is in fact a human burial, then it will be covered, and preserved in place. Human remains encountered during such a test will not be removed, photographed, or collected.

If testing does not encounter human remains, the feature will be subject to data recovery according to the procedures and standards described in the Data Recovery Plan (also located in Appendix E of the Draft EIS). If, during the course of the project, human burials are inadvertently discovered, work in the vicinity will be halted while the archaeologist determines if they are likely to have been in place for more than 50 years. If not, the matter comes under the jurisdiction of local police, who will be notified. If so, the SHPD Burials Program will be consulted. The preferred treatment will be to leave any burials in the location they were found, and avoid any further disturbance.

The plans recognize known and possible burials, including an area identified by kumu hula and historian John Kaimikaua as a burial place for the chiefs of Kamāka'ipō; it also addresses patterns (such as use of sand dunes and settlement peripheries) that help us identify and avoid impacts in likely burial areas. As written, the Burial Treatment Plan proposes protection in place as the preferred treatment for any newly discovered burials, but does not rule out reinterment entirely, since the Burial Councils and descendants sometimes request that treatment.

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

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

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

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

## LIFE OF THE LAND

*Ua Mau Ke Ea o Ka 'Aina i Ka Pono*  
The Life of the Land is Perpetuated in Righteousness  
76 North King Street, #203, Honolulu, Hawai'i 96817  
(808) 533-3454 \* henry@lifeoftheland.net

---

February 5, 2007

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

Thomas S. Witten  
PBR Hawai'i, ASB Tower  
1001 Bishop St., Ste. 650  
Honolulu, HI 96813

Office of Environmental Quality Control  
235 S. Beretania St., Suite 702  
Honolulu, Hawaii 96813

re: Moloka'i Ranch's La'au Point DEIS

Aloha Mr. Whitten,

My name is Henry Curtis and I am Executive Director of Life of the Land, Hawai'i's own environmental and community action group advocating for the people and the 'aina since 1970. Our mission is to preserve and protect the life of the land through sustainable land use and energy policies and by promoting open government through research, education, advocacy, and litigation.

Hawai'i is facing an acute housing shortage for its working population. Many developers are proposing high-end apartment, condo, hotel and residential units. Few are proposing units for the working class. What percentage of your units will be for people earning (a) 60%, (b) 80%, (c) 100%, and (d) 140% of the median income for Moloka'i and for the State

of Hawai'i?

With each new high end development, it is often argued that we are raising the economic base to provide for additional working class residential units. (a) How many units has your company built in the last ten years? (b) What percentage were affordable? (c) How could that percentage be increased?

With the release of the IPCC 4th Assessment, current and future climate variability is making headlines. How will your project impact climate change? Specifically (a) what percentage of your electrical load will be provided by renewable energy? (b) What specific energy efficiency policies will you employ? (c) What is the increase in (1) air travel and (2) marine travel you anticipate during the building and during the use of your project? (d) What percentage of your commercial and residential units will be built at three feet above mean sea level or less?

Will your project lead to a decrease in isolated areas?

How will your project affect (a) traffic congestion; (b) the loss of open space; (c) diverse agriculture (d) urban sprawl and (e) infrastructure?

The term sustainability is in vogue at the State Capitol this year. (a) How do you define sustainability? (b) Will your project lead to greater sustainability? (c) Can sustainability occur during periods of rapid economic and population growth? (d) Will you market your development to locals, on the mainland, and/or elsewhere? Please elaborate.

Mahalo,

Henry Curtis  
Executive Director



November 1, 2007

Henry Curtis  
Life of the Land  
76 North King Street, #203  
Honolulu, Hawai'i 96817

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Curtis:

Thank you for your letter dated February 5, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). We would like to respond to your comments.

1. *What percentage of your units will be for people earning (a) 60%, (b) 80%, (c) 100%, and (d) 140% of the median income for Moloka'i and for the State of Hawai'i?*

**Response:** None of the 200 lots within the project area are designated for affordable housing. As discussed in Section 4.8.2 of the Draft EIS, in order to satisfy affordable housing requirements for Maui County, MPL is designating land in Maunaloa, Kualapu'u, and Kaunakakai to be developed by the Molokai Community Development Corporation (CDC), and providing the necessary funding from a net 5 percent of lot sale revenue from the Lā'au development (estimated to initially be \$10 million). The number of units per percentage of median income will be determined by the CDC and/or Maui County criteria.

2. *(a) How many units has your company built in the last ten years? (b) What percentage were affordable? (c) How could that percentage be increased?*

**Response:** MPL built the Nani Maunaloa 70-unit affordable housing rental project in the 90s. However, regrettably, more than 20 of these rental units continue to remain vacant because of the parlous financial situation of the West End.

In recent months, we have confirmed a 10-unit affordable housing project for Maunaloa that will be under construction before the end of calendar 2007.

We sincerely hope regulators will approve the *Community-Based Master Land Use Plan for Molokai Ranch* (Master Plan) and this project so MPL is able to partner with the CDC in further community homes projects.

3. *How will your project impact climate change? Specifically (a) what percentage of your electrical load will be provided by renewable energy? (b) What specific energy efficiency policies will you employ? (c) What is the increase in (1) air travel and (2) marine travel you anticipate during the building and during the use of your project? (d) What percentage of your commercial and residential units will be built at three feet above mean sea level or less?*

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

**Response:** Energy-efficient practices and technologies have been incorporated into the Lā'au Point Covenants, Codes, and Restrictions (CC&Rs), as discussed in Section 2.3.6 of the Draft EIS. Nothing will be built at three feet above mean sea level or less.

4. *Will your project lead to a decrease in isolated areas?*

**Response:** Yes.

5. *How will your project affect (a) traffic congestion; (b) the loss of open space; (c) diverse agriculture (d) urban sprawl and (e) infrastructure?*

**Response:** (a) The TIAR states no significant impact to traffic; this was discussed in Section 4.4 of the Draft EIS; (b) As shown on Figure 1 of the Draft EIS, the project will utilize 460 acres for residential lots, roadways, and infrastructure. However, the project, and the Master Plan which it is a part of, will place over 50,000 acres into permanent open space. In addition, only 30 percent of the residential lots will be buildable area. (c) As discussed in Section 3.4 of the Draft EIS, the project will not take land out of agriculture. The implementation of the Master Plan will add agricultural easements; (d) Section 4.9 of the Draft EIS discussed infrastructure.

6. *(a) How do you define sustainability? (b) Will your project lead to greater sustainability? (c) Can sustainability occur during periods of rapid economic and population growth? (d) Will you market your development to locals, on the mainland, and/or elsewhere?*

**Response:** (a) In this case, sustainability is defined as being sustainable ecologically, environmentally, economically, socially, and culturally. The project is envisioned as having minimal impact on water, energy use, the environment, and the society and culture of Moloka'i; (b) We believe so in that it creates a sustainable economic future for Moloka'i through the re-opening of the Kaluako'i Hotel, the creation of jobs from the Hotel, the creation of jobs from the development, and the job certainty for MPL's 140 employees; (c) This question is unrelated to the project specifics; (d) Yes we would like lots to be purchased by residents from all of the Hawaiian islands.

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

Sincerely,

A handwritten signature in dark ink, appearing to read 'Peter Nicholas'.

Peter Nicholas  
President and CEO  
Molokai Properties Limited

Mr. Henry Curtis  
SUBJECT: LĀ'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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## NATIVE HAWAIIAN LEGAL CORPORATION

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February 1, 2007

Peter Nicholas/Harold Edwards  
Molokai Properties Limited  
745 Fort Street Mall, Ste. 600  
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Thomas Witten  
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1001 Bishop St., Ste. 650  
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Anthony Ching  
State Land Use Commission  
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Genevieve Salmonson  
OEQC  
235 S. Beretania St. #702  
Honolulu, HI 96813

Re: COMMENTS ON DEIS FOR LĀ'AU POINT

Dear Messrs. Nicholas, Edwards, Witten, Ching and Ms. Salmonson:

The Native Hawaiian Legal Corporation submits these comments on behalf of our clients, the Moloka'i Homestead Farmers Alliance and Wayde Lee.

The DEIS does not come close to meeting the legal standards that an EIS must meet.

The LUC has a responsibility pursuant to HRS chapter 343, the public trust doctrine, and Native Hawaiian rights to ensure that the EIS thoroughly and completely assesses the impacts of a project requiring its approval. HRS § 343-5(c) provides that the "authority to accept a final statement shall rest with the agency receiving the request for approval"; it is not the applicant's

*Services made possible with major funding from the Office of Hawaiian Affairs.*



Niolo, Uuright, stalcht, stalny, tall and straight as a tree without branches; sharply peaked, as mountains. Pig, righteous, correct.

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decision as to whether the FEIS is sufficiently detailed and complete. The fact that the agency has to make an independent decision is re-enforced by decisions of the Hawai'i Supreme Court: *Ka Pa`akai O Ka`aina v. Land Use Commission*, 94 Hawai'i 31, 51, (2000) and *Kelly v. 1250 Oceanside Ptms*, 111 Haw. 205 (2006).

The public trust doctrine requires that the LUC

take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process. Thus, the state may compromise public rights in the resource pursuant only to a decision made with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state. Such a duty requires DOH [and the LUC] to not only issue permits after prescribed measures appear to be in compliance with state regulation, but also to ensure that the prescribed measures are actually being implemented after a thorough assessment of the possible adverse impacts the development would have on the State's natural resources.

*Kelly v. 1250 Oceanside Ptms*, 111 Haw. 205, 231 (2006) (internal citations and marks omitted).

The applicant likewise has important duties. It must adhere to the EIS rules. These rules provide that an "EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action." HAR § 11-200-14. It is clear that the applicant has not taken its responsibilities seriously. The applicant has ignored many of the questions and concerns raised by the Moloka'i Homestead Farmers Alliance, Glenn Teves, Steve Morgan and DeGray Vanderbilt. What purpose is consultation if these questions are going to be ignored?

These comments specifically incorporate herein the comments made by the Moloka'i Homestead Farmers Alliance, Glenn Teves, Steve Morgan and DeGray Vanderbilt on the EISPN.

### IMPACTS FROM PROPOSED WATER PUMPING AND USE

In his response to the comments our office submitted on behalf of the Moloka'i Homestead Farmers Alliance, Thomas Witten writes, "potential impacts of the proposed use of the Kākalahale Well will be addressed in the permitting process for this well. . ."

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The EIS cannot ignore, and the Land Use Commission may not disregard, water issues under the premise that the Water Commission will consider the issue at some future date. In *Mauī Tomorrow v. BLNR*, 110 Haw. 234, 245 (2006), the Hawai'i Supreme Court recognized that the BLNR could not make a decision that could adversely affect Native Hawaiian rights subject to a future CWRM decision. The LUC, like the BLNR, is under the duty to protect Native Hawaiian rights and public trust resources.

No EIS can be accepted until after USGS completes the comprehensive modeling analysis that is currently being done. During the Waiola contested case hearing, there was much contention over MPL's failure to provide timely information on its modeling, last minute "re-calibration"; and the untimely production of data upon which conclusions were drawn. The LUC's decisionmaking process on this application will be facilitated if all this information is provided up-front.

The main body of the EIS should disclose the impacts that were projected to occur to the Kualapu'u aquifer from the Waiola Well application. Some of these issues are summarized on pages 126-132 of the cultural impact assessment. This issue should not be minimized, or buried in an appendix. The EIS should explain why there would be any less impact to the aquifer in pumping brackish water instead of potable water.

Some of these impacts are discussed in the materials that are attached to this letter: September 26, 1997 letter from William Meyer to Darrell Yagodich; April 1, 1997 letter from William Meyer to Wayne Nishiki; Direct Witness Statements of Darrell Yagodich, Delwyn Oki, Clyde Satoshi Tamaru, Dan Polhemus, Brendan Harley and Wayde Lee; and the transcripts from the testimony of Wayde Lee and Clyde Tamaru. This information should be provided in the EIS.

The failure to discuss timeframes by which uses of potable water would shift to nonpotable creates significant problems for decisionmakers as well as the resources that will likely be affected by overpumping. Does the applicant promise to not pump any water from the Kākalahale well until after all necessary infrastructure is in place to allow current non-potable uses (such as the golf course and landscape irrigation) to use the non-potable water? And does the applicant promise to not sell any lots until after all this infrastructure is in place?

It is unfortunate that the EIS misleads the LUC and the public by using a false baseline. It asserts that the proposal does not require any more drinking water than what is currently proposed for allocation in the Community-Based Master Land Use Plan for Molokai Ranch (p. 8). The baseline should be either (1) current uses or (2) authorized uses – not proposed uses in a plan that no government agency has ever approved.

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The EIS should address whether the covenants preventing MPL from ever seeking further potable water permits apply to MPL's successors, assignees etc..

The EIS should disclose the nature and location of the easements that MPL claims it possesses to cross DHHL land for the transmission of Kākalahale water.

Who is the author of the "Analysis of the Water Plan for the Community-Based Enterprise Community/Moloka'i Ranch Master Land Use Plan found at Appendix P?"

#### DESALINIZATION

The DEIS too cavalierly rejects desalination as too expensive. It ignores the fact that water costs are passed down to the consumer – a position that the applicant took in the *Waiola* contested case. The figures on page 82 suggest that drinking desalinated water will cost less than triple the cost of groundwater. This price difference is not significant given (1) the small percentage of a household budget spent on water (compared to mortgage, insurance, property tax, homeowner association fees, electricity, sewage bills etc.); (2) the wealth of the people who will buy lots at La'au; and (3) the impact that groundwater withdrawals will have on future DHHL activities and Native Hawaiian practices dependent on freshwater flows near the ocean. In addition, the EIS should compare the capital costs of these ventures and consider how using the power of the sun can lower the kwh costs of desalination.

An independent water purveyor providing desalinated water to La'au homeowners would receive PUC approval to charge an appropriate rate that surely these homeowners could afford. Off-island investors will easily absorb island electricity prices that are more than double what they pay at home. Similarly, they can also pay for desalinated water prices that are triple what they may pay at home.

#### CUMULATIVE IMPACTS

In another case challenging development the west end of Moloka'i and use of water, the Hawai'i Supreme Court held that Chapter 343 "definitely contemplates a consideration of the secondary and non-physical effects of a proposal prior to a governmental approval thereof. And the effects to be studied include the socio-economic consequences of a proposed action, as well as its direct physical impact." *Molokai Homesteaders Cooperative Assn v. Cobb*, 63 Haw. 453, 466 (1981).

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The Hawai'i Supreme Court has also ruled that a group of actions must be treated as a single action when:

- 1) the single action is part of a larger project;
- 2) the single action is a necessary precedent for the larger action; or
- 3) the single action has no independent utility

*Kahana Sunset Owners v. County of Maui*, 86 Hawai'i 66, 74 (1997). See also, HAR § 11-200-7. Furthermore, HAR §11-200-2 provides:

"Cumulative impact" means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Finally, HAR 11-200-17 requires that an EIS discuss "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)."

Page 4 of the DEIS notes that "the Lā'au Point project is crucial to the economic viability of the Plan. Proceeds from the sale of Lā'au Point lots will fund renovations and upgrading of the now-closed Kaluako'i Hotel and Golf Course." See also page 1 of Social Impact Assessment. Thus, the EIS must address not only the impacts caused by the Lā'au development itself, but also increasing tourism from existing levels. If the Lā'au development will fund the re-opening of the Kaluako'i hotel, then the EIS must address the impacts of the equivalent of 56,000 visitor-nights worth of tourists (p. 75). This analysis would include a review of not only the economic benefits, but also environmental, infrastructure and social impacts. As such, it would be useful to examine the study the state produced (through the UH Department of Urban and Regional Planning) on the impacts of tourism growth.

In our letter commenting on the EISPN, we specifically asked that the DEIS disclose what Moloka'i Properties Limited's plans are for the other lands it owns near Hale o Lono Harbor.

#### CC&Rs

In *Hui Alaloe v. Planning Commission*, 68 Haw. 135 (1985), the Hawai'i Supreme Court held that the government could not delegate its duties to a private party. In that case, which also involved development on the west end of Moloka'i, the planning commission had attempted to condition the approval of an SMA permit on the preparation of an archaeological protection plan

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by the developer's archaeologist. The developer's plan would protect those sites that the developer's archaeologist decided were significant. The court noted that the commission could not have made appropriate findings given the delegation of the duty to protect historic sites to the developer. The court emphasized that findings must first be made before approval can be granted, and that an agency cannot delegate to a developer the duty to ensure that resources are protected. *Id.* at 137.

Similarly, in *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawai'i 31, 51 (2000), the Hawai'i Supreme Court held that the LUC could not approve a project conditioned on the developer's future development of a resource management plan.

MPL is proposing to do just what the developers in the *Hui Alaloe* and *Ka Pa'akai* cases proposed. The DEIS repeatedly claims that impacts will be addressed through the CC&Rs, which will be developed by the applicant. For example, the DEIS asserts that "to minimize visual impacts caused by the Lā'au Point project, all homes will be subject to stringent CC&Rs." (p. 7)(p.67). "CC&Rs and design standards for Lā'au Point will encourage energy-efficient building design and site development practices to reduce electrical demand." (p. 9) (p. 86). A shoreline access management plan will be included in the CC&Rs and homeowner orientation and education materials. (p. 63). "The strict CC&Rs attached to Lā'au Point ensure that new residents will have to adhere to values consistent with the Moloka'i community." (p.74 ) "Strict CC&Rs for Lā'au Point will restrict the use of hazardous materials, such as fertilizers and termite treatment." (December 13, 2006 letter from Thomas Witten to NHLC, p.3)

The precise content of these CC&Rs, however, has not been provided to the LUC or the public. If MPL wishes to claim that the CC&Rs will mitigate many of the impacts raised in the EIS, then it must include the exact wording of the CC&Rs.

Furthermore, enforcement of the CC&Rs cannot rest only with the homeowners and the Moloka'i Land Trust. It must also rest with government agencies as well. The public trust doctrine requires that the LUC "ensure that the prescribed measures are actually being implemented." *Kelly v. 1250 Oceanside Ptnrs*, 111 Haw. 205, 231 (2006) (internal citations and marks omitted).

Similarly, the shoreline access management plan must be included in the EIS.

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### AGRICULTURAL EASEMENT

The DEIS reveals that 14,390 "protected" acres that MPL will continue to own will be available for the construction of farm dwellings. The definition of a farm dwelling has been the subject of much controversy and litigation. *See e.g., In the Matter of the Petition for a Declaratory Order of the Sierra Club and David Kimo Frankel*, DR00-23 COL 14 (Land Use Commission, filed October 25, 2000); *Kelly v. Oceanside*, Civ. No. 00-1-0192K (Hokulia). In one instance, a developer labeled a three story dwelling consisting of four bedrooms, six baths, five dressing room areas, two enclosed lanais, a kitchen, a dining room, a living room, and a house keeper room as a "farm dwelling." *In the Matter of the Petition of John Godfrey*, DR94-17 (Land Use Commission, filed December 6, 1994). How is MPL proposing to define farm dwellings for purposes of the agricultural easement? How big can these farm dwellings be? How many can there be? Where will the water come from for farms on these lands?

### HOTEL

It is unclear what kind of guarantee, other than a non-binding statement, that proceeds from the sale of Lā'au Point lots will be spent on the Kaluako'i Hotel.

Given that 72,099 tourists visited Moloka'i in 2004 and that the Kaluako'i Hotel is now closed, how realistic is it that the Kaluako'i hotel can generate 56,000 visitor nights per year?

If the hotel cannot obtain sufficient traffic to break even, will MPL propose more development to subsidize its operations?

What will be the impact generated from this increase in tourist arrivals?

### SCENIC IMPACTS

Unfortunately, the DEIS does not include a simulation of what Lā'au Point will look like after it is developed. The EIS needs to.

The DEIS misleads the public into thinking that the scenic impact is negligible because so much of the land is left in open space. It is irrelevant that each lot is "relatively large" at two acres given their shape. Some lots fronting the ocean appear to be less than 200 feet wide. The open space will not, for the most part, lie between the houses, but will rather stretch mauka and makai of the houses. Given the shape of the lots (long and narrow facing the ocean), the effect (looking from the ocean) will be a row of houses.

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The DEIS fails to include any specific information about the maximum size of the houses.

The maximum height is 25 feet, and, apparently, based on responses to DeGray Vanderbilt, from finished grade. This is quite tall. Couldn't these houses be limited to 15 feet in height?

### ENDANGERED SPECIES

The discussion regarding the endangered monk seal is completely inadequate. Phillip Bruner's field survey is a survey – not an impact analysis. The suggestion that people call NMFS when a monk seal is observed reveals the inadequacy of the EIS.

The reason that monk seals frequent this area is that there are no houses and few people. It is unusual for monk seals to frequent beaches that front subdivisions. The impact of this development is not simply that there will be more interaction between humans and the endangered monk seals. Humans will adversely impact monk seal habitat. How will that affect the health of monk seals and their population? The EIS must assess what impact the development of this area will have on monk seals. The EIS must include an analysis by a monk seal biologist.

The suggestion that people on Moloka'i call the National Marine Fisheries Service when a monk seal is encountered is absurd. What kind of presence does NMFS have on Moloka'i? How many NMFS staff members live and work on Moloka'i? And what kind of mitigation is this????

Finally, a biologist with experience locating hawksbill nesting sites should study whether the area is currently used by the endangered hawksbill. The cultural impact assessment reports that the West End is home to many turtles – although it does not identify the species.

### MARINE ENVIRONMENT

The water quality analysis failed to examine nutrients in a thorough manner. No analysis of nutrient levels was provided in dry conditions as a baseline. Impacts to the marine environment must examine not only sediments, but also nutrients and hydrocarbons. Sources of nutrients include natural fertilizers, wastewater and pets. Hydrocarbons come from cars. What impact will adding these nutrients and hydrocarbons to the land – and thereby into coastal waters from runoff or percolation – have on coastal water quality and marine life?

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The EIS should study the amount of nonpoint source water pollution associated with similar developments and discuss the degradation of coral reefs and coastal water quality caused by similar projects.

The EIS should apply the HSPF model to project post-development total phosphorus load, total phosphorus concentration, total nitrogen load, total nitrogen concentration, nitrate concentration, ammonia concentration, metals concentrations and a pathogen count.

What precisely are the best management practices that will be implemented to control erosion?

Because an EIS is a full disclosure document and because there is no meaningful opportunity for public participation in the approval of erosion control plans, please provide a copy of the erosion control plan and best management practices in the EIS.

The DEIS discloses on page 30 that water quality will be continuously monitored. It fails to discuss what happens if the monitoring detects a problem. What is supposed to take place – and pursuant to what authority – if the water quality monitoring detects a problem?

The drainage maps (exhibit 5 and 6 in Appendix O) are too small to comprehend. Where will the drainage retention and erosion abatement structures be built, and what will they look like?

#### ACCESS TO BEACHES

Will the public be given an opportunity to review the shoreline access management plan before the EIS process is completed?

Will parking be free?

Will parking be closed at night?

Is the amount of parking adequate?

How will Lā'au homeowners located inland (not adjacent to the conservation district) get to the shoreline? Will they travel all the way to the public shoreline access points at the southern and western ends, or will they be able to cut across land within the development to get to the beach?

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Has the old traditional trail been located on the ground and mapped (p. 60)? This information should be in the EIS. The EIS should include the 1886 and 1897 maps that show the trail.

Why are the toilets at the two proposed parks not linked to the wastewater system? Wouldn't coastal resources be better protected if the bathrooms were connected to the developer's wastewater system? Why is the electrical system from the project connecting all the way to Hale O Lono, but the sewage system not linked to the parks?

#### WILDERNESS

The applicant is to be commended for acknowledging that:

- "development of the area will destroy the special quality of Lā'au as a special place of spiritual mana and power. The overall spiritual quality of the Lā'au area as a wahi pana and wahi kapu cannot be quantified and deserves recognition and respect. The Lā'au Point project will have an impact upon the solitude and spiritual resources now existing." (p. 60)
- the area is an "isolated, pristine and spiritual area" (p. 56)
- "A large part of the significance of the Lā'au Point area is that it is raw and untouched. . . Lā'au Point has become an icon of what Moloka'i represents – a rural stronghold and reserve of Native Hawaiian culture, a cultural kipuka. If Moloka'i is 'The last Hawaiian Island' then Lā'au is one of the last untouched Hawaiian places on 'The Last Hawaiian Island.'"

The EIS should identify how many people currently use this stretch of coastline on any given day. How much more use will there be after the 200 houses are built? The character of the area is dramatically affected by the inevitable use by residents of the 200 houses. The EIS should discuss how use by these new residents will affect natural resources in the area, cultural practices and the wilderness experience.

The EIS should discuss the loss of this "unspoiled coastal environment," the impact of this loss to native Hawaiians, the visitor experience, and the affect on visitors return to the islands.

People visit Hawai'i because of the *natural* environment. A VISITOR'S VIEW OF PARADISE: A REPORT ON MAUI'S VISITORS . . . WHY THEY COME, WHAT THEY ENJOY, WHY THEY RETURN) concluded that:

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- The most memorable part of visitors' trip was "excursions into Nature."
- The feature that most visitors said that they would like to see more of was "natural coastlines"
- 91% reported that the preservation of natural areas was very important in their decision to return to visit.

#### MUNITIONS DUMP

The EIS should include a thorough discussion of the former target range, and in particular the munitions dump that the road corridor passes. Has the munitions dump been cleaned up? Are there any plans to clean it up?

#### ALTERNATIVES ANALYSIS

MPL raises the dire prospect of it selling of its holdings of 101 lots, which could then be subdivided into 1500 lots. How many of these lots have water already available to make them (1) marketable and (2) developable? Does the subdivision code allow lots to be subdivided if no source of water is identified and no drinking water infrastructure provided?

MPL rejects various alternatives in which it sells off some of its holdings. But isn't it true that MPL may still proceed with some of the alternatives it rejected after this project is approved?

What are the entitlements on lands that MPL acquired at Kaluako'i?

#### FINANCIAL DATA

MPL has put the issue of its finances on the table (*see, e.g.*, page 64 of the Social Impact Assessment). And HAR § 15-15-50(c)(8) makes this information pertinent as well. MPL cannot, after claiming significant revenue loss, refuse to answer questions that challenge the veracity of such claims.

Steve Morgan raises interesting financial data regarding recent profits from sales at Kaluako'i. His data indicates that MPL is not being candid. DeGray Vanderbilt similarly points to a BIL report that Molokai Properties managed to remain cash positive in the 2004/05 financial year. Is MPL really bleeding?

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The economic impact analysis absurdly assumes that the cost to government to provide services (per person) will remain the same through the year 2023. The modeling also makes no sense since many additional government services are fixed costs regardless of whether the services are provided to ten new residents or 325 new residents.

#### SOCIAL IMPACT

The social impact assessment should have devoted less time to surveys and more time to analysis of social impacts. What will be the affect on crime rates, suicides and other indicators of social disruption that were found on Lana'i? The "assessment" reads more like a rationalization than a real assessment of the impacts of social stratification.

#### ARCHAEOLOGICAL IMPACTS

The EIS must include a map that shows where all the archaeological sites that have been identified are located – particularly with respect to where the houses are proposed.

As OHA commented, view planes between heiau and other cultural sites must be preserved.

Thomas Witten's reply to OHA's letter suggests that buffers around heiau will be nine meters. A nine meter buffer around a heiau and burials is incredibly small.

#### APPLICANT'S TRACK RECORD

The success of any mitigation measures is dependent on the track-record of the applicant. Furthermore, decisionmakers operating under HRS Chapter 205 are supposed to consider the representations and commitments made by the petitioner in securing a boundary. It therefore is absolutely essential for the EIS to discuss problems the developer may have had in the past in fulfilling commitments and representations.

The EIS should fully disclose the nature of all litigation that relates to promises or representations made, the claims that were made and the final disposition of all such cases. The discussion should be even-handed and not rely on self-serving statements.

To what degree have promises in other EAs and EISes, or applications for government approvals for projects that Moloka'i Ranch been kept? Have all the mitigation measures

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mentioned in these documents been implemented? Have there been any violations of the law, citations or warnings issued by government agencies to Moloka'i Ranch?

#### MITIGATION MEASURES

The Hawai'i Supreme Court has held that the public trust doctrine allows government agencies to issue permits only if the agencies must "ensure that the prescribed measures are actually being implemented." *Kelly v. 1250 Oceanside Ptnrs*, 111 Haw. 205, 231 (2006) (internal citations and marks omitted). This duty cannot be met if agencies' monitoring and enforcement programs are understaffed. Please fully discuss how the public can be assured that any proposed mitigation measures will be performed and will be effective. Please describe the county and state government's monitoring and enforcement programs so that we can be assured that promises made will be kept. How much staff do the State Health Department, County Public Works Department and County Planning Department have to ensure that promises are kept? How often can they be expected to visit the site?

The applicant should identify all proposed mitigation measures in a consolidated list. These measures should be written in plain language that is easily enforceable when incorporated into a permit.

#### OTHER ISSUES

Who is building the houses: MPL or lot-owners? In other words, is MPL selling lots, or lots with houses?

The EIS should disclose the current electrical capacity on the island and whether this development will necessitate an expansion.

It should disclose whether an indirect impact will be an increase in electrical rates. It should disclose who pays for the extension of electric lines to the site.

When the applicant states that "a net 5 percent of the sale revenue" will go to the CDC, what exactly does that mean? Who determines the net? What factors go into determining the net? If no profit is generated from this project, does the CDC get any money?

The issue of how the CDC will be funded is important because MPL keeps raising the funding of the CDC as a benefit of the project. The EIS cannot, on the one hand, promote the

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benefits of the project without, on the other hand, describing the mechanism by which these benefits will accrue. If the sale of a LLC rather than land effectively allows the conveyance of land without the collection of the promised money to the CDC, some of the EIS promised benefits are illusory.

Despite Mr. Witten's assurances, there is no guarantee -- and no explanation of any mechanism to ensure -- that profits from this development will be used for hotel revitalization.

The EIS should discuss any risks posed by earth slippage that La'au homeowners would face. The EIS should include a discussion of the soil type and slope and whether development has taken place in similar types of environments in this state. Attached to this letter is a map showing that vertisols are located at La'au. Vertisols are clay-rich soils that shrink and swell with changes in moisture content. During dry periods, the soil volume shrinks, and deep wide cracks form. The soil volume then expands as it wets up. This shrink/swell action creates serious engineering problems and can damage buildings and roads.

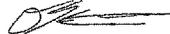
Will the applicant make any commitment to keeping all inadvertently discovered burials in place? Please answer this question: yes or no.

#### RESPONSE TO COMMENTS

As the Hawai'i Supreme Court has observed, the "applicant must respond in writing and address all concerns and questions before proceeding with the development of the EIS. Once this phase of the process is complete, the applicant then begins preparation of the EIS." *Sierra Club v. Office of Planning*, 109 Haw. 411, 415 (2006)(emphasis added). See also, HAR §§ 11-200-15(D), -22(C) and -23.

The applicant ignored or discounted many of the questions asked. These questions must be answered prior to the acceptance of the EIS. These questions include all the questions asked in this letter, our previous letter, as well as others' letters (including the specific financial questions of Steve Morgan and DeGray Vanderbilt).

Sincerely,

  
David Kimo Frankel  
Staff Attorney

Documents attached



IN REPLY REFER TO:

United States Department of the Interior

U.S. GEOLOGICAL SURVEY  
WATER RESOURCES DIVISION  
677 Ala Moana Boulevard, Suite 415  
Honolulu, Hawaii 96813

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September 26, 1997

RECEIVED SEP 29 1997

Mr. Darrell Yagodich  
Department of Hawaiian Home Lands  
P.O. Box 1879  
Honolulu, Hawaii 96805

Dear Mr. Yagodich:

The purpose of this letter is to summarize the general results of our cooperative investigation on the geohydrology of Molokai that has resulted in the reports: "Geohydrology and Numerical Simulation of the Ground-Water Flow System of Molokai, Hawaii" by Delwyn Oki, and "Water Budget for the Island of Molokai, Hawaii" by Patricia Shade.

As you are aware, pineapple was cultivated on Molokai from 1923 to 1988. During this era, there was a higher rate of ground-water recharge and a lower rate of pumpage than there is today. This is true for the island as a whole and also specifically for the area near Kualapuu. The higher rate of recharge resulted from the fact that evapotranspiration from un-irrigated pineapple is less than evapotranspiration from natural vegetation. The increase in ground-water recharge above that for natural vegetation was about 12.7 mgd (million gallons per day) for the island as a whole, with about half of the increase occurring near Kualapuu. Average ground-water withdrawal for the island during the 1950's era of pineapple cultivation was estimated to be 0.731 mgd. Average withdrawal for the area near Kualapuu was 0.421 mgd for the time period 1954-61. The average withdrawal of ground-water for the time period 1992-96 was 6.225 mgd (including 1.822 mgd from the Molokai Irrigation System tunnel) for the island as a whole. The average rate of ground-water withdrawal near Kualapuu for this time period was 2.263 mgd.

During the 1950's and 1960's, measured water levels in the Kualapuu area were about 10 to 12 feet above sea level. Ground-water levels in the area near Kualapuu are currently declining due to this reduction in recharge and the increase in pumpage. The USGS model predicts that ground-water levels will stabilize at about 8 feet above sea level in the vicinity of the existing DHHL wells in the Kualapuu area if the distribution and rates of pumpage that existed from 1992-96 continue unchanged.

Whether or not the existing rate of pumpage can be maintained without the chloride content of the water rising to unacceptable levels at the DHHL wells is unknown. Available data do not allow this question to be completely addressed. In order to address this question with some confidence,

one would need to know the depth to and thickness of the transition zone between freshwater and saltwater in the vicinity of the wells. It would also be necessary to understand how these two factors are changing with time.

One can estimate the depth to the midpoint of the transition zone using the well known Ghyben-Herzberg principle which predicts that, for an abrupt interface between freshwater and saltwater, every foot of freshwater above sea level must be balanced by 40 feet of freshwater below sea level. Because the transition from freshwater to saltwater is not abrupt, the 40 to 1 ratio is used to estimate the depth to the midpoint of the transition zone. This point is commonly referred to as the "interface." Utilization of this relationship for a water level of 8 feet above sea level results in a calculated depth to the interface of 320 feet below sea level. The two DHHL wells extend to a depth of about 90 feet below sea level. Thus, the distance between the bottom of the wells and the theoretical position of the interface would be 230 feet.

Analysis of data from monitor wells on the islands of Oahu, Maui, and Hawaii indicates that the thickness of the transition zone above the interface is about 80 feet in North Kohala on the Big Island (Underwood, Meyer, and Souza, 1995), about 130 to 150 feet in the Iao aquifer on Maui, and about 150 to 325 feet on Oahu (Souza and Meyer, 1995). Using these values as an approximate guide to the thickness of the transition zone above the interface at the DHHL wells on Molokai, it is clear that an 8-foot water level could potentially result in the DHHL wells being intruded by saltwater. Based on this same data, however, it is possible to argue that the transition zone may not reach the wells.

Some indication that the transition zone may be above the bottom of the wells is indicated by the fact that the average chloride content of the water from DHHL well #1 increased by about 25 mg/L in 1991 and the average chloride content of water from DHHL well #2 increased by just over 10 mg/L at the same time. This increase corresponds to the initiation of pumping at the Department of Water Supply well in the Kualapuu aquifer system. The increase is relatively small and the cause is open to argument, but it does suggest that the top of the transition zone may be near the bottom of the DHHL wells. The average chloride content in DHHL wells #1 and #2 over the last six years is about 100 and 80 mg/L respectively.

In summary, the USGS work on Molokai to date indicates that it is currently unclear if the existing pumpage of 2.2 mgd in the Kualapuu area can continue indefinitely without causing saltwater intrusion that would raise the chloride content of the DHHL well water to unacceptable levels.

The USGS model also indicates that pumping an additional 0.8 mgd (above the existing 2.263 mgd) in the vicinity of the Kukui or DHHL wells will cause water levels to decline to about 7 feet above sea level in the vicinity of these wells. Because, as discussed above, it is questionable if an 8-foot water level will allow existing pumpage to continue without saltwater intrusion of the wells, a 7-foot water level simply increases the potential for failure.

The above results indicate that DHHL will probably have to construct new wells in the Kualapuu aquifer system in order to obtain all or at least part of their 2.9 mgd reservation from this aquifer

system. In order to minimize the effects of any additional pumpage on existing wells, DHHL would have to locate their wells as far away from existing wells as possible. A logical direction for DHHL to explore for additional water would be toward Kamiloloa. This consideration is a major factor in determining the potential effect of proposed pumpage in the Kamiloloa aquifer system on DHHL's ability to obtain their reserve.

The effect of the proposed pumpage resulting from the Wai'ola O Molokai and Molokai Ranch application for a water-use permit in the Kamiloloa aquifer system was evaluated with the USGS model and this evaluation indicated that the addition of this pumpage to the existing pumpage will result in water-level declines in the Kualapuu aquifer system ranging from about 0.1 to 1.0 feet, with the greatest declines occurring near the line between the Kualapuu and Kamiloloa aquifer systems. The water-level decline at the existing DHHL wells would be about 0.2 feet. Although this decline is small, it is not inconsequential. If the additional pumpage of 0.8 mgd at the Kukui or the DHHL wells discussed previously results in a decline of about one foot, it is fair to say that a decline of 0.2 feet at the DHHL wells could represent a loss of about 160,000 gpd (gallons per day) production at these wells. Of potentially more importance, however, are the greater draw-downs induced by the proposed pumpage as one proceeds from the existing DHHL wells toward Kamiloloa. Drawdown in the Kualapuu aquifer system caused by the proposed pumpage in the Kamiloloa aquifer system reduces the potential yield from the Kualapuu aquifer system. Because drawdowns from the proposed pumpage increase in the direction that DHHL would most likely explore for additional water, the possibility of DHHL obtaining their reserve may be undermined.

If you have any questions, please feel free to contact either myself or Delwyn Oki at 522-8290.

Sincerely,

  
William Meyer  
District Chief

Attachment



United States Department of the Interior

U.S. GEOLOGICAL SURVEY  
WATER RESOURCES DIVISION  
677 Ala Moana Boulevard, Suite 415  
Honolulu, Hawaii 96813

April 1, 1997

Mr. Wayne K. Nishiki, Councilmember  
Maui County Council  
200 S. High Street  
Wailuku, HI 96793

Dear Mr. Nishiki:

Subject: Proposed Maunaloa Town Center on Molokai

The following comments are offered in response to your memo to me of March 27, 1997. With regard to your first question which was as follows:

1. Is it your understanding that the Kamiloloa aquifer and Kualapuu aquifer on Molokai are not separate and distinct from each other; that pumpage of the Kamiloloa aquifer could potentially affect the yield of the Kualapuu aquifer, and vice versa?

The U.S. Geological Survey's (USGS) view of the two aquifers is that they are not separate and distinct from each other. Pumpage from the Kamiloloa aquifer would be expected to affect the yield of the Kualapuu aquifer and vice versa. This fact is stated in a letter from me addressed to Mr. Keoni K. Agard of the Department of Hawaiian Home Lands dated May 7, 1996, copy of which is enclosed. I have also enclosed a copy of a letter from me to Ms. Loretta Barsamian of the U.S. Environmental Protection Agency (USEPA). The main thought in the letter is that the USGS regards the Island of Molokai as being underlain by a single aquifer. The discussion in the letter is the justification of this thought.

2. Is it your understanding that the designation of Molokai as a sole source aquifer means that the USEPA considers Molokai to have only one aquifer?

In a telephone discussion between Mr. Stephen Anthony of my staff and Ms. Wendy Melgin of the USEPA, that was initiated to address this question, I have the following comments. It is our (USGS) understanding that, in general, the designation of an area by the USEPA as a sole source aquifer does not, in and of itself, mean that the area is underlain by a single aquifer. In the case of Molokai, a technical review of the geohydrologic situation on the island by the USEPA resulted in their designation being based, at least in part, on the fact that they do regard the island as being underlain by a single aquifer.

Mr. Wayne K. Nishiki, Councilmember

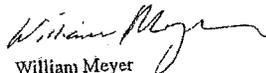
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- 3. If your responses to the above questions are in the affirmative, what types of studies need to be done in order to establish whether or not pumpage of the Kamiloloa aquifer could adversely affect the Kualapuu aquifer's ability to provide water to Hawaiian Home Lands? How long would these studies take to complete?

In one sense, the USGS has addressed the broader implications of this question several times. A copy of pages 30 and 31 from USGS Report #95-4180 is enclosed in partial response to this question. A copy of the report itself is being sent to you under separate cover. This discussion on data needs in this report really deals with the additional type of information necessary to quantify ground-water availability on the island as a whole. It does not deal with the amount of new data, time required to collect it, or the cost of the entire effort. Similar work in other parts of Hawaii has cost up to several millions of dollars when test wells are included. The time required to complete test drilling and other analyses is generally several years also. It is clear from data presently available, however, that pumpage from the Kamiloloa aquifer could reduce the ultimate yield from the Kualapuu aquifer, which in turn could affect the aquifer's ability to provide water to Hawaiian Home Lands. With regard to this specific question, no additional work or studies are required.

If you have any questions, please feel free to contact me at (808) 522-8290 or by Fax at (808) 522-8298.

Sincerely,

  
William Meyer  
District Chief

Enclosures

DIRECT WITNESS STATEMENT OF DARRELL YAGODICH

- 1 Q: Please state your name and occupation.
- 2 A: Darrell Yagodich. I have been employed with the Department of Hawaiian Home Lands
- 3 (DHHL) for 17 years and am currently the Planning Office Administrator.
- 4 Q: What are your general duties and responsibilities?
- 5 A: The Planning Office conducts research and planning studies required for the development
- 6 of policies, plans, and programs to benefit native Hawaiians; provides for the periodic
- 7 review and update of the DHHL General Plan; produces master plans for the development
- 8 of planned communities and subdivisions; develops and recommends the approval of
- 9 programs and administers approved pilot projects. Our office is also responsible for water
- 10 licenses, permit applications filed with the CWRM, and reservation requests.
- 11 Q: Are you familiar with Waiola O Molokai and Molokai Ranch's Water Use, Well
- 12 Construction, and Pump Installation Permit Applications to withdraw approximately 1.3
- 13 mgd of groundwater from the Kamiloloa aquifer?
- 14 A: Yes.
- 15 Q: What are some of the main concerns regarding the Waiola application?
- 16 A: We oppose the Waiola application because we believe it will threaten the ability of the
- 17 State and the Hawaiian Homes Commission to implement their trust obligations towards
- 18 native Hawaiians.
- 19 Q: What are your trust obligations?

1 A: As I understand it, our trust responsibilities are stated in the case of Ahuna v. Department  
2 of Hawaiian Home Lands, decided in 1982 by the Hawaii Supreme Court.

3 Q: Can you summarize your trust obligations?

4 A: As trustees, it is the duty of commissioners to: (1) act exclusively in the interest of the  
5 beneficiaries under the Act; (2) hold and protect the trust property for beneficiaries under  
6 the Act; (3) exercise such care and skill as a person of ordinary prudence would exercise  
7 in dealing with one's own property in the management of Hawaiian home lands; and (4)  
8 adhere to the terms of the trust as set forth in the Hawaiian Homes Commission Act.

9 Public policy articulated in the Hawaii Admission Act, Hawaii State Constitution,  
10 Hawaiian Homes Commission Act, and Water Code authorizes the DHHL and other  
11 public agencies to undertake a range of activities for the benefit of native Hawaiians.

12 The Hawaiian Home Lands program was created by the United States Congress  
13 via provisions of the Hawaiian Homes Commission Act (HHCA), 1920, as amended,  
14 which set aside over 200,000 acres of land for the benefit of Native Hawaiians.

15 The HHCA §220(d) provides for a mandatory reservation of water for  
16 construction of irrigation projects on Hawaiian home lands which states in part, "Sufficient  
17 water shall be reserved for current and foreseeable domestic, stock water, aquaculture,  
18 and irrigation activities on tracts leased to native Hawaiians."

19 In the Admissions Act of 1959, as a condition of Statehood, the people of Hawaii  
20 adopted the HHCA as part of its State Constitution and accepted an obligation to manage  
21 and administer the Hawaiian Home Lands program.

1 Q: How will the Waiola application threaten the Hawaiian Homes Commission's ability to  
2 implement their trust obligations?

3 A: We are concerned that the proposed well site will harm our wells with saltwater intrusion  
4 and limit our ability to secure our water reservation. The DHHL contracted with the  
5 USGS to establish a groundwater model to estimate the interaction between wells on  
6 Molokai. This study entitled, "Geohydrology and Numerical Simulation of the  
7 Groundwater Flow System of Molokai, Hawaii" (Exhibit D-1) was a product of our  
8 cooperative agreement with the USGS. The groundwater model strongly suggests that  
9 the Kualapuu aquifer is overdrawn just with the current authorized uses. The model  
10 predicts that our well levels will drop from the current 11 feet to about 8 feet at  
11 equilibrium. This could raise the chloride concentration in our wells. Chlorides have been  
12 increasing in our wells for the last 10 years. For example, chlorides have increased by  
13 about 20 mg/L in DHHL well 1 (0801-01) and 10 mg/L in DHHL well 2 (0801-02). This  
14 suggests that the bottom of our wells are near the top of the transition zone. If well levels  
15 are decreasing and chlorides are increasing then our ability to draw on our reservation is  
16 also severely reduced. The aquifer may not have the capacity to sustain increased  
17 withdrawals. Since the aquifer appears to be overdrawn, the Waiola application does not  
18 meet the "reasonable-beneficial" requirement as defined in §174C-3.

19 Q: Are you familiar with the water system on Molokai?

20 A: Yes.

21 Q: Can you describe how DHHL supplies potable water to its beneficiaries?

1 A: We have two wells in Kalae, 0801-01 and 02 (Exhibit D-2). These two wells supply about  
2 0.5 mgd of potable water to our Hoolehua and Kalamaula Homestead area. There are 40  
3 miles of transmission and distribution main lines throughout these areas. The system also  
4 includes several storage tanks, pumps, pressure relief valve stations, main valves, the  
5 control and monitoring of water quality, and approximately 425 water meters.

6 Q: Can you describe the Molokai Irrigation System?

7 A: The MIS was completed in 1962 with surface water being captured and dispersed from  
8 the Waikolu Valley via the 0.5 mile tunnel to the MIS. Water is used by diversified  
9 agriculture by farmers on DLNR, Molokai Ranch, and Hoolehua homestead lands.

10 Q: Does DHHL also maintain a dual water system for beneficiary use?

11 A: There are two systems with agricultural water provided from the MIS under the  
12 jurisdiction of the Department of Agriculture to Hoolehua but not in Kalamaula.  
13 Domestic water is provided for homesteaders and non-homesteaders in Hoolehua and  
14 Kalamaula under the jurisdiction of DHHL. The range of agricultural water use in  
15 Hoolehua is 2,700 - 4,000 gpd per acre. The average domestic water use in Hoolehua and  
16 Kalamaula is 1000 - 1500 gpd, respectively.

17 Q: Are there other subdivisions planned for these two areas?

18 A: Yes. Design and construction projects in progress include about 425 more homestead lots  
19 in Hoolehua and Kalamaula to meet the needs of awardees and the 1615 applicants on the  
20 waiting list for homestead lots on Molokai. Leases will include agricultural, pastoral, and  
21 residential lots, and industrial and commercial leases.

1 Q: Does DHHL also support the water needs of other users?

2 A: Yes. We supply water to the Molokai Intermediate School, Kualapuu Elementary School,  
3 Airport, Maui County, Meyer Subdivision in Kalae, Maui Electric Co., the Seventh Day  
4 Adventist Church, and many others.

5 Q: Can you summarize your water use?

6 A: We have a permit to use 0.367 mgd of water which is supplied by our two wells in  
7 Kualapuu, 0801-01 and 02. The two wells supply water to Hawaiian Home Lands and  
8 other lessees in Hoolehua and Kalamaula and is the sole source of drinking water for our  
9 beneficiaries. We have a 2.9 mgd reservation in the Kualapuu aquifer. We have a 0.9  
10 mgd water use permit application on file with the CWRM to further service our  
11 beneficiaries in Hoolehua and Kalamaula. Future water use would come from our  
12 reservation.

13 Q: Who will be providing expert witness testimony for the Department of Hawaiian Home  
14 Lands regarding the groundwater study?

15 A: Delwyn Oki of the USGS will discuss the methods used in the study. His curriculum vitae  
16 is attached (Exhibit D-3). Bill Meyer of the USGS will discuss the model findings and its  
17 implications. His curriculum vitae is attached (Exhibit D-4). Bill Meyer also reviewed the  
18 groundwater model submitted by Waiola and will provide testimony on this (Exhibit D-5).  
19 His testimony will include a discussion on the State's guidelines for groundwater model  
20 reports (Exhibit D-6).

21 Q: Does DHHL have a reservation of water on Molokai?

1 A: Yes. Pursuant to HAR §13-171-63, the DHHL has a reservation of 2,905 mgd of water  
2 in the Kualapuu aquifer system. It is our understanding that decisions of the CWRM shall  
3 protect reserves of water for current and foreseeable development and use of Hawaiian  
4 Home Lands, HRS §174C-101(a), as set forth in HHCA §221. Conditions for a permit  
5 will not interfere with the rights of the DHHL, HRS §174C-49(a)(7). All permits issued  
6 by the CWRM shall be subject to the rights of the DHHL, HRS §174C-(49)(e).

7 Q: Can you summarize your trust activities on Molokai?

8 A: The DHHL has 25,383 acres of land on Molokai in Hoolehua, Kalamaula, Kalaupapa,  
9 Kamiloloa, Kapaakea, Makakupaia, and Ualapue. As of August, 1996, there were 812  
10 homestead leases on Molokai and 1,615 applicants on the waiting list. Construction and  
11 design projects in progress include almost 300 homestead lots in Hoolehua and Kalamaula  
12 to meet the needs for homestead lots on Molokai. Leases will include industrial and  
13 commercial leases, agricultural, pastoral, and residential lots. Water requirements for the  
14 new uses will be about 0.9 mgd. A water use permit application, first submitted in  
15 November 1996, is on file with the CWRM.

16 Q: Are you concerned with the effects on the utility and capacity of infrastructure  
17 improvements paid for with public and trust funds which provide water to the Molokai  
18 Irrigation System, Airport, High School, and Kualapuu Elementary?

19 A: Yes. The DHHL derives trust revenues from water licenses and other leases. The DHHL  
20 has over 25,000 acres under lease or license, including 12,599 acres considered revenue  
21 producing. Some of these leases and licenses contain provisions for water use.

1 Approximately \$400,000 is generated annually and is expected to increase with over 1600  
2 applicants on the waiting list and as other lands become developed. This revenue is placed  
3 back into our trust operating budget. We supply water to the Airport, Kualapuu  
4 Elementary and Molokai High, and Hawaiian Research, Ltd., among others. It is our  
5 understanding that decisions of the CWRM shall not diminish or extinguish trust revenues  
6 derived from existing water licenses unless compensation is made, HRS §174C-101(b).

7 Q: Are there concerns that the withdrawal of water from the Kamiloloa aquifer may adversely  
8 impact the Alii Fishpond located within Kamililoa?

9 A: Yes. The USGS model predicts freshwater discharge will be reduced in coastal springs.  
10 Model results indicate that 95 percent of the coastal discharge reduction will occur over a  
11 13-mile stretch of southern coastline. Coastal discharge is reduced by 3 percent within  
12 this 13-mile stretch of coastline. Waiola must demonstrate that this reduction is  
13 springflow will not interfere with the springs feeding the fishponds, spawning grounds, and  
14 limu grounds along the Kamiloloa shoreline.

15 Q: Are you concerned that the Waiola well site will interfere with DHHL's water reservation?

16 A: Yes. Waiola submitted a Nance-McNulty groundwater model which concludes that well  
17 levels will fall to 5 feet with current authorized uses. This does not include utilizing our  
18 reservation. This is in general agreement with the USGS study. As such, we don't believe  
19 the aquifer has the capacity to support further pumping. We believe the CWRM should  
20 deny Waiola their permit on this basis.

1 The USGS questions whether an 8-foot well level will allow existing withdrawals  
2 to continue without saltwater intrusion. The Nance-McNulty model shows a 5-foot well  
3 level. As a result, the DHHL would probably have to construct new wells in Kualapuu in  
4 order to obtain all or part of our reservation. We would probably have to site our new  
5 well as far from existing wells as possible. A logical direction would be to explore for  
6 additional water near the Kamiloloa boundary. The 2-5 foot drawdown from the  
7 proposed Waiola site, as shown in the Nance-McNulty model, would have a considerable  
8 effect on our ability to secure our reservation.

9 Q: Any other concerns regarding the Nance-McNulty groundwater model?

10 A: Waiola has not provided enough information regarding the Kamiloloa aquifer's ability to  
11 supply their requested amount, its effect on Kualapuu, or on the coastal springs along the  
12 southern shore. They have not supplied the necessary documentation per the state's  
13 guidelines to support their application for water use (Exhibit D-6). We believe the  
14 CWRM should deny the Waiola application on this basis.

15 Q: Are there other concerns regarding the USGS groundwater model?

16 A: Yes. The model concluded that we need more information to advance decision making.  
17 Such information would require the placement of a monitoring well or well field to  
18 accurately describe the transition zone which we know very little about. We believe the  
19 CWRM should defer decision making on the Waiola application until a monitoring well is  
20 in place and results permit additional withdrawals.

21 Q: Are there other concerns regarding current withdrawals in Kualapuu?

1 A: Yes. We understand that the Kualapuu aquifer is overdrawn and that permit holders are  
2 withdrawing more than their authorized amount. We have requested the CWRM to  
3 investigate and take corrective action if necessary.

4 Q: Does the DHHL claim appurtenant or riparian rights in the area?

5 A: Yes. The DHHL claims appurtenant and riparian rights to spring water flowing into the  
6 fishponds and nearshore waters along the southern portion of Molokai pursuant to §174C-  
7 101. Native Hawaiians practice aquaculture and limuculture in the Alii Fishpond area.  
8 Groundwater pumping may have a one-to-one affect on spring flow along the southern  
9 shore of Molokai where the DHHL has property. Spring flow may be reduced in the  
10 ponds which may affect the quality of the nearshore fisheries habitat.

11 Q: Any other concerns regarding the Waiola application?

12 A: We are concerned with the submittal of three permits at one time. We don't believe this  
13 to be prudent in a water management area. We believe separate applications should be  
14 filed with the public comment period preserved. We feel this would be in the public's best  
15 interest as well as our own as defined in the statement of policy objective in §174C-2(c).

16 Q: Can you summarize why DHHL opposes the Waiola application?

17 A: We believe the proposed use of water does not meet the criteria for the issuance of a  
18 water use permit as provided in HRS §174C-50(b) for the following reasons: (1) it will  
19 threaten the ability of the State and the Hawaiian Homes Commission to implement their  
20 trust obligations towards native Hawaiians. The Waiola application would harm our  
21 wells, our sole source of drinking water for our beneficiaries, with increased chlorides; (2)

1 it would harm our ability to secure our water reservation; (3) reduce revenues from  
2 current and future water leases; (4) diminish our riparian and appurtenant rights as seen by  
3 reduced aquaculture yields; (5) the USGS and the Nance-McNulty model both conclude  
4 that the Kualapuu aquifer is hydrologically connected to the adjoining Kamiloloa aquifer  
5 and is overdrawn; (6) the Nance-McNulty model does not meet the state's guidelines for  
6 documentation of groundwater model reports, is therefore incomplete, and otherwise does  
7 not support Waiola's contention that water is available for withdrawal; (7) the Water Use,  
8 Well Construction, and Pump Installation Permit Applications should be submitted in an  
9 orderly fashion with the public comment period preserved.

10 In the event the CWRM does not deny the Waiola application, we request the  
11 CWRM to defer action on the Waiola application until a monitoring well is drilled and the  
12 transition zone is better understood.

#### DIRECT WITNESS STATEMENT OF DELWYN OKI

Q: Please state your name and occupation.

A: My name is Delwyn Oki and I am a hydrologist with the U.S. Geological Survey.

Q: Please describe your relevant education and background.

A: I have a Ph.D. in Geology and Geophysics from the University of Hawaii. My dissertation was on modeling the effects of pumping, barometric pressure, and ocean tides on ground-water levels in northern Oahu. I also have a Bachelor of Science and Master of Science degree in Civil Engineering from the University of Hawaii. I have published articles in peer-reviewed journals on various topics related to ground-water hydrology in Hawaii.

Q: Have you participated in or conducted any studies related to the ground-water flow system on Molokai?

A: Yes.

Q: Were you the author of the U.S. Geological Survey report "Geohydrology and Numerical Simulation of the Ground-Water Flow System of Molokai, Hawaii?"

A: Yes.

Q: Was the report peer-reviewed?

A: Yes.

Q: As part of your study, did you develop a numerical ground-water flow model for the entire island of Molokai?

A: Yes.

Q: Is the model the best available tool for estimating the long-term effects of current and additional withdrawals on ground-water levels on Molokai.

A: Yes.

Q: What numerical code did you use for your model?

A: The code used was AQUIFEM-SALT, which is a U.S. Geological Survey code written by Clifford I. Voss (Water-Resources Investigations Report 84-4263). The code has been used for studies on Oahu, Hawaii, and now Molokai, where freshwater lenses exist.

Q: Does your model account for aquifer system boundaries as used by the State Commission on Water Resource Management?

A: The aquifer system boundaries used by the Commission on Water Resource Management were drawn primarily on the basis of topographic considerations which may not be relevant from a ground-water flow standpoint. Thus, the aquifer system boundaries were not used in the model.

Q: Does your model account for any geohydrologic barrier along the line separating the Kamiloloa and Kualapuu aquifer systems?

A: No. Although there are volcanic vents in the area, there is no evidence for a barrier running along the line separating the Kamiloloa and Kualapuu aquifer systems.

Q: Does your model account for the different geological settings on Molokai?

A: Yes. Zones were created in the model to account for different geological settings. For instance, separate zones were created for the dike-complex areas and dike-free areas to account for differences in permeability. Dike-complex areas generally have a lower overall permeability than dike-free areas.

Q: What was the basis for defining the geometry of the zones?

A: The model zones were defined on the basis of published information.

Q: What does your model simulate?

A: Within the modeled area, the numerical model simulates ground-water flow and the

distribution of freshwater heads, commonly represented by water levels, for steady-state conditions. The model also simulates discharge to the ocean, streams, and wells.

Q: What is meant by steady-state?

A: Steady-state means that conditions do not change with time. For steady-state conditions to exist in a ground-water flow system, recharge, discharge, and water levels must not change with time. Steady-state conditions generally do not exist in hydrologic systems because of changes in rainfall or withdrawal rates. When viewed over long time periods, however, some hydrologic systems do approach steady-state conditions.

Q: Why does your model simulate steady-state conditions?

A: We do not have enough data to predict the daily, seasonal, or interannual variations in pumping rates or recharge rates. In any event, we were mainly interested in studying the long-term hydrologic effects of pumping at a given rate. Steady-state simulations allow us to estimate the ultimate distribution of water levels and coastal discharge for given withdrawal and recharge rates.

Q: How do you test whether the model is properly representing the system?

A: The model must be able to reproduce a set of measured conditions. For the Molokai model, I attempted to represent conditions for the period 1954-61. During this period, withdrawals, water levels, and rainfall were relatively steady. I varied the distribution of hydraulic characteristics in the model until model-calculated and measured water levels were in general agreement, and model-calculated and estimated spring discharge were in general agreement.

Q: What was the average reported pumpage during the period 1954-61?

A: Total reported pumpage during 1954-61 averaged about 0.7 million gallons per day.

Q: What was the ground-water recharge for the period 1954-61 that was assumed to contribute to the modeled ground-water system?

A: Total recharge used in the model for the period 1954-61 was 200.0 million gallons per day.

Q: How was the recharge estimated?

A: Recharge was estimated by a monthly water-budget model that accounts for spatially varying rainfall, runoff, evapotranspiration, soil moisture storage, and recharge.

Q: Does the water-budget model account for the effects of evapotranspiration suppression by pineapple plants?

A: Yes.

Q: What were the measured water levels in the Kualapuu area during the period 1954-61.

A: About 10 to 12 feet above sea level.

Q: Did the model represent the water level in the Kualapuu area properly?

A: Yes, the model simulated a water level of about 11 feet above mean sea level in the Kualapuu area.

Q: Did you then simulate the long-term effects of pumping at the average 1992-96 withdrawal rates?

A: Yes, I simulated a base-case scenario in which withdrawals were assumed to be at the average 1992-96 rates.

Q: What was the average reported withdrawal rate during the period 1992-96?

A: Total withdrawals during 1992-96 averaged about 6.2 million gallons per day, which includes about 1.8 million gallons per day of gravity flow to the Molokai Irrigation System tunnel. Reported ground-water pumpage data were obtained from the Commission on Water Resource Management.

Q: What was the recharge you used for this base-case scenario to estimate the long-term effects of pumping at the average 1992-96 withdrawal rates?

A: Total recharge used in the model for this simulation was 187.3 million gallons per day. Recharge was estimated for natural vegetation conditions and is documented by Patricia J. Shade in a separate U.S. Geological Survey report (U.S. Geological Survey Water Resources Investigations Report 97-4155). Recharge for natural vegetation is less than estimated for the period 1954-61 because of the loss of pineapple cultivation. Results of the water-budget model indicate that pineapple cultivation on Molokai increased ground-water recharge, relative to natural vegetation conditions, by about 13 million gallons per day.

Q: What was the long-term model-calculated water level in the vicinity of the existing DHHL wells near Kualapuu in the base-case scenario?

A: About 8 feet above sea level.

Q: Is there any evidence that chloride concentrations in pumped water from wells near Kualapuu have been increasing in the past 10 years?

A: Yes. Since 1991, chloride concentrations in pumped water from DHHL well 1 (0801-01) have increased by about 20 mg/L (milligrams per liter). Since about 1990, chloride concentrations in pumped water from DHHL well 2 (0801-02) have increased by about 10 mg/L. The chloride concentrations in pumped water from both DHHL wells, however, have remained below 250 mg/L, which is the maximum contaminant level established by the U.S. Environmental Protection Agency under the secondary drinking-water standards.

Q: Did you also simulate the hydrologic effects of additional withdrawals beyond the average 1992-96 rates?

A: Yes, I simulated three additional scenarios.

Q: Can you describe scenario 1?

A: In scenario 1, I simulated about 0.3 million gallons per day additional withdrawal at the site of the proposed Waiola well. All other conditions were the same as in the base-case scenario.

Q: Can you describe the effects on water levels caused by pumping the additional 0.3 million gallons per day?

A: Model-calculated water-level drawdown was greatest in the vicinity of the proposed well, and decreased with distance from the well. Model-calculated water-level drawdown within 0.5 mile from the proposed well is greater than 0.2 feet. Model-calculated drawdown in the vicinity of the existing DHHL wells near Kualapuu is greater than 0.05 feet and less than 0.1 feet. Model results indicate that drawdown of 0.01 feet or more extends as much as 6 miles northwest of the proposed well site. At the coast, model-calculated drawdown is less than 0.01 feet, and within a mile of the coast, model-calculated drawdown is less than 0.05 feet.

Q: Can you describe the effects on coastal discharge caused by pumping the additional 0.3 million gallons per day?

A: For steady-state conditions, natural ground-water discharge will be reduced by an amount equal to the human-induced ground-water withdrawals. Thus, the model-calculated natural ground-water discharge was reduced by 0.3 million gallons per day. Model results indicate that 95 percent of the coastal discharge reduction will occur over a 13-mile stretch of southern coastline. Relative to the base-case scenario, coastal discharge is reduced by 0.8 percent within this 13-mile stretch of coastline. The largest effects will occur in areas nearest the well. The effects diminish with distance from the well.

Q: Can you describe scenario 2?

A: In scenario 2, I simulated 1.3 million gallons per day additional withdrawal at the site of the proposed Waiola well. All other conditions were the same as in the base-case scenario.

Q: Can you describe the effects on water levels caused by pumping the additional 1.3 million gallons per day?

A: Model-calculated water-level drawdown within 0.5 mile from the proposed well is greater than 0.5 feet. Model-calculated drawdown in the vicinity of the existing DHHL wells near Kualapuu is greater than 0.1 feet and less than 0.5 feet. Model results indicate that drawdown of 0.01 feet or more extends as much as 9 miles northwest of the proposed well site. At the coast, model-calculated drawdown may exceed 0.01 feet but is less than 0.05 feet. Near Kaunakakai, model-calculated drawdown within a half mile of the coast is about 0.1 feet.

Q: Can you describe the effects on coastal discharge caused by pumping the additional 1.3 million gallons per day?

A: The model-calculated natural ground-water discharge was reduced by 1.3 million gallons per day. As in scenario 1, model results indicate that 95 percent of the coastal discharge reduction will occur over a 13-mile stretch of southern coastline. Relative to the base-case scenario, coastal discharge is reduced by 3 percent within this 13-mile stretch of coastline.

Q: Can you describe scenario 3?

A: In scenario 3, I simulated 0.8 million gallons per day additional withdrawal at the site of the existing Kukui well 0901-01. All other conditions were the same as in the base-case scenario.

Q: Can you describe the effects on water levels caused by pumping the additional 0.8 million gallons per day?

A: Model-calculated drawdown in the vicinity of the existing DHHL wells near Kualapuu is about 1 foot. Model results indicate that drawdown of 0.01 feet or more extends as much as 8 miles northwest of the proposed well site.

Q: Can you describe the effects on coastal discharge caused by pumping the additional 0.8 million gallons per day?

A: The model-calculated natural ground-water discharge was reduced by a total of 0.8 million gallons per day. Along a 6-mile stretch of northern coastline, discharge is reduced by 0.1 million gallons per day, which represents a reduction of about 3 percent relative to the base-case scenario. Discharge is reduced by about 0.7 million gallons per day along the southern coast, over a stretch of coastline that is at least 10 miles long.

Q: In the report, do you describe the limitations of the model?

A: Yes.

Q: What are some of the model limitations?

A: Water-level data are not available for many areas of Molokai. Because of the limited spatial distribution of measured water levels, the model is unverified in places. In addition, the model developed is not unique. That is, different distributions of hydraulic characteristics could conceivably produce equally acceptable model-calculated water levels. Additional data are needed to better estimate the hydraulic-conductivity distribution on the island. Another important limitation is that the model cannot predict salinity changes, either at the regional- or local-scale.

Q: What would help to address these limitations?

A: More data are needed to address the limitations. Drilling of additional monitoring wells would help to better define the spatial distribution of water levels on Molokai. Deep

monitoring wells that are drilled through the transition zone between freshwater and saltwater would help to estimate the availability of fresh ground water. Aquifer tests should be conducted to obtain independent estimates of hydraulic conductivity throughout the island.

Q: If the model is not unique, how can it be used to simulate the effects of current and additional withdrawals on ground-water levels on Molokai?

A: Although it is possible that different distributions of hydraulic characteristics could conceivably produce equally acceptable model-calculated water levels, the values for the hydraulic characteristics estimated in the model represent the actual values as closely as available data will reasonably allow.

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BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of the Contested ) CCH-MO 96-1  
Case Hearing on Water Use, Well )  
Construction, and Pump ) INTERVENORS MARTIN KAHAE,  
Installation Permit ) ET ALS.  
Applications Filed by Wai'ola )  
O Molokai and Molokai Ranch Ltd. ) DIRECT WITNESS STATEMENT OF  
CLYDE SATOSHI TAMARU

CASE NO.: CCH-MO96-1  
WITNESS: CLYDE SATOSHI TAMARU  
(TESTIMONY: B-T-13)  
PAGE 1 OF 5

DIRECT WITNESS STATEMENT OF CLYDE SATOSHI TAMARU

- 1 Q. What is your name?  
2 A. Clyde Satoshi Tamaru  
3 Q. Where are you employed?  
4 A. I am an Aquaculture specialist for state DLNR (Aquaculture Development Program). I  
5 also am on the faculty at UH Hawaii Sea Grant Extension Service. I started in the  
6 joint position in 1995.  
7 Q. Where were you employed previously?  
8 A. Between 1981-93, I worked at the Oceanic Institute as principal investigator and  
9 program manager, working in aquaculture. From 1993-95, I was a consultant, working  
10 throughout Southeast Asia on fisheries and aquaculture projects.  
11 Q. What is your educational background?  
12 A. I earned my Ph.D in agriculture from University of Tokyo in 1981. My degree is  
13 from the Department of Fisheries in Faculty of Agriculture at the University of Tokyo.  
14 Rest of world sees aquaculture as agriculture. I have provided a curriculum vitae  
15 which summarizes my background and publications. I've marked it at Exhibit B-22.  
16 Q. Given this training and background can you offer a professional opinion on the role of  
17 fresh water in the life cycle of the fish you studied?  
18 A. Yes, I believe my academic and professional background qualifies me to render an  
19 opinion based on my training and education in the field of aquaculture.

1 Q. Is the life cycle of fish like mullet and wholehole tied to the inflow of fresh water from  
2 the land into coastal areas?

3 A. In order to understand any answer to that question, you have to appreciate the pattern  
4 fish follow in their life cycle. When mullet or ama'ama are fry, up to one month old,  
5 they are predators, eating zooplankton in the open ocean. Then they move to  
6 nearshore areas where they switch to an omnivore diet, and feed on diatoms, a benthic  
7 plant usually found on the bottom of estuaries where brackish water and sunlight mix  
8 to allow for their growth. They stay on this diet for the rest of their lives, feeding in  
9 estuaries and stream mouth areas which are conducive to this plant. Fishermen often  
10 know these locations in their areas.

11 The wholehole will follow a similar pattern. However, they are planktivores,  
12 feeding on small shrimp, crustaceans and baby fish. Thus, wholehole rely on nearshore  
13 areas for their nurseries.

14 Brackish water environments also support the fries of the uiua and moi  
15 indirectly which provide their fry, in the summer months when they spawn, a place to  
16 grow. These fry, the papio and moili'i, stay in shallows to feed and for protection  
17 from predators. They rely on food sources like opae, and other fry or pua (of awa and  
18 ama'ama). In turn, the opae eat diatoms, which are on the bottom part of the food  
19 chain. Brackish water brings in nutrients on which phytoplanktons and diatoms feed.  
20 This food pyramid is depicted in Exhibit B-23.

21 Q. What is the significance of understanding this relationship?

1 A. These fish depend on this natural food web or chain, of which fresh water is an  
2 integral part. If you disturb the base of this chain or web, everything is disrupted  
3 above the pyramid. Furthermore, this disturbance is not proportional. For a  
4 disturbance in any lower level of this pyramid, the effects above are exponential - e.g.,  
5 if you decrease populations in the bottom by half, the impact on higher level  
6 populations is ten-fold, where the fish is situated.

7 Q. So how do you protect fish stocks that have been depleted?

8 A. You need to protect estuaries, which are critical to restoring fisheries, especially for  
9 the fish species I've mentioned, long depleted by this lack of understanding. We can  
10 artificially stock fry in the ocean, but without healthy ecologies in estuaries, it's  
11 pointless, they'll all die off without this natural habitat. For example, if you restock  
12 O'ahu areas like Punalu'u with mullet fry, where there is limited brackish  
13 environments and nurseries, the fry will not stay around, migrating to Kahana Bay  
14 where there are fresh water inflows. In contrast, in Hilo, the populations stay in the  
15 area, where estuaries are less disturbed, allowing for recovery of the species and  
16 habitats. The principle would be the same in any fishery where you have fresh water  
17 input. The biggest reason for decline in a whole variety of fish populations is the  
18 disruption of the life cycle I've described by both habitat destruction and overfishing.  
19 Without fresh water, you interrupt this life cycle.

20 Q. Is fresh water the only reason for the decline of fish in many parts of Hawaii?

21 A. Overfishing and other contributions to habitat destruction are definitely other factors in

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT  
OF THE STATE OF HAWAII

In the Matter of the ) Case No.: CCH-MO96-1  
Contested Case Hearing on )  
Water Use, Well Construction, and )  
Pump Installation Permit Applications )  
Filed by Waiola O Moloka'i and )  
Moloka'i Ranch, Limited )

1 this decline. It's true that we suffer from a lack of extensive study on the exact  
2 relationship between fresh water and fish stocks. However, in my opinion and based  
3 on my experience, fresh water is a significant factor in the decline of the fish, like  
4 those I have mentioned, that many people, especially Hawaiians, gather. And the  
5 decline is clear. Between 1948-96 catch of mullet has plummeted.

6 With flood control project or artificial stream diversions changing or disrupting  
7 fresh water sources, the mullet, aholehole, shrimp (opae) and many of the fish that rely  
8 on opae and crustaceans are all adversely affected. In fact, the whole food chain  
9 changes.

10 Q. Is there any other reason you believe that the contribution of fresh water is important  
11 to the health of fish populations?

12 A. Hawaiians understood this relationship, and built fishponds in areas fringed normally  
13 came along shorelines with estuaries. Loko kuapa, or fishponds, were built around  
14 coastal springs and discharge points for streams because of this understanding. Local  
15 fisherman from Windward O'ahu told me that when the Waiahole water came back in  
16 recent months, so did the fish populations. This result told me that fresh water was an  
17 important factor in restoring fisheries.

REBUTTAL TESTIMONY OF DAN POLHEMUS

1. My name is Dan Polhemus. I am currently a research entomologist  
working in the Department of Entomology at the Smithsonian Institution in Washington,  
D.C. Prior to this I was employed from 1990 to 1996 as a research entomologist at the  
Bishop Museum in Honolulu. I received my Ph.D. in biology from the University of Utah  
in 1984, and my B.S. in entomology from Colorado State University in 1980. From 1992  
through 1996 I was involved in statewide conservation status surveys of native damselflies  
throughout Hawaii under funding from the U.S. Fish and Wildlife Service ("FWS"). A copy  
of my curriculum vitae is attached as Exhibit C-9.

Introduction

2. The Orangeblack Hawaiian Damselfly, *Megalagrion xanthomelas*,  
formerly occurred throughout lowland aquatic habitats on all the high Hawaiian islands.  
Photographs of *Megalagrion xanthomelas*, as well as a diagram of Hawaiian damselfly  
habitat, is attached as Exhibit C-10. Although common at the turn of the century, the  
species began to experience a progressive decline after World War II, and by the early 1990s  
had not been seen on O'ahu for over twenty years. This fact, coupled with the extensive

alteration of lowland habitats in which the species formerly bred, led Polhemus (1993) to conclude that the species was probably extirpated on O'ahu when he reviewed the conservation status of *Megalagrion* species for the FWS. Based on this assessment, plus the apparent extirpation of the species on Kaua'i and Maui as well, FWS (1994) proposed that *M. xanthomelas* be listed as a Threatened species and given protection under the Endangered Species Act. Due to political considerations this listing has been temporarily delayed, but the species retains a C1 status on the Federal Register, meaning that its listing is imminent.

#### Taxonomy and historic distribution of *Megalagrion xanthomelas*

3. *Megalagrion xanthomelas* was described by Selys-Longchamps (1876) based on specimens collected by G. F. Matthew of the Royal Navy, and labelled "Sandwich Islands", with no specific island within the group noted on the labels. The location of Selys-Longchamps' types is not currently known, although it is suspected that they may be in the Koninklijk Belgisch Instituut voor Natuurwetenschappen, in Brussels. The species has not been confused with others since its original description, thus its taxonomic history is relatively simple and devoid of synonyms. The original distribution of *M. xanthomelas* within the Hawaiian islands is a matter of some speculation. It seems unlikely that the species ever inhabited the small, dry island of Kaho'olawe, and its presence on Kaua'i is open to question. Perkins (1899) stated that *M. xanthomelas* "Probably occurs all over the islands", although he lacked any collections from Kaua'i and Lāna'i. Kennedy (1917) followed Perkins' opinion and listed *M. xanthomelas* from O'ahu, Moloka'i, Maui, Hawai'i, Kaua'i and Lāna'i, although once again there were apparently no specimens at hand supporting the latter two records. It was only in 1993 that specimens were finally captured

on Lāna'i (Polhemus, 1993), and to date the species has never been taken on Kaua'i, although a specimen is present from nearby Ni'ihau.

4. The ecology of *M. xanthomelas* was discussed anecdotally by Williams (1936), who also illustrated the immatures. They appear to have formerly bred in impounded sections of lowland streams, and in both natural and artificial ponds. The ability of this species to exploit artificial habitats was noted by Perkins, who observed that *M. xanthomelas* was "a common insect in Honolulu gardens and in lowland districts generally, not usually partial to the mountains, though in the Kona district of Hawai'i it is common about stagnant pools up to an elevation of about 3000 feet. It is very numerous under conditions changed from the natural; perhaps it now finds more numerous breeding places, and a more abundant prey in the numerous insects that have been introduced by man in the region it frequents." Williams (1936) also noted that *xanthomelas* bred abundantly in sugar plantation reservoirs at Wai'anae. Zimmerman (1948), by contrast, remarked that the introduction of *Gambusia* topminnows "has changed the lowland situation considerably in recent years, however, and the species is much less abundant than formerly."

5. The decline in populations of *M. xanthomelas* noted by Zimmerman in the years after World War II has continued to the present day. The species is now apparently extirpated on Maui, with no records from that island for the last hundred years, and on O'ahu has been reduced to a single known population (at Tripler Army Medical Center). Moloka'i is known to support four known populations, and the species is abundant in artificial golf course ponds on Lāna'i, although elsewhere on that island it retains only a tenuous foothold in small remnants of its former natural habitat. Only on Hawai'i island is

the species still truly widespread, being commonly found in the coastal wetlands of the Puna, Ka'ū and Kona districts.

#### Current Status of *Megalagrion xanthomelas*

6. The most common habitats in which this species occurs are coastal wetlands fed by basal springs, as seen in the Puna, Ka'ū and North Kona districts of Hawai'i, at Pālā'au on Moloka'i, and formerly at Pearl Harbor on O'ahu. This species also occasionally breeds along the terminal and lower midreaches of perennial streams, as illustrated by the populations at Pelekunu and Waikolu streams on Moloka'i, and at Onomea Bay on Hawai'i island. Given the absence of introduced aquatic biota, *M. xanthomelas* can also breed in reservoirs and ornamental ponds, as recorded previously by Williams (1936), and currently documented at the Kō'ele Lodge on Lāna'i. The species will also opportunistically exploit temporary habitats, as shown by its occupation of ephemeral side pools bordering flashy streams on Hawai'i island, and pipeline seepages on Lāna'i.

7. Despite its broad range of ecological tolerances, *M. xanthomelas* is becoming increasingly rare in Hawai'i, having apparently been extirpated from two islands, Kaua'i and Maui, on which it previously occurred, while being perilously close to extirpation on O'ahu. Based on our current understanding of the species' biology, this loss of *M. xanthomelas* populations is linked more to the introduction of alien aquatic biota than to outright habitat alteration or destruction. On the one hand this is a source of optimism, since this pattern of decline can perhaps be stabilized through protection of remaining natural habitats or construction of suitable refugia. On the other hand, it is also a source of

pessimism, since the continuing onslaught of alien aquatic species in Hawaii shows no signs of abatement.

#### Population at Pala'au Wetland, Moloka'i

8. An extensive basal spring wetland is present at Pālā'au, 2 miles east of Kaunakakai on the southern coast of central Moloka'i. At least six individual spring outflows of varying sizes are present in this area, many being marked by stands of bulrushes (*Schoenoplectus* sp.), bordered peripherally by expanses of pickleweed (*Batis maritima*), and others emerging along the margins of shallow coastal basins to form large, horizontally stratified mixohaline ponds, most notably the Kaluaapuhi Pond. Most of the larger springs that emerge above sea level have been boxed, although their outflows still reach the ponds, and water from others is being used to supply an expanding series of aquaculture projects, and for cooling and steam generation at the local power plant. The vegetation of the area is highly altered from its original state, being a kiawe (*Prosopis pallida*) savannah along the inland margins, and bearing a thick band of mangroves seaward, the latter having become established after World War II. A more complete vegetative description of this ecosystem type may be found in Wagner et al., 1990.

9. *Megalagrion xanthomelas* was present here during surveys in 1995, occurring along the along the inland margins of the wetland in company with two introduced damselfly species, *Ischnura ramburi* and *Ischnura posita*, and two larger dragonfly species, *Anax junius* and *Orthemis ferruginea*. Individuals of *M. xanthomelas* were observed along the back edge of Kaluaapuhi Pond, in the nearby mangroves along a flooded trail, and emerging as teneral from small water pockets at the base of an isolated *Schoenoplectus*

clump. Measured salinities in Kaluaapuhi Pond varied from 2 ppt at a small spring inflow to 3 ppt in the middle of the pond away from this inlet. Stearns and Macdonald (1947) noted that the entire basal lens underlying west and central Moloka'i is brackish, thus all basal springs in this area are saline to some degree. The fact that *M. xanthomelas* is breeding in the Pālā'au wetland, which is supplied by such brackish springs, clearly indicates that the species can tolerate salt concentrations of at least 2 ppt.

10. This conclusion was reinforced by the discovery of *M. xanthomelas* at a small pond adjacent to the Moloka'i Sea Farms aquaculture facility at western end of the Pālā'au wetland complex. This pond occupied an elongate, steep sided basin bordered by pickleweed and other introduced weeds. The waters of the pond were heavily covered with a layer of duckweed (*Lemna aequinocialis*), which was maintained by the aquaculture farm as a means of deterring algal growth. The steep sides and elongate form of the basin suggest that it is an artificial modification of a former spring outflow.

11. *Megalagrion xanthomelas* was present at this small pond, in association with the same damselfly and dragonfly species seen at Kaluaapuhi pond, but did not occur at the adjacent aquaculture ponds, which lacked floating or marginal vegetation. Individual males were seen perching on sticks and weeds that projected over the water, and a tandem pair was observed ovipositing on the thick duckweed mat. The salinity of the water in this pond was taken and found to be 2 ppt., the same as that of the springs at Kaluaapuhi Pond. This once again clearly demonstrates that *M. xanthomelas* can breed in mildly saline waters.

#### Impact of Proposed Water Use

12. As noted above, recent surveys indicate that *M. xanthomelas* can breed in waters with salinities of up to 8 ppt (Polhemus, 1996). (A copy of Polhemus, 1996 is attached as Exhibit C-11.) This is important in horizontally stratified wetlands such as Pālā'au and other leeward Moloka'i fishponds, since it means that *M. xanthomelas* can persist in the narrow zone of basal spring inflow along the inland margins of such wetlands. Any pumpage from upslope wells that significantly diminished such limnetic inflow, however, would eventually produce a change in the salinity regime across the system, raising the salt concentration along the inland margins and thereby eliminating the zone of breeding habitat upon which *M. xanthomelas* depends. The critical level of salinity is not exactly known, but would appear to be in the range of 9-10 ppt., since no *M. xanthomelas* populations have been found in wetlands with such salinities.

13. Based on information supplied by the U. S. Geological Survey, the proposed well at Kualapu'u could produce reduced basal spring outflows in the Pālā'au area. As such, this well appears to constitute a potential threat to the populations of *M. xanthomelas* occurring in this wetland system.

#### Literature Cited

- Kennedy, C. H. 1917. Notes on the penes of damselflies (Odonata). No. 2. The close relations inter se of the Hawaiian Agrionines. Entomological News, 28 (1): 9-14, 49 figs.
- Perkins, R. C. L. 1899. Neuroptera, pp. 63-77 in Fauna Hawaïensis, Vol. 2, part 3 (D. Sharp, ed.). Cambridge Univ. Press, Cambridge.

Polhemus, D. A. 1993. Damsels in distress: a review of the conservation status of Hawaiian Megalagrion damselflies (Odonata: Coenagrionidae). *Aquatic Conservation: Marine and Freshwater Ecosystems*, 3: 343-349.

Polhemus, D. A. 1996. The Orangeblack Hawaiian Damselfly, *Megalagrion xanthomelas* (Odonata: Coenagrionidae): clarifying the current range of a threatened species. *Records of the Hawaii Biological Survey for 1995. Bishop Museum Occasional Papers*, 45: 30-53.

Selys-Longchamps, E. 1876. Synopsis des Agrionines, 5me Legion: Agrion. *Bull. Acad. Royal Belgique*, (II) 41 (2,3): 1-282.

Stearns, H. T. and G. A. Macdonald. 1947. Geology and ground-water resources of the island of Molokai. Territory of Hawaii, Dept. of Public Lands, Division of Hydrography, Bull. 11. 113 pp.

U.S. Fish and Wildlife Service. 1994. Endangered and Threatened Wildlife and Plants; animal candidate review for listing as Endangered or Threatened species. *Federal Register*, 59: 58982-59028.

Wagner, W. L., D. R. Herbst, and S. H. Sohmer. 1990. *Manual of the Flowering Plants of Hawaii*, Vol. 1. Bishop Museum Press, Honolulu. 988 pp.

Williams, F. X. 1936. Biological studies in Hawaiian water-loving insects. Part I. Coleoptera or Beetles. Part II. Odonata or Dragonflies. *Proc. Hawaiian Entomol. Soc.*, 9 (2): 235-349.

Zimmerman, E. C. 1948. *Insects of Hawaii. Volume 2. Apterygota to Thysanoptera inclusive*. University of Hawaii Press, Honolulu. 475 pp.

**DIRECT WITNESS STATEMENT OF BRENDAN M. HARLEY**

- 1 Q: Please state your name, occupation, and educational background.
- 2 A: Brendan M. Harley. I am currently a Senior Vice President with Camp Dresser & McKee
- 3 International, Inc., usually referred to as CDM, based in Cambridge, Massachusetts. I have
- 4 a doctorate in Water Resources from the Massachusetts Institute of Technology. My
- 5 curriculum vitae is attached.
- 6 Q: What is CDM?
- 7 A: CDM is a worldwide environmental engineering consulting firm. It has approximately
- 8 2,300 employees, and operates out of 80 offices in the U.S., and another 12 located around
- 9 the world. CDM is a world leader in the development and application of advanced modelling
- 10 and assessment techniques for the evaluation of groundwater management projects. At
- 11 CDM, I lead the group that develops and applies groundwater modelling techniques to
- 12 projects around the world.
- 13 Q: Are you familiar with Wai'ola O Molokai and Molokai Ranch's application for a water use
- 14 permit?
- 15 A: Yes. When this became a contested case, I was contacted by Molokai Ranch's lawyers to
- 16 evaluate the hydrological impact of drilling a well at the location proposed and withdrawing
- 17 1.25 mgd of water.
- 18 Q: Please summarize your conclusions.

1 A: Pumping 1.25 mgd from the proposed well site will have minimal impact on the Kamiloloa  
2 aquifer outside the immediate vicinity of the well. The four existing wells located near  
3 Kaunakakai are sufficiently distant from Molokai Ranch's proposed well that they will not  
4 be impacted.

5 I also assessed the impact of the proposed well on the well sites in the Kualapuu  
6 aquifer, since those wells currently supply most of the drinking water for the island. Under  
7 a worst case scenario, pumping 1.25 mgd from Molokai Ranch's proposed well would  
8 lower the head level in the Kualapuu aquifer by less than a foot. Such an impact would not  
9 affect the ability to continue pumping from these wells even at increased extraction rates.

10 Finally, I looked at what impact the proposed pumping would have on stream flows.  
11 My conclusion is that there will be no impact.

12 Q: Let's explore how you arrived at these conclusions. First of all, please briefly describe the  
13 Kamiloloa aquifer.

14 A: The Kamiloloa aquifer unit covers an area of about 17 square miles with an annual average  
15 rainfall of 33 inches/year. The groundwater system is essentially an unconfined basaltic  
16 aquifer having a relatively thin fresh water lens overlying salt water.

17 At some of the higher altitudes on the island, there are many igneous dikes which are  
18 relatively impermeable and "trap" freshwater. These dikes can significantly influence local  
19 groundwater levels, raising heads above what would otherwise be expected. Head levels in  
20 the northern sector of the Kualapuu aquifer appear to be supported by the dike intrusions

1 running along the southern boundary of the Kalaupapa peninsula. However, there does not  
2 appear to be any dike influences in the vicinity of the proposed Molokai Ranch well.

3 Q: On what do you base your conclusion that pumping 1.25 mgd at the proposed well site will  
4 not impact pumping on the 4 existing wells in the Kamiloloa aquifer, which are located near  
5 the town of Kaunakakai?

6 A: My conclusion is based on three foundations: (1) my review of all of the literature that I  
7 could find on the hydrology and hydrogeology of Molokai; (2) my knowledge and years of  
8 experience with groundwater systems all over the world; and (3) my review of the results of  
9 the modeling that was done for this case.

10 Given what we know about the geology of this section of the island and data that we  
11 have on head levels in this aquifer, we expect that pumping 1.25 mgd will have only a  
12 localized effect. The wells near Kaunakakai town are about 3 miles away from this  
13 proposed well. That is sufficiently distant so that the existing wells will not experience any  
14 impact from pumping 1.25 mgd from the new well.

15 Q: Did CDM do a groundwater model for this project?

16 A: No. Prior to my involvement in this case, Tom Nance and Tony McNulty had already begun  
17 a groundwater model for this project. I reviewed the approach used by what I'll refer to as  
18 the "McNulty Model". Based on my experience with freshwater/saltwater aquifers and the  
19 literature that I had read on Molokai's hydrology, I believed the McNulty Model estimates  
20 to be reasonable and of sufficient accuracy for permitting purposes. Thus, producing  
21 another model done by CDM would not have been cost-effective.

1 Q: You indicated that you also evaluated the proposed well's impact on the wells in the  
2 Kualapuu aquifer. Are the Kualapuu and Kamiloloa aquifers hydrologically connected?

3 A: At the present time, there is insufficient field data to determine the extent to which these  
4 two aquifers are or are not connected.

5 Q: If you don't know what the hydrological connection is, how can you conclude that pumping  
6 in Kamiloloa will not impact the wells in Kualapuu?

7 A: That's one of the values of groundwater modeling. When field data is sparse, a modeler can  
8 conduct simulations in which aquifer conditions are varied, and, thereby assess the range of  
9 probable impacts.

10 Because we don't have a lot of field data about the hydrogeological conditions in the  
11 Kamiloloa and Kualapuu aquifers, a model is used to simulate a range of possible aquifer  
12 conditions, in particular, the anisotropy of the aquifers. You conduct a range of simulations  
13 with and without this anisotropy and evaluate the potential impact of the proposed pumping  
14 by Molokai Ranch.

15 Over the range of simulations that were conducted in this case, the relative impact of  
16 the proposed pumping on State wells 0801 and 0901 in Kualapuu is less than a foot, and  
17 usually only about four-tenths of a foot (less than 5 inches). Such an impact is effectively  
18 negligible. It will not affect the ability of other users to withdraw water from the Kualapuu  
19 aquifer.

20 Q: Did the McNulty Model simulate the entire range of assumptions that should be considered?

1 A: To be of any usefulness as a predictive tool a model has to be able to reasonably represent actual  
2 conditions. Otherwise, a modeler could simulate an infinite number of variations of aquifer  
3 conditions which would be of no practical use to anyone. To test whether a model is reasonably  
4 accurate, a modeler will run simulations to see whether he can get results which replicate, or  
5 at least reasonably approximate, whatever field data is available. If the model cannot do  
6 that, it means that the model does not accurately represent hydrologic or geologic  
7 conditions. Or, it could mean that there's some mistake in the data or data input.

8 The McNulty Model is calibrated to the overall groundwater characteristics in the  
9 region and can reasonably represent the water levels in the various aquifer units using  
10 reasonable estimates on rainfall/infiltration and aquifer properties.

11 Within these parameters, the range of simulations that were conducted by Tony  
12 McNulty is appropriate for evaluating the impact on the Kualapuu wells of pumping from  
13 the proposed well site in Kamiloloa.

14 Q: One of the concerns that has been raised is the impact of pumping in reducing groundwater  
15 discharge into the ocean and the effect that may have on stream flows and the coastal  
16 habitat. Would you comment on that?

17 A: Pumping 1.25 mgd from the Kamiloloa aquifer would reduce the amount of groundwater  
18 discharged into the ocean. Pumping 1.25 mgd of groundwater will not change the amount of  
19 surface runoff that enters the ocean, which is about 20 mgd. That's an annual average; in  
20 actuality, on most days there is very little surface runoff, but there is significant surface  
21 runoff during storm events.

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BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

In the Matter of the Contested )  
Case Hearing on Water Use, Well )  
Construction, and Pump )  
Installation Permit )  
Applications Filed by Wai'ola O )  
Molokai and Molokai Ranch Ltd. )

CCH-MO 96-1

INTERVENORS MARTIN KAHAE, ET  
ALS.

DIRECT WITNESS STATEMENT OF  
WAYDE H. LEE

1           Rainfall in this area averages 33 inches per year and there is a total inflow of about  
2           26.6 mgd on average. Of this 26.6 mgd, about 6 mgd likely infiltrates and becomes  
3           groundwater. The remaining 20 mgd is direct runoff. Since there are no perennial streams  
4           which reach the ocean within the Kamiloloa aquifer, however, we can deduce that the runoff  
5           occurs intermittently and that the gulches in the area are actually conduits for storm runoff.  
6           Pumping groundwater has no impact on wet weather flows in the gulches at all. Thus,  
7           surface water flows will not be affected by pumping groundwater.  
8           As to what effect the change in groundwater discharge will have on the coastal habitat,  
9           I'm not an expert on that. You'll have to address that question to someone else.  
10          Q: Does that complete your testimony?  
11          A: Yes.

DIRECT WITNESS STATEMENT OF WAYDE H. LEE

1 Q: Please state your full name and address.  
2 A: My name is Wayde Hoapili Lee. I'm an offspring of Wilford Lee  
3 who is an offspring of Mary Lee who's an offspring of Kapo,  
4 Mary who is the offspring of Elizabeth Kekahuna. On my  
5 mother's side is Jane Pahula Lee, who is an offspring of  
6 Pahula, Mary who is Halawa and Kaunakakai resident 1800s. I  
7 wanted to state that fact so you know my genealogy in this  
8 area of ahupua'a of Kamiloloa.  
9 Q: Where were you born?  
10 A: On O'ahu.  
11 Q: Where did you grow up?  
12 A: When I was a year old, my family moved back to Moloka'i. I  
13 have lived there my whole life.  
14 Q: What are your ties with Moloka'i?  
15 A: My father and grandfather lived on Moloka'i all their lives.  
16 I stayed with my grandfather.  
17 Q: Where do you live now?  
18 A: I reside in Pu'u Hauoli.  
19 Q: How far is that from Kaunakakai Town?  
20 A: About a five minute walk or maybe 10.  
21 Q: Are you a native Hawaiian?  
22 A: Yes, I am. I am a successor to Hawaiian homestead lot 154,  
23 which is currently under lease to my wife, Adele Lee.  
24 Q: Is that in Ho'olehua?

1 A: Yes. I am in the process of building a house there.  
2 Q: In terms of your residence do you use a stream nearby your  
3 residence for any particular purpose?  
4 A: Yes, I use a stream that goes right up to the Wai'ola site, a  
5 connecting stream. This stream runs all year round, but it  
6 flows down to our area only with the overflow. It disappears  
7 in the aquifer on top of that where Wai'ola wants to drill its  
8 well. It runs all year round. Hawaiian stilt also depend on  
9 these waters.  
10 Q: What is the name of that river or stream?  
11 A: It's the Kaunakakai River. It's right between the boundary of  
12 Kaunakakai and Pu'u Hauoli.  
13 Q: How often does that stream run throughout the year?  
14 A: Well, that stream runs all the way to the ocean about half of  
15 the year during the wintertime. It runs all year round, and  
16 it comes half way down and disappears on the rocks and feeds  
17 the aquifer. So there is a spring that runs all year round  
18 right next to the Wai'ola site where they are thinking of  
19 digging their well.  
20 Q: What happens right next to the spot where they have their  
21 current well? Are you saying it disappears into the ground  
22 there?  
23 A: Yes. The river runs, but if there is insufficient flow, it  
24 disappears into the rocks and bubbles up down in the ocean.  
25 Q: Does this happen half of the time during a year?

1 A: No. Half of the year the water runs all the way continuously  
2 above the ground to the ocean, but it flows underground all  
3 year. The spring runs and goes in the rocks to feed the  
4 aquifer and also flows into the ocean.

5 Q: If you follow the stream further up to the current Molokai  
6 Ranch well, how close does it get to the proposed well site in  
7 this proceeding?

8 A: Right on it. The proposed well may be even closer than  
9 Kaunakakai.

10 Q: Why do you use this particular stream?

11 A: My grandmother, Mary Lee, was a practitioner and an expert of  
12 limu. I was the hiapo living with her. She took me to gather  
13 these limu. She taught me the water cycle and how important  
14 it is to the shoreline and to the mountains. Also, my wife's  
15 family resides on a homestead known as Kapa'akea, which is in  
16 the ahupua'a of Kamiloloa. I also go with them to harvest and  
17 show their children how to harvest. Water is a big factor in  
18 this relationship.

19 My grandmother harvested the limu. She was so good in  
20 harvesting the limu as a practitioner that not even the  
21 University of Hawai'i people knew some of the limu she knew.  
22 She named a limu called o'olu, which is a limu that is not  
23 harvested off the stone.

24 When these waters from the mountain come down to the sea,  
25 the spring bubbles up. It excites the limu o'olu, and then it

1 causes it to spawn. After it spawns and matures, it breaks  
2 away from the rock and ends up on the beach. That's how you  
3 harvest this type of limu after its maturity.

4 When I went with my grandmother, my job was to catch  
5 crab, kuhonu, ala'eke and 'alamihi. These crabs use the limu  
6 for hiding, and they wait for their kau kau to swim by. There  
7 are several different types of limu - manauea, huluhuluwaena,  
8 'ele'ele. These limu rely upon this fresh water or spring  
9 water coming down into this river as part of their habitat.

10 As a practitioner and from the knowledge I got from my  
11 grandmother, I see a great effect on my native subsistence and  
12 fishing rights that are being imposed on. If they drilled,  
13 the water would not come down the mountain. That would  
14 disrupt the water cycle I've described and the life cycle of  
15 all the living things that depend on it.

16 Q: You've described some of the kinds of gathering you do  
17 particularly in terms of the limu and the crab. Are these the  
18 kinds of gathering that you do in this particular stream?

19 A: Yes, right in this stream. You have to understand that water  
20 feeds through that whole side. That's the only stream running  
21 right now. The next stream you can go to is at Kawela, and it  
22 runs all year round. If you go way up mauka up to the Kawela  
23 Gulch or right next it, there is a stream. That one won't  
24 flow all the way down. You won't see it during the  
25 wintertime.

1 Kaunakakai River is one of the few streams that flows all  
2 the way down. There's a lot that flow, but they disappear in  
3 the rocks. Kawela already supports two ahupua'a up the road.  
4 Q: With respect to these kinds of products or food sources that  
5 you seek, how often do you go there to gather crab or limu?  
6 A: As often as I can.  
7 Q: Are there any other kinds of products that you do gather, any  
8 kind of fish, for example?  
9 A: Yes, I catch mullet and freshwater he'e. Mullet, like the  
10 ones in this picture (attached as Exhibit B-12), like the  
11 freshwater because it excites them to breed. Somehow it's a  
12 sexual thing about the water that reproduces the fish. They  
13 become excited, and they spawn. They need the freshwater to  
14 catch all the 'opae coming down the river.  
15 The he'e like to live near the freshwater. That's part  
16 of the fish chain. When you eat any of the fish in the ocean,  
17 it's part of the flesh. If you break that chain off, there is  
18 no more kau kau for the other fish. They rely on the sources  
19 right in the water.  
20 I can name them off, kumu, aholehole (attached as Exhibit  
21 B-13), palani (attached as Exhibit B-14). Choke fish are in  
22 this cycle that you cannot disturb because they rely on the  
23 freshwater.  
24 Q: You mentioned 'opae. If the streamflow that currently exists  
25 up above is reduced, maybe reduced by some activity, what

1 would happen to the 'opae and limu along that stretch of  
2 stream that might be affected by the flow?  
3 A: That 'opae and limu would disappear. It would be detrimental.  
4 The crab eat the 'opae. If the limu disappear, there isn't  
5 going to be crab to eat. Everything will be out. They need  
6 that mud and silt and sand to live in, hide and burrow  
7 themselves in. There would be big time damage to the ecology  
8 of the ocean.  
9 Q: Do you know where the Moloka'i Irrigation System is located in  
10 relation to the proposed well site?  
11 A: It goes from Waikolu Valley, comes across all the way down  
12 right where they want to put the new well setting. I don't  
13 know. It might be on top of that tunnel. I'm not sure. I've  
14 only seen the map where they want to put it. Yet that tunnel  
15 water comes out right there. I fear there may be an impact of  
16 this well on the water in the tunnel. That's a big detriment  
17 to me because my homestead is over here for my children and  
18 for me to live on. I have two children. One lives in  
19 Kaunakakai, one in Pu'u Hauoli Homestead. I'm here protecting  
20 their rights for water.  
21 Q: You mentioned in your genealogy Mary Lee, is that right?  
22 A: That's right.  
23 Q: Robert K. Alcain speaks of Aunty Mary Lee who gathered limu  
24 along the Kamiloloa shoreline. Is that the same Mary Lee in  
25 your genealogy?

1 A: Yes. That's the same Mary Lee. We take and teach everybody  
2 to harvest. Mary Lee was the teacher. She taught the right  
3 way, so when you harvest there is still enough for the next  
4 generation. Like I said, she was an expert. I know one thing  
5 she told me, "Watch the water, boy. The water disappears,  
6 it's goners the limu."

7 Q: Can you summarize your concerns about the proposed well?

8 A: I have two main concerns. First, the proposed well is in the  
9 same ahupua'a as Pu'u Haouli, where I reside. The Kaunakakai  
10 river runs parallel to this area, so I am afraid the new well  
11 will dry up the river.

12 Second, I fear that the proposed well will deplete the  
13 supply of water from the Kamiloloa aquifer and result in salty  
14 water. This will directly and significantly impact my  
15 hunting and fishing activities, possibly leading to loss of  
16 crabs and loss of fish ponds. Fish, including mullet, will  
17 not spawn without fresh water. If the saline level in the  
18 waters increase, then all the fresh water fish will be  
19 affected.

20 Q: How long have you been gathering food in this area?

21 A: Most of my life. My family depends on the hunting and  
22 gathering we have done in this area as a means of subsistence.  
23 As I mentioned before, my grandma and I used to pick limu and  
24 catch crab.

25 Q: Throughout your years of fishing and hunting in the ahupua'a,

1 have you ever noticed any difference in the salinity of the  
2 domestic water you drink in the homestead area?

3 A: Yes. At one time the saline levels went up when the new  
4 county well was put in near the DHHL wells (see Exhibit B-7).  
5 We could tell there was saline in the water because after we  
6 used our domestic water for farming, salt remained on the  
7 surface. I fear the new well will cause the saline levels to  
8 rise to a level where it is not safe for my family and I to  
9 drink the water.

10 In addition, some rivers have stopped running,  
11 particularly in the Kamalo and Kawela areas. We could see  
12 that rivers that used to run before were no longer running.  
13 We had no more limu 'ele'ele to pick.

14 Q: Are you involved in a challenge to Molokai Ranch's Great  
15 Molokai Trail Project?

16 A: Yes, I am one of several members of Pono, which asked the Land  
17 Use Commission (LUC) to determine whether the Ranch's  
18 "overnight camps" needed to get approval by the LUC. The LUC  
19 said yes in its Declaratory Order (attached as Exhibit B-11).  
20 Pono also files suit against the Ranch because it refused to  
21 listen to the LUC. Because of the Ranch's actions, it is not  
22 complying with the state land use laws.

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1 order again this afternoon. And we're ready for the witnesses  
2 for the intervenors along here. Who is going to introduce --  
3 MR. MURAKAMI: I am going to call as our first  
4 witness Wayde Lee.  
5 HEARING OFFICER COX: Would you swear in the first  
6 witness.  
7 WAYDE LEE  
8 called as a witness at the instance of Intervenor Kabae, et al.  
9 being first duly sworn to tell the truth, the whole truth and  
10 nothing but the truth, was examined and testified as follows:  
11 THE WITNESS: Promise.  
12 DIRECT EXAMINATION  
13 BY MR. MURAKAMI:  
14 Q Mr. Lee, can you please state your name and address  
15 for the record?  
16 A O Wayde Hoopili Lee kou inoa.  
17 Q And your address?  
18 A Address is right now is Manila Camp, Kamiloloa, P.  
19 O. Box 832. But I also have a homestead lot in Ho'olehuanu.  
20 Q Okay. And are, how long have you been a resident of  
21 Moloka'i?  
22 A I don't want to tell my age but all my life.  
23 Q Are you Hawaiian?  
24 A Yeah.  
25 Q And how much?

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1 A I'm about, I'm a native Hawaiian, over 50 percent.  
2 Q All right. And have you in your lifetime engaged in  
3 the practice of gathering along the shoreline of Moloka'i?  
4 A Yes.  
5 Q And have you fished in the waters off of Moloka'i?  
6 A Yes.  
7 Q And are you familiar with the area known as the  
8 Kamiloloa shoreline?  
9 A Yes.  
10 Q Did you prepare and submit testimony that's been  
11 submitted under the title of Direct Witness Statement of Wayde  
12 H. Lee?  
13 A Yes.  
14 Q And have you had a chance to read that testimony to  
15 see if you wanted to add any other items to the statements you  
16 made?  
17 A Yeah.  
18 Q Have you heard the testimony of Dr. Dollar that was  
19 just presented today?  
20 A Yes.  
21 Q And the testimonies of Dr. McNulty and Mr. Nance?  
22 A Yes.  
23 Q Okay. In connection with that, with those  
24 testimonies would you agree with the statements they made  
25 concerning some of the characteristics of water seepages on the

Page 106  
1 shoreline along Kamiloloa?  
2 A No.  
3 MR. OSHIMA: For the record, objection.  
4 HEARING OFFICER COX: Objection is  
5 MR. OSHIMA: The witness is to be offered for  
6 summary of the prefiled direct testimony. And I'd like to have  
7 an offer of proof as to what this is summarizing.  
8 MR. MURAKAMI: Well, we will get into the summary  
9 but I don't think that this witness or any of my witnesses  
10 should necessarily be confined to the words and lines of what  
11 is contained in his written submission.  
12 As you know there have been no opportunities to  
13 rebut some of the statements that have been presented since  
14 this particular statement has been drafted and submitted. And  
15 this is the occasion during this hearing to supplement and  
16 amplify those statements.  
17 MR. OSHIMA: Well, just one further, Mr. Cox. To  
18 the extent that new testimony is offered at this time and  
19 because applicants bear the burden of proof as already decided  
20 by the Hearing Officer in this case by Minute Order,  
21 applicants are the parties who have the right of rebuttal.  
22 So if there is any new testimony offered by these  
23 witnesses as they come up to otherwise summarize their direct  
24 testimony, then applicants must then be given the additional  
25 opportunity to further rebut that new testimony. And such a

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1 procedure could last interminably without some direction and  
2 control.  
3 MR. MURAKAMI: I don't understand what Mr. Oshima's  
4 concern is. I haven't gone into any new areas so far and don't  
5 intend to do so. Information that is being presented  
6 today will in part amplify on the various statements he has  
7 submitted. I think that has been allowed in the past with  
8 Mr. Oshima's witnesses and should be allowed with mine.  
9 MR. OSHIMA: They were only allowed to the extent  
10 that cross-examination led them into their rebuttal portions of  
11 their testimony which is prefiled. Nothing new was offered by  
12 their witnesses.  
13 MR. MURAKAMI: Excuse me, but I recall at least two  
14 or three new exhibits that I've never seen before these  
15 proceedings began. I don't think he's in any position to  
16 complain that something new is being submitted at this time.  
17 We intend to, my final offer of proof in this is we  
18 intend to submit a video, a seven minute video that I'm  
19 prepared to have this witness explain. Just for your  
20 information, Mr. Hearing Officer, this video is really  
21 demonstrative of the statements made within his written  
22 statement.  
23 HEARING OFFICER COX: I will rule that it would  
24 certainly, Mr. Lee can talk about, summarize his written  
25 testimony here. And I will allow a little leeway in terms of

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1 new information.  
2 MR. MURAKAMI: Thank you very much.  
3 Q Mr. Lee, have you prepared a video to explain and  
4 summarize your statements that you have submitted as a witness  
5 in this case?  
6 A Yes, I have.  
7 MR. MURAKAMI: With the Hearing Officer's permission  
8 I'd like to have leave to play the video which is seven minutes  
9 long so that Mr. Lee can go through his summary.  
10 MS. NISHIOKA: Before we start, how are we going to  
11 handle -- are you talking on the video also or it's just no  
12 sound?  
13 MR. MURAKAMI: He is talking on the video.  
14 MS. NISHIOKA: So we're going to do a transcript of  
15 what he is testifying to and then admit the tape as a video.  
16 MR. MURAKAMI: As he narrates it you mean?  
17 MS. NISHIOKA: Right. I'm just looking at how we  
18 are going to do the transcript of this. You're going to have  
19 him talking on the video at the same time.  
20 THE WITNESS: You can have the video.  
21 MR. MURAKAMI: We will mark it.  
22 THE WITNESS: That's my gift to you guys.  
23 MS. NISHIOKA: So we're just going to do a  
24 transcript of what he is saying.  
25 THE REPORTER: Not of what's on the video.

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1 MS. NISHIOKA: Right.  
2 MR. MURAKAMI: So we will mark the video the next  
3 number in order and ask for it to be admitted at the proper  
4 time.  
5 THE WITNESS: This was taken two days ago.  
6 (By Mr. Murakami) Mr. Lee, before you proceed if  
7 you could describe where you are as depicted in this video.  
8 A I'm right at this area right over here.  
9 Q You're referring to what's been marked as CW84-17  
10 A Yeah.  
11 Q That's the map of the island, right?  
12 A Yeah.  
13 Q What is this area known as?  
14 A Kalamas'ula.  
15 Q Specifically that location of the site that's being  
16 videotaped.  
17 A Coconut Grove.  
18 Q Just outside of Kuanakakai to the west?  
19 A Yes. You guys see all the, I guess I was going to  
20 say Australian mullet inside that freshwater. That's  
21 freshwater coming out over there, coming out from the ground.  
22 What you see now is all the baby pua on top over there, the  
23 fries. Right in the freshwater they coming out into the ocean.  
24 This is about 6:00 in the morning. Maybe 6:30.  
25 You see all the baby fish? So they loving it right

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1 there. That's that 'ole'ole that Mr. Dollar -- stop right  
2 there. See that? See the dark cloud? It's not raining. It's  
3 actually the fish. We depend on this freshwater.  
4 If you can see the clear water and the bubbling  
5 coming up, this we're about 40 yards out in the ocean. So any  
6 speculations that any hydrologist made or models they have  
7 shown they're not too sure there's springs out in the ocean,  
8 this is it.  
9 It's out in the ocean. We're not on the shoreline.  
10 This is outside in the ocean. This is a spring and that's  
11 located just above of here, right about over here, this  
12 section, this spring is out there.  
13 HEARING OFFICER COX: That's in the Manawainui  
14 aquifer.  
15 THE WITNESS: Yes.  
16 Q (By Mr. Murakami) Mr. Lee, would you take a green  
17 dot I'm going to hand you and mark a spot of that location of  
18 that spring that's depicted in the video is located. I'm sorry  
19 I gave you the wrong color.  
20 THE WITNESS: Blue is --  
21 MR. MURAKAMI: I'm sorry. I gave you the wrong  
22 color. May the record reflect the witness is depicting a blue  
23 dot in the location of the spring that's being depicted in the  
24 video where he's standing in the water 40 yards out from the  
25 shoreline.

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1 THE WITNESS: Okay. This spring is about 40 yards  
2 out in the ocean and it's a big puka and the freshwater just  
3 keep coming. I reluctant to show plenty springs 'cause this is  
4 hidden stuff. That's why the guys don't know because we don't  
5 like 'em put wells right over there. So I willing to show this  
6 because might damage. You can understand why we reluctant to  
7 show some of the springs.  
8 Right there the clear water, all the water coming  
9 out. Stop 'em right there. What I'm holding into my hand is a  
10 introduced ala'ele Hawaiian call 'em. DLNR introduced this  
11 crab. It ate all our kuhouu. It's Samoan. We use this right  
12 oow for hua. This is our wild crab, cooked crab. We eat this  
13 now. And this guy he need the freshwater too. Okay? I going  
14 show different species of crab.  
15 Stop. This is an endangered species that rely on  
16 also the freshwater. It's found on this whole coastline, that  
17 depends on this too this endangered species called the Hawaiian  
18 Silt. It part of the system and it eats all the fries, the  
19 crabs. So this is an endangered species also that would be  
20 affected by this water disappearing discharge in the ocean.  
21 HEARING OFFICER COX: Excuse me. Can you stop it  
22 for a minute. I think we have a question.  
23 MR. OSHIMA: As we go along, Alan, can we have  
24 identification of the exact location of where this is being  
25 taped, whenever we stop.

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1 THE WITNESS: This is all along this area here.  
2 It's Coconut Grove.  
3 Q (By Mr. Murakami) You're talking about an area  
4 that's --  
5 A Kalamas'ula.  
6 Q In the immediate vicinity of the blue dot that  
7 you've placed on the map?  
8 A Yeah.  
9 Q We're talking to the west of the dot?  
10 A Yeah, west of the dot. Us guys, they look one  
11 Hawaiian going throw net on top land, they say, "This guy's  
12 crazy." Well, I going let out my secret spot. Inside that  
13 pond get mullet. Okay? And I going catch the mullet but I  
14 never like. But I wanted to show, but the mullet in there.  
15 Plenty people can verify.  
16 This is a spring about 40 feet in from shore and  
17 about maybe 60 yards from the road. Now, get mullet in there  
18 about this big. Yeah, about that fat.  
19 Q Can you describe how long that you just described  
20 with your hands?  
21 A About one foot long and they all living in there.  
22 The mullet that tells you underneath the puka they live in the  
23 springs. Okay? So they stay -- stop right there. This is the  
24 spring right there. This spring was --  
25 HEARING OFFICER COX: Excuse me. Could you identify

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1 the spot again.  
2 THE WITNESS: In this area too Coconut Grove same  
3 where, west of the line.  
4 Q (By Mr. Murakami) Mr. Lee, in relation to the blue  
5 dot that you just placed on the map, where is the location of  
6 that pond that you just talked about?  
7 A Right inside here.  
8 Q So you're talking to an area just above and to the  
9 left of the dot?  
10 A Yeah.  
11 Q It's between the shoreline and the depiction of the  
12 road?  
13 A And the road. It's between this road and the  
14 shoreline. It's in there. Okay? So that spring get mullet  
15 inside. So that's an indication that no matter where you going  
16 to stop the discharge it's going to effect the system, the  
17 ecosystem.  
18 So a lot of people say this Hawaiian crazy throwing  
19 net on dry land. That's good. I take that as a compliment.  
20 Fast forward. Here's the evidence of another  
21 spring. See how heavy the bugger flowing into the ocean? It's  
22 the same place west of this blue dot.  
23 Q Again, for the record can you describe where that  
24 flow is occurring in relation to the blue dot?  
25 A It is about 40 feet -- or 40 yards below that blue

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1 dot.  
2 Q For the purposes of the record can you mark a 1 in  
3 the blue dot that you put on the wall. That is the original  
4 location of that spring source that you had depicted on the  
5 video?  
6 A Yes.  
7 Q With this next spring source can you mark it on the  
8 map with another blue dot and the No. 2 on it. So for purposes  
9 of identification can you put your initials to the bottom of  
10 the dots.  
11 A This blue dot is to be offshore. Is that okay?  
12 It's supposed to be off.  
13 Q Put your initials below that. Thank you.  
14 A Freeze. Okay. I going over this point. This, see  
15 this guy right here? It's a little tongue. It's from one our  
16 clams inside here. Okay? That's how we can find 'em. This  
17 clam need the freshwater survive, all the freshwater in the mud  
18 inside there. So this is his tongue reaching out and girdling.  
19 We going dig 'em up. That's out 40 feet below the second blue  
20 dot down the road.  
21 HEARING OFFICER COX: By below you mean to the west?  
22 THE WITNESS: To the west. Fast forward where we  
23 dig 'em up. Okay. See 'em? They bigger than that. But this  
24 one of them that we found. But we put 'em back because bumbye  
25 we going pick 'em up when they get a little bigger. Oops.

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1 Stop.  
2 This next species is kuhouu, the white crab. This  
3 is another species that's a delicacy for us Hawaiians. This  
4 one not too much guys use them for party. Mostly they save 'em  
5 home for themselves. This is the kuhouu crab and another  
6 species that thrive in that area that we use for subsistence.  
7 Stop right there. That's the kuhouu crab. We also  
8 have some other species in this area which is the mo'ala crab.  
9 HEARING OFFICER COX: Where is this spot?  
10 THE WITNESS: That's the same place right about  
11 40 yards down here. It's to the west of that.  
12 Q (By Mr. Murakami) Mr. Lee, before we proceed,  
13 using this yellow dot which will represent the crab locations,  
14 can you put that where that spot is and put your initials below  
15 it.  
16 A Okay. I was to tell you where the crab stay. Put a  
17 yellow dot here. Let me -- there are other crab that are in  
18 this area. This whole area over here, Samoan crab. Mo'ala is a  
19 crab, all'i crab is identified by a reddish purple color, long  
20 eyes okay? The all'i used to eat this crab.  
21 That crab out of all the species he need the  
22 freshwater. Besides that in this area is the huna opae. This  
23 opae he need that freshwater. But what we have to understand  
24 is if we want talk about, we want talk about limu like that we  
25 cannot take the environment out of his context. In other

1 words, we got to talk the whole ecosystem.
2 The freshwater go in the ocean water. If you fill
3 out up this kau kau, food for all these small fishes, crabs and
4 the limu grow, the crab eat the limu, they biting there, they
5 eat the ope, the ope eat that. As you go out the bigger fish
6 come in that one. The he's come in to eat the crab. Then ulu
7 come in eat that one. The papio come in, the waka, awa, so and
8 I'm at the end. I'm at the end of the food chain. Yeah?
9 So if we interrupt, we only talking one segment of
10 this ecosystem -- if we going to interrupt 'em it leaves me --
11 we need too understand the whole system and not take it out of
12 context of how this freshwater going affect this environment.
13 That's what I saying is that I'm at the end. If you
14 disturb anything below me in the food chain it's going to
15 affect me. So not only me but all the gatherers in this room.
16 We need to not only look at limu but look at everything.
17 Because we dependent on it. Moloka'i people are dependent to
18 subsidize their table.
19 Q That's the end of the video, right?
20 A Yeah.
21 Q On the map behind you, Mr. Lee, there's a stretch of
22 coastline marked in pencil showing the end points of the effect
23 that I think that the modelers discussed would occur along the
24 shoreline from the proposed well drilling and pumping.
25 Taking again the blue dots to represent the springs

1 A Old man Rodrigues used to have, right out his place
2 had one spring going out and also it shoots right into the
3 ocean and come bubbling out. What else? Keep going?
4 Q Would you also mark the next one as No. 6 and the
5 initials?
6 A Going up now, going way more up, 6 is Mowat's place.
7 They went hide this spring. They went cover them over because
8 of the development next door. But gonna expose 'em right now.
9 Got one spring over here and they come out. I don't know what
10 the transect was but this has a spring over here.
11 Q Is this, is that a spring that comes out --
12 A Under the ground too.
13 Q -- in the ocean?
14 A In the ocean too. It comes out as well on top his
15 land and come out -- every spring be just, you know, my theory
16 is the water come whenever be can puka out be going come out
17 and be just keep going until the bigger come a little not
18 enough gallons to bubble out like over there.
19 Q How far offshore?
20 A This spring right now is actually on land where be
21 went hide. But outside here get freshwater. Outside this
22 reefs -- you know, the reefs, yeah, I never had underwater
23 camera or else I woulda took pictures too. But on the reef
24 get. I going tell you'll how you know.
25 First, if you cold when you dive down you can feel

1 that you have encountered along the shoreline, would you depict
2 where along the shoreline you've encountered concentrations of
3 freshwater outflow into the ocean?
4 A This fresh spring output over here is by Auntie
5 Janetie's house old olo. 1928 the homesteaders over there used
6 to pump 'em two hours in the morning, two hours in the
7 afternoon to water their crops. This spring come all the way
8 out from the mangrove. You can see the thing go inside.
9 This spring old olo. They puka out. They have
10 stopped pumping since 1928 because of the, they started getting
11 salt. So they said, you know, what? We going stop pumping
12 this well. So this spring comes all the way out to the ocean.
13 The thing go underground too 'eh and come out. This is one
14 spring.
15 You see all these blue dots? You guys know what is
16 that? Loko, the fishponds, all they springs. The Hawaiians
17 they knew the difference, they knew. They know. Only
18 aquaculture guys in the world. There's no other place in the
19 world you find this and in Moloka'i had the most fishponds. So
20 they had to put them by freshwater.
21 Had some statement these fishponds no rely on
22 springs. They akamai the Hawaiians. When you look at the
23 ponds the bigger turning light green color that, the bigger was
24 ready for throw the fries inside. This is the kau kau that
25 they eat. Yeah?

1 the water coming up. It change, the temperature of the water.
2 Second, the water will get all blurry. 'Cause when
3 the freshwater meet the salt water the thing make the place, I
4 dunno, just like heat waves. That's the evidence of freshwater
5 mixing with salt water. It gets blurry. So I dive all this
6 over here. Over here I only go to here because my family only
7 over here, my brother-in-law.
8 Q Wait a second. You say you dove and you saw these
9 freshwater coming out under the water. Were you diving --
10 along what stretch of reef were you speaking on this map?
11 A All the way over here dive with my boat.
12 Q Is this at Punaikou?
13 A Yeah. From Punaikou all the way Kamilolea freshwater
14 is evidence all along here.
15 Q How far from the shoreline?
16 A This is like in the channel, deep.
17 Q Are you saying where the reef drops off?
18 A Yeah. Behind the reef the water still come out when
19 you dive you can see. That's what it looks like heat waves
20 coming up. But it's actually the mixture of the salt, the
21 freshwater mixing with the salt. Then you get cold and we
22 usually dig away from that because we no like dive in cold
23 water.
24 Q Any other springs?
25 A Well, all these ponds over here get springs, all

1 So they know exactly what the fresh water when mix
2 with the salt water just like throwing the thing develop the
3 kau kau. I don't know the haole word but plankton or, you
4 know, you guys know what is that?
5 Q For the purposes of the record can you mark that
6 with dot 3 with your initials? That's the one, Kalama'ula, the
7 dot that you put on there? And you have other springs?
8 A Okay. Awwe. Manawainui, this guy right here is,
9 name of this fishpond is Puhii.
10 Q Why don't we mark that as No. 4.
11 A And this one I put my initials in it?
12 Q Yes.
13 A This one lotta guys I guess plenty guys going to
14 understand when I say Pasqua's Pond. But it's not Pasqua's
15 Pond. But the freshwater go all the way out to the ocean. You
16 see how far the thing go in? This is one long freshwater go
17 all the way out to here. And the thing, when you come over to
18 here the thing bubbling. You know how I show the picture the
19 thing bubbling over the grounds? It's bubbling over here too.
20 So is, this is one of the affected springs. There's
21 also one, two, three -- there are three springs over here. Got
22 to put one more dot. West of this one more spring. This is
23 the spring outside, one inside and one more down here. This is
24 where Rodrigues' house.
25 Q Would you label that 5 and your initials?

1 these ponds.
2 Q Just so we can assure Commissioner Cox what you're
3 doing, you have a map with you?
4 A Yes.
5 Q What is this map for?
6 A It's a better map than this one. You can see the
7 house and everything. Coconut Grove. They can see all over
8 here. They can see the ponds.
9 Q How are you using this map?
10 A So I can relate to this map so I can see where the
11 general area is. Yeah? Because this map is a better detailed
12 map I can tell where I am. But right now this is, I think, oh,
13 wait. Mania Camp.
14 See this river? I live right over here. They never
15 mark mine down. Oh, yeah. There my house right there, the
16 purple. Intervenor, the bigger right around my house.
17 This stream right there way up in the thing split
18 off. He go one into Kakalahale which is this area over here,
19 Pa'u Kakalahale. And then be going into Makakape'ia which is
20 down this side the bigger spin off.
21 The water, he disappears coming down on the ground.
22 Then he bubble up over here. So he come out. I tell you where
23 the areas be come out. He come out on the road right under the
24 bridge, right in front the bridge, and be come outside the
25 ocean too.

1 Q Can you mark that site as spring 7 and put your
2 initials there?
3 A Okay. So when you drive you go to the side you can
4 see 'em right there coming out. So this is the spring. I know
5 this, yeah, because it's passed on to me from my grandmother
6 Mary Lee. And if anybody say they see expert on limu, there's
7 this kindergarten question we ask. If I walk up to you and I
8 say "Clean water?" you no can answer, you never past
9 kindergarten-picking limu because you never work with the
10 kupunaa.
11 Q What does that yellow dot mean?
12 A This yellow dot means crab, where the crab stay.
13 Okay? I come down here and I catch Samoan crab in these ponds
14 already. I won't tell how but I catch Samoan crabs. I only
15 going up to here. Because like I said I only get family over
16 now.
17 And like Moloka'i style I was telling Dr. Dollar
18 them before you go in the ocean, my grandmother taught me this
19 very well, you got to go "Hoooooocccc, you get people home!" If
20 they tell you "Yeah," you can go. If you go and you no ask
21 them, you siele. You so belong in that area. Okay? So that's
22 all. You like Moloka'i participants, you just gotta go,
23 "Hoooooocccc." Draw the line?
24 Q No, what is the significance of the two dots you
25 just drew?

1 First I want start with da kine, 'eh? The limu
2 'ele'ele right over here. Then I will tell you one secret.
3 Okay, bruddah? My grandmother's favorite place was the
4 Kamehameha backgrounds. Before that she go pick right by
5 Uncle Sherman's house over here. Plenty limu there. The
6 problem was --
7 MR. OSHIMA: Can we have --
8 A Plenty limu over there. The problem was you went
9 wrong timing, brah. That's why I say, if you went "Hoooooocccc,
10 I can go look for limu?" They would tell you, "Brah, no more
11 limu-no. Come back two months from now."
12 Okay? And out by the big pond, out by the
13 battlegrounds, Kawela, all inside here. Okay. That was my
14 grandmother's favorite place for go get limu.
15 Q (By Mr. Murakami) For those last two dots you put
16 on is that to signify the outer boundaries of the area that had
17 limu?
18 Q That was most plentiful.
19 Q Could you put an arrow on the left dot to point to
20 the right and an arrow on the left --
21 A I shouldn't say most plentiful. It was my
22 grandmother's favorite place to go. No more house. She
23 always, "Hoooooocccc, you got over there?"
24 Q Put your initials under both dots so we know it was
25 marked by you. So would you characterize the growth of limu in

1 I catch crab all over here.
2 Q Can you put an arrow pointing from the right on the
3 first dot and put an arrow to the left of the second dot and
4 put your initials there and tell us what these two dots mean?
5 A Um, you no can catch crab one place. You going wipe
6 'em out. So you gotta spread out the area different times.
7 Sometimes over there. Raining more hard than over here. We
8 catch crab over here we walk, sometimes get flat bottom boat.
9 I catch Samoan crab with net. I scoop 'em, I grab 'em like how
10 you see in the picture. That was all grabbed by hand.
11 All the different crabs all inside here, this whole
12 area. Like I said I no can go past that because I no more, I
13 not too much ohaa that side so I cannot go "hoooooocccc". Just
14 only in this area I can. This is where my grandmother took me.
15 We go to limu now.
16 Q Just one thing to follow up. Dr. Dollar reported
17 that he detected a seep, groundwater seep to the west of the
18 Ali'i Fishpond. Do you know about that discharge of water?
19 A What is that? Bubbling water?
20 Q Yeah, bubbling water to the west of Ali'i Fishpond.
21 A Oncali'i Park coming here?
22 Q Yes.
23 A This way. All the ponds, the blue dots. I should
24 initial them, all of them get screen. All of them get screen.
25 Hawaiians build their ponds around screens, it's not a place

1 this stretch of coastline that you just designated as being
2 rare and patchy?
3 A Oh, get plenty limu.
4 Q What kind?
5 A Okay. Huhuhuluwaa, ogo, inside here, get 'ele'ele
6 and get one limu that only my grandmother named. It's called
7 'o'ulu. And this limu, 'eh, we took to University of Hilo and
8 showed him. What happens was when the most water get to 'em it
9 matures and be break off of the rock. And when the turbulence
10 comes bring 'em on shore, matured that's when you pick that
11 limu.
12 I used to, "Grandmother, how come we picking up
13 rubbish limu?" Because it was always on the sand that certain
14 types.
15 "No, boy. That's where this limu is. It's called
16 'o'ulu." My grandmother gave that name to that limu. Yeah?
17 Palahalaha the cabbage limu. That one too. My grandmother
18 would eat say -- mix all the limu together, not just make one
19 like this. She throw all the limu together mix 'em up. Then
20 sometimes she separate 'em.
21 Q Mr. Lee, now is that the extent to which you're
22 prepared to testify about the coastal springs, limu and crabs
23 in this area?
24 A That's her favorite place. But she went all the
25 way up to da kine. What's that house? What her name? My

1 where you get the fish and hold 'em. It's a place where you
2 cultivate the fish and grow them so they no need touch the
3 outside wild. They have some occasion let some of the wilds
4 come in close and boom, let the wilds go, the bigger ones.
5 Q Isn't there a seep that occurs to the west?
6 A You mean the water coming out?
7 Q Yes.
8 A Yes.
9 Q You want to put a blue dot there?
10 A Yeah. Like I said, I never like show all the
11 screens. Bumbleby they get educated.
12 Q Well, he's already put that in his report. I just
13 wanted to see if you could confirm that or not. I guess you've
14 marked that as No. 8 with your initials.
15 Going on to limu populations, Dr. Dollar reports in
16 his report that be encountered relatively more limu in
17 transects 2 and 3 which are in the location of the, between the
18 harbor, Kaunakakai Harbor and somewhere to the east of it up to
19 about the first fishpond.
20 And he says there's some, there's relatively more
21 limu in the two transects that he drew there and that if you go
22 further eastward it's rare and patchy.
23 Would you, concentrating on that area would you take
24 the green dot and tell me where you have seen limu and in what
25 abundance along that stretch of coastline.

1 grandmother go all the way up to where to pick limu.
2 Q Are you placing the green dots in area just east of
3 Kamalo?
4 A Yeah. That's where she, but that was her favorite
5 places, but over here. The crab, that was my job. Her and
6 Auntie Clara used to go pick limu. My job was stay inside with
7 the kids. Make a chute, we catch crabs. We catch crabs, they
8 pick limu. Then we come home clean everything.
9 Q Can you put an arrow to the left of the last green
10 dot and put your initials there as well. This the Kamalo spot?
11 A Yeah. Oh, that's a good spot.
12 Q Now, are you done testifying about the limu
13 populations?
14 A Yes.
15 Q So you mentioned several varieties: Ogo, or
16 manauas. And what other varieties?
17 A All the limu kahu, limu kaha, more off side. Limu
18 pae, moa. And outside on the reef got the limu koha and
19 huhuhuluwaa.
20 Q Huhuhuluwaa?
21 A Yeah.
22 Q How about wawae'iole?
23 A Wawae'iole. Oh, wawae'iole get one secret spot this
24 side.
25 Q May I ask the Commission for... Mr. Lee, I'm

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1 going to hand you what's been marked as C-16. It's a sample  
2 limu that was handed to Dr. Dollar. And he identified, I  
3 believe it may have been two species of limu in here, sargassum  
4 and hypnea. I don't know which one is asserted to, alleged to  
5 have been limu koku. But do you see any limu koku in that  
6 sample?  
7 A I don't see nothing in there. You can smell 'em  
8 too, you know, the koku. That's how Hawaiians get excited when  
9 you smell the koku. No, no more.  
10 Q The sargassum you referred to, what is that called  
11 in Hawaiian?  
12 A I don't know. He got to tell me what named sargassum.  
13 But I can identify them in my name. (Audience laughter)  
14 Q What is it?  
15 A It's okay because he never know my name. I can  
16 break 'em up? Can?  
17 Q Well, just identify.  
18 A Limu kala. I think he said it was limu koku, 'eh?  
19 It's limu kala, bruddah. Bruddah, you chop 'em. I no tell you  
20 guys how. You like eat 'em.  
21 Q You are also a fisherman?  
22 A Yeah.  
23 Q What kind of fisherman are you?  
24 A I'm a subsistence fisherman.  
25 Q How do you fish generally?

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1 A I free dive. I fish off a boat, throw out and I  
2 hand harvest and I pole.  
3 Q Are you familiar with the species known as mullet?  
4 A Yes.  
5 Q What do the Hawaiians call it?  
6 A One. (Audience laughter) This size is 'anae. This  
7 the ama'ana, it's the big bugger.  
8 Q I'll hand you what's marked as Exhibit B-12; It's a  
9 photograph of some fish. Can you identify that fish, please?  
10 A It's the mullet, it's the 'anae.  
11 Q I hand you what's been marked as B-13. What's that  
12 fish that's depicted?  
13 A It's a holohole.  
14 Q Finally going to hand you what's been marked as  
15 B-14: What is that fish?  
16 A It's the palani.  
17 Q Do you catch all these fish?  
18 A Oh, yeah.  
19 Q As to the nearshore areas what fish are common along  
20 the shoreline amongst the three fishes that I just handed you?  
21 A Close to the shore?  
22 Q Yes.  
23 A The most is the mullet and then the holohole. They  
24 like the freshwater. That's why they stay close to the shore.  
25 Q Have you gone down the shore also to fish for

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1 holohole and mullet?  
2 A Yeah, but only if I forced to in the flat bottom.  
3 Q Can you also take the red dots and mark places where  
4 along the shoreline you have fished for mullet?  
5 A I can make one line?  
6 Q Okay. Or use the arrows in the same way. Put the  
7 appropriate arrow and put your initials.  
8 A You talking where all the mullet stay, that species  
9 or where I fish?  
10 Q Where you have witnessed the mullet to be?  
11 A Oh, yeah. (Audience laughter)  
12 Q Along that southern shoreline?  
13 A Okay. We can't go by these yellow dots. Where  
14 these ponds on top and then all the way by the last dot over  
15 there too, red 'eh? Like I say I cannot go farther than that  
16 because I no kuleana over there.  
17 Q Put a red arrow.  
18 A Put my initials?  
19 Q Yes. So in essence by putting those dots where they  
20 are you're saying you fished this entire shoreline to find  
21 holohole and mullet?  
22 A Yeah. But I not going to tell exactly where but in  
23 this whole area get.  
24 MR. MURAKAMI: Mr. Hearing Officer, I have taken  
25 the liberty of drawing up a legend that can be taped to the

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1 CWRM: so the representation of dots will be clear. Red will  
2 be for fish, green for limu, blue for springs and yellow for  
3 crab. With no objection I'd like to --  
4 MR. OSHIMA: No objection.  
5 MR. MURAKAMI: -- place it on the map.  
6 THE WITNESS: Right next to this knee?  
7 Q (By Mr. Murakami) Yes. That's fine. Okay.  
8 Mr. Lee, are you involved in a guardianship program for  
9 Moloka'i?  
10 A Mo'omomi.  
11 Q Mo'omomi?  
12 A Yeah.  
13 Q Would you tell us very briefly, not a lot of  
14 details, what that entails?  
15 A We along with the Subsistence Task Force introduced  
16 two legislation Acts 271 which creates the Department of Land  
17 and Natural Resources designate subsistence fishing area  
18 because the state only believed there were two types of  
19 fishermen which was commercial and recreational but they forget  
20 as Hawaiian is subsistence.  
21 In April Mr. Mike Wilson, who I just met this past  
22 Saturday, along with other people in here, will seek  
23 designation from the Dept of Land and Natural Resources  
24 under the management of our hui which I am the president, under  
25 careful rules. We're allowed some commercial fishermen,

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1 commercial fishing but most of it will be designated  
2 subsistence fishing area to manage these resources here on the  
3 shoreline. And for that reason it's because they admitted the  
4 state cannot manage our resources. So they look to us to  
5 manage it.  
6 We lease 400 acres right here parallel to the  
7 shoreline which is Mo'omomi all the way to Anahaki. We lease  
8 lease the 400 acres. We have a park down there.  
9 We have educated over 700 kids on subsistence  
10 fishing learning the life cycle, which is important, the  
11 ecosystem how you can take without disrupting the life cycle.  
12 We educated over 3,000 people in conferences about our project  
13 And I guess he recognized our project as the experts.  
14 Q What is the name of this project?  
15 A Hui Malama O Mo'omomi Subsistence Project.  
16 Q Thank you for your testimony up to now. Do you have  
17 any further comments --  
18 A Yeah.  
19 Q -- to add?  
20 A In the video you guys saw that if anybody get  
21 questions you guys' hydrologist no more spring in the ocean, we  
22 went show get springs way out in the ocean. If you never know  
23 the limu I gave you the name now. Learn 'em.  
24 Second of all, you gotta know the seasons and you  
25 gotta know the life cycle. And you gotta know that everything

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1 over here is related, interrelated. We just a part of it. And  
2 anything that we touch might damage it or disturb.  
3 Last of all, some of this limu disappearing. I  
4 cannot say only from the water. We need to still educate.  
5 What we doing now is our Filipino foreigners whose, we need to  
6 teach them how along this side they harvest plenty limu too.  
7 Maybe that's some of the cause no more limu. But they don't  
8 know how to harvest, that's why. They take everything. So we  
9 need to educate. We still are educating them.  
10 Hopefully from this pilot project we can do  
11 something to educate how they can take and be able to still  
12 have a sustaining yield to harvest. Yeah?  
13 So it's important in this that we understand the  
14 life cycle of the whole ocean and how it relates from maku.  
15 My grandmother say, "Boy, maku'ala. You no only look in the  
16 ocean. You got to look up in the mountains. What happens up  
17 here affects here." It's a proven fact. Okay.  
18 I wanted to talk about this island. A lot of you  
19 from off-island, I know the mana went touch your heart. When  
20 you walked out this door, you went home you felt the peaceful  
21 and beautiful life living. I also tell you, "You like move  
22 Moloka'i?" You would say, "Yeah, in an instant."  
23 Now, I'm talking about a life style here. We no  
24 more people robbing bank. All though 21 percent are  
25 unemployed, people are not starving, and they're not robbing

Page 8  
1 A I know this is not written in my testimony but there  
2 is something that I feel I need to say from my gut. I made a  
3 choice to move home to Moloka'i back in '79 because one of the  
4 things that I wanted was the right to have a homestead land.  
5 I am 50 plus percent -- I can almost prove that I'm  
6 57 and-a-half percent Hawaiian. I was grateful that in '83 the  
7 Lord blessed me. I have this one-acre homestead lot. I hope  
8 and pray I'm able to have it to pass it on to others within my  
9 family because that's my intent.  
10 My grandparents have a four-acre homestead lot which  
11 is on Mo'omomi. And my cousin presently lives there. And he  
12 tries to utilize the farm and use the land that way.  
13 When I sit here at that table I not only represent  
14 myself but I represent my family that's presently on this earth  
15 that's with me, those that have gone, are beyond the veil and  
16 those to come.  
17 I want to make sure that in all my power and  
18 abilities that I am able to really share to you the concerns  
19 that I have about water. It's something that we as Hawaiians  
20 treasure and take care of and malama.  
21 But we're also not selfish. If there's enough I  
22 don't have a problem with sharing. I don't know if there is  
23 enough and with that concern I'm afraid. That's the fear I  
24 have. And that's why I have to do what I did as far as these  
25 proceedings.

Page 9  
1 Q Finally, Louise, were you here yesterday to hear  
2 some of the testimonies from our other clients about gathering  
3 of fish, crab, limu?  
4 A Yes.  
5 Q And I'm wondering do you benefit from any of the  
6 sharing of that food that's gathered by the other clients and  
7 the other people that do gathering?  
8 A Very much so. In fact there are many times, and I'm  
9 not ashamed to say this, when I don't have in my home or in my  
10 freezer. But I don't have a problem calling one of them or any  
11 of my other family members who also use those rights and  
12 knowing that I will have something to put on my table for that  
13 night.  
14 Q Are any of the foods that you benefit, that you get  
15 from the sharing, are they used in hula celebrations?  
16 A Some of those foods are used for ceremony. I need  
17 to be honest, though, I'm not really good or I'm not an expert  
18 in that area. I don't have a real clear understanding. But  
19 recently I have been, I've participated in two aba'ana's and  
20 saw some of those things applied there.  
21 Q Does that conclude your testimony?  
22 A Yes.  
23 MS. PAUOLE: Mrs. Bush is available for  
24 cross-examination.  
25 HEARING OFFICER COX: Mr. Oshima?

Page 10  
1 MR. OSHIMA: No questions.  
2 HEARING OFFICER COX: Mr. Zakian?  
3 MR. ZAKIAN: No questions.  
4 HEARING OFFICER COX: Mr. Achioff?  
5 MR. ACHIOFF: No questions.  
6 HEARING OFFICER COX: Mr. Crowell?  
7 MR. CROWELL: No questions.  
8 HEARING OFFICER COX: Mr. Nakamura?  
9 MR. NAKAMURA: No questions.  
10 HEARING OFFICER COX: Thank you very much, Ms. Bush.  
11 We appreciate your testimony. Call your next witness.  
12 MR. MURAKAMI: At this time I don't know if you want  
13 to reshuffle. Should we just leave the witness stand here?  
14 He's going to refer to the map.  
15 HEARING OFFICER COX: If you're referring to the map  
16 I think you better. Okay.  
17 MR. MURAKAMI: We call Dr. Clyde Tamaru.  
18 CLYDE TAMARU, Ph.D.,  
19 called as a witness at the instance of Intervenor Martin Kabu,  
20 et al, being first duly sworn to tell the truth, the whole  
21 truth, and nothing but the truth, was examined and testified  
22 as follows:  
23 THE WITNESS: Yes. Good morning.  
24 //  
25 //

Page 11  
1 DIRECT EXAMINATION  
2 BY MR. MURAKAMI:  
3 Q Dr. Tamaru, would you state your name and residence  
4 address for the record.  
5 A My name is Clyde S. Tamaru.  
6 Q And your address?  
7 A Home?  
8 Q Yes.  
9 A My home address is 1157 Luanaopou Place in Kailua on  
10 Oahu.  
11 Q Dr. Tamaru, did you prepare at my insistence a  
12 Direct Witness Statement for submission for these proceedings?  
13 A Yes, I did.  
14 Q That was marked as testimony No. B-T-12?  
15 A Yes.  
16 Q I'll hand you a copy. Is that your testimony?  
17 A It's so long.  
18 Q I think the errata sheets were sent out. All the  
19 parties received that, the additions, the references to the  
20 awa.  
21 A Okay.  
22 Q Just for clarification what were those changes?  
23 A Initially when we talked we had a short time for  
24 discussion but I had asked for the inclusion of the milkfish or  
25 the awa.

Page 12  
1 Q And that was specifically in three reference points  
2 on Page 2 of your testimony?  
3 A Correct.  
4 Q After the listing of the mullet or ama'ana?  
5 A Correct.  
6 Q The inclusion there was just to include the awa or  
7 milkfish as an additional listed fish?  
8 A Correct.  
9 Q Would you summarize your testimony with respect to  
10 its relation to the life cycle of the fish that you presented  
11 in this testimony?  
12 A Would you repeat.  
13 Q Yes. Could you summarize your testimony with  
14 respect to the life cycle of the fish.  
15 A The question posed to me was whether there would be  
16 an adverse effect if there was taken away of fresh waters in a  
17 particular habitat. That was the specific question that you  
18 posed to me.  
19 There's several fish that are concerned. One was  
20 the ama'ana, the striped mullet. Holohole is another one.  
21 That's why also to be included was the milkfish. These three  
22 depend on the kind of, I'll call it curyaline or brackish water  
23 environment for the nursery portions.  
24 Certain questions were posed to me about, for  
25 example, whether mullet can spawn in freshwater. And I tried

Page 13  
1 to correct them. That's not correct. The basis that most of  
2 these particular species need --  
3 Q Before you go on, Mr. Tamaru, I forgot to offer you  
4 as an expert in, let's see, in fisheries and aquaculture.  
5 MR. ACHIOFF: Stipulate.  
6 MR. ZAKIAN: No objection.  
7 HEARING OFFICER COX: You will be recognized as an  
8 expert in fisheries and aquaculture.  
9 THE WITNESS: Continue?  
10 Q (By Mr. Murakami) Go ahead. Sorry to interrupt  
11 you.  
12 A Anyway, I've done a lot of research on the certain  
13 parts of the life cycle for both the milkfish -- my doctoral  
14 thesis on the milkfish. Striped mullet is just another species  
15 I have been working with since 1977. And there are some errors  
16 that are commonly said. But it's kind of, I think, a  
17 misunderstanding about appearance of fish in a particular  
18 habitat.  
19 Mullet and milkfish requires saltwater for spawning.  
20 Then the larvae develop at sea. However, from the juvenile  
21 stages that's when they migrate and they require the curyaline  
22 or brackish environment for their growth.  
23 For the mullet specifically it's even documented  
24 that the brackish water environment is not necessary but it's  
25 best for the maturation. That was what I wanted to clarify.

Page 14  
1 Those are the areas that are particularly endangered  
2 especially if you take away freshwater or decrease the brackish  
3 water environment.  
4 Habitat destruction I don't know if you got the plot  
5 of the fisheries of mullet. Is that too late? Yeah.  
6 Q Are you referring to the charts that you had  
7 submitted as exhibits to your testimony Exhibit B-23? And I'm  
8 handing you includes both the Live Food Pyramid, and three  
9 charts with respect to the Catch Records of the Striped Mullet,  
10 Milkfish and Aholehole. You can refer to that.  
11 A I'll focus on the striped mullet for now, but this  
12 is a commercial catch data from the Department of Land and  
13 Natural Resources. As you can see the landings is a continuing  
14 decline. This is up to 1996, the historical record from 1949  
15 to the present. Even with the restrictions on closed seasons  
16 we're still having a decline in the ama'ama fishery.  
17 There's two questions as to why this occurred.  
18 There's two possibilities. One is overfishing. And the second  
19 is habitat destruction. Probably the answer would be it's a  
20 combination of both. The habitat - I mean the state is now  
21 investing, I think, about 300,000 in the stock enhancement  
22 program to address restocking native mullet.  
23 The trouble is that when you talk about stock  
24 enhancing program they have to take into account the other  
25 factors that affect the catch record. That's the destruction

Page 15  
1 of habitat.  
2 On Oahu in particular this is a real serious  
3 concern. And that's one of the things I think on Moloka'i, the  
4 fishery here, the nursery habitat is still quite good.  
5 Same with the milkfish and the aholehole. The  
6 milkfish is kind of the same situation. And the aholehole is  
7 the only one that hasn't changed much. It just goes up and  
8 down, up and down. But these two particular species brackish  
9 water environment especially the habitat is essential to their  
10 healthy population.  
11 Q Now, you described, did you not, the life cycle of  
12 the fish. Would you just detail that part of your testimony so  
13 that the record and the Water Commission will have a clear  
14 understanding of how this particular life cycle of the, in  
15 particular the mullet and the awa are dependent upon certain  
16 conditions in the habitats for them to go through the cycle of  
17 adulthood, spawning and juvenile stage to maturation?  
18 A Okay. The best I can provide is a pictorial. This  
19 is an actual manual for striped mullet production, artificial  
20 propagation that I produced under contract to the Governor of  
21 Guam. On the picture is basically the life cycle. In  
22 aquaculture our goal is to close the life cycle in captivity.  
23 Our research is focused on doing all of this on  
24 land. That's why we need to understand what are the  
25 requirements of the fish during this complete life cycle, fish,

Page 16  
1 mullet, moi, all the ones we are targeting for culture.  
2 In research we focus on, a lot of time is focused on  
3 the environmental parameters. Because these are what we call  
4 euryaline fish or brackish water species, there's certain  
5 periods that we need to identify when lower salinity is  
6 important.  
7 For the striped mullet I think I already said the  
8 spawning will take place in the ocean. That's required all the  
9 way to the larval development. It is at this portion from the  
10 juvenile stage all the way up to maturation where brackish  
11 water environments are important in their life cycle. We need  
12 to identify what are the actual parameters and take advantage  
13 of them to close the cycle.  
14 In the process, as I said, we have to produce the  
15 fry artificially, so we have to know how, what they eat, et  
16 cetera. In aquaculture we are capable of doing, we actually  
17 know how much we have to put in to get so much fry out.  
18 That's why we can get an estimate on the, what it  
19 requires to produce X number of fish. This is the Live Food  
20 Pyramid based upon our recent results. This is a daily  
21 requirement.  
22 Q You're referring to the front page of the Exhibit  
23 marked B-23?  
24 A Yeah.  
25 Q It's titled Live Food Pyramid?

Page 17  
1 A Yes.  
2 Q Would you explain the significance of the  
3 relationship of the different stages you see depicted in that  
4 pyramid?  
5 A A lot of people forget that even humans are  
6 dependent on the primary productivity required. Energy from  
7 the sun must be translated into something that will go up to  
8 the food chain, the fish for us to eat it.  
9 That's why you see the bottom of the pyramid is very  
10 large, 750 million phytoplankton cells per day. That is needed  
11 to support 120 million rotifers. This is the food that we're  
12 going to be feeding to the larvae. That will support, the  
13 rotifers are a direct food for the mullet fry.  
14 In addition we also include a 1200, excuse me  
15 12 million artemia, small crustaceans, baby shrimp. Anyway,  
16 the combined amount to support 40,000 mullet fry the daily  
17 requirement is 12,000 - 12 million artemia, 120 million  
18 rotifers.  
19 One of the questions that Mr. Murakami asked was how  
20 did the production in saltwater occur. These are live food  
21 organisms for the mullet. But as these start to grow older  
22 they will switch. This is, the protocol that we have to use  
23 for the mullet and milkfish is pretty similar.  
24 These lines here are the live feed requirements,  
25 Artemia and rotifers. You will notice that this day zero when

Page 18  
1 they spawn, hatch, you'll notice when they grow older it's an  
2 artificial food that's being also added. This reflects a  
3 change in their diet. That occurs actually in nature. It's  
4 applicable to what happens in the nursery.  
5 They become, they switch from a predator to what we  
6 call an omnivore or even a herbivore. They start to feed on the  
7 diatoms, the benthic mat which the nursery habitat supports.  
8 This is the key component for both mullet and milkfish.  
9 The euryaline environment provides enough of the  
10 diatoms for them to switch over. Without this particular area  
11 this is where you will impact the native Hawaiian, excuse me,  
12 mullet and milkfish populations.  
13 The other parts you realize is that the pyramid, you  
14 notice - I was reading the testimony of Dr. Dollar, I believe.  
15 He's actually in the same college that I'm in. He considered  
16 the macro algae as one of the components in his testimony.  
17 But he forgot to - be left out this other portion,  
18 the phytoplankton and diatom base which is what this group will  
19 rely upon.  
20 You know, this is not, if you change 11 percent  
21 reduction in freshwater it is very difficult to know what the  
22 effects will be. But what it is also to impress upon you it is  
23 not a simple linear relationship, proportional. It's an  
24 exponential relationship. So 11 percent change -  
25 MR. ACHTEROFF: Changed to 15.

Page 19  
1 THE WITNESS: Oh, 15? Anyway, a change like that  
2 reflects a much larger change than can be anticipated. You  
3 have to keep in mind it's not a proportional one. It's an  
4 exponential change.  
5 Q (By Mr. Murakami) That's related to that pyramid,  
6 that exponential relationship?  
7 A Yes. The difficulties in estimating the amount  
8 that's actually in the nursery habitat by reducing the  
9 freshwater, no one can predict what's going to happen as far as  
10 the proportionate change. What will happen is even a small  
11 change might result in a very large change in habitat.  
12 Q I'm not sure this came out real clearly. You spoke  
13 about the transition phase when the juveniles switch from  
14 eating the certain type of food and become predators?  
15 A Yes.  
16 Q Now, what relationship does the presence of fresh or  
17 brackish water have with respect to that particular stage in  
18 the life cycle of the mullet or awa? What are the requirements  
19 that are for those types of food for the mullet or awa?  
20 A I'll try and -- I have a picture of developmental  
21 changes so that in your mind you can see. This is the basic  
22 change in morphology that the larvae will go through.  
23 Q What type of fish?  
24 A It's ama'ama, striped mullet. But approximately  
25 this bottom portion you'll never see this close to shore. This

Page 20  
1 is occurring out in the ocean. This is when they are still  
2 dependent on plankton. They are basically considered a  
3 carnivore at this point in time feeding on small crustaceans,  
4 et cetera.  
5 When they get older you'll see both a change -- this  
6 is the pua that the people refer to -- occurs at specific times  
7 of the year. This, at this particular point in time they  
8 actually change their diet and become almost exclusively what  
9 we call herbivore, feed on plants.  
10 The herbivore-raising area, so to speak, is a  
11 nursery ground. And this is basically an estuarine or a  
12 brackish water environment. This is probably the best source  
13 of particular diatoms they use as food.  
14 In fact I'm not sure if you're familiar, but  
15 Hawaiian fishponds - I was also reading I think Dr. Dollar's  
16 report -- I think he made one conclusion that I would not  
17 particularly agree upon. He said that the fishponds are at  
18 this point in time, because of the diatoms they are silted in.  
19 And he said they're just confines for fish.  
20 That's not entirely true. In historical times and  
21 the ones that are still being used today, there are very few of  
22 them though, they are all local kupa which is the type of  
23 fishponds you see on Moloka'i. They were built around  
24 estuarine environments.  
25 The reason they did that, the mullet pua, the fry

Page 21  
1 and milkfish juveniles are attracted to these areas and they  
2 will literally stock the pond by themselves.  
3 That was one of the remarkable achievements of the  
4 Hawaiians. They understood that. That's, you know, it cost a  
5 lot of money to stock ponds but these ponds do it themselves.  
6 So one of the main characteristics of a Hawaiian  
7 fishpond before was that they were built around estuarine  
8 environments.  
9 I think he said there's no freshwater now. But I  
10 think because of diatoms it silted in. And I think if you were  
11 to dig, the water would come up again. But they probably been  
12 pushed off to the side.  
13 Q How did Hawaiians in ancient days take care of that  
14 problem?  
15 A That has not been very well documented. But my  
16 understanding they continued to sweep; they probably used the  
17 outgoing tides to stir the bottom up so that the silt never got  
18 to the point that it is now. It's remarkable what they used to  
19 do.  
20 A good example that I use as an example, I'm not  
21 sure if you're familiar with Kawai Nui Marsh. Everybody knows  
22 how overgrown it is. In prehistory, precontact that was a  
23 250-acre fishpond that was clean. There was nothing growing  
24 like it is now. They pulled everything that rooted. It's hard  
25 to imagine but that's how it used to be.

Page 22  
1 Q Dr. Tamara, are your comments similar to both the  
2 awa and the mullet?  
3 A Very similar, yes.  
4 Q How about for the aholehole?  
5 A That one is a little bit different. I'm not -- they  
6 require -- they spend a large portion of their time as  
7 juveniles in the brackish water environment. The difference is  
8 that milkfish and mullet are herbivores at that particular  
9 point in time.  
10 The aholehole is always a carnivore and he will feed  
11 on the plankton that is also present, not only the plankton but  
12 small benthic crustaceans that thrive in the nursery habitat or  
13 the brackish water habitat.  
14 Q So they will depend on slightly different type of  
15 source but also dependent on the brackish water environment?  
16 A Correct. The brackish water environment is  
17 necessary for the primary productivity there that the small  
18 crustaceans will feed on.  
19 The mention of opae, that's actually one of the  
20 bigger crustaceans that are present. You have to really look  
21 for the phytoplankton that are present. Those are at  
22 microscopic level.  
23 Q Are you familiar with the waters off the south  
24 shores of Moloka'i in and around the area of Kaunakakai?  
25 A Actually not like the hydrology but I do know a

Page 23  
1 little bit about the coastline. I had to do a small assessment  
2 of the mullet fry population. And it's kind of coincidence  
3 because I never knew about this particular hearing. But is  
4 that Oneali'i? The culvert right by the service station and  
5 Coconut Grove.  
6 Q You're speaking of the service station right down  
7 the road from this hearing room?  
8 A Yes.  
9 Q What was the last place?  
10 A Coconut Grove.  
11 HEARING OFFICER COX: Just a second.  
12 MR. ZAKLAN: Excuse me. Could you identify the name  
13 of the service station so we have it clear on the record.  
14 THE WITNESS: I don't know the name. Chevron.  
15 VOICE FROM AUDIENCE: Robin's Chevron.  
16 THE WITNESS: I'm from Oahu so I just know that's  
17 the service station. (Audience laughter)  
18 Q (By Mr. Murakami) Maybe this might be helpful. If  
19 you could take this pen and locate the general areas that you  
20 said that you just mentioned on what's been marked CWRM-1.  
21 Could you just circle those areas, designate what they are and  
22 initial them.  
23 A I may need some assistance.  
24 HEARING OFFICER COX: Use the mike, please.  
25 Q (By Mr. Murakami) What might assist you is a more

Page 24  
1 detailed map of the features of Moloka'i that has not been  
2 admitted into evidence but several witnesses have referred to  
3 in order to get a bearing on CWRM-1.  
4 A Coconut Grove is right around here someplace? It  
5 would be in this location right there. This area is Coconut  
6 Grove.  
7 Q Will you circle that and just initial that, just put  
8 a circle where your survey area included on that map?  
9 A There's a lot of stuff here.  
10 Q I know. Maybe just draw a line to it so we know you  
11 did that.  
12 A Is this the main road?  
13 Q That's an aquifer boundary you just pointed to.  
14 A This is the main road. The Chevron station would be  
15 where? This is the pier. Somewhere over there.  
16 VOICE FROM AUDIENCE: Near the pier area.  
17 MR. MURAKAMI: The witness will have to testify on  
18 his own. Just put your initials there too.  
19 A And then Oneali'i is around, I'm not familiar with  
20 the landmarks on the map.  
21 Q Well, your testimony is that around Oneali'i you did  
22 the survey?  
23 A Yeah.  
24 Q If you can't find Oneali'i that's fine. We will  
25 have to take your oral testimony on that basis. What you've

Page 25  
1 done you've indicated on the map two areas: One, Coconut  
2 Grove, one just outside the shoreline near the service station  
3 closest to the culvert line where you did some survey work.  
4 Would you describe what the survey work revealed?  
5 A The question was whether there's enough mullet fry,  
6 an estimate of how much mullet fry is present in this area,  
7 actually for all of this but I just had enough time to just do  
8 a real quick and dirty one.  
9 Basically it's what they called a catch per unit  
10 effort. You time yourself how much fish you catch per amount  
11 of time. So I have it in written form that I had to submit to  
12 the person.  
13 Roughly I think I know the culvert by the Chevron is  
14 200 fry per minute, 200 fry per minute now. And Coconut Grove  
15 area is also 200 fry per minute. And Oneali'i was 2 fry per  
16 minute.  
17 And the unfortunate part is that there aren't many,  
18 in fact there are none to my knowledge similar kinds of even  
19 guesstimates anywhere in the state. That's one of the things  
20 that we are lacking on that kind of baseline data.  
21 But just based upon that information there's enough  
22 fry in just those three areas. The issue was whether they had  
23 enough fry to stock up the fishponds 300 acres could be  
24 stocked. I estimated, yeah, you could do it in three days.  
25 That's how much mullet pua was present.

Page 26  
1 I took that as an indication your nursery ground  
2 here is stable, not stable but very, still very productive as  
3 opposed to some other nursery locations on Oahu.  
4 Q That's assuming that the project, the design wasn't  
5 to take fry out of the wild?  
6 A That's correct.  
7 Q Just for purposes of clarification I'm going to hand  
8 you a photograph that's marked as Exhibit B-12. Could you  
9 identify what that species of fish is?  
10 A Mugil cephalus.  
11 Q Which is?  
12 A Ama'ama.  
13 Q Striped mullet.  
14 A Striped mullet. This is Hanalei Bay.  
15 Q I'm going to show you a photograph B-13. Are you  
16 familiar with that species and what is it?  
17 A Yeah. That's the wholehole Kuhlia sandvicensis.  
18 Q The wholehole, the species you referred earlier?  
19 A Correct.  
20 Q Just out of curiosity, I'm not sure you know this,  
21 you know what species is depicted in Exhibit B-14?  
22 A I call it a palani. Acanthurus dussumieri. That's  
23 on Guam I think. (Audience laughter)  
24 Q Have palani entered into any of your research?  
25 A No.

Page 27  
1 Q Do you have anything to add to conclude your  
2 testimony?  
3 A That's all you asked me.  
4 MR. MURAKAMI: Okay. The witness is now open for  
5 cross examination.  
6 HEARING OFFICER COX: Could I ask a question? In  
7 terms of the brackish water which you talked about, do you know  
8 how much freshwater has to be, what percentage of freshwater  
9 should be out there?  
10 THE WITNESS: I knew this question would come  
11 across. That's a very difficult question. I would tell you  
12 right at this time no. There's no one in the world that could  
13 tell you that. We know the limits or the ranges that are  
14 important for certain parts of the live hatchery.  
15 The issue at hand is a much more complicated one.  
16 By taking out a certain percentage of water from the aquifer  
17 you're basically asking, well how much of an impact will that  
18 make on the nursery ground, the nursery habitat. To be quite  
19 frank there's no one in the world that can tell you what  
20 10 percent would mean, what 15, 20.  
21 The only thing I can add or I guess caution people  
22 when they think about it is that, as I said, it's not a  
23 proportional. If you think 11 percent it's going to - take  
24 out 11 percent of water then maybe only 11 percent of the  
25 habitat will change. That is not true. It will be an

Page 28  
1 exponential change. That's why it's really scary. You have to  
2 be really careful.  
3 MR. MURAKAMI: Mr. Hearing Officer, I failed to  
4 mention I would be willing to offer to copy those pages in  
5 Mr. Tamuru's book here on the hatchery manual or the artificial  
6 propagation of striped mullet just so that the record will be  
7 complete if that will be useful.  
8 MR. OSHIMA: Unless we had opportunity the review it  
9 in advance to do cross-examination I don't think it's useful on  
10 the record.  
11 HEARING OFFICER COX: I believe we are ready for  
12 cross-examination, Mr. Oshima.  
13 CROSS-EXAMINATION  
14 BY MR. OSHIMA:  
15 Q Dr. Tamuru, I'm Alan Oshima. I'm representing  
16 the applicants in this case.  
17 A Moloka'i Ranch?  
18 Q Yes, Moloka'i Ranch and Wai'ola o Moloka'i. Your  
19 estimates of fry, can you tell me when you did that and how  
20 long it took? You described it as quick and dirty. I'd like  
21 to know when that was done, what time of year?  
22 A Can I have a minute here? My quick and dirty  
23 results were reported to a Mr. John Savas. He was the then  
24 executive director of Department of Labor, Office of Community  
25 Services. I did the survey on January 25th.

Page 29  
1 Q Of what year?  
2 A 1996. Excuse me, '97.  
3 Q And you did the three areas at the same time, the  
4 same day?  
5 A Yes, same day.  
6 Q Approximately how much time did it take to conduct  
7 your survey?  
8 A The entire time?  
9 Q Yes.  
10 A About hour and-a-half.  
11 Q So what you did is you went there and you looked at  
12 one spot and you counted the amount of fry per minute?  
13 A Basically you go, it's a catch per unit effort. So  
14 you get your net --  
15 Q And just scoop?  
16 A Just scoop. You got to be careful in those areas.  
17 There are two kinds of mullet that are present. The reason I  
18 went in January this is the natural time when the fry are  
19 coming in. So basically between January till April. Actually  
20 this is early in the season so my guesstimate is that the fry  
21 population even gets higher.  
22 Q So with respect to the scoop technique you used, you  
23 did the same scoop technique at each of the locations?  
24 A Right.  
25 Q Now, you say you were looking primarily for striped

Page 30  
1 mullet?  
2 A Yes.  
3 Q That was the focus of your efforts at that point?  
4 A Correct.  
5 Q And at the culvert near the gas station --  
6 A Yes.  
7 Q -- was it -- on which side of the road did you do  
8 that?  
9 A The ocean side, makai. It's actually at the  
10 beginning part of the culvert along the coastline right at the  
11 opening.  
12 Q Okay. Had you gone further in you might have still  
13 found fry?  
14 A Yes. I just looked but, yes, they are there.  
15 Q What was the purpose of your study in reporting to  
16 Mr. Savas?  
17 A What was that?  
18 Q Were you contracted? Was this under a contract for  
19 the state?  
20 A No. My duties as an extension.  
21 Q So this was a part of your regular duties in  
22 surveying?  
23 A Yeah, not the surveying. The issue that was at hand  
24 was whether there was enough mullet fry to stock Hawaiian  
25 fishponds assuming that all 300 acres would be back in

Page 31  
1 production.  
2 Q So you did surveys elsewhere as well?  
3 A I haven't done any.  
4 Q So you would be totally dependent upon those three  
5 quick and dirty studies to make a determination that all 300  
6 plus fishponds could be stocked?  
7 A Yeah. I mean I would feel comfortable with that to  
8 tell me if I had, you know, in an hour I would have wondered.  
9 But per minute, no.  
10 Q And why would you -- and particularly this is to  
11 address Moloka'i fishponds or fishponds statewide?  
12 A No. The issue is whether there's enough fry in the  
13 nursery habitat on Moloka'i.  
14 Q On Moloka'i?  
15 A Yeah. If I was to do, if I had time and resources,  
16 you know, the correct study would be the whole coastline here.  
17 Because if it's typical of other places they will congregate in  
18 certain areas so you can actually, you can identify areas that  
19 they congregate.  
20 Q What would those areas be?  
21 A Brackish water.  
22 Q Would they most likely be around inlets like the  
23 Kaunakakai culvert, stream water, what might be considered a  
24 small estuarine environment?  
25 A Yes.

Page 32  
1 Q They do not normally -- I think in your direct  
2 testimony you refer to the, in Panalua'u within the ocean  
3 environment may not be as conducive to habitat?  
4 A Yes.  
5 Q As an estuarine environment such as I think you  
6 pointed to Kahala'u at that point?  
7 A Yes. In fact they have with the stock enhancement  
8 activities where they put little wire tags so that they can  
9 monitor. We want to know where we putting our fish, what  
10 happens to them in areas where you release in an estuarine  
11 environment.  
12 So if you specifically put them in Kahana Bay --  
13 Hilo is the best example -- they will stay there. If you put  
14 them along the coastline where there's not a great deal of  
15 brackish water, they just go along the coastline until they  
16 find it.  
17 Q They find their habitat, right?  
18 A Correct.  
19 Q These are the juvenile mullet we're talking about?  
20 A Yes.  
21 Q Not particularly the adult mullet?  
22 A That's correct.  
23 Q Because the adult mullet once they reach adult stage  
24 will migrate and can live in a different environment?  
25 A That's actually, they will congregate during the

Page 33  
1 spawning season. I think this is one of the reasons that  
2 people believe that they need the freshwater to spawn.  
3 But during periods of December, actually right now  
4 if you were to go to Kaneohe Bay, Pearl Harbor you'll start to  
5 see the mullet coming close to shore in the estuarine  
6 environment, the adults.  
7 And we have done experiments to determine what is  
8 the optimal salinity for maturation. It turns out brackish  
9 water. So there is, apparently, a physiological component to  
10 that aggregation before spawning.  
11 They then will migrate. And there are very few  
12 people that I know of that have actually seen it. But  
13 fishermen are well aware of the migratory activities that take  
14 place when the school moves offshore to spawn.  
15 Q So you could catch mullet in various parts of the  
16 state not just necessarily their fisheries?  
17 A Yeah. It would be easier to catch them in the  
18 estuarine environments, unfortunately, when they're in the  
19 spawning season.  
20 Q When you say you've done studies on the salinity and  
21 the brackish water is the best, can you define brackish water  
22 for this commission?  
23 A Brackish water, the range can be quite large,  
24 anything from our sophistication is units, parts per thousand.  
25 Q Correct. And seawater, just for the record seawater

Page 34  
1 is?  
2 A Above 30, I'd say above 30 parts per thousand for  
3 our definition we call seawater. Anything above, so from 1  
4 till 30 I guess.  
5 Q Is seawater?  
6 A No, 30 and above. And below that to freshwater is  
7 considered brackish.  
8 Q The lower the parts per thousand is it better or is  
9 it worse or is there any linear relationship to the habitat  
10 quality that you seek for striped mullet juveniles or have you  
11 arrived at that conclusion?  
12 A At this point, no. It's difficult.  
13 Q So would you expect that a 29 parts per thousand  
14 salinity level would be just as good as a 15 parts per  
15 thousand?  
16 A No. I think that's too general a statement to make.  
17 Because what the level of understanding where we know it will  
18 impact the nursery, we do not know what will happen. Even  
19 that's -- what? Say the numbers are 15 to 29.  
20 Q Well, you described 30 as the dividing point between  
21 what you considered to be ocean water and brackish water?  
22 A Right.  
23 Q So my question was is 29 just as good as 15?  
24 A No. They're quite different.  
25 Q All right. Is 23 just as good as 15?

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1 A It's still -- if you're looking for a range I think  
2 about 3 parts per thousand to plus or minus around there.  
3 Q You're looking for 3 parts per thousand environment  
4 for the juvenile mullet?  
5 A No. The environment, well, in the lab we can define  
6 specifically what, if you wanted 15.25 we could do that.  
7 Q Correct.  
8 A In the environment there's with the fluxes and the  
9 water enters the ocean you just have to say brackish water.  
10 So you will be anywhere from even freshwater for the mullet  
11 till about 28 parts per thousand, my experience.  
12 Q Where is it most likely that you would find the  
13 juveniles? Is it in 28 parts per thousand, 23 parts per  
14 thousand, 15 parts per thousand?  
15 A It's, I wouldn't be able to answer that one. Most  
16 of the places are approximately -- again it's a real difficult  
17 answer to give you. The best I say no because I don't know the  
18 exact boundaries in the wild, in the nursery habitat.  
19 Q So you don't know?  
20 A No. I couldn't tell you.  
21 Q As long as there's some freshwater input --  
22 A Yes.  
23 Q -- it's okay?  
24 A Yes.  
25 Q You say that if you were to look along the coastline

Page 36  
1 here there would be other areas where you would find mullet  
2 fry, striped mullet fry?  
3 A Yes.  
4 Q Where might those areas be?  
5 A The first I would look for is basically streams or  
6 estuaries, because the mind is simple thinking. I can see the  
7 stream and I'll look for it.  
8 On Moloka'i it's a little bit more complex because  
9 you have the streams coming out from right onto the shore. So  
10 then I would start to go along the coast and hope to find those  
11 areas.  
12 Q Would you agree -- are you familiar with Dr. Steven  
13 M. Blaiber and his article in 1987 on Factors Affecting the  
14 Recruitment and Survival?  
15 A No.  
16 Q You're not. Is habitat besides salinity an  
17 important part of juvenile recruitment for striped mullet in  
18 your estimation?  
19 A My estimation, yes.  
20 Q Part of the reasons why mullet seek a fresh or a  
21 brackish water environment is partly might be predator  
22 protection as well?  
23 A Not necessarily because at that point in time there  
24 are several other predators that also frequent the area, clops,  
25 awa'awa, clops, small carangidace, papio, the moi already

Page 37  
1 moving out, those kind of barracuda.  
2 Q What about turbidity?  
3 A Turbidity if it affects the benthic food chain that  
4 would have an input. Turbidity prevents light from  
5 penetrating.  
6 Q So they would seek -- it's a better environment when  
7 there is turbidity?  
8 A Not necessarily.  
9 Q You think it's the other way around? You think a  
10 clear water is better for striped mullet juveniles than turbid  
11 water?  
12 A Not necessarily. It depends if there's enough food,  
13 you know, if there's enough light penetration whatever the  
14 turbidity may be to give them that benthic mat that they feed  
15 on.  
16 When you say turbid what do you mean by turbid? Is  
17 that because of the siltation? Because turbid is also --  
18 Q Suspended particles in the water making it less than  
19 clear.  
20 A Okay. But the particles themselves is that silt or  
21 is that plankton?  
22 Q Could be either.  
23 A If it's plankton, yes, that's actually a good  
24 environment because that's all live stuff. If you're getting  
25 siltation from where it's from the soil that would be a

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1 problem.  
2 Q So surface runoff would not be a good situation  
3 necessarily?  
4 A Correct.  
5 Q But streams -- in an estuarine environment in Hawaii  
6 aren't the periodic episodes of stream water input good for the  
7 estuary in terms of charging the estuary with a large amount of  
8 nutrients?  
9 A Yes.  
10 Q That increases phytoplankton growth as well?  
11 A Yes.  
12 Q So in some situations turbidity might be good and  
13 some situations it might not be good?  
14 A Yes.  
15 Q When you look for the other stream environments  
16 along the coastline, can you tell me where they might be, where  
17 you might look for fry that might stock the fishponds that  
18 you're now studying?  
19 A We're talking about mullet or milkfish or both?  
20 Q Mullet, striped mullet.  
21 A For mullet, I haven't done outside here yet. We're  
22 kind of proposing to do that for the future. Like I said the  
23 problem with our study we don't have enough of them. So I just  
24 would look for anywhere where I can see or measure salinity  
25 drop. So something in the brackish environment. It doesn't

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1 of availability of that fish?  
2 A Yes.  
3 Q Because if commercial fisheries are reporting it the  
4 trends would be the same in your mind as what others are  
5 catching, the availability of the fish?  
6 A There's been quite a debate as far as using the  
7 commercial landings on certain species because as you know the  
8 recreational fisheries in Hawaii is rather large.  
9 And there's another fish that we are trying to  
10 culture. That's moi. I use, we look at the commercial  
11 landings. It's prior to when restrictions were placed. And  
12 the average landing is only 14,000 pounds a year. And  
13 everybody -- Jesus, moi is a real popular fish. But the actual  
14 numbers that are landed is really low.  
15 The commercial fishery -- I had to do this with  
16 akule and a couple others. Quite frankly, um, there's no  
17 estimate, unfortunately, that we can give. But the  
18 recreational fishery has to contribute a substantial amount to  
19 the fishing pressure.  
20 Q Which is not reported, not shown in this data?  
21 A That's correct.  
22 Q I think you identified that in your summary where  
23 you say that, "it's affected by primarily overfishing and  
24 habitat destruction."  
25 A Yes. It's a combination of both. That's the issue

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1 have to be, necessarily be a stream. But that would be my  
2 first clue that this would be appropriate nursery.  
3 Q Do you know the relationship of freshwater to --  
4 looking at your food pyramid, what is the relationship of  
5 groundwater to phytoplankton availability?  
6 A For groundwater, okay, that pyramid is based on  
7 culture results. That's why sometimes the people -- what am I  
8 trying to say here? In the artificial environment we have to  
9 create the food chain. In the wild the groundwater basically  
10 supports nutrients that will provide an adequate bloom at this  
11 level.  
12 Q What is that level of nutrients that's required for  
13 the adequate bloom that you propose?  
14 A Is this for this pyramid or for out in the wild?  
15 Q Out in the wild.  
16 A The wild I don't know what it would be.  
17 Q Would surface water runoff contribute to the  
18 nutrient levels --  
19 A Yes.  
20 Q -- in the wild? Do you know what percentage surface  
21 water runoff would have compared to groundwater discharge?  
22 A No.  
23 Q When you're looking at the striped mullet  
24 recruitment, you say it starts in January, how long does it  
25 extend to?

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1 that is at hand. I think with the DLNR, DAR has to face.  
2 Q What would you consider the habitat destruction  
3 that's affecting this, if you know?  
4 A At this point we didn't do enough of the survey. I  
5 believe that is planned for the upcoming years.  
6 Q Hilo Bay has how many rivers emptying into it, if  
7 you know?  
8 A I only know of the one major one. I don't know its  
9 name.  
10 Q Would you consider Hilo Bay to be a good habitat --  
11 A Yes.  
12 Q -- for striped mullet?  
13 A Yes.  
14 Q Juveniles especially?  
15 A Yes.  
16 Q In fact, that's where one of the studies is ongoing  
17 for stocking?  
18 A That's right.  
19 Q To determine the --  
20 A Feasibility.  
21 Q -- feasibility of stocking a good habitat?  
22 A That's correct.  
23 Q And if, I guess I'm just trying to get to your  
24 statement that habitat destruction might be a part of this.  
25 I'm trying to understand where you've determined that mullet,

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1 A Basically between January through April.  
2 Q Okay.  
3 A Peaks in February or March. That's the general  
4 term. It changes every year.  
5 Q Have you correlated that to what months are the  
6 wetter months and surface runoff and stream levels, et cetera?  
7 A To the amount of runoff?  
8 Q Yes.  
9 A No.  
10 Q Is it your expectation that the months of January  
11 through April would be the time where there would be no surface  
12 runoff and the streams would be fuller than other times of the  
13 year?  
14 A Well, that's usually -- our rainy season is usually  
15 considered more of a wet time so that's probably correct, yes.  
16 Q So your exhibit also attaches the catch records of  
17 striped mullet from 1948 through 1996?  
18 A Yeah, right.  
19 Q This you got from the Division of Aquatic Resources?  
20 A Right.  
21 Q So these are commercial reports of --  
22 Commercial landings, right.  
23 Q -- of landings?  
24 A Hmm humm.  
25 Q But you used it as an indicator, a broad indicator

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1 striped mullet habitat has been destroyed to show this  
2 correlation, what effect that has versus the overfishing aspect  
3 that you also attribute?  
4 A How are we going to decide on which is the main  
5 contributor?  
6 Q Right. In your mind.  
7 A In my mind, actually I was hoping for the Waiahole  
8 case to be in favor. Actually in part I rely upon the  
9 traditional fisheries, fishermen in the Kaneohe Bay area. One  
10 of the things -- that's the problem with that work that I do.  
11 A lot of it is anecdotal but actually I kind of rely on them a  
12 lot. With the increase, even though it's not the full amount,  
13 we can see a little bit of restoration in the striped mullet  
14 population in Kaneohe Bay.  
15 Q That was in 1995, wasn't it?  
16 A Yes. But from the original report there's one  
17 person I trust with his observation is one of the last  
18 traditional fishpond operators, Mr. Omura. And I rely on his  
19 judgment a lot of times. He said he could see it the following  
20 year. But I thought, wow, that's pretty fast.  
21 But, anyway, at this point in time as far as just  
22 the general amount, like I said, I cannot give you a number.  
23 But there are feelings and their, what they're saying it's  
24 coming back large numbers.  
25 Q What about Pearl Harbor?

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1 A I have no idea on Pearl Harbor.  
2 Q Have you compared the mullet populations in your  
3 habitat during that same period to determine if there is a  
4 correlation at all?  
5 A No.  
6 Q Or is it just merely anecdotal?  
7 A It's anecdotal.  
8 Q So it could be occurring in other habitats as well?  
9 A Possibly, yes.  
10 Q In fact it is happening in Hilo Bay because of the  
11 stocking program. But it may be also happening there as well  
12 naturally, correct?  
13 A The Hilo Bay one because the fish are tagged they  
14 can measure the actual contribution made by the hatchery-raised  
15 fish. I believe it's quite high. It's 30 percent, which is a  
16 lot. You don't hear that kind of number in the normal stock  
17 cabannements like they do in Japan in the trout and other  
18 things.  
19 I wanted to clarify in my opinion it's not just  
20 overfishing or it's not just habitat destruction. I think it's  
21 going to be somewhere in between or a combination of both.  
22 HEARING OFFICER COX: How much longer do you have  
23 for your testimony, cross-examination?  
24 MR. OSHIMA: Why don't we take a break. I only have  
25 about five minutes.

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1 those determinations of the salinity level and the nutrient  
2 levels that are necessary to maintain a fishpond environment?  
3 A Yeah. We don't have the numbers now but we have a  
4 project ongoing that is trying to determine that.  
5 Q But you don't know if it's, what salinity level is  
6 the optimum in your mind?  
7 A Salinity --  
8 Q Anything less than 30 is okay?  
9 A Actually for that particular kind, yeah, if you want  
10 to just generalize less than 30. Actually the fishponds are  
11 very dynamic things. If you were to draw a picture, some of  
12 the small ones is a salinity gradient inside of the fishpond  
13 where the springs, of course, are coming out it's almost fresh  
14 and it mixes.  
15 So by the time it reaches the kuapa it's almost all  
16 salt or maybe even a little less. That changes on the tide and  
17 they actually would regulate that also.  
18 Q From an aquaculture standpoint it is necessary in a  
19 fishpond environment to rely solely upon natural nutrient  
20 levels or is it also possible to supplement that by man?  
21 A Okay. Are we talking about 20th Century  
22 aquaculture?  
23 Q Yes.  
24 A Twentieth century aquaculture normal practice for  
25 high production we normally do not add nutrients or fertilizer.

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1 HEARING OFFICER COX: Let's see if we can finish up  
2 then.  
3 Q (By Mr. Oshima) Dr. Tamaru, what is your  
4 definition of an estuary?  
5 A An estuary?  
6 Q Yeah.  
7 A My definition of it? Mine might not be the same as  
8 an ecologist. Basically it would be an euryhaline, any, I use  
9 the water as my definition. It would a euryhaline environment,  
10 a brackish water being lower than normal seawater, salinity is  
11 lower than normal seawater.  
12 Q So any salinity lower than 30 in your estimation is  
13 an estuary?  
14 A Not an estuary. But, I don't know. I would, like I  
15 say, I don't know. My definition of an estuary might not be  
16 the same but I would just focus on levels of salinity.  
17 Q So residence time of water in a captured natural  
18 embayment has nothing to do with an estuary environment in your  
19 mind?  
20 A Say that again.  
21 Q Residence time of the water in a captured  
22 environment in an embayment is not, has nothing to do with the  
23 definition of estuary?  
24 A Residence time?  
25 Q Yes.

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1 Our fertilizer comes in the form of the feed that we feed to  
2 the fish.  
3 Q Right.  
4 A And their poop is fertilizer. There have been times  
5 when people have tried adding direct fertilizer, and sometimes  
6 catastrophic results because you can't control.  
7 Q What you do is you feed the fish so that they're not  
8 totally relying on the phytoplankton and other naturally  
9 occurring --  
10 A Yes. In modern day aquaculture.  
11 MR. OSHIMA: Thank you. I have no further  
12 questions.  
13 HEARING OFFICER COX: Before we take a break I want  
14 to see if there is a lot of additional cross-examination.  
15 Mr. Zakian?  
16 MR. ZAKIAN: Just a few questions.  
17 HEARING OFFICER COX: Mr. Achitoff?  
18 MR. ACHITOFF: I might have a couple.  
19 HEARING OFFICER COX: I think we better take our  
20 break then first and come back.  
21 (A recess was taken.)  
22 HEARING OFFICER COX: I call the hearing back to  
23 order. I believe we are ready for Mr. Zakian.  
24 #####  
25 #####

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1 A Normally I guess when you talk about a brackish  
2 water environment and estuary there's a constant flow of  
3 freshwater into the sea. That implies a movement all the time,  
4 not a fixed body of water.  
5 Q So an estuary to you could be a coastline, a stream  
6 mouth that's open into the coastline. And where there's a  
7 rapid current along the coastline even the euryhaline  
8 environment in the ocean until it gets to 30 parts per thousand  
9 to you would be an estuary?  
10 A That's what I consider. But it may not be what  
11 other people.  
12 Q With regard to the fishponds, how important, as long  
13 as the fishpond water is less than 30 parts per thousand it's  
14 okay?  
15 A The salinity is just one component. Like I said  
16 Mr. Dollar uses the example of the fishpond as they are now.  
17 That's the dead fishpond, not a living one. Like I said those  
18 were built in specific areas where there was a continuous  
19 inflow of freshwater.  
20 That actually will help to stimulate the primary  
21 productivity there, the phytoplankton and the diatoms. That's  
22 an essential one. I think Mr. Dollar when I just read that  
23 part it kind of struck me as odd. That's a dead fishpond, not  
24 a live one.  
25 Q Do you have any live fishponds where you can make

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1 CROSS-EXAMINATION  
2 BY MR. ZAKIAN:  
3 Q Mr. Tamaru, I just have a few questions to ask of  
4 you. Is it your testimony that freshwater entering into the  
5 saltwater in the nearshore areas is important to the mullet and  
6 other fry that live there?  
7 A Yes. I need some clarification when you say mullet  
8 fry. You have to understand that the fry are depending on  
9 what's growing there. That's where the brackish water is  
10 important.  
11 Q Okay. With their food source?  
12 A Right.  
13 Q Okay. Are you opposed to the drilling of a well  
14 that would decrease the amount of freshwater that flows into  
15 these nearshore waters?  
16 A Not opposed to it. Actually the only way to resolve  
17 the issue, the question that nobody's posed to me but I kinda  
18 feel it coming: "What is the 11 percent going to do?" There's  
19 nobody in the world that's going to be able to do that. You gonna  
20 have to punch a well and monitor it and see what it does.  
21 That's the bottom line.  
22 Q Okay. So you would have no objection then, if say,  
23 the County of Maui were to drill another well that may have  
24 some impact on the amount of freshwater flowing into the  
25 nearshore waters?

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1 MR. MURAKAMI: This is a question that goes way  
2 beyond the direct examination and is irrelevant to these  
3 proceedings. I object.  
4 Q (By Mr. Zakian) I'll rephrase it. You would have  
5 no objection, then, to Moloka'i Ranch drilling a well that may  
6 have some impact on the amount of freshwater flowing into the  
7 nearshore waters --  
8 MR. MURAKAMI: Objection. It's really not relevant  
9 what this witness is for or against. He's here as an expert on  
10 fisheries and aquaculture. I think he's provided evidence.  
11 Really this answer would be irrelevant.  
12 HEARING OFFICER COX: I'm going to allow this for  
13 whatever value it is. We have asked quite a few witnesses  
14 fairly broad questions.  
15 Q (By Mr. Zakian) Please answer.  
16 A Can you restate the question.  
17 MR. ZAKIAN: Repeat the question.  
18 HEARING OFFICER COX: Could you rephrase your  
19 question.  
20 Q (By Mr. Zakian) Yes. Would you have any objection  
21 to Moloka'i Ranch drilling a well that may have some impact on  
22 the amount of freshwater flowing into the nearshore waters?  
23 That's as best as I can remember the question I asked.  
24 A Okay. I wouldn't have any objection but they would  
25 need to demonstrate that the impact would be negligible. I

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1 also work with Waikoloa Fishpond Preservation Society on the  
2 Kaneohe Bay. Pacific Allied owns the golf course now. And  
3 part of their permit application it was approved on condition  
4 that they fund a monitoring study to demonstrate that there is  
5 no impact.  
6 In fact if there was 1/1000th impact on the adjoining  
7 stream they would have to shut the well down. But at this  
8 point in time there's no, they haven't, the amount of water  
9 that they have taken hasn't reached that. So, the kind of the  
10 only way to resolve the situation is to have some kind of a  
11 study ongoing at the same time.  
12 I found it kind of interesting that I believe it's  
13 the Water Commission or a part of the terms of the approval was  
14 for them to fund it. They had to pay for it to build. Because  
15 otherwise you're going to call this expert, that expert, you're  
16 never going to answer the question.  
17 Q Just one final question. This is more of, I think,  
18 a housekeeping measure. In your written testimony on Page 1 of  
19 5, line 12 you state that you got your Ph.D. in agriculture  
20 from the University of Tokyo in 1981?  
21 A That's, I think, a mistake. '88.  
22 Q Okay. I just wanted to clarify that because on your  
23 curriculum vitae you indicate 1988.  
24 A Yeah. I caught that after.  
25 MR. ZAKIAN: No further questions.

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1 HEARING OFFICER COX: Let's see. Mr. Achitoff,  
2 cross-examination?  
3 CROSS-EXAMINATION  
4 BY MR. ACHITOFF:  
5 Q I was confused about one part of your testimony.  
6 Perhaps you could clarify it for me, Dr. Tamaru. That is  
7 regarding the salinity levels that are optimum or even  
8 necessary for the kind of habitat that you had testified was  
9 needed by the mullet at a certain stage in their life.  
10 And as I understand it, nobody knows with precision  
11 what the optimum salinity level is, is that correct in terms of  
12 parts per thousand, or do we?  
13 A When you do a salinity, especially estuarine  
14 environment, we are talking a range of salinities. So when I  
15 say less than seawater, you have to incorporate the whole  
16 range. It's not an average value.  
17 I know this is not in evidence but I got -- in  
18 research we can't control it. But even when we do so this is  
19 the stuff I did about showing the importance of freshwater in  
20 the maturation of the striped mullet. The range that we found  
21 to be effective or important was 13 to 20. So it's a range.  
22 You could never say an average value.  
23 Normally you have to actually take it all the way  
24 from 1 to, I guess, I used the definition less than 30. So it's  
25 all of that, not just I below 30. It's the whole range.

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1 Q So you said 13 to 20? Is that what you said 13 to  
2 20?  
3 A For the oocyte maturation. Specifically for oocyte  
4 maturation of the mullet when the eggs are being produced.  
5 That's 13 to 20.  
6 Q Okay. That's 13 parts per thousand?  
7 A Per thousand, yes.  
8 Q If you had a fishpond that was -- are you saying  
9 that if you wanted to have a productive fishpond you would need  
10 at least part of that fishpond that had a 13 to 20 parts per  
11 thousand? Or is that --  
12 A With the fishpond it's a much, it's kind of a very  
13 complex situation, I guess. Can I draw something just to  
14 clarify?  
15 HEARING OFFICER COX: You may. Do we have another  
16 sheet back here?  
17 MR. MURAKAMI: Mr. Hearing Officer, for purposes of  
18 the record I'd like to mark that as B-27.  
19 HEARING OFFICER COX: B-27.  
20 THE WITNESS: What was the question?  
21 HEARING OFFICER COX: Maybe you can rephrase it.  
22 Q (By Mr. Achitoff) I'll see if I can make it  
23 clearer. What I'm trying to find out is if you wanted to have  
24 a productive fishpond, what kinds of salinity, what levels of  
25 salinity would you need to have in the fishpond?

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1 A Okay, I remember. I'm going to use the black as the  
2 fishpond. That's the kuaapa makahas. If you take it out of  
3 is a difficult answer, I guess. As I said before when we work  
4 with euryhaline fish you have to consider the whole range. It's  
5 not a specific --  
6 Q You use the word euryhaline meaning brackish?  
7 A Yeah, it's a range of salinity so from zero all the  
8 way up to seawater. That's the range when I say brackish  
9 water. In the fishpond, as I said, the ones that are alive  
10 they will always have the freshwater source, either a stream or  
11 spring, some kind of freshwater source. So I'm going to put  
12 that as this purple area.  
13 So the salinities just where the streams are  
14 obviously they're going to be very low. If you take it out of  
15 the spring, it might be freshwater. I got to say already we are  
16 talking about a range already. So 0 to 5 maybe? Zero to 10?  
17 It depends on how much saltwater influx.  
18 The other part that's difficult in the fishponds the  
19 tidal flux occurs twice a day. So it's a real dynamic type of  
20 situation. I guess what you will see is a gradient occur.  
21 Again I cannot give you a number. It will be 5 to 15.  
22 Q Again parts per thousand?  
23 A Parts per thousand, yes. I can't, all I will be  
24 able to tell you it's closer to the makahas. Then you see the  
25 20, 28. The fishpond is never except in a dead one, one

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1 salinity. Unfortunately that's what most of our fishponds in  
2 the state are, dead.  
3 Q In terms of what the fish need, is there some  
4 relationship between these ranges that you've given us and what  
5 the fish need in order for the fishponds to be productive? I  
6 think you've described what the fishpond looks like. What's  
7 the relationship between these ranges and the needs of the  
8 fish?  
9 A The brackish water environment. That's why I won't,  
10 I'm not going to talk about the specific part of the pond. The  
11 brackish water environment is conducive for the benthic growth  
12 of their basic food source. That's the important -- that's the  
13 relationship.  
14 So you could have actually, you know, mat growing  
15 all the way up to here. But it's this particular, the whole  
16 thing together that's conducive for the nursery habitat and  
17 important for the mullet and milkfish.  
18 Q Okay. The range that you mentioned earlier 13 to 20  
19 parts per thousand, how would you relate that to the fishpond  
20 environment that you're describing here? What's sort of the  
21 overlap between these concepts of the 13 to 20 parts per  
22 thousand in Exhibit B-27?  
23 A Okay. That's a wholly different scenario. Because  
24 as I said the ponds themselves were built around these  
25 particular areas. The reason why is that the fry are attracted

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1 to them. And as I said they naturally stocked the ponds. That  
2 was one of the most remarkable achievements to recognize that  
3 behavior.  
4 Basically when they went to the makaha, went into  
5 the ponds, fed in the nursery habitat that was created they got  
6 too big and couldn't come back out.  
7 Q This is the relationship between the freshwater and  
8 the attraction?  
9 A Yes. They will seek out, I don't know, for lack of  
10 a better term the food, they feel it. That's one of things  
11 they homing in, they homing in on. This particular study is  
12 the adults totally separate entity.  
13 We looked at what was required for the maturation.  
14 And, you know, although they spawn in saltwater the brackish  
15 water environment is actually very important in their  
16 maturation process.  
17 That's why it's, I think when you -- that's where I  
18 think the misunderstanding about them spawning in freshwater  
19 came about. It is a very, very important part of their  
20 reaching full sexual maturity. But when they actually spawn  
21 they will do it offshore. But at least I can give you a range,  
22 a specific range that is necessary.  
23 Q I see. I think that clarifies it for me, anyway.  
24 HEARING OFFICER COX: You've completed your  
25 cross-examination, Mr. Achitoff?

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1 MR. ACHITOFF: I want to make sure. Yes, I think  
2 that's it.  
3 HEARING OFFICER COX: Mr. Crowell?  
4 CROSS-EXAMINATION  
5 BY MR. CROWELL:  
6 Q Dr. Tamaru, as you reduce the amount of freshwater  
7 coming in either through the spring or the stream, does that  
8 affect -- it would affect the amount of, the parts per  
9 thousand, right?  
10 A Right.  
11 Q And how far out it spreads, correct?  
12 A Right.  
13 Q Would that have any effect on the number of fish,  
14 the number of fry in that pond?  
15 A Yes. That's the whole point I guess I have been  
16 making, trying to make. It was not making. It is at the  
17 fishpond. I have to use the fishpond as an example. Because  
18 this is only one example of what you are facing to decide. I  
19 could put it on the bottom.  
20 What you're faced also with is the shoreline.  
21 There's springs throughout. And as I said before this  
22 particular springs create this nursery habitat that God knows  
23 how big it is.  
24 If you reduce the freshwater by a certain amount,  
25 what that will do nobody in this world will be able to tell.

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1 Because you don't know which part of the springs it's gonna  
2 affect. Basically I'm just gonna diagram something. This is  
3 just a guess.  
4 So this, you know, this particular area, so the  
5 spring is being fed creates this particular habitat. What you  
6 folks are trying to ask me, I think, correct me if I'm wrong,  
7 if I take away 11 percent does this thing shrink by 11 percent?  
8 That is not entirely true.  
9 As I said what will happen is your food structure,  
10 the bottom base of the pyramid will change. How much I don't  
11 know. There's nobody else that can tell you. What that does  
12 you set up -- and I said the effects are exponential. That's  
13 the, yeah.  
14 Q So 15 percent might not just be 4 percent reduction?  
15 A No. It may be even, there may be quite  
16 catastrophic. It may have no impact. I cannot tell you. This  
17 is a food chain that you're messing with on the bottom part.  
18 That's why it's really scary. That's not, you guys are  
19 focusing on awa and mullet. They guys are forgetting all the  
20 opae, all the phytoplankton that everything else relies upon.  
21 That pyramid, that's why I use that pyramid our best  
22 means to try and illustrate that. I know for sure exactly how  
23 much food to feed mullet only. But with all the other critters  
24 you got out there it's quite, it's quite, it can have a major  
25 impact but it might be negligible too. I couldn't answer.

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1 Q But you may not be able to say that the amount of  
2 the impact or the significance of the impact. But is it fair  
3 to say that as the amount of freshwater declines, it declines  
4 more and more that the impact would rise?  
5 A Oh, yeah, definitely.  
6 MR. CROWELL: No further questions.  
7 HEARING OFFICER COX: Mr. Nakamura?  
8 CROSS-EXAMINATION  
9 BY MR. NAKAMURA:  
10 Q Just a couple of questions. Dr. Tamaru, you  
11 mentioned that once a habitat is damaged the damage to the food  
12 chain -- you mentioned that once a habitat is damaged the  
13 damage to the food chain is exponential. What do you mean by  
14 exponential?  
15 A Like I was trying to -- when they say 11 percent, a  
16 proportional amount, if you take away 11 percent here and, say,  
17 actually put a small proportion -- gosh, I don't know how to  
18 explain it.  
19 HEARING OFFICER COX: Could you close the door so we  
20 can hear the witness.  
21 THE WITNESS: I guess what I'm trying to say is  
22 maybe it's not a linear change or it's a straight line. In  
23 other words you make a change like one, two times. One half  
24 versus two times. The amount of change is exponential.  
25 It's not -- okay, a 10 time change results in a

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1 hundred fold change. I don't know if that's making it clear.  
2 It's not just linear. Linear just goes step by step.  
3 Exponential it goes this way. A small change results in a  
4 bigger change.  
5 Q (By Mr. Nakamura) You mentioned in response to one  
6 question on cross that in order to determine damage it might be  
7 reasonable to condition a well upon monitoring studies.  
8 If we are talking, as we are in this case, about  
9 natural environment with a multitude of ponds, a number of  
10 fishponds and the concern is the ecological and cultural effect  
11 of the withdrawal --  
12 A Right.  
13 Q -- would it be sufficient to monitor any single  
14 site? If the commission, say, were to require a monitoring as  
15 is condition?  
16 A Of approval, huh-huh.  
17 Q Given the fact that we are concerned about a natural  
18 environment with a multitude of potentially affected sites and  
19 an ecological and cultural impact that's a legitimate legal  
20 concern --  
21 A Right.  
22 Q -- do you think it would be sufficient to monitor  
23 one site?  
24 A Oh, no. This is a, dealing with this kind of issue  
25 on the coastlines that's really difficult one because just

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1 defining the aquifer is not good enough as far as monitoring.  
2 You have to understand the nursery habitat. It will extend  
3 well outside the boundaries of the aquifer because freshwater  
4 does not have any restrictions on where it's going to go.  
5 That's what makes it difficult. My guess is why the state  
6 probably hasn't done a lot of this kind of work. It's not a  
7 simple task.  
8 Q So something like the monitoring that you mentioned  
9 to take a single stream and look for a flow reduction is not  
10 what you meant by conditional monitoring?  
11 A No. It's not applicable. I'm sorry. It's not  
12 applicable to what the situation you have here. Because in our  
13 area, I mean the place that I'm assisting, if you want to call  
14 it that, the golf course is watered by the stream. So actually  
15 it's actually very easy way to monitor it, I think, maybe one  
16 of the reasons they said to do it. Because it's a clear case  
17 you can establish cause and effect.  
18 This one going to be a little more difficult to do.  
19 But in our situation I was surprised the Water Commission did  
20 that. They did that.  
21 MR. NAKAMURA: No further questions.  
22 HEARING OFFICER COX: All right. Do we have  
23 redirect, Mr. Murakami?  
24 / / / / /  
25 / / / / /

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1 REDIRECT EXAMINATION  
2 BY MR. MURAKAMI:  
3 Just a point of clarification here. Dr. Tamarii, in  
4 I think in answer to a question by Mr. Oshima there may have  
5 been a suggestion of your definition of what estuaries were in  
6 the context of the discussion of brackish water environments.  
7 Just to be clear, is it true that all that  
8 estuaries are confined to areas that are inlets or mouths of  
9 streams in the definition that you used where estuaries are  
10 brackish water confines?  
11 A They're not confined? Try that one again.  
12 Q Are they confined to only inlets and mouths of  
13 streams as it suggests?  
14 A No. My definition of what I used is the salinity  
15 change.  
16 Q So, for example, you mentioned the Coconut Grove  
17 area. Does that fit in the description --  
18 Yes.  
19 Q -- of some sort of inlet or a stream mouth?  
20 A I considered the location an estuary. There's no  
21 stream coming directly to it. But because there is upwelling  
22 of freshwater that whole area in my definition is an estuary.  
23 Q That does provide some conditions that are conducive  
24 to the mullet fry?  
25 A Yes.

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1 Q With respect to the study you cited, I guess, that  
2 you conducted with respect to the best salinity conditions for  
3 the maturation of, I think you called it oocytes, those are  
4 eggs, right?  
5 A Yes.  
6 Q Does that finding of 13 to 20 parts per million, per  
7 thousand is that a finding of what is the ideal level for the  
8 maturation of eggs or does it, is it the only range in which  
9 eggs can mature?  
10 A They will mature across, all the way from freshwater  
11 to seawater. But the best maturation occurs between, what did  
12 I say? 13 to 20.  
13 Q You talked about benthic growth. Just to be clear  
14 for those of us that are not real familiar with some of the  
15 terminology, can you define what you're talking about when you  
16 talk about benthic growth or shelves?  
17 A Benthic growth, the easiest way to define that?  
18 Describe it in laymen's terms what it looks like.  
19 A Well, that's part of the problems, where a lot of  
20 people misunderstand. We ran into this all the time. I think  
21 Mr. Oshima refers it as turbidity.  
22 Turbid water is, you have to look what's in the  
23 turbid water. Because if it's, as I say, silt particles or  
24 non-living that is bad. But turbid water when it's got  
25 phytoplankton and living things that's actually good.

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1 The benthic growth you need -- too bad I didn't  
2 bring the picture -- at a microscopic level the benthic mat is  
3 a diatom layer. It's not like the macro algae where you can,  
4 like this one. I can't do that. That's why I don't know.  
5 Q In other words you can't grab it?  
6 A No. Well, you can pick up a rock and see it along  
7 top of it along the sediment. It's growing on top of it, yeah.  
8 If you watch the mullet when they're eating they lift their  
9 butts up and they're going like this and they're scrubbing the  
10 alga mat. Mulletfish will do the same.  
11 If you were to go you might say they're not eating,  
12 but tearing.  
13 Q You're referring to some sort of layer on the  
14 surfaces on the bottom of the rocks?  
15 A Yes.  
16 Q You indicated that you would not know for certain  
17 what the effects of an 11 percent reduction along this  
18 coastline might be. Is that true?  
19 A Yes.  
20 Q For purposes of evaluating risks here, how would you  
21 characterize what a decision maker should be careful to be wary  
22 of given what you know about the range of possible outcomes?  
23 A Good question. I face this all the time in my  
24 position. I'm not sure if you understand. I'm an aquaculture  
25 extension agent. I wear two hats. One is economic

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1 development. The other one is my funds come from DLNR. Part  
2 of my salary. So I'm actually also a protector of the  
3 environment. I'm in the in between many times so I have to  
4 cross this.  
5 At present I will use the same criteria as far as  
6 the Department of Ag and how we introduce alien species or the  
7 process that goes through getting permission to bring in a  
8 species. You have to err -- if you're gonna err you have to  
9 err on the side, I mean you have to be the most cautious I  
10 guess.  
11 They always use the worst case scenario that you  
12 have to prove or not prove but provide enough evidence that the  
13 impact is not significant. Until you can do that they don't  
14 allow an introduction.  
15 A good example, I'm trying to bring in striped  
16 mullet from Taiwan. This is supposedly the same Taiwan, I mean  
17 same species that we have here. The reason I wanted to bring  
18 it in it grows fast. But there is the possibility that it can  
19 interbreed with our native stocks. And just because of that  
20 they have used that.  
21 I cannot guarantee that it won't escape and do that.  
22 What they told me is that the way they will approach it they  
23 always will assume the worst case scenario if it did get out  
24 and what then will happen. That's what they have, that's kind  
25 of how the Department of Ag. I don't know about the rest of

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1 the state.  
2 Q What is the worst case in this situation of  
3 11 percent decline, 15 percent decline in groundwater input to  
4 this coastline?  
5 A You will have a diminishing of your habitat. With  
6 that, as I said, there you will have a diminishing of your  
7 natural fry population and everything else that depends on the  
8 nursery.  
9 I don't know if we're focusing -- you asked me to  
10 testify on mullet and milkfish and maybe aolehole. But that  
11 habitat supports birds, crabs, other fish, you know. It's a  
12 habitat. It's an ecosystem that you'll diminish. That's the  
13 worst case scenario.  
14 Q Actually my next question was aside from milkfish  
15 and mullet what other creatures that are in your area of  
16 expertise would be affected in the way of a worst case  
17 scenario?  
18 A Like I said the fry that are present feed upon --  
19 the initial area again is the bottom of the food chain. That  
20 supports X number, a certain number of smaller organisms.  
21 These form the basis of the food chain.  
22 One layer is the mullet fry and awa fry. But then  
23 there are high level carnivores, papio, barracuda, moi, all  
24 those other fish that will come in also to feed on them. Then  
25 on top of that you got crustaceans, crabs, birds, everything

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1 else. The ultimate one is man, us.  
2 Q Is your Service aware of the presence of the  
3 endangered Hawaiian Stilt in this area?  
4 A Yes.  
5 Q Is that one of the birds that of which you're  
6 speaking?  
7 A One.  
8 MR. OSHIMA: Objection. He's an expert in fish and  
9 aquaculture.  
10 MR. MURAKAMI: Well, I think he testified about  
11 birds. I was going to ask him about it. I think that's an  
12 allowable question.  
13 HEARING OFFICER COX: I'm going to allow him to  
14 testify as to his personal experience.  
15 THE WITNESS: As a public servant in my area I need  
16 to be aware of which endangered species are. The native  
17 Hawaiian Stilt is an endangered species. One of the problems  
18 we have in aquaculture they like our facilities. It's an  
19 immediate source of food.  
20 I'm well aware. We have this confrontation all the  
21 time. The farmers want to kill them. You can't do that. So  
22 we have to come up with ingenious ways to make them move.  
23 Q (By Mr. Murakami) Is the he'e or octopus a part of  
24 this chain?  
25 A Certain on the outer level it would benefit, yes.

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1 MR. MURAKAMI: Thank you. That's all.  
2 HEARING OFFICER COX: Thank you, very much, Doctor.  
3 Recross? Excuse me.  
4 RE-CROSS EXAMINATION  
5 BY MR. OSHIMA:  
6 Q Mr. Nakamura asked you about your -- Mr. Murakami,  
7 I'm sorry, asked you about your position and you described it  
8 as being born because economic development and protecting the  
9 environment because of your occupation.  
10 A That's correct.  
11 Q Can you tell me again who you work for and how  
12 you're funded?  
13 A I have a joint -- okay. I am a faculty member of  
14 the School of Ocean, Earth Sciences and Technology at the  
15 University of Hawaii at Manoa. My department is Sea Grant  
16 Extension Service. I have a joint funding for my position.  
17 I'm funded by Aquaculture Development Program which is part of  
18 the DLNR.  
19 The second component is Sea Grant College program  
20 which is federally funded Department of Commerce.  
21 Q So you're a fulltime employee of the university but  
22 you focus on areas specific to your funding because of the  
23 funding. Who directs your work?  
24 A The way that it's set up is that I have to apply  
25 for, I have to make a proposal, annual proposal to get funding

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1 for my position. The person that directs the direction  
2 actually is me.  
3 Q And you're appearing today in your official capacity  
4 as part of the University of Hawaii or on your own?  
5 A This is part of the, I cannot represent the  
6 university without that signature. So I'm testifying as an  
7 expert witness on the area of my expertise.  
8 Q On your own? This is personal?  
9 A No. I've combined it with some of my extension.  
10 This is part of my extension duties.  
11 Q So you're being paid by the university to appear  
12 before us today?  
13 A As part of my duties, yes.  
14 Q Okay. Now, talking about erring on the side of  
15 protecting the environment?  
16 A Yes.  
17 Q Would you agree with me that if we carried that to  
18 the ultimate extreme, then we wouldn't do anything?  
19 MR. MURAKAMI: Objection. This is a totally  
20 argumentative question. I would oppose it.  
21 MR. OSHIMA: He's an expert. He can answer the  
22 question.  
23 MR. MURAKAMI: He's answered the question as to what  
24 the worst case is. He's stated it. You're now attempting to  
25 provide argument in the form of a question.

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1 HEARING OFFICER COX: I'm going to allow him to  
2 answer it. And we will give it the weight that may not be  
3 particularly helpful.  
4 THE WITNESS: Repeat that.  
5 Q (By Mr. Oshima) You've urged this commission in  
6 your testimony today and talked about other monitoring projects  
7 that you're a consultant on, et cetera. And you said on  
8 balance between economic development and protecting the  
9 environment you would err on the side of protecting the  
10 environment?  
11 A Yes.  
12 Q To what degree? Where does that end?  
13 A That's why the burden of proof for example I have to  
14 do this, that's why. I'll use the example of bringing in the  
15 mullet from Taiwan as, if you will, as an example. We have  
16 reached the crossroad. And it may pass.  
17 My duties then because after -- I'm doing this on  
18 behalf of the aquaculture community which is what they want. I  
19 have to then prove to the board with research that the impact  
20 will be negligible. So now that's what I just proposed to do.  
21 It may take six years but that's what I have to do.  
22 Q Okay. And bringing the mullet from Taiwan there's  
23 not a critical urgency for that particular mullet, is there?  
24 A For the farmers there are.  
25 Q It would be for aquaculture purposes?

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1 A That's right.  
2 Q In a controlled environment?  
3 A That's correct.  
4 Q Now, with respect to an open environment like this  
5 what would you use as a baseline for determining the effect of  
6 diminished groundwater flow at any specific location along a  
7 13-mile stretch of coastline?  
8 A This is my own opinion because --  
9 Q That's what we want, your opinion.  
10 A You probably would have to demonstrate -- of course  
11 you're going to monitor that groundwater salinity for sure.  
12 Q How would you do that?  
13 A I believe there are methods. You just have to do  
14 continual transects or repeated transects along, across the  
15 13-mile area. You don't have to do every foot but  
16 representative like demonstrate the gradients.  
17 You probably would need to do that first before the  
18 drilling takes place because you will then identify the impact  
19 area. So it might not even extend 13 miles. It might be  
20 larger.  
21 Second, you'd probably have to get the baseline to  
22 determine what is the current level present as far as biota.  
23 Q How would you do that along 13 miles?  
24 A That also would probably have to be done by multiple  
25 transecting to establish the gradient across that area.

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1 Q And what would you be testing for? Would you be  
2 testing for nitrates and phosphates?  
3 A No, no.  
4 Q What would you be testing for?  
5 A You would be looking at, again you can probably get  
6 the phytoplankton count, micro algae fish surveys.  
7 Q How often would you do that?  
8 A You would probably have to do at least in an initial  
9 phases -- if you wanted to start tomorrow you would probably  
10 have to do it minimum on a monthly basis or even -- a monthly  
11 basis for about a year just to get the baseline of temporal  
12 changes that occur. In fact, they would be nice to be  
13 duplicated for two years. So you have two years and across the  
14 months.  
15 Q What else would you have to do to get a baseline?  
16 A Basically you have to get an estimate of your macro  
17 and micro algal and also fish counts and invertebrate counts.  
18 Q How would you do that?  
19 A Probably they would probably be quarterly sampling  
20 and estimate the number, quarterly sample.  
21 Q How often would you have to do that?  
22 A I would say should be doing it at least once a  
23 month. Again across the months and probably two years for  
24 temporal change and at least two months -- ah, two years.  
25 That's before the well goes in. And then probably follow after

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1 the well goes in probably another two months.  
2 And then assess its effects for about actually for  
3 that kind of change, maybe, almost five years. Then if an  
4 impact you can start to decrease the monitoring but need to  
5 continue once a month or even every other month.  
6 Q Would that be the totality of the establishment of  
7 the baseline?  
8 A No. Just the manpower and costwise that's probably  
9 the best way to start.  
10 Q Would you also have to correlate surface water  
11 runoff into the area so that you could isolate the effects of  
12 groundwater?  
13 A Yes.  
14 Q How would you do that?  
15 A Probably the initial work you need to focus on your  
16 water fall, rainfall. And I believe, I'm not sure of this  
17 area, but where they do monitor that particular site, the gauges  
18 that are set up each island those certain specific sites.  
19 Q Wouldn't you have to monitor the surface runoff  
20 into the specific area rather than just up in the mountains?  
21 A That's why I said this is not like the situation in  
22 Kaneohe because we have an adjacent, a good case for a direct  
23 cause and effect.  
24 This is a little bit more difficult because of the  
25 aquifer's percolating down into the shoreline area. So 13

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1 miles, if you going to only restrict yourself initially for the  
2 13 miles I think it's initially, I think that's a little bit  
3 too small.  
4 Q Again how would you monitor the surface water runoff  
5 effect so that you could isolate the groundwater model based  
6 on?  
7 A I understand your question. Okay.  
8 Q How would you do that?  
9 A I don't know if you could, to tell you the truth.  
10 Q And how would you monitor --  
11 A Oh, I think, I handled one, that's why. The  
12 temporal and the two year monitoring would be, you get a  
13 guessimate on what will happen. Because it will be obviously  
14 dry seasons and wet seasons. That's why the necessary long  
15 period of time to get a handle on that groundwater.  
16 Q I guess what I'm getting at, though, is how would  
17 you isolate the groundwater effect versus the combined  
18 groundwater and surface water effect in the curvilinear  
19 environment?  
20 A The only way to do it would be the temporal, look at  
21 the temporal to see the different changes. That's the only way  
22 I think I could. Not an easy one.  
23 Q And you would rely upon the model to, a model to  
24 give you the groundwater discharge? How would you measure the  
25 groundwater discharge if it's not isolated to the springs and

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1 the seeps that are visible?  
2 A My own, this is my opinion. I'm not a hydrologist  
3 that's why. Like I said I would monitor the salinity gradient  
4 across the coastline. And that's why this is where it's real  
5 difficult for this particular area because it may extend quite  
6 a ways. And just look at that gradient. That will define  
7 quote your "estuary."  
8 Q So you consider this coastline as an estuary in  
9 totality?  
10 A Yeah. My definition because of the springs, yeah.  
11 Q Can you mark on CWRM-1 the boundaries of the estuary  
12 that you are defining for this case?  
13 A Well, actually you can look at where the fishponds  
14 are located.  
15 Q So from Waiialua to Punakou?  
16 A Yeah.  
17 Q Would be the extent of the estuarine boundaries as  
18 you define them?  
19 A That's along the coast. How far out from shore I  
20 don't know. That you would use the salinity gradient.  
21 Q So as long as it's below 30 parts per thousand it's  
22 an estuary for your purposes?  
23 MR. MURAKAMI: I object. There's no foundation for  
24 that particular question.  
25 MR. OSHIMA: I thought that was his answer. I'm

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1 just getting clarity on.  
2 MR. MURAKAMI: Dr. Tamaru has gone into extensive  
3 explanation as to the gradients and why they are important as  
4 opposed to a one set average figure for salinity in terms of  
5 the answers that he's provided.  
6 MR. OSHIMA: Dr. Tamaru is the expert. He's fully  
7 capable of answering his own question. If he knows the answer  
8 I'd like to know the answer. If not --  
9 MR. MURAKAMI: I have a right to object to the form  
10 of the question. It lacks foundation. I think this question  
11 lacks foundation.  
12 MR. OSHIMA: The foundation was his answer to my  
13 previous question. He didn't know how far out the salinity  
14 gradient extended. I just want more following up on that.  
15 HEARING OFFICER COX: I will allow the question.  
16 Can you answer the question?  
17 THE WITNESS: At this point, no. I will add in two  
18 years maybe. The study is, we realize this particular problem.  
19 That's why we have already initiated this study, a study.  
20 Q (By Mr. Oshima) What study is that?  
21 A Right now it's to, we're looking to establish the  
22 baseline water quality parameters of two types of fishponds,  
23 basically. 1. The working ones that are still alive.  
24 And 2. that are undergoing restoration process.  
25 Q I want to be clear on this. The study you're

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1 referring to is not the water quality along the miles of  
2 coastline between Waiialua and Punakou?  
3 A No.  
4 Q But you're confining it to the fishpond environment?  
5 A The fishpond environment.  
6 Q So that's not the study that I was asking you about  
7 in terms of establishing a baseline per se for that whole area?  
8 A Yes. You would be able to at least get some  
9 information from it, though.  
10 Q Now, one's the two year part of your study and I  
11 thought you also mentioned a five year monitoring program  
12 before you established a baseline. Can you clarify what needs  
13 five years and what needs two years?  
14 A I guess the question is whether to go to two or five  
15 as your initial baseline. At this point in time I don't know  
16 what to expect, that's why. So, you know, I'm just throwing  
17 those as a range two to five.  
18 Q So if you err on the side of protecting the  
19 environment what would the time frame be?  
20 A A minimum would be five, I guess.  
21 Q Five years?  
22 A To be on the safe side.  
23 Q With respect to -- do you have any historical data  
24 along these lines that you could measure the effect of  
25 increased pumping at Kualapu'u in the past and how it might

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1 have affected the same factors that you're proposing be imposed  
2 now?  
3 A I don't have that.  
4 Q To your knowledge does anyone?  
5 A I don't know.  
6 Q So your answer to my question as to monitoring would  
7 apply to any diminution of groundwater discharge at the  
8 shoreline from whatever source if, from the protect the  
9 environment standpoint?  
10 MR. MURAKAMI: Just a second. I want to get an  
11 objection in here. This question is vague and is not based on  
12 any prior evidence submitted earlier. He has testified nothing  
13 about a need to monitor Kualapu'u groundwater.  
14 MR. OSHIMA: He is talking -- if you're ready to  
15 rule I withdraw the question. I will proceed. But he's  
16 talking about the need to protect the environment and for  
17 extensive groundwater modeling or discharge modeling on the  
18 effects of the shoreline.  
19 My question is is that irrespective of where the  
20 effect is coming from whether it's from a MRL well, a DPHL  
21 well, a department well, a Kulei well, a private well?  
22 Would the same figure be imposed from the protect  
23 the environment standpoint irrespective of the source of the  
24 diminution?  
25 MR. MURAKAMI: I would object on the basis it lacks

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1 foundation. Because he's talking about establishing a base  
2 line set of data. These other wells are already in place. You  
3 cannot establish a baseline for something that's already in  
4 place. He's talking about the current conditions with the  
5 wells already operating.  
6 MR. OSHIMA: Despite Mr. Murakami's objection that's  
7 not the question. It's about a new source development.  
8 HEARING OFFICER COX: I think I'm going to allow  
9 this question. Because I think we have been talking about  
10 groundwater coming out.  
11 THE WITNESS: So try your question again. You lost  
12 me.  
13 Q (By Mr. Oshima) Your monitoring program that you  
14 just described before a well should be allowed to pump water,  
15 would apply to any scenario --  
16 A Ah --  
17 Q -- for diminution of groundwater discharge along the  
18 shoreline, would it not?  
19 A Any?  
20 MR. MURAKAMI: Objection, vague. The question is  
21 about any discharge is completely vague.  
22 Q (By Mr. Oshima) Why would you impose this  
23 monitoring requirement on this particular well? And would the  
24 monitoring requirements in your mind change based solely upon  
25 the ownership of the well?

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1 A I don't care who owns the well.  
2 Q Okay. So if another party were seeking additional  
3 water that would have similar effects at the shoreline?  
4 A Yes.  
5 Q Your answer would be the same that the same  
6 monitoring effects, the same monitoring studies should be done  
7 in advance of that water being allowed to be drawn from the  
8 aquifer?  
9 A Hmm-hmm.  
10 Q And you're nodding. Is that a yes?  
11 A Yes.  
12 MR. OSHIMA: Fine. Thank you. I have no further  
13 questions.  
14 HEARING OFFICER COX: All right. We have recess  
15 Mr. Zakian?  
16 MR. ZAKIAN: Yes.  
17 RECESS-EXAMINATION  
18 BY MR. ZAKIAN:  
19 Q A few questions. Lawyers' famous last words.  
20 Mr. Tamaru, in your redirect you indicated that you wear two  
21 hats. One in terms of an aquaculture specialist, the other as  
22 relates to economic development. Could you explain?  
23 A That's the same hat. The other half is part of the  
24 DLNR. So I need to also be accountable for our natural  
25 resources.

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1 Q Maybe you could just explain. I'm a little  
2 confused.  
3 A Aquaculture specialist, my main job is to assist  
4 farmers in aquaculture to develop enterprises that will  
5 basically make money. That sometimes conflicts with the  
6 environmental issues because we need to take into account  
7 efficient discharge, also many of the species that are  
8 culturable are not native.  
9 And that's why this is where many times the  
10 conflicts come into play. Because part of my job is to protect  
11 the environment. Part of it is to make sure that people can  
12 develop successful businesses. And those do not necessarily  
13 coexist together sometimes.  
14 Q Okay. Now, I believe you testified specifically  
15 about mullet in Taiwan that you want to have introduced here?  
16 A That's correct.  
17 Q To what extent would the introduction of those  
18 mullet benefit the citizens of Moloka'i and more generally the  
19 County of Maui? Would the mullet be introduced for production  
20 here on Moloka'i?  
21 A I would -- at this point in time the target  
22 production and the way the discussions have gone on with the  
23 plant and animal quarantine, they would not be used in anything  
24 close to the coastline.  
25 Again, the way they set it up is to err on the least

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1 probability of escape. Initially I had thought about doing  
2 that but that is the way -- actually after the arguments and  
3 now like I said I'm in between and I have to actually put on my  
4 DLNR cap. I have to agree with them. They are targeted for  
5 inland based areas where the potential of escape is almost nil.  
6 Q Would those areas include the island of Moloka'i?  
7 A If there are facilities that are, that will pass the  
8 Department of Ag's regulations, yes.  
9 Q Are there any facilities either currently existing  
10 or that you're aware of that are pending that could accommodate  
11 these fish?  
12 A Some, yes.  
13 Q Some.  
14 A The specific, there are actually specific requests  
15 that have already come. That's why I have to respond to their  
16 requests. Two on the Big Island. One on Oahu.  
17 Q And any on Moloka'i?  
18 A Nobody has requested it at this time.  
19 Q Okay. Is there anything that you're able to testify  
20 to that would indicate to you that the drilling of the Moloka'i  
21 Ranch well in particular and the introduction of these mullet  
22 for farming inland, not in the ocean, that the well Moloka'i  
23 Ranch proposes and the mullet cannot coexist?  
24 In other words, can the mullet be introduced here on  
25 Moloka'i and the ranch well be drilled without affecting each

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1 other?  
2 MR. MURAKAMI: Objection. This question is totally  
3 vague.  
4 HEARING OFFICER COX: I think maybe, it gets -- I'm  
5 not able to follow your question myself.  
6 Q (By Mr. Zakian) I was trying to follow it as I was  
7 asking it myself.  
8 MR. MURAKAMI: I'm going to have to at this point  
9 object on the basis that goes beyond the scope of redirect. I  
10 recall some questions vaguely, vaguely peripherally related to  
11 this particular question, but I don't think it is proper on  
12 recess.  
13 HEARING OFFICER COX: I think I will uphold your  
14 objection.  
15 Q (By Mr. Zakian) I'll move on. Mr. Tamaru, who  
16 requested that you appear here today as part of your job?  
17 MR. MURAKAMI: Same objection. This goes beyond the  
18 scope of redirect. He could have asked that on  
19 cross-examination. He failed to do so. He has waived his  
20 right.  
21 MR. ZAKIAN: I disagree with that. Mr. Tamaru  
22 testified on redirect and recess that he was here as part of  
23 his job with the University of Hawaii.  
24 HEARING OFFICER COX: I believe that's correct. I  
25 will allow you to ask the question.

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1 Q (By Mr. Zakian) So, Mr. Tamaru, who requested that  
2 you appear here today?  
3 MR. MURAKAMI: Just another objection. That was the  
4 subject of recess by Mr. Oshima, not a subject of redirect.  
5 examination. The purpose of recess is to address redirect  
6 examination not recess-examination by a fellow party.  
7 HEARING OFFICER COX: I'm going to allow you to  
8 answer it. I don't know whether it's material or not.  
9 THE WITNESS: Request was generated by Mr. Alan  
10 Murakami.  
11 Q (By Mr. Zakian) On behalf of intervenors?  
12 A Yes.  
13 Q If a private party such as a business requested that  
14 you appear and testify, would you also be doing so as part of  
15 your duties not job with the university?  
16 A That's correct.  
17 MR. ZAKIAN: No further questions.  
18 HEARING OFFICER COX: Mr. Achitoff, recess?  
19 RECESS-EXAMINATION  
20 BY MR. ACHITOFF:  
21 Q One point of clarification. You were testifying  
22 earlier that, about the hats that you wear, economic  
23 development and aqua, environmental protection. In this  
24 situation that we are talking about today in terms of your  
25 testimony, the economic development we are talking about here

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1 that is part of your job responsibilities is the economic  
2 development as a result of aquaculture not, say, building  
3 Kentucky Fried Chicken?  
4 A Hmm-hmm.  
5 Q Okay. So your concerns here are to both protect the  
6 environment and promote economic development through  
7 aquaculture?  
8 A That's correct.  
9 MR. ACHITOFF: Thank you.  
10 HEARING OFFICER COX: Mr. Crowell?  
11 MR. CROWELL: Nothing further.  
12 HEARING OFFICER COX: Mr. Nakamura? You will be  
13 brief?  
14 MR. NAKAMURA: I will be brief.  
15 RECESS-EXAMINATION  
16 BY MR. NAKAMURA:  
17 Q On redirect Mr. Murakami asked you to build a worst  
18 case scenario based on a 15 percent reduction in the  
19 groundwater seepage. Would your testimony be the same if it  
20 were based on, say, a 5 percent reduction?  
21 A Yes. Of course we don't answer, we don't know what  
22 will happen upon that basis alone.  
23 Q In your discussion on the need for monitoring would  
24 be the same based on a 5 percent reduction rather than a  
25 15 percent?

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1 A Yes.

2 Q In your discussion on the parameters of appropriate  
3 monitoring study, given the particular environment, given your  
4 knowledge of the particular environment and the traditional and  
5 customary gathering practices that have occurred here, do you  
6 think it's an important part of any such monitoring or study  
7 that traditional and customary practitioners be included in the  
8 construction, implementation -- design and implementation of  
9 this study?

10 A Their input is essential.

11 MR. NAKAMURA: That's all I have. Thank you.

12 HEARING OFFICER COX: I think we have completed,  
13 then, the recess. And we thank you very much, Dr. Tarnaru  
14 along in here. We will take a recess, let's say, till a  
15 quarter after 11.

16 (A recess was taken.)

17 HEARING OFFICER COX: Will the hearing come back to  
18 order again. We're ready for your next witness, Mr. Murakami.

19 MR. MURAKAMI: We call Davianna McGregor.

20 DAVIANNA MCGREGOR, Ph.D.

21 called as a witness at the instance of Intervenor Martin Kabae,  
22 et al, being first duly sworn to tell the truth, the whole truth  
23 and nothing but the truth, was examined and testified as follows:

24 THE WITNESS: Yes, I do.

25 DIRECT EXAMINATION

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1 BY MR. MURAKAMI:

2 Q Dr. McGregor, would you state your full name and  
3 address for the record?

4 A Davianna Pomaikai McGregor. 1942 Naio Street,  
5 Honolulu, Hawaii.

6 Q In anticipation of this case did you prepare a  
7 Direct Witness Statement of Davianna Pomaikai McGregor, Ph.D.  
8 that's been marked Exhibit B-T-9?

9 A Yes, I have.

10 Q Utilizing that testimony would you summarize the  
11 salient points of that testimony for Commissioner Cox.

12 A Actually I'd like to elaborate on some of the  
13 points.

14 HEARING OFFICER COX: Could you pull the mike a  
15 little closer.

16 MR. MURAKAMI: At this point I'd like to get a  
17 stipulation as to her qualification as an expert in the history  
18 of Hawaiians and rural communities and the continuity of  
19 cultural practices in rural Hawaiian communities.

20 HEARING OFFICER COX: History of Hawaiian --

21 MR. MURAKAMI: And the continuation of cultural  
22 practices in rural Hawaiian communities.

23 HEARING OFFICER COX: Is there --

24 MR. OSHIMA: No objections.

25 HEARING OFFICER COX: -- any objections?

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1 MR. ZAKIAN: No objections.

2 HEARING OFFICER COX: If not you are an expert.

3 THE WITNESS: I'd like to summarize, then, and  
4 elaborate on some of the points in the testimony which I  
5 provided.

6 Moloka'i is properly known as the last Hawaiian  
7 island and traditionally was known as the "land of the fat fish  
8 and kukui nut relish" which indicated the healthy natural  
9 resources of both the ocean and of the land.

10 The Moloka'i people have an unbroken continuity with  
11 the customs and practices of their ancestors. Subsistence has  
12 continued to be an integral part of the life of the people of  
13 Moloka'i. This subsistence is guided by cultural beliefs,  
14 customs and practices and deep spiritual connection and respect  
15 of the spirit of the land.

16 There are basic principles which help to guide the  
17 management of Hawaiian cultural resources. One is that the  
18 ahupua'a's the basic unit of Hawaiian cultural resource  
19 management. So the management of the land goes with the ocean  
20 and runs from mauka where the clouds bring down the rain --

21 HEARING OFFICER COX: I think you better slow down  
22 just a little bit so the court reporter can...

23 THE WITNESS: Okay. And mauka down and including  
24 the ocean and out into the reef and the deep blue ocean.

25 The second is that the natural elements of land and

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1 air and water and ocean are interconnected and interdependent.

2 The atmosphere affects the land which, in turn, affects running  
3 streams and the water table and the beaches and the ocean. And  
4 cultural land use management must take all aspects of the  
5 natural environment into account.

6 And, thirdly, that of all of the natural elements  
7 freshwater is the most important for life and needs to be  
8 considered in every aspect of land use and planning.

9 Hawaiian ancestors studied the land and the natural  
10 elements and became very familiar with its features and its  
11 assets. This ancestral knowledge of the land was recorded and  
12 passed down through place names and chants and the names of our  
13 winds and the rains and different landscape features or  
14 mo'olelo, our traditions.

15 And the people of Moloka'i have learned that  
16 knowledge from their ancestors. I would say that of what is  
17 documented about Moloka'i probably only one fourth of the total  
18 knowledge has been written. And three fourths is in the lives  
19 of the memory of the living descendants of our ancestors.

20 Moloka'i people are very knowledgeable and have a  
21 very deep knowledge of the land and the culture of our people  
22 as a whole not just for the Moloka'i people but as Hawaiians as  
23 a whole throughout all of our islands.

24 The values and customs include in the gathering of  
25 limu or the ocean marine resources and fishing and hunting such

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1 values and ethics as: Only take what is needed. Don't waste  
2 the natural resources. Gather according to the life cycle of  
3 the resources. Allow the resources to reproduce. Don't fish  
4 during their spawning seasons.

5 Alternate areas to gather fish and hunt. Don't keep  
6 going back to the same places. Allow the resource to replenish  
7 itself. If an area has a declining resource, observe a kapu in  
8 harvesting until it comes back.

9 Replant if appropriate. Resources are always  
10 abundant and accessible only to those who possess the knowledge  
11 about their rotation and have the skill to obtain them, so  
12 there's no need to overuse a more accessible area.

13 In some, in some communities the more accessible  
14 areas are reserved for the kupuna who can't go to the less  
15 accessible areas. There's respect and protect the knowledge  
16 which has been passed down from one generation to the next. It  
17 is not carelessly given away to outsiders.

18 Everyone respects the areas of their ancestors.  
19 Families usually gather and hunt in those areas that have been  
20 taught to them by their ancestors. If they go outside an area  
21 of their family for some specific purpose, they usually ask  
22 permission of the other people who live there or go out with  
23 the people who are living there.

24 When they go out to fish or hunt or gather they keep  
25 focused on the purpose and the goal; are aware of the natural

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1 elements and stay alert to natural signs. And they share what  
2 is gathered with family and neighbors.

3 They take care of the kupuna who pass knowledge and  
4 experience to them and who are now too old to go out on their  
5 own, and make sure that they have resources. And most of what  
6 is gathered is shared very generously with kupuna and neighbors  
7 and family.

8 Usually people don't talk openly about their plans  
9 to go out to subsistence hunt, fish or gather. There's a  
10 strong respect for aumakua and resources of those aumakua which  
11 are sacred to them.

12 In 1993-94 the Moloka'i people decided to conduct  
13 the study of subsistence on Moloka'i. They knew that their  
14 legacy was special. They wanted to protect it for future  
15 generations.

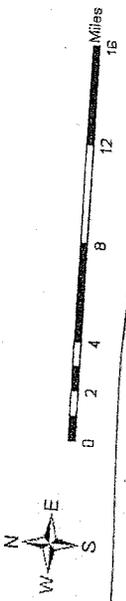
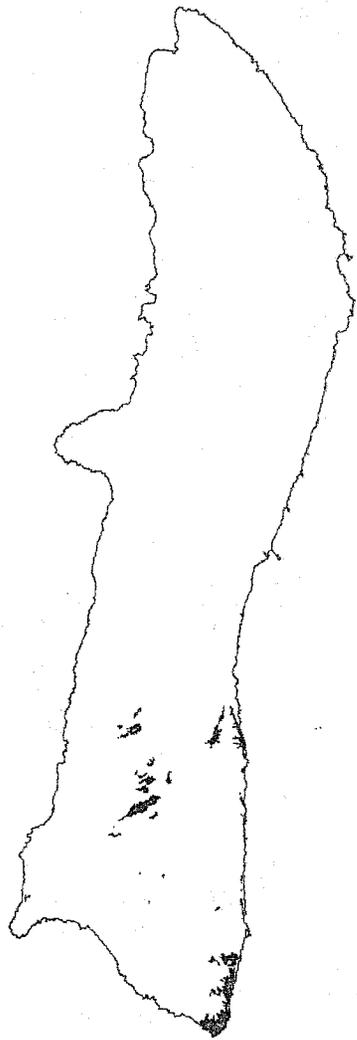
16 Myself and Jon Matsuoka of the School of Social Work  
17 and Luciano Minerbi of the Department of Urban and Regional  
18 Planning facilitated the process for the community.

19 The result I included in my testimony the executive  
20 summary of the Moloka'i Subsistence Task Force final report  
21 which was completed in June of 1994.

22 Q Dr. McGregor, was that what was marked as  
23 Exhibit B-8 and included, incorporated as far as your  
24 testimony? It was?

25 A Yes, it was. The executive summary was incorporated.

Distribution of Vertisols on Molokai





November 1, 2007

David Kimo Frankel  
Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, Hawai'i 96813

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Frankel:

Thank you for your letter dated February 1, 2007 on behalf of the Molokai Homestead Farmers Alliance and Wayde Lee regarding the Lā'au Point Draft Environmental Impact Statement (EIS). We offer the following responses to your comments.

We have made a good faith effort to prepare an EIS in compliance with Chapter 343 and the underlying regulations found in HAR § 11-200-1 et. seq.

The information that we have assembled is thorough and detailed. The EIS will alert decision-makers to significant environmental effects which may result from the implementation of the Lā'au Point project. This document will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.

We agree that the public trust doctrine is applicable in many instances and that agency decision-makers bear important responsibilities in reviewing Molokai Properties Limited's requests for land use entitlements. While your comments have focused upon the legal duties of administrative agencies in acting on requests for permits or approvals, in this EIS, we have provided sufficiently detailed and complete information to the public and decision-makers to aid in this important decision-making process.

#### **IMPACTS FROM PROPOSED WATER PUMPING AND USE**

1. In his response to the comments our office submitted on behalf of the Molokai Homestead Farmers Alliance, Thomas Witten writes, "potential impacts of the proposed use of the Kāalahale Well will be addressed in the permitting process for this well..." ¶The EIS cannot ignore, and the Land Use Commission may not disregard, water issues under the premise that the Water Commission will consider the issue at some future date. In *Maui Tomorrow v. BLNR*, 110 Haw. 234, 245 (2006), the Hawaii Supreme Court recognized that the BLNR could not make a decision that could adversely affect Native Hawaiian rights subject to a future CWRM decision. The LUC, like the BLNR, is under the duty to protect Native Hawaiian rights and public trust resources. ¶No EIS can be accepted until after USGS completes the comprehensive modeling analysis that is currently being done. During the Waiola contested case hearing, there was much contention over MPL's failure to provide timely information on its modeling, last minute "recalibration"; and the untimely production of data upon which conclusions were drawn. The LUC's decisionmaking process on this application will be facilitated if all this information is provided up-front. (page 2-3)

David Kimo Frankel  
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**Response:** We have addressed, to the greatest extent feasible, the potential impacts of the proposed use of Kāalahale Well. 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 section of the attachment titled, "Additional Information on the Kāalahale Well."

Section 7.5 of the Draft EIS includes a section summarizing unresolved issues with a discussion of how such issues will be resolved prior to the commencement of the action. See HAR § 11-200-17(n). Further discussion has been provided in Section 7.5 of the Final EIS as shown in the attachment titled, "Revised Section 7.5 (Unresolved Issues)."

2. *The main body of the EIS should disclose the impacts that were projected to occur to the Kualapu'u aquifer from Waiola Well application. Some of these issues are summarized on pages 126-132 of the cultural impact assessment. This issue should not be minimized, or buried in an appendix. The EIS should explain why there would be any less impact to the aquifer in pumping brackish water instead of potable water.* (page 3)

**Response:** MPL is not proposing to withdraw water from the proposed Waiola well site. There are material differences between the Waiola and Kāalahale well sites such that a discussion about the impacts of the Waiola well on the Kualapu'u aquifer would be irrelevant.

MPL assumes that the impact of withdrawing 1 mgd from the Kamiloloa aquifer from the Kāalahale Well is not dependent upon the quality of water being withdrawn.

The reason that withdrawing 1 mgd from the Kāalahale well site will not have adverse impacts on the drinking water aquifers is not due to the quality of the water, but due to the hydrogeologic isolation of the Kāalahale well site.

The Kāalahale Well was developed in 1969 as a drinking water well for the Kaluako'i Resort. However, due to the brackish quality of the water, the well was never put into production. Relative to its distance inland, chlorides of the Kāalahale Well are anomalously high. This anomaly is explained, however, by the presence of upgradient subsurface intrusives, i.e., the subsurface "plumbing" of Pu'u Kāalahale, which function as barriers to normal mauka-to-makai flow of groundwater. The upgradient intrusives, which create the brackish result in the Kāalahale Well, also function to limit the effect of pumping the Kāalahale Well on other wells upgradient of the intrusives, such as the DHHL and DWS wells in Kualapu'u.

The response to this specific comment is incorporated into the Final EIS as shown in the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Waiola Well Issues Raised."

3. *Some of these impacts are discussed in the materials that are attached to this letter: September 26, 1997 letter from William Meyer to Darrell Yagodich; April 1, 1997 letter from William Meyer to Wayne Nishiki; Direct Witness Statements of Darrell Yagodich, Delwyn Oki, Clyde Satoshi Tamaru, Dan Polhemus, Brendan Harley and Wayde Lee; and the transcripts from the testimony of Wayde Lee and Clyde Tamaru. This information should be provided in the EIS.* (page 3)

**Response:** Your letter and its attachments will be included in the Final EIS.

4. *The failure to discuss timeframes by which uses of potable water would shift to nonpotable creates significant problems for decisionmakers as well as the resources that will likely be affected by overpumping. Does the applicant promise to not pump any water from the Kākahale well until after all necessary infrastructure is in place to allow current non-potable uses (such as the golf course and landscape irrigation) to use the non-potable water? And does the applicant promise to not sell any lots until after all this infrastructure is in place?* (page 3)

**Response:** Pumping of Kākahale will begin when all permits are obtained, the necessary infrastructure is in place and there is a need for additional non-potable water beyond what is currently available.

The response to this specific comment is incorporated into the Final EIS as shown in the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Lā'au Project Issues."

5. *It is unfortunate that the EIS misleads the LUC and the public by using a false baseline. It asserts that the proposal does not require any more drinking water than what is currently proposed for allocation in the Community-Based Master Land Use Plan for Molokai Ranch (p.8). The baseline should be either (1) current uses or (2) authorized uses – not proposed uses in a plan that no government agency has ever approved.* (page 3)

**Response:** As shown on page 115 of the *Community-Based Master Land Use Plan for Molokai Ranch* (Appendix A of the Draft EIS), the Water Plan provides a baseline of MPL's (1) current uses and (2) authorized water allocation of 1,018,000 gallons per day (gpd) from Well 17 and 500,000 gpd from the Molokai Ranch system. The current uses are covered by the current allocation. MPL does not require more drinking water for its current uses.

Using the current water allocation as a baseline, water demand for the proposed developments (Lā'au Point lots, parks, re-opening of the Kaluako'i Hotel, buildout of Kaluako'i residential lots and Maunaloa industrial park, and future CDC buildout for community expansion of Kualapu'u and Maunaloa) described in the *Community-Based Master Land Use Plan for Molokai Ranch* are not covered by MPL's current water allocation. Therefore, it makes sense to propose a water allocation that covers the proposed developments.

6. *The EIS should address whether the covenants preventing MPL from ever seeking further potable water permits apply to MPL's successors, assignees etc..* (page 4)

**Response:** MPL will enter into agreements with the land trust and will be subject to regulatory requirements that will have to be assumed by its successors, etc.

7. *The EIS should disclose the nature and location of the easements that MPL claims it possesses to cross DHHL land for the transmission of Kākahale water.* (page 4)

**Response:** Easements are recorded at either the Bureau of Conveyances or the Land Court, and can be found through a title search.

8. *Who is the author of the 'Analysis of the Water Plan for the Community-Based Enterprise Community/Moloka'i Ranch Master Land Use Plan' found at Appendix P?* (page 4)

**Response:** Yvonne Izu, former Deputy Director to the State Commission on Water Resource Management, and currently with the Morihara Lau & Fong law firm, authored the Water Plan Analysis.

#### DESALINIZATION

9. *The DEIS too cavalierly rejects desalination as too expensive. It ignores the fact that water costs are passed down to the consumer — a position that the applicant took in the Waiola contested case. The figures on page 82 suggest that drinking desalinated water will cost less than triple the cost of groundwater. This price difference is not significant given (1) the small percentage of a household budget spent on water (compared to mortgage, insurance, property tax, homeowner association fees, electricity, sewage bills etc.); (2) the wealth of the people who will buy lots at Lā'au; and (3) the impact that groundwater withdrawals will have on future DHHL activities and Native Hawaiian practices dependent on freshwater flows near the ocean. In addition, the EIS should compare the capital costs of these ventures and consider how using the power of the sun can lower the kwh costs of desalination. An independent water purveyor providing desalinated water to Lā'au homeowners would receive PUC approval to charge an appropriate rate that surely these homeowners could afford. Off-island investors will easily absorb island electricity prices that are more than double what they pay at home. Similarly, they can also pay for desalinated water prices that are triple what they may pay at home.* (page 4)

**Response:** Reasonable alternatives are required to be studied in the EIS. After preliminary investigation it was determined that desalination was not a current reasonable economic alternative and it was therefore not included among those alternatives that were more rigorously explored.

As mentioned in MPL's water plan, desalting is still about four times more expensive on Moloka'i (not helped by the island's high energy costs) than developing an operating deep groundwater well.

A pilot plant on O'ahu developed in the early 2000s still remains idle today because of escalating energy costs needed, in simple terms, to push the brackish water through a membrane to remove the salts.

MPL has previously been approached by two parties proposing desalination on Moloka'i as an economic business; neither party, following their detailed investigation, wished to continue with their plans for a desalination plant.

Desalination is therefore prohibitively expensive to be considered MPL's first choice of non-potable water. However, it is an alternative if water from the Kākahale Well is not available.

The response to this specific comment is incorporated into the Final EIS as shown in the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Alternatives to the Use of Kākahale-Sourced Water."

#### CUMULATIVE IMPACTS

10. In another case challenging development the west end of Moloka'i and use of water, the Hawai'i Supreme Court held that Chapter 343 "definitely contemplates a consideration of the secondary and non-physical effects of a proposal prior to a governmental approval thereof. And the effects to be studied include the socio-economic consequences of a proposed action, as well as its direct physical impact." *Molokai Homesteaders Cooperative Assn v. Cobb*, 63 Haw. 453, 466 (1981). ¶The Hawai'i Supreme Court has also ruled that a group of actions must be treated as a single action when:

- 1) the single action is part of a larger project;
- 2) the single action is a necessary precedent for the larger action; or
- 3) the single action has no independent utility

*Kahana Sunset Owners v. County of Maui*, 86 Hawai'i 66, 74(1997). See also, HAR § 11-200-7. Furthermore, IAR §11-200-2 provides:

"Cumulative impact" means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. ¶Finally, HAR 11-200-17 requires that an EIS discuss "significant beneficial and adverse impacts (including cumulative impacts and secondary impacts)." ¶Page 4 of the DEIS notes that "the Lā'au Point project is crucial to the economic viability of the Plan. Proceeds from the sale of Lā'au Point lots will fund renovations and upgrading of the now-closed Kaluako'i Hotel and Golf Course." See also page 1 of Social Impact Assessment. Thus, the EIS must address not only the impacts caused by the Lā'au development itself, but also the increasing tourism from existing levels. If the Lā'au development will fund the re-opening of the Kaluako'i hotel, then the EIS must address the impacts of the equivalent of 56,000 visitor-nights worth of tourists (p.75). This analysis would include a review of not only the economic benefits, but also environmental, infrastructure and social impacts. As such, it would be useful to examine the study the state produced (through the UH Department of Urban and Regional Planning) on the impacts of tourism growth. (page 4-5)

**Response:** We concur that the Draft EIS must address cumulative impacts, the secondary and non-physical effects of a proposal and the socio-economic consequences of a proposed action. We have done so to the greatest extent possible in this EIS.

First, the Lā'au Point project was analyzed. The environmental impacts and benefits of this project have been addressed based upon the construction of this project in West Moloka'i.

Second, the Lā'au Point project has been addressed as one component that permits other actions to take place such as (1) the reopening of the Kaluako'i Hotel and (2) affordable housing projects elsewhere. To the extent that the EIS must discuss the impacts of re-opening of the Kaluako'i Hotel, this re-opening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

The impact of not increasing tourism on the island is more relevant as most tourism establishments and tour operators are in serious financial difficulties. This difficulty is evidenced

by the continual change in ownership at Hotel Molokai, the lack of retained earnings to fund capital improvements, and the losses sustained by the Molokai Lodge and Beach Village.

The impact of the re-opening of the Kaluako'i Hotel will produce no more of an impact than when it was open up until 2001, providing jobs and a stable economy on the West End of the Island, including a viable Maunaloa elementary school and a viable commercial heart for Maunaloa.

The tourism committee of Project #47, Sustainable Economic Development was unanimous in seeking the hotel's re-opening, and the Sustainable Tourism Study by Dr. Davianna McGregor (2005 for the EC) stated that all participants in the study wanted the hotel re-opened. Dr. McGregor's study resulted in the creation of the *Moloka'i Responsible Tourism Initiative Report* (2006), which is discussed in Section 4.8.4 of the Draft EIS.

In your letter, you suggest that the development of Lā'au together with the potential development at some time in the future of sites zoned for hotel and multi-family units within the existing Kaluako'i Resort could have enormous cumulative impacts, particularly in terms of the amounts of water consumed. Cumulative impacts are restricted to those future actions that are reasonably foreseeable. MPL's development plans are clearly outlined in the Master Plan. MPL has not proposed any new development for Kaluako'i Resort zoned for hotels and multi-family units that is not addressed already in the Master Plan. Therefore, your speculation on unplanned future development cannot be said to be reasonably foreseeable for the purposes of this EIS.

Third, the Lā'au Point project is also a part of the *Community Based Master Land Use Plan for Molokai Ranch* (Master Plan). To this extent, each component of the Master Plan really facilitates each other component of the Plan. In an overall context, the Master Plan preserves and protects large amounts of acreage on the West end of Moloka'i. The development of Lā'au Point to some degree "facilitates" this protection and preservation.

11. In our letter commenting on the EISPN, we specifically asked that the DEIS disclose what Moloka'i Properties Limited's plans are for the other lands it owns near Hale o Lono Harbor. (page 5)

**Response:** We note that lands near Hale O Lono are not part of the proposed action; regardless, preliminary plans are as shown on page 9 of the Master Plan (provided as Appendix A of the Draft EIS). The lands adjacent to Hale O Lono Harbor are being placed in Rural Landscape Reserve with an easement in favor of the Land Trust. The lands east of the Harbor will be donated fee simple to the Land Trust.

#### CC&RS

12. In *Hui Alaloe v. Planning Commission*, 68 Haw. 135 (1985), the Hawai'i Supreme Court held that the government could not delegate its duties to a private party. In that case, which also involved development on the west end of Moloka'i, the planning commission had attempted to condition the approval of an SMA permit on the preparation of an archaeological protection plan by the developer's archaeologist. The developer's plan would protect those sites that the developer's archaeologist decided were significant. The court noted that the commission could not have made appropriate findings given the delegation of the duty to protect historic sites to the developer. The court emphasized that findings must first be made before approval can be granted, and that an

*agency cannot delegate to a developer the duty to ensure that resources are protected. Id. at 137. ¶Similarly, in Ka Pa 'akai O Ka 'aina v. Land Use Commission, 94 Hawai'i 31, 51(2000), the Hawai'i Supreme Court held that the LUC could not approve a project conditioned on the developer's future development of a resource management plan. ¶MPL is proposing to do just what the developers in the Hui Alalao and Ka Pa 'akai cases proposed. The DEIS repeatedly claims that impacts will be addressed through the CC&Rs, which will be developed by the applicant... ¶The precise content of these CC&Rs, however, has not been provided to the LUC or the public. If MPL wishes to claim that the CC&Rs will mitigate many of the impacts raised in the EIS, then it must include the exact wording of the CC&Rs. (page 6)*

**Response:** Mitigation measures must be addressed in an EIS and we have done so here in accordance with HAR § 11-200-17(m). Mitigation measures must be described reducing significant impacts to insignificant levels. The timing of the implementation of the mitigation measures must be discussed. What provisions have been included to assure that the mitigation measure will in fact be taken must be discussed.

The CC&Rs are not assuming the State's duty to protect the archaeological and cultural sites, but rather the CC&Rs are provided as supplemental to the State's duty. The enforcement of the CC&Rs shall be pursued by the Lā'au Point homeowners' association, affected persons such as the Land Trust who will be a party to the CC&Rs, and in certain situations MPL, as the declarant under the CC&Rs. The CC&Rs will be enforceable by all legal matters.

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

To provide the above information in the Final EIS, as well as address other comments about the covenants, Section 2.3.6 (Covenants) has been revised as shown in the attachment titled, "Revised Section 2.3.6 (Covenants)."

13. *Furthermore, enforcement of the CC&Rs cannot rest only with the homeowners and the Moloka'i Land Trust. It must also rest with government agencies as well. The public trust doctrine requires that the LUC "ensure that the prescribed measures are actually being implemented." Kelly v. 1250 Oceanview Pkwy, 111 Haw. 205, 231 (2006) (internal citations and marks omitted). (page 6)*

**Response:** CC&Rs are binding and enforceable. Restrictive Covenants have long been effectively used in Hawaii to control land uses. Conservation Easements are similar land use devices utilized to protect and preserve land resources in Hawaii. There is nothing suspect or unenforceable about these land use tools. They can be successfully relied upon to mitigate adverse impacts to acceptable levels.

Mitigation plans, by our environmental regulations, do not necessarily have to be enforced by administrative agencies. In this instance, many of these mitigation measures will be enforced by the Moloka'i Land Trust. The officers of this Land Trust are local Moloka'i residents. The

citizens of Moloka'i may have greater access to these officers than they would to enforcement agencies located on another island.

As stated in #12 above, the CC&Rs are not assuming the State's duty to protect the archaeological and cultural sites, but rather the CC&Rs are provided as supplemental to the State's duty.

14. *Similarly, the shoreline access management plan must be included in the EIS. (page 6)*

**Response:** The Shoreline Access Management Plan is included in the Final EIS as an appendix.

#### AGRICULTURAL EASEMENT

15. *The DEIS reveals that 14,390 "protected" acres that MPL will continue to own will be available for the construction of farm dwellings. The definition of a farm dwelling has been the subject of much controversy and litigation. See e.g., In the Matter of the Petition for a Declaratory Order of the Sierra Club and David Kimo Frankel, DR00-23 COL 14 (Land Use Commission, filed October 25, 2000); Kelly v. Oceanview, Civ. No. 00-1-0192K (Hokulia). In one instance, a developer labeled a three story dwelling consisting of four bedrooms, six baths, five dressing room areas, two enclosed lanais, a kitchen, a dining room, a living room, and a house keeper room as a "farm dwelling." In the Matter of the Petition of John Godfrey, DR94- 17 (Land Use Commission, filed December 6, 1994). How is MPL proposing to define farm dwellings for purposes of the agricultural easement? How big can these farm dwellings be? How many can there be? Where will the water come from for farms on these lands? (page 7)*

**Response:** The Land Trust will be managing the agricultural easement lands. The Land Trust will comply with all state and county laws regarding farm dwellings and structures that can be built in the State Land Use Agricultural District and the County of Maui Agricultural District.

The Draft EIS and Master Plan (Page 4, Executive Summary, 1.6 Easements) states that the 14,390 acres will be protected forever for farming use. It also states that for legitimate farming uses, one dwelling and farm buildings will be allowed, thus facilitating farmers to live on the land that they farm.

The easement criteria and documentation for these lands is currently being drawn up. It will prevent the subdivision of lands into allowable (under the Maui County farming ordinances) 25-acre lots on the West End agricultural lands for "gentlemen farmers."

The criteria for farming will be based on economic units; in the case of the West End it will probably mean 200 acre+ lots that maybe economic for the raising of cattle; near Kualapu'u where intensive agriculture is possible and where there is natural rainfall to irrigate crops, parcels of less acreage may be possible to farm as an economic unit.

The Land Trust will hold the Agricultural Easement over the lands and be the final arbiter on whether agricultural activities are presumed or are taking place. It has litigation as a resort to non-compliance.

On the question of water for these lands, see the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the section of the attachment titled, "Other Water Issues Raised."

#### HOTEL

16. *It is unclear what kind of guarantee, other than a non-binding statement, that proceeds from the sale of Lā'au Point will be spent on the Kaluako'i Hotel.* (page 7)

**Response:** MPL will sign a binding agreement with the Land Trust enforcing the provisions of the Master Plan upon approval of the Lā'au Point project.

17. *Given that 72,099 tourists visited Moloka'i in 2004 and that the Kaluako'i Hotel is now closed, how realistic is it that the Kaluako'i hotel can generate 56,000 visitor nights per year?* (page 7)

**Response:** As discussed in Comment #10 above, to the extent that the development of Lā'au Point "facilitates" the re-opening of the Kaluako'i Hotel, this reopening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

We note that Section 4.8.4 of the Draft EIS states the following on page 75:

*The Moloka'i Responsible Tourism Initiative Report (2006) indicates: "Kaluako'i resort development is essential to the island's tourism economy" (p. 21). The study determined that for the re-opened Kaluako'i Resort to break even (60 percent occupancy), Moloka'i would need an additional 56,000 visitor nights annually.*

It is not implied in the EIS that the responsibility of generating 56,000 visitor nights annually is solely by the Kaluako'i Hotel. The 56,000 visitor nights annually refers to the entire Island of Moloka'i's tourism industry.

Also discussed in Section 4.8.4 of the Draft EIS, although Moloka'i's visitor occupancies have been low for many years, forecasts show Moloka'i visitor unit occupancy rising over time, in proportion to overall growth of Maui County's average visitor count (page 75 of the Draft EIS).

Prior to 9/11, Moloka'i saw 103,630 visitors, averaging 616 per day (source: Moloka'i Responsible Tourism Initiative Report (2006)). With the tourism industry now recovering from the significant impacts of that tragedy, we are optimistic that Moloka'i will be able to regain pre-9/11 visitor arrivals.

18. *If the hotel cannot obtain sufficient traffic to break even, will MPL propose more development to subsidize its operations?* (page 7)

**Response:** No, MPL will not propose more development. MPL's plans are set forth in the Master Plan (provided as Appendix A in the Draft EIS).

19. *What will be the impact generated from this increase in tourist arrivals?* (page 7)

**Response:** As discussed in Comment #10 above, to the extent that the development of Lā'au Point "facilitates" the re-opening of the Kaluako'i Hotel, this reopening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

#### SCENIC IMPACTS

20. *Unfortunately, the DEIS does not include a simulation of what Lā'au Point will look like after it is developed. The EIS needs to. The DEIS misleads the public into thinking that the scenic impact is negligible because so much of the land is left in open space. It is irrelevant that each lot is "relatively large" at two acres given their shape. Some lots fronting the ocean appear to be less than 200 feet wide. The open space will not, for the most part, lie between the houses, but will rather stretch mauka and makai of the houses. Given the shape of the lots (long and narrow facing the ocean), the effect (looking from the ocean) will be a row of houses.* (page 7)

**Response:** During the design phase, building footprints will be defined to mitigate the scenic impact of a "row of houses." Since the maximum buildable area is 30% of the lot, the majority of the lots will remain as open space.

21. *The DEIS fails to include any specific information about the maximum size of the houses.* (page 8)

**Response:** The maximum building size is 5,000 square feet. One accessory building, such as a work shed or an 'ohana dwelling, may be built as an accessory to the main house. The house and accessory structure cannot exceed 5,000 square feet.

22. *The maximum height is 25 feet, and, apparently, based on responses to DeGray Vanderbilt, from finished grade. This is quite tall. Couldn't these houses be limited to 15 feet in height?* (page 8)

**Response:** Comment noted. However, maximum height in the CC&Rs is still 25 feet. As of November 2007, a draft of the CC&Rs were being developed by MPL in conjunction with the Land Trust. The Land Use Commission and other regulatory agencies may further require changes to the CC&Rs during their review process; therefore, a final version of the CC&Rs is not available as of November 2007, and the issue of the completion of the CC&Rs is included as an unresolved issue in the Final EIS. The CC&Rs will be available for review at the Land Use Commission hearings on the State Land Use District Boundary Amendment petition.

#### ENDANGERED SPECIES

23. *The discussion regarding the endangered monk seal is completely inadequate. Phillip Bruner's field survey is a survey—not an impact analysis. The suggestion that people call NMFS when a monk seal is observed reveals the inadequacy of the EIS. The reason that monk seals frequent this area is that there are no houses and few people. It is unusual for monk seals to frequent beaches that front subdivisions. The impact of this development is not simply that there will be more interaction between humans and the endangered monk seals. Humans will adversely impact monk seal habitat. How will that affect the health of monk seals and their population? The EIS must assess what impact the*

*development of this area will have on monk seals. The EIS must include an analysis by a monk seal biologist. (page 8)*

**Response:** 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 (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 also provides rules 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." Rules 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.

To ensure that the project does not alter behavior of Hawaiian monk seals that visit the area, residents and visitors will be educated about possible interaction with these animals and the appropriate human behavior for that interaction. Appropriate protocol if one encounters a Hawaiian monk seal on the beach is to notify National Marine Fisheries Service (NMFS), who will check if the animal is injured or entangled, then put tape around the site to keep people from approaching too closely. Due to the lack of available NMFS staff on Moloka'i, a Resource Manager will monitor the Lā'au shoreline area daily.

The established mitigation measures for protecting hauled-out monk seals have been generally effective elsewhere in the Main Hawaiian Islands, and this segment of the monk seal population appears to be increasing. Prohibition of domestic animals from the shoreline 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 has been revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)." The SAMP has been included as an appendix to the Final EIS.

In their letter dated June 21, 2007, NOAA states: "NMFS believes it would not be necessary to conduct a survey at the site to ascertain that Lā'au Point is important monk seal habitat, as that is already known." For your convenience and reference, we have attached the correspondence from NOAA.

24. *The suggestion that people on Moloka'i call the National Marine Fisheries Service when a monk seal is encountered is absurd. What kind of presence does NMFS have on Moloka'i? How many NMFS staff members live and work on Moloka'i? And what kind of mitigation is this???? (page 8)*

**Response:** The SAMP contains a plan and recommendations developed in conjunction with the National Oceanic and Atmospheric Administration (NOAA) Monk seal program and elements

were taken directly from their draft *Recovery Plan for the Hawaiian Monk Seal* (November 2006). The SAMP reiterates the rules required to ensure non-disturbance of Monk seal habitat and the promotion of Lā'au point as an area for Monk seals to frequent and "haul out."

To address your comment in the Final EIS, Section 3.7 (Fauna) has been revised as follows:

Appropriate protocol if one encounters a Hawaiian monk seal on the beach is to notify National Marine Fisheries Service (NMFS), who will check if the animal is injured or entangled, then put tape around the site to keep people from approaching too closely. Due to the lack of available NMFS staff on Moloka'i, a Resource Manager will monitor the Lā'au shoreline area daily. The Resource Manager will:

- Post signs in regular intervals along the shoreline explaining the rules regarding Hawaiian monk seals.
- Cordon off areas, place signs around resting Hawaiian monk seals, and designate areas closed to fishing as a result of a Hawaiian monk seal sightings.
- Report Hawaiian monk seal sightings to NOAA and take whatever actions are required by NOAA to ensure the safety of the Hawaiian monk seal.
- Enforce all Hawaiian monk seal protection rules, regulations, and protocols.
- Report violations of federal or state laws to appropriate authorities and act as a witness in the prosecution of any person violating federal or state laws.
- Receive training as a Hawaiian monk seal protection specialist.
- Notify NOAA of entangled Hawaiian monk seals.
- Remove debris that may be harmful to Hawaiian monk seals from the shoreline area.
- Monitor the shoreline area for contaminants that may be harmful to Hawaiian monk seals.
- Work with NMFS to develop a volunteer seal monitoring program.

25. *Finally, a biologist with experience locating hawksbill nesting sites should study whether the area is currently used by the endangered hawksbill. The cultural impact assessment reports that the West End is home to many turtles – although it does not identify the species. (page 8)*

**Response:** Hawksbill turtles are extremely rare in Hawai'i, but nests have been observed on isolated beaches on Moloka'i and the Big Island. The following information is from the Pacific Hawksbill Recovery Plan.

In Hawai'i, hawksbills nest only on main island beaches, primarily along the east coast of the island of Hawai'i. Kamehame Point on Hawai'i and a black sand beach at the river mouth of Hālawā Valley at the east end of Moloka'i are the most consistently used beaches. In surveys from 1989-1993, eighteen hawksbills were tagged and 98 nests documented. Nesting occurred from late May with hatching completed by early December. Peak nesting activity occurs from late July to early September. There are no measurable trends in stock numbers, either up or down.

Hawksbill nesting has not been recorded at Lā'au Point, but such nests, if they occurred, would be subject to the same threats present elsewhere including non-native predators of eggs and hatchlings and perhaps human takes of eggs and/or shells. Increased human activity at Lā'au

Point could reduce the threats from non-native predators, but increase the threats of human interactions. On the other hand, increased human presence could be a deterrent to illegal harvest if nesting were to occur at Lā'au Point.

Green turtles may be found throughout the Hawaiian Islands but their main nesting beaches are in the NWHI. The Hawai'i stock of green turtles has been increasing for some time, and some people, including the Western Pacific Regional Fishery Management Council, believe that the recovery of this species has progressed to the point that delisting should be considered. Given that most of the nesting of this species occurs in the NWHI, increased activity at Lā'au Point will have a negligible effect on the population trajectory of this species.

The SAMP also addresses other biological and endangered species protection. A long term monitoring program will be developed to adapt to changing circumstances and to measure the effectiveness of the mitigation measures. To include this information in the Final EIS, Section 4.3 (Trails and Access) has been revised to include the following about the SAMP:

- Biological/Endangered species protection – Similar to the Hawaiian monk seal requirements, rules for access and designation of closed areas are set forth in the SAMP. The Resource Manager will be responsible for monitoring the health of any significant organisms, designating closed areas, and enforcing regulations designed to protect the resource including fires and limitations on access to the area. A long term monitoring program will also be developed to adapt to changing circumstances and to measure the effectiveness of the program.

## MARINE ENVIRONMENT

26. *The water quality analysis failed to examine nutrients in a thorough manner. No analysis of nutrient levels was provided in dry conditions as a baseline. Impacts to the marine environment must examine not only sediments, but also nutrients and hydrocarbons. Sources of nutrients include natural fertilizers, wastewater and pets. Hydrocarbons come from cars. What impact will adding these nutrients and hydrocarbons to the land – and thereby into coastal waters from runoff or percolation – have on coastal water quality and marine life? ¶The EIS should study the amount of nonpoint source water pollution associated with similar developments and discuss the degradation of coral reefs and coastal water quality caused by similar projects. ¶The EIS should apply the HSPF model to project post-development total phosphorus load, total phosphorus concentration, total nitrogen load, total nitrogen concentration, nitrate concentration, ammonia concentration, metals concentrations and a pathogen count. (page 8-9)*

**Response:** During dry conditions surface runoff would be non-existent. Nutrient levels except in the immediate vicinity of groundwater seepage points would be similar to open ocean waters because of the short residence time of water along this coast. Advection by currents, mixing and dilution would homogenize the water within a short distance from shore.

Vehicle traffic will be extremely light and with streets well removed from the ocean, hydrocarbon delivery to coastal waters will be minimal. Wastewater will be used for irrigation and not disposed of directly to the ocean.

Regarding your comment that the EIS should model post-development runoff for its "total phosphorus load, total phosphorus concentration, total nitrogen load, total nitrogen concentration, nitrate concentration, ammonia concentration, metals concentrations and a pathogen count," this is not necessary because the proposed development is not expected to have a significant adverse effect on the existing downstream properties. The anticipated increase in surface runoff from the paved roadway area will be directed into surface or subsurface detention and/or desilting facilities before being released into the nearby drainageways. Also, the increase in runoff from each developed lot will be retained onsite in surface or subsurface facilities. In addition, the contractor will be required to comply with State and County approved Best Management Practices for the duration of the construction period. To reflect this information in the Final EIS, Section 4.9.1 (Drainage) has been revised as shown in the attachment titled, "Revised Section 4.9.1 (Drainage)." The preliminary drainage plan is also included as an appendix in the EIS.

27. *What precisely are the best management practices that will be implemented to control erosion? ¶Because an EIS is a full disclosure document and because there is no meaningful opportunity for public participation in the approval of erosion control plans, please provide a copy of the erosion control plan and best management practices in the EIS. (page 9)*

**Response:** All construction activities will comply with all applicable Federal, State, and County regulations and rules for erosion control. To address your comment in the Final EIS, Section 3.3 (Soils) has been revised as follows:

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 Moloka'i 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 Kākahale 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.

28. *The DEIS discloses on page 30 that water quality will be continuously monitored. It fails to discuss what happens if the monitoring detects a problem. What is supposed to take place – and pursuant to what authority – if the water quality monitoring detects a problem?* (page 9)

**Response:** 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 Hākina 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.

29. *The drainage maps (exhibit 5 and 6 in Appendix O) are too small to comprehend. Where will the drainage retention and erosion abatement structures be built, and what will they look like?* (page 9)

**Response:** We understand that some pages of the document contain two pages per sheet which results in small print; however, this format is used so that the hard copy of the document would not be too unwieldy to handle. If every page were printed full-size, the hard copy document would have yielded over a 1,000 pages. For this reason, we also offer the EIS on CD to view on a computer; this provides the reader the option to enlarge pages for easier reading.

The response to your comment about the drainage structures is included in the attachment titled, "Revised Section 4.9.1 (Drainage)." The preliminary drainage plan is also included as an appendix in the EIS.

#### ACCESS TO BEACHES

30. *Will the public be given an opportunity to review the shoreline access management plan before the EIS process is completed?* (page 9)

**Response:** The Shoreline Access Management Plan has been reviewed and was approved by the Land Trust on August 10, 2007.

31. *Will parking be free? Will parking be closed at night? Is the amount of parking adequate?* (page 9)

**Response:** The park rules will be determined by the managing authority of the parks—either the County Department of Parks & Recreation or the Moloka'i Land Trust. MPL plans to follow the parking requirements per the Maui County Code and/or recommendation from the Department of Parks & Recreation.

32. *How will Lā'au homeowners located inland (not adjacent to the conservation district) get to the shoreline? Will they travel all the way to the public shoreline access points at the southern and western ends, or will they be able to cut across land within the development to get to the beach?* (page 9)

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

33. *Has the old traditional trail been located on the ground and mapped (p.60)? This information should be in the EIS. The EIS should include the 1186 and 1897 maps that show the trail.* (page 10)

**Response:** Informants indicate that the existing dirt road is located upon the old traditional trail and serves the purpose of providing access to subsistence, cultural and spiritual resources utilized for traditional and customary purposes. The coastal trail which appears in the 1886 and 1897 Monsarrat maps is reproduced in Figures 1 and 5 of the Cultural Impact Assessment (Appendix F of the Draft EIS). It is identified in the Figure 5 map legend as the "Keala Pupu Coastal Trail," as informants indicated that they believe it is possible that the trail drawn on the Monsarrat Maps was possibly located upon the Kealaakapupu trail established by Kihāapi'ilani.

34. *Why are the toilets at the two proposed parks not linked to the wastewater system? Wouldn't coastal resources be better protected if the bathrooms were connected to the developer's wastewater system? Why is the electrical system from the project connecting all the way to Hale O Lono, but the sewage system not linked to the parks?* (page 10)

**Response:** The Lā'au Point wastewater treatment plant (WWTP) will be owned and maintained by the Lā'au Point homeowners' association fees. The parks' comfort stations will have their own individual wastewater systems.

The State Department of Health (DOH) allows for individual wastewater systems to be used in remote areas and in areas of low density. Individual wastewater systems are quite reliable. All wastewater plans will conform to applicable provisions of the DOH's Administrative Rules, Chapter 11-62, "Wastewater System."

#### WILDERNESS

35. *The applicant is to be commended for acknowledging that:*

- *"development of the area will destroy the special quality of La'au as a special place of spiritual mana and power. The overall spiritual quality of the La'au area as a wahi pana and wahi kapu cannot be quantified and deserves recognition and respect. The La'au Point project will have an impact upon the solitude and spiritual resources now existing." (p. 60)*
- *the area is an "isolated, pristine and spiritual area" (p. 56)*
- *"A large part of the significance of the La'au Point area is that it is raw and untouched. . . Lā'au Point has become an icon of what Moloka'i represents -- a rural stronghold and reserve of Native Hawaiian culture, a cultural kipuka. If Moloka'i is 'The last Hawaiian Island' then La'au is one of the last untouched Hawaiian places on 'The Last Hawaiian Island.'"*

*The EIS should identify how many people currently use this stretch of coastline on any given day. How much more use will there be after the 200 houses are built? The character of the area is dramatically affected by the inevitable use by residents of the 200 houses. The EIS should discuss how use by these new residents will affect natural resources in the area, cultural practices and the wilderness experience. (page 10)*

**Response:** In responding to your comment regarding the spiritual quality of Lā'au point, it is first important to note that Lā'au Point, itself, can be considered a significant cultural property. Hawaiians named specific sites according to their natural resources and features. Looking at historic and contemporary maps of Moloka'i, Ka Lae O Ka Lā'au is within the 51 acres owned by the federal government. This property will not be disturbed or developed on by the proposed project.

The west and south shorelines adjacent to Lā'au Point, Keawakalani on the southeast and Kamāka'ipō on the northwest, is where the proposed development is projected. According to the archaeological surveys and ethnographic documents, there were settlement clusters around protected bays, such as at Kapukuwahine and Kanalukaha on the south shore. In addition, the Master Plan identified Kamāka'ipō as an important cultural and spiritual place.

Molokai Ranch has applied to the State Land Use Commission to re-district these areas from Agricultural to Conservation district in order to protect the significant settlement areas and clusters along the west and south shores adjacent to Lā'au Point, notably at Kamāka'ipō, Kapukuwahine, and Kanalukaha. These proposed conservation zones will be gifted to the Moloka'i Land Trust.

A Shoreline Access Management Plan, included in the Final EIS, sets out management guidelines for the Lā'au shoreline area, which includes an expanded conservation district zone

between the makai boundary of the proposed residential lots and the shoreline, and two parks at the culturally significant Kamāka'ipō Gulch and Pu'u Hakina areas. Access will be limited to foot travel in these areas to limit the amount of traffic and disturbance.

In addition, a cultural management plan will guide protection, access to and use of the cultural and spiritual sites. These cultural guidelines are provided on pages 116-117 of the Cultural Impact Assessment report (provided as Appendix F of the Draft EIS).

The cultural impact assessment was a qualitative rather than quantitative study. Of the 250 persons who attended the community meetings held in Summer 2006, very few indicated that they access the area projected for development by land. Some indicated that they access the area by boat. The key informants who were interviewed indicated that their families have accessed the coastal areas proposed for development to gather marine resources for large family gatherings for occasions such as graduations, baby lu'au, weddings, and funerals.

The 1994 subsistence study reported that 23 percent of the respondents in the random sample telephone survey fish in the area from Palā'au to Lā'au Point and from Lā'au to 'Īlio Point, while 19% gather in the ocean off of the same area. By comparison, fishing and ocean gathering areas with the largest percentages of multiple responses (above 30%) was on the South-East end coast from Makakupa'ia to Honouliwai (40% for fishing and 35% for ocean gathering) and from Honouliwai to Halawa (30% for fishing and 33% for ocean gathering).

Employees of MPL are allowed access along the west coast at areas called Egusa, Kamāka'ipō, Sam Wights, and Shipwreck, all of which are located in the area proposed for development. Maunaloa Ahupua'a Tenants can access Pu'u Hakina, Halena Camp, and Kolo on the South coast; however, only Pu'u Hakina is in the area proposed for development. From April 2006 through May 2007, a total of 214 different persons accessed these areas located on west and south coastal areas which are proposed for development. Many of these persons camped as 'ohana, as there were only 85 distinct family names among these 214 persons. In addition, some of these persons accessed these areas more than once, as there were a total of 375 persons who were granted a day pass or permission to camp in these areas from April 2006 through May 2007. The months of May 2006 and May 2007, right before graduation, had the highest use. January, February, and March 2007 also had high use.

36. *The EIS should discuss the loss of this 'unspoiled coastal environment,' the impact of this loss to native Hawaiians, the visitor experience, and the affect on visitors return to the islands. (page 10)*

**Response:** The EIS comprehensively discusses the expansion the Conservation District shoreline area around Lā'au Point. There will not be a "loss of unspoiled coastal environment" because the residential areas will not be on the shoreline. The lots will have large setbacks and an additional building setback for the houses. The coastal environment will be managed by the Land Trust, who will hire resource managers as stewards of the area.

Native Hawaiians will continue to be able to access the area for cultural and subsistence activities.

Since visitors are not known to frequent Lā'au Point, unless with a commercial tour operator through Molokai Ranch Lodge, their "experience" and "effect on return" will be unchanged. Visitors will still be able to visit Lā'au Point through Molokai Ranch, or they can hike along the shoreline as residents do.

37. *People visit Hawai'i because of the natural environment. A Visitor's View Of Paradise: A Report On Maui's Visitors...Why They Come, What They Enjoy, Why They Return* concluded that:

- The most memorable part of visitors' trip was "excursions into Nature."
- The feature that most visitors said that they would like to see more of was "natural coastlines"
- 91% reported that the preservation of natural areas was very important in their decision to return to visit. (page 10-11)

**Response:** We note that the document, *A Visitor's View Of Paradise: A Report On Maui's Visitors...Why They Come, What They Enjoy, Why They Return*, is a 1998 survey conducted by the Sierra Club Maui Group. As stated on page 1 of the report: "This report was based on a survey that offered visitors a chance to respond to a series of questions about one specific island (Maui)."

Although visitors to Moloka'i may agree with similar conclusions from the 1998 Maui survey, we do not believe this report is an accurate resource to apply directly to Moloka'i's visitor industry. For this reason, the EIS utilizes visitor-related information from a tourism report completed more recently and specific to the island of Moloka'i, *Moloka'i Responsible Tourism Initiative* (author: McGregor, 2006). A copy of this report can be obtained at: <http://huinet.hawaiiirdp.org/molokai/visitorindustry.htm>

In response to the three conclusions bullet-pointed, please see our response to #36 above about visitor experience likely remaining unchanged because the "excursion into nature," "natural coastlines," and "preservation of natural areas" will remain with the implementation of the Master Plan and the Lā'au Point project.

#### MUNITIONS DUMP

38. *The EIS should include a thorough discussion of the former target range, and in particular the munitions dump that the road corridor passes. Has the munitions dump been cleaned up? Are there any plans to clean it up?* (page 11)

**Response:** MPL understands that there was some bombardment of the Kaluako'i area in the past, and that there have been surveys of the area by the Army Corps of Engineers. However, the Army has assured there were no live firings that took place at Kaluako'i. The project area does not have a history of previous releases of petroleum, hazardous substances, pollutants, or contaminants.

To provide information in the Final EIS regarding the former target range, Section 2.1.3 (Surrounding Uses) will be revised to include the following:

A portion of the Pāpōhaku 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 Kaluako'i Road which provides access to the project.

#### ALTERNATIVES ANALYSIS

39. *MPL raises the dire prospect of it selling of its holdings or 101 lots, which could then be subdivided into 1500 lots. How many of these lots have water already available to make them (1) marketable and (2) developable? Does the subdivision code allow lots to be subdivided if no source of water is identified and no drinking water infrastructure provided?* (page 11)

**Response:** This question relates to issues outside the project area and is a hypothetical question based on the abandonment of the Master Plan. In the event of the Master Plan being abandoned and MPL selling its holdings, water could be made available to subdivided lands from the Pālā'au Prawn Farm non-potable well.

40. *MPL rejects various alternatives in which it sells off some of its holdings. But isn't it true that MPL may still proceed with some of the alternatives it rejected after this project is approved?* (page 11)

**Response:** As stated in #16 above, MPL will sign a binding agreement with the Land Trust enforcing the provisions of the Master Plan upon approval of the Lā'au Point project. If this project is approved, 26,200 acres of MPL's holdings will be donated to the Land Trust and another 24,950 acres will have a perpetual easement held by the Land Trust. Even if MPL sold their lands, the perpetual easements run with the land, preventing development. MPL will not have many holdings left to "sell off" if the Master Plan and this project are implemented.

41. *What are the entitlements on lands that MPL acquired at Kaluako'i?* (page 11)

**Response:** The entitlements for the Kaluako'i lands are what are designated by the *Molokai Community Plan*, which is available on-line from the Molokai Planning Commission and the Maui County Planning Department.

MPL has not changed the entitlements since it purchased the Kaluako'i lands in 2001. The entitlements can be summarized a number of ocean-front hotel/multi family sites, a number of mauka multi-family sites, rural zoned land and a commercial site adjacent to the road leading to the Kaluako'i Hotel.

Under the Master Plan, MPL intends to donate two hotel/condo sites and part of a third to the Moloka'i Land Trust because of their cultural significance. As outlined in the Master Plan, MPL may need the remaining site at some time in the future for:

- An extension to the Kaluako'i Hotel if demand warrants.
- A cultural center.
- Housing for staff working at the Kaluako'i Hotel.
- A second golf course to replace the community-plan designated golf course in Maunaloa that was proposed to be sited near the Molokai Lodge.

However, in the event these future opportunities eventuate, approval would be needed from the Moloka'i Planning Commission as the entire Kaluako'i entitled area aforementioned are contained within the Special Management Area. Also, MPL has no water for such future expansions and has no current plans for any such implementation. In the event the community sought an extension to the hotel, desalinated water would be its only option.

#### FINANCIAL DATA

42. *MPL has put the issue of its finances on the table (see, e.g., page 64 of the Social Impact Assessment). And HAR § 15-15-50(c)(8) makes this information pertinent as well. MPL cannot, after claiming significant revenue loss, refuse to answer questions that challenge the veracity of such claims. Steve Morgan raises interesting financial data regarding recent profits from sales at Kaluako'i. His data indicates that MPL is not being candid. DeGray Vanderbilt similarly points to a BIL report that Molokai Properties managed to remain cash positive in the 2004/05 financial year. Is MPL really bleeding?* (page 11)

**Response:** MPL has stated quite clearly that it is cash negative from its operations-Lodge and Beach Village, Golf Course, island maintenance, property taxes, insurance, etc., as outlined in the Economics and Fiscal Impacts Report (Appendix J of the Draft EIS). Since 2001, MPL has been "cash negative from its operations," plus the need to spent money on replacement capital equipment, prior to the sale of land, of more than \$40 million.

The sale of land over that period has enabled MPL to realize cash to offset those losses and remain cash positive. It has been able to prevent seeking funds from its parent by keeping ahead of this "cash burn" by selling parcels of lands, particularly subdivided lots in Maunaloa and at Kaluako'i. However some time in the future MPL will have no more subdivided lots to sell to offset its losses.

Because of the huge cash drain MPL previously imposed on its parent company, BIL International (MPL has accumulated cash losses--known as Net Operating Loss, in excess of \$90 million), MPL's parent company BIL will not longer support on-going losses.

In this event, and if this "cash negative from operations" situation continues in a similar manner, MPL will need to sell all its land to offset its operational losses.

Or close its loss making operations and sell its land to the highest bidder in a piecemeal way to realize cash for its shareholders.

43. *The economic impact analysis absurdly assumes that the cost to government to provide services (per person) will remain the same through the year 2023. The modeling also makes no sense since many additional government services are fixed costs regardless of whether the services are provided to ten new residents or 325 new residents.* (page 12)

**Response:** The Economic report (Appendix J of the Draft EIS) did not include an analysis of how Maui County expenditures in total or per person may change over the next 15 years and it was outside of the scope of the analysis. However, the author of the Economics report feels that

there will be few if any additional fixed costs to government due to the Lā'au Pont project, so it is reasonable that the costs per person would likely decrease.

#### SOCIAL IMPACT

44. *The social impact assessment should have devoted less time to surveys and more time to analysis of social impacts. What will be the affect on crime rates, suicides and other indicators of social disruption that were found on Lana'i? The "assessment" reads more like a rationalization than a real assessment of the impacts of social stratification.* (page 12)

**Response:** We disagree that the Social Impact Assessment (SIA) should have devoted less time to surveys and more time to analysis of social impacts. First, SIAs have many purposes, including understanding the ability of a community or group to adapt to changing conditions, defining the problems or clarifying the issues involved in a proposed change and illuminating the meaning and importance of anticipated change. Obtaining this type of information requires in-field primary research that may be supplemented by secondary research. Earthplan chose to obtain this level of information through primary research that included direct contact with Molokai residents. The SIA conducted a public information meeting attended by 27 people, conducted focus group that included 49 people, and conducted 62 interviews with community people. These efforts were standardized for comparison purposes, and the results are summarized and analyzed in Section 4 of the SIA (Appendix M in the Draft EIS).

Section 5 of the SIA contains further analysis of social impacts and we disagree that this section tried to rationalize such impacts. The SIA presented an objective analysis of possible issues and recommended mitigation measures to address potential impacts. There were no predispositions or prejudgments on the nature of impacts.

We call your attention to your reference to Lāna'i, which was examined as a possible model of potential social impact. The SIA found that the Lāna'i model illustrates how a rapid shift from a single-product agribusiness to a resort and luxury development caused significant social disruption. The SIA further found that implementation of Lā'au Point would not result in similar social conditions. Moloka'i has traditionally exhibited self-reliance and independence, whereas Lāna'i residents historically accepted the decisions of the island's predominant employer. Also, whereas Lāna'i had no other options for their abrupt change to a tourism industry, Moloka'i has multiple options for change, including economic forces and development projects. To say that Moloka'i will experience the same social results as Lāna'i implies that that the Moloka'i people are unable to influence their future and do not recognize the diversity of economic and social options. We strongly disagree with your implications.

#### ARCHAEOLOGICAL IMPACTS

45. *The EIS must include a map that shows where all the archaeological sites that have been identified are located - in particularly with respect to where the houses are proposed.* (page 12)

**Response:** Figure 10 of the Draft EIS contains a map of archaeological sites and residential lot plan. During the design phase, the housing envelopes for each of the lots will take into account the location of the historic sites and not intrude on them.

46. As OHA commented, view planes between heiau and other cultural sites must be preserved. JThomas Witten's reply to OHA's letter suggests that buffers around heiau will be nine meters. A nine meter buffer around a heiau and burials is incredibly small. (page 12)

**Response:** Heiau buffers were specified at a minimum 9-meter radius beyond the edge of the site. At this time, the only identified heiau occur within the large Cultural Protection Zones at Kamāka'ipō on the west coast and Hakina. Ko'a (fishing shrines) also occur within the Cultural Protection Zones and Shoreline Conservation Zones. Therefore, all known shrines and heiau have larger buffers than the minimum specified. The Preservation Plan also specifies that the makai view plane of heiau and ko'a will be protected.

In response to your comments, Section 4.1 (Archaeological Resources) in the Final EIS 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 Kamāka'ipō Gulch (see Figure 49 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.

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 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 (Pāpōhaku Ranchlands) does not yet have an adequate inventory survey. MPL will survey the Pāpōhaku Ranchlands parcels that will be affected by the road corridor through the area. This commitment does not extend into TMK 5-1-02-030. Prior to construction, the archaeologist will re-examine the road corridor and verify descriptions of known sites, gather additional data if possible, and search for unrecorded archaeological deposits or features observable due to changes in surface visibility. After the road corridor re-survey re-examination and supplemental data collection, the proposed subdivision lots and coastal zone will be also be re-surveyed, following the same methods for investigating and recording sites as described for the road corridor. Additional survey work will be done prior to designation of the road corridor in order to design the corridor to avoid significant sites. Inventory work will be performed in accordance with the Preservation and Monitoring Plans during the road construction period.

Archaeological sites will be treated in one of three ways: preservation, data recovery, or no action. Preservation means avoiding damage to the site whether treatment is passive (avoidance) or active (stabilization, interpretation, and other measures). Data recovery pertains to sites that are significant for their information only, and covers actions such as mapping, excavation, and surface collection that adequately gather that information. No action is planned for those sites that were deemed not significant in the 1993 Bishop Museum inventory report, such as sites that had been so badly damaged as to eliminate the possibility of determining their original form or salvaging meaningful data.

After the re-surveys of the road corridor and project site, short-term site preservation measures will be implemented, such as establishing protective buffers and emergency stabilization. Then, data recovery and long-term preservation measures will be implemented. During construction, monitoring by an approved archeologist will occur. In their July 5, 2006 comment letter on the EISPN, OHA requested that "an archaeological monitor be on-site during all excavation and ground disturbances for this project." The archaeological mitigation plan has been submitted to the State Historic Preservation 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 H. By letter February 13, 2007, SHPD has approved the Data Recovery Plan contained in Appendix H. The other three plans will be submitted in a revised form to SHPD in the near future. The Archaeological Plan in the Draft EIS 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 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.~~

**APPLICANT'S TRACK RECORD**

47. *The success of any mitigation measures is dependent on the track-record of the applicant. Furthermore, decisionmakers operating under HRS Chapter 205 are supposed to consider the representations and commitments made by the petitioner in securing a boundary. It therefore is absolutely essential for the EIS to discuss problems the developer may have had in the past in fulfilling commitments and representations. ¶The EIS should fully discuss the nature of all litigation that relates to promises or representations made, the claims that were made and the final disposition of all such cases. The discussion should be even-handed and not rely on self-serving statements. ¶To what degree have promises in other EAs and EISes, or applications for government approvals for projects that Moloka'i Ranch been kept? Have all the mitigation measures mentioned in these documents been implemented? Have there been any violations of the law, citations or warnings issued by government agencies to Moloka'i Ranch?"* (page 12-13)

**Response:** We agree that as part of the decision making process on the Lā'au Point State Land Use District Boundary Amendment (Docket No. A06-764), the State Land Use Commission (LUC) will consider the representations and commitments made by the petitioner, MPL, for this project. The LUC has the authority to impose project specific conditions to ensure a petitioner's representations and commitments are implemented.

We disagree that a discussion on the applicant's "track record" is warranted in the EIS, since the current owners of MPL have not previously applied for a boundary amendment, and therefore, do not have a "track record" to discuss.

MPL knows of no violations of the law or citing or warnings that have been issued against it, in relation to its operations, as far as is known by current management. As far as current management is aware, it has met all the terms of its previous agreements with State, county and other regulators.

**MITIGATION MEASURES**

48. *The Hawaii Supreme Court has held that the public trust doctrine allows government agencies to issue permits only if the agencies must "ensure that the prescribed measures are actually being implemented." Kelly v. 1250 Oceanside Ptnrs, 111 Haw. 205, 231(2006) (internal citations and marks omitted). This duty cannot be met if agencies' monitoring and enforcement programs are*

*understaffed. Please fully discuss how the public can be assured that any proposed mitigation measures will be performed and will be effective. Please describe the county and state government's monitoring and enforcement programs so that we can be assured that promises made will be kept. How much staff do the State Health Department, County Public Works Department and County Planning Department have to ensure that promises are kept? How often can they be expected to visit the site?* (page 13)

**Response:** The proposed action is for a change in land use; we are not currently asking for permits.

49. *The applicant should identify all proposed mitigation measures in a consolidated list. These measures should be written in plain language that is easily enforceable when incorporated into a permit.* (page 13)

**Response:** The executive summary, which includes mitigation measures, is provided at the beginning of the EIS. We believe the executive summary provides an adequate consolidation of the proposed mitigation measures, and that adding a list, as you suggested, would be redundant.

**OTHER ISSUES**

50. *Who is building the houses: MPL or lot owners? In other words, is MPL selling lots, or lots with houses?* (page 13)

**Response:** MPL will be selling lots. The lot owners would build their own houses.

51. *The EIS should disclose the current electrical capacity on the island and whether this development will necessitate an expansion. ¶It should disclose whether an indirect impact will be an increase in electrical rates. It should disclose who pays for the extension of electric lines to the site.* (page 13)

**Response:** To address your comment, Section 4.9.5 of the Final EIS will be revised to include the following:

At full build-out, if all 200 lots contain a residence, estimated electrical demand would range from 110,400 to 183,000 kilowatt-hours (kWh) monthly, depending on the residence's air conditioning usage (see Table 8 below). This estimate is based on the use of solar water heaters, as required by the CC&Rs.

**Table 8. Electrical Demand**

	200 Residences	
	Electric Demand per month (kWh)	Electric demand per year (kWh)
No a/c	110,400	1,324,200
With room a/c	139,800	1,676,400
With central a/c	183,000	2,194,200

Electrical, telephone, and cable distribution systems will be extended underground from Kahuako'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 EISPN, 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.

Moloka'i has 12.0 Megawatts (MW) of firm generating capacity. Peak load for 2005 was 6.4 MW. The existing system has capacity to accommodate this project.

52. *When the applicant states that 'a net 5 percent of the sale revenue' will go to the CDC, what exactly does that mean? Who determines the net? What factors go into determining the net? If no profit is generated from this project, does the CDC get any money? The issue of how the CDC will be funded is important because MPL keeps raising the funding of the CDC as benefit of the project. The EIS cannot, on the one hand, promote the benefits of the project without, on the other hand, describing the mechanism by which these benefits will accrue. If the sale of a LLC rather than land effectively allows the conveyance of land without the collection of the promised money to the CDC, some of the EIS promised benefits are illusory.* (page 13-14)

**Response:** MPL is in complete agreement with these sentiments. The profitability or otherwise of the Lā'au Point project bears no relationship to funds generated from the project for the CDC. The funds that are allocated from the project result from the sale proceeds of the 200 lots to be sold.

To address your comment in the Final EIS, Section 2.1.9 (Moloka'i CDC) has been revised to include the following:

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:
  - A 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.

Table 2 below lists the assets and sources of income for the CDC as set forth in the Plan.

**Table 2. Moloka'i CDC Revenue Stream**

<b>Proposed Donations</b>	<b>Revenue Stream</b>
1,100 acres above Kaunakakai town	Land for affordable housing
Land currently occupied on a short-term lease by the Junior Roping Club (4.18 acres) that is County-zoned industrial.	Land to either develop or realize in cash on sale.
The funds (\$100,000) to be received from the County from the purchase of land for the new Kaunakakai Fire Station.	\$100,000 in late 2007 or 2008.
The funds received from the University of Hawai'i from the future purchase of 3,213 acres designated for community college expansion.	Funds will be at market valuation of the property at the time of sale.
Five percent of the net proceeds from the initial sales of lots in the proposed 200-lot Lā'au Point subdivision (likely to be in excess of \$10 million).	A total of \$10 million over the period of the sale of the lots, anticipated to be a 5-year period.
A 0.5 percent (a half a percent) of all future lot and house sales in the Lā'au Point development (giving the CDC a perpetual income forever).	A continuous income stream as lots or lots and houses are resold.

53. *Despite Mr. Witten's assurances, there is no guarantee -- and no explanation of any mechanism to ensure -- that profits from this development will be used for hotel revitalization.* (page 14)

**Response:** MPL will sign a binding agreement with the Land Trust enforcing the provisions of the Master Plan upon approval of the Lā'au Point project.

MPL is committed to the implementation of the Master Plan and its relevant provisions, including the re-opening of the Kaluako'i Hotel. MPL and the Moloka'i Land Trust, as the representative of the Moloka'i community as envisaged under the Master Plan, and the organization that will enforce many of its provisions, are currently preparing agreements to this effect.

The many agreements that encompass the Master Plan are detailed and complicated in their provisions. It is anticipated the agreements covering all aspects of the Master Plan, will be available at LUC hearings. Some of these are:

- Master Plan overall agreement document.
- Agricultural easement and Rural Landscape Reserve agreements.
- Lā'au Point CC&Rs
- Lā'au Point expanded Conservation District lands easement to the Land Trust agreement.
- Shoreline Access and Management Plan (proposed to be included in the Final EIS).

The agreement covering the donation of the first piece of land, the 1,600 acre parcel between 'Īlio Point and Mo'omomi, is a confidential document between the Moloka'i Land Trust and MPL, but the essence of its timing and provisions are outlined in the Final EIS.

54. *The EIS should discuss any risks posed by earth slippage that Lā'au homeowners would face. The EIS should include a discussion of the soil type and slope on whether development has taken place in similar types of environments in this state. Attached to this letter is a map showing that vertisols are located at Lā'au. Vertisols are clay-rich soils that shrink and swell with changes in moisture content. During dry periods, the soil volume shrinks, and deep wide cracks form. The soil volume then expands as it wets up. This shrink/swell action creates serious engineering problems and can damage buildings and roads (page 14)*

**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 Kamāka'ipō Gulch), basalt rock formation is encountered at the ground surface and partly exposed at the ground surface mixed with the soils mentioned previously.

55. *Will the applicant make any commitment to keeping all inadvertently discovered burials in place? Please answer this question: yes or no. (page 14)*

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

While it is advised that any burial be preserved in place, there is a small possibility that doing so would not be a good idea. One example would be if lineal or cultural descendants were to request its reinterrment elsewhere, either out of concern for its safety and stability, or to remove it from close proximity to a sewer line or the like. Another instance in which data recovery of a site or movement of human remains could be the best path is when preservation in place would cause worse impacts wherever the road or construction is rerouted. Preservation in place should remain the preferred option, but not when it defies the overall aim of preservation.

If testing does not encounter human remains, the feature will be subject to data recovery according to the procedures and standards described in the Data Recovery Plan (also located in Appendix E of the Draft EIS). If, during the course of the project, human burials are inadvertently discovered, work in the vicinity will be halted while the archaeologist determines if they are likely to have been in place for more than 50 years. If not, the matter comes under the jurisdiction of local police, who will be notified. If so, the SHPD Burials Program will be consulted. The preferred treatment will be to leave any burials in the location they were found, and avoid any further disturbance.

As stated in our response to #46 above, Section 4.1 (Archaeological Resources) of the Final EIS will be revised as follows:

David Kimo Frankel  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
November 1, 2007  
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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.~~

#### RESPONSE TO COMMENTS

56. *As the Hawaii's Supreme Court has observed, the "applicant must respond in writing and address all concerns and questions before proceeding with the development of the EIS. Once this phase of the process is complete, the applicant then begins preparation of the EIS." Sierra Club v. Office of Planning, 109 Haw. 411, 415 (2006)(emphasis added). See also, HAR § 11-200- 15(D), -22(C) and -23. ¶The applicant ignored or discounted many of the questions asked. These questions must be answered prior to the acceptance of the EIS. These questions include all the questions asked in this letter, our previous letter, as well as others' letters (including the specific financial questions of Steve Morgan and DeGray Vanderbilt). (page 14)*

**Response:** We respectfully disagree with this statement. We understand our duty to respond to comments. See HAR § 11-200-22(c). We have endeavored to respond in good faith to your comments, as well as to all of the other comments that we have received, as fully and completely as possible.

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 7.5 (Unresolved Issues)
- Revised Section 2.3.6 (Covenants)
- Revised Section 3.7 (Fauna)
- June 21, 2007 NOAA correspondence
- Revised Section 4.9.1 (Drainage)

cc: Anthony Ching, State Land Use Commission

David Kimo Frankel  
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November 1, 2007  
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Office of Environmental Quality Control  
Jeff Hunt, Maui Planning Department  
Thomas S. Witten, PBR HAWAII

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# NATIVE HAWAIIAN LEGAL CORPORATION

*Serving Hawai'i since 1974*

1164 Bishop Street, Suite 1205 • Honolulu, Hawaii 96813 • Phone (808) 521-2302 • Fax (808) 537-4268

February 22, 2007

Peter Nicholas  
Molokai Properties Limited  
745 Fort Street Mall, Ste. 600  
Honolulu, HI 96813

Thomas Witten  
PBR Hawaii  
1001 Bishop St., Ste. 650  
Honolulu, HI 96813

Anthony Ching  
State Land Use Commission  
P.O. Box 2359  
Honolulu, HI 96804

Genevieve Salmonson  
OEQC  
235 S. Beretania St. #702  
Honolulu, HI 96813

Re: COMMENTS ON DEIS FOR LĀ'AU POINT

Dear Messrs. Nicholas, Witten, Ching and Ms. Salmonson:

The Native Hawaiian Legal Corporation is submitting these additional comments on behalf of Moloka'i Homestead Farmers Alliance and Wayde Lee to supplement the comments we submitted to you on February 1.

## 1. Development Potential North of Existing Resort

The EIS must thoroughly discuss MPL's development plans for the area north of the existing Kaluakoi resort. There are many sites there zoned for hotels and multi-family units. This issue must be thoroughly discussed for two reasons.

Peter Nicholas  
Thomas Witten  
Anthony Ching  
Genevieve Salmonson  
February 22, 2007  
Page 2

First, development in this area could potentially involve fewer infrastructure costs while generating sufficient income to subsidize the Kaluakoi resort (ostensibly the purpose of the Lā'au development). In other words, this is an alternative to development at Lā'au that needs to be thoroughly discussed.

Second, given the potential density of projects in this area, together with other existing entitlements, development in this area – together with Lā'au – could have enormous cumulative impacts – particularly in the amount of water consumed. HAR §11-200-2 provides:

“Cumulative impact” means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

## 2. MPL's Economic Hardship

Much is made of MPL's financial situation in the EIS. Please reconcile (in plain English) these claims with the statement in your corporate disclosure: “The Molokai Properties operation continued to remain cash-positive in 2005/2006 by the further sale of non-strategic lots in subdivisions that were developed in the 1980's and 1990's and by keeping a strict control on costs.”

## 3. Monk Seal

Residents report that monk seals are always at Lā'au. On February 15, 2006 I saw five. Where else in this state (besides the Northwest Hawaiian Islands) can one see monk seals on a regular basis? The EIS must include the opinion of a real marine biologist, experienced with monk seals, who discloses the probable impact of development in the area on the monk seals.

*Services made possible with major funding from the Office of Hawaiian Affairs.*



Nihoa. Upright, straight, stately, tall and straight as a tree without branches; sharply peaked, as mountains. Fig., righteous, correct.



Peter Nicholas  
Thomas Witten  
Anthony Ching  
Genevieve Salmonson  
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#### 4. Brackish Water

MPL proposes to use brackish water for irrigation. The EIS should disclose the salt content of this brackish water from the Kākahāhale well; the tolerance of agriculture (and golf courses) to brackish water; and the long-term impact of accumulated salts in the soil from using brackish (i.e. salty) water for irrigation.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Kimo Frankel', written over a horizontal line.

David Kimo Frankel  
Staff Attorney

November 1, 2007

David Kimo Frankel  
Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, Hawai'i 96813

#### SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Frankel:

Thank you for your second letter dated February 22, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). Below, we respond to your comments.

- 1. Development Potential North of Existing Resort: The EIS must thoroughly discuss MPL's development plans for the area north of the existing Kaluakoi resort. There are many sites there zoned for hotels and multi-family units. This issue must be thoroughly discussed for two reasons. ¶First, development in this area could potentially involve fewer infrastructure costs while generating sufficient income to subsidize the Kaluakoi resort (ostensibly the purpose of the Lā'au development). In other words, this is an alternative to development at Lā'au that needs to be thoroughly discussed. ¶Second, given the potential density of projects in this area, together with other existing entitlements, development in this area — together with La'au — could have enormous cumulative impacts — particularly in the amount of water consumed. HAR §11-200-2 provides: ¶"Cumulative impact" means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

**Response:** As stated in the *Community-Based Master Land Use Plan for Molokai Ranch* (provided as Appendix A in the Draft EIS; hereafter referred to as "Master Plan"), MPL has no plans to develop the entitled lots north of the Kaluako'i Hotel. However, as stated clearly in the Master Plan, some of those lands may be needed at some distant time in the future for extending the Kaluako'i Hotel if demand requires it; some land for a Cultural Center adjacent to the hotel; and some land for community housing for Kaluako'i Hotel staff. At this point, there are no plans to do that, but MPL believes it should be up-front about this remote possibility. Also under its Water Plan, MPL has no water available for such a remote possibility.

The Master Plan also states that if ever there is a demand for a second golf course on Moloka'i, (and replacing the Moloka'i Community Plan-approved golf course below the Lodge at Maunaloa), then it should be sited in this area.

These Kaluako'i parcels are within the Special Management Area (SMA) and any type of construction there would be subject to approval by the Moloka'i Planning Commission. Desalinated water would be needed in this case.

In terms of the potential of developing entitled lots north of Kaluako'i, please refer to Section 6.0 (Alternatives) in the Draft EIS, which examined a number of options for development of these areas as an alternative to the proposed Lā'au development; in particular, refer to Section 6.4.5 Kaluako'i Rural Subdivision and Golf Course; and Section 6.4.6 Kaluako'i Resort Condo Units. These alternatives were rejected because they used far more water than was available to MPL and created excessive population increases.

2. *MPL's Economic Hardship: Much is made of MPL's financial situation in the EIS. Please reconcile (in plain English) these claims with the statement in your corporate disclosure: "The Molokai Properties operation continued to remain cash-positive in 2005/2006 by the further sale of non-strategic lots in subdivisions that were developed in the 1980's and 1990's and by keeping a strict control on costs."*

**Response:** MPL has stated quite clearly that it is cash negative from its operations-Lodge and Beach Village, Golf Course, island maintenance, property taxes, insurance, etc., as outlined in the Economics report (provided as Appendix J of the Draft EIS). From this report, it can be seen that MPL, since 2001, has been "cash negative from its operations," plus the need to spend money on replacement capital equipment, prior to the sale of land, of more than \$40 million. By selling land, MPL has been able to realize cash to offset those operating losses and remain cash positive. MPL has been able to prevent seeking funds from its parent company by keeping ahead of this "cash burn" by selling parcels of lands, particularly subdivided lots in Maunaloa and at Kaluako'i. However, MPL will eventually have no more subdivided lots to sell to offset its losses.

Since 2002, MPL has made huge cost improvements, such as reductions in losses at the Lodge and Beach Village. However, increases in insurance costs, property taxes and energy costs have offset those gains. Entities such as NHLC will be well aware of cost increases in these areas.

Because of the huge cash drain that MPL previously imposed on its parent company (MPL has accumulated cash losses—known as net operating losses or NOL's – in excess of \$90 million), MPL's parent company, BIL, will no longer support on-going losses.

In this event, and if this "cash negative from operations" situation continues in a similar manner, MPL will need to sell all its land to offset its operational losses or close its loss making operations and sell its land to the highest bidder in a piecemeal way to realize cash for its shareholders. This scenario was previously discussed in Section 6.2 of the Draft EIS.

3. *Monk Seal: Residents report that monk seals are always at Lā'au. On February 15, 2006 I saw five. Where else in this state (besides the Northwest Hawaiian Islands) can one see monk seals on a regular basis? The EIS must include the opinion of a real marine biologist, experienced with monk seals, who discloses the probable impact of development in the area on the monk seals.*

**Response:** The density of monk seals generally increases northward through the Main Hawaiian Islands (MHI) to the Northwestern Hawaiian Islands where their primary breeding colonies exist. The largest concentration of monk seals in the MHI is on Ni'ihau. Moloka'i has relatively few monk seals, although the population in the MHI appears to be increasing.

We consulted with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service about the monk seal population at Lā'au Point. In a subsequent letter (dated June 21, 2007) to their comment letter on the Draft EIS, NOAA NMFS stated: "NMFS believes it would not be necessary to conduct a survey at the site to ascertain that Lā'au Point is important monk seal habitat, as that is already known." For your convenience and reference, a copy of this correspondence is attached.

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 Monk seal habitat and the promotion of Lā'au Point as an area for Monk seals to frequent and "haul out."

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding monk seals, Section 3.7 (Fauna) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.7 (Fauna)."

4. *Brackish Water: MPL proposes to use brackish water for irrigation. The US should disclose the salt content of this brackish water from the Kāalahale well; the tolerance of agriculture (and golf courses) to brackish water; and the long-term impact of accumulated salts in the soil from using brackish (i.e. salty) water for irrigation.*

**Response:** To address this comment, the following information has been added to Section 4.9.2 of the Final EIS:

Water from Kāalahale Well is considered "slightly brackish" with chloride levels of approximately 400 mg/L. In contrast, seawater is about 19,500 mg/L, the County's Kawela Shaft (a drinking water source) has chlorides of about 200 mg/L, and MPL's Well 17 has consistent chloride levels of 40 mg/L.

Types of crops that could be irrigated with water of these chloride levels include: asparagus, date palm, sugarbeet, alfalfa, broad bean, onion, turnip, cabbage, lettuce, carrot (source: CTAHR <<http://www.ctahr.hawaii.edu/oc/freepubs/pdf/pnm17.pdf>>).

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

David Kimo Frankel

SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT

November 1, 2007

Page 4 of 4

Attachment:

June 21, 2007 Correspondence from NOAA  
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

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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED & FACSIMILE TRANSMITTAL**

February 23, 2007

John Sabas, General Manager of Community Affairs  
 Molokai Properties Limited  
 745 Fort Street Mall, Suite 600  
 Honolulu, Hawai'i 96813  
 Fax: (808) 521-2279

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Genevieve Salmonson  
 Office of Environmental Quality Control  
 235 S. Beretania St. #702  
 Honolulu, Hawai'i 96813

**Re: Comments on MPL's Lā'au Point Draft Environmental Impact Statement**

Aloha kakou:

Pursuant to Hawai'i Administrative Rules § 11-200, this letter comments on PBR Hawai'i's December 2006 Draft Environmental Impact Statement (DEIS) for Lā'au Point Moloka'i on behalf of the Save Lā'au 'Ohana, a hui of community members who are committed to preserving and protecting this cultural kīpuka. Our goal in sharing this mana'o is to identify issues where your DEIS fails to fulfill the letter and spirit of applicable laws. After reading our letter, we hope that you will agree that it is simply inappropriate to develop Lā'au and will abandon your plans for this area. If you elect to pursue your development, in reviewing and responding to our comments, we hope that you will make every effort to bring your proposed project into compliance with applicable laws, and to meaningfully address issues of concern for our group and the larger Moloka'i community before seeking any additional project approvals.

In 1974, our State Legislature enacted Hawai'i Revised Statutes (HRS) chapter 343, which is also known as the Hawai'i Environmental Policy Act (HEPA). HEPA's fundamental purpose is to establish a comprehensive review process for projects like yours, which will

**Save Lā'au 'Ohana's Comment Letter Regarding MPL's Lā'au Point DEIS**  
**February 23, 2007**  
**Page 2 of 11**

significantly impact Hawai'i's natural and cultural treasures. This process was specifically designed to "ensure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations" and to do so early-on in the decisionmaking process to help determine whether or not a project should move forward. HRS § 343-1. Hawai'i Administrative Rules (HAR) § 11-200 establishes the framework for EIS procedures and contents for the accepting authority (in this case, the Land Use Commission), the applicant, and the public.

Your final EIS must "convey the information in a form easily understood, both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement." HAR § 11-200-19. You also must respond, in writing, to each of the comments received during the review period and incorporate the comments and responses in any final EIS. Your response to comments must include: (1) a point-by-point analysis of the validity, significance, and relevance of comments; and (2) discussion regarding how each comment was evaluated and considered in planning and/or modifying the proposed action. Your responses must also explain why any specific comments or suggestions were rejected. HAR § 11-200-22. This analysis of and response to comments like ours must take place before you proceed with any final EIS. Sierra Club v. Office of Planning, 109 Haw. 411, 415 (2006) ("applicant must respond in writing and address all concerns and questions before proceeding with the development of the [final] EIS. Once this phase of the process is complete, the applicant then begins preparation of that] EIS.").

Below, we detail several significant areas where your DEIS is inadequate. First, Moloka'i Properties Limited (MPL) claims that the development of Lā'au Point is necessary to reopen the Kaluako'i hotel. But, MPL and its parent company have made millions of dollars over the last two years in land sales alone and already possess the capital necessary to refurbish the hotel. The truth of the matter is that this renovation is simply being dangled in front of our community as a tradeoff for the Lā'au Point development.

Second, the DEIS' examination of freshwater resources is wholly inadequate because it fails to provide necessary data and analysis. This is a fatal flaw given the Hawai'i Supreme Court's recent decision in In re Wai'ola o Moloka'i, 103 Hawai'i 401 (2004), which mandates that applicants such as MPL demonstrate that withdrawals from the Kakalahale well will not impact the Department of Hawaiian Homelands' (DHHL) existing reservations. As set forth in more detail below, on this basis alone we urge MPL to suspend any further action or investment of resources in this effort unless and until you are able to establish that you have a source of water sufficient to support all phases of your proposed project.

As also set forth below, your DEIS fails to adequately analyze cumulative impacts, effects on the marine environment (specifically class AA waters), and impacts on native Hawaiian traditional and customary rights and practices.

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**I. DEVELOPING LĀ'AU IS NOT NECESSARY TO GENERATE THE CAPITAL TO REFURBISH  
THE KALUAKO'I HOTEL AND RESORT PROPERTY**

In 2001, MPL purchased the lands that comprise the proposed Lā'au Point development and adjacent areas, which total approximately 7,000 acres. In the same year, MPL also assumed ownership of the abandoned Kaluako'i hotel and resort property. MPL has publicly stated that developing 200 luxury lots at Lā'au is necessary to "empower Moloka'i residents to implement their community strategic plan and, thereby, control their own destiny, inter alia, by re-opening the Kaluako'i hotel."

In addition to claiming that profits from developing Lā'au are necessary to refurbish Kaluako'i, MPL affirmed that without this development, Moloka'i Ranch lands would be "split-up and sold, or parent company Briery Investments (BIL) would sell MPL because it would never be economically viable." MPL also noted that the community would face "the resultant prospect of never again being able to have the opportunity of planning its future," unless the consensus could be reached on the plan.<sup>1</sup> MPL made public statements that the shareholders of its parent company, BIL, were "unwilling to take on additional risk on Molokai," in reference to the cost of repairs required to re-open the Kaluako'i hotel.

Despite MPL's representations, there is no guarantee that the profits from developing Lā'au will actually be used to refurbish the hotel. Moreover, basic information regarding MPL's investments on Moloka'i reveal that developing Lā'au is not an economic necessity:

(1) MPL purchased the existing Kaluako'i hotel and golf course for approximately \$9 million in December 2001. The sale also included the remaining unsold residential lots in Pāpōhaku Ranchlands and Moana Makani subdivisions, large acreage zoned rural that can accommodate approximately 400 or more future homes, and five beachfront hotel sites.<sup>2</sup>

(2) MPL sold over \$34 million dollars worth of residential lots in the past three years. Although its original purchase price was \$9 million, it still retains the core properties that were included in the initial sale – namely, the existing hotel and golf course, and future beachfront hotel sites.<sup>3</sup> MPL investors had extremely low land acquisition costs at Kaluako'i, coupled with land sales of only a small portion of the original Kaluako'i acquisition. MPL investors reaped a 275% increase in the value of their portfolio (over approximately five years or less), without sacrificing any core holdings from their original purchase.

<sup>1</sup> "Consensus reached on the plan" refers most directly to the consensus for approval of the Lā'au Point Development.

<sup>2</sup> Information obtained from TMK Hawai'i dba Hawaiian Information Service LLC.

<sup>3</sup> Id.

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(3) Although MPL claims that it suffers ongoing losses at its Moloka'i Ranch subsidiary, any such losses are not related to MPL's core businesses, which include hotel, resort, and real property development and sales.<sup>4</sup>

(4) In 2001, MPL purchased approximately 7,000 acres, including the parcels targeted for development at Lā'au Point, for approximately \$6 million dollars. MPL estimates total development costs including infrastructure, roadways, and utilities to approach the \$72 million dollar range (exclusive of ongoing and forward-looking maintenance costs). Based on current market analyses, the planned 200 lot residential development at Lā'au, will conservatively gross over \$300 million in sales.<sup>5</sup>

Contrary to its own claims that MPL's investors are "unwilling to take on additional risk on Moloka'i," MPL is planning one of the world's longest ocean-front developments. Ironically, this demonstrates that MPL's investors are willing to tolerate high-risk ventures, just not the smaller capital risk of re-opening the Kaluako'i hotel.

Evidently, MPL investors consider the relative reward-to-risk analysis for the Lā'au project more appealing and a better potential for profit than the Kaluako'i hotel project. This is alarming, because it demonstrates that even an extremely high-risk project such as Lā'au has a better potential for profit than does the Kaluako'i hotel. If the hotel is not economically self sufficient, will MPL close the property? Or, will MPL propose more residential developments to help keep the hotel open?

The information above calls into question MPL's statements alleging the "critical importance" and "urgency to reach consensus" regarding the Lā'au development. Through short-term profits from land sales in West Molokai, MPL already has the resources to re-open Kaluako'i without sacrificing additional capital from its investor base. The Lā'au development is not about corporate philanthropy; rather, it's about more corporate profit.

**II. THE DEIS WHOLLY FAILS TO CONSIDER IMPACTS ON WATER RESOURCES**

**A. Moloka'i lacks sufficient water to support current uses and future expansion at Lā'au.**

The DEIS fails to adequately consider critical information regarding Moloka'i's ground and surface water resources. Moloka'i is a Sole Source Aquifer (59 FR 23063) under Section 1424(e) of the Safe Drinking Water Act. Sole Source Aquifers are designated by EPA (Safe Drinking Water Act, Section 1427) as the "sole or principal" source of drinking water for an area.

<sup>4</sup> DEIS at 167.

<sup>5</sup> Information based on Comparative Market Analysis (CMA) using Multiple Listing Service (MLS). West Maui and rural oceanfront areas of O'ahu were compared to determine values. Although there are few oceanfront lots of two acres that have sold on prime ocean frontage in rural areas of O'ahu and Maui, the minimum value of lots on prime ocean-frontage range between \$4 million and \$8 million. The lots at Lā'au Point would have minimum market values that range from approximately \$1.5 million to \$3 million, based on MPL development standards at today's market prices.

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Because it has only a single aquifer, Moloka'i's drinking water supply is inherently limited. In addition, water use and withdrawals in one part of the aquifer affect water quality and discharge in other areas. Current demand is already taxing remaining supply, and water quality has decreased as pumping has increased. A 2006 study by the United States Geological Survey (USGS) documents current conditions on Moloka'i:

"Because of increased demand for water associated with growing population, projected increases in demand over the next few decades, and rising salinity of the water pumped from some existing wells, the County of Maui Department of Water Supply is currently considering drilling additional wells to replace or supplement existing wells on the island of Molokai, Hawai'i. Redistributed and additional ground-water withdrawals will affect ground-water levels, discharge of ground water to the nearshore environment, and, possibly, salinity of the water pumped from existing wells."

USGS Scientific Investigations Report 2006-5177 at 1.

Based on threats to Moloka'i's water resources, in 1992, the State Commission on Water Resource Management designated the entire island a Ground Water Management Area (GWMA). Moloka'i is the only GWMA in Hawai'i that encompasses an entire island. This means that all new or changing uses of ground water will be strictly regulated through water permits. At the date of designation, Moloka'i's population was expected to grow 20% from 1990 to 2000. Increased water withdrawals over that period led to rising chloride levels in many of the wells. As noted by USGS, by 2006, the Maui County Board of Water Supply was forced to consider drilling more wells to increase supply and better distribute pumping. In addition to shortages in the County system, there is currently a moratorium on new water meters for agricultural users serviced by the Molokai Irrigation System (MIS). Evidently, there is not enough water in MIS' system to service its users, so no more meters will be allowed.

The bottom line is that the Water Commission's designation of Moloka'i's sole source aquifer as a GWMA, USGS's 2006 report, and MIS's moratorium on water meters raise serious questions about whether there is enough water on Moloka'i now to supply current uses, let alone future expansion as is proposed by your DEIS for Lā'au Point. Moreover, the increased use of existing or new wells, including the wells potentially available to serve the proposed project, will affect ground water levels and the discharge of water into nearshore marine waters, which are critical to support traditional and customary native Hawaiian rights and practices in this area, as discussed below. Any final EIS must examine and address these critical issues.

**B. The DEIS fails to analyze impacts on native Hawaiian rights, practices, and culture.**

In Wai'ola, the Hawai'i Supreme Court determined that many native Hawaiians who live on Moloka'i, such as the members of Save Lā'au 'Ohana, engage in traditional and customary practices, namely, gathering limu and fishing in nearshore areas to help feed their families. Practitioners, including members of the Save Lā'au 'Ohana, testified that these resources require fresh water, which would be significantly reduced if Wai'ola's Water Use Permit Application

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were granted. Moreover, any such reductions will adversely affect traditional practices, including gathering rights. The Court further ruled that an applicant bears the burden of proving that its use will not abridge or deny native Hawaiian traditional and customary rights. In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401. In this case, you have failed to affirmatively demonstrate that the withdrawal of water as proposed in your DEIS will not negatively affect traditional and customary rights and practices guaranteed by Hawai'i's Constitution.

The DEIS also fails to analyze how increased pumping from the Kakalahale well will impact discharge to nearshore waters. Based on the analysis and data in the USGS report, "discharge to [some] fishponds and springs decreases in response to increased withdrawal." USGS Report at 47. You have neglected to provide sufficient analysis for the LUC to satisfy its duty to protect our traditional and customary rights:

In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must – at a minimum – make specific findings and conclusions as to the following: (1) the identity and scope of "valued cultural, historical, or natural resources" in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.

Ka Pa'akai O Ka 'aina v. Land Use Commission, 94 Haw. 31, 47 (2000).

In addition to reducing the discharge of fresh water to nearshore areas and impacting limu and fisheries, plopping 200 luxury homes and their residents on Lā'au will severely hamper if not effectively destroy the ability of native Hawaiians to continue to exercise traditional practices in and around this area. Hawaiian culture extends far beyond physical practices, such as catching fish or gathering limu. In order to exercise traditional customs in a pono manner, practitioners require the space and privacy to carry out ceremonies, rituals, and spiritual practices that are the foundation for and heart of Hawaiian culture. Without this spiritual aspect, our practices become empty. Put simply, traditional practices lose their mana if millionaire residents are peeping through their windows and snapping photos. Your proposed development of Lā'au will rob this sacred place of its spiritual integrity and discourage many local practitioners from even attempting traditional practices in this area. These impacts must be considered in your final EIS.

**C. The DEIS does not analyze impacts on DHHL's reservation.**

In Wai'ola, the Hawai'i Supreme Court also determined that the Water Commission's decision to grant a new water use permit for 655,928 gallons of water per day (gpd) from the Kamiloloa aquifer violated DHHL's reservation rights as guaranteed by the Hawaiian Homes Commission Act ("HHCA"), State Constitution, and Water Code. For administrative purposes, the Commission divided the Moloka'i GWMA into distinct hydrologic units and aquifer systems.

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However, because each unit is hydrologically connected, pumping in one system affects the water levels in adjacent aquifers. DHHL has a 2.905 mgd water reservation in the Kualapu'u aquifer, which is adjacent to the Kamiloloa aquifer. The Court determined that the Water Commission's actions could not divest DHHL of its duty to protect its reservation. Thus, the applicant bore the burden of establishing that its proposed use (to withdraw from Kamiloloa aquifer system) would not interfere with DHHL's reservation of water in the Kualapu'u aquifer.

In this case, you bear the same burden and must establish that your water use will not impact DHHL's reservation. Your Water Plan Analysis provides:

As discussed above, implementation of the Water Plan will require a finding by the Water Commission that the withdrawal of 1 mgd of brackish water from the Kakalahale Well will not impact DHHL's existing wells in Kualapu'u, nor jeopardize DHHL's ability to access its reservation in the Kualapu'u Aquifer.

DEIS Appendix P at 23. Your DEIS concedes the possibility that withdrawing 1 mgd from Kakalahale may negatively impact DHHL's existing wells, yet fails to provide the required analysis or consider the environmental and cultural effects of negatively impacting DHHL's wells or reservations. On this basis alone, the LUC should reject any final EIS unless and until this burden has been satisfied.

D. Use of the Kakalahale well will affect ground water levels and salinity in other wells.

MPL's DEIS makes blanket assertions that lack any scientific basis and are contradicted by established data. For example, MPL claims that "drawing water from the Kakalahale well will have no impact on the yield of the Kualapu'u aquifer." DEIS Appendix A (Water Plan) at 119. This assertion is unsupported by any analysis.

On the contrary, USGS Scientific Investigations Report 2006-5177 establishes:

"If water is pumped from one well, it will affect salinity of nearby wells. Also, it will affect discharge of fresh water to stream mouths and fishponds, upon which fish rely."

Id. at 4, 47. If MPL has information or analysis to support its assertion that drawing water from Kakalahale will have no impact on Kualapu'u, that information should have been included in the DEIS. Regardless, this deficiency must be addressed in any final EIS and must be resolved before MPL proceeds any further with its development plans.

E. MPL has failed to demonstrate how it will transport the water from Kakalahale.

MPL claims that it WILL NOT transmit the Kakalahale brackish water to the West Side of Moloka'i via the Moloka'i Irrigation System. DEIS Appendix P at 119. MPL offers only that it is "currently investigating transmission alternatives." Importantly, before water from the Kakalahale well could be used for the proposed project, MPL would have to obtain a water use permit from the State Water Commission for this specific use. MPL also contends that it will use

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existing pipeline easements across DHHL's Ho'olehua lands to transmit Kakalahale water. These contingency plans fail for two reasons: First, the majority of the existing pipelines are already at or near capacity and in use for transmission purposes; and second, the limited lines that are available for transmission are six inch lines, which are incapable of transporting the amount of water in question. Any final EIS must analyze how water will be transported from Kakalahale to Lā'au, as well as the environmental and/or cultural impacts of such a proposal. MPL's empty claims that they are "investigating transmission alternatives" to get water from the Kakalahale well to Lā'au Point is simply inadequate.

F. A one percent build rate per year at Lā'au Point is misleading and inaccurate.

The proposed build-out rates and corresponding water use proposed for Lā'au Point do not accurately forecast water demand for this project. MPL claims that the build-out rate at Pāpōhaku Highlands is 1% per year, based on the fact that after 20 years, only 20% of the lots have had houses constructed on them. MPL also projects that if all 200 homes at Lā'au are sold in year one at a conservative price of \$1.5 million, then only two lots will have homes built on them by the end of year two. This is unrealistic and fails to account for the fact that last year, the build out rate at Pāpōhaku Highlands was closer to 9%. Moreover, the target buyer for a house at Lā'au differs in almost every aspect from lower-end residential buyers in other projects, such as the one at Pāpōhaku. Buyers with the capacity to purchase a lot in Lā'au will have significantly more disposable income and the corresponding ability to build as soon as they want. The DEIS failed to address the likelihood that the build rate will be greater than one percent per year – perhaps closer to last year's 9% build out rate at Pāpōhaku Highlands – and how any related infrastructure needs, such as water, will be met. Any final EIS must include this analysis.

G. MPL shows a high water use during construction yet neglects to identify a source.

MPL mistakenly estimates the build rate at Lā'au Point will be 1% per year. Yet, MPL expects that even this extremely low build rate will require 50,000 to 1,500,000 gpd. DEIS Appendix A (Water Plan) at 120. Erosion protection and control measures will require an additional 50,000 to 100,000 gpd. Construction is projected for two years with erosion control lasting for 7 to 12 years. The DEIS fails to identify where this 100,000 to 1,500,000 gpd of water will come from or analyze any potential or cumulative impacts on natural and cultural resources due to the source or transmission of this water. Any final EIS must account for this omission.

H. MPL fails to identify a source for the water for its proposed public parks.

While the DEIS' Water Plan acknowledges that the public parks at Lā'au Point will require both potable and non-potable water, it neglects to identify the source of such water. DEIS Appendix A (Water Plan) at 120. The final EIS must identify a source and analyze any potential or cumulative impacts on the natural and cultural resources due to the source and/or transmission of this water.

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**I. The relationship between residency and water use is unclear.**

MPL claims that only 40% of Pāpōhaku homeowners will be residents. There is no ascertainable relationship between residency or non-residency and water use. A home could be used as a vacation-rental with high-occupancy rates and water use significantly higher than if the home was occupied by a “resident.” Moreover, people with more than one home do not necessarily use less water when they are at Lā‘au Point. These analyses are unrealistic and make no economic sense, nor do they address how much water will ultimately be needed for this development. For purposes of our comment letter, we used MPL’s estimates to chart how much water will be needed at 100% occupancy:

Water Usage of Other Proposed Projects		
Residence/Condominium	current*	potential*
Pāpōhaku Ranchlands/ Moana Makani (no subdivision)	306	612
Pāpōhaku Ranchlands/ Moana Makani (subdivision exercised)		1,538
Rural Zoning/ North of Resort Area		400
Multi Family Zoning Areas**	400	800
Single Family Zoning Area		200
<b>Sub-total</b>	<b>706</b>	<b>3,550</b>
Water Usage: 600 gallons per day for one house ***	423,600	2,130,000
Hotel Zoning/ Resort Area	current*	potential*
Potential Hotels sights		5
<b>Sub-total</b>	<b>0</b>	<b>5</b>
Water Usage: 33400 gallons per day for one hotel	0	167,000
<b>TOTAL</b>	<b>423,600</b>	<b>2,297,000</b>

\*We assume that the current & potential lots are occupied 100% of the time. “Current” is defined as projects proposed as of February 2007. “Potential” is defined as potential projects as well as current projects. The total water usage “potential” does not assume maximum water usage.

\*\*There are currently four multi family zoned areas. We assume each area has 100-200 houses.

\*\*\*For the water demand calculation, we used the rates provided in MPL’s Water Plan in Appendix A. **We note, however, that current homes in the Kaluako‘i area use approximately 3,000 gpd, or more than five times the rate estimated by MPL for Lā‘au.**

**J. Water conservation at Kaluako‘i does not relate to Lā‘au Point.**

The Master Plan in section 6.10 (included in the DEIS as Appendix A) fails to explain how water conservation at Kaluako‘i will affect water conservation at Lā‘au Point. There is no proposed base rate, conservation rate, or gallons per day rationed for Lā‘au Point in the Master

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Plan or DEIS. The only hint of this vital information is contained in the small print narrative for the graph on page 121 of the Master Plan. Why Lā‘au Point is estimated to use 600 gallons per day – as compared with the 1,000 -5,000 gallons per day estimated for Kaluako‘i – is not explained and does it make any sense. Any final EIS for Lā‘au Point must address and define the water needs and projections for the entire project.

**K. The DEIS lacks a serious basis for claiming that water consumption will be moderated.**

“MPL believes a combination of low occupancy, water conservation education, xeriscaping and tiered water rates will moderate water consumption by these homeowners.” DEIS at 81. Believing that millionaires who can afford to buy luxury beachfront homes as a second or third house (Water Plan at 119) will conserve water due to education and a higher water rate is amusing, but fails to rise to the specificity required in an EIS. MPL’s tiered water rates are also likely have an insignificant effect on water conservation given the overall capacity necessary to purchase property and build a house at Lā‘au. These shortcomings must be addressed in any final EIS.

**L. The contingency plan is inadequate.**

The contingency plan in Appendix A: Community-Based Master Land Use Plan for Molokai Ranch is inadequate because it fails to provide practicable alternatives. The final EIS must better examine the impacts of current alternatives (including brackish water and desalinization) and explore other options. As just one example, the final EIS must examine the impacts of using brackish water on the chloride content of soils, agricultural operations, and ground water supplies.

**III. THE DEIS FAILS TO ADEQUATELY CONSIDER IMPACTS ON THE MARINE ENVIRONMENT**

The State of Hawai‘i identified the waters around Lā‘au Point as class AA, which is the most protective classification for marine waters.

It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected.

HAR § 11-54-3(c)(1). Furthermore, § 11-54-1 (c) mandates that:

Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

The DEIS neglects to adequately address potential impacts on Class AA waters and their designated uses, including increased erosion and sedimentation from the development of five

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miles of pristine coastline and the maintenance of 200 luxury lots on land abutting pristine waters. For example, the DEIS does not adequately examine any nonpoint source pollution resulting from this development and corresponding impacts on coral reefs, water quality, and fisheries. What erosion control techniques will be implemented and how will these techniques maintain and protect Lā'au's outstanding water quality and ecological and cultural significance? How will your proposed development impact the nearshore environment? This development will have significant impacts on the marine environment and any final EIS must honestly and thoroughly address these impacts, mitigate them, and consider alternatives to the development. As already detailed in section IIB, all impacts to the marine environment must be considered, including impacts on natural and cultural resources and the traditional and customary native Hawaiian practices reliant upon those resources.

#### IV. CUMULATIVE IMPACTS

The DEIS fails to sufficiently examine cumulative impacts resulting from this proposed project. Any final EIS must consider and analyze

the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

HAR §11-200-2. Since MPL has made Lā'au Point a part of Moloka'i's master planning effort, any final EIS must necessarily examine all cumulative impacts of the master plan, including future developments such as the re-opening of the Kaluako'i hotel. In 2005, Moloka'i had an average daily visitor count of 955 (Hawaii's Comprehensive Wildlife Conservation Strategy) without the Kaluako'i hotel. What are the impacts of additional tourists at the hotel? Any final EIS must address this issue.

#### V. CONCLUSION

Mahalo for this opportunity to comment on your draft EIS. Given the serious inadequacies of both your EIS and proposed development, especially regarding the impacts on Moloka'i's limited water resources, we urge you to abandon your plans to develop Lā'au and focus MPL's time and resources elsewhere. In the event that you decide to push on, we expect that you will respond, in writing, to each of the issues raised in this comment letter.

'O au iho nō.

Walter Ritte  
 Save Lā'au 'Ohana

November 1, 2007

Walter Ritte  
 Save Lā'au 'Ohana  
 [no address provided]

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Ritte:

Thank you for your letter dated February 23, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). We would like to respond to your comments.

1. *I. Developing Lā'au Is Not Necessary To Generate The Capital To Refurbish The Kaluako'i Hotel And Resort Property ¶If the hotel is not economically self sufficient, will MPL close the property? Or, will MPL propose more residential developments to help keep the hotel open?*

**Response:** The intent is for the hotel to be self-sufficient. MPL will adhere to the commitments made in the *Community-Based Master Land Use Plan for Molokai Ranch* (provided as Appendix A in the Draft EIS; hereafter referred to as "Master Plan").

2. *II. The DEIS Wholly Fails to Consider Impacts On Water Resources¶A. Moloka'i lacks sufficient water to support current uses and future expansion at Lā'au. The DEIS fails to adequately consider critical information regarding Molokai's ground and surface water sources. Molokai is a Sole Source Aquifer (59 FR 23063) under Section 1424(e) of the Safe Drinking Water Act. Sole Source Aquifers are designated by the EPA (Safe Drinking Water Act, Section 1427) as the "sole or principal" source of drinking water for an area.*

**Response:** The Sole Source Aquifer program was established under §1424(e) of the Safe Drinking Water Act of 1974 as a program to protect ground water sources. This program prohibits Federal financial assistance for projects that might contaminate an aquifer that has been designated by EPA as a sole or principal source of drinking water for an area.

"Sole or principal" means that the aquifer is needed to supply 50% or more of the drinking water for the aquifer service area, and that the volume of water which could be supplied by alternative sources is insufficient to replace the sole source aquifer should it become contaminated.

For purposes of the Sole Source Aquifer program, an "aquifer" may be a part of an aquifer, an entire aquifer, or an aquifer system. An aquifer system may be designated a "sole source aquifer" if all aquifers in the system are hydrogeologically connected.

The petition to designate the entire island of Molokai as a sole source aquifer was filed by Sarah Sykes in 1993. The petition acknowledged that aquifer boundaries are not known and proposed a "broad-brush agreement that there is basically only one hydrogeologically-linked aquifer underlying Moloka'i."

Proposed projects with Federal financial assistance that have the potential to contaminate sole source aquifers are subject to EPA review by a ground water specialist. Examples of projects that might be subject to review include highways, wastewater treatment facilities, construction projects that involve storm water disposal, public water supply wells and transmission line, agricultural projects that involve the management of animal waste, and projects funded through Community Block Grants. Project reviews can result in:

- EPA requirements for design improvements, ground water monitoring programs, maintenance and educational activities that would not otherwise occur; or
- District technical assistance, by identifying specific activities that may lead to ground water contamination. In addition, technical assistance usually involves site-specific coordination of ground water protection activities among State and local environmental and public health protection agencies.

To reiterate, no Federal financial assistance is contemplated for any part of the Lā'au Point project and therefore the Sole Source Aquifer program is not applicable to Lā'au Point.

In response to your comment above, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Moloka'i's 'Sole Source Aquifer' Designation."

3. *Because it has only a single aquifer, Molokai's drinking water supply is inherently limited. In addition, water use and withdrawals in one part of the aquifer affect water quality and discharge in other areas. Current demand is already taxing remaining supply, and water quality has decreased as pumping has increased.*

**Response:** To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that the use of 1.018 mgd from Well 17 and water collected in Molokai Ranch's Mountain Water System will not interfere with DHHL's existing permits and reservation.

In response to your comments above, as well as to address other questions and concerns received regarding water issues, Section 4.9.2 (Water) in the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the sections of the attachment titled, "Explanation of Moloka'i Aquifer Systems Geology," "Prior Studies by USGS on the Capacity of the DHHL Wells," and "Additional Information on the Kākahale Well."

4. *Based on threats to Molokai's water resources, in 1992, the State Commission on Water Resource Management designated the entire island a Ground Water Management Area (GWMA). Molokai is the only GWMA in Hawaii that encompasses an entire island. This means that all new or changing uses of ground water will be strictly regulated through water use permits.*

**Response:** Criteria for designating a ground water management area are set forth in HRS § 174C-44. The Water Commission will designate a groundwater management area if:

- 1) Actual water use or "authorized planned use" will cause the maximum rate of withdrawal from that groundwater source to reach ninety percent of the sustainable yield;
- 2) The Department of Health determines that there is actual or threatened water quality degradation;
- 3) The Water Commission believes, based on evidence of excessively declining groundwater levels, that regulation is necessary to preserve the ground water supply for the future;
- 4) Existing withdrawals of groundwater are endangering the stability or optimum development of the ground water body due to upconing or encroachment of salt water. Although the amount of water withdrawn may be well within the sustainable yields, the rates, times, spatial patterns, or depths of the withdrawals may nevertheless degrade the water source;
- 5) Chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses;
- 6) There is excessive and preventable waste occurring;
- 7) There are serious disputes about the use of groundwater resources; or
- 8) Water development projects that have received other governmental approvals would result in any of the above conditions.

The entire island of Moloka'i was designated as a groundwater management area for a combination of reasons. There is no indication that current withdrawals are threatening the health of any of the aquifers. Rising salinity levels in some of the wells appear to be localized phenomena associated with particular wells and not an indication of general aquifer degradation.

The total sustainable yield for groundwater resources on Moloka'i, which is established by the Water Commission, is 81 mgd. For planning purposes, the Moloka'i Water Working Group used 33.5 mgd as the developable yield of potable water on the island. Of the 81 mgd, less than 10 mgd is currently used.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Moloka'i Designated a Ground Water Management Area."

5. *At the date of designation, Molokai's population was expected to grow 20% from 1990 to 2000. Increased water withdrawals over that period led to rising chloride levels in many of the wells. As noted by USGS, by 2006, the Maui County Board of Water Supply was forced to consider drilling more wells to increase supply and better distribute pumping.*

**Response:** Rising salinity in certain Moloka'i wells appear to be related to local phenomena associated with particular wells. In particular, the concentrated pumpage of the two DHHL wells (Well Nos. 0801-01 & 02), the County DWS well (Well No. 0801-03) appear to be the cause of chloride rise in these wells.

The DHHL and DWS wells are closely grouped and poorly located relative to each other. All three wells have upgradient/downgradient effects when the DWS well is running while one or the other of the DHHL wells is also operating. A 20 mg/L chloride rise – to levels of about 100 mg/L – in the DHHL wells was an almost immediate response to the start of pumping of the

DWS Kualapu'u well in 1991. Chloride levels appear to have been stabilized in all three wells at the higher level.

Well 17 has been in use from 1952 to the present. There has never been a chloride response in the DHHL wells since they began operating in 1961 and 1981, or in DWS well since it began operating in 1991 as a result of pumping the Well 17, even during periods of extended (continuous) pumpage of Well 17 at a 1750 gpm pumping rate (2.5 mgd). The fact that chloride levels for Well 17 have remained stable at about half (or less) the levels in the DHHL and DWS wells is further evidence that pumpage of Well 17 is not producing a chloride response in the DHHL/DWS wells, and vice versa.

The rising chloride levels in Kawela Shaft and 'Ualapu'e Shaft appear to be the result of localized phenomena, and the USGS and Maui County are exploring redistributing and increasing withdrawals to other locations, including locations within the Kawela and 'Ualapu'e aquifers.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Prior Studies by USGS on the Capacity of the DHHL Wells."

6. *In addition to shortages in the County system, there is currently a moratorium on new water meters for agricultural users serviced by the Molokai Irrigation System (MIS). Evidently, there is not enough water in the MIS' system to service its users, so no more meters will be allowed.*

**Response:** MPL is not privy to the reasons for such a moratorium. The State Department of Agriculture's *Agricultural Water Use and Development Plan*, December 2003 (Revised December 2004), includes a chapter on challenges and solutions for the MIS.

7. *The bottom line is that the Water Commission's designation of Moloka'i's sole source aquifer as a GWMA, USGS's 2006 report, and MIS's moratorium on water meters raise serious questions about whether there is enough water on Moloka'i now to supply current uses, let alone future expansion as is proposed by your DEIS for Lā'au Point.*

**Response:** MPL believes that there is ample ground and surface water to meet DHHL's and the County's needs while still supporting MPL's plans for all of its lands. MPL's Water Plan does not adversely affect either DHHL's or the County's ability to develop the water resources they need for future uses.

MPL has committed to using only existing sources, at currently permitted amounts, to meet all of the potable water needs for its current water customers and MPL's future developments proposed under the Master Land Use Plan. A new non-potable source is being proposed. Currently permitted uses for potable water from Well 17 include more than 600,000 gpd for irrigation uses. When non-potable water from the Kākahale Well becomes available, those irrigation uses that are now supplied with potable water will utilize the new non-potable source, thus freeing up sufficient potable water to meet the demands of the Lā'au Point development.

The Kākahale Well, the proposed new source of non-potable water, is situated where it is unlikely to have a measurable impact on the existing DHHL and DWS wells in Kualapu'u. First, the Kākahale Well is down- and across-gradient from the DHHL and DWS wells. Second, the Kākahale 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 mgd will create a measurable effect. Third, there are known subsurface intrusives between the Kākahale and DHHL/DWS well sites, namely Pu'u Kākahale and Pu'u Luahine, which are barriers to ground water flow.

The Kākahale Well was developed in 1969 as a drinking water well for the Kaluako'i Resort. However, due to the brackish quality of the water, the well was never put into production. Relative to its distance inland, chlorides of the Kākahale Well are anomalously high. This anomaly is explained, however, by the presence of upgradient subsurface intrusives, i.e., the subsurface "plumbing" of Pu'u Kākahale, which function as barriers to normal mauka-to-makai flow of groundwater. The upgradient intrusives, which create the brackish result in the Kākahale Well, also function to limit the effect of pumping the Kākahale Well on other wells upgradient of the intrusives, such as the DHHL and DWS wells in Kualapu'u.

Additionally, it is highly unlikely that withdrawing 1 mgd from the Kākahale Well will have an adverse impact DHHL's ability to access its reservation amount from the Kualapu'u aquifer. For DHHL to develop its 2.905 mgd reservation in the Kualapu'u aquifer, new and appropriately spaced wells east of the existing DHHL/DWS well field will be required. All of these new wells will be upgradient of the known subsurface intrusives, Pu'u Kākahale and Pu'u Luahine. These subsurface intrusives create a barrier to groundwater flow, benefiting wells that are upgradient of the intrusives and adversely impacting the wells downgradient of the intrusives. They also limit the impact that wells on one side of the intrusives have on wells on the other side of the intrusives.

The Kākahale 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.

Additionally, desalinization is an alternative source of water that becomes increasingly viable with technological advances.

To ensure water availability to all, MPL, DHHL, and Maui County DWS are working cooperatively to coordinate future water development plans with the assistance of the USGS. It is anticipated that by proper placement of wells, the needs of DHHL, the County, and MPL for the foreseeable future can all be met at reasonable costs to the respective parties.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) of the Final EIS will be revised as shown as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

8. *Moreover, the increased use of existing or new wells, including the wells potentially available to serve the proposed project, will affect ground water levels and the discharge of water into nearshore marine waters, which are critical to support traditional and customary native Hawaiian rights and practices in this area, as discussed below. Any final EIS must examine and address these critical issues.*

**Response:** It is not disputed that withdrawals from any basal aquifer on Moloka'i will affect ground water levels and alter ground water discharge at the shoreline. The issues that must be addressed are whether these impacts – to existing wells or to shoreline discharges – are harmful to natural resources or to humans who depend on these resources.

A discussion of the impact of withdrawing 1 mgd from Kākahale Well on existing DHHL and DWS wells in Kualapu'u, the DHHL reservation in Kualapu'u Aquifer, increasing chlorides in existing wells, and ground water discharge along shoreline was previously provided in response to #3 above.

In addition, please refer to 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 Kākahale Well."

9. *B. The DEIS fails to analyze impacts on native Hawaiian rights, practices, and culture. The Court further ruled that an applicant bears the burden of proving that its use will not abridge or deny native Hawaiian traditional and customary rights. In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401. In this case, you have failed to affirmatively demonstrate that the withdrawal of water as proposed in your DEIS will not negatively affect traditional and customary rights and practices guaranteed by Hawai'i's Constitution.*

**Response:** Pages 130 – 131 of the Cultural Impact Assessment (Appendix F of the Draft EIS) discusses with regard to the potential cultural impact of withdrawing 1 mgd of brackish water from the Kākahale well, in part, as follows:

• **Impact on the Ocean**

Marine resources need infusion of fresh water to spawn. The findings in the Waiola Case provide relevant information on the potential impact of the pumping of 1,000,000 gallons of brackish water a day can have on the marine resources makai of Kākahale. The findings were based on the pumping of 1.25 mgd of ground water and thus the impact would be less than that projected in the Waiola Case.

Ground-water models showed that pumping 1.25 mgd of ground water would reduce ground-water flux to the nearshore area by about 3% to 15%. At that magnitude, the resultant change in salinity in the fishponds would be virtually indistinguishable from the initial values.

Native Hawaiians gather limu and other marine resources all along the southern and eastern coastline of Molokai, including the shoreline area of the Kamiloloa Aquifer. They do not confine their gathering activities to areas within their ahupua'a of residence.

Appendix P of the Draft EIS, discusses the water plan in greater detail.

As a first step in finding solutions for the sustainable use of water on Moloka'i, MPL met in September 2006 with the major managers of water resources on the island - Department of Hawaiian Homelands (DHHL), the County of Maui; Kawela Plantation Homeowners, the United States Geological Services (USGS) and the Commission on Water Resource Management. At the meeting, the USGS agreed to conduct a comprehensive modeling analysis of the water resources of the island in order to determine the annual sustainable yield.

10. *The DEIS also fails to analyze how increased pumping from the Kakalahale well will impact discharge to nearshore waters. Based on the analysis and data in the USGS report, "discharge to [some] fishponds and springs decreases in response to increased withdrawal." USGS Report at 47. You have neglected to provide sufficient analysis for the LUC to satisfy its duty to protect our traditional and customary rights.*

**Response:** We responded to this comment in #8 above. In addition, please refer to 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 Kākahale Well."

11. *In addition, to reducing the discharge of fresh water to nearshore areas and impacting limu and fisheries, plopping 200 luxury homes and their residents on Lā'au will severely hamper if not effectively destroy the ability of native Hawaiians to continue to exercise traditional practices in and around this area. Hawaiian culture extends far beyond physical practices, such as catching fish or gathering limu. In order to exercise traditional customs in a pono manner, practitioners require the space and privacy to carry out ceremonies, rituals, and spiritual practices that are the foundation for and heart of Hawaiian culture. Without this spiritual aspect, our practices become empty. Put simply, traditional practices lose their mana if millionaire residents are peeping through their windows and snapping photos. Your proposed development of Lā'au will rob this sacred place of its spiritual integrity and discourage many local practitioners from even attempting traditional practices in this area. These impacts must be considered in your final EIS.*

**Response:** Extraordinary measures will be taken by the Moloka'i Land Trust in cooperation with the homeowners, to work with the longtime residents of Maunaloa and longtime ranch cowboy and employee families to protect subsistence hunting and fishing. These measures will also protect the quality of the cultural sites, complexes and resources.

During the planning process for the Master Plan, the persistence of subsistence on Moloka'i was of central significance. The Cultural Impact Assessment report (Appendix F of the Draft EIS) refers to the measures outlined in the Master Plan to protect subsistence fishing and hunting in the proposed development area (page 113) 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 report provides details of the plan to protect subsistence fishing and gathering from p. 118 through 121 and to protect subsistence hunting from p. 121 through p. 122. In addition, access will be managed to protect subsistence resources as discussed in section 5.2 - pp. 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 an 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 Molokai 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.
- 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 Nā'iwa (Manawainui-Kahanui) and Ka'ana-Pu'u Nana (Kalaipahoa-'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 Maunaloa community shall be integrally involved in the management and monitoring of access within the Kaluako'i 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 Cultural Impact Assessment report also provides details of the Master Plan to protect subsistence fishing and gathering from pages 118 through 121 and to protect subsistence hunting from pages 121 through p. 122.

*12. C. The DEIS does not analyze impacts on DHHL's reservation. ¶Your DEIS concedes the possibility that withdrawing 1 mgd from Kakalahale may negatively impact DHHL's existing wells, yet fails to provide the required analysis or consider the environmental and cultural effects of negatively impacting DHHL's wells or reservations. On this basis alone, the LUC should reject any final EIS unless and until this burden has been satisfied.*

**Response:** We respectfully disagree with this conclusion. To meet its potable water needs, MPL has committed to using only existing sources in amounts that are already permitted. In other words, a determination has already been made that the use of 1.018 mgd from Well 17 and water collected in Molokai Ranch's Mountain Water System will not interfere with DHHL's existing permits and reservation.

A discussion of the impact of withdrawing 1 mgd from Kākahale Well on existing DHHL and DWS wells in Kualapu'u, and the DHHL reservation in Kualapu'u Aquifer was previously provided in response to #3 above.

MPL has been working diligently with DHHL and the County of Maui Department of Water Supply (DWS) to find water solutions for Moloka'i's future needs.

Since September of 2006, MPL has attempted to join with DHHL and the DWS in having USGS perform a comprehensive model for the Moloka'i aquifers. USGS is 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 Kākahale Well on the DHHL wells. The results, which were outlined in a briefing to all interested parties in late June, indicate that the pumping of 1.0 mgd from the Kākahale Well would have a negligible effect on the DHHL wells and the Kualapu'u aquifer as a whole. This study is extremely conservative in nature.

The Draft EIS does not include an analysis of the environmental and cultural effects of negatively impacting DHHL's wells or reservations because, by law, MPL is not permitted to do so. Should it be determined that withdrawal of 1 mgd from the Kākahale Well will adversely impact DHHL's existing wells or its ability to develop its reservation in the Kualapu'u aquifer, MPL will seek to develop alternative sources of water to meet its needs.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

*13. D. Use of the Kakalahale well will affect ground water levels and salinity in other wells. ¶If MPL has information or analysis to support its assertion that drawing water from Kakalahale will have no impact on Kualapu'u, that information should have been included in the DEIS. Regardless, this deficiency must be addressed in any final EIS and must be resolved before MPL proceeds any further with its development plans.*

**Response:** As set forth in the responses to your questions above, we disagree that use of the Kākahale well will affect ground water levels and salinity in other wells. All of MPL's information and analysis in this regard is set forth above and in the Draft EIS. We therefore feel that the issue has been sufficiently addressed.

The Water Commission has established separate sustainable yields for each aquifer system. The Kākahale Well is within the Kamiloloa aquifer; therefore a withdrawal of 1 mgd from the Kākahale Well will not affect the remaining sustainable yield of the Kualapu'u aquifer.

Separate and apart from the issue of sustainable yields, however, water withdrawals from a well can affect existing wells in the Kualapu'u aquifer and DHHL's ability to withdraw its reservation amount from the Kualapu'u aquifer.

A discussion of the impact of withdrawing 1 mgd from Kākahale Well on existing DHHL and DWS wells in Kualapu'u, and the DHHL reservation in Kualapu'u Aquifer was previously provided in response to #3 above. Additional discussion is included in the attachment titled, "Revised Section 4.9.2 (Water)."

*14. E. MPL has failed to demonstrate how it will transport the water from Kakalahale. ¶These contingency plans fail for two reasons: First, the majority of the existing pipelines are already at or near capacity and in use for transmission purposes; and second, the limited lines that are available for transmission are six inch lines, which are incapable of transporting the amount of water in question. Any final EIS must analyze how water will be transported from Kakalahale to Lā'au, as well as the environmental and/or cultural impacts of such a proposal. MPL's empty claims that they are "investigating transmission alternatives" to get water from the Kakalahale well to Lā'au Point is simply inadequate.*

**Response:** MPL will be seeking to transmit the Kākahale brackish water to the West End in a separate pipe and not mix it, prior to transmission, with its existing potable water from Well 17.

MPL will not seek approval to use the MIS system for this water transmission, as stated in the Master Plan and its Water Plan, contained as Chapter 6 within the Master Plan.

MPL intends to seek permission from DHHL, under its current easement agreement, to increase the size of one of its existing two pipes in the easement area to facilitate this transmission.

Under the joint easement agreement with DHHL, both parties need to seek approval from the other for amendments to their existing agreed pipe sizes, but the agreement notes that this approval "cannot be unreasonably withheld."

MPL has initially raised this issue with DHHL, along with a range of issues aimed at ensuring benefits to both parties from future water plans for the island.

To reflect the above information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." The response to this specific comment is incorporated into the attachment. See the section of the attachment titled, "Additional Information on the Kākahale Well."

*15. F. A one percent build rate per year at Lā'au Point is misleading and inaccurate. ¶The proposed build-out rates and corresponding water use proposed for Lā'au Point do not accurately forecast water demand for this project... The DEIS failed to address the likelihood that the build rate will be greater than one percent per year — perhaps closer to last year's 9% build out rate at Pāpōhaku*

*Highlands — and how any related infrastructure needs, such as water, will be met. Any final EIS must include this analysis.*

**Response:** We believe that our estimated are accurate as they are based on a long-term analyses rather than single year estimates that may be inaccurate over the long-term. We doubt that there is a likelihood that build-out will vary from our projections. Regardless, infrastructure for the project will be constructed prior to build-out.

16. G. MPL shows a high water use during construction yet neglects to identify a source. MPL mistakenly estimates the build rate at Lā'au Point will be 1% per year. Yet, MPL expects that even this extremely low build rate will require 50,000 to 1,500,000 gpd. DEIS Appendix A (Water Plan) at 120. Erosion protection and control measures will require an additional 50,000 to 100,000 gpd. Construction is projected for two years with erosion control lasting for 7 to 12 years. The DEIS fails to identify where this 100,000 to 1,600,000 gpd of water will come from or analyze any potential or cumulative impacts on natural and cultural resources due to the source or transmission of this water. Any final EIS must account for this omission.

**Response:** Water for construction will be from the identified sources at Well 17, the Ranch Mountain system, and Kākahale Well. Generally, water is applied for based on long-term needs. Water can then be used for construction and dust control while construction is ongoing. When construction is completed, all of the water used for construction will then be used for long-term domestic uses (if potable water) or irrigation.

17. H. MPL fails to identify a source for the water for its proposed public parks. ¶While the DEIS' Water Plan acknowledges that the public parks at Lā'au Point will require both potable and non-potable water, it neglects to identify the source of such water. DEIS Appendix A (Water Plan) at 120. The final EIS must identify a source and analyze any potential or cumulative impacts on the natural and cultural resources due to the source and/or transmission of this water.

**Response:** As with other components of the Lā'au Point project, and, indeed, all components of the Master Plan, potable water for the parks will be supplied from Well 17 and treatment of surface water from Molokai Ranch's mountain water system. Non-potable water will be provided by the mountain water system and the proposed Kākahale Well. Alternatively, non-potable water may be from reclaimed effluent, reclaimed water from the Palā'au Shrimp Farm, or desalinated brackish or salt water.

18. I. The relationship between residency and water use is unclear. ¶MPL claims that only 40% of Pāpōhaku homeowners will be residents. There is no ascertainable relationship between residency or non-residency and water use. A home could be used as a vacation-rental with high-occupancy rates and water use significantly higher than if the home was occupied by a "resident." Moreover, people with more than one home do not necessarily use less water when they are at Lā'au Point. These analyses are unrealistic and make no economic sense, nor do they address how much water will ultimately be needed for this development.

**Response:** We note that you refer to "Pāpōhaku homeowners" and we believe you meant "Lā'au Point homeowners."

As discussed in Section 2.3.6 of the Draft EIS, vacation rentals will not be allowed at Lā'au Point. In addition, the CC&Rs will contain water covenants. 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 the effectiveness of these rates have already been manifested. Additionally, covenants on Lā'au Point lots will limit further subdivision of the lots, restrict disturbance of each lot to no more than 30 percent (approximately 1/2-acre), require catchment systems for each residence for irrigation use, and require drip irrigation systems, double flush toilets, and other water conservation devices. To reflect this information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Lā'au Project Issues."

In addition, Section 2.3.6 (Covenants) of the Final EIS will be amended to include the following:

- **Landscaping and irrigation.** Landscaping Common area irrigation systems will be from will utilize re-use water (treated effluent) from the wastewater treatment plant, or collected in catchments 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 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.
- **Storage tank.** All houses will be required to have at least a 5,000-gallon storage tank for water captured from roofs.
- **Water covenants.** Requirement of a dual-water system split into safe drinking and non-drinking water; safe drinking water will be limited to 500-600 gpd, or 96,000 gallons per day for potable water in the entire subdivision. Homes will be required to use double flush toilets and specially-designed showerheads for water conservation.

19. J. Water conservation at Kaluako'i does not relate to Lā'au Point. ¶The Master Plan in section 6.10 (included in the DEIS as Appendix A) fails to explain how water conservation at Kaluako'i will affect water conservation at Lā'au Point There is no proposed base rate, conservation rate, or gallons per day rationed for Lā'au Point in the Master Plan or DEIS. The only hint of this vital information is contained in the small print narrative for the graph on page 121 of the Master Plan. Why Lā'au Point is estimated to use 600 gallons per day — as compared with the 1,000 -5,000 gallons per day estimated for Kaluako'i — is not explained and does it make any sense. Any final EIS for Lā'au Point must address and define the water needs and projections for the entire project.

**Response:** The estimated use of 600 gpd for each Lā'au Point residence relates to potable water use only. Additional non-potable water is anticipated for irrigation uses.

Residences at Lā'au Point, unlike the existing Kaluako'i residences, will be required to use a dual water system (potable and non-potable). Moreover, a number of covenants will be attached to the Lā'au lots that will ensure conservation of potable water. These covenants include:

- Restrictions on further subdivision of lots
- Disturbance of lot limited to no more than 30% (approx. 1/2acre)
- Restrict water use for irrigation (landscaping)
  - Require re-use and collection/storage systems for catchments
  - Only drip systems permitted for irrigation

- Require all houses to have at least a 5,000-gallon storage tank for water captured from roofs (could be used for irrigation)
- Covenants on drinking water use -- designed to ensure an overall maximum drinking water daily use of 500-600 gpd
  - Double flush toilets
  - Specially designed shower heads for conservation
  - Must use dual water system (potable and non-potable)

Water conservation measures at Kaluako'i will impact the overall water use for the West End of the Island. Water conservation measures in one area impact water availability for other areas.

To reflect this information in the Final EIS, as well as to address other questions and concerns regarding water issues, Section 4.9.2 (Water) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)." See the section of the attachment titled, "Lā'au Project Issues."

20. *K. The DEIS lacks a serious basis for claiming that water consumption will be moderated. ¶"MPL believes a combination of low occupancy, water conservation education, xeriscaping and tiered water rates will moderate water consumption by these homeowners." DEIS at 81. Believing that millionaires who can afford to buy luxury beachfront homes as a second or third house (Water Plan at 119) will conserve water due to education and a higher water rate is amusing, but fails to rise to the specificity required in an EIS. MPL's tiered water rates are also likely have an insignificant effect on water conservation given the overall capacity necessary to purchase property and build a house at Lā'au. These shortcomings must be addressed in any final EIS.*

**Response:** We respectfully disagree with your comment. The target market for Lā'au Point are people who respect the unique character of the site and of Moloka'i, and who support conservation, cultural site protection, and coastal resource management. Brochures, sales material, and other promotional documents will be reviewed by the Land Trust or the EC for accuracy and adherence to their principles. The intent for Lā'au Point is for it to be a community for people that demonstrate the value of mālama'aina (caring for, protecting, and preserving the land and sea). The project "must be the most environmentally planned, designed, and implemented large lot community in the State." This statement precedes the covenant document determined by the Land Use Committee that will place many restrictions on lot owners. We believe Lā'au Point will participate in water conservation because it will be ingrained in the community character.

Conservation rates are but one means of moderating water consumption. Covenants attached to the Lā'au lots will ensure conservation of water. See #18 and #19 above.

21. *L. The contingency plan is inadequate. ¶The contingency plan in Appendix A: Community-Based Master Land Use Plan for Molokai Ranch is inadequate because it fails to provide practicable alternatives. The final EIS must better examine the impacts of current alternatives (including brackish water and desalination) and explore other options. As just one example, the final EIS must examine the impacts of using brackish water on the chloride content of soils, agricultural operations, and ground water supplies.*

**Response:** Brackish or desalinated water is proposed to be used for irrigation over aquifers which do not currently contain potable quality water. Therefore, there will not be any adverse impact on ground water supplies. Additionally, only plants that can tolerate elevated salinities will be selected.

22. *III. The DEIS Fails To Adequately Consider Impacts On The Marine Environment ¶The DEIS neglects to adequately address potential impacts on Class AA waters and their designated uses, including increased erosion and sedimentation from the development of five miles of pristine coastline and the maintenance of 200 luxury lots on land abutting pristine waters. For example, the DEIS does not adequately examine any nonpoint source pollution resulting from this development and corresponding impacts on coral reefs, water quality, and fisheries. What erosion control techniques will be implemented and how will these techniques maintain and protect Lā'au's outstanding water quality and ecological and cultural significance? How will your proposed development impact the nearshore environment? This development will have significant impacts on the marine environment and any final EIS must honestly and thoroughly address these impacts, mitigate them, and consider alternatives to the development. As already detailed in section IIB, all impacts to the marine environment must be considered, including impacts on natural and cultural resources and the traditional and customary native Hawaiian practices reliant upon those resources.*

**Response:** To address your specific comments above in the Final EIS, as well as to address other questions and concerns regarding the marine environment, Section 3.8 (Marine Environment) of the Final EIS will be revised as shown on the attachment titled, "Revised Section 3.8 (Marine Environment)."

The baseline marine biological survey indicates that the area is not particularly unique or sensitive. It is accustomed to episodic inundations of sediment-laden "red water," which the proposed action will reduce. Appendix D of the Draft EIS contains the complete marine biological and water quality baseline survey report. According to their letter dated February 15, 2007, the State Department of Land and Natural Resources, Division of Aquatic Resources confirmed that the methodology of the marine surveys were adequate.

23. *IV. Cumulative Impacts ¶Since MPL has made Lā'au Point a part of Moloka'i's master planning effort, any final EIS must necessarily examine all cumulative impacts of the master plan, including future developments such as the re-opening of the Kaluako'i hotel. In 2005, Moloka'i had an average daily visitor count of 955 (Hawaii's Comprehensive Wildlife Conservation Strategy) without the Kaluako'i hotel. What are the impacts of additional tourists at the hotel? Any final EIS must address this issue.*

**Response:** We concur that the DEIS must address cumulative impacts, the secondary and non-physical effects of a proposal and the socio-economic consequences of a proposed action. We have made a good faith effort to prepare an EIS in compliance with Chapter 343 and the underlying regulations found in HAR §11-200-1 et. seq. We concur that the Draft EIS must address cumulative impacts, the secondary and non-physical effects of a proposal and the socio-economic consequences of a proposed action. We have done so to the greatest extent possible in this EIS.

First, the Lā'au Point project was analyzed. The environmental impacts and benefits of this project have been addressed based upon the construction of this project in West Moloka'i.

Walter Ritte  
SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT  
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Second, the Lā'au Point project has been addressed as one component that permits other actions to take place such as (1) the reopening of the Kaluako'i Hotel and (2) affordable housing projects elsewhere. To the extent that the EIS must discuss the impacts of re-opening of the Kaluako'i Hotel, this re-opening is roughly to the same extent that the hotel was operating a few years ago such that the impacts of the hotel at that time are already known.

The impact of not increasing tourism on the island is more relevant as most tourism establishments and tour operators are in serious financial difficulties. This is evidenced by the continual change in ownership at Hotel Molokai, the lack of retained earnings to fund capital improvements, and the losses sustained by the Molokai Lodge and Beach Village.

The impact of the re-opening of the Kaluako'i Hotel will produce no more of an impact than when it was open up until 2001, providing jobs and a stable economy on the West End of the Island, including a viable Maunaloa elementary school and a viable commercial heart for Maunaloa.

Third, the Lā'au Point project is also a part of the *Community Based Master Land Use Plan for Molokai Ranch* (Master Plan). To this extent, each component of the Master Plan really facilitates each other component of the Master Plan. In an overall context, the Master Plan preserves and protects large amounts of acreage on the West end of Moloka'i. The development of Lā'au Point to some degree facilitates this protection and preservation.

Cumulative impacts are restricted to those future actions that are reasonably foreseeable. MPL's development plans are clearly outlined in the Master Plan. MPL has not proposed any new development for Kaluako'i, Maunaloa, or Pāpōhaku that is not addressed already in the Master Plan. Therefore, your speculation on unplanned future development cannot be said to be reasonably foreseeable for the purposes of this 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 Section 3.8 (Marine Environment)

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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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RECEIVED

FEB 26 2007

PBR HAWAII

To Maui County Planning Department,  
And Moloka'i Planning Commission

Feb 22, 2007

Re: DEIS for proposed La'au Point 200 lot/ 500-acre subdivision and related Project District

TMK(s) : (2) 5-1-02:30; 5-1-06:157; 5-1-08:04, 03,06,07,13,14,15, 21 & 25.

From: Sierra Club Maui Group  
PO Box 791180, Paia, HI 96779

Thank you for extending the time frame for public comments to be received on this very vital decision regarding Moloka'i's future. The Sierra Club Maui Group would like to ask the Maui County Planning Department and Molokai Planning Commission to seriously consider the long term impacts of granting any amendment to the Molokai Community Plan, as well as the other requested zoning changes, special use permits for a wastewater treatment plant and for the rural-residential subdivision requested by the proposed project. We would further suggest that these impacts are not realistically portrayed in the Draft EIS. We wish to be considered a consulted party on this matter.

#### **Background:**

There is a good reason that the State Land Use Commission unanimously agreed that the La'au Point development may have a "significant impact" and therefore warranted the preparation of an EIS. It is now your responsibility to insist that this EIS accurately examines the significant impacts that the proposed project will have on Molokai's water resources, infrastructure capabilities, marine resources, socio-economic conditions and the island's traditional lifestyle.

La'au point is a Wahi Pana (celebrated place) from ancient legends. It is well known that powerful currents sweep this part of the island as well as large storm generated surf and fierce winds, all making its use by swimmers and even inexperienced fishers dangerous. The only moderately safe swimming beach in the area is Kaupoa Beach (where the Molokai ranch has its Beach "tentals"). According to John Clark's Beaches of Maui County (p83) "Over the years numerous shipwrecks have occurred on the west end of Molokai, especially around La'au Pt."

#### **Protection of Marine Resources:**

The DEIS claims that marine resources in the area will be better protected and managed under the proposed development plan through buffer areas and regulated access. The remote location of La'au Point is providing a natural management tool for these resources. The shallow reefs of Penguin Banks, are well known for an abundance of sea life, including and limu kohu, ophihi, pipipi, and aama crab that helps sustain the subsistence life style of Molokai residents.

The DEIS makes the same promises of marine resource protection being compatible with the development of a formerly remote area that the citizens of Maui have heard over the

last three decades. If there is one site on Maui or Molokai island that can be shown to have improved marine resource or marine environment conditions as a result of past developments, this study should provide actual independent evidence of it to support its claims being being credible. Without this factual evidence, County planning professionals should question the document's conclusions.

#### **Fresh Water Resources**

Molokai has a number of constrains on its fresh water supply including degradation of native watershed areas, geologic capacity and natural weather patterns. There has been a long history on Molokai of the large landowners and county and state policy makers assuming that more fresh water was available than was realistically sustainable. Citizens had to take legal action to insist that the island's water resources were not overtaxed. The DEIS does not see water use for the proposed development as presenting any impacts on the claims of subsistence farmers or others for the same water resources.

This simply does not make any sense. Even with sound water conservation planning going into the design of the proposed development, the needs of large luxury homes is likely to include swimming pools, large capacity fixtures and appliances and other demands on potable water. The water needs of Molokai residents and watersheds should be estimated by an independent source to determine if extra water capacity exists for this style of development.

#### **Socio-economic Conditions**

The DEIS refers only to the increased economic opportunities that will be generated by the proposed project and the reopening of the Kaluakoi resort that proceeds from La'au Pt are promised to support. To be fair and accurate, it should compare impacts and benefits from similar developments that have occurred elsewhere to the model that is being proposed for La'au. The Makena area of Maui would be a likely comparison as it was a remote region with rugged roads frequented mostly by fishermen before the Kihei Civic Plan was passed in 1970.

Thirty years have passed and although promises were made to care for cultural sites, fishing grounds, water quality and other natural resources, the loss to the public has been great. In Makena 155 acres were protected as a state beach park and almost 1,500 acres as a Natural Area Reserve but the "improved" access to this once remote area and the growth of exclusive luxury home communities has turned these "protected areas" into over crowded tourist traps in the space of around 15 years.

Local families who once lived and fished in the area have been forced to sell their lands due to escalating taxes and the demands of the new residents now dictate what the future shape of the natural lands will be. Local residents have been herded into a few ~~last~~ last beach areas and a way of life that many enjoyed for generations has been lost. These impacts were discussed in Makena Resort's 1974 plan, but the conclusion was that other economic benefits would outweigh them .



Please don't let the same thing happen to the people and lands of Moloka'i.

*Lucienne de Naie*  
Lucienne de Naie  
Conservation Committee  
Sierra Club, Maui Group

November 1, 2007

Lucienne de Naie  
Sierra Club, Maui Group  
P.O. Box 791180  
Paia, Hawai'i 96779

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Ms. De Naie:

Thank you for your letter dated February 22, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS). We would like to respond to your comments.

1. *Thank you for extending the time frame for public comments to be received on this very vital decision regarding Moloka'i's future. The Sierra Club Maui Group would like to ask the Maui County Planning Department and Molokai Planning Commission to seriously consider the long term impacts of granting any amendment to the Molokai Community Plan, as well as the other requested zoning changes, special use permits for a wastewater treatment plant and for the rural-residential subdivision requested by the proposed project. We would further suggest that these impacts are not realistically portrayed in the Draft EIS. We wish to be considered a consulted party on this matter.*

**Response:** We acknowledge your comments. To formally be considered a "consulted party," you would have had to request this status during the EISPN comment period. Your comments in this letter, however, will be included in the Final EIS.

**Background:**

2. *There is a good reason that the State Land Use Commission unanimously agreed that the La'au Point development may have a "significant impact" and therefore warranted the preparation of an EIS. It is now your responsibility to insist that this EIS accurately examines the significant impacts that the proposed project will have on Molokai's water resources, infrastructure capabilities, marine resources, socio-economic conditions and the island's traditional lifestyle. ¶La'au point is a Wahi Pana (celebrated place) from ancient legends. It is well known that powerful currents sweep this part of the island as well as large storm generated surf and fierce winds, all making its use by swimmers and even inexperienced fishers dangerous. The only moderately safe swimming beach in the area is Kaupoa Beach (where the Molokai ranch has its Beach "tentallows"). According to John Clark's Beaches of Maui County (p83) "Over the years numerous shipwrecks have occurred on the west end of Molokai, especially around La'au Pt."*

**Response:** The Draft EIS has examined the significant impacts the project will have on Moloka'i's water resources (Section 4.9.2), infrastructure (Section 4.9), marine resources (Section 3.8), socio-economic conditions (Section 4.8), and traditional lifestyle (Section 4.2).

### Protection of Marine Resources

3. *The DEIS claims that marine resources in the area will be better protected and managed under the proposed development plan through buffer areas and regulated access. The remote location of La'au Point is providing a natural management tool for these resources. The shallow reefs of Penguin Banks, are well known for an abundance of sea life, including and limu koku, ophihi, pipipi, and aama crab that helps sustain the subsistence life style of Molokai residents. ¶The DEIS makes the same promises of marine resource protection being compatible with the development of a formerly remote area that the citizens of Maui have heard over the last three decades. If there is one site on Maui or Molokai island that can be shown to have improved marine resource or marine environment conditions as a result of past developments, this study should provide actual independent evidence of it to support its claims being being credible. Without this factual evidence, County planning professionals should question the document's conclusions.*

**Response:** The cultural impact assessment (Appendix F of the Draft EIS) provides details of the plan to protect subsistence fishing and gathering from p. 118 through 121. In addition, Access will be managed to protect subsistence resources as discussed in section 5.2 - pp. 116 - 118 as outlined above.

In addition, the Land Trust's Shoreline Access Management Plan (SAMP), a community-based and developed set of guidelines, rules, monitoring programs and general principals for the protection and utilization of the cultural, biological and social resources of Lā'au Point, will ensure protection of the marine resources. While an initial draft is provided as a part of the Final EIS, it is intended as an initial governing document based on current knowledge of the cultural, subsistence and biological resources of the site. From a social standpoint it is intended to foster a harmonious and respectful relationship between current users and subsistence practitioners of the area and Lā'au homeowners and new local users of the area. The SAMP will also be incorporated into the CC&Rs.

To reflect the information above in the Final EIS, as well as to address other questions and concerns regarding shoreline management issues, 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.

### Fresh Water Resources

4. *Molokai has a number of constraints on its fresh water supply including degradation of native watershed areas, geologic capacity and natural weather patterns. There has been a long history on Molokai of the large landowners and county and state policy makers assuming that more fresh water was available than was realistically sustainable. Citizens had to take legal action to insist that the island's water resources were not overtaxed. The DEIS does not see water use for the proposed development as presenting any impacts on the claims of subsistence farmers or others for the same water resources. ¶This simply does not make any sense. Even with sound water conservation planning going into the design of the proposed development, the needs of large luxury homes is likely to include swimming pools, large capacity fixtures and appliances and other demands on potable water. The water needs of Molokai residents and watersheds should be estimated by an independent source to determine if extra water capacity exists for this style of development.*

**Response:** There is no intent to deny any resident's use of water in order to supply water to the Lā'au Point development. MPL has often reiterated its recognition of DHHL's priority rights to water, which is a priority established by law.

MPL believes that there is ample ground and surface water to meet DHHL's and the County's needs while still supporting MPL's plans for all of its lands. MPL's Water Plan does not adversely affect either DHHL's or the County's ability to develop the water resources they need for future uses.

MPL has committed to using only existing sources, at currently permitted amounts, to meet all of the potable water needs for its current water customers and MPL's future developments proposed under the Master Plan. A new non-potable source is being proposed. Currently, permitted uses for potable water from Well 17 include more than 600,000 gpd for irrigation uses. When non-potable water from the Kākalahale Well becomes available, those irrigation uses that are now supplied with potable water will utilize the new non-potable source, thus freeing up sufficient potable water to meet the demands of the Lā'au Point development.

To ensure water availability to all, MPL, DHHL, and Maui County DWS are working cooperatively to coordinate future water development plans with the assistance of the USGS. It is anticipated that by proper placement of wells, the needs of DHHL, the County, and MPL for the foreseeable future can all be met at reasonable costs to the respective parties.

In response to your comments regarding water issues, as well as to address other questions and concerns received regarding water issues, in the Final EIS Section 4.9.2 (Water) will be revised as shown on the attachment titled, "Revised Section 4.9.2 (Water)."

### Socio-economic Conditions

5. *The DEIS refers only to the increased economic opportunities that will be generated by the proposed project and the reopening of the Kaluakoi resort that proceeds from La'au Pt are promised to support. To be fair and accurate, it should compare impacts and benefits from similar developments that have occurred elsewhere to the model that is being proposed for La'au. The Makena area of Maui would be a likely comparison as it was a remote region with rugged roads frequented mostly by fishermen before the Kihei Civic Plan was passed in 1970. ¶Thirty years have passed and although promises were made to care for cultural sites, fishing grounds, water quality and other natural resources, the loss to the public has been great. In Makena 155 acres were protected as a state beach park and almost 1,500 acres as a Natural Area Reserve but the "improved" access to this once remote area and the growth of exclusive luxury home communities has turned these "protected areas" into over crowded tourist traps in the space of around 15 years. ¶Local families who once lived and fished in the area have been forced to sell their lands due to escalating taxes and the demands of the new residents now dictate what the future shape of the natural lands will be. Local residents have been herded into a few last beach areas and a way of life that many enjoyed for generations has been lost. These impacts were discussed in Makena Resort's 1974 plan, but the conclusion was that other economic benefits would outweigh them.*

**Response:** We do not agree with your comparison of Lā'au Point to the Mākena area of Maui. Unlike Mākena, nobody lives at Lā'au Point now, and therefore, there would be no local families forced out of Lā'au Point. Also, the residents of Maui did not undertake a three-year planning process for the Mākena area as the Moloka'i community did for the Lā'au Point project and the

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*Community-Based Master Land Use Plan for Molokai Ranch (Master Plan).* Positive impacts of the project and Master Plan include the donation of 26,200 acres to a Moloka'i Land Trust and Community Development Corporation, restrictive easements on another 24,000 acres of Molokai Ranch land, preservation of cultural and archaeological sites, increased subsistence gathering access, and permanent parks and open space. Appendix A of the Draft EIS contains the Master Plan in its entirety.

La'au Point will continue to be accessible along the shoreline. The area will be managed by the Land Trust, as discussed comment #3 above.

Thank you for reviewing the Draft EIS. Your letter will be included in the Final EIS.

Sincerely,



Peter Nicholas  
President and CEO  
Molokai Properties Limited

Attachments:

Revised Section 4.3 (Trails and Access)  
Revised Section 4.9.2 (Water)

cc: Anthony Ching, State Land Use Commission  
Office of Environmental Quality Control  
Jeff Hunt, Maui Planning Department  
Thomas S. Witten, PBR HAWAII

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February 23, 2007

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Comments on the La`au Point Draft Environmental Impact Statement

Peter Nicholas and Molokai Properties Limited:

The main supporting document to the DEIS, entitled *Community –Based Master Land Use Plan for Molokai Ranch, MPL*, is misleading and non-representative of the Molokai Community in that majority of the Molokai people do not support the development of La`au Point, and therefore do not support the plan as it is currently proposed.

This is extremely important considering MPL CEO, Peter Nicholas, as well as representative leaders of Molokai's community, Molokai Enterprise community have publicly promised, on numerous occasions, that **the La`au Point project would not come to pass** if the community did not support it.

Through Political jockeying and a slanted media campaign costing thousands of dollars, MPL has attempted deceive the greater public into believing that Molokai residents support the Master Land Use Plan.

However, numbers speak louder than words.

In September, 2006, Molokai Dispatch staff conducted a poll in which 100 randomly selected respondents were asked if they could support a Master Plan which included the development of La`au Point. Only 14 respondents said they were in support of the plan (See appendix Figure 1).

In an ongoing online poll, respondents were asked again if they supported a Master Land Use Plan which includes the development of La`au Point. This poll currently shows that 66% percent of respondents do not support the development (See appendix Figure 2).

Also posted in September of 2006, an online poll asked if Molokai community members should be given the chance to vote on issues surrounding the Community Based Master Land Use Plan. 82% of people who vote yes proved that the Molokai community indeed wanted the chance to weight in on the development through a public vote (See appendix Figure 3).

In January, the Molokai Enterprise Community (EC) announced a that public vote that would decide who in the community would become the organization's new board members. The EC is widely known as the community's representative and dealmaker in bartering an approval of the La`au development in trade for thousands of acres of the developer's unused land.

In January the Molokai Dispatch posted an online poll asking residents if they'd vote in an EC candidate who supported the development of La`au Point. 67% said they would rather vote in a candidate who supported alternatives to the development (see appendix figure 4).

EC election results on January 31 precisely showed that 68% of voters selected the candidates who clearly said they supported alternatives. The candidates who clearly supported the development and plan only garnered 32% of the vote (see appendix figure 5).

Finally, in section 4.2.4, facilitator Deviana McGreggor finding also support the fact that residents don't support the plan. Of the non-supports, the subsistence gatherers were found to be among the most vocal:

"Those responsible for the future of the land and natural resources of Molokai must weigh the cultural impacts and the benefits of the proposed development in consultation with the people of Molokai who depend upon these resources for subsistence, cultural, and spiritual purposes. In particular, the kama`aina families who have lived in Maunaloa and the Kaluakoi ahupua`a for generations and the long time employees of Molokai

Ranch and their relatives have been the primary users of these resources and will be the most directly affected by the proposed development. In general, of those people that were interviewed for the cultural impact assessment and those who came to cultural assessment community meetings, many expressed reservations about the proposed development. There were no enthusiastic advocates and the most vocal were opposed to the development.”

There is overwhelming proof that the Molokai Community does not support the development of La`au Point. Both the community’s leadership and MPL CEO need to hold their promises to Molokai people and rethink their plans for La`au Point.

Todd Yamashita – Molokai Dispatch Editor in Chief

*Todd Yamashita 2/23/07*

Figure 1 - MOLOKAI DISPATCH RANDOM TELEPHONE POLLING (100 RESIDENTS) - September 2006

Do you support a Master Land Use Plan for Molokai that includes the Development of La`au Point?

- Yes \_\_\_\_\_ 14% (14 Respondents)
- Undecided \_\_\_\_\_ 12% (12 Respondents)
- No \_\_\_\_\_ 74% (74 Respondents)

Total Respondents: 100

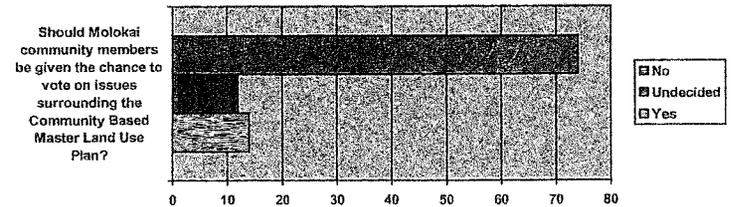


Figure 2 - MOLOKAI DISPATCH ONLINE POLLING - October 2006 to Present

Do you support a Master Land Use Plan for Molokai that includes the Development of La`au Point?

- Strongly Support \_\_\_\_\_ 17% (37 votes)
- Support \_\_\_\_\_ 10% (21 votes)
- Neutral or Undecided \_\_\_\_\_ 7% (16 votes)
- Against \_\_\_\_\_ 10% (22 votes)
- Strongly Against \_\_\_\_\_ 56% (120 votes)

Total votes: 216

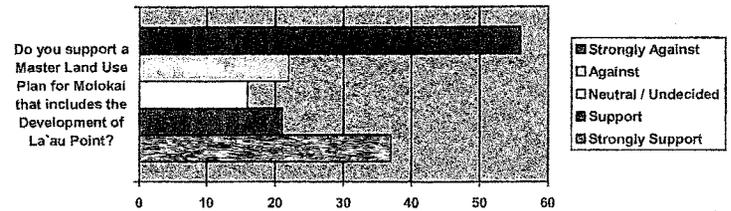


Figure 3 - MOLOKAI DISPATCH ONLINE POLLING - September 2006 to Present

Should Molokai community members be given the chance to vote on issues surrounding the Community Based Master Land Use Plan?

- Yes \_\_\_\_\_ 82% (111 votes)
  - No \_\_\_\_\_ 18% (25 votes)
- Total votes: 136

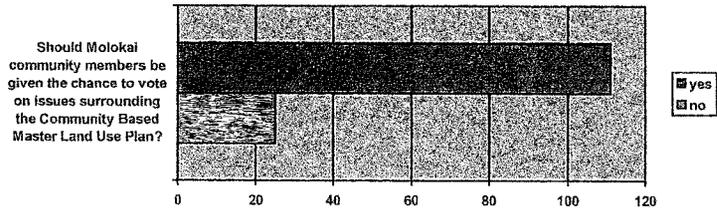


Figure 4 - MOLOKAI DISPATCH ONLINE POLLING - January 2007

How will you vote in the January 31 EC Board Election?

- For a candidate who supports La'au Development \_\_\_\_\_ 33% (43 votes)
- For a candidate who supports alternatives to developing La'au Point \_\_\_\_\_ 67% (89 votes)

Total votes: 132

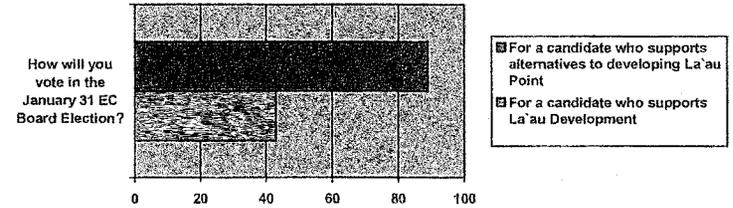
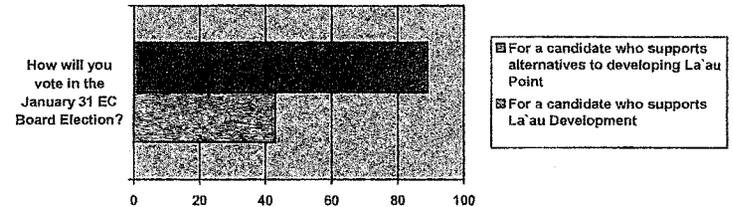


Figure 5 - ENTERPRISE COMMUNITY ELECTION RESULTS - January 31, 2007

Actual results of the January 31 EC election?

- Votes for candidates who openly support the La'au Development \_\_\_\_\_ 32% (780 votes)
- Votes for candidates who support alternatives the La'au Development \_\_\_\_\_ 68% (1683 votes)

Total votes: 2463 (Voters were allowed two votes each as there were two open seats)





November 1, 2007

Todd Yamashita, Editor in Chief  
The Molokai Dispatch  
P.O. Box 482219  
Kaunakakai, Hawai'i 96748

**SUBJECT: LĀ'AU POINT DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Dear Mr. Yamashita:

Thank you for your letter dated February 23, 2007 regarding the Lā'au Point Draft Environmental Impact Statement (EIS).

1. *The main supporting document to the DEIS, entitled Community—Based Master Land Use Plan for Molokai Ranch MPL, is misleading and non-representative of the Molokai Community in that majority of the Molokai people do not support the development of La'au Point, and therefore do not support the plan as it is currently proposed. ¶This is extremely important considering MPL CEO, Peter Nicholas, as well as representative leaders of Molokai's community, Molokai Enterprise community have publicly promised, on numerous occasions, that the La'au Point project would not come to pass if the community did not support it. ¶Through Political jockeying and a slanted media campaign costing thousands of dollars, MPL has attempted deceive the greater public into believing that Molokai residents support the Master Land Use Plan.*

**Response:** We acknowledge your comments; however, we disagree with your statement stating that we are attempting to deceive the public into believing that Moloka'i residents supporting the *Community-Based Master Land Use Plan for Molokai Ranch (Master Plan)*.

There were numerous meetings during the planning process. This community-based planning and involvement is unprecedented for any landowner in the state. We are proud of the achievements that came out of the process, and are thankful of all the hard work and time put in by the participants.

2. *However, numbers speak louder than words. ¶In September, 2006, Molokai Dispatch staff conducted a poll in which 100 randomly selected respondents were asked if they could support a Master Plan which included the development of La'au Point. Only 14 respondents said they were in support of the plan (See appendix Figure 1). ¶In an ongoing online poll, respondents were asked again if they supported a Master Land Use Plan which includes the development of La'au Point. This poll currently shows that 66% percent of respondents do not support the development (See appendix Figure 2). ¶Also posted in September of 2006, an online poll asked if Molokai community members should be given the chance to vote on issues surrounding the Community Based Master Land Use Plan. 82% of people who vote yes proved that the Molokai community indeed wanted the chance to weight in on the development through a public vote (See appendix Figure 3).*

**Response:** With the diversity of the island, we are aware that not everyone will agree on everything. We also do not consider a random telephone poll of 100 people and online poll to be "overwhelming proof" of anything except the opinion of those specific people.

3. *In January, the Molokai Enterprise Community (EC) announced a that public vote that would decide who in the community would become the organization's new board members. The EC is widely known as the community's representative and dealmaker in bartering an approval of the La' au development in trade for thousands of acres of the developer's unused land. ¶In January the Molokai Dispatch posted an online poll asking residents if they'd vote in an EC candidate who supported the development of La'au Point. 67% said they would rather vote in a candidate who supported alternatives to the development (see appendix figure 4). ¶EC election results on January 31 precisely showed that 68% of voters selected the candidates who clearly said they supported alternatives. The candidates who clearly supported the development and plan only garnered 32% of the vote (see appendix figure 5).*

**Response:** We acknowledge your comment about the EC election and results; however, we respectfully disagree with your conclusion that there is a direct correlation between the election results and the project. The EC Board election was not a mandate for the Lā'au Point project.

The election held on January 31, 2007 was for two board members the Moloka'i Enterprise Community (EC) Governance Board. While some candidates ran on platforms that included stances on the proposed development at Lā'au Point, the proposed development at Lā'au Point is not a project of the EC.

The EC facilitated the Master Plan community-based planning process (as discussed in Section 2.1.6 of the Draft EIS), and later voted to support the Master Plan based on the strong recommendation from the Land Use Committee. The EC has also stated that the Master Plan represents the fulfillment at the highest levels of the key principles of the USDA's Empowerment Zone/ Enterprise Community program, which are: 1) Economic Opportunity; 2) Sustainable Community Development; 3) Community-based Partnerships; and 4) Strategic Vision for Change.

A total of 1,284 voters turned out for the January 31, 2007 EC election, casting a total of 2,541 votes (2 votes per person minus 27 abstentions and voided ballots). This turnout, while record-setting for EC elections, represents only 25.6% of Moloka'i residents over 18 (According to the 2000 Census, the Moloka'i population over 18 years of age is 5,015) Bridget Mowat and Leila Stone, who won the two seats and campaigned on an "anti-Lā'au" platform, received a combined 1,683 votes, or 65.5%, equivalent to 841.5 voters. A total of 841.5 voters represent only 16.8% of Molokai's eligible voting age population.

To assume that an election for Board Directors of a private, nonprofit corporation is equivalent to a referendum on the Master Plan or a mandate for the Lā'au Point project, no matter what the candidates' platforms, is not only a misrepresentation of fact on many levels, but can also be seen as an attempt to disenfranchise the other 3,731 eligible Moloka'i residents (74.4%) who did not turn out to vote. The turnout on an actual referendum on the Master Plan could well have had extremely different results.

A community vote on the Master Plan never occurred; there is no provision for one. Regulatory organizations are charged with making the decisions on entitlement issues such as with Lā'au Point. The EC election was for Board Directors that have no such regulatory power.

4. Finally, in section 4.2.4, facilitator Daviana McGreggor finding also support the fact that residents don't support the plan. Of the non-supports, the subsistence gatherers were found to be among the most vocal: ¶"Those responsible for the future of the land and natural resources of Molokai must weigh the cultural impacts and the benefits of the proposed development in consultation with the people of Molokai who depend upon these resources for subsistence, cultural, and spiritual purposes. In particular, the kama'aina families who have lived in Maunaloa and the Kaluakoi ahupua'a for generations and the long time employees of Molokai Ranch and their relatives have been the primary users of these resources and will be the most directly affected by the proposed development. In general, of those people that were interviewed for the cultural impact assessment and those who came to cultural assessment community meetings, many expressed reservations about the proposed development. There were no enthusiastic advocates and the most vocal were opposed to the development" ¶There is overwhelming proof that the Molokai Community does not support the development of La'au Point. Both the community's leadership and MPL CEO need to hold their promises to Molokai people and rethink their plans for La'au Point.

**Response:** Once again, we disagree with your conclusion of "overwhelming proof" that the Moloka'i community does not support the project.

MPL still maintains that the majority of the community, and in particular those from the ahupua'a, do support the Master Plan and its contingent parts.

As with any new proposal, and with change, some people will feel threatened by a change in lifestyle that they fear that change will bring. Many people fought the advent of Kaupoa Camp in the 90s. However, now its establishment has provided jobs for the community, and every quarter, the camp is available at \$25 per person per night for the community to enjoy. Many community members take advantage of that offer, including some of the same people who fought the establishment of Kaupoa a decade ago.

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