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Planning Director, Chris Yuen
101 Pauahi, Suite 3
Hilo, HI 96720-3043

CC: Mayor Harry Kim
Office of Environmental
Quality Control (OEQC)
Stanley Black, Black Equities
Sea Mountain Five, LLC
Group 70, International

Re: Draft Environmental Impact Statement (DEIS) for *Sea Mountain at Punalu`u* Comments and Questions to be addressed in the Final Environmental Impact Statement (EIS)

Dear Mr. Yuen, and all interested parties:

What is the County's liability for accepting an inadequate EIS? Could the County's acceptance mislead investors to believe that the proposed project is environmentally, socio-culturally and fiscally sound? Or does the EIS acceptance carry a disclaimer, exempting County (taxpayers) from all liabilities? The County released for public review the DEIS prepared by Group 70. I have read quality DEISs and this is not one. I waded through this muck of redundancy, rife with contradictions, inconsistencies and omissions of reference figures and tables, to glean the jewels of relevancy from the fragmented (editorialized) studies of reputable sub-consultants. This DEIS is an embarrassment to the State and an offence to the serious.

I. The Final EIS is already unacceptable under Hawaii Administrative Rules, Title 11 Chapter 200-23 (1) for the following reasons:

► The procedures for the *environmental assessment*, consultation process, review and the preparation and submission of the final assessment were not completed by the applicant prior to the DEIS process. According to The Environmental Guidebook (OEQC) pg. 6 “If a proposed action is subject to the EIS law, the environmental review process begins with the development of a draft environmental assessment (EA).” Under Chapter 343 (Environmental Impact Statement) **§343-5 Applicability and requirements**: “(a) Except as otherwise provided, an environmental assessment shall be required for actions that: **(2)** Propose any use within any land classified as conservation district by the state land use commission under chapter 205.” (Recreational buildings and constructed pathways; DEIS page 5-76) “**(3)** Propose any use within a shoreline area as defined in section 205A-41.” (Development in the Ninole Cove area; DEIS page 5-70) “**(9)** Propose any: (A) Wastewater facility, except an individual waste water system or waste water facility serving fewer than fifty single-family dwellings or the equivalent. (More than 1800 units; DEIS page 1-2) “(E) Power-generating facility” (Project area facility in the event HELCO cannot meet demand; DEIS page 5-64) Obviously, this residential/resort project is required to prepare an Environmental Assessment. It is not in the *best interest of the public* to bypass the

preliminary EA process. Because the applicant failed to complete the EA, **NO** notices of preparation for the draft EA and the final EA were published; **NO** public review and comment periods of thirty days each (during draft and final EA phases) were made available; nor the possibility of an extension of 30 days for public comment upon the request of a consulted party; **NO** comments and responses were incorporated in a draft or final EA. *Had this procedure for environmental assessment been followed, the public would have had up to an additional 90 days for essential questions and comments; would have had time to acquire information critical in the preparation of the DEIS.*

II. The content requirements for the DEIS under Chapter 343 have not been satisfied:

► On page 5-52 of the DEIS: “The project hydrologist will analyze sustainable yields of the aquifer to ensure water use does not exceed demand.” (“Estimated water demand”)

- Why wasn’t this analysis of the aquifer completed before the release of the DEIS? **As a consulted party, I am requesting a copy of this analysis once it is completed.**

This DEIS does not contain a hydrology report to affirm the availability of potable water to meet project demands. On page 5-57, “The existing private water

system for Punalu`u area would not be able to handle the needs of the proposed development of Sea Mountain.”

- What is the County’s liability for accepting an EIS without a final hydrology report for a sustainable water supply?
- Could the County be financially liable, once the project is sold or underway, if there is no substantial and reliable water source?
- Will these developer-investors be perpetually liable for providing a sustainable water supply to the project if it is sold or underway?
- Or will this financial responsibility somehow be passed on to the County?

The adequacy of the aquifer needs to be corroborated before completion of the EIS. *The sustainable water source should be verified by the County before the EIS is accepted.*

On page 5-57 of the DEIS: “The project’s civil engineer recommends dedication of the existing wells to irrigation service only, based upon isolation of the potable water supply from the irrigation water supply.”

- Are these existing wells contaminated, if so what are the contaminants and what has been the duration of contamination?

Appendix D, Exhibit 4 states that **off-site** sources of water will need to be developed to meet the project’s needs. “**1.** Up to 4 new potable water wells required including back-up water supply. **2.** New wells will be constructed mauka

of the Hawaii Belt Highway, sited in the vicinity of the existing reservoir and/or off-site mauka of the project boundary near the proposed off-site reservoir. Construction of the off-site wells will be contingent upon approval of the landowner. **3.** Existing wells (are) to be isolated from potable water system to supplement golf irrigation.”

To minimize liabilities the County should not accept the final EIS without a full hydrology report and description of the **off-site** aquifer or hydrologic unit status that answer the following: 1.) What are the sustainable yields or other measures of water availability? 2.) What water use is authorized by the Commission on Water Resource Management? 3.) What is the pending installed capacity and/or use for the proposed well and subtotals for individual wells and/or groups of wells within the aquifer? 4.) What are current water use totals, including subtotals for individual users? 5.) What is the current installed capacity including subtotals for individual wells and/or groups of wells. 6.) What is the record of contamination problems in the aquifer or hydrologic unit including but not limited to saltwater intrusion, turbidity, heavy metals, inorganic and organic chemicals, microbiological agents, water quality parameters such as pH, alkalinity, calcium, conductivity and temperature, and radioactivity. If contamination exists, what are the sources and duration of the contamination? 7.) What are the past and existing land uses within the wellhead protection area and the potential for future

contamination from those uses? 8.) What is the description of the associated off-site watershed and recharge area? 9.) What potential effects may the well development have on the affiliated groundwater and surface water? 10.) What is the pump test data on water level, extraction rates, and water quality? 11.) What are the criteria used to determine if the well should be converted to production? 12.) What are the provisions for future use and monitoring of wells not placed into production? 13.) What will be the institutional, financial or land use arrangements or commitments related to developing the wells and delivering water to the Punalu`u project? 14.) How may the proposed well development affect land and water uses on the island and in the region? 15.) What is the Hawaii State Water Plan and its component parts? 16.) What are plans for future water development within the aquifer? 17.) What are any related water, wastewater, drainage or erosion control plans? 18.) How may the well affect existing water sources? 19.) What are any secondary or cumulative impacts caused by promoting land uses that alter the hydrology of the source and/or end-use area?

► “The draft EIS shall also contain a list of necessary approvals, required for the action from governmental agencies, boards, or commissions and other similar groups having jurisdiction. *The status of each identified approval shall also be described.*” The status is not adequately described in the DEIS on page 9-1.

►“Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public;” Appendix G had ten reference tables omitted from the “Economic and Fiscal Impacts” study: **Table 1** “Redevelopment Program for the Sea Mountain”; **Table 2** “Absorption Schedule at Sea Mountain”; **Table 3** “Estimated Assessed Values for Sea Mountain”; **Table 4** “Revenues and Costs to the County of Hawaii”; **Table 5** “Outgoing Revenues and Costs to the State of Hawaii”; **Table 6** “Sea Mountain Commercial Space Needs and Employment”; **Table 7** “Summary of Project Costs for Sea Mountain”; **Table 8** “Construction and Project Development Employment at Sea Mountain”; **Table 9** “Construction and Project Development Tax” **Table 10** “Indirect Impacts of Sea Mountain Construction”. I made three requests (two written, one verbal) before I received those tables from Group 70. After the delay in receiving the data, I submitted written request to the Planning Department (as a consulted party) for a thirty-day extension to verify the data in the tables. My request was denied because we were not in the “Environmental Assessment phase” of the process; a phase that the applicant bypassed altogether. I reserve the right to comment on the contents of these tables at any contested case hearings.

DEIS page 5-65: “At the end of Phase 1 (2011), there should be 235 new permanent residents at the redeveloped Sea Mountain community who reside there

at least 180 days per year. In addition, there will be a non-resident population that will occupy their residences on a seasonal basis. They may also rent them as vacation rentals. We anticipate that up to 80% of seasonal residences may be occupied during peak periods resulting in a maximum seasonal population of 2,382 part-time residents and renters. This leads to a peak population of permanent and seasonal residents plus renters of just under 3,700 persons and an average population of around 2,430 persons.”

- What is the projected population at the redeveloped Sea Mountain community at the end of Phase 2 and Phase 3?
- What is the projected secondary effect of population growth (construction workers, resort employees, job seekers, indirect business employees) at the end of Phase 1, Phase 2 and Phase 3?

The “*Economic and Fiscal Impact to County and State of Hawaii*” on page 5-66 **did not calculate the secondary effect of population growth**, many of whom may not be property owners paying County taxes, (some may be homeless) in the comparison of County and State revenue to expenditures. Please recalculate Tables 4 and 5 to include this secondary influx of people for Phase 1, Phase 2, and Phase 3 of the project. In the Final EIS, thoroughly explain how the per capita expenditures of the State and County are calculated, why Tables 4 and 5 show the per capita expenditures never increase from 2006 to 2017, and how the revenues of

this project will compare with these expenditures once the secondary population growth is included in the comparison. Give special attention to the requirements of §11-200-17 (i) “...These secondary effects may be equally important as, or more important than, primary effects and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsection (j), (k), (l), and (m).”

- Once the secondary population increase is calculated, what will be the fair share contribution to the Department of Education for school facilities, to the Department of Health for medical services, to the Department of Transportation for highway reconstruction and maintenance, to the State Library system for an on-site library?
- What is the verbatim content of the condition of the original resort zoning on the project site that requires the provision of workforce housing in

proportion in the number of employees at the resort? **Please do not interpret this requirement, but give the exact wording of the condition.**

- Though the proposed project does not currently have an inclusionary zoning affordable housing requirement, the DEIS page 5-81 states, “Construction will bring an influx of construction workers to the project area during the ten year buildout period. This will likely create additional demand for housing in the area...” What are the mitigations for this housing demand during the construction phase of the project? What performance bonds will be posted and what other provisions are proposed to assure the mitigation measures?
- According to the UH Center on the Family, Ka’u currently has the highest home ownership in the state at 74.3% of owner-occupied housing. What is the percentage of home ownership by resort employees on the island of Hawaii and in the state? How does the percentage rate of home ownership change in an area as the number of resorts increase?
- The proposed project will create a community with the population equivalent to Naalehu and Pahala combined. The community will need the same on-site County facilities and services present in the other existing communities: a police station, fire station, community center, and park. It should not be up to the County taxpayers to pay for the construction costs these facilities. The full expense for these new facilities should be

shouldered by the developer creating this community and located on site of the project.

- The project community will also need an on-site post office, construction of which is fully financed by the developer.
- All housing units will need to be equipped with laundry appliances as standard equipment to reduce the impact of water usage in the Naalehu and Pahala areas, where commercial laundry facilities are limited.

► What will be the environmental consequences of the project on the anchialine ponds and its specialized species like goby and *Machrobrachium grandimanus*, a unique ecotype of shrimp? “Anchialine Ponds are one of Hawaii’s most threatened ecosystems. Anchialine pools are landlocked brackish ponds located close to the shoreline connected to the sea via subterranean tunnels. Characterized by tidal fluctuations, these rare and fragile ponds are home to unusual plants and animals. Of the approximately 700 known anchialine ponds, 480 are located on the island of Hawaii. Over 95% of these ponds have been drastically impacted by human activity through adjacent land practices and the introduction of alien plant and animal species. Formed by volcanic activity, these pools are home to a unique assemblage of invertebrate and algal species, some of which are known to exist only in this habitat. In the last 20 years, alien fish species have been introduced and/or invaded a majority of the pools. These alien species

gradually destroyed the ecological balance in the pools by eliminating many of the unique endemic species.” (<http://yosemite.epa.gov/water/restorat.nsf>)

► The Hawaiian Heritage Program has reported on the following sensitive species (plants and animals) located in the project area and close proximity:

| Scientific Name | Common Name | Federal Status |
|-------------------------------------|--------------------------------|---|
| PLANTS | | |
| <i>Bobea timoniodes</i> | `Ahakea | C2-possibly endangered/ threatened (U.S. Fish and Wildlife Service) |
| <i>Cyanea tritomantha</i> | `Oha, haha, `oha wai | C2 |
| <i>Melicope zahlbruckneri</i> | Alani | C2 |
| <i>Neraudia ovata</i> | Ma `aloha, mo`oloha `oloha | C2 |
| <i>Nothoecstrum breviflorum</i> | `Aiea | C1 biological vulnerability |
| <i>Ophioglossum concinnum</i> | Pololei | C2 |
| <i>Pleomele hawaiiensis</i> | Halapepe | C1 |
| ANIMALS | | |
| <i>Chelonia mydas</i> | Green Sea Turtle | FE-Federal Endangered |
| <i>Eretmochelys imbricata</i> | Hawksbill Sea Turtle | FE |
| <i>Anas wyvilliana</i> | Hawaiian Duck | FE |
| <i>Buteo solitarius</i> | `Io (Hawaiian Hawk) | FE |
| <i>Hemignathus monroi</i> | `Akiapola`au | FE |
| <i>Loxops coccineus coccineus</i> | Hawai`I Akepa | FE |
| <i>Nesochen sandvicensis</i> | Nene (Hawaiian Goose) | FE |
| <i>Oreomystis mana</i> | Hawai`i Creeper | FE |
| <i>Oceanodroma castro</i> | Band-rump Storm Petrel | SE-State Endangered |
| <i>Pterodroma phaeopygia</i> | Hawaiian Dark-rumped Petrel | FE |
| <i>Puffinus auricularis newelli</i> | Newell`s Townsend`s Shearwater | FT-Federal Threatened |
| <i>Lasiurus cinereus</i> | `Ope`ape`a Hawaiian hoary bat | FE |

Since this report there have also been sightings and photos of the endangered Hawaiian Monk Seal near the project area. There is an association between Hawaiian Monk Seals and deep sea coral. The DEIS did not study the impacts on the Hawaiian Monk Seals nor the biomass of coral and sponge in the waters outside Ninole and Punalu`u. The DEIS did not address most of the above named species in the field survey and the mitigation measures listed for those mentioned are not adequate, especially for the endangered turtles. There is no analysis of the

relationship between ocean water quality, the run-off nutrients and macro-algal tumors observed in the turtles.

▶ §11-200-25. It appears that the project is subject to the National Environmental Policy Act of 1969. Has the applicant notified responsible federal agencies to prepare the draft environmental impact statement? If not, when does it plan to do so?

▶ When considering alternatives to the project, the most popular concept of an education-cultural center touted by numerous and diverse Ka`u residents was never investigated by the consultant. §11-200-17 (f) “The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of costs, in sufficient detail to explain why they were rejected.” The final EIS must consider this alternative arising from the “Community Voice”, a world class education-cultural center merging the Hawaiian culture with today’s earth and ocean sciences, similar to the Imiloa Center’s merge of astronomy with Hawaiian culture. Dormitories, conference rooms and dining facilities could be located above the highway. The living classroom and other public facilities could be situated in the SMA portion below the highway. A minimum 1000 ft. shoreline set back is needed to help protect the endangered Hawksbill turtles and their nesting habitats, and to preserve the cultural lifestyle of the local population. A restoration of the anchialine ponds at Punalu`u and Ninole, preservation of the

trails and archaeological sites, an historical museum, amphitheatre and guided educational tours would enhance the project. If jobs for the local population were an objective, this would accomplish that.

Of the alternatives listed in the DEIS, the 50 private luxury estates (DEIS page 7-4) represented the lowest density and least environmental impacts for the district and still offers jobs to the community (maids, landscapers, cooks, catering, nannies, private educators, drivers, pool maintenance, etc). This would require down-zoning to reduce the property taxes to its actual use tax rate. Considering top economic analysts' recent projections of an 80% chance of recession in 2007 (based on the national decrease in housing starts and increase in foreclosures), this would be the most economically feasible for the developer-investors and least disturbing to the rural quality of life preferred by Ka`u residents.

§11-200-21 Distribution “For final statements, the agency or applicant shall give the commentor an option of requesting the final EIS or portions thereof.” **As a commentor to the EIS, I am requesting a hard copy, not a disc, of the final EIS.**

Thank you,

Ruth

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