



# STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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October 2, 2006

## CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF	)	CERTIFICATE OF NEED
	)	APPLICATION
	)	NO. 05-25
Malulani Health and Medical Center, LLC	)	
	)	
Applicant	)	DECISION ON THE MERITS
	)	
	)	

## DECISION ON THE MERITS

The State Health Planning and Development Agency (hereinafter "Agency"), having taken into consideration all of the records pertaining to Certificate of Need Application No. 05-25 on file with the Agency, including the written and oral testimony and exhibits submitted by the applicant and other affected persons, the recommendations of the Tri-Isle Subarea Health Planning Council, Certificate of Need Review Panel and Statewide Health Coordinating Council, the Agency hereby makes its Decision on the Merits, including findings of fact, conclusions of law, order, and written notice on Certificate of Need Application No. 05-25.

I

## BACKGROUND

1. This is an application for a Certificate of Need ("Cert.") for the establishment of the following services:

- Medical/Surgical Beds – 110
- Critical Care Beds – 25
- Obstetric Beds – 10
- Neonatal Intensive Care Beds – 5

- Computed Tomography (CT) Stationary
- Magnetic Resonance Imaging (MRI) Stationary
- Positron Emission Tomography (PET)/Computed Tomography (CT)
- Cardiac Catheterization
- Heart Surgery
- Blended Operating Rooms
- Diagnostic Radiology
- Nuclear Medicine
- Ultrasound
- Emergency Services
- Clinical Laboratory
- Pharmacy
- Recompression Center
- Social Services
- Acute Inpatient Renal Dialysis

to be located at TMK: (2) 2-2-24: por. 16, Kihei, Hawaii at a capital cost of \$119,313,397.

2. The applicant, Malulani Health and Medical Center, LLC is a Limited Liability Corporation.

3. The Agency administers the State of Hawaii's Certificate Program, pursuant to Chapter 323D, Hawaii Revised Statutes (HRS), and Title 11, Chapter 186, Hawaii Administrative Rules (HAR).

4. On September 27, 2005, the applicant filed with the Agency a Certificate of Need application for standard review for establishment of the above-listed services to be located at TMK: (2) 2-2-24: por. 16, Kihei, Hawaii at a capital cost of \$119,313,397 (the "Proposal"). On October 12<sup>th</sup> and 14<sup>th</sup>, 2005, the applicant submitted additional information. On October 26, 2005, the Agency determined that the application was incomplete and requested additional information. The applicant submitted additional information on the following dates: November 21, 2005, February 14, 2006, March 6, 2006, March 13, 2006, April 11, 2006, April 24, 2006, May 9, 2006, May 12, 2006, May 16, 2006, May 17, 2006, May 18, 2006, May 19, 2006, May 24, 2006 and May 25, 2006. On May 25, 2006, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #05-25. On June 14, 2006, the applicant submitted additional information. The period for Agency review of the application commenced on June 30, 2006, the day that notice was provided to the public pursuant to 11-186-39 HAR.

5. The application was reviewed by the Tri-Isle Subarea Health Planning Council at a public meeting held July 7th, 8th, and 11th, 2006. The Council voted 5 to 2 in favor of recommending approval of the application.

6. The application was reviewed by the Certificate of Need Review Panel at a public meeting held July 20th and 24th, 2006. The Panel voted 7 to 1 in favor of recommending disapproval of the application.

7. The application was reviewed by the Statewide Health Coordinating Council at a public meeting held July 27th and August 3rd, 2006. The Council voted 7 to 0 in favor of recommending disapproval of the application with three abstentions.

8. The criteria set forth in Section 11-186-15(a), HAR were considered in the review of the application:

- (1) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services;
- (2) In the case of reduction or elimination of a service, including the relocation of a facility or service:
  - (A) The need that the population presently served has for the service;
  - (B) The extent to which that need will be met adequately by the proposed relocation or by alternative arrangements; and
  - (C) The effect of the reduction, elimination, or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, to obtain needed health care;
- (3) The probable impact of the proposal on the overall costs of health services to the community;
- (4) The probable impact of the proposal on the costs of and charges for providing health services by the applicant;
- (5) The immediate and long term financial feasibility of the proposal;
- (6) The applicant's compliance with federal and state licensure and certification requirements;
- (7) The quality of the health care services proposed;
- (8) In the case of existing health care services or facilities, the quality of care provided by those facilities in the past;
- (9) The relationship of the proposal to the state health services and facilities plan and the annual implementation plan;
- (10) The relationship of the proposal to the existing health care system of the area;
- (11) The availability of less costly or more effective alternative methods of providing service;
- (12) The availability of resources (including health personnel, management personnel, and funds for capital operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these

resources as identified by the state health services and facilities plan and the annual implementation plan.

9. Burden of proof. Section 11-186-42, HAR, provides:

"The applicant for a certificate of need or for an exemption from certificate of need requirements shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."

II

**FINDINGS OF FACT**

A. **REGARDING THE RELATION OF THE PROPOSAL TO THE STATE HEALTH SERVICES AND FACILITIES PLAN (HAWAII HEALTH PERFORMANCE PLAN) OR "H2P2"**

*Vision and Guiding Principles (Chapter II)*

10. Part F of Chapter II contains the five H2P2 critical elements of a health care delivery system: Access, Quality Management, Cost-Effectiveness, Continuity of Care and Constituent Participation. With respect to the critical element of Access, H2P2 provides:

"1. **Access.** Access to appropriate, culturally sensitive care—from preventive and primary care to tertiary care and disease management—in the most comprehensive practical model possible, given the population's size, needs, and resources, is a high priority. Equitable, effective and efficient access is achieved through an adequate availability of quality health care that is reasonable in cost, with priority given to those services that benefit the majority of the residents and that are cost-effective. (Emphasis added)

11. On page A-3 of its application, the applicant states "...we are committed to providing care which is cost effective and that priority will be given to those services which benefit the majority of residents." The applicant, however, does not elaborate on this statement.

12. In testimony dated July 7, 2006, Maui Memorial Medical Center (MMMC) states "The marginal increase in Maui residents' access to health care services under the proposal is very slight. Only 15 percent of Maui's population would

reside closer to MHMC's (Malulani Health and Medical Center's) proposed site than to MMMC... The application may correctly state that Kihei is near the **geographical** center of Maui country (sic). The county's **population center**, is, however, in the Kahului/Wailuku area....The number of persons that might benefit from proximity to MHMC is small - estimated at about 15% - compared to the overall population of the island, as illustrated by the fact that, in 2005, MMMC admitted 12,485 inpatients, of whom only 1,935 – or approximately 15% - had zip codes in areas closer to the proposed MHMC site than to MMMC."

13. The June 2006 *Socio-Economic Forecast: The Economic Projections for the Maui County General Plan 2030* prepared by the Maui County Planning Department, states that the Maui resident population for 2000 was 117,644 and the population by region was: Lahaina – 17,967 (15.27%), Kihei-Makena – 22,870 (19.44%), Wailuku-Kahului – 41,503 (35.28%), Makawao-Pukalani-Kula – 21,571 (18.33%), Paia-Haiku – 11,866 (10.09%) and Hana – 1,867 (1.59%).

14. The *Socio-Economic Forecast* also states that "SMS forecasts that the Wailuku-Kahului area will grow faster than other parts of Maui Island as former C. Brewer sugar lands are developed with residential subdivisions. It is expected to continue as home to over a third of Maui's households."

15. In testimony dated July 12, 2006, Joseph D. Pluta, President, West Maui Improvement Foundation Inc. states "The proposal at Maui Research and Technology Park in Kihei... is over an hour away from West Maui and fails to address West Maui's critical care access to lifesaving emergency services within the golden hour."

16. In testimony dated July 7, 2006, Linda Hill states "...I believe that Malulani is not a cost efficient way of adding to health care services on Maui...The construction of a brand new hospital in South Maui will serve only a small percentage of the Maui Community. Services will be duplicated. Resources and staffing will be diluted. This will have a negative impact on health care for all of Maui."

#### *Statewide and Regional Values and Priorities (Chapter III)*

17. Chapter III of H2P2 contains the statewide priorities for modifying or adding to the health care delivery system for the State of Hawaii. Priority F, on Page III-2, provides:

"f. Promote enhanced health care networks to ensure access to comprehensive medical care statewide and promote continuous community-based assessment to facilitate public education and

coordinated health care. Eliminate costly duplication and fragmentation, as well as costly consent decrees, by having new or expanded health services demonstrate how they are going to integrate services with other health and human services." (Emphasis added)

18. The applicant states "No services will be shared with another institution or consolidated at the MHMC campus."

19. In testimony dated July 20, 2006, Donna McCleary, M.D., Vice President Hawaii Permanente Medical Group, states "We want to see care continue to improve on Maui and appreciate the Malulani supporters for presenting this CON. This is a serious, genuine proposal but we are also interested in a unified, integrated solution for Maui, if at all possible."

20. In public testimony dated July 7, 2006, Sammy Kadotani states "The approval of additional for-profit acute care beds in Kihei without strategic community planning will negatively affect access to and cost of quality healthcare to these communities. As you know, all healthcare providers are in short supply and high demand. The fragmentation of these providers will further erode healthcare delivery!"

21. In testimony dated July 7, 2006, MMMC states: "The MHMC proposal would fragment Maui's health care system.... It would bring about significant problems with utilization of services, which would have a detrimental affect on the quality of care provided to Maui's residents. MHMC would establish unnecessarily duplicative services and would result in services being split, unnecessarily and to the detriment of patients, between different facilities. Some services (e.g. psychiatric service at MMMC) could be lost as revenues are diverted to Triad/MHMC. Quality could decline as specialized services (and specialist providers) are split between the two facilities... Many of the services that Malulani proposes to offer are not available on Maui. However, (sic)nature of these services dictate they can be offered on a more cost-effective basis to residents of the entire state through large, tertiary medical care centers on Oahu than through relatively low-volume providers on the neighbor islands...As a relatively low volume provider, Malulani will not be able to spread its fixed costs among as many patients. Accordingly, contrary to its assertions, Malulani can be expected to incur higher costs per procedures than those of Oahu's tertiary care centers – even after transportation costs have been taken into account. However, by reducing the number of cases being done at Oahu tertiary care centers, Malulani will also hamper their ability to distribute their fixed costs among the greatest number of patients, and thereby reduce their ability to provide these services in the most cost effective manner possible as well. The result will be an increase in per procedure costs that will extend throughout the state."

22. In testimony dated July 5, 2006, Lee Miyasato, M.D., Managing Member, Maui Radiology Associates, states **"Our Neurointerventional stroke service is the only fully developed service of its kind in the entire state. We are concerned that a second hospital on Maui may jeopardize this unique service...** We are able to provide our level of service because we are fortunate enough to provide these services to the entire patient population on this island and potentially on the other neighboring islands. Since the cost to provide this service is very expensive, any dilution in the patient volumes could be catastrophic to the entire service. Neither facility would be able to justify the expense, and in time, each facility would be forced to downgrade or close vital interventional procedures. Hence, the level of care on the island would be diminished."

23. In testimony dated July 7, 2006, Jeanne Rabold states "I am concerned that a second hospital on the island will result in duplication of services that will result in increased costs for everyone and dilute the quality of care at both hospitals. It would be most helpful if there were a comprehensive, coordinated plan for medical services for the community."

24. Chapter III also contains the Maui County "Tri-isle" Subarea Values and Priorities of H2P2. At page III-10, H2P2 lists the following as the first priority:

**"Priority 1.**

- **Behavioral Health Services**
- Substance Abuse Services\*+
  - Drug/Alcohol Education, Treatment and Prevention
  - Detox, including Medical Detox
  - Poly-substance Abuse
  - Substance Abuse Residential Treatment for Women with Children
  - Teen Substance Abuse
  - Substance Abuse Treatment and Follow-up—Hana
- Mental Health Services\*+"

25. The applicant states that "Malulani Health and Medical Center will be a comprehensive, state-of-the-art, fully digital healthcare campus that will effectively and efficiently meet the needs of the Maui County community."

26. In testimony dated July 18, 2006, Gary L. Smith, President, Hawaii Disability Rights Center, states "The Hawaii Disability Rights Center has serious concerns about the deficiencies contained in the aforementioned CON application...Specifically, we are concerned by the non-existence of psychiatric beds, lack of psychiatric staff and lack of budgetary provisions for psychiatric

services in the application."

27. In testimony dated July 7, 2006, MMMC states: "In the H2P2, the number one priority of the Tri-Isle SAC is 'behavioral health, substance abuse, mental health.' This application does nothing to address these crucial needs, which are consistently money-losing, non-profitable services... Approving MHMC will result in an (sic) projected annual loss of \$54,913,000 in revenue to MMMC. If MHMC were approved, MMMC, the community's 'safety net' hospital, would have to consider closing some of its money-losing services, such as psychiatric services. In that event, the establishment of MHMC would actually work against the SAC's first priority."

28. The Agency finds that the Proposal is not consistent with state health services and facilities plan - Chapter II, Part F, Chapter III - Statewide Priorities – Priority F, and Priority 1 of the Maui County "Tri-isle" Subarea Priorities.

29. The Agency finds that the applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in HAR 11-186-15(a)(9): *The relationship of the proposal to the state health services and facilities plan.*

#### B. REGARDING QUALITY AND LICENSURE CRITERIA

30. The applicant states that "Malulani Health and Medical Center will partner with Triad... Malulani Health and Medical Center is a new facility, however Triad operates 50 hospitals throughout the US. Every Triad hospital has received certification by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association."

31. The applicant states that "Triad will own (80%), manage, staff and operate the Malulani Health and Medical Center. Triad brings an established history of staffing high quality, high performance organizations."

32. The applicant states that "Triad policies, procedures, internal controls and compliance programs will be implemented in the joint venture... These policies are implemented at all Triad hospitals and are continually updated. The Triad policies and procedures are a key factor in Triad's success in obtaining accreditation (JCAHO and American Osteopathic Association) at all its hospitals."

33. The applicant states that it will seek all State and Federal licensing and certificates associated with the operation of an acute care hospital. The applicant further states that it will seek accreditation from the Joint Commission on

Accreditation of Healthcare Organizations.

34. The Agency finds that the applicant has proven by a preponderance of the evidence that the Proposal meets the criteria as established in HAR Section 11-186-15(a) (6): *The applicant's compliance with federal and state licensure and certification requirements*, and HAR Section 11-186-15(a) (7): *The quality of the health care services proposed*.

C. REGARDING THE RELATIONSHIP OF THE PROPOSAL TO THE EXISTING HEALTH CARE SYSTEM OF THE AREA

35. The applicant states that "MHMC will have limited impact on the volumes at existing Maui healthcare providers... Where there is an impact, the net effect will be to relieve the pressure on bed services that currently operate above desired occupancy levels."

36. In testimony dated July 5, 2006, Lee Miyasato, M.D., Managing Member, Maui Radiology Associates, states "**Our Neurointerventional stroke service is the only fully developed service of its kind in the entire state. We are concerned that a second hospital on Maui may jeopardize this unique service...** We are able to provide our level of service because we are fortunate enough to provide these services to the entire patient population on this island and potentially on the other neighboring islands. Since the cost to provide this service is very expensive, any dilution in the patient volumes could be catastrophic to the entire service. Neither facility would be able to justify the expense, and in time, each facility would be forced to downgrade or close vital interventional procedures. Hence, the level of care on the island would be diminished."

37. In testimony dated July 3, 2006, Grant Y.M. Chun states "Counter intuitive as it may seem, we have learned from other marketplaces that the health care industry is unique in that more facilities does not always equate to better health care. Absent a sufficient population base, communities with more than one hospital lack the critical mass to provide services cost efficiently, they lack the pool of professional expertise to fully staff both facilities, and they tend to drive down the least common denominator in terms of what services can be economically provided to the community. Indeed, while the matter before you proposes an increase in the number of facilities in a community of less than 150,000 people, the trend nationally is for facilities to merge in order to provide the best possible care to their communities."

38. In testimony dated July 20, 2006, Russell Johnson, Fiscal Officer, MMMC states "The financial impact to Maui Memorial Medical Center by the approval of

Malulani would be severe. Total estimated net revenue loss in Malulani's third year of operation is estimated to be \$54,913,000. Of this, \$46,213,000 would be from the loss in patient volume, \$7,782,000 would be from the loss of sole source provider status and an addition (sic) \$918,000 would be a net revenue decrease due to the change in payor mix....Revenue losses of this magnitude would limit any safety net programs MMMC could provide. Programs that require subsidies from other hospital departments, such as the psychiatric ward, would have to be reexamined to determine if they could continue. Subsidies from MMMC to help sister Maui County facilities, Kula Hospital and Lanai Hospital, would no longer be available. ...In short, MMMC existence as the community's safety net hospital would be threatened without major increases in insurance reimbursements or, alternatively, greater general fund subsidies. Either way, through increased insurance premiums or increased taxes, the people of Hawaii will be paying for Malulani."

39. In testimony dated July 18, 2006, Gary L. Smith, President, Hawaii Disability Rights Center, states "Community hospitals across the United States depend on revenues generated by their other services to support their psychiatric departments. This is also true in Hawaii. On Maui, we are aware that Maui Memorial Medical Center depends on the revenues generated by other areas of their hospital to support their psychiatric unit.... If SHPDA were to approve a new hospital on Maui – one that does not intend to provide psychiatric services - then it is evident that the existing health care system for the disabled population of the mentally ill will be severely damaged."

40. In public testimony dated July 1, 2006, William Mitchell, M.D. states "Two competing hospitals will reduce the availability of specialized services which require high volumes to be economically viable. In addition, highly trained physicians will not be available to staff both hospitals."

41. In public testimony dated June 28, 2006, Stephen Sussman, M.D., President, Maui Medical Group, Inc. states "The Board of Directors of the Maui Medical Group, Inc. opposes application 05-25 by the Malulani Health and Medical Center, which proposes the creation of a new private hospital on Maui ...A hospital needs numerous skilled persons to work there, such as nurses, physicians, radiology technicians, social workers, and physical therapists. Maui already has a shortage of many of these types of workers, without adding an entire new hospital. Recruitment of new skilled health care workers for Maui is difficult, given the high costs of living here and the distance from the mainland. The addition of a new hospital on Maui will only worsen this situation, and will likely take skilled workers away from MMMC. In addition, MMMC already has difficulty providing adequate on-call physician coverage for its emergency room. It is quite likely this situation would worsen with a second hospital, and both

hospitals would likely have worse coverage than MMMC currently does. In our opinion one hospital will be better able to organize and provide high quality advanced tertiary care, rather than dividing services and skilled staff between two hospitals."

42. In testimony dated July 20, 2006, Ronald Boyd, M.D. states "Dividing the patient pool into two small community style hospitals is a retrograde step. It will dome (sic) the community long into the future into having nothing better than two small community hospitals neither of which can provide comprehensive specialty care aside from possibly cardiac surgery."

43. The Agency finds that the Proposal would have an overall negative impact on the existing healthcare system of the area.

44. The Agency finds that the applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(10), HAR: *The relationship of the proposal to the existing healthcare system of the area.*

#### D. REGARDING COST AND FINANCIAL CRITERIA

45. In testimony dated July 24, 2006, Jonathan Olson states "The hospital in Kihei should not be approved by SHPDA....The costs of health care services would increase due to the fact that services and costs would be duplicated. Two CEOs, Two CFOs, Two DON's maintenance/billing/computer operators, two JCAHO surveys, two Medicare/Medicaid cost reports and down the line and two facilities that would need to be filled with patients that are needing decreased acute care services. These hospitals would need to increase billings to the population of Maui to pay its bills to the duplicate doctors/staff/executives. The population would pay for these duplicate services, through increased payments, through increased HMSA/Kaiser charges, through increased taxes as HHSC would now need subsidies to operate and through unnecessary medical procedures being recommended and performed on patients."

46. In testimony dated July 7, 2006, MMMC states "Many of the services that Malulani proposes to offer are not available on Maui. However, nature of these service dictate they can be offered on a more cost-effective basis to residents of the entire state through large, tertiary medical care centers on Oahu than through relatively low-volume providers on the neighbor islands...As a relatively low-volume provider, Malulani will not be able to spread its fixed costs among as many patients. Accordingly, contrary to its assertions, Malulani can be expected to incur higher costs per procedures than those of Oahu's tertiary care centers –

even after transportation costs have been taken into account. However, by reducing the number of cases being done at Oahu tertiary care centers, Malulani will also hamper their ability to distribute their fixed costs among the greatest number of patients, and thereby reduce their ability to provide these services in the most cost-effective manner possible as well. The result will be an increase in per procedure costs that will extend throughout the state."

47. In testimony dated July 20, 2006, Russell Johnson, Fiscal Officer, MMMC states "The financial impact to Maui Memorial Medical Center by the approval of Malulani would be severe. Total estimated net revenue loss in Malulani's third year of operation is estimated to be \$54,913,000. Of this, \$46,213,000 would be from the loss in patient volume, \$7,782,000 would be from the loss of sole source provider status and an addition (sic) \$918,000 would be a net revenue decrease due to the change in payor mix....Revenue losses of this magnitude would limit any safety net programs MMMC could provide. Programs that require subsidies from other hospital departments, such as the psychiatric ward, would have to be reexamined to determine if they could continue. Subsidies from MMMC to help sister Maui County facilities, Kula Hospital and Lanai Hospital, would no longer be available. ...In short, MMMC existence as the community's safety net hospital would be threatened without major increases in insurance reimbursements or, alternatively, greater general fund subsidies. Either way, through increased insurance premiums or increased taxes, the people of Hawaii will be paying for Malulani."

48. The Agency finds that the applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in HAR 11-186-15(a) (3): *The probable impact of the proposal on the overall costs of health services to the community.*

#### E. REGARDING THE AVAILABILITY OF RESOURCES

49. The applicant states that the total capital cost of its proposal is \$211,809,000 and that the capital cost for certificate of need purposes is \$119,313,397.

50. The applicant states that "All project costs will be financed through cash contributions from the owners (\$169.4 million by Triad and \$42.4 million by Malulani Health Systems, Inc.).... Triad is prepared to assume a greater portion of the project cost should the Malulani Health System, be unable to raise its full capital requirements through philanthropic and financing efforts." D-2

51. In a letter dated April 7, 2006, Dan Moen, Executive Vice-President, Development, Triad Hospitals Inc., states "As you know, we entered into a letter of intent dated September 7, 2005, relating to a proposed joint venture between Triad Hospitals, Inc. ('Triad') and Malulani Health System ('MHS') that would own, build and operate Malulani Health and Medical Center (the 'Hospital') and certain associated health care assets... Please be advised that in the event MHS is unable to contribute \$40.72 million to the Partnership, then Triad would contribute any shortfall in funding by MHS."

52. The United States Securities and Exchange Commission Form 10-Q (a copy of which is included in the application) shows Triad Hospitals, Inc. as having: current assets of \$1.13 billion, total assets of \$5.2 billion and total stockholders equity of \$2.5 billion as of March 31, 2005.

53. The Agency find that the applicant has met the burden of proof for establishing that the funds for capital and operating needs will be available for the Proposal.

54. The applicant states that it will require the following staff for the first 3 years of operations:

Function	Paid	FTE	Employees
	2009	2010	2011
Administrative Services: Financial	14.0	16.6	18.8
Administrative Services: Other	57.9	63.5	67.4
<b>Ancillary Services</b>			
Cardiopulmonary	12.0	21.2	23.3
Laboratory	20.4	35.8	39.3
Pharmacy	5.2	9.1	10.0
PT/OT/Speech	11.7	22.0	24.2
Radiology	40.2	72.0	76.1
Other	3.5	6.6	7.2
<b>Nursing Services</b>			
Emergency Room/Urgent Care	24.4	43.9	48.7
ICU	24.5	43.8	47.9
NICU	9.2	16.9	18.0
Med/Surg	92.6	168.0	177.4
LDRPN Unit	19.4	35.1	38.3
Other	12.2	21.6	23.7
<b>Support Services</b>			
Food & Nutrition	21.3	38.0	41.0
Housekeeping/Laundry	19.8	37.5	39.6
Materials Management	6.3	11.1	11.7

Plant/Biomed/Security	9.5	16.7	18.2
Surgical Services	42.4	77.0	84.7
Other	9.9	17.4	19.0
<b>Malulani Total</b>	<b>456.4</b>	<b>773.8</b>	<b>834.4</b>

55. The applicant states that "Plain and simply, demand for health professionals will increase regardless of the institutional provider landscape in Maui. However, a new state-of-the-art medical center will significantly increase the odds that Maui will be able to attract high quality healthcare professionals...A lack of choice (only one hospital) and the condition of existing healthcare facilities on Maui is likely a contributing factor in the current shortage of healthcare professionals on Maui – compared to other major Hawaiian Islands. "

56. In public testimony dated August 3, 2006, MMMC states "The table of Staffing Resource submitted by Malulani listed approximately 15 physicians who have purportedly inquired about working Malulani. However, as Dr. Howard Barbarosh, who advocated granting the Malulani CON, testified, '*Physicians are not attracted to Maui. The reasons are multiple. School system, cost of living, cost of housing.*'"

57. In a memorandum dated July 26, 2006, Barbara Ideta, Acting Chair, Certificate of Need Review Panel forwarded the Committee's recommendation for disapproval of this application. The recommendation states in pertinent part:

**Availability of Resources**

This criterion has not been met. The applicant fails to address with any degree of specificity or long range strategy how it plans to recruit and retain physicians, nurses and other professionals given the shortage of health care professionals in Hawaii and throughout the United States.

58. On August 29, 2006, the Agency's requested additional information from the applicant pursuant to 11-186-54 HAR including, without limitation, "additional information as to how the applicant proposes to identify and overcome the healthcare staffing barriers on Maui."

59. In the applicant's "Response to David T. Sakamoto M.D.'s letter dated August 29, 2006", the applicant provides eleven steps it will take "to ensure that the hospital is adequately staffed at the time of opening and beyond...", however, in the said letter, the applicant fails to provide direct information as to how it proposes to identify and overcome the healthcare staffing barriers on Maui.

60. In testimony dated September 28, 2006, Aggie Pigao Cadiz, Executive Director, Hawaii Nurses' Association states "We oppose this application because its budget for nursing care is significantly below prevailing rates throughout the state.

With such a great deficiency in its budget, we do not see how the applicant will be able to staff its proposal nor do we see how the applicant will maintain high standards of nursing practice...Furthermore, like the rest of the United States, Hawaii has a shortage of nurses. Compounding this shortage is the current demographics of our nursing pool. In the near future, a good segment of our nurses will be approaching or will have arrived at retirement age. There are not enough new students pursuing nursing degrees to replace them. In addition, nurses will continue to leave the workplace and the profession as long as conditions in their work environment continue to decline. Even with the efforts of the Hawai'i State Center for Nursing at the University of Hawaii and other initiatives in progress throughout the state, the nursing shortage will continue to be a challenge for Hawai'i's health care system... Adding a new hospital to the mix will only serve to negatively impact all of these health care providers who are struggling to retain and recruit nursing professionals."

61. The Agency finds that the applicant has not met the burden of proof for establishing that the health personnel will be available for the Proposal.

62. The Agency finds that the applicant has not met the burden of proof of establishing that the Proposal meets the criterion in HAR 11-186-15(a) (12): *The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed.*

### III

#### CONCLUSIONS OF LAW

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 05-25 on file with the Agency, including the written and oral testimony, exhibits and attachments submitted by the applicant and other affected persons, the recommendations of the Tri-Isle Subarea Health Planning Council, Certificate of Need Review Panel and Statewide Health Coordinating Council, and based upon the findings of fact contained herein, the Agency concludes as follows:

1. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(3), HAR.
2. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(9), HAR.

3. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(10), HAR.
4. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(12), HAR.

Accordingly, as required by Section 323-43(b) and Section 323-43(c), HRS, no certificate of need shall be issued for this proposal.

The criteria in HAR 11-186-15(a) (2) and (8) are not applicable to this Proposal.

As the Proposal fails to meet the criteria in HAR 11-186-15(a) (3), (9), (10) and (12), it is not necessary for the Agency to make findings of fact as to the application's relationship to the remaining criteria (HAR 11-186-15(a) (1), (4), (5) and (11)). However, based upon its review and analysis of the information and testimony provided, the Agency makes the following observations and summaries in regard to these criteria:

- Maui will need additional acute care beds and associated services in the future. Given the current demographic projections, if circumstances do not change substantially over the next five years, Maui may need: a maximum of approximately 55-85 additional acute care beds by 2010, or, a maximum of approximately 90-130 acute care beds by 2015. (Based upon the 2004 Maui Bed Need Study and need projections in this application.) If the long term care waitlist issue is resolved, this need may be significantly less, depending on the degree to which the issue is resolved.
- To build a second hospital on Maui to fulfill this future need would undermine and weaken the community's healthcare system by duplicating and diluting services. In his written testimony, Ronald Boyd, M.D. states "Dividing the patient pool into two small community style hospitals is a retrograde step. It will dome (sic) the community long into the future into having nothing better than two small community hospitals neither of which can provide comprehensive specialty care aside from possibly cardiac surgery."
- One large, well-run facility, strategically-located, would be the most efficient and effective means of addressing the acute care needs on Maui. All financial, medical and personnel resources could be focused on one acute care center. There would be no duplication or

dilution of services or staff. Achieving economies of scale would facilitate long term economic feasibility. One profitable hospital would have the resources to partner with Maui county regions to ensure that access to the proper level of care is available to all regions of Maui. This could include urgent care, emergent care and long term care.

- It is likely that Maui's ability to establish a Level II Trauma Center (as recommended by the American College of Surgeons Committee on Trauma in their 2005 Trauma System Consultation) would be severely impaired if two hospitals were duplicating services on Maui. In his written testimony, Stephen Sussman, M.D., President, Maui Medical Group, Inc. states "In our opinion one hospital will be better able to organize and provide high quality advanced tertiary care, rather than dividing services and skilled staff between two hospitals."
- The state may not have the capital to expand, replace or significantly upgrade MMMC to meet the future needs of Maui. In addition, it may not be structurally or financially viable to make significant renovations to MMMC in the future.
- The resources of a private sector provider or a private/public community joint venture may be needed.
- The long term care waitlist needs to be addressed.
- Several persons providing written testimony in this application expressed their opinion that an integrated solution would be most appropriate for Maui:
  - ✓ Donna McCleary M.D., Vice President Hawaii Permanente Medical Group states "We want to see care continue to improve on Maui and appreciate the Malulani supporters for presenting this CON. This is a serious, genuine proposal but we are also interested in a unified, integrated solution for Maui, if at all possible. Kaiser Permanente has been part of discussions with Maui Memorial and Malulani in an effort to work toward a collaborative solution to provide the citizens of Maui the level of care they deserve. We are willing to continue this dialogue."
  - ✓ Jeanne Rabold states "I am concerned that a second hospital on the island will result in duplication of services that will result in increased costs for everyone and dilute the quality of care at both hospitals. It would be most helpful if there were a comprehensive, coordinated plan for medical services for the community."

- ✓ T. Manoukian M.D. states "Through integrated healthcare planning, expansion of existing services and development of appropriate new services can be achieved harmoniously among all stakeholders."

### ORDER

Pursuant to the findings of fact and conclusions of law contained herein, IT IS HEREBY DECIDED AND ORDERED THAT:

The State Health Planning and Development Agency hereby DISAPPROVES and DENIES a certificate of need to Malulani Health and Medical Center, LLC for the project described in Certificate Application No. 05-25.

### WRITTEN NOTICE

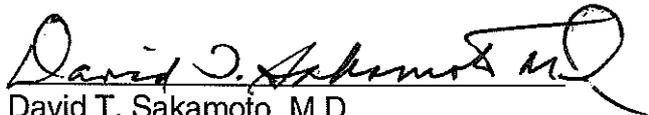
Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

The decision on the merits is not a final decision of the Agency when it is filed. Any person may request a public hearing for reconsideration of the decision pursuant to Section 11-186-82 of the Agency's Certificate of Need Program rules. The decision shall become final if no person makes a timely request for a public hearing for reconsideration of the decision. If there is a timely request for a public hearing for reconsideration of the decision and after the Agency's final action on the reconsideration, the decision shall become final.

DATED: October 2, 2006  
Honolulu, Hawaii

(Note, pursuant to Chapter 323D-47, Hawaii Revised Statutes, a request for reconsideration shall be received by the Agency within ten working days of the state agency decision.)

HAWAII STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

A handwritten signature in black ink, appearing to read "David T. Sakamoto, M.D.", written over a horizontal line.

David T. Sakamoto, M.D.  
Administrator

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Decision on the Merits, including findings of fact, conclusions of law, order, and written notice, was duly served upon the applicant by sending it by certified mail, return receipt requested, in the United States Postal Service addressed as follows on October 2, 2006.

Ronald C. Kwon, M.D., FACP  
Chairman, Board of Directors  
Malulani Health Systems, Inc.  
One Main Plaza, 2200 Main Street, Suite 513  
Wailuku, Hawaii 96793

HAWAII STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY



David T. Sakamoto, M.D.  
Administrator



# STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

LINDA LINGLE  
GOVERNOR OF HAWAII

CHIYOME L. FUKINO, M.D.  
DIRECTOR OF HEALTH

DAVID T. SAKAMOTO, M.D., M.B.A.  
ADMINISTRATOR

1177 Alakea St. #402, Honolulu, HI 96813 Phone: 587-0788 Fax: 587-0783 www.shpda.org

February 8, 2007

## CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF	)	CERTIFICATE OF NEED
	)	APPLICATION
	)	NO. 05-25
Malulani Health and Medical Center, LLC	)	
	)	
Applicant	)	
	)	
	)	
	)	

## WRITTEN EXPLANATION FOR DENIAL OF REQUEST FOR RECONSIDERATION HEARING

This written explanation is filed pursuant to Section 11-186-82 (c), Hawaii Administrative Rules (HAR):

- (c) If the request for a public hearing for reconsideration is denied, the committee shall file a written explanation for the denial and shall send it to the person who made the request by certified mail, return receipt requested, and deliver to addressee only. The explanation shall include a written notice stating that:
- (1) The denial is the agency's final action on the reconsideration; and
  - (2) The decision which was sought to be reconsidered is the final decision of the agency.

Under Section 11-186-82, HAR and Section 323D-47 Hawaii Revised Statutes (HRS), the Reconsideration Committee of the Hawaii State Health Planning and Development Agency (the "Agency") met on January 22, 2007 to determine whether good cause had been shown to hold a public hearing for reconsideration of the Agency's Decision on Certificate of Need Application No. 05-25.

Pursuant to HAR 11-186-82, a request for a public hearing shall be deemed by the committee to have shown good cause, if:

- 1) It presents significant, relevant information not previously considered by the agency which, with reasonable diligence, could not have been presented before the agency made its decision;
- 2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision;
- 3) It demonstrates that the agency has materially failed to follow the agency's rules in reaching its decision;
- 4) It provides any other basis for a public hearing which the agency determines constitutes good cause; or
- 5) The decision of the administrator differs from the recommendation of the statewide council.

Having taken into consideration all of the records pertaining to the request for a reconsideration hearing of the Agency's decision on Certificate of Need Application No. 05-25, including, without limitation, the written request for reconsideration, written testimony, exhibits, attachments and supplementary material submitted by the person who made the request and other affected persons, and the oral testimony presented at the good cause meeting, the Reconsideration Committee finds by a vote of four to one that the request for a public hearing for reconsideration of the Agency's decision on Certificate of Need Application No. 05-25, fails to establish good cause under HAR 11-186-82 and 323D-47 HRS.

Specifically, the written request for reconsideration, written testimony, exhibits, attachments and supplementary material submitted by the person who made the request and other affected persons, and the oral testimony presented at the good cause meeting, fails to: *present significant, relevant information not previously considered by the agency which, with reasonable diligence, could not have been presented before the agency made its decision; demonstrate that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision; demonstrate that the state agency has materially failed to follow the agency's rules in reaching its decision; provide any other basis for a public hearing which the agency determines constitutes good cause.*

The decision of the administrator did not differ from the recommendation of the statewide council.

Therefore, the request for a public hearing for reconsideration is denied.

WRITTEN NOTICE

- (1) The denial is the agency's final action on the reconsideration; and
- (2) The decision which was sought to be reconsidered is the final decision of the agency.

David T. Sakamoto, M.D. 2/18/07  
David T. Sakamoto, M.D. Date

Jim Walsh 2/15/07  
Jim Walsh Date

Patty Foley 2/22/07  
Patty Foley Date

Barbara Ideta 3/9/07  
Barbara Ideta Date

APPROVED AS TO FORM ONLY

Elaine Slavinsky 3-5-07  
Elaine Slavinsky Date