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LAND USE COMMISSION
STATE OF HAWAII
2012 DEC 21 P 1:50

BEFORE THE LAND USE COMMISSION

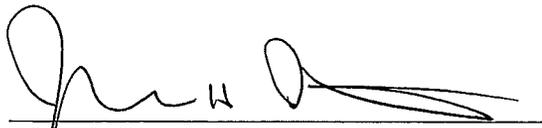
STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A-94-706
)	
KAONOULU RANCH)	PIILANI PROMENADE SOUTH, LLC
)	AND PIILANI PROMENADE NORTH,
To Amend the Agricultural Land Use District)	LLC'S PROPOSED FINDINGS OF FACT
Boundary into the Urban Land Use District)	AND CONCLUSIONS OF LAW AND
for approximately 88 acres at Kaonoulu,)	DECISION AND ORDER; CERTIFICATE
Makawao-Wailuku, Maui, Hawai'i)	OF SERVICE
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PIILANI PROMENADE SOUTH, LLC AND PIILANI PROMENADE NORTH, LLC'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND DECISION AND ORDER

COME NOW Piilani Promenade South, LLC ("PPS") and Piilani Promenade North, LLC ("PPN") (collectively "Piilani"), by and through their attorneys, McCorriston Miller Mukai MacKinnon LLP, and submit their proposed Findings of Fact and Conclusions of Law.

Dated: Honolulu, Hawai'i, December 21, 2012.

A handwritten signature in black ink, appearing to read 'Clifford J. Miller', written over a horizontal line.

CLIFFORD J. MILLER
JOEL D. KAM
JONATHAN H. STEINER

Attorneys for
Piilani Promenade South, LLC and
Piilani Promenade North, LLC

FINDINGS OF FACT

Procedural Background

1. On May 23, 2012, Maui Tomorrow Foundation, South Maui Citizens for Responsible Growth, and Daniel Kanahale (hereinafter “Intervenors”) filed a Motion for Hearing, Issuance of Order to Show Cause, and Other Relief (“Motion for Order to Show Cause”).
2. Upon due notice, the Land Use Commission (the “Commission”) held a public hearing on the Motion for Order to Show Cause on August 24, 2012, at the conclusion of which the Commission voted to grant said motion and set a show cause hearing.
3. On August 30, 2012, Intervenors filed a Petition to Intervene in Show Cause Hearing.
4. On September 6, 2012, the Commission, upon due notice, held a public hearing on Intervenors’ Petition to Intervene in Show Cause Hearing, at the conclusion of which the Commission voted to grant the Petition to Intervene in Show Cause Hearing.
5. On September 10, 2012, the Commission issued an Order Granting Movants’ Motion for Hearing, Issuance of Order to Show Cause, and Other Relief.
6. At the hearing on the Petition to Intervene in Show Cause Hearing, the Commission ordered that it would first hear evidence and consider whether Piilani and/or Honua’ula Partners, LLC (“Honua’ula”) have violated the conditions of the Findings of Fact, Conclusions of Law, and Decision and Order filed herein on February 10, 1995 (hereinafter “the Order”), and that should the Commission find that there has been a violation of the Order, the Commission would then hold further proceedings to determine whether reversion of the Petition

Area to its former land use classification or to a more appropriate classification is the appropriate remedy.

7. On September 17, 2012, the Commission issued an Order Granting Movants' Petition to Intervene in Show Cause Hearing.

8. On September 17, 2012, the Commission issued an Order to Show Cause to Piilani and Honua'ula.

9. In the Order Granting Movant's Motion for Hearing, Issuance of Order to Show Cause and Other Relief, issued by the Commission on September 10, 2012, the Commission identified violations of Condition 5 and Condition 15 of the Order as the basis for granting the motion and setting this matter for a show cause hearing. See the Order Granting Movant's Motion for Hearing, Issuance of Order to Show Cause and Other Relief, entered by the Commission on September 10, 2012 at pages 2-3.

10. The hearing on the Order to Show Cause took place, and evidence was presented on November 1, 2, 15 and 16, 2012.

11. Intervenors have asserted and offered arguments and evidence related to alleged violations of Conditions 1 and 17 of the Order, in addition to Conditions 5 and 15.

12. At the conclusion of the hearing on November 16, 2012, the evidentiary phase of the hearing as to whether there has been a violation of the Order was closed.

The Petition and Representations Made to the Land Use Commission

13. On July 6, 1994, Kaonoulu Ranch filed a Petition for Land Use District Boundary Amendment ("the Petition") with the Commission in In the Matter of the Petition of Kaonoulu Ranch, Docket No. A94-706. See Piilani Exhibit 2.

14. The Petitioner, Kaonoulu Ranch (“Original Petitioner”) was, at that time, the fee simple owner of approximately 88 acres of land located at Kaonoulu, Makawao-Wailuku, which at that time was identified as a portion of Tax Map Key Nos. 2-2-02:15, and 3-9-01:16. See Piilani Exhibit 2 at 2-3 (hereinafter “the Subject Property”).

15. The Subject Property has since been subdivided into seven different parcels. See Piilani Exhibit 17 and 18.

16. PPS and PPN are Hawaii limited liability companies and the current owners of six of the seven parcels, comprised of the following tax map key parcels: (2) 3-9-001:016 and 170-174 (referred to collectively hereinafter as the “Piilani Parcels”). See Intervenors’ Exhibits I-32 and I-33; Piilani Exhibit 34 at 1, fn.1.

17. Honua’ula owns the seventh parcel, identified as tax map key parcel (2) 3-9-001:169 (referred to hereinafter as the “Honua’ula Parcel”). See Intervenors’ Exhibit I-31; Honua’ula Exhibit 12 at 1, fn.1

18. In the Petition, the Original Petitioner sought an amendment of the land use district boundary to effect reclassification from the Agricultural District to the Urban District. See Piilani Exhibit 2 at 1.

19. The Petition, and the exhibits submitted to the Commission in support of the Petition, contained representations to the Commission regarding the proposed development of the Subject Property. See Testimony of Martin Luna, Transcript of Proceedings on November 1, 2012 (hereinafter “TR1”) at 157:12-15.

20. The Petition was prepared by Martin Luna, who was the attorney for the Original Petitioner. See Testimony of Martin Luna, TR1 at 156:9-22.

21. In the Petition, the Original Petitioner represented to the Commission that the “project is intended to satisfy the existing needs of South Maui and anticipated future growth of the area. The Property presents a convenient location for future commercial and light industrial development.” See Piilani Exhibit 2 at 4; Testimony of Martin Luna, TR1 at 157:24-158:12.

22. In the Petition, the Original Petitioner further represented to the Commission that:

In general, the proposed project will provide new employment opportunities for Maui residents. Moreover, currently there is a shortage of commercial and light industrial space for businesses servicing the Kihei-Makena region. Given the growth anticipated for the Kihei region, businesses will increasingly prefer to locate in Kihei rather than in Maui’s urban core. . . . The proposed project within the Property provides commercial and light industrial business and employment opportunities to better serve the existing population.

See Piilani Exhibit 2 at 6-7; Testimony of Martin Luna, TR1 at 158:19-159:7.

23. In commenting on the objectives and policies of the Hawaii State Plan, the Petition noted that “[t]he project is proposed as a commercial and light industrial park which would provide needed business services in the region. The project will provide additional job choice in an area with predominantly resort and service-oriented employment activities. In the long term, Kihei will serve as a commercial and industrial hub for the development along the southwestern coast from Maalaea to Makena.” See Piilani Exhibit 2 at 10; Testimony of Martin Luna, TR1 at 159:11-25.

24. Nowhere in the Petition did the Original Petitioner ever represent that it would limit the amount of retail or commercial uses which it or its successors would develop on the Subject Property. See Piilani Exhibit 2; Testimony of Martin Luna, TR1 at 160:15-22.

25. The Petition included a map which was submitted along with the Petition containing a conceptual development plan of approximately 123 lots. See Testimony of Martin Luna, TR1 at 161:5-12, Piilani Exhibit 1.

26. The map which was submitted along with the Petition was labeled “Conceptual Development Plan; Kaonoulou Industrial Park” (the “Conceptual Plan”). See Piilani Exhibit 1.

27. The map was labeled as a “conceptual” development plan because the Original Petitioner was not a developer, and this map was prepared by consultants to depict one possible manner of developing the property, but because it was not certain what would be developed, it was called a “conceptual development plan.” See Testimony of Martin Luna, TR1 at 161:13-22.

28. A conceptual development plan is inherently subject to change over time, and does not necessarily reflect precisely what would be developed on the property depicted on the conceptual plan. See Testimony of Charles Jencks, Transcript of Proceedings on November 2, 2012 (hereinafter “TR2”) at 163:9–164:9; Testimony of William Spence, Transcript of Proceeding on November 15, 2012 (hereinafter “TR3”) at 183:2–185:1.

29. Several factors may cause or require a project to change over time. See Testimony of William Spence, TR3 at 183:3–185:1.

30. Conditions imposed by other governmental agencies in the entitlement process can substantially change a project. Testimony of William Spence, TR3 at 184:2-8.

31. In addition, changes in the market, applicable zoning, and land use or environmental laws may occur before the necessary entitlements can be obtained, which may take up to ten years, resulting in changes in what is economically feasible or possible to develop. See Testimony of William Spence, TR3 at 183:3–185:1.

32. The market and circumstances have changed significantly during the entitlement process for the Subject Property. See Testimony of Charles Jencks, TR3 at 64:7–67:7; Testimony of Tom Holliday, TR2 at 118:18–119:19. See ¶¶ 230 through 240 for additional proposed findings relating to changes in the market.

33. If the Commission wanted to ensure that the developer was bound to develop based on a particular conceptual plan, the Commission could have imposed specific conditions to that effect. See Testimony of William Spence, TR3 at 185:2-25; Testimony of Rodney Funakoshi, Transcript of Proceedings on November 16, 2012 (hereinafter “TR4”) at 83:19–84:7.

34. The Order entered by the Commission did not contain any condition that the Subject Property be developed in conformity with the Conceptual Plan. See Intervenor’s Exhibit I-2. Testimony of William Spence, TR3 at 185:24-25; Testimony of Rodney Funakoshi, TR4 at 84:4-10.

35. The Original Petitioner submitted as Exhibit 5 to the Petition a Market Feasibility Study and Economic Report (“Market Feasibility Study”), which was prepared by Lloyd Sodeani. See Piilani Exhibit 3.

36. The Market Feasibility Study contained representations to the Commission regarding what the Original Petitioner or its successor would, could or might develop on the Subject Property. See Testimony of Martin Luna, TR1 at 162:22-25; Testimony of Rodney Funakoshi, TR4 at 58:12-14.

37. Under “Permitted Uses,” the Market Feasibility Study states that the permitted uses are those uses permitted in the County’s M1 (light industrial) zoning district. See Piilani Exhibit 3 at 3.

38. The Market Feasibility Study attached as an exhibit a list of all the permitted uses in the M1 zoning district, including all those uses permitted in the County of Maui's B1, B2, B3, and M1 zoning districts. See Piilani Exhibit 3 at 9-14.

39. Through the Market Feasibility Study, the Original Petitioner specifically represented to the Commission that all of the uses permitted in the County of Maui's B1, B2, B3, and M1 zoning districts were anticipated on the Subject Property. See Piilani Exhibit 3 at 3 and at 9-14; Testimony of Martin Luna, TR1 at 164:1-9.

40. The Market Feasibility Study includes a section entitled "Projected Absorption," in which the author, Mr. Sodetani, discusses the types of tenants one might expect for the Subject Property once developed. See Piilani Exhibit 3 at 5-7; Testimony of Martin Luna, TR1 at 165:11-22.

41. One category of occupant which is discussed in the Market Feasibility Study is as follows:

The third category of occupants are generally long term lessees. These occupants require the best possible visibility advantage from highways and streets. The expectation is that other investors will purchase the land, develop improvements for multitenant use and have a long term lease with occupants. Examples of these occupants are: Discount retailers, auto part sales, furniture and appliance sales; sportswear and equipment; wholesale food distributors; fast food outlets; etc.

See Piilani Exhibit 3 at 6. Testimony of Martin Luna, TR1 at 166:1-15.

42. Discount retailers, furniture and appliance stores, and sportswear and equipment stores are all retail uses. See Testimony of Rodney Funakoshi, TR4 at 55:14 – 56:7.

43. The reference to investors purchasing the land and making improvements for multitenant use in the Market Feasibility Study indicates the likely consolidation of some of the

conceptually proposed 123 lots in the conceptual plan. See Testimony of Rodney Funakoshi, TR4 at 56:21 – 57:6.

44. In the Market Feasibility Study, the Original Petitioner represented to the Commission that:

The success of marketing these parcels will depend on the success of obtaining popular and internationally recognized outlets to occupy the larger parcels, the timeliness of the installation of the infrastructure (i.e. highways, schools, etc.) and the prosperity of the tourist related businesses in South Maui. Many businesses located in Wailuku and Kahului will create branches or satellite locations in Kaonoulu Industrial Park for convenience and cost effectiveness.

See Piilani Exhibit 3 at 7 (emphasis added). Testimony of Martin Luna, TR1 at 166:16-167:7.

45. The reference to popular and internationally recognized outlets in the Market Feasibility Study appears to refer to retail use. See Testimony of Rodney Funakoshi, TR4 at 57:7-23.

46. Although the Market Feasibility Study discussed certain percentages of types of uses and lot sizes, it specifically represented to the Commission that this was only one of a number of possible conceptual alternatives which would need to be reassessed based on changing market conditions:

These estimates of lot sizes, quantity and values are provided for planning purposes only. It is only one conceptual alternative which meets current market conditions with considerations for economic, social and physical variables. These estimates require reassessments from time to time, and may need to be adjusted accordingly. Any major variable (i.e. location of a new highway) may require an alteration of the subdivisions configuration, however, the current requirement for additional light industrial land in South Maui should not change.

See Piilani Exhibit 3 at 8 (emphasis added). Testimony of Martin Luna, TR1 at 168:4-23.

47. The Original Petitioner submitted as Exhibit 6 to the Petition a Project Assessment Report. See Piilani Exhibit 4; Testimony of Martin Luna, TR1 at 169:10-25.

48. The Project Assessment Report contained representations to the Commission as to what the Original Petitioner and/or its successors planned to develop on the Subject Property. Testimony of Martin Luna, TR1 at 170:1-4.

49. In the Project Assessment Report, the Original Petitioner represented to the Commission that the proposed project could contain commercial retail establishments. See Piilani Exhibit 4 at 31-32; Testimony of Martin Luna, TR1 at 170:5-18.

50. Specifically, the Project Assessment Report states that “[t]he proposed project is anticipated to contain commercial and light industrial uses. These could include commercial retail and service establishments as well as warehousing and distribution types of activities.” See Piilani Exhibit 4 at 31-32 (emphasis added).

51. The Project Assessment Report also represented to the Commission that the success of marketing the parcels on the Subject Property “will be dependent on the success of obtaining popular and internationally recognized outlets to occupy the larger parcels. . . .” See Piilani Exhibit 4 at 33; Testimony of Martin Luna, TR1 at 170:24-171:5.

52. Nowhere in the Project Assessment Report did the Original Petitioner ever represent to the Commission that the Original Petitioner or its successors would limit the amount of retail to be developed on the Property. See Piilani Exhibit 4; Testimony of Martin Luna, TR1 at 171:15-19.

53. The Commission held a hearing to consider the Petition on November 1, 1994. See Piilani Exhibit 6.

54. Martin Luna represented the Original Petitioner at the hearing on November 1, 1994, and attended that hearing. See Piilani Exhibit 6; Testimony of Martin Luna, TR1 at 172:11-21.

55. Charles Jencks also attended and observed the hearing on November 1, 1994, and testified as a witness in his capacity as Deputy Director of Public Works for the County of Maui. See Testimony of Charles Jencks, TR2 at 164:14 – 165:14.

56. At the hearing, the Original Petitioner and various consultants of the Original Petitioner appeared, testified about the proposed project, and answered questions posed by counsel for the original Petitioner, the Office of State Planning, the Maui Planning Department, and by members of the Commission. See Piilani Exhibit 6.

57. Lloyd Sodetani, the author of the Market Feasibility Study, testified at the hearing on November 1, 1994. See Piilani Exhibit 6 at 77-108.

58. Mr. Sodetani was specifically asked about the fact that the proposed project included some commercial activity, and that the permitted uses in the anticipated M-1 zoning included all permitted uses in the B1, B2, and B3 zoning districts. See Piilani Exhibit 6 at 105:23 – 106:13; Testimony of Martin Luna, TR1 at 172:22-173:1.

59. At the hearing on November 1, 1994, Commissioner Kajioka specifically asked Mr. Sodetani if it was a possibility that the proposed project could have a preponderance of retail and service type establishments, and Mr. Sodetani represented to the Commission that this was a possibility. See Piilani Exhibit 6 at 106:5-13; Testimony of Martin Luna, TR1 at 173:17-22, 175:4-18.

60. In response to Commissioner Kajioka's questions regarding the possibility of a preponderance of retail at the proposed project, Mr. Sodetani represented to the Commission that

the market would likely dictate what types of tenants would eventually occupy the proposed project. See Piilani Exhibit 6 at 12-24; Testimony of Martin Luna at 175:11-176:1.

61. In response to Commissioner Kajioka's questions regarding the possibility of a preponderance of retail at the proposed project, Mr. Sodetani at no point represented to the Commission that the landowner would refrain from developing retail on the Subject Property. See Piilani Exhibit 6 at 12-24; Testimony of Martin Luna at 175:21-176:5.

62. At the hearing on November 1, 1994, Commissioner Kajioka also asked Mr. Sodetani about the fact that apartment houses were a permitted use under the anticipated M-1 zoning for the Subject Property, and Mr. Sodetani represented to the Commission that apartment buildings were a permitted use. See Piilani Exhibit 6 at 105:23 – 106:4; Testimony of Martin Luna, TR1 at 175:7-10 and at 182:15-18.

63. Based on Commissioner Kajioka's question to Mr. Sodetani and the permitted uses in the list attached to the Market Study, the Commission was aware that apartment buildings were permitted uses on the Subject Property. Testimony of Martin Luna, TR1 at 182:19-25.

64. At the hearing on November 1, 1994, Brian Miskae, Planning Director for the County of Maui, testified regarding the County of Maui's position on the Petition. See Piilani Exhibit 6 at 137 – 140.

65. Mr. Miskae, in his testimony, acknowledged that the proposed project would include some retail component, and testified that the County intended to ask the Maui County Council to include as a zoning condition a limitation on the percentage of the proposed project that could be used for retail purposes. See Piilani Exhibit 6 at 139:2-22; Testimony of Martin Luna, TR1 at 177:24 – 178:12; Testimony of Charles Jencks, TR2 at 168:15 – 169:2.

66. At no time at the hearing on the Petition before the Commission did the Original Petitioner ever make any representation that it would exclude or limit the amount of retail in the proposed project, or prohibit uses otherwise allowed by the County of Maui in the B1, B2, or B3 zoning districts. See Testimony of Martin Luna, TR1 at 179:10-15; Testimony of Charles Jencks, TR2 at 169:10-19.

67. Based on the questions and responses at the hearing on November 1, 1994, the Commission recognized, and the Original Petitioner represented, that under the proposed M-1 zoning, a predominance or even a totality of retail at the proposed project was a possibility. See Piilani Exhibit 6 at 105-108; Testimony of Martin Luna, TR1 at 178:24-179:6; Testimony of Charles Jencks, TR2 at 169:3-5.

68. Despite knowing and specifically inquiring about the possibility of a predominance of retail use at the proposed project, the Commission did not impose any condition limiting the amount of retail which could be developed on the Subject Property. See Intervenors' Exhibit I-2; Testimony of Martin Luna, TR1 at 179:7-9; Testimony of Charles Jencks, TR2 at 169:6-9.

69. In other district boundary amendments, the Commission has imposed specific conditions limiting the proportion of retail which the petitioner could develop on the property. See Maui County Exhibit 1 at 10; Maui County Exhibit 3; Testimony of William Spence, TR3 at 179:11 – 180:11.

70. In Docket No. A03-739, the Commission included an express condition regarding the amount of non-retail light industrial use at the property which was the subject of that District Boundary Amendment. See Maui County Exhibit 1 at 10; Maui County Exhibit 3; Testimony of William Spence, TR3 at 179:11 – 180:11.

71. In Docket No. A03-739, where the Commission included a condition limiting the amount of commercial use, the Commission included therein an express definition of the phrase “light industrial” as it is used in that condition. See Maui County Exhibit 3; Testimony of William Spence, TR3 at 180:3-11.

72. The Original Petitioner submitted a Traffic Impact Assessment Report (“TIAR”) to the Commission as Appendix B to the Project Assessment Report, which was Exhibit 6 to the Petition. See State Office of Planning Exhibit (hereinafter “OP Exhibit”) 6.

73. The TIAR submitted to the Commission computed traffic impacts based on the proposed project as an industrial park. See OP Exhibit 6 at 1; November 1, 1994 Transcript at 62:4-19.

74. The TIAR computed the estimated vehicle trips at peak A.M. and P.M. hours for the proposed project based on an industrial park use, and estimated about 700 vehicle trips at both the peak A.M. and P.M. hours.

75. The Commission was aware of the fact that, although the TIAR was based on the proposed project as an industrial park, there was the possibility that a significant proportion or even a preponderance of use could be retail, and that this would have an impact on traffic which would be different than reflected in the TIAR, as evidenced by the comments of Commissioner Kajioka at the November 1, 1994 hearing on the Petition. See Piilani Exhibit 6 at 108:1-11.

76. Knowing Commissioner Kajioka’s concerns about traffic due to the possibility of retail uses, the Original Petitioner offered to recall the author of the TIAR, Julian Ng, to respond to the Commission’s questions, but the Commission declined to reexamine Mr. Ng. See November 1, 1994 Transcript at 121: 8-11.

77. On February 10, 1995, the Commission entered its Findings of Fact, Conclusions of Law, Decision and Order herein (hereinafter "the Order").

78. The Order contains 104 Findings of Fact, and includes 20 Conditions. See Intervenor's Exhibit I-2.

Condition 1
Zoning and Community Plan

79. Condition 1 of the Order provides that "The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the County of Maui." See Intervenor's Exhibit 2 at 26.

80. In 1998, the Original Petitioner applied to the County of Maui for a change in zoning from Agricultural to M-1 Light Industrial. See Piilani Exhibit 7 at 10; Intervenor's Exhibit I-12 at 10.

81. Charles Jencks was the Director of Public Works for the County of Maui at the time the change in zoning application was submitted, and was involved in reviewing and transmitting comments on the application. See Testimony of Charles Jencks, TR2 at 169:25 – 170:21.

82. In the course of processing the change in zoning application, the Planning Department of the County of Maui recommended to the Maui Planning Commission that the change in zoning should include a limitation on the relative amounts of commercial and retail uses allowed on the Subject Property, and gave three examples of other light industrial projects where a similar limitation on the amount of commercial use was proposed: Lahaina Business Park Light Industrial Subdivision, Kahului Industrial Park Expansion Project (Maui Marketplace), and Rainbow Ranch – Napili Trade Center. See Maui County Exhibit 1 at 9;

Piilani Exhibit 7 at 10-11; Testimony of William Spence, TR3 at 176:23 – 177:3; Testimony of Charles Jencks, TR2 at 171:1–17 and at 172:5-18.

83. Conditions limiting the amount of commercial use were imposed by the County of Maui against the Kahului Industrial Park Expansion Project (Maui Marketplace) and Rainbow Ranch – Napili Trade Center projects. See Piilani Exhibit 7 at 10-11.

84. The Maui Planning Commission rejected the Maui Planning Department’s recommendation of a specific limitation on the percentage of commercial use on the Subject Property, and instead recommended to the Maui County Council that discretionary language be included as a condition to the change in zoning that the applicant “use its best efforts in attracting light industrial uses” See Maui County Exhibit 1 at 9-10; Piilani Exhibit 8 at 3.

85. The Maui County Council considered the Maui Planning Commission’s recommendations, as well as the proposed condition by the Maui County Planning Department limiting the amount of retail/commercial use at the Subject Property, but the Maui County Council ultimately chose to grant the change in zoning request without imposing any conditions limiting the use of the Subject Property. See Maui County Exhibit 1 at 9-10; Piilani Exhibit 9; Testimony of William Spence, TR3 at 176:23–177:3 and 179:3-7; Testimony of Charles Jencks, TR2 at 172:19 – 173:3.

86. The Subject Property was rezoned to M-1 Light Industrial in 1999 without any limitation on uses. See Piilani Exhibit 9; Testimony of Charles Jencks, TR3 at 10:7-10.

87. The processing of the Application for Change in Zoning involved public hearings held by the Maui County Planning Commission, a committee of the Maui County Council, and two readings before the Maui County Council once it is passed out of committee. See Testimony of William Spence, TR3 at 177:4 – 178:17.

88. At each of the hearings before the Maui County Planning Commission and a committee of the Maui County Council, and the two readings before the Maui County Council, the public was given notice and an opportunity to participate. See Testimony of William Spence, TR3 at 177:4 – 178:17.

89. The public had at least four different opportunities to comment on the Maui County Planning Department’s recommendation that the amount of commercial and retail use at the project be restricted at the Subject Property. See Testimony of William Spence, TR3 at 178:18 -179:2.

90. The Maui County Zoning Code is a Euclidean zoning code, one aspect of which is that uses are “stacked” or “tiered” into progressively more intense land use zonings. Uses thought to be less intense or intrusive are permitted in more intense zoning categories because they are thought to be compatible. See Maui County Exhibit 1 at 5; Testimony of William Spence, TR3 at 186:9-12, 20-22.

91. Under the Maui County Zoning Code, the M-1 light industrial zoning district allows, as of right, all of the commercial uses contained in the Maui County business districts, B-1, B-2 and B-3. See Maui County Exhibit 1 at 5; Testimony of William Spence, TR3 at 186:5 – 187:6.

92. The M-1 light industrial zoning district specifically allows apartment buildings. See Maui County Exhibit 1 at 5; Testimony of William Spence, TR3 at 187:7-10; Testimony of Michael Foley, TR4 at 113:24 – 114:5.

93. The County’s M-1 light industrial zoning district ordinance was recently amended; in part the amended ordinance makes clear that apartment houses are an allowed use I

the M-1 zoning district. See Maui County Exhibit 7; Testimony of William Spence, TR3 at 187:11-20 and at 188:6-19.

94. Even before the adoption of recent amendments clarifying that apartment uses are expressly allowed in the M-1 light industrial zoning district, “apartment houses” were listed as permitted uses in the M-1 light industrial zoning district, and the Maui Planning Department interpreted the Maui Zoning Code to allow apartment houses in such district. See Testimony of William Spence, TR3 at 188:20 – 189:12.

95. At the present time, the vast majority of Maui’s major commercial centers (including malls) are located on both light and heavy industrial zoning lands, including:

- a. Queen Ka’ahumanu Center (Kahului’s and the island’s largest mall)
- b. Maui Mall (Kahului)
- c. Maui Marketplace (Kahului)
- d. Wailuku Town Center
- e. Lahaina Cannery
- f. Lahaina Gateway
- g. Haiku Cannery
- h. Haiku Marketplace
- i. Pauwela Cannery

See Maui County Exhibit 1 at 6; Written Testimony of William Spence at 6; Testimony of William Spence, TR3 at 181:18 – 182:3; Testimony of Charles Jencks, TR3 at 59:25 – 61:8.

96. There are also a considerable number of apartment buildings on land currently zoned for light industrial uses:

- a. Iao Parkside (Wailuku) 480 individually owned, affordable units.

- b. Ali'i Koa Apartments (Wailuku) 20 rental units
- c. Approximately 92 other units along Lower Main in Wailuku located next to or above commercial and light industrial uses
- d. Kahului Town Terrace – 72 low-income rental units
- e. Opukea - (Lahaina) 114 predominantly affordable units

See Maui County Exhibit 1 at 7; Written Testimony of William Spence at 7; Testimony of William Spence, TR3 at 182:4-21; Testimony of Charles Jencks, TR3 at 58:23 – 59:24.

97. There is nothing unusual about shopping malls or apartment houses being located on light industrial land. See Written Testimony of William Spence at 7.

98. During the update of the Kihei-Makena Community Plan process, the designation for the Subject Property was changed to Light Industrial. See Intervenors' Exhibit I-9; Testimony of William Spence, TR3 at 190:15-21.

99. The current version of the Kihei-Makena Community Plan was adopted in 1998, after the Order herein was entered. See Intervenors' Exhibit I-9 at 2 (numbered p. 3).

100. It is the position of the Director of the Maui County Planning Department that the Piilani Promenade project and the affordable housing use proposed by Honua'ula for the Honua'ula Parcel are consistent with the Kihei-Makena Community Plan. See Testimony of William Spence, TR3 at 191:25–193:16 and TR4 at 18-25.

101. One reason for the Maui County Planning Director's belief that Piilani Promenade and the Affordable Housing Project are consistent with the Kihei-Makena Community Plan is that in rezoning the Subject Property to the M-1 Light Industrial zoning district, the Maui County Council was required to consider whether, and by virtue of its action, did in fact determine that

the M-1 Light Industrial zoning district is consistent with the community plan designation for the Subject Property. See Testimony of William Spence, TR3 at 192:6-24.

102. The Planning Department of the County of Maui interprets the Kihei-Makena Community Plan designation of Light Industrial as allowing all uses allowed within the M-1 light industrial zoning district, including retail and apartment uses, because the zoning code is the implementing mechanism for the community plan. See Testimony of William Spence at 190:25 – 191:24 and at 193:17-21.

Condition 15
Piilani Promenade and the Affordable Housing Project

103. Condition 15 of the Order provides as follows:

Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

See Intervenors' Exhibit I-2 at 30.

104. After obtaining the change in the zoning of the Subject Property to M-1 light industrial, the Original Petitioner applied for and obtained from the County of Maui preliminary approval for a 4-lot large lot subdivision. See Testimony of Charles Jencks, TR3 at 10:16-22.

105. In 2005, the Subject Property was sold by the Original Petitioner to Maui Industrial Partners, LLC. See Testimony of Charles Jencks, TR3 at 10:14-16.

106. After Maui Industrial Partners, LLC obtained the Subject Property, Charles Jencks was asked by Maui Industrial Partners, LLC to hire various consultants such as a civil engineer, a traffic consultant and engineer and other consultants and to work with various agencies such as the County of Maui, and the State Department of Transportation, as well as other agencies, to seek to obtain final subdivision approval. See Testimony of Charles Jencks, TR3 at 10:23 – 11:13.

107. During the subdivision approval process, the name of the project evolved from Kaonoulu Industrial Park to Kaonoulu Marketplace, to more accurately reflect what was needed in the marketplace at the time. See Piilani Exhibits 11 & 19; Testimony of Charles Jencks, TR3 at 15:1-25; Testimony of Rodney Funakoshi, TR4 at 64:10-22.

108. On August 14, 2009, approval of the Kaonoulu Ranch (Large Lot) Subdivision No. 2 and the Kaonoulu Ranch-Water Tank Subdivision were obtained, which is the subdivision for the Subject Property. See Piilani Exhibits 17 and 18; Testimony of Charles Jencks, TR3 at 21:19–22:6 and at 30:19–31:7.

109. In order to obtain the final approval of the subdivision of the Subject Property, the property owner, who at the time was Maui Industrial Partners, LLC, posted thirteen (13) separate bonds for infrastructure improvement, totaling \$22,058,826.00. See Piilani Exhibit 18; Testimony of Charles Jencks, TR3 at 22:7 – 23:6.

110. On August 20, 2009, Maui Industrial Partners, LLC sold the Honua'ula Parcel to Honua'ula, who is the current owner of the Honua'ula Parcel. See Intervenors' Exhibit I-31; Testimony of Charles Jencks, TR3 at 31:8-16.

111. On September 10, 2010, Maui Industrial Partners, LLC sold the Piilani Parcels to PPS and PPN, who are the current owners of the Piilani Parcels. See Intervenors' Exhibits I-32 and I-33; Testimony of Charles Jencks, TR3 at 31:17-23.

112. Eclipse Development Company, LLC is the entity which is developing the Piilani Parcels owned by PPS and PPN. See Testimony of Charles Jencks, TR2 at 160:14-23.

113. Honua'ula is a completely separate entity from Piilani, and does not share any common ownership, members, shareholders, control, or other connections with Piilani. See Testimony of Charles Jencks, TR2 at 161:16-19.

114. Charles Jencks is currently serving as the owner's representative for Honua'ula and, separately, also as the owner's representative for Piilani. See Testimony of Charles Jencks, TR2 at 160:9-13 and at 161:2-15 and at 20-22.

115. Mr. Jencks has extensive experience in land use planning, both in the private and public sector, both on the mainland and in Hawaii. See Testimony of Charles Jencks, TR2 at 151:17 – 160:1.

116. When the Piilani Parcels and the Honua'ula Parcels were sold by Maui Industrial Partners, LLC, the Commission was informed of the transfers by letters from Honua'ula and Eclipse Development. See Testimony of Charles Jencks, TR3 at 32:2-11.

117. When the Piilani Parcels were transferred from Maui Industrial Partners, LLC to PPS and PPN, Piilani deposited cash in the amount of \$22,058,826.00 (the "Bond Amount") with the County of Maui to replace the 13 subdivision bonds that had been posted by Maui Industrial Partners, LLC. See Testimony of Charles Jencks, TR3 at 23:20 – 24:7.

118. The Bond Amount represents the cost of onsite and offsite infrastructure improvements required in connection with the development of the Subject Property. See Testimony of Charles Jencks, TR3 at 24:8-14.

119. The Bond Amount includes \$2,299,046 for East Kaonoulu Street Improvements, to be used for roadway improvement to East Kaonoulu Street, which is the first segment of the planned future Kihei Upcountry Maui Highway. See Piilani Exhibit 18; Testimony of Charles Jencks, TR3 at 24:15 – 25:4.

120. In addition to spending the \$2,299,046 to construct the first segment of the future Kihei Upcountry Highway, Piilani is also dedicating three roadway lots to the State of Hawaii, one for the Kihei Upcountry Highway Corridor, and two fronting Piilani Highway for

improvements to the intersection at Piilani Highway and East Kaonoulu Street (the future Kihei Upcountry Highway). See Testimony of Charles Jencks, TR3 at 25:8-22.

121. The Kihei Upcountry Highway is a State highway improvement project; a final Environmental Impact Statement prepared by the State Department of Transportation for the Kihei Upcountry Highway has been completed. See Testimony of Charles Jencks, TR3 at 26:2-18.

122. The Piilani Promenade project includes the construction of the first increment of the Kihei Upcountry Highway. See Testimony of Charles Jencks, TR3 at 26:2-18.

123. The development of the Piilani Promenade project, and the prospect of Piilani constructing the beginning segment of the Kihei Upcountry Highway and dedicating land for the roadway have caused the State of Hawaii to move forward on the construction of the rest of the anticipated highway. See Testimony of Charles Jencks, TR3 at 29:19 – 27:2.

124. The Bond Amount includes \$1,411,106.00 for Piilani Highway widening and improvements, including acceleration and deceleration lanes, signalization of the intersection, and other intersection improvements. See Piilani Exhibit 18; Testimony of Charles Jencks, TR3 at 27:3-11.

125. The Bond Amount includes \$4,802,784.00 for construction of a 1 million-gallon domestic water tank, as required by the County of Maui Department of Water Supply, to be placed on an acre of land located at an elevation above and outside of the Piilani Parcels. The tank will be connected to the Central Maui Water System, dedicated to the County of Maui, and will serve North Kihei. See Piilani Exhibit 18; Testimony of Charles Jencks, TR3 at 27:15 – 28:5.

126. It is anticipated that the Piilani Promenade Project will use less than 20 percent of the 1-million gallons of water capacity of the tank, and that the remainder of the water would be available for North Kihei, to address, *inter alia*, fire flow and pressure control issues in North Kihei, as well as possibly supply the anticipated new high school in the future. See Testimony of Charles Jencks, TR3 at 28:15-25.

127. In addition to the roadway improvements, and the construction of the 1 million-gallon water tank and other infrastructure improvements that will benefit the Kihei-Makena community, Piilani also plans to dedicate a one and-a-half acre parcel from the land comprising the Piilani Parcels for a Maui Electric Company (“MECO”) substation. See Testimony of Charles Jencks, TR3 at 30:10-15; Piilani Exhibit 31.

128. The construction plans for the installation of the infrastructure were originally approved in 2009 by Director of the Department of Public Works and the Director of the Department of Water Supply of the County of Maui, and by the Chief of the Environmental Management Division and the Chief of the Highways Division of the Department of Transportation of the State of Hawaii, and re-approved in 2010 and 2011 by the Director of the Department of Public Works of the County of Maui. See Piilani Exhibit 19; Testimony of Charles Jencks, TR3 at 32:14-25.

129. Piilani’s current plan is to develop the Piilani Parcels as a shopping complex known as “Piilani Promenade.” See Exhibits 31 and 33; Testimony of Charles Jencks, TR3 at 33:8-10.

130. The northwest parcel of the Subject Property is owned by PPN, and is anticipated to be the first phase of the Piilani Promenade project to be developed, currently referred to as the Maui Outlet Center. See Exhibits 31 and 33; Testimony of Charles Jencks, TR3 at 34:2-8.

131. The Maui Outlet Center on the north side of the Piilani Promenade project is anticipated to attract retail tenants, as driven by the market, including retailers who are currently not located in Hawaii, those currently on Oahu but not on Maui, or those on Maui looking for larger, more visible and up-to-date space on Maui. See Testimony of Charles Jencks, TR3 at 34:16 – 35:2.

132. The MECO substation is a light industrial use under current zoning. See Maui County Exhibit 7, Ordinance 3975, at 19.24.020, page 5; Testimony of Charles Jencks, TR3 at 30:16-18 and at 34:13-15; Testimony of Rodney Funakoshi, TR4 at 48:1-7.

133. Piilani has not yet determined all of the types of tenants which may occupy the south side of the Piilani Promenade project, owned by PPS. See Testimony of Charles Jencks, TR3 at 35:3-9.

134. Piilani's current plan includes a commitment to devote 125,000 gross square feet of leasable area on the south side of the project for a home improvement type of use which would include both a wholesale and retail function, and would supply materials to contractors, builders, and the general public. See Testimony of Charles Jencks, TR3 at 36:7 – 38:12 and at 68:3-24.

135. Together with associated parking, a home improvement type use comprising 125,000 gross square feet of leasable area would comprise approximately 11.5 acres of the Subject Property. See Testimony of Charles Jencks, TR3 at 36:13-18 and at 68:3-24.

136. Lumber yards, plumbing supply stores, electrical supply stores, and similar types of suppliers are considered M-1 light industrial uses, even if the public is allowed to purchase goods from those businesses. See Testimony of William Spence, TR3 at 199:2-22; Maui County Exhibit 7; Testimony of Tom Holliday, TR2 at 126:19 – 128-21.

137. The anticipated home improvement type of use Piilani has committed to, which would likely include supplying lumber, plumbing supplies, electrical supplies, and other similar material, qualifies as both a light industrial use, as well as a retail use, since it includes aspects of both. See Testimony of William Spence, TR3 at 199:23–200:17 and at 203:21–204:6.

138. The Director of Planning of the County of Maui considers a home improvement type of use which would supply materials to contractors, builders, and the general public to be a light industrial use. See Testimony of Charles Jencks, TR3 at 36:3-7; Testimony of William Spence, TR3 at 199:23–200:17 and at 203:21–204:6.

139. The plans for Piilani Promenade include a bike pathway or bikeway along Piilani Highway. See Piilani Exhibit 30; Testimony of Charles Jencks, TR3 at 38:23 – 39:6.

140. During the planning stages for Piilani Promenade, the owners of the Subject Property attempted to design a bike pathway which would be off of Piilani Highway within the buffer zone between the project and the Piilani Highway, but the State Department of Transportation rejected that proposal. See Testimony of Charles Jencks, TR3 at 39:7–40:22.

141. The development plans for Piilani Promenade include roadway improvements along East Kaonoulu Street (the future Kihei Upcountry Highway) with medians and shoulders on each side of the roadway, including a separated bicycle pathway and a pedestrian pathway, separated by a landscaped median. See Piilani Exhibits 30 and 32; Testimony of Charles Jencks, TR3 at 40:24–41:6 and at 42:10–43:21.

142. The plans for Piilani Promenade include pedestrian paths throughout the project, with dedicated sidewalks through the project for pedestrians. See Piilani Exhibits 30 and 33; Testimony of Charles Jencks, TR3 at 38:12-19, 41:10–42:9 and at 46:4-16.

143. The plans for Piilani Promenade include a buffer transition required by the landscape plans approved by the County of Maui for the project, as shown in Piilani Exhibit 33. See Piilani Exhibit 33; Testimony of Charles Jencks, TR3 at 44:3-19.

144. The northwestern portion of the Subject Property is intended to be a multi-level, open air retail center, which includes gathering spaces for the public, a water feature, and non-uniform roof lines, as illustrated on Piilani Exhibit 33. See Piilani Exhibit 33; Testimony of Charles Jencks, TR3 at 45:2 – 46:3 and at 46:18 – 47:9.

145. Piilani currently has valid grading permits, with bonds posted as to those permits, and is prepared to begin construction on the infrastructure for Piilani Promenade immediately. See Piilani Exhibit 21 and 22; Testimony of Charles Jencks, TR3 at 47:18 – 48:11.

146. Construction of the infrastructure, including the 1 million-gallon water tank, the future Kihei Upcountry Highway corridor, improvements to Piilani Highway, and other required improvements would take approximately 14 months to construct. See Testimony of Charles Jencks, TR3 at 48:12-21.

147. Following installation of the \$22 million worth of infrastructure, an additional \$185 million in estimated construction costs would be incurred to complete the construction of the retail outlet center. Absent further delays, the retail outlet center could open in a little over two years from commencement of construction. See Testimony of Charles Jencks, TR3 at 48:24 – 49:23.

148. The timeframe for the construction of the improvements on the South side of Piilani Promenade would depend on the market, but if there were a market, could commence fairly soon. See Testimony of Charles Jencks, TR3 at 49:20 – 50:1.

149. The Honua'ula Parcel comprises approximately 13 acres of the Subject Property and is located on the northeast corner of the Subject Property. See Testimony of Charles Jencks, TR3 at 33:11-13. See OP Exhibit 10 at 2; Testimony of Ken Tatsuguchi, TR2 at 11:7-14.

150. In addition to owning the Honua'ula Parcel, Honua'ula also owns and is developing the Wailea 670 project. See Testimony of Charles Jencks, TR2 at 159:10-15; Honua'ula Exhibit 5.

151. Condition 5 of County of Maui Ordinance No. 3554 (2008) relating to Wailea 670 (the "Wailea 670 Project District Ordinance") requires Honua'ula to construct 250 workforce housing units on the Subject Property (the "Affordable Housing Project"). See Honua'ula Exhibit 5 at 23; Testimony of Charles Jencks, TR3 at 31:10-16.

152. Although Honua'ula must complete the Affordable Housing Project before any market-rate units in Wailea 670 are completed, it is uncertain when Honua'ula will be able to construct the Affordable Housing Project. See Honua'ula Exhibit 5 at 23; Testimony of Charles Jencks, TR3 at 56:10-18, 58:10-16.

153. William Spence, the Director of the Planning Department of the County of Maui has reviewed the Order and the Piilani Promenade development plan and the Wailea 670 Project District Ordinance requiring Honua'ula to build the Affordable Housing Project, and has concluded that there has been no breach of the conditions of the Order. See Maui County Exhibit 1; Piilani Exhibits 23 and 26; Testimony of William Spence, TR3 at 172:12-15 and at 198:1-20.

154. Specifically, Mr. Spence has concluded that there has been no violation of Condition 15 of the Order, based on a review of the representations made to the Commission before the Order was issued, and the fact that the Order contains no condition limiting the

amount of retail or commercial use at the Subject Property, or precluding apartment use at the Subject Property. See Maui County Exhibit 1 at 2-5; Piilani Exhibits 23 and 26; Testimony of William Spence, TR3 at 172:18 – 176:22.

155. The Director of Planning of the County of Maui has the duty under Haw. Rev. Stat. Ch. 205 to enforce orders issued by the Commission with respect to property located in the County of Maui. See Testimony of William Spence, TR3 at 201:1-5.

156. It is important for the Maui County Planning Department to have explicit, clearly ascertainable conditions in a Land Use Commission order for enforcement purposes, if the Planning Department is to determine whether there has been a breach of a condition for enforcement purposes. See Maui County Exhibit 1 at 8; Testimony of William Spence, TR3 at 180:12-20, 197:6-15 and at 202:6-17.

157. The State Office of Planning agrees that the Order allows the flexibility to include some unspecified number of commercial lots. See OP Exhibit 11 at 7; Testimony of Rodney Funakoshi, TR4 at 66:20–67:2.

158. While the State Office of Planning takes the position that the Piilani Promenade project violates the Order due to the predominant amount of retail in the project, the State Office of Planning does not take a position regarding, and cannot determine, the amount of light industrial which would need to be included in Piilani Promenade in order for the project to comply with the Order. See Testimony of Rodney Funakoshi, TR4 at 48:8-20 and at 66:20 – 67:6.

159. The State Office of Planning is unable to identify any additional specific conditions, other than conditions already contained in the Order, which should be included in the

Order to address the Piilani Promenade project. See Testimony of Rodney Funakoshi, TR4 at 68:15-25.

160. The State Office of Planning admits that if the Commission had imposed a specific condition in the Order specifying the amount of commercial uses allowed on the Subject Property, the Order would be clearer to the landowner, the County and the Commission.

161. Even if the Subject Property were subdivided into 123 lots, an owner of 2 or more lots could consolidate such lots into a single, larger lot. See Testimony of Rodney Funakoshi, TR4 at 60:8-25; Testimony of Charles Jencks, TR3 at 61:25 - 62:23.

Condition 5
Traffic

162. Condition 5 of the Order provides as follows:

Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall provide traffic signals at the intersection of Piilani Highway and Kaonoulu Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner shall also install a fence and appropriate screening, i.e. landscaping, etc., along the highway right-of-way in coordination with the State Department of Transportation. Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

See Intervenors' Exhibit I-2 at 27.

163. Phillip Rowell, of Phillip Rowell and Associates, prepared the 2012 TIAR. See Piilani Exhibits 24 & 46 at 2; Testimony of Phillip Rowell, TR2 at 63:4-18.

164. The 2012 TIAR outlines the planned roadway improvements proposed to be constructed by Piilani, as well as their impacts on traffic. See Piilani Exhibit 24.

165. The 2012 TIAR and the current design for East Kaonoulu Street through the Subject Property have been submitted to the State Department of Transportation (“SDOT”) for review and comment. See Piilani Exhibit 46 at 5; OP Exhibit 10 at 1.

166. The traffic impact of the Affordable Housing Project was addressed and considered in the Traffic Impact Analysis Report for Piilani Promenade dated January 30, 2012, Revised May 7, 2012, prepared by Phillip Rowell, of Phillip Rowell and Associates, for the Eclipse Development Group (the “2012 TIAR”). See Testimony of Phillip Rowell, TR2 at 77:21 – 81:3; Piilani Exhibit 24 at 69-73.

167. The 2012 TIAR considers the traffic impact not only of Piilani Promenade, but also of other future projects in the area. See Testimony of Phillip Rowell, TR2 at 80:4-14.

168. One of the future projects considered by the 2012 TIAR is Wailea 670 including the Affordable Housing Project. See Testimony of Phillip Rowell, TR2 at 80:4-22.

169. Exhibit 31 to the 2012 TIAR shows traffic going in and out of drive C, which serves the Honua’ula Parcel, the anticipated location of the Affordable Housing Project. See Piilani Exhibit 24 at 71; Testimony of Phillip Rowell at 79:13-18.

170. The 2012 TIAR has not yet been accepted by the SDOT, but ongoing discussions with SDOT and Piilani’s traffic consultant, Phillip Rowell, are continuing regarding the remaining transportation concerns of SDOT. See Piilani Exhibit 46 at 5; OP Exhibit 10 at 1; Testimony of Phillip Rowell, TR2 at 77:3-11 & 103:9-17; Testimony of Ken Tatsuguchi, TR2 at 10:17-22 and at 15:15–16:6.

171. SDOT’s determination of measures to mitigate traffic impacts are not typically done as part of boundary amendment proceedings before the Commission, but are usually

completed later through other entitlement phases. See Testimony of Ken Tatsuguchi, TR2 at 18:1-16; Testimony of Rodney Funakoshi, TR4 at 50:7-16.

172. No additional approvals regarding traffic are needed from the County of Maui. See Piilani Exhibit 46 at 5.

173. The Subject Property consists of 88 acres. See Testimony of Charles Jencks, TR3 at 33:8-11.

174. Roadway lots to be dedicated to the State of Hawaii for roadway improvements along Piilani Highway and East Kaonoulu Street (the future Kihei Upcountry Highway) comprise approximately eight (8) acres of the Subject Property. See Piilani Exhibit 31; Testimony of Charles Jencks, TR3 at 33:14-18.

175. The 2012 TIAR and the development plans for Piilani Promenade include signalization at the intersection of Piilani Highway and East Kaonoulu Street. See Testimony of Philip Rowell, TR2 at 65:11-13; Piilani Exhibits 24 at 3; Piilani Exhibits 28 and 29.

176. The roadway improvements planned by Piilani include adding two double left-turn lanes into East Kaonoulu Street, as well as widening West Kaonoulu Street to include acceleration and deceleration lanes. See Piilani Exhibits 28 & 29; Testimony of Phillip Rowell, TR2 at 70:5-13.

177. In order to accommodate traffic traveling southbound on Piilani Highway and turning left onto East Kaonoulu Street, which will be the future Kihei Upcountry Highway, Piilani has designed two left turn lanes with storage for 55 vehicles, which is anticipated to be enough left turn storage to accommodate both the Piilani Promenade project, and anticipated traffic to the Kihei Upcountry Highway. See Piilani Exhibit 29; Testimony of Phillip Rowell, TR2 at 75:8-22 and at 76:14-21.

178. In order to accommodate traffic traveling northbound on Piilani Highway and turning into and out of East Kaonoulu Street, Piilani has designed acceleration and deceleration lanes. See Piilani Exhibit 29, Testimony of Phillip Rowell, TR2 at 76:1-8.

179. Further traffic mitigation along Piilani Highway is provided by the placement of the ingress and egress points on East Kaonoulu Street to Piilani Promenade. See Piilani Exhibit 29, Testimony of Phillip Rowell, TR2 at 76:9-13.

180. The primary access from Piilani Highway to Piilani Promenade would be the major, fully-signalized intersection of Kaonoulu Street and Piilani Highway. See Piilani Exhibits 28 and 29; Testimony of Phillip Rowell, TR2 at 70:5-13.

181. In addition to the signalized intersection at Kaonoulu Street and Piilani Highway, the proposed plans include proposed “future access points” both north and south of the intersection into Piilani Promenade, which will only be developed if warranted by future traffic studies once the project is 65 percent occupied. See Piilani Exhibit 24 at 60; Testimony of Phillip Rowell, TR2 at 70:15–71:2 and at 104:17–105:18.

182. Access to the north and south portions of Piilani Promenade from East Kaonoulu Street is provided through four different driveways, labeled A through D, which were designed and revised based on consultations with SDOT. See Piilani Exhibits 28 and 29; Testimony of Phillip Rowell, TR2 at 72:22 – 73:25.

183. The traffic impact analysis report submitted by the Original Petitioner (the “Original TIAR”) and analyzed that project’s traffic impacts using trip generation formulas published by the Institute of Transportation Engineers (ITE) for vehicle trips based entirely on light industrial use. See OP Exhibit 6 & OP Exhibit 10 at 2; Testimony of Ken Tatsuguchi, TR2 at 11:7-14; Testimony of Rodney Funakoshi, TR4 at 59:2-7.

184. The Original TIAR computed a trip generation analysis of approximately 700 total vehicle trips for both the AM and PM peak hours. See OP Exhibit 6 and OP Exhibit 10 at 2; Testimony of Ken Tatsuguchi, TR2 at 11:14-17.

185. The 2012 TIAR, using the ITE formulas for shopping centers, showed similar total vehicle trips (approx. 700) as the Original TIAR for the AM hours, but approximately 2,900 total vehicle trips for the PM peak hours. OP Exhibit 7 and OP Exhibit 10 at 2; Testimony of Ken Tatsuguchi, TR2 at 11:18-24.

186. The Commission was aware in 1994 when it issued the Order that the traffic that would be generated by retail use of the Subject Property would be different and greater than that created by light industrial uses, since the Commission specifically pointed this out at the hearing on the Petition. See Piilani Exhibit 6 at 108:1-11; Testimony of Rodney Funakoshi, TR4 at 59:8-24.

187. Condition 5 of the Order contains the following language regarding a “frontage road:”

Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

Intervenors’ Exhibit I-2 at 27.

188. At the hearing on November 1, 1994, during the testimony of Julian Ng, Commissioner Kajioka asked whether it would be prudent, in order to improve the long term viability of Piilani Highway, to include a condition which would “encourage or force a feeder road within the petitioner’s properties, adjoining properties, similar to what is being proposed down in Kona.” See November 1, 1994 Transcript at 70:3-9.

189. Following the November 1, 1994 hearing on the Petition, the Original Petitioner submitted, and the other parties responded to, proposed Findings of Fact and Conclusions of Law. Therein, the Office of State Planning proposed that as part of Condition 5 of the Decision and Order, the following language be included:

Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

See Office of State Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order, filed with the Commission on November 29, 1994.

190. The Commission met to consider the Proposed Findings of Fact, Conclusions of Law and Decision and Order on February 2, 1995. See Transcript of Hearing on February 7, 1995, filed with the Commission on February 7, 1995, at 13-42.

191. At the hearing on February 2, 1994, Martin Luna, as attorney for the Original Petitioner, made the following statement regarding the Office of State Planning's proposal as to Condition 5:

We had one issue to discuss with the Office of State Planning which was transportation. In discussing this issue with the Office of State Planning, which is the issue of a parallel road to be recommended by the Office of State Planning as a condition on the project, we had thought that it would be purely a frontage type road. Our understanding is that it could not necessarily be just a frontage road but it could be other roads connecting to areas mauka of the project.

And we also understand that the condition would be with the approval of the Department of Transportation, Highways, and the County of Maui, so that if the type of roadway that's being proposed to limit the excess on Honoapiilani Highway is approved by both of these agencies, then we would be – certainly be required to put that type of road in. If it's not approved by the agencies, then the reverse would apply which would be that we would be able to plan the subdivision in the matter that we had presented to the Commission.

Our first preference is not to have the condition there just to keep things clear and not have any misunderstanding, but if the Commission feels that the condition is

necessary, we would certainly expect that the condition would have the understanding that I had just stated.

See Transcript of Hearing on February 7, 1995, filed with the Commission on February 7, 1995, at 15:19 – 16:17.

192. Neither the County of Maui nor the Office of State Planning disagreed with the Original Petitioner’s interpretation and understanding of Condition 5 as stated at that hearing. See Transcript of Hearing on February 7, 1995, filed with the Commission on February 7, 1995, at 16:23 – 17:12.

193. After the Original Petitioner made the foregoing statement of understanding regarding the proposed Condition 5, the Commission adopted the language of Condition 5 as proposed by the Office of State Planning. See Transcript of Hearing on February 7, 1995, filed with the Commission on February 7, 1995, at 39:4 and at 41:14 – 42:14.

194. The language regarding a frontage road in Condition 5 of the Order was not provided by or ever coordinated with the SDOT. See OP Exhibit 10, testimony of State Department of Transportation at 3; Testimony of Ken Tatsuguchi, TR2 at 12:15-20.

195. The term “frontage road” has a specific meaning for the SDOT, which meaning is different from the general use of the term. See Testimony of Ken Tatsuguchi, TR2 at 12:21-24.

196. A frontage road is not simply a local road parallel to a regional road. See Testimony of Ken Tatsuguchi, TR2 at 12:22-23.

197. A frontage road instead more correctly refers to an adjacent road parallel to a regional road. See Testimony of Ken Tatsuguchi, TR2 at 12:23-24.

198. The term “frontage road” is sometimes used to describe the parallel road makai of Queen Ka’ahumanu Highway in Kona, but that roadway is not considered a frontage road to

SDOT because it is not an adjacent parallel road. See OP Exhibit 10 at 3; Testimony of Ken Tatsuguchi, TR2 at 12:21–13:4.

199. Since the date of the Order, Piilani Highway has been widened from two to four lanes, which significantly increases the north to south carrying capacity, and mitigates traffic impacts. See OP Exhibit 10 at 3; Testimony of Ken Tatsuguchi, TR2 at 13:5-7 and at 16:23–17:11.

200. A frontage road adjacent to Piilani Highway would result in the Piilani Highway and Kaonoulu Street intersection being in close proximity to the frontage road, which could cause traffic operation and safety issues. See OP Exhibit 10 at 3-4; Testimony of Ken Tatsuguchi, TR2 at 13:12-16; Testimony of Phillip Rowell, TR2 at 81:10-15.

201. A frontage road would create a new intersection with East Kaonoulu Street less than a desirable distance east of Piilani Highway, making coordination of signals difficult and likely leading to traffic backups onto Piilani Highway, interfering with traffic flow. See Piilani Exhibit 46 at 4; Testimony of Phillip Rowell, TR2 at 66:8-15.

202. It is the SDOT's opinion that a frontage road parallel to Piilani Highway at the Kihei Upcountry Highway intersection would not be feasible, and that appropriate local accesses from Piilani Promenade to the State Highway System are currently being addressed in the TIAR without frontage roads. See OP Exhibit 10 at 4; Testimony of Ken Tatsuguchi, TR2 at 14:1-17 and at 15:3-6 and at 32:13-15. See also Testimony of Phillip Rowell, TR2 at 81:16-22.

203. A frontage road would be inconsistent with the plans, projections and comments received by Piilani relevant to the 2012 TIAR, and comments to its predecessors from SDOT over the past ten years. See Piilani Exhibit 46 at 3; Testimony of Phillip Rowell, TR2 at 65:17-23 and at 69:5-9.

204. Under the current conditions, there would be nowhere for a frontage road to go either north or south of the Subject Property, due to the developments currently on the neighboring properties, and the fact that Piilani does not have ownership or control over those properties. See Piilani Exhibit 46 at 3-4; Testimony of Phillip Rowell, TR2 at 65:24 -66:7.

205. A frontage road would also create an additional barrier to pedestrian access which would separate or divide the community, a concern which has been raised in the past at public meetings with the community. See Piilani Exhibit 46 at 4; Testimony of Phillip Rowell, TR2 at 66:16 – 67:2.

206. The proposed Piilani Promenade project addresses connector roads by providing a circulation plan that provides one access point on Piilani Highway, and one major intersection and three minor intersections on East Kaonoulu Street, providing access to Piilani Promenade. See Piilani Exhibit 46 at 4; Testimony of Phillip Rowell, TR2 at 68:22 – 69:4.

207. Intervenors identified a witness (Victoria A. Huffman, P.E.) to testify about traffic issues and offered written testimony from said witness, but later withdrew such written testimony from evidence, and Ms. Huffman did not testify. See TR4 at 91:4-8.

Condition 17
Annual Reports

208. Condition 17 of the Order requires that the Petitioner provide annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department. See Intervenors' Exhibit I-2 at 31.

209. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Annual Reports of Kaonoulu Ranch, the Original Petitioner, for 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004 were filed with and are contained in the Commission's files.

210. On May 12, 2005, the Subject Property was purchased by Maui Industrial Partners, LLC from the Original Petitioner. See Piilani Exhibit 10; Testimony of Charles Jencks, TR2 at 161:2-4.

211. On or about September 16, 2005, the Tenth Annual Report for 2005 was submitted by Maui Industrial Partners, as Successor Petitioner to Kaonoulu Ranch, to the Commission, in which the sale to Maui Industrial Partners, LLC was reported to the Commission. See Piilani Exhibit 10; Testimony of Charles Jencks, TR3 at 50:21 – 51:23.

212. While Mr. Jencks recalls and believes that annual reports for 2006 through 2009 were prepared and submitted to the Commission by Maui Industrial Partners, LLC, he has not been able to locate copies of those four annual reports. See Testimony of Charles Jencks, TR3 at 52:5-24.

213. Maui Industrial Partners, LLC, was the owner of the Subject Property from 2005 to 2010, which includes the period covered by the missing annual reports. See Testimony of Charles Jencks, TR3 at 52:25–53:12.

214. On April 12, 2010, the Fourteenth Annual Report of Maui Industrial Partners, LLC was filed by Maui Industrial Partners, LLC for 2010. See Intervenors' Exhibit I-4.

215. On May 23, 2011, a Fifteenth Annual Report was filed by Honua'ula Partners, LLC, which disclosed that Honua'ula Partners, LLC had purchased the Honua'ula Parcel from Maui Industrial Partners. See Intervenors' Exhibit I-5.

216. An undated Fifteen Annual Report of Kaonoulu Ranch Light Industrial for 2011 was also filed by Piilani, which disclosed that the Piilani Parcels were owned by Piilani. See records of the Land Use Commission.

217. The Sixteenth Annual Report of Piilani Promenade South, LLC and Piilani Promenade North, LLC, Successor Petitioner to Kaonoulu Ranch was filed with the Commission on October 10, 2012. See Piilani Exhibit 34.

218. The Sixteenth Annual Report of Honua'ula Partners, LLC, Successor Petitioner to Kaonoulu Ranch was filed with the Commission on October 10, 2012. See Honua'ula Exhibit 12.

School Impact Fees

219. The Order contains no condition regarding educational impact fees. See Intervenors' Exhibit I-2; Testimony of Heidi Meeker, TR2 at 45:16 – 46:7.

220. At the time of the Petition, the DOE did not have the authority, on its own, to impose educational impact fees upon developments. See Testimony of Heidi Meeker, TR2 at 47:2-8.

221. Instead, at the time of the Petition, the DOE had to rely upon the Commission or the Counties to impose conditions requiring developments to pay fair-share contributions related to educational impacts. See Testimony of Heidi Meeker, TR2 at 47:9-21.

222. If the State Department of Education (“DOE”) had known that a residential project was planned for the Subject Property at the time of the Petition, the DOE would have asked the Commission to impose a condition in the Order requiring payment of fair-share contributions relating to educational impacts. See Testimony of Heidi Meeker, TR2 at 48:15 – 49:1.

223. The specific fair-share condition which the DOE would have asked for and had generally been imposed by the Commission in the past was a general condition requiring that

“the developer must satisfy the Department of Education.” See Testimony of Heidi Meeker, TR2 at 50:7 – 51:13.

224. In 2007 the Hawaii State Legislature passed Act 245 which allowed the DOE to collect impact fees in areas that are designated as a School Impact District by the Board of Education (BOE). See Written Testimony of Heidi Meeker; see also Testimony of Heidi Meeker, TR2 at 46:19-25.

225. In November 2010, the BOE adopted the Central Maui and West Maui School Impact Districts. See Written Testimony of Heidi Meeker.

226. In January 2011, the DOE began collecting school impact fees for all residential projects within the West Maui and Central Maui School Impact Fee Districts. Written Testimony of Heidi Meeker.

227. The Subject Property is located within the West Maui and Central Maui School Impact Fee Districts. See Written Testimony of Heidi Meeker.

228. The DOE expects to collect impact fee from the Affordable Housing Project, as Act 245 applies to the Subject Property and requires that all residential developers or builders seeking a building permit within a school impact fee district pay the DOE school impact fees. See Written Testimony of Heidi Meeker; see also Testimony of Heidi Meeker, TR2 at 57:3-12.

229. Under Act 245, the amount of the school impact fee applicable to the Affordable Housing Project is \$2,451 per unit. See Testimony of Heidi Meeker, TR2 at 51:24 – 52:22, 55:23 – 56:1.

Evolution of the Industrial/Light-Industrial Sector

230. The Industrial/Light-Industrial real estate sector has evolved over the last two decades. See Written Testimony of Tom Holliday at 4; Testimony of Tom Holliday, TR2 at 118:18 – 119:19.

231. Historically, industrial lands on Maui were subdivided into smaller lots, and often improved with owner-occupied, single business/tenant buildings, with lesser emphasis on exposure, appearance of improvements and patron functionality, reflecting the agrarian-based economy and small-town environment of Maui at the time. See Written Testimony of Tom Holliday at 3-4; Testimony of Tom Holliday, TR2 at 118:18 – 119:19.

232. Presently Maui's economy is more service-based resulting in the emergence of "retail warehouses," an influx of mainland companies and franchises, adapting business models, trending consumer preferences and different economic realities. See Written Testimony of Tom Holliday at 4; Testimony of Tom Holliday, TR2 at 118:18 – 119:19.

233. In response, the industrial/light-industrial sector on Maui has evolved to encompass larger projects and structures, more multi-tenant buildings, greater ownership by investors, more emphasis on exposure and appearance, larger parking areas, ease of access and more efforts to improve the customer experience, and higher quality of building design and construction. See Written Testimony of Tom Holliday at 4; Testimony of Tom Holliday, TR2 at 118:18 – 119:19.

234. The commercial/industrial subdivision and building model of the past is not amendable to supporting prevailing business and consumer trends, and may be unsustainable under current market conditions. Written Testimony of Tom Holliday at 4.

235. Presently there is little construction activity in the light industrial sector occurring on Maui. See Testimony of Tom Holliday, TR2 at 125:24 – 126:3.

236. There was negative absorption of industrial space in the third quarter of 2012 on Maui. See Testimony of Tom Holliday, TR2 at 121:10-22.

237. The industrial real estate market on Maui is still recovering from a recent contraction cycle, and presently there are hundreds of thousands of square feet of vacant, available industrial space on Maui. See Testimony of Tom Holliday, TR2 at 126:4-10.

238. The Original Petitioner's conceptual plan of 123 separate lots is no longer feasible under current market conditions and not likely to be successful in the market for a period of years. See Testimony of Tom Holliday, TR2 at 120:11 – 122:9.

239. It would take a decade or more before meaningful jobs, economic activity, and tax revenues could be realized by the County of Maui and the State of Hawaii if the Original Petitioner's conceptual plan of 123 separate lots were implemented. See Testimony of Tom Holliday, TR2 at 121:23 – 122:2.

240. Conversely, there is a present demand for the Piilani Promenade project and it will create immediate construction jobs and within a couple of years long-term employment, economic activity, and tax revenues. See Testimony of Tom Holliday, TR2 at 122:3-9.

CONCLUSIONS OF LAW

1. The Order contains 20 separate Conditions, all of which are binding on Piilani and Honua'ula, as successors in interest to the Original Petitioner.

2. The issue before the Commission is whether Piilani and/or Honua'ula are in violation of Conditions 1, 5, 15, or 17 of the Order. None of the other Conditions are at issue herein.

3. Condition 1 of the Order only requires Petitioner to obtain a Change in Zoning and a Community Plan amendment, and does not require anything further.

4. The requirement of Condition 1 to obtain a Community Plan amendment was satisfied in 1998 when the Kihei-Makena Community Plan was updated to provide that the Subject Property is designated as "Light Industrial."

5. The Light Industrial designation was the community plan designation which the Original Petitioner represented it would seek.

6. The requirement of Condition 1 to obtain a Change in Zoning was satisfied by the Original Petitioner in 1999 when the Subject Property was rezoned by the County of Maui to M-1 Light Industrial.

7. Intervenor's argument that the Commission should find a violation of Condition 1 based on the allegation that Piilani Promenade and the Affordable Housing Project conflict with the Light Industrial designation for the Subject Property under the Kihei-Makena Community Plan or the M-1 zoning district, would require the Commission to exceed its jurisdiction and go beyond the scope of the Order to Show Cause.

8. Enforcement and interpretation of the Kihei-Makena Community Plan and the zoning code of the County of Maui is the obligation and duty of the County of Maui, and is beyond the jurisdiction of the Commission. See HRS § 205-5 & 205-12; Lanai Co., Inc. v. Land Use Comm'n, 105 Hawai'i 296, 318-19, 97 P.3d 372, 394-95 (2004); Kuleana Ku'ikahi, LLC v. State, Land Use Com'n, Slip Copy, 2012 WL 1510188, *3 -*4 (Hawai'i App. April 27, 2012).

9. There has been no violation of Condition 1 of the Order by Piilani or Honua'ula.

10. Condition 5 of the Order only requires a frontage road if such a road is approved by the SDOT and the County of Maui.

11. A frontage road is not feasible and in fact would create traffic operations and safety issues in connection with the development of Piilani Promenade and the Affordable Housing Project.
12. Appropriate local accesses from Piilani Promenade to the State Highway System are currently being addressed in the 2012 TIAR without frontage roads.
13. Piilani and Honua'ula are not in violation of Condition 5 of the Order.
14. The Original Petitioner's proposed plan for the Subject Property was merely conceptual.
15. The Original Petitioner represented to the Commission that the specific number of lots in the subdivision, and the tenant make up, would be dictated by the market.
16. The Original Petitioner represented that the permitted uses allowed on the Subject Property would be those allowed in Maui County's M-1 light industrial zoning district.
17. Permitted uses in Maui County's M-1 light-industrial zoning district specifically include all of the uses permitted in Maui County's B-1, B-2, and B-3 zoning districts, which encompasses all of the uses proposed by Piilani. See Maui County Code § 19.24.020.
18. Maui County's M-1 light-industrial zoning ordinance, both before and after the recent amendment contained in Ordinance No. 3975, specifically allows for apartment use. See Maui County Code § 19.24.020.
19. It was represented to the Commission that the project could contain retail and commercial tenants, including discount retailers, furniture and appliance sales, sportswear and equipment sales, and that the success of the project would depend upon finding popular and internationally recognized outlets to occupy the larger parcels.

20. Neither Condition 15, nor any other condition in the Order, requires any certain percentage of light industrial use, nor does it limit the uses that would be allowed to any subset of those permitted in the applicable M-1 Light Industrial zoning.

21. The Commission cannot enforce or find a violation of a condition that was not expressly adopted. Lanai Co., Inc. v. Land Use Comm'n, 105 Hawai'i 296, 314, 97 P.3d 372, 390 (2004).

22. The Commission has the responsibility of stating with "ascertainable certainty what is meant by the conditions it has imposed." Id.

23. Any interpretation of Condition 15 which limits the amount of retail or commercial allowed on the Subject Property would not be reasonably ascertainable by the landowner, or by the County of Maui for purposes of enforcement.

24. Piilani's proposed development of Piilani Promenade does not violate Condition 15 of the Order.

25. It was represented to the Commission that one of the permitted uses for the Subject Property would be for apartments.

26. Neither Condition 15, nor any other condition in the Order limits or precludes apartment use on the Subject Property.

27. Any interpretation of Condition 15 which restricted or precluded apartment use at the Subject Property would not be reasonably ascertainable by the landowner, or by the County of Maui for purposes of enforcement.

28. Use of the Honua'ula Parcel for the Affordable Housing Project would not violate Condition 15 of the Order.

29. In addition, whether Honua'ula will ultimately develop the Affordable Housing Project is subject to litigation and market driven factors, and as such, it would be premature to find that Honua'ula has violated the Order.

30. The only Annual Reports which are not either contained in the records and files of the Commission or submitted in evidence herein are the Annual Reports for 2006 through 2010, when the Subject Property was owned by Piilani's and Honua'ula's predecessor in interest, Maui Industrial Partners.

31. Evidence exists that annual reports have been submitted but may have been misplaced for the years 2006 – 2009.

32. To the extent that there has been a failure to file Annual Reports, that failure was not by the current owners Piilani or Honua'ula.

33. There is no violation of Condition 17 of the Order by Piilani.

34. There is no violation of Condition 17 by Honua'ula.

35. Although the Order contains no condition addressing school impact fees, the subsequent passage of Act 245 by the Legislature in 2007 subjects the Subject Property and the Affordable Housing Project to school impact fees imposed by the DOE. Accordingly, the fact that the DOE may not have anticipated a residential use for the Subject Property at the time of the Petition and Order is neither prejudicial to the interests of the DOE or the State Office of Planning, nor a violation under the Order.

36. The burden of proof on the Order to Show Cause is on Intervenors and/or the State Office of Planning to show a violation of the Order by a preponderance of evidence. See United States v. Nolen, 472 F.3d 362, 372 (5th Cir. Tex. 2006); United States v. Peele Co., 224 F.2d 667, 669 (2nd Cir. 1955); Riverview Packing Co. v. Reconstruction Finance Corp., 92 F.

Supp. 376, 380 (D.N.J. 1950); Morehouse v. Pacific Hardware & Steel Co., 177 F. 337 (9th Cir. 1910); Goldstein v. United States, 11 F.2d 593 (5th Cir. 1926); 60 C.J.S., Motions and orders, § 20).

37. The Intervenors and/or the State Office of Planning have failed to demonstrate, by a preponderance of evidence, that there has been a violation of the Order.

38. Even if the burden of proof was on Piilani, Piilani has demonstrated by a preponderance of evidence that there has been no violation of the Order.

39. Even if the burden of proof was on Honua'ula, Honua'ula has demonstrated by a preponderance of evidence that there has been no violation of the Order.

DECISION AND ORDER

Having found no violation of the Order, the Commission hereby rescinds and vacates the Order to Show Cause entered in this docket on September 10, 2012.

DOCKET NO. A94-706 – KAONOULU RANCH

Done at _____, Hawaii, this ____ day of _____, 2013, per motion on _____, 2013.

LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A-94-706
)
KAONOULU RANCH) CERTIFICATE OF SERVICE
)
To Amend the Agricultural Land Use District)
Boundary into the Urban Land Use District)
for approximately 88 acres at Kaonoulu,)
Makawao-Wailuku, Maui, Hawai'i)
_____)

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date, a true and correct copy of the foregoing document was duly served upon the following party via U.S. Mail and electronic mail, addressed as follows:

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Dated: Honolulu, Hawai'i, December 21, 2012.

A handwritten signature in black ink, appearing to read "Clifford J. Miller", written over a horizontal line.

CLIFFORD J. MILLER
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Attorneys for
Piilani Promenade South, LLC and
Piilani Promenade North, LLC