

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of

KA'ONO'ULU RANCH

To Amend The Agricultural Land Use
District Boundary Into The Urban
Land Use District For Approximately
88 Acres Of Land At Ka'ono'ulu,
Makawao-Wailuku, Maui, Hawai'i,
Tax Map Key: 3-9-01: 16, 169, And 170
Through 174

DOCKET NO. A94-706

ORDER GRANTING PI'ILANI
PROMENADE SOUTH, LLC, AND
PI'ILANI PROMENADE NORTH,
LLC'S, MOTION TO STAY PHASE II OF
THE ORDER TO SHOW CAUSE
PROCEEDING; AND CERTIFICATE OF
SERVICE

ORDER GRANTING PI'ILANI PROMENADE SOUTH, LLC, AND
PI'ILANI PROMENADE NORTH, LLC'S, MOTION TO STAY PHASE II
OF THE ORDER TO SHOW CAUSE PROCEEDING

AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

7/12/13
Date

BY



Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2013 JUL 12 A 10:48
LAND USE COMMISSION
STATE OF HAWAII

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BEFORE THE LAND USE COMMISSION
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LAND USE COMMISSION
STATE OF HAWAII
2013 JUL 12 A 10:50

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On April 8, 2013, Pi`ilani Promenade South, LLC, and Pi`ilani Promenade
North, LLC (collectively "Pi`ilani"), filed a Motion to Stay Phase II of the Order to Show
Cause Proceeding ("Motion to Stay"), pursuant to section 15-15-70, Hawai`i
Administrative Rules ("HAR").¹

¹ On February 7, 2013, the State of Hawai`i Land Use Commission ("Commission") found that both
Pi`ilani and Honua`ula Partners, LLC ("Honua`ula"), had violated Condition Numbers 5, 15, and 17 of
this Commission's Findings of Fact, Conclusions of Law, and Decision and Order filed February 10, 1995,
in the subject docket. Having found that there was a failure to perform according to the conditions
imposed or to the representations or commitments made during this first phase of the Order to Show

On April 11, 2013, the County of Maui Department of Planning (“DP”) filed a Statement of No Opposition to Pi`ilani Promenade South, LLC and Pi`ilani Promenade North, LLC’s Motion to Stay Phase II of the Order to Show Cause Proceeding.

On April 12, 2013, the State of Hawai`i Office of Planning (“OP”) filed a Response in Support of Pi`ilani Promenade South, LLC and Pi`ilani Promenade North, LLC’s Motion to Stay Phase II of the Order to Show Cause Proceeding.

On April 16, 2013, Honua`ula filed a Joinder in Pi`ilani Promenade South, LLC and Pi`ilani Promenade North, LLC’s Motion to Stay Phase II of the Order to Show Cause Proceeding.²

On April 16, 2013, Maui Tomorrow Foundation, Inc.; South Maui Citizens for Responsible Growth; and Daniel Kanahele (collectively “Intervenors”) filed a Memorandum in Opposition to Pi`ilani Promenade South, LLC’s Motion to Stay Phase II of the Order to Show Cause Proceeding (“Memorandum in Opposition”).³

Cause proceeding, the Commission would then determine in the next phase (i.e., Phase II) whether reversion of the Petition Area to its former land use classification or to a more appropriate classification is the appropriate remedy.

² Honua`ula represented that it will not commence any construction on its parcel while a stay of Phase II of the Order to Show Cause proceeding is pending, or unless and until Honua`ula provides this Commission with adequate notice to do otherwise and this Commission grants said request.

³ Intervenors inadvertently excluded Pi`ilani Promenade North, LLC, as a co-movant in the title of their Memorandum in Opposition.

On June 3, 2013, Intervenors filed a Supplemental Memorandum in Support of (1) Intervenors' Motion to Conclude Contested Case at the Earliest Practicable Time, Filed April 16, 2013, and (2) Intervenors' Memorandum in Opposition to Pi'ilani Promenade South, LLC's Motion to Stay Phase II of the Order to Show Cause Proceeding, Filed April 16, 2013.⁴

The Commission considered Pi'ilani's Motion to Stay at its meeting on June 27, 2013, at Kahului, Maui, Hawai'i. Jonathan H. Steiner, Esq., and Charles Jencks were present on behalf of Pi'ilani and Honua`ula. Jesse Souki and Rodney Funakoshi were present on behalf of OP. Michael J. Hopper, Esq., and William Spence appeared on behalf of the DP. Tom Pierce, Esq., and Irene Bowie were present on behalf of Intervenors.

At the meeting, Clayton Nishikawa and Joan Martin provided public testimony. Following the receipt of public testimony, the parties provided oral argument on Pi'ilani's Motion to Stay.

Thereafter, a motion was made and seconded to grant Pi'ilani's Motion to Stay, subject to the condition that both Pi'ilani and Honua`ula shall refrain from commencing any construction or development activities on their respective parcels

⁴ On June 12, 2013, Pi'ilani filed a Motion to Strike and Objection to Intervenors' Supplemental Memorandum in Support of (1) Intervenors' Motion to Conclude Contested Case at the Earliest Practicable Time, Filed April 16, 2013, and (2) Intervenors' Memorandum in Opposition to Pi'ilani Promenade South, LLC's Motion to Stay Phase II of the Order to Show Cause Proceedings, Filed April 16, 2013.

within the Petition Area during the stay of Phase II of the Order to Show Cause proceeding until such time that Pi`ilani files a Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order filed February 2, 1995 ("Motion for Order Amending the D&O"), to reflect proposed changes to development of its parcels and requesting, among other things, the bifurcation of this docket to cover said parcels not later than December 31, 2013.⁵ The commencement of any construction or development activities by Pi`ilani and/or Honua`ula on their respective parcels prior to the filing of a Motion for Order Amending the D&O by Pi`ilani, or prior to this Commission rendering a decision on such motion, or by Honua`ula at any time subsequent thereto, shall result in the immediate lifting of the stay relative to their parcels and the commencement of Phase II of the Order to Show Cause proceeding.

Following discussion by the commissioners, a vote was taken on this motion. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

ORDER

This Commission, having duly considered Pi`ilani's Motion to Stay and the oral and written arguments of the parties in the proceeding, and a motion having been made at a meeting on June 27, 2013, in Kahului, Maui, Hawai`i, and the motion

⁵ In its Motion to Stay which Honua`ula joined in, Pi`ilani represented that it will file the Motion for Order Amending the D&O to allow development of its proposed Pi`ilani Promenade project as depicted in its existing conceptual plan not later than December 31, 2013.

having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that Pi'ilani's Motion to Stay be GRANTED, subject to the condition that both Pi'ilani and Honua'ula shall refrain from commencing any construction or development activities on their respective parcels within the Petition Area during the stay of Phase II of the Order to Show Cause proceeding.

IT IS FURTHER ORDERED that this stay is subject to the condition that Pi'ilani file a Motion for Order Amending the D&O to reflect proposed changes to development of its parcels and requesting, among other things, the bifurcation of this docket to cover said parcels not later than December 31, 2013.

IT IS FURTHER ORDERED that the commencement of any construction or development activities by Pi'ilani and/or Honua'ula on their respective parcels prior to the filing of a Motion for Order Amending the D&O by Pi'ilani, or prior to this Commission rendering a decision on such motion, or by Honua'ula at any time subsequent thereto, shall result in the immediate lifting of the stay relative to their parcels and the commencement of Phase II of the Order to Show Cause proceeding.

ADOPTION OF ORDER

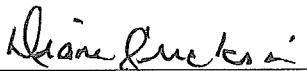
This ORDER shall take effect upon the date this ORDER is certified
by this Commission.

Done at Honolulu, Hawai'i, this 12th, day of July, 2013, per
motion on June 27, 2013.


LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By 

RONALD HELLER
Chairperson and Commissioner

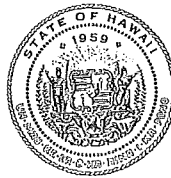
Filed and effective on:

7/12/13

Certified by:



DANIEL ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the ORDER GRANTING PI`ILANI PROMENADE SOUTH, LLC, AND PI`ILANI PROMENADE NORTH, LLC'S, MOTION TO STAY PHASE II OF THE ORDER TO SHOW CAUSE PROCEEDING was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

| | HAND DELIVERED | REGULAR MAIL | CERTIFIED MAIL |
|--|---------------------------|-------------------------|---------------------------|
| JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813 | X | | |
| BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813 | | X | |

| | HAND DELIVERED | REGULAR MAIL | CERTIFIED MAIL |
|--|----------------|--------------|----------------|
| TOM PIERCE PO Box 798 Makawao, Hawaii 96768 | | | X |
| William Spence Director, County of Maui Planning Department 250 S. High St Kalana Pakui Bldg Ste 200 Wailuku, HI 96793 | | X | |
| JANE LOVELL, Esq./MICHAEL HOPPER, Esq. Corporation Counsel 200 S. High St. Kalana O Maui Bldg 3rd Flr Wailuku, HI 96793 | | | X |
| McCorrison Miller Mukai MacKinnon LLP JONATHAN H. STEINER, Esq Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawai'i 96813 | | | X |
| McCorrison Miller Mukai MacKinnon LLP JOEL KAM, Esq Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawai'i 96813 | | | X |

Honolulu, Hawai'i, July 12, 2013.



DANIEL ORODENKER
Executive Officer