

ORIGINAL

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 Keys: 2-2-02: Por. Of 15 And
3-9-01: 16

DOCKET NO. A94-706

ORDER GRANTING MOVANTS'
MOTION FOR A HEARING, ISSUANCE
OF ORDER TO SHOW CAUSE, AND
OTHER RELIEF; CERTIFICATE OF
SERVICE

2012 SEP 10 A 11:23

LAND USE COMMISSION
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AND

CERTIFICATE OF SERVICE



ORIGINAL

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STATE OF HAWAII
2012 SEP 10 A 11:29

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On May 23, 2012, Maui Tomorrow Foundation, Inc.; South Maui Citizens
for Responsible Growth; and Daniel Kanahele (collectively "Movants") filed a Motion
for a Hearing, Issuance of Order to Show Cause, and Other Relief ("Motion for a
Hearing"); Memorandum in Support; Exhibits 1 through 4; Affidavit of Mark Hyde;
and Certificate of Service, pursuant to sections 15-15-70 and 15-15-93, Hawai'i
Administrative Rules ("HAR").

Movants request that the State of Hawai'i Land Use Commission
("Commission") (1) set a hearing; (2) issue an order shortening the time for the hearing

because of the imminent threat of development of the Petition Area;¹ (3) issue an order to show cause why the Petition Area should not revert to its former boundary classification because of the landowners' failure to use the Petition Area consistent with this Commission's Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") filed February 10, 1995; (4) conduct a contested case hearing on the factual and legal issues supporting the reversion of the Petition Area's classification; and (5) issue an order compelling the owners of the Petition Area to withdraw all previously filed annual reports that do not correctly represent the status of the Project and to file amended annual reports with this Commission, the State of Hawai'i Office of Planning ("OP"), and the County of Maui that accurately describe the status of the Petition Area and the Project.

Movants contend that the current landowners of the Petition Area, Pi'ilani Promenade South, LLC; Pi'ilani Promenade North, LLC (collectively "Pi'ilani"); and Honua'ula Partners, LLC ("Honua'ula"), are in violation of Condition Numbers 5 and 15 of this Commission's Decision and Order.

Condition Number 5 states as follows:

- 5) 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 Pi'ilani Highway and Ka'ono'ulu Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner

¹ The Petition Area is currently identified as Tax Map Key: 3-9-01: 16, 169, and 170 through 174.

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 Pi'ilani 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.

Condition Number 15 states as follows:

- 15) 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.

Movants point out that this Commission originally approved the reclassification of the Petition Area to the State Land Use Urban District for a light industrial development based on the representations of original Petitioner Ka'ono'ulu Ranch that the Petition Area would be developed into a light industrial park. Movants argue that instead of a light industrial park, the current owners plan to develop the Petition Area into a commercial development to include two major shopping centers as well as workforce housing. Movants contend that these uses will have different impacts than a light industrial development on the surrounding community, and that no assessment has been made to gauge the full extent of these impacts. Movants also maintain that this change in development plans was never brought to the attention of this Commission by way of the required annual reports and never presented to the public during the entitlement process. Movants further assert that the current plans do

not provide for the required frontage and connector roads as required in Condition Number 5.

On May 24, 2012, Movants filed a Supplemental Certificate of Service.

On June 13, 2012, Movants filed a Second Supplemental Certificate of Service and Exhibit 1.

On June 29, 2012, Movants filed a Supplement of New Facts Re: Motion for a Hearing, Declarations of Mark Hyde and Tom Pierce, Exhibits 5 through 9, and Certificate of Service.

On July 13, 2012, the County of Maui Department of Planning ("DP") filed a Response to the Motion for a Hearing, Request for Official Notice, Exhibits A through F, and Certificate of Service.

On July 13, 2012, OP filed a Response to the Motion for a Hearing, Exhibits 1 through 3, and Certificate of Service.

On July 16, 2012, Pi'ilani filed a Memorandum in Opposition to the Motion for a Hearing, Declaration of Jonathan H. Steiner, Exhibits A through N, and Certificate of Service.

On July 16, 2012, Honua`ula filed a Memorandum in Opposition to the Motion for a Hearing, Declaration of Jonathan H. Steiner, Exhibits 1 through 5, and Certificate of Service.

On July 27, 2012, Movants filed a Reply to Landowners' and County's Responses, Exhibits 10 through 15, Declaration of Tom Pierce, and Certificate of Service.

On July 27, 2012, OP filed a Supplemental Response to the Motion for a Hearing, Exhibits 4 and 5, and Certificate of Service.

On July 30, 2012, Pi`ilani filed a Memorandum in Response to OP's Response to the Motion for a Hearing and Certificate of Service.

On July 30, 2012, Honua`ula filed a Memorandum in Response to OP's Response to the Motion for a Hearing, Declaration of Jonathan H. Steiner, Exhibits 6 and 7, and Certificate of Service.

On August 20, 2012, Pi`ilani and Honua`ula filed their respective Errata to their Memoranda in Opposition to the Motion for a Hearing and Memoranda in Response to OP's Response to the Motion for a Hearing and Certificates of Service.

The Commission considered the Motion for a Hearing on August 24, 2012, at Lahaina, Maui, Hawai`i. Tom Pierce, Esq., and Irene Bowie appeared on behalf of the Movants. Jonathan H. Steiner, Esq., and Joel D. Kam, Esq., appeared on behalf of Pi`ilani and Honua`ula, respectively. Jane Lovell, Esq.; Michael Hopper, Esq.; and William Spence appeared on behalf of the DP. Bryan C. Yee, Esq., and Jesse Souki appeared on behalf of OP.

At the meeting, the Commission heard public testimony from Danny Collier, Perry Artates, Michael W. Foley, Renee Richardson, Patricia Stillwell, Mike Moran (on behalf of Carla M. Flood), Mark Hyde (on behalf of Victoria A. Huffman),

Mary Star Little, Tom Blackburn-Rodriguez,² Ann Cua, William Spence, Cynthia Groves, Ivan Lay, and Bill Kamai, and entered their written testimonies, if any, into the record.³ Following the receipt of public testimony, the Movants, Pi`ilani and Honua`ula, the DP, and OP provided oral argument in support of their respective positions on the Motion for a Hearing.

After discussion and deliberation by the Commissioners, a motion was made and seconded to (1) grant the Motion for a Hearing on the basis that there is reason to believe Pi`ilani and Honua`ula, as the successors-in-interest to original Petitioner Ka`ono`ulu Ranch for all purposes under the Decision and Order filed February 10, 1995, have failed to perform according to the conditions imposed or to the representations or commitments made by Ka`ono`ulu Ranch; and (2) set this matter for a show cause hearing as it pertains to the entire approximately 88-acre Petition Area. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion carried.

ORDER

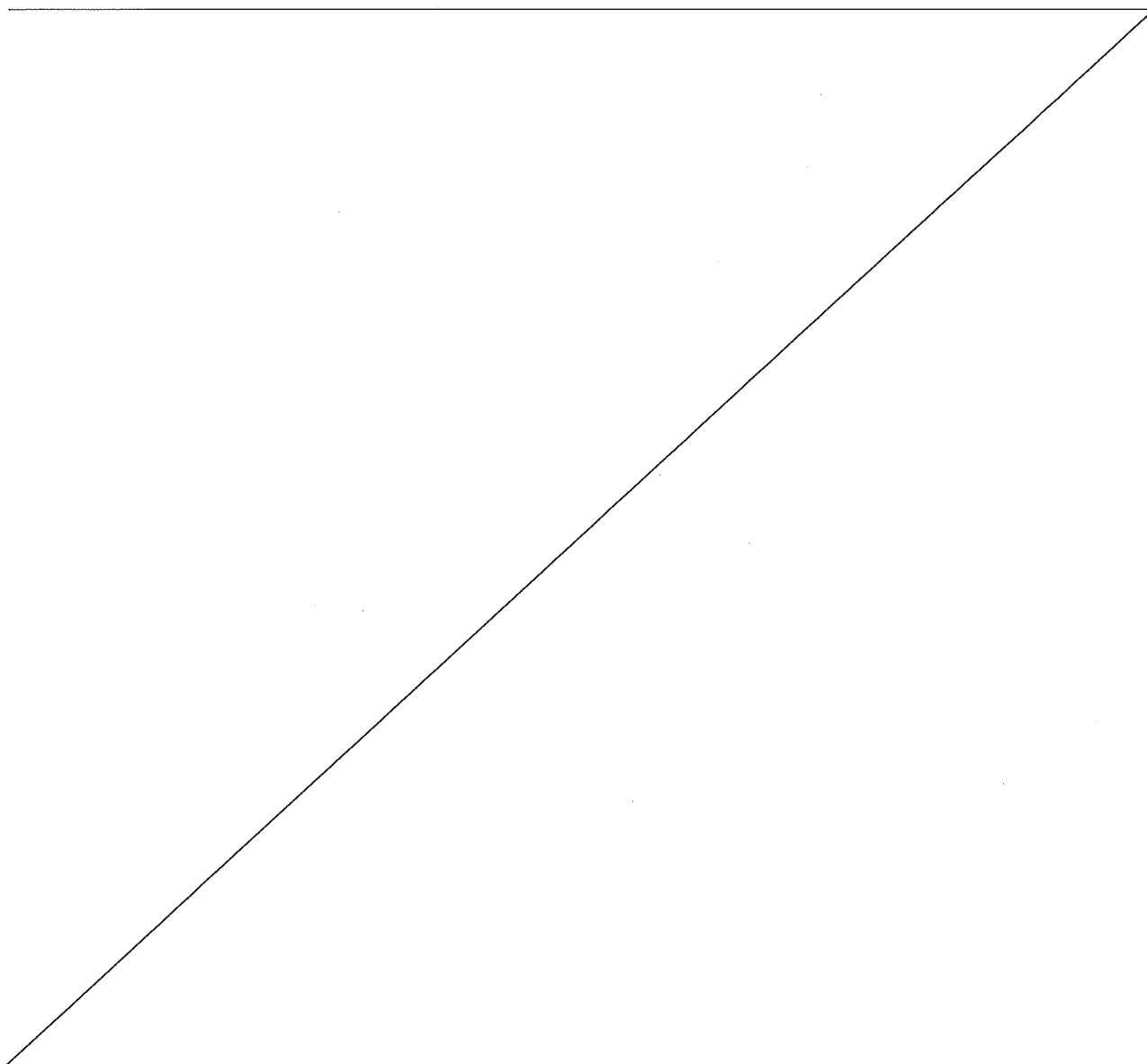
This Commission, having duly considered the Motion for a Hearing, the oral and written arguments presented by the Movants, Pi`ilani and Honua`ula, DP, and OP, and further representations made during the meeting, and a motion having been

² Mr. Blackburn-Rodriguez submitted identical cards from approximately 500 individuals expressing support for jobs and Pi`ilani Promenade.

³ The Commission also entered into the record correspondence from State Senator Rosalyn H. Baker; State Representative George R. Fontaine; County Councilmember Donald G. Couch, Jr.; Carla M. Flood; Warren Haynes; Patrick C. Linner; Victoria A. Huffman; Paula Baldwin; and Megan Hinman.

made and seconded at a meeting on August 24, 2012, in Lahaina, Maui, Hawai`i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and good cause appearing therefrom,

HEREBY ORDERS that the Movants' Motion for a Hearing be GRANTED, and that this matter be set for a show cause hearing as it pertains to the entire approximately 88-acre Petition Area.



By 
LANCE INOUYE
Commissioner

By _____ (excused)
JAYE NAPUA MAKUA
Commissioner

By 
ERNEST MATSUMURA
Commissioner


Filed and effective on:

9/10/12

By _____ (excused)
THOMAS CONTRADES
Commissioner

Certified by:


DANIEL ORODENKER
Executive Officer

By 
NICHOLAS W. TEVES JR.
Commissioner

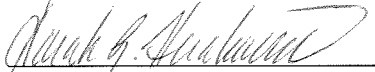
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 10th day of September, 2012. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu Hawai'i, this 10th day of September, 2012, per motion on August 24, 2012.

LAND USE COMMISSION

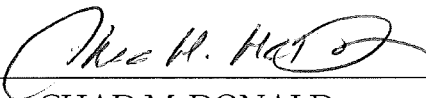
APPROVED AS TO FORM


Deputy Attorney General

STATE OF HAWAII

By (excused)
KYLE CHOCK
Chairperson and Commissioner

By 
RONALD HELLER
Vice- Chairperson and Commissioner

By 
CHAD McDONALD
Vice- Chairperson and Commissioner

By 
SHELDON BIGA
Commissioner



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CERTIFICATE OF SERVICE

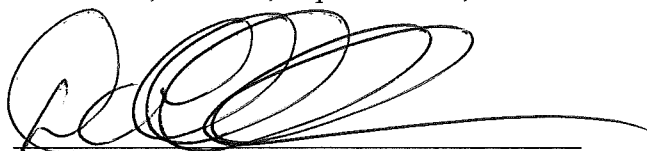
CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING MOVANTS' MOTION FOR A HEARING, ISSUANCE OF ORDER TO SHOW CAUSE, AND OTHER RELIEF 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		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
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
McCorriston Miller Mukai MacKinnon LLP JONATHAN H. STEINER, Esq Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawai'i 96813			X
McCorriston Miller Mukai MacKinnon LLP JOEL KAM, Esq Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawai'i 96813			X

Honolulu, Hawai'i, September 10, 2012.



DANIEL ORODENKER
Executive Officer