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Attorney for Maui Tomorrow Foundation, Inc.,  
South Maui Citizens for Responsible Growth  
and Daniel Kanahele

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

**In the Matter of the Petition of**

KAONOULU RANCH

To Amend the Agricultural Land Use  
District Boundary into the Urban  
Land Use District for  
approximately 88 acres at  
Kaonoulu, Makawao-Wailuku,  
Maui, Hawaii

DOCKET NO. A94-706

MOTION TO TAKE TESTIMONY OF CARLA  
M. FLOOD VIA TELEPHONE;  
MEMORANDUM IN SUPPORT; REQUEST  
FOR HEARING; DECLARATION OF CARLA  
M. FLOOD; CERTIFICATE OF SERVICE

**Filed by:** Maui Tomorrow Foundation, Inc.,  
South Maui Citizens for Responsible Growth  
and Daniel Kanahele

SHOW CAUSE HEARING DATE:  
November 1 & 2, 2012

**MOTION TO TAKE TESTIMONY OF CARLA M. FLOOD VIA TELEPHONE**

Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele (“Intervenors”), through their attorney Tom Pierce, Esq., hereby submit this Motion requesting the Land Use Commission (“Commission”) permit the taking of testimony of Carla M. Flood by telephone due to medical necessity. Intervenors hereby request a hearing of this Motion, pursuant to Hawaii Administrative Rules (“HAR”) §15-15-70(c), prior to the show cause hearing schedule for November 1 and 2, 2012.

This Motion is filed pursuant to HAR § 15-15-70, and Subchapters 5 and 7 of HAR 15-

15.

DATED: Makawao, Maui, Hawaii, October 19, 2012.

A handwritten signature in black ink, appearing to read "Tom Pierce", written in a cursive style.

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TOM PIERCE  
Attorney for Maui Tomorrow  
Foundation, Inc., South Maui Citizens  
for Responsible Growth, and Daniel Kanahale

**MEMORANDUM IN SUPPORT OF MOTION**

Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahale (“Intervenors”), through their attorney Tom Pierce, Esq., hereby submit this memorandum in support of the attached Motion and request for a hearing.

In general, administrative agencies have discretion in what oral or documentary evidence may be received, so long as “every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence”. HRS § 91-10(1) and HRS § 91-10(3). Moreover, the Land Use Commission, acting as the hearings officer, is not bound by the common law rules relating to the admission or rejection of evidence. Hawaii Administrative Rules (“HAR”) § 15-15-70.

In the present case, Intervenors desire to present the testimony of Carla M. Flood during their portion of the case and/or as a rebuttal witness. Ms. Flood is a percipient witness to negotiations in the 1990s between Kaonoulu Ranch and the Kihei Community Association regarding the Petitioner’s representations with respect to the 88 acres of land which is the subject of this action.

Unfortunately, Ms. Flood is not able to testify in person at the November 1 and 2, 2012 evidentiary hearing for medical reasons. *See* attached Declaration of Carla M. Flood. However, Ms. Flood is willing and able to testify by telephone, including responding to cross-examination by the other parties or by the Commission. *Id.* Therefore, Intervenors hereby request that Ms. Flood be permitted to testify by telephone. The opposing parties will not be harmed by the introduction of her testimony via telephone, as they will have the opportunity to conduct cross-examination that may be necessary and submit rebuttal evidence. To the extent Ms. Flood is required to respond to exhibits, these may be emailed to her in an efficient manner such that the hearing will not be delayed by the telephonic testimony.

DATED: Makawao, Maui, Hawaii, October 19, 2012.

A handwritten signature in black ink, appearing to read 'Tom Pierce', written in a cursive style.

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TOM PIERCE  
Attorney for Maui Tomorrow  
Foundation, Inc., South Maui Citizens  
for Responsible Growth, and Daniel Kanahela

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DECLARATION OF CARLA M. FLOOD

**Filed by:** Intervenors Maui Tomorrow  
Foundation, Inc., South Maui Citizens for  
Responsible Growth and Daniel Kanahale

SHOW CAUSE HEARING DATE:  
November 1 & 2, 2012

**DECLARATION OF CARLA M. FLOOD**

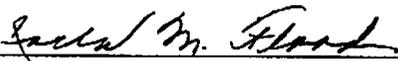
Carla M. Flood, states as follows:

1. I am 81 years of age, have knowledge of the matters set forth in this Declaration, and, if called upon to testify, I could and would competently testify thereto.
2. While I have good mental health and good mental recall, including with respect to the matters that I will be called to testify on in this matter, I currently have poor physical health such that I will be unable to attend the hearing scheduled for November 1 and 2, 2012.

3. I do have sufficient physical health to testify and be cross-examined by telephone,  
and I hereby request the opportunity to do so.

I declare under penalty of law that the foregoing is true and correct.

Dated: October 17, 2012

  
\_\_\_\_\_  
Carla M. Flood

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was mailed to the Hawaii Land Use Commission, and has been duly served upon the following via email and at their addresses of record United States Mail, first class mail, postage prepaid on the date indicated below.

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DATED: Makawao, Maui, Hawaii, October 19, 2012.



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TOM PIERCE  
Attorney for Maui Tomorrow  
Foundation, Inc., South Maui Citizens  
for Responsible Growth, and Daniel Kanahale