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JUN 12 2013
STATE OF HAWAII
LAND USE COMMISSION

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ATTORNEYS FOR DEPARTMENT OF PLANNING, COUNTY OF MAUI

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. A-94-706

DEPARTMENT OF PLANNING,
COUNTY OF MAUI'S REPLY AND
JOINDER IN PIILANI PROMENADE
SOUTH, LLC AND PIILANI
PROMENADE NORTH LLC'S 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 PIILANI
PROMENADE SOUTH, LLC'S
MOTION TO STAY PHASE II OF THE
ORDER TO SHOW CAUSE
PROCEEDING, FILED APRIL 16,
2013; EXHIBITS "A" - "B";
CERTIFICATE OF SERVICE

**DEPARTMENT OF PLANNING, COUNTY OF MAUI'S REPLY
AND JOINDER IN PIILANI PROMENADE SOUTH, LLC AND
PIILANI PROMENADE NORTH LLC'S 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 PIILANI PROMENADE
SOUTH, LLC'S MOTION TO STAY PHASE II OF THE ORDER TO SHOW
CAUSE PROCEEDING, FILED APRIL 16, 2013**

The DEPARTMENT OF PLANNING, COUNTY OF MAUI ("County") hereby submits this Reply and joins in Piilani Promenade South, LLC and Piilani Promenade North LLC's Motion to Strike and Objection ("Motion to Strike") to Intervenor's Supplemental Memorandum to Intervenor's Supplemental Memorandum in support of (1) Intervenor's Motion to Conclude Contested Case at the earliest practicable time, filed April 16, 2013, and (2) Intervenor's Memorandum in Opposition to Piilani Promenade South, LLC's Motion to Stay Phase II of the Order to Show Cause Proceeding, filed April 16, 2013, filed herein on June 12, 2013 ("Supplemental Memorandum").

I. REPLY

A. Sections I(2), III and Appendix "A" of Intervenor's Supplemental Memorandum Contain no Relevant Evidence Related to the DBA Conditions in this Docket and Should be Disregarded.

In sections I, III and Appendix "A" of the Supplemental Memorandum, Intervenor's attach a copy of a May 22, 2013 Maui News article ("Article") related to a proceeding before the Maui County Council regarding the annual compliance report for the zoning conditions imposed on the Honuaua (Wailea 670) project, a separate project from the one presently before the Commission. Intervenor's excerpt two quotations from the article, and baldly state that the

quotations show that granting Piilani's pending motions and denying Intervenors' motions would "be prejudicial to Intervenors and harmful to the public". Intervenors do not argue how a newspaper article provides the Commission with relevant evidence, or how the Committee meeting on the zoning conditions (not the DBA conditions) for a project that is not before the Commission is relevant to conditions imposed by the Commission in Docket A94-706.

First, it is objectionable to pass off a newspaper article as evidence in a proceeding before the Commission. No transcript from the Council meeting was provided, nor was the agenda for the meeting indicating what was before the Council. Intervenors even highlight selected passages from the Article, in one case attempting to pass off a quotation from the County's legal counsel, made in the process of updating the Council Planning Committee on the status of this docket, as evidence that it would be prejudicial to grant Piilani's pending motions and deny Intervenors'. This is not the case.

A true and correct copy of the agenda for the Planning Committee meeting of May 21, 2013 meeting is attached hereto as Exhibit "A". The agenda indicates that the item before the Council was PC-34, the annual compliance report for the zoning conditions on the Honuauia (Wailea 670) project. Not only is that project not before this Commission, the compliance report was related to zoning conditions imposed by the Council, not this Commission. In addition, the agenda makes clear that the purpose of the item was to "receive a presentation" on the report and discuss related policy

matters. No action was taken or contemplated other than receiving a status update on the zoning conditions and the filing of the item. The agenda item was filed by the adoption of Committee Report 13-63 at the Council's June 6, 2013 meeting. (See pp. 1-2 of the June 6, 2013 Council Agenda, attached hereto as Exhibit "B"). The filing of the item means that it is no longer on any Council agenda.

Docket A94-706 was only discussed at the Committee meeting after two of the Intervenors, Mr. Hyde and Ms. Bowie, testified before the Committee and raised the issue. A Council member asked a question regarding the testimony, and the Committee's legal counsel noted, among other things, that the LUC docket focused on the DBA conditions, rather than the community plan, that there was no written decision, and that the landowner had requested permission to amend the original LUC approval. The item was filed. Intervenors do not even attempt to argue how any of these events indicate "harm" to anybody, and they do not. Any implication that the Maui County Council was or is waiting to take certain action based on the Commission's decision in this docket is without merit, as the item has been filed and is no longer on any Council agenda.

Because sections I, III and Appendix "A" of Intervenors' Supplemental Memorandum deal solely with a newspaper article related to the Council's review of an annual compliance report for zoning conditions imposed on a separate project, which was filed by the Council, it contains no relevant evidence and should be disregarded.

DATED: Wailuku, Hawaii, June 12, 2013.

PATRICK K. WONG
Corporation Counsel
Attorney for Department of
Planning, County of Maui

By 
MICHAEL J. HOPPER
Deputy Corporation Counsel

PLANNING COMMITTEE

Council of the County of Maui

Meeting Agenda

Tuesday, May 21, 2013

9:00 a.m.

RECEIVED
MAY 15 AM 10:5
OFFICE OF THE
COUNTY CLERK

MEETING SITE: Council Chamber, 8th Floor, 200 South High Street, Wailuku, Hawaii

REMOTE TESTIMONY SITES: Hana Council District Office, Hana Community Center,
5091 Uakea Road, Hana, Hawaii
Lanai Council District Office, Lanai Community Center, 8th Street, Lanai
City, Hawaii
Molokai Council District Office, 100 Ainoa Street, Kaunakakai, Hawaii

website: www.mauicounty.gov/committees/PC

VOTING MEMBERS

Donald G. Couch, Jr., Chair

Michael P. Victorino, Vice-Chair

Gladys C. Baisa

Elle Cochran

Stacy Crivello

Don S. Guzman

Mike White

NON-VOTING MEMBERS

Robert Carroll

G. Riki Hokama

AGENDA ITEMS ARE SUBJECT TO CANCELLATION. For a confirmation of the meeting date and time, and for tentative scheduling of agenda items, please contact the Committee Staff (Regina Gormley or Yvette Bouthillier) at: Office of Council Services, 200 South High Street, Wailuku, HI 96793, 808-270-7838, 1-800-272-0026 (toll-free from Molokai), 1-800-272-0098 (toll-free from Lanai), 808-270-7686 (fax).

ORAL OR WRITTEN TESTIMONY on any agenda item will be accepted. Each testifier shall be allowed to speak for three minutes on each item. If additional time is requested, the testifier shall be allowed one minute to conclude the testimony on the item. These time limits may be modified pursuant to the Rules of the Council, provided a modification would apply equally to all testifiers and all items. No further oral testimony by the testifier on the item shall be permitted. An individual's request to testify shall be deemed withdrawn if the individual does not answer when called to testify. To ensure its distribution prior to the meeting, written testimony must be received in the Office of Council Services at least 24 hours prior to the meeting; provided, that if a meeting will be held on a Monday, written testimony shall be received by 12:00 noon on the business day preceding the meeting. If written testimony is submitted at the meeting site, 16 copies are requested to ensure distribution at the meeting.

REMOTE TESTIMONY SITES: Oral testimony may be received by telephone from each of the Council district offices noted above. If the audio connection between the meeting site in the Council Chamber and any of the remote testimony sites is lost, the meeting in the Council Chamber will still continue. Members of the public interested in information about offering testimony on an agenda item from a remote testimony site may contact the Office of Council Services prior to the meeting. While oral testimony is being received, the district offices cannot provide other services. The audio connection will be terminated after all oral testimony has been received.

INDIVIDUALS WHO INTEND TO ATTEND THE MEETING AND WHO HAVE DISABILITIES REQUIRING SPECIAL ASSISTANCE should call the Office of Council Services at least three days in advance.

DOCUMENTS ON FILE WITH THE COMMITTEE, which may include correspondence relating to the agenda items below, may be inspected prior to the meeting date. Photocopies may be ordered, subject to charges imposed by law (Maui County Code, Sec. 2.64.010). Please contact the Office of Council Services to make arrangements for inspection or photocopying of documents.

TO LEARN MORE ABOUT COUNCIL-RELATED ISSUES, tune in to Akaku: Maui Community Television.

EXHIBIT "A"

MORE →

PC-34 ANNUAL COMPLIANCE REPORT - HONUA'ULA**DESCRIPTION:**

The Committee is in receipt of the following:

1. County Communication 12-80, from former Council Chair Danny A. Mateo, transmitting correspondence dated April 13, 2012, from Charles Jencks, Honua'ula Partners, LLC, transmitting an annual compliance report pursuant to Condition 29 of Ordinance 3554 (2008), establishing Kihei-Makena Project District 9 (Wailea 670) Zoning (Conditional Zoning) for approximately 670 acres situated at Paeahu, Palauea, Keauhou, Hawaii.
2. County Communication 13-156, from the Council Chair Gladys C. Baisa, transmitting correspondence dated April 11, 2013, from Charles Jencks, Honua'ula Partners, LLC, transmitting an annual compliance report pursuant to Condition 29 of Ordinance 3554 (2008), establishing Kihei-Makena Project District 9 (Wailea 670) Zoning (Conditional Zoning) for approximately 670 acres situated at Paeahu, Palauea, Keauhou, Hawaii.

STATUS:

The Committee may receive a presentation from Honua'ula Partners, LLC, on the annual compliance reports and discuss related policy matters. The Committee may also consider the filing of County Communications 12-80 and 13-156 and other related action.

PC-9 REQUIRING NOTIFICATION TO THE COUNCIL OF UNFULFILLED CONDITIONS OF ZONING**DESCRIPTION:**

The Committee is in receipt of County Communication 12-261, from former Council Chair Danny A. Mateo, transmitting a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.510.050, MAUI COUNTY CODE, TO REQUIRE NOTIFICATION TO THE COUNCIL OF UNFULFILLED CONDITIONS OF ZONING". The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.510.050, MAUI COUNTY CODE, TO REQUIRE NOTIFICATION TO THE COUNCIL OF UNFULFILLED CONDITIONS OF ZONING". The purpose of the proposed bill is to require the Department of Planning to transmit a quarterly report to the Council on any unfulfilled conditions of zoning provisions as required by Section 19.510.050, Maui County Code, within the specified time limitations.

STATUS:

The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions. The Committee may also consider the filing of County Communication 12-261 and other related action.

PC-11 CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AMENDMENTS**DESCRIPTION:**

The Committee is in receipt of County Communication 12-262, from former Council Chair Danny A. Mateo, transmitting a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION 19.68.040, MAUI COUNTY CODE, RELATING TO CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AMENDMENTS". The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.68.040, MAUI COUNTY CODE, RELATING TO CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AMENDMENTS". The purposes of the proposed bill are to require the Department of Planning to transmit a quarterly report to the Council on any unfulfilled conditions of State land use district boundary amendments as required by Section 19.68.040, Maui County Code, within a maximum of three years if no time limitation is established by the Council.

RECEIVED

COUNCIL OF THE COUNTY OF MAUI

2013 MAY 30 PM 2: 17

A G E N D A

Regular Meeting of June 6, 2013
9:00 a.m.

OFFICE OF THE
COUNTY CLERK

Meeting Site: Council Chamber, 8th Floor, 200 South High Street, Wailuku, Hawaii

Remote Testimony Sites: Hana Council District Office – Hana Community Center, 5091 Uakea Road, Hana, Hawaii
Lanai Council District Office – Lanai Community Center, 8th Street, Lanai City, Hawaii
Molokai Council District Office – 100 Ainoa Street, Kaunakakai, Hawaii

website: <http://www.mauicounty.gov/county/clerkSub/Agenda.php>.
e-mail: county.clerk@mauicounty.us

ORAL OR WRITTEN TESTIMONY

ORAL OR WRITTEN TESTIMONY on any agenda item will be accepted. Each testifier shall be allowed to speak for three minutes on each item. If additional time is requested, the testifier shall be allowed one minute to conclude the testimony on the item. No further oral testimony by the testifier on the item shall be permitted. An individual's request to testify shall be deemed withdrawn if the individual does not answer when called to testify.

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If written testimony is submitted at the meeting site, 15 copies are requested. If written testimony is e-mailed or faxed (808-270-7171), it must be received at least 24 hours prior to the meeting; provided, that if a meeting will be held on a Monday, written testimony shall be received by 12:00 noon on the business day preceding the meeting.

-
- A. ROLL CALL
 - B. OPENING REMARKS: COUNCILMEMBER STACY CRIVELLO
 - C. PLEDGE OF ALLEGIANCE
 - D. TESTIMONY ON CEREMONIAL RESOLUTIONS

EXHIBIT " B "

E. CEREMONIAL RESOLUTIONS:

NO. _____ - "CONGRATULATING MAUI CHEER BABES FOR CAPTURING ALL YOUTH CHEER LEVEL 1 HONORS AT THE 2013 JAMFEST CHEER NATIONALS IN LONG BEACH, CALIFORNIA"

F. PRESENTATION OF WRITTEN OR ORAL TESTIMONY

G. MINUTES:

Regular Meeting of May 7, 2013

H. COMMITTEE REPORTS:

NO. 13-63 - PLANNING COMMITTEE:

Recommending **FILING** of communications relating to annual compliance reports for the 670-acre Kihei-Makena Project District 9 located at Paeahu, Palauea, Keauhou, Hawaii (Honua'ula).

NO. 13-64 - PLANNING COMMITTEE:

Recommending **ADOPTION** of resolution referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill amending Section 19.510.040, Maui County Code, relating to change of zoning protests.

NO. 13-65 - PLANNING COMMITTEE:

Recommending the following:

1. **FIRST READING** of bill amending Section 19.04.040, Maui County Code, and Chapter 19.31, Maui County Code, relating to Public/Quasi-Public Districts; and
2. **FILING** of communication.

NO. 13-66 - PLANNING COMMITTEE:

Recommending the following:

1. **FIRST READING** of bill amending Chapter 19.04, Maui County Code, relating to comprehensive zoning provisions, and Chapter 19.30A, Maui County Code, relating to utility walls in the Agricultural District; and
2. **FILING** of communication.

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, Hawaii

CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing document was duly served upon the following on June 12, 2013 as indicated hereinbelow, addressed as follows:

	METHOD OF SERVICE		
	<u>MAIL</u>	<u>HAND DELIVERY</u>	<u>E-MAIL</u>
DANIEL ORODENKER, ESQ. Executive Director Land Use Commission P. O. Box 2359 Honolulu, HI 96804 E-mail: daniel.e.orođenker@dbedt.hawaii.gov	X		X
TOM PIERCE, ESQ. P. O. Box 798 Makawao, Hawaii 96768 E-mail address: tom@mauilandlaw.com	X		X

Attorney for Intervenors Maui Tomorrow Foundation, Inc., South Maui Citizens For Responsible Growth, and Daniel Kanahahele

