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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII  
2012 DEC 21 P 2:20

In the Matter of the Petition of	)	DOCKET NO. A94-706
	)	
KAONOULU RANCH	)	OFFICE OF PLANNING'S PROPOSED
	)	FINDINGS OF FACT, CONCLUSIONS
To Amend the Agricultural Land Use	)	OF LAW, AND DECISION AND ORDER
District Boundary into the Urban Land Use	)	ON PETITIONERS' FAILURE TO
District for approximately 88 acres at	)	PERFORM ACCORDING TO
Kaonoulu, Makawao-Wailuku, Island of	)	CONDITIONS IMPOSED ON THE
Maui, Hawai'i, TMKs: 2-2-02: por. of 15	)	PETITION; CERTIFICATE OF SERVICE
and 3-9-01: 16	)	

**OFFICE OF PLANNING'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER ON PETITIONERS' FAILURE TO PERFORM ACCORDING TO CONDITIONS IMPOSED ON THE PETITION**

On February 2, 1995, the Land Use Commission ("LUC" or "Commission") approved a petition filed by Kaono'ulu Ranch ("Petitioner") to amend the Land Use District Boundary to reclassify approximately 88 acres of land at Kaono'ulu, Makawao-Wailuku, Maui, Hawaii, specifically identified as Tax Map Key Nos. 2-2-02: Portion of 15 and 3-9-01: 16 ("Petition Area") from the Agricultural District to the Urban District, to develop a 123-lot commercial and light industrial subdivision.

On May 23, 2012, a Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief ("Motion for Order to Show Cause") was filed by the Movants Maui Tomorrow Foundation, Inc.; South Maui Citizens for Responsible Growth; and Daniel Kanahale, alleging that the landowners are pursuing uses of the property which violate the terms and conditions of the 1995 approval.

The Commission, having examined the testimony and evidence presented during the Order to Show Cause (“OSC”) hearing, having heard the arguments of counsel, and having reviewed the Proposed Findings of Fact, Conclusions of Law, and Decision and Order and subsequent objections and responses filed by Petitioners; the State Office of Planning (“OP”); the County of Maui, Department of Planning; and the Intervenor, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order on the failure of Petitioners to perform according to conditions imposed on the Petition:

## **FINDINGS OF FACT**

### **I. PROCEDURAL MATTERS**

#### **a. 1995 ORDER**

1. In 1994, Petitioner filed a Petition to reclassify approximately 88 acres of land from the Agricultural District to the Urban District.
2. On February 10, 1995, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order (“1995 Decision and Order”) in this docket reclassifying approximately 88 acres at Kaono'ulu from the Agricultural to the Urban District to develop a 123-lot commercial and light industrial subdivision.
3. The 1995 Decision and Order imposed 20 conditions on the Petitioner, two of which are relevant to the OSC:

a. Condition No. 5, relating to traffic improvements states in relevant part as follows:

“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 and with the review and approval of the State Department of Transportation and the County of Maui. “

b. Condition No. 15 relating to representations states 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.”

**b. CURRENT PROCEDURAL HISTORY**

4. On May 23, 2012, the Motion for Order to Show Cause was filed by the Maui Tomorrow Foundation, Inc.; South Maui Citizens for Responsible Growth; and Daniel Kanahale (“Movants”), alleging that the landowners are pursuing uses of the property which violate the terms and conditions of the 1995 Decision and Order.
5. On August 2, 2012, the Commission conducted a site inspection of the Petition Area.
6. On September 6, 2012, the Movants Motion to Intervene in the Order to Show Cause hearing by Maui Tomorrow Foundation, Inc.; South Maui Citizens for Responsible Growth; and Daniel Kanahale’s was granted by the Commission, and a pre-hearing scheduled.
7. By order dated September 10, 2012, the Commission granted Movants Motion for Order to Show Cause, stating in pertinent part, as follows:

. . . 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 Kaono'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 Kaono'ulu Ranch; and (2) set this matter for a show cause hearing as it pertains to the entire approximately 88-acre Petition Area.

See Order Granting Movants' Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief. Vice-Chair Heller stated at the hearing that the Commission will first consider whether Petitioners have violated the applicable conditions of the 1995 Decision and Order. Should the Commission find that Petitioners have failed to perform according to the conditions imposed or to the representations or commitments made, the

Commission will then determine whether reversion or other designation is the appropriate remedy. See Scheduling Order dated September 27, 2012.

8. On September 17, 2012, the Commission issued its Order to Show Cause.
9. On September 21, 2012, the Petitioner Honua'ula Partners, LLC filed a Motion for Order Bifurcating Docket No. A94-706, and Suspending Show Cause Hearing As To Honua'ula Partners, LLC ("Motion for Order Bifurcating Docket"). This Motion requested that the Commission suspend the Show Cause hearing for Honua'ula Partners, LLC, until a decision was rendered on a Motion to Amend the 1995 Order, to be filed by Honua'ula not later than July 31, 2013. On October 10, 2012, Petitioners filed their Sixteenth Annual Report of Pi'ilani Promenade South LLC and Pi'ilani Promenade North, LLC, Successor Petitioner to Kaono'ulu Ranch and the Sixteenth Annual Report of Honua'ula Partner's LLC, Successor Petitioner to Kaono'ulu Ranch.
10. By letter dated October 30, 2012, Honua'ula Partners, LLC withdrew its Motion for Order Bifurcating Docket.
11. On November 1, 2, 15 and 16, 2012, the LUC conducted public hearings on this matter. On November 1, 2012, Commission also heard five (5) motions prior to the Order to Show Cause hearing.
  - 1) By Order dated November 9, 2012, the Commission denied the County of Maui, Department of Planning's Motion filed to Exclude Further Public Testimony.
  - 2) By Order dated November 9, 2012, the Commission voted to deny without prejudice Intervenors' Pre-Hearing Motion In Limine Regarding Scope of Evidence.
  - 3) By Order dated November 9, 2012, the Commission voted to deny Intervenor's Motion to Take Testimony of Carla M. Flood Via Telephone.
  - 4) By Order dated November 9, 2012, the Commission voted to deny without prejudice the Department of Planning, County of Maui's Motion to Exclude Evidence Related to the 1998 Kihei-Makena Community Plan and Determination of the Scope of Review.
  - 5) The Commission deferred action on the Intervenor's Pre-Hearing Motion on Burden of Proof, Etc.

## **II. 1995 PROPOSED DEVELOPMENT**

12. The original proposed use for development of the Petition Area was a 123-lot commercial and light industrial subdivision. See Petitioner Pi'ilani Promenade South, LLC and Pi'ilani Promenade North, LLC's (referred to collectively as "Pi'ilani") Ex.2, Paragraph VIII.
13. The Project was named Kaono'ulu Industrial Park, consistent with the Petitioner's focus on light industrial uses. See 1995 Order, FOF 21.
14. During the 1994 hearing, Petitioner and its consultants described a number of issues relating to light industrial uses, such as the need for large lots for warehouse space (Tr. 11/1/94 at 25:16-21).
15. Petitioner estimated near 100 percent occupancy within nine or ten years (Tr. 11/1/94 at 88:9-12), and full buildout by 2010 (Tr. 11/1/94 at 54:3-4).

## **III. PETITIONERS CURRENT PROPOSAL**

16. Petitioners have not yet developed the Petition Area, and are now proposing to develop residential apartments and two shopping centers. The Traffic Impact Analysis Report ("TIAR") for Pi'ilani Promenade, the name of the proposed outlet shopping malls, contains a Preliminary Site Plan which indicates that the leasable area for the outlet mall contains 385,070 square feet within several major buildings, and 2,071 parking stalls on three of the four major lots. See OP Exhibit 7. The fourth lot owned by Petitioner Honua'ula will contain 250 workforce housing units, according to the County Council Approved Ordinance for Wailea 670. See OP Exhibit 4.
17. The Pi'ilani Petitioner's Representative stated at the LUC hearing for the first time that they would commit to a home improvement center component for the Petition Area, with approximately 125,000 square feet of floor area for both wholesale and retail sales. However, no lease or tenant has yet been secured for this proposal. (Tr. 11/15/12, 35: 10 through 37: 6.)
18. A home improvement center of approximately 125,000 square feet of floor area is typically considered as a "big box" retail store, like Home Depot. (Tr. 11/15/12, 38: 2-8 and 70: 7-9.) Although the sale of lumber and other home improvement items for

wholesale use is a light industrial type of activity, the predominant character of such a store is retail or commercial. (Tr. 11/15/12, 99:20 – 100:13; and 11/16/12, 45: 22-24.)

19. The Petitioners also proposed to include approximately one and a half acres for an electrical substation to be dedicated to the Maui Electric Company. (Tr. 11/15/12, 30: 10-15.)
20. Although an electrical substation is a type of light industrial activity, in this case it is a necessary and accessory component for the proposed retail activities. As such, the electrical substation is a minor accessory use to the proposed retail activities.
21. The Petitioners have not proposed any significant or independent “light industrial” uses as that term was used in the 1995 Decision and Order for the Petition Area.

#### **IV. CURRENT PROJECT’S CONSISTENCY WITH 1995 ORDER**

##### **a. Original Proposal**

22. The Petitioner originally proposed to build a commercial and light industrial subdivision. The focus of the proposal was on light industrial uses, with the flexibility to include an unspecified number of commercial lots. (Tr. 8/24/12, 45:25 – 46: 2.) The market study, assessment report, and TIAR focused on the project’s light industrial uses.
23. The proposal to sell rather than lease individual lots was a mitigating factor to the LUC’s concerns about a preponderance of commercial uses in the Petition Area.
24. In the 1994 hearings, the LUC noted that the county’s light industrial zoning allowed a broad range of activities, even including apartments. (Tr. 11/1/94 at 105:23-106:3.)
25. When concerns were expressed about the possibility that there might be a preponderance of commercial uses in the Petition Area, Petitioner’s marketing consultant replied that this was possible but unlikely. (Tr. 11/1/94 at 106:5-11.)
26. The consultant represented to the LUC that light industrial businesses preferred their own individual buildings, rather than having to share a building with other potentially conflicting uses. Market forces would restrict the commercial enterprises to those which would service the light industrial complex, such as a hair dresser, restaurant, okazuya or bank branch. (Tr. 11/1/94 at 106:14-24, and 107:7-25.)

27. LUC concerns about a predominance of commercial space was, therefore, addressed through the Petitioner's proposed plan to sell vacant lots as set forth in the conceptual plan rather than construct buildings which would then be leased to individual vendors.
28. The LUC made a specific determination that the Project "would conform with the proposed Light Industrial designation for the Property. The LUC specifically determined that light industrial uses include warehousing, light assembly, and service and craft-type industrial operations." See 1995 Decision and Order, FOF 32.
29. The LUC's imposed conditions reflect a primarily industrial project. Condition No. 8 goes into careful detail about oil-water separators, precautions on cleaning, repair and maintenance activities, control of industrial spills, and storage of industrial liquids. Condition No. 13 requires a buffer zone between lands designated for single-family housing in the Kihei-Makena Community Plan to mitigate impacts from the proposed industrial development.
30. The 1995 Decision and Order and supporting record do not address issues related to traffic, job creation, scenic impacts, energy use, water use, solid waste, or wastewater for apartment buildings and two large shopping centers. The market study focused on the future needs for additional light industrial uses and did not draw conclusions regarding the Project's ability to fill a need in the residential market or even in the commercial market. The market study is silent on the current proposal for apartment buildings and two shopping centers.
31. The supporting documentation focused on the proposed light industrial uses. The 1994 Market Feasibility Study and Economic Report stated that the purpose of the report was to determine the market feasibility of developing the Petition Area "into a light industrial subdivision containing approximately 122 lots." See Pi'ilani Ex. 3, p. 1. Although this market study noted that commercial and apartment uses were allowed under county zoning for light industrial, the analysis was of the light industrial market.
32. The 1994 Project Assessment Report similarly noted that there was "very little light industrial and service commercial space available in the Kihei Region . . . . Economic activities such as distribution and light industrial activities take place primarily in Wailuku-Kahului." (emphasis added) See Pi'ilani Ex. 4, pp. 32-33.

33. The 1994 TIAR was based upon the description of the proposed project as “an industrial park.” See OP Ex. 6, p.5.

**b. Current Proposal**

34. Petitioner’s currently proposed development is substantially different from the project originally proposed. In 1995, Petitioner proposed to develop and sell 123 lots ranging in size from approximately 14,000 square feet to 54,000 square feet, or 0.3 to 1.2 acres each. See 1995 Order, FOF 21. The current subdivision consists of four (4) major lots, ranging in size from 13.129 acres to 30.132 acres, and a roadway lot of 4.89 acres. A comparison of Exhibit No. 7D, labeled, “Conceptual Development Plan Kaono’ulu Industrial Park,” with the map attached as an exhibit to the Petitioners’ subdivision application demonstrates the significant difference in the lot configuration. See OP Ex. 1 and 2.

35. Petitioner’s traffic engineer expert, Philip Rowell, testified that the current proposed project is substantially different from the original proposal:

“Vice Chair Heller: Would it be fair to say that from a traffic engineer’s point a project consisting of 123 lots sold for primarily commercial and light industrial use is substantially different from a project—

The Witness: Yes.

Vice Chair Heller: -- broken into four lots and used for retail?

The Witness: Yes.”

(Tr. 11/2/12, 109:9-14.)

36. Petitioner’s marketing expert witness, Tom Holliday, testified that from a marketing perspective the current project is different from the 1995 project:

“Question: It’s a different project, right?

Answer: Yeah...

Question: Did it [1994-95 market study] look at the outlet mall in that study?

Answer: I believe—no. In fact what all it really looked at was the sales of lots.

Question: Did it look at residential uses?

Answer: No, it did not.”

(Tr. 11/2/12, 138: 7-25.)

37. The County of Maui’s Planning Director, William Spence, and the Office of Planning’s Land Use Division Administrator, Rodney Funakoshi, both testified that from a planning perspective, the current proposed project is different from the original proposal:



“Question: A you reviewed this record has the plan for this property changed since 1994?

Answer-Mr. Spence: Yes, it has.”

(Tr. 11/15/12, 205: 1-3.)

“Mr. Funakoshi: In OP’s opinion this is clearly a different Project from what was initially proposed.”

(Tr. 11/16/12, 45: 3-4.)

38. The County of Maui’s Land Use Planning Supervisor, Ann Cua, testified that from a land use planning perspective, outside of a discussion about Maui County zoning, there are important differences between light industrial uses, commercial uses, and residential uses:

“Question: ...when two planners just get together to talk about land uses, and when you refer to a land use of light industrial, you generally understand that that would not include residential, correct?

Answer: Generally, yes, if I’m talking ac—if I’m speaking academically with someone, yes.

Question: In fact, land use planners also make a distinction between commercial and Light Industrial.

Answer: Academically, yes.

Question: Because there are important differences when you do land use planning to know whether something is what is typically regarded as light industrial, and what is typically regarded as residential, correct:

Answer: Correct.”

(Tr. 8/24/12, 50: 1-15.)

39. A condition requiring Petitioners to substantially comply with their representations is a clear and standard condition in Commission decisions.
40. Petitioners should have known that a change in the basic nature of a project will at least require an investigation as to whether the change will be in substantial compliance with the representations previously made to the Commission.
41. Petitioner never asked either the Commission or the Office of Planning as to whether the Commission’s original Decision and Order must be amended due to the change in the nature of the Project. (Tr. 11/15/12, 71: 7-11.)
42. Petitioners have argued that they have not filed a Motion to Amend, in part, because the delay would not work from a marketability perspective. (Tr. 11/15/12, 54: 3-13.)
43. In 2005, the Petitioner decided to change the name and nature of the Project from Kaono’ulu Industrial Park to Kaono’ulu Marketplace. (Tr. 11/15/12, 15: 2-25.)

44. Petitioners have had enough time since 2005 to file a Motion to Amend and receive a decision from the Commission. Any current marketing difficulties resulting from a delay for consideration of a Motion to Amend would be due to Petitioner's failure to file a timely Motion to Amend.
45. The Petitioner's current proposal to subdivide the Petition Area into 4 rather than 123 lots, and then lease space rather than sell lots, is not in substantial compliance with the Petitioner's original representations in 1994.
46. On August 14, 2009, the County approved the Petitioner's request for a four (4) lot subdivision plus a roadway lot as follows: Lot 2A—30.152 acres; Lot 2B—13.129 acres; Lot 2C—18.519 acres; Lot 2D—19.539 acres, and (roadway) Lot 2E—4.898 acres. This subdivision plat differs significantly from the proposal in the zoning application and the map submitted to the LUC in its approval process. See OP Ex. 2.
47. The State Department of Transportation ("DOT") representative compared the projected trip generations between the original Kaono'ulu Industrial Park and the proposed Pi'ilani Promenade project. Based upon the TIAR submitted by Petitioners, during the afternoon peak hours there will be a very significant increase in the number of trips generated. The industrial park would have generated about 700 trips during the afternoon peak hours, but the Pi'ilani Promenade will generate about 2,900 trips or four times the original proposal. (TR 11/2/12 at 11:7-25 and 12:1-11)

**V. Workforce Housing**

**a. Original Proposal**

48. The original LUC Petition and 1995 Decision and Order did not propose any residential uses in the Petition Area.
49. Petitioner initially considered, then explicitly removed residential use from its project based upon the concerns of placing residential units so close to an industrial park. The Petitioner's representations to the LUC are as follows:

"Mr. Eichor: My last question. As I understand it initially this was viewed as a residential project?

(Mr. Sodetani): A: I guess it was a mixture of residential, commercial, light industrial.

Q: Is there a particular reason why you switched concepts?

A: Well, I think Mr. Kajioka had expressed a concern about having residential units in close proximity of light industrial properties. And I think we share the same concern too.”

(Tr. 11/1/94 at 100:9-18.)

50. The addition of apartments would have made a significant difference in the LUC’s analysis regarding impacts to, among other things, State educational facilities. Consequently, the 1995 Decision and Order contains no finding or requirement for an educational contribution.
51. The representative for the State Department of Education testified that the 1995 Decision and Order does not have any education requirement. If the Department of Education had known that 250 workforce housing was going to be located within this Petition area, the DOE would have requested that the LUC put in a condition relating to the collection of fair-share contributions for school facilities. (TR 11/2/12 at 44:15 through 46:7)

**b. Current Proposal**

52. From a planning perspective, residential use is different from both light industrial and commercial uses. (Tr. 11/15/12, 204: 16-19.)
53. On April 8, 2008, the Maui County Council adopted Ordinance No. 3554, the Wailea 670 zoning ordinance. Bill No. 22, A Bill for an Ordinance to Repeal Ordinance No. 2171 (1992) And To Establish Kihei-Makena Project District 9 (Wailea 670) Zoning (Conditional Zoning), For Approximately 670 Acres Situated at Paeahu, Palauea, Keauhou, Maui, Hawaii, Condition 5. Under this ordinance, one of the new owners of the Petition Area, Honua'ula Partners, LLC, was required to provide 250 workforce housing units within the Kaono'ulu Petition Area. Condition 5 states as follows:

“5. That Honua'ula Partners, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code (the "Residential Workforce Housing Policy"); provided that, 250 of the required workforce housing units shall be located at the Kaono'ulu Light Industrial Subdivision and completed prior to any market-rate unit, that 125 of those workforce housing units shall be ownership units, and that 125 of those units shall be rental units. In addition, construction of those workforce housing units shall be commenced within two years, provided all necessary permits can be obtained within that timeframe. Honua'ula Partners, LLC, its successors and permitted assigns, shall provide a minimum two-acre park at the Kaono'ulu Light Industrial Subdivision, which shall be credited toward the requirements of Section 18.16.320, Maui County Code, for that subdivision. “

54. Consequently, Petitioners were aware as early as 2008 that the land use for the Petition Area had changed to include residential units yet they failed to so notify the LUC until their most recent annual report filed in October 2012, well after the Intervenors filed their request for a hearing for an Order to Show Cause. See OP Ex. 3.
55. An updated TIAR for Pi'ilani Promenade dated May 7, 2012, analyzed the impacts of retail development only; no industrial or residential uses were assessed. See OP Ex. 7.
56. The Department of Transportation testified that the 250-unit workforce housing project is not reflected in the current TIAR. (Tr. 11/2/12 at 12:12-14.)
57. If a motion to amend is not required, no further discretionary permits or approvals are needed prior to construction of the Project, including both the commercial and residential elements, and Petitioner makes no commitment to delay construction until a motion to amend is granted. (Tr. 11/15/12, 79:21-24 and 81: 11-19.)
58. On April 18, 2012, the Petitioner obtained a grading and grubbing permit for the Petition Area. OP Exhibit 11.
59. Given the lack of any further discretionary approvals prior to construction, Petitioner's decision to move forward with construction without a motion to amend, and the existence of a grubbing and grading permit for the Petition Area, the matter is timely for consideration by the LUC.
60. Based on all the information above, the current proposed project is substantially different than the project proposed in 1994 and is not in substantial compliance with the Petitioner's representations in 1994.
61. Construction of the current proposed project will violate Condition No. 15 of the 1995 Decision and Order.

## **VI. Frontage Road**

### **a. Original Proposal**

62. During the 1994 hearings, the LUC asked whether it would be prudent to require a "feeder road within the petitioner's properties, adjoining properties, similar to what is being proposed down in Kona." (Tr. 11/1/94 at 70:3-9). The Petitioner's traffic consultant agreed that "some kind of connection . . . between this project and in future

- projects” could result in less traffic on the highway. (Tr. 11/1/94 at 70:10-17). OP eventually proposed a condition requiring a “frontage road.” (Tr. 11/14/94 at 70:3-9).
63. Condition No. 5 in the 1995 Decision and Order provides in part that regarding the frontage road:
- “5. ...Petitioner shall provide for a frontage road parallel to Pi'ilani....”
- b. Current Proposal**
64. The DOT representative explained that the requirement for the frontage road that was proposed in the 1995 Decision and Order is not currently needed, and may actually impact on safety and operational concerns if two intersections, i.e. a frontage road and the intersection for Pi'ilani Highway were to be placed close to each other. (Tr. 11/2/12 at 12:15-25 through 15:6.)
65. Roadway plans depicted in the 2012 traffic study show that no frontage road is planned as required by Condition No. 5.
66. Petitioner will not be constructing a frontage road parallel to Pi'ilani Highway. (Tr. 11/15/12, 79: 17-19.)
67. No request for an amendment to Condition 5 has been filed by the Petitioners. The only indication that a Motion to Amend might be filed in the future was a Motion to Bifurcate filed by Honua'ula Apartments which was withdrawn along with its commitment to delay construction until after a Motion to Amend is granted. (Tr. 11/15/12, 81: 1-7.)
68. The Petitioner's decision to not construct a frontage road parallel to Pi'ilani Highway and to not file a motion to amend is a violation of Condition No. 5 of the 1995 Decision and Order.

### **CONCLUSIONS OF LAW**

1. Any conclusions of law herein improperly designated as a finding of fact should be deemed and construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed and construed as a finding of fact.
2. Section 205-4, Hawaii Revised Statutes, authorizes the LUC to impose conditions necessary to “assure compliance with representations made by the petitioner in seeking a boundary change” and that “absent substantial commencement of use of the land in accordance

with such representations, the [C]ommission shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use reclassification or be changed to a more appropriate classification.”

3. Under the facts and circumstances of this case, Petitioners have failed to substantially comply with representations made to the Commission regarding the proposed uses of the Petition Area, in violation of Condition No. 15 of the 1995 Decision and Order.

4. Under the facts and circumstances of this case, Petitioners have failed to construct a frontage road parallel to Piilani Highway in violation of Condition No. 5 of the 1995 Decision and Order.

### **ORDER**

This Commission, having duly considered the evidence, pleadings, and oral and written statements and testimony, and oral arguments of the parties, and a motion having been made and seconded at a hearing on \_\_\_\_\_, in \_\_\_\_\_, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

#### **HEREBY ORDERS:**

1. The Parties shall appear at a subsequent hearing to determine whether the Petition Area should not revert to its former or another land use classification.
2. Any and all proposed findings of fact submitted by the parties which are not expressly adopted by the Commission, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

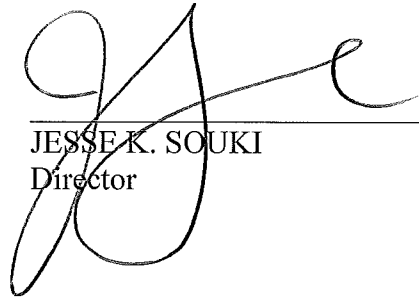
### **ADOPTION OF ORDER**

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this \_\_\_ day of \_\_\_\_\_, 2013. This ORDER may be executed in counterparts.

Done at Honolulu, Hawai'i, this \_\_\_\_\_ day of \_\_\_\_\_, 2013, per  
motion on \_\_\_\_\_, 2013.

DATED: Honolulu, Hawai'i, this 21st day of December, 2012.

OFFICE OF PLANNING  
STATE OF HAWAI'I



A handwritten signature in black ink, appearing to read 'Jesse K. Souki', is written over a horizontal line. The signature is stylized and cursive.

JESSE K. SOUKI  
Director



**OFFICE OF PLANNING**

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Docket No. A94-706

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

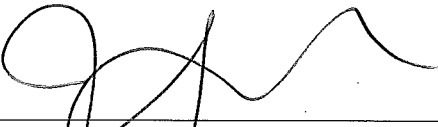
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DATED: Honolulu, Hawai'i, this 21st day of December, 2012.

  
\_\_\_\_\_  
JESSE K. SOUKI  
Director  
Office of Planning