

McCORRISTON MILLER MUKAI MacKINNON LLP

CLIFFORD J. MILLER 1406-0

miller@m4law.com

JOEL D. KAM 6052-0

kam@m4law.com

JONATHAN H. STEINER 6084-0

Steiner@m4law.com

500 Ala Moana Boulevard
Five Waterfront Plaza, 4th Floor
Honolulu, Hawaii 96813

Telephone: (808) 529-7300

Facsimile: (808) 524-8293

JOHN S. RAPACZ 4408-0

rapacz@hawaii.rr.com

P.O. Box 2776

Wailuku, HI 96793

Telephone: (808) 244-6955

Facsimile: (808) 244-6956

Attorneys for HONUUA'ULA PARTNERS, LLC

60615

LAND USE COMMISSION
STATE OF HAWAII

2012 SEP 14 P 2: 33

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A-94-706
)	
KAONOULU RANCH)	HONUUA'ULA PARTNERS, LLC'S
)	MOTION FOR ORDER BIFURCATING
To Amend the Agricultural Land Use District)	DOCKET NO. A94-706 AND
Boundary into the Urban Land Use District)	SUSPENDING SHOW CAUSE HEARING
for approximately 88 acres at Kaonoulu,)	AS TO HONUUA'ULA PARTNERS, LLC;
Makawao-Wailuku, Maui, Hawai'i)	AFFIDAVIT OF MICHAEL ROSENFELD;
)	CERTIFICATE OF SERVICE
)	
)	

MOTION FOR ORDER BIFURCATING DOCKET NO. A94-706 AND
SUSPENDING SHOW CAUSE HEARING AS TO HONUUA'ULA PARTNERS, LLC

Petitioner HONUUA'ULA PARTNERS, LLC ("Honua'ula"), by and through its undersigned attorneys, hereby moves the Land Use Commission of the State of Hawaii (the "Commission") to:

(i) substitute Honua'ula for the original petitioner in this docket, Kaonoulu Ranch (the "Original Petitioner"), with respect to the portion of the original Petition Area designated by TMK No. (2) 3-9-001:169 (the "Honua'ula Parcel"), and formally recognize Honua'ula as a party to this docket;

(ii) bifurcate this docket and issue a new docket number for the Honua'ula Parcel;

(iii) stay, as to Honua'ula and the Honua'ula Parcel, the show cause hearing ordered by the Commission in that certain Order Granting Movants' Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief dated September 10, 2012, until such time as a decision is rendered on a Motion to Amend the 1995 D&O to be filed by Honua'ula by not later than July 31, 2013; and

(iv) confirm that although Honua'ula and the Honua'ula Parcel shall remain subject to that certain Findings of Fact, Conclusions of Law, and Decision and Order dated February 10, 1995 (the "1995 D&O"), following issuance of a new docket number for the Honua'ula Parcel, Honua'ula and the Honua'ula Parcel shall not be subject to any decision and/or order that may be issued by the Commission in this docket, and likewise that any decision and/or order that may be issued by the Commission under the new docket number shall not affect or apply to any petitioners or property remaining in this docket.

This Motion is brought pursuant to Hawaii Administrative Rules ("HAR") sections 15-15-1, 70 and 71, and is supported by the attached affidavit of Michael Rosenfeld, and the records and files contained in this docket.

Pursuant to HAR section 15-15-70(c), Honua'ula hereby requests a hearing on this motion.

I. BACKGROUND

In 1994 the Original Petitioner filed a Petition for District Boundary Amendment to amend the Land Use District Boundary to reclassify approximately 88 acres of land at Kaonoulu, Makawao-Wailuku, Maui, Hawaii, specifically identified at the time by Tax Map Key Nos. 2-2-02: portion of 15 and 3-9-01:16 (the "Petition Area") from the Agricultural District to the Urban District. On February 10, 1995, the Commission issued the 1995 D&O reclassifying the Petition Area to the Urban District subject to certain conditions specified therein.

In or about 2005, the Original Petitioner conveyed the Petition Area to Maui Industrial Partners, LLC ("MIP").

In or about 2009, MIP conveyed the Honua'ula Parcel to Honua'ula.

In or about 2010, MIP conveyed the remainder of the Petition Area to Piilani Promenade North, LLC, and Piilani Promenade South, LLC (jointly, "Piilani").

On May 23, 2012, Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahale (collectively, "Intervenors") filed a Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief (the "Motion for Order to Show Cause"). In the Motion for Order to Show Cause, Intervenors contended, among other things, that the intended use of the Honua'ula Parcel by Honua'ula for the development of 250 affordable housing units violated Conditions 5 and 15 of 1995 D&O. Condition 5 provides:

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 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 provides:

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.

On September 10, 2012, the Commission granted Intervenors' Motion for Order to Show Cause, and ordered that a show cause hearing be set as to the entire Petition Area (the "Show Cause Hearing").

On September 6, 2012, the Commission's Executive Officer conducted a prehearing conference relating to the Show Cause Hearing, and preliminarily scheduled the Show Cause Hearing for November 1 and 2, 2012.

II. SUBSTITUTION OF PARTY

Honua'ula is the fee owner of the Honua'ula Parcel which is a portion of the Petition Area covered by this docket and the 1995 D&O. HAR §15-15-71 provides as follows:

"Upon motion and for good cause shown, the commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion."

Since Honua'ula is the current owner of a portion of the Petition Area, good cause exists to substitute Honua'ula for the Original Petitioner with respect to the Honua'ula Parcel and to recognize Honua'ula as a formal party in this docket.

III. BIFURCATION OF DOCKET AND STAY OF SHOW CAUSE HEARING

By this motion, Honua'ula is asking the Commission to bifurcate this docket and issue a new docket number for just the Honua'ula Parcel, and to stay the Show Cause Hearing until such time as the Commission renders a decision on a Motion to Amend the 1995 D&O, which

Honua'ula intends to file by July 31, 2013. Bifurcation and a stay of the Show Cause Hearing are appropriate for the following reasons:

First, although Honua'ula desires to construct 250 affordable housing units on the Honua'ula Parcel, it is not clear when construction activities will commence. No construction is presently occurring on the Honua'ula Parcel, and no construction activities are planned in the near future. No County building, grading or other permits that may be necessary for construction of the desired affordable housing units have been obtained. No firm estimates or timeframes for when the construction of the desired affordable housing units will commence have been established. In this regard, Honua'ula stands in stark contrast to Piilani which has already begun the process of obtaining permits to initiate construction of its project.

Second, Honua'ula hereby represents that it will file a Motion to Amend the 1995 D&O to clarify that the Honua'ula Parcel may be used as the site for the desired affordable housing units (the "Motion to Amend"). Honua'ula further represents that it will file the Motion to Amend by not later than July 31, 2013, and that no construction of the desired affordable housing units or related site work will occur on the Honua'ula Parcel unless and until the Commission grants the Motion to Amend.

Finally, the Commission has the inherent authority to manage proceedings before it in a just and efficient manner. HAR sec. 15-15-01 provides, in pertinent part:

Purpose. This chapter governs the practice and procedure before the land use commission, and shall be construed to secure the just and efficient determination of every proceeding. This chapter shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawaii."

Given the absence of present construction activities on the Honua'ula Parcel, and Honua'ula's commitment to file the Motion to Amend and to refrain from initiating construction of the

affordable housing units on the site unless and until the Commission grants the Motion to Amend, it would be grossly unjust and inefficient to subject Honua'ula to the Show Cause Hearing and the possibility of reversion of the Honua'ula Parcel to the Agricultural District.

Even if Honua'ula did not commit to file the Motion to Amend, Honua'ula's mere desire to use the Honua'ula Parcel as the site of an affordable housing project, in the complete absence of any overt acts necessary to fulfill that desire, cannot reasonably be construed as a violation of either Condition 5 or 15 of the 1995 D&O. Nevertheless, Honua'ula will file the Motion to Amend to eliminate any doubt as to the propriety of the desired affordable housing use. Under these circumstances, to subject Honua'ula to the Show Cause Hearing and the possibility of reversion to the Agricultural District as the result of a development undertaken by a third party (i.e., Piilani) would be draconian and completely unreasonable. Fortunately, the Commission may easily avoid this result by bifurcating this docket and issuing a new docket number covering the Honua'ula Parcel, and suspending the Show Cause Hearing until such time as the Commission has ruled upon the Motion to Amend. This would allow the Commission to move forward with the Show Cause Hearing as to Piilani, which desires to move forward quickly, without subjecting Honua'ula to the Show Cause Hearing unnecessarily. In addition, none of the other parties to the Show Cause Hearing, including Intervenors, would suffer any prejudice because the Show Cause Hearing could be reset as to Honua'ula if Honua'ula should fail to file the Motion to Amend, or if the Commission should deny the Motion to Amend.

IV. INSULATION FROM ORIGINAL DOCKET

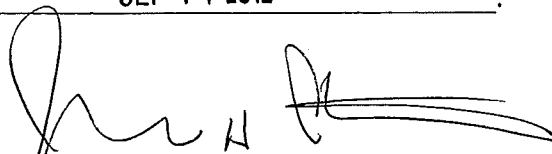
Finally, because the 1995 Order will continue to affect the Honua'ula Parcel even if this Motion is granted, Honua'ula requests that the Commission confirm in the order that Honua'ula and the Honua'ula Parcel will be insulated from any decision and/or order that may be issued by the Commission in the original docket, and likewise that any decision and/or order that may be

issued by the Commission under the new docket number shall not affect or apply to any petitioners or property remaining in the original docket. This will help to clarify that the fate of the Honua'ula Parcel and the Piilani parcels will be determined by the actions of Honua'ula and Piilani, respectively, notwithstanding that the parcels may be covered by the same 1995 Order unless and until the Commission grants the Motion to Amend.

V. **CONCLUSION**

Based upon the foregoing, Honua'ula respectfully requests that the Commission grant this Motion.

Dated: Honolulu, Hawai'i, SEP 14 2012.



CLIFFORD J. MILLER
JOEL D. KAM
JONATHAN H. STEINER

Attorneys for Honua'ula Partners, LLC

affordable housing units or related site work will occur on the Honua'ula Parcel unless and until the Commission grants the Motion to Amend.

6. Capitalized terms used in this Affidavit have the same meanings ascribed to such terms in the Motion, unless defined otherwise.

Further Affiant sayeth naught.

Honua'ula Partners, LLC
a Delaware limited liability company

By: Wailea Associates, LLC
a Delaware limited liability company
Its Managing Member

By: Michael Rosenfeld
Executive Manager

This _____ page *Affidavit of* _____
dated _____, was subscribed and
sworn to before me by _____ on
_____, in the _____ Circuit
of the State of Hawaii.

Name:
Notary Public, State of Hawaii

My commission expires:

ACKNOWLEDGMENT

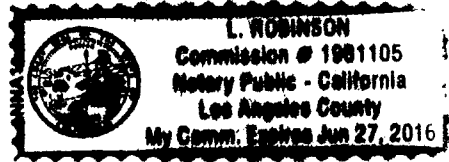
State of California
County of Los Angeles

On September 13, 2012 before me, L. Robinson notary public
(insert name and title of the officer)

personally appeared Michael Rosefield
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in
~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature] (Seal)

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date, a true and correct copy of the foregoing document was duly served upon the following party via certified mail, return receipt requested and electronic mail, addressed as follows:

TOM PIERCE, ESQ. tom@mauilandlaw.com
P.O. Box 798
Makawao, Hawai'i 96768

Bryan C. Yee Bryan.C.Yee@hawaii.gov
Deputy Attorney General
Department of the Attorney General
435 Queen Street
Honolulu, Hawai'i 96813

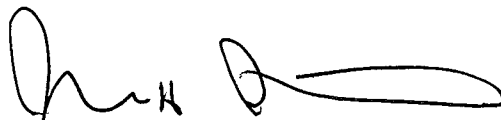
Jesse K. Souki, Director Jesse.K.Souki@dbedt.hawaii.gov
Office of Planning
State of Hawai'i
Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawai'i 96813

William Spence, Director William.Spence@co.maui.hi.us
County of Maui, Office of Planning
250 S. High Street
Kalana Pakui Building, Suite 200
Wailuku, Hawai'i 96793

Jane Elizabeth Lovell, Esq. Jane.Lovell@co.maui.hi.us
Corporation Counsel
County of Maui
200 South High Street
Kalana O Maui Building, 3rd Floor
Wailuku, Hawai'i 96793

SEP 14 2012

Dated: Honolulu, Hawai'i, _____.



CLIFFORD J. MILLER

JOEL D. KAM

JONATHAN H. STEINER

Attorneys for Honua'ula Partners, LLC