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LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A-94-706
)	
KAONOULU RANCH	)	PIILANI PROMENADE SOUTH, LLC
	)	AND PIILANI PROMENADE NORTH,
To Amend the Agricultural Land Use District	)	LLC'S MOTION TO STAY PHASE II OF
Boundary into the Urban Land Use District	)	THE ORDER TO SHOW CAUSE
for approximately 88 acres at Kaonoulu,	)	PROCEEDING; DECLARATION OF
Makawao-Wailuku, Maui, Hawai'i	)	JONATHAN H. STEINER; EXHIBIT "1";
	)	CERTIFICATE OF SERVICE
)	
)	

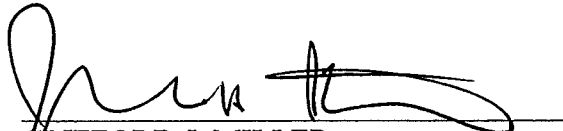
PIILANI PROMENADE SOUTH, LLC AND PIILANI PROMENADE NORTH, LLC'S
MOTION TO STAY PHASE II OF THE ORDER TO SHOW CAUSE PROCEEDING

COME NOW Piilani Promenade South, LLC ("PPS") and Piilani Promenade North, LLC ("PPN") (collectively "Piilani"), by and through its undersigned attorneys, hereby move the Land Use Commission of the State of Hawaii (the "Commission") to stay Phase II of 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 the Commission renders a decision on a Motion to Amend the 1995 D&O, which Piilani intends to file by not later than December 31, 2013.

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 Simon J. Honeybone, and the records and files contained in this docket.

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

Dated: Honolulu, Hawai'i, April 8, 2013.



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

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Piilani Promenade South, LLC (“PPS”) and Piilani Promenade North, LLC (“PPN”) (collectively “Piilani”) hereby request that the Commission stay Phase II of the pending Order to Show Cause proceeding, on the basis that Piilani has not proceeded with and will not be proceeding with any development which will violate the 1995 D&O, but instead will file a Motion to Amend the 1995 D&O.

II. BACKGROUND

In 1994 Kaonoulu Ranch (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 part of the Petition Area, specifically approximately 13 acres identified as TMK (2) 3-9-001:169 (“the Honua’ula Parcel”) to Honua’ula Partners, LLC. In or about 2010, MIP conveyed the remainder of the Petition Area, specifically the portion of the original Petition Area designated by TMK Nos. (2) 3-9-001:016 and 170-174 (the “Piilani Parcels”), to Piilani. Piilani is not affiliated with Honua’ula, and has separate ownership.

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 Piilani Parcels by Piilani for the development of retail shopping complex violated Conditions 5, 15, and 17 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 15 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.

Condition 17 provides, in relevant part:

17. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein.

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 11, 2012, the Commission entered a Prehearing Order, wherein it was stated that the Commission would first hold hearings to consider whether Piilani and Honua'ula had violated the 1995 D&O (hereinafter “Phase I”). Thereafter, if a violation was

found, the Commission would then proceed to hold hearings to determine whether reversion or other designation is the appropriate remedy (hereinafter "Phase II").

On November 1, 2, 15 and 16, 2012, the Commission heard evidence and arguments in Phase I of the Order to Show Cause. At a meeting on February 7, 2013, a majority of the members of the Commission orally passed a motion finding that Piilani's and Honua'ula's proposed uses of the Piilani Parcels and the Honua'ula Parcel would violate Conditions 5 and 15 of the 1995 D&O, and that Condition 17 had also been violated. No written order reflecting that oral motion has been entered.

As of the date of this filing, a hearing on Phase II of the Order to Show Cause has not been scheduled, nor have any exhibits, evidence, or arguments been submitted by any party to the Order to Show Cause proceeding in Phase II.

III. STAY OF SHOW CAUSE HEARING

By this motion, Piilani respectfully requests that the Commission stay Phase II of the Show Cause Hearing until such time as the Commission renders a decision on a Motion to Amend the 1995 D&O, which Piilani intends to file by December 31, 2013. A stay of the Show Cause Hearing is appropriate because, based on the Commission's finding that the development of the Piilani Promenade project would violate the 1995 D&O, Piilani will not develop the Piilani Promenade project, but will instead be moving to amend the 1995 D&O to allow for development of the Piilani Parcels in a manner to be set forth in detail in said motion. As such, there will be no construction or development which will violate the 1995 D&O, and proceeding to Phase II would be an inefficient use of the Commission's and parties' resources.

The decision of the Commission that Piilani's proposed development would be in violation of Conditions 5 and 15 of the 1995 D&O presumably was based on Piilani's proposal to construct a retail shopping complex on the Piilani Parcels, the conceptual plans for which do

not include a frontage road. The Commission presumably found that development of this specific project pursuant to Piilani's existing conceptual plans would not be in substantial compliance with the representations made to the Commission by the Original Petitioner (Condition 15), and that the failure to incorporate a frontage road into the conceptual plans constitutes a violation of Condition 5 of the 1995 D&O.

Although mass grading permits were obtained by Piilani prior to the commencement of Phase I, no significant grading or other construction has occurred. Furthermore, Based on the finding by the Commission that the proposed development would violate the 1995 D&O, Piilani has elected not to construct the proposed Piilani Promenade as depicted in its conceptual plan presented to the Commission in Phase I of the Order to Show Cause hearing. Rather, Piilani represents that it will file, pursuant to HAR §§ 15-15-70 and 15-15-94, a Motion for Order Amending the 1995 D&O (hereinafter "the Motion to Amend"). Therein, Piilani will request that the Commission bifurcate this docket to re-designate a new docket covering only the Piilani Parcels, and to release the Piilani Parcels from the conditions of the 1995 D&O, and to impose new, appropriate conditions, allowing Piilani to develop a retail/commercial and/or light industrial project. The details of the conditions which Piilani will seek to amend, and the development upon which the Motion to Amend will be based are in the process of being formulated, and will be set forth in the Motion to Amend, including all impacts from the new proposed project. Unless and until that Motion to Amend is heard, Piilani will not commence any construction activities on the Piilani Parcels without express approval of the Commission.

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 that there is and will be no construction activity on the Piilani Parcels, and also given Piilani's commitment to file the Motion to Amend and not to engage in construction on the Piilani Parcels unless and until the Commission grants the Motion to Amend, it would be unjust and inefficient to subject Piilani to Phase II of the Show Cause Hearing and the possibility of reversion of the Piilani Parcels to the Agricultural District. Fortunately, the Commission may easily avoid this result by suspending Phase II of the Show Cause Hearing until such time as the Commission has ruled upon the Motion to Amend. None of the other parties to the Show Cause Hearing, including Intervenors, would suffer any prejudice because Phase II of the Show Cause Hearing could be reset if Piilani should fail to file the Motion to Amend, or if the Commission should deny the Motion to Amend.

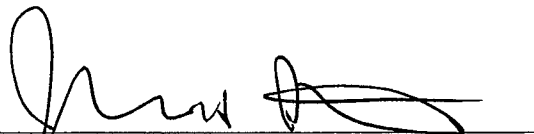
Neither Intervenors nor any other party be prejudiced with regards to the Honua'ula Parcel if Phase II of the Order to Show Cause Proceeding is stayed. In Phase I, Honua'ula's representative stated, on the record, that due to legal challenges and uncertainty in the market, Honua'ula has no present intention or plans to begin construction of the affordable housing project on the Honua'ula Parcel. See Testimony of Charles Jencks, Transcript of November 15, 2012 at 56:10-18, 58:10-16. Honua'ula has not taken any overt actions, such as seeking any permits, which would indicate an intent to begin construction of the affordable housing project on the Honua'ula Parcel. Piilani has no control over what Honua'ula will ultimately seek to do with regards to the determination in Phase II that its affordable housing project is in violation of the 1995 D&O. Piilani intends, when it files its Motion to Amend, to therein also seek to

bifurcate the docket herein, such that a new docket (or sub-docket) that is created would only apply to the Piilani Parcels.¹

IV. CONCLUSION

Based upon the foregoing, Piilani respectfully requests that the Commission grant this Motion.

Dated: Honolulu, Hawai'i, April 8, 2013.



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

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC

¹ Alternatively, Piilani would not be opposed to the Commission bifurcating the docket at this time, to separate the Piilani Parcels and the Honua'ula Parcel into separate subdockets, each of which would only apply to each owners' parcel. Piilani and Honua'ula are separate entities, and the development of their parcels are not interdependent. For procedural reasons, it would appear to be more efficient to bifurcate as part of Piilani's Motion to Amend, but if the Commission would prefer to bifurcate at this time, Piilani would not object, and would be willing, if necessary, to file a motion seeking that relief.

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A-94-706
)
KAONOULU RANCH) DECLARATION OF JONATHAN
) STEINER
To Amend the Agricultural Land Use District)
Boundary into the Urban Land Use District)
for approximately 88 acres at Kaonoulu,)
Makawao-Wailuku, Maui, Hawai'i)
)
_____)

DECLARATION OF JONATHAN H. STEINER

I, JONATHAN H. STEINER, hereby declare that:

1. I am licensed to practice law in all courts of the State of Hawaii.
2. I am an attorney with the law firm of McCorriston Miller Mukai

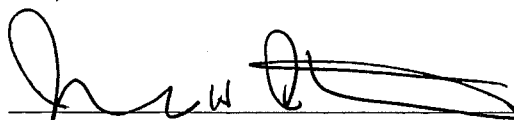
MacKinnon LLP, attorneys for Piilani Promenade South, LLC and Piilani Promenade North, LLC.

3. I have personal knowledge of the matters set forth herein except and unless stated to be upon information and belief.

4. Attached hereto as Exhibit "1" is a true and accurate facsimile copy of Simon J. Honeybone's Affidavit executed in Dallas, Texas. I understand the original is being mailed to my office from Texas, and I intend to file the original with The Land Use Commission upon receipt of the document.

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

Dated: Honolulu, Hawaii, April 8, 2013.


JONATHAN H. STEINER

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A-94-706
)	
KAONOULU RANCH	)	AFFIDAVIT OF SIMON J. HONEYBONE
)	
To Amend the Agricultural Land Use District)	
Boundary into the Urban Land Use District)	
for approximately 88 acres at Kaonoulu,)	
Makawao-Wailuku, Maui, Hawai'i)	
)	
)	
)	
)	

AFFIDAVIT OF SIMON J. HONEYBONE

I, Simon J. Honeybone, being duly sworn on oath, deposes and says:

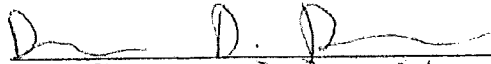
1. I am the Vice President of Piilani Promenade South, LLC and Piilani Promenade North, LLC ("Piilani"), and am authorized and competent to testify on its behalf.
2. I am familiar with the property owned by Piilani which is the subject of this docket, and have personal knowledge of the facts set forth in the motion to which this affidavit is attached (the "Motion").
3. I make this affidavit pursuant to Haw. Admin. Rules sec. 15-15-39.
4. I have read the Motion and hereby verify that the contents thereof are true and correct to the best of my knowledge and belief.
5. Piilani intends to file a motion to amend the 1995 D&O by not later than December 31, 2013, and will not undertake any construction on the parcels subject to the 1995 D&O owned by Piilani unless and until the Commission grants the Motion to Amend or otherwise allows such construction.

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

Further Affiant sayeth naught.


SIMON J. HONEYBONE

This Two page Affidavit of Simon J. Honeybone dated April 3, 2013, was subscribed and sworn to before me by Simon J. Honeybone April 8, 2013, in the Dallas County Circuit of the State of Texas.



Name: DOMINIQUE D. DONOVAN
Notary Public, State of Texas



My commission expires:
JUNE 23, 2014

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:

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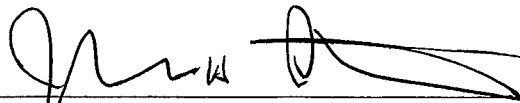
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Dated: Honolulu, Hawai'i, April 8, 2013.



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