

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

RECEIVED
JUN 12 2013

STATE OF HAWAII
LAND USE COMMISSION

S 130pm
✓

Attorneys for Piilani Promenade South, LLC and
Piilani Promenade North, LLC
60615

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 STRIKE AND
Boundary into the Urban Land Use District	)	OBJECTION TO INTERVENORS'
for approximately 88 acres at Kaonoulu,	)	SUPPLEMENTAL MEMORANDUM IN
Makawao-Wailuku, Maui, Hawai'i	)	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
	)	PROCEEDINGS, FILED APRIL 16, 2013;
	)	CERTIFICATE OF SERVICE
)	
)	

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
PROCEEDINGS, FILED APRIL 16, 2013

COME NOW Piilani Promenade South, LLC ("PPS") and Piilani Promenade North, LLC ("PPN") (collectively "Piilani"), by and through their undersigned attorneys, and hereby submits this Motion to Strike and Objection to Intervenor's Supplemental Memorandum, served on June 5, 2013 ("Supplemental Memorandum"). The Supplemental Memorandum should be stricken because it is not allowed under the rules, and no extraordinary circumstances or new developments justify such an out of time filing.

Hawaii Administrative Rule ("HAR") § 15-15-70 governs motions filed with the Commission before, during, or after the close of a hearing. Thereunder a party may submit a motion, and then, unless the deadline to respond is modified by the Chair of the Commission, any party opposing the motion may file counter affidavits and memorandums in opposition to the motion not later than seven days after being served. There is no provision for submitting supplemental memoranda. Thus, absent leave of the Commission, or possibly under special circumstances, such are not allowed.

In this case, Piilani filed its Motion to Stay Phase II of the Order to Show Cause Proceeding on April 8, 2013. Intervenor's had the opportunity to submit, and did submit, a Memorandum in Opposition to that Motion on April 16, 2013. That same date, they also filed their own Motion to Conclude Contested Case. Piilani, the County of Maui, and the State Office of Planning, each submitted timely memoranda in opposition (or joinders therein) to that motion on April 23, 2013. Under the rules, the submission of those memoranda completed the briefing

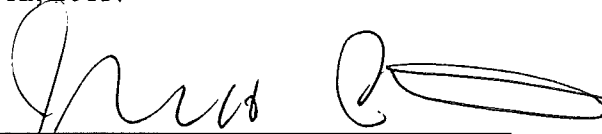
on the two Motions, with oral argument to occur at the hearing set by the Commission. Despite there being no significant new developments, Intervenors now want to take an extra bite at the apple by submitting the Supplemental Memorandum.

The Supplemental Memorandum essentially seeks to compel the Commission to enter Finding of Fact and Conclusions of Law as to Phase I of the Order to Show Cause proceeding. Whether and when to enter such is wholly within the discretion of the Commission, particularly in light on the pending Motion to Stay Phase II. Thus, the Supplemental Memorandum improperly seeks affirmative relief beyond the pending Motions before the Commission.

Nor do any new developments or other extraordinary circumstances justify the need to file a Supplemental Memorandum. Contrary to the Intervenors' assertion, the public is not being harmed by the procedural posture of the proceeding, since both Piilani and Honua'ula Partners, LLC have committed not to take any action to develop the Subject Property until the Commission addresses the pending motions. Intervenors' cite, out of context, an article from the Maui News, as evidence of the public being harmed. Piilani joins in the discussion and explanation of same in the Department of Planning, County of Maui's Reply and Joinder in this filing, filed of even date herewith. Piilani would add that, as this Commission is well aware, enforcement and interpretation of Maui County zoning is not within the Commission's jurisdiction, and thus, there is no way that the lack of Findings of Fact and Conclusions of law by the Commission on Phase I could possibly have any detrimental effect on any determination of what the zoning or the Community Plan allows. See HRS § 205-5 & 205-12; Lanai Co., Inc. v. Land Use Comm'n, 105 Hawai'i 296, 318-19, 97 P.3d 372, 394-95 (2004); Kuleana Ku'ikahi, LLC v. State, Land Use Com'n, Slip Copy, 2012 WL 1510188, *3 -*4 (Hawai'i App. April 27, 2012).

Based upon the foregoing, Piilani respectfully requests that the Commission strike the Supplemental Memorandum. The arguments therein, and the relief sought, should not be considered by the Commission. No hearing is requested on this motion.

Dated: Honolulu, Hawai'i, June 12, 2013.

A handwritten signature in black ink, appearing to read 'Clifford J. Miller', written over a horizontal line.

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

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

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

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

Dated: Honolulu, Hawai'i, June 12, 2013.


CLIFFORD J. MILLER
JOEL D. KAM
JONATHAN H. STEINER
Attorneys for Piilani Promenade South, LLC
and Piilani Promenade North, LLC