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. A94-706

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 PILANI PROMENADE SOUTH, LLC'S MOTION TO STAY PHASE II OF THE ORDER TO SHOW CAUSE PROCEEDING, FILED APRIL 16, 2013; CERTIFICATE OF SERVICE

Filed by: Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele
Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele (“Intervenors”), through their attorney Tom Pierce, Esq., hereby submit their Supplemental Memorandum (“Supplement”) 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.

I. REASON FOR SUPPLEMENT OF INTERVENORS’ EARLIER MEMORANDUM

This Supplement provides the Commission with information relating to events that have occurred subsequent to Intervenors’ filings made on April 16, 2013, as follows: This Supplement incorporates by reference Intervenors’ Memorandum in Opposition to Piilani Promenade South, LLC and Piilani Promenade North, LLC’s Motion to Stay Phase II of the Order to Show Cause Proceeding, filed April 8, 2013.

1. Legal counsel for PPN and PPS recently intimated that this Commission never intended to issue findings of fact (“FOF”) and conclusions of law (“COL”) after the conclusion of Phase One. However, the record belies PPN and PPS’s representation, as summarized below.

2. The County of Maui’s attorney, Michael Hopper, who sat through the Phase One Commission hearing, has recently testified before the Maui County Council explaining that the County may not surmise why the Commission voted the way it did because there was no written

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1 Intervenors standard abbreviations for the parties will apply, namely: Pi’ilani Promenade South, LLC (“PPS”), Pi’ilani Promenade North, LLC (“PPN”), and Honua’ula Partners, LLC (“HP”). In addition the Findings of Fact, Conclusions of Law, and Decision and Order filed February 10, 1995 will be referred to as the “1995 Order.”
decision and order with respect to that vote. See Appendix “A,” attached hereto, which is a true and correct copy of a Maui News article, dated May 22, 2013, entitled “Few Honua‘ula Conditions Met so Far.” This fact shows how the public is being harmed by a delay in rendering FOF and COL, and otherwise not concluding the current contested case.

II. THE COMMISSION INTENDED TO, AND HAS AN OBLIGATION TO, ENTER FINDINGS AND CONCLUSIONS

The Commission’s Scheduling Order confirmed findings and conclusions would issue. On September 27, 2012, the Commission’s Chairperson issued a Scheduling Order in which this contested case was bifurcated into a Phase One and Phase Two. It was clearly stated by the Commission that it would be making findings and thereafter determining whether there had been a violation, i.e., reaching conclusions. For example, the last paragraph of that Scheduling Order provides as follows with respect to Phase One: “[T]his Commission will first consider whether [PPS, PPN] and/or [HP] has violated the applicable conditions of the [1995 Order]; should this Commission find that [PPN, PPS and/or HP] has failed to perform according to the conditions imposed or the representations or commitments made, this Commission will then determine whether reversion or other designation is the appropriate remedy.” (Emphasis added).

The Commission ordered findings and conclusions upon conclusion of evidence of Phase One. Consistent with the Scheduling Order, immediately upon conclusion of the evidentiary portion of the hearing, the chair of the Commission ordered the parties to prepare proposed FOF and COL: “I’d like to direct the parties to draft your individual proposed Findings of Fact, Conclusions of Law, and Decision and Order based upon the record in this docket and served upon each other and the Commission.” Transcript of Proceedings held on November 16, 2012. The chair ordered the parties to file and serve their proposed FOF/COL/D&O by December 21, 2012, and objections thereto by January 4, 2013. Id.
The Commission voted only after receiving and reviewing the parties’ proposed FOF/COL/D&O. After the parties submitted to the Commission their respective proposed FOF/COL/D&O and objections, the Commission held a hearing. The hearing occurred on February 7, 2013, where the Commission voted that PPN, PPS and HP had violated conditions 5, 15 and 17 of the 1995 Order. However, the Commission did not adopt the FOF/COL/D&O that day and the adoption has not been rescheduled.

III. THE PUBLIC IS BEING HARMED BY THE DELAY

Intervenors explained in their April 16, 2013 filings that a further delay of issuing findings, conclusions and a decision and order as to Phase One, and the failure to otherwise complete Phase Two in a timely manner would be prejudicial to Intervenors and harmful to the public. One such example has already transpired before the Maui County Council relating to County conditions on HP. The attached Maui News article states in pertinent part as follows:

“The council was led (in 2008) to believe that the Kaonoulu site would require less infrastructure investment, was ready to go and that workforce housing there would be an ideal fit,” Irene Bowie, executive director of the Maui Tomorrow Foundation, said Tuesday. “These claims no longer appear accurate.”

Debate as to whether or not residential apartments may be allowed under Kaonoulu’s “light industrial” zoning may be a reason the state found the project to be in violation of its land use conditions, county officials said, though they do not know for sure.

“Because there was no written decision in the order (from the state LUC), we don’t know a lot of specifics as to what the commission ordered,” said Deputy Corporation Counsel Michael Hopper.

(Emphasis added). See Appendix “A.”

IV. CONCLUSION

The law requires the Commission to complete this contested case. It can begin that process by issuing the FOF and COL and D&O for Phase One. It may continue that process by
scheduling the hearing for Phase Two and thereafter issuing a final decision in this contested case which is already over a year old.

THEREFORE, Intervenors hereby request as follows:

1. That a hearing be set at the earliest practicable time to render written findings, conclusions and a decision and order as to Phase One;

2. That the Commission schedule at the earliest practicable time a hearing for Phase Two;

3. That at the conclusion of Phase Two the Commission, as soon as practicable thereafter, file a final decision and order so that this contested case may be concluded as required by the Hawai‘i Administrative Procedure Act.


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TOM PIERCE
Attorney for Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele
Few Honolulu’sla conditions met so far
Honua‘ula
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Council in 2008; the Maui Planning Commission
approved its final environmental
impact statement last year.
But some community groups say that developers of the $1.2
billion project have failed to
meet a number of the other crit-
cal conditions set by the County
Council, like the 250-unit af-
fordable housing that would be
built off-site in Kaonoulu and
constructed first, before the
market units at Honua‘ula.
The Kaonoulu housing proj-
ext was expected to commence
construction “within two years,
provided all necessary permits
can be obtained within that time
frame,” according to the 2008
condition. However, no con-
struction has taken place be-
cause the state Land Use Com-
mission found in February
that the project was in violation of
the conditions placed on the
housing development in 1999.
“The council was led (in
2008) to believe that the Kaon-
oulu site would require less
infrastructure investment, was
ready to go and that workforce
housing there would be an ideal
fit,” Irene Bowie, executive di-
rector of the Maui Tomorrow
Foundation, said Tuesday.
“These claims no longer appear
accurate.”
Debate as to whether or not
residential apartments may be
allowed under Kaonoulu’s “light
industrial” zoning may be a
reason the state found the proj-
ject to be in violation of its land
use conditions, county officials
said, though they do not know
for sure.
“Because there was no writ-
ten decision in the order (from
the state LUC), we don’t know
a lot of specifics as to what the
commission ordered,” said
Deputy Corporation Counsel
Michael Hopper. He also noted
that there have been apartments,
like the Iao Parkside Condo-
ominiums, built in areas zoned
for light industrial use.
Other community members
were concerned about the un-
certain future of a native dry-
land forest located in the south-
ern part of the project area that
is home to a number of native
plants, including the rare will-
ill tree.
“This is a very special treas-
ure we have on Maui,” said
Laura Herrmann, who testified
as a community member.
“Ten thousand years ago,
there was a lava flow in the area
that created the kind of soil that
protects willill trees from preda-
tors like kiawe that often
destroy the habitat,” she said.
“There is ample opportunity for
research that can bring dollars
to the state.”
Honua‘ula Partners, under
Condition 27 of its county ordi-
nance, is required to draft a
habitat conservation plan for the
management of the area, and
that would be approved by the
state Department of Land and
Natural Resources, the U.S.
Fish and Wildlife Service and
the U.S. Corps of Engineers, with
a conservation easement “no less than 18 acres and
no more than 30 acres.”
The U.S. Fish and Wildlife
Service recommended in a
2010 letter sent to the devel-
opers “that the entire 130-acre
at the southern end of the project
merits preservation.”

However, the project’s envi-
ronmental impact statement,
which was approved by the
Maui Planning Commission
last year, proposes only a 40-
acre preserve. However,
Honua‘ula Partners has also
designated an additional 350
acres off-site in East Maui, and
the Kanaio and Auwahi areas,
as conservation easements,
according to the developer’s own
representative Charlie Jencks.
“Everybody looks at the 130
acres as being an end-all solu-
tion to the problem, but that
130 acres is not premium habi-
tat,” Jencks said. “There is habi-
tat elsewhere that provides a
much greater public and envi-
ronmental benefit.”
Honua‘ula Partners has sub-
mited a draft plan to both state
and federal agencies and ex-
pects a final approval from the
state DLNR this summer, accord-
ing to it compliance report.
“The latest proposal submit-
ted to the Planning Department
is 40 acres. We still do not have
confirmation from all the agen-
dices as to what that magic num-
ber is,” said county planner Ann
Cua. “This is one of the condi-
tions that is holding up the proj-
ect from going to the next step.”
Cua said the next step is for
Honua‘ula Partners to submit
an application to the Maui Plan-
ing Commission for Phase 2
of the project to be approved,
which will not be granted until
many of the conditions, like the
habitat conservation plan, are
met.
“It just takes one guy in one
agency to say ‘I’m not going to
get through this today; I’m too
busy,’ and things get stalled,”
Jencks said. “It was a difficult
approval.” I started working on
the project in 2001, and we did
not get zoning until 2008.”

Asked about a construction
timeline, Jencks said it is entire-
ly dependent on how long it will
take to secure the necessary per-
mits, satisfy the conditions of
approval and get project financ-
ing. However, he said he ex-
pects to start construction in
the next 10 years.

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“protect the mission” pres-
sures a safe environment
for the children, elderly
or anyone else who attends
the Salvation Army facility or
for worship, recreational or fi-
cial assistance.”
He added that the of-
cine takes careful pro-
cedures to reduce or eliminate
abuse that might occur.
“We do not take light
allegation that might
be proactive in search-
ning and discovering
details that surround
Rasmussen said in the.
The Maui News does not
reach Taba’s immediate
through phone or email.
Spencer, who said he
’t like to call attention
self, said she was spec-
t to try to help others. The
ional scars she can see
her abuse have led to
ning her femininity
hing revealing clothes,
even carrying a purse

“If one person can
cepted and saved, it’s
everything coming from
she said in an interview
Mau News on Tuesday
with her attorney
after the lawsuit was

Oahu attorney
Rosenberg said in a
written statement she
stepping forward, be-
helping expose a lon-
mal pattern of abuse.
her bravery will inspire
potential victims on
Maui, to help them
these unspeakable acts.

Spencer’s decision
ty to light
from seeing an obitu-
a and learning that
oved to Maui and
part of the Salvation.
She said she be-
Taba was fired after he
reported the abuse
Salvation Army a
decades ago. She knew
not was at the
Army site she had atte-

Reading the
brought it all back,”
Spencer reflected on
ault on Oahu and
Maui might have had

This photo of a willill tree on the Honua‘ula property was taken in 2007

OBITUARIES

Robert “Kau‘i” “Bob” Gilmore


He was a teacher at Kalaeoha Elementary School former president of HSTA.

Preceded in death by: father, Robert B. Gilmore; sister, Darlene N. Fauhiva.

Survived by: mother, Florence W. Yoshino, Maui; sister, Luana Kama, Maui; brother, Hamlin (Linda)
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document shall be duly served upon the following parties as addressed below, via certified mail, return receipt requested and electronic mail, on June 5, 2013:

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