

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

LAND USE COMMISSION
STATE OF HAWAII

2018 JUL -5 A 11:16

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, Hawai'i; Tax Map Key Nos. 2-2-02:por. of 15 and 3-9-01:16

Docket No. A94-706

STATUS REPORT OF PIILANI
PROMENADE SOUTH, LLC AND PIILANI
PROMENADE NORTH, LLC, SUCCESSOR
PETITIONERS TO KAONOULU RANCH;
CERTIFICATE OF SERVICE

**STATUS REPORT OF
PIILANI PROMENADE SOUTH, LLC AND
PIILANI PROMENADE NORTH, LLC,
SUCCESSOR PETITIONERS TO KAONOULU RANCH**

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

COMES NOW Piilani Promenade South, LLC ("PPS"), and Piilani Promenade North, LLC ("PPN") (hereinafter collectively "Piilani")¹, successors-in-interest to KAONOULU RANCH, a Hawai'i limited partnership, in regards to the real property which is the subject matter of Docket No. A94-706, as referenced above (the "Petition Area"), and pursuant to a request made telephonically by the State of Hawai'i Land Use Commission (the "Commission") on May 17, 2018, hereby submits this status report.

A. Background Information.

1. Ownership of the Petition Area.

Piilani own six of the seven parcels (the "Piilani Parcels") encumbered by the Findings of Fact, Conclusions of Law, and Decision and Order issued by the Commission on February 10,

¹ PPS and PPN are Delaware limited liability companies and the current owners of six of the seven parcels encumbered by the D&O. The parcels owned by Piilani are comprised of the following tax map key parcels: (2) 3-9-001:016 and 170-174, and are referred to collectively hereinafter as the "Piilani Parcels."

1995 (the “D&O”) in Docket No. A94-706. The Piilani Parcels are identified as tax map key parcels (2) 3-9-001:016 and :170-:174. The seventh parcel encumbered by the D&O is owned by Honua‘ula Partners, LLC (“Honuauula”), which has no affiliation with Piilani. Honuauula owns tax map key parcel (2) 3-9-001:169, referred to hereinafter as the “Honuauula Parcel.” The Honuauula Parcel and the Piilani Parcels are collectively referred to hereinafter as the “Petition Area”.

2. Petition Area.

The Petition Area is located within the State Land Use Urban District, and within the Urban growth boundary identified in the Maui Island Plan. The Project is designed as LI Light Industrial under the Kihei-Makena Community Plan, and is zoned within the M-1 Light Industrial district.

Lands located north of the Petition Area include a commercial complex, which is within the State Land Use Urban District. The complex includes a self-storage facility, a gas station, and an automobile sales lot. Located south of the Petition Area is the Kihei High School, which is within the State Land Use Urban District.

Lands located *mauka* (east) of the Petition Area are very large commercial ranch lands which extend up to Lower Kula, which are within the State Land Use Agricultural District. Lands located *makai* (west) of the Petition Area include the Kaonoulu Estates residential subdivision and the Maui Lu Resort, which are within the State Land Use Urban District.

3. Procedural History.

On May 23, 2012, Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele (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 a retail project (the “Retail Project”) violated Conditions 5, 15, and 17 of D&O.

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 Honuaula had violated the 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 proceeding. At a meeting on February 7, 2013, a majority of the members of the Commission orally passed a motion finding that Piilani’s and Honuaula’s proposed uses of the Piilani Parcels and the Honuaula Parcel would violate Conditions 5 and 15 of the D&O, and that Condition 17 had also been violated. No written order reflecting that oral motion has been entered.

On April 18, 2013, Piilani filed a Motion to Stay Phase II of the Order to Show Cause Proceeding, wherein Piilani represented that it intended to file a motion to amend the D&O to allow Piilani to develop a project different from that originally presented to the Commission when the D&O was issued. Piilani requested that the Commission stay Phase II to allow the Commission to consider its Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated February 10, 1995 (the “Motion to Amend”). On June 27, 2013, the Commission granted the Motion to Stay Phase II of the Order to Show Cause Proceeding, and ordered that Phase II would be stayed on the condition that Piilani file its Motion to Amend before

December 31, 2013, and that no construction on the Property occur during the stay. Piilani filed its Motion to Amend on December 31, 2013.

Piilani prepared an environmental impact statement (the “EIS”) for a mixed use project incorporating light industrial, business/commercial, and multi-family uses (the “Mixed Use Project”), and submitted the same to the Commission for processing in connection with its review of the Motion to Amend. After two days of public hearings, the Commission denied the acceptance of the final EIS prepared for the Mixed Use Project on July 20, 2017.

B. Development of Original Plan.

Since July 2017, Piilani and Honuaula have been meeting to discuss development of the Petition Area in light of the procedural history and non-acceptance of the EIS. After much discussion, Piilani has decided to forego each of the Retail Project and the Mixed Use Project, and to develop the Petition Area together with Honuaula in substantial compliance with the representations made to the Commission, as required by condition 15 of the D&O (the “Original Plan”).

The Original Plan was to develop a 123-lot commercial and light industrial subdivision within the Petition Area. Piilani and Honuaula have been meeting with their consultants to discuss how to design and implement the Original Plan.

In January 2018, Piilani retained Koa Partners, LLC to lead the approval, design, and development efforts for the Original Plan, and to engage in a dialogue with all stakeholders, including the Intervenor and other interested community members, to discuss the development of the Petition Area as the Original Plan. Through this dialogue, the Intervenor and other members of the public have expressed an interest in seeing other types of uses (other than light industrial)

on the Petition Area. Piilani is continuing to engage with the public to discuss development options for the Petition Area.

To implement the Original Plan, Piilani has already expended over \$2,672,000.00 for materials and construction work. Approximately \$1,900,000.00 of materials are presently located upon the Petition Area, which were purchased with funds that were released from a cash bond deposited with the County of Maui Department of Public Works' Development Services Administration in connection with its approval of Subdivision File Nos. 2.2795 and 2.2995. Over \$700,000.00 has been spent on labor and construction costs to clear the Petition Area, to erect fencing around the perimeter, and for mobilization for the installation of necessary infrastructure. The \$2,672,000.00 does not include costs expended by Piilani for plans, professional services, and permits, which Piilani has also incurred in connection with development of the Petition Area.

In addition, as required by the County of Maui Department of Public Works' Development Services Administration in connection with its approval of Subdivision File Nos. 2.2795 and 2.2995, Piilani deposited \$22,058,826.00 in cash to fund civil infrastructure improvements to support the implementation of the Original Plan. The improvements include:

- Sitework Improvements - \$1,256,710.00
- East Kaonoulu Street Improvements - \$2,299,046.00
- Piilani Highway Widening Improvements - \$1,411,106.00
- Access Road and Swales - \$1,771,330.00
- Sewer System/Revisions - \$712,592.00
- Storm Drainage System/Revisions - \$2,895,052.00
- Onsite Water System - \$834,700.00
- 12" Offsite Water/IMG Water Tank - \$4,802,784.00

- 36" Water Main/Water/Misc. Revisions - \$2,444,940.00
- Electrical - \$885,566.00
- Traffic Signal Improvements - \$643,000.00
- Landscape/Irrigation - \$1,202,000.00
- CRM Walls - \$900,000.00

As aforementioned, approximately \$1,900,000 of the cash bond was released to purchase certain materials. The remaining \$20,150,000.00 continues to be held by the County of Maui as a bond for the performance of certain improvements and infrastructure required by the subdivision approvals.

In total, Piilani has invested approximately \$23,000,000.00 into the Original Plan and development of the Petition Area.

C. Supplement to Annual Report.

This Status Report supplements the Twenty-Second Annual Report which was filed by Piilani on March 12, 2018. In particular, Piilani hereby amends and restates its response to Condition 5, Condition 15, and Condition 17, each in their entirety, as follows:

Condition 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 Piilani Highway and Kaonoulou 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 Piilani 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.

Piilani intends to comply with this condition. Petitioner notes that the State Department of Transportation (the "DOT") has indicated to the Commission that a

frontage road parallel to Piilani Highway would not be feasible and could create traffic and safety issues, and that the State DOT would not approve a frontage road.

Condition 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.

Piilani intends to comply with this condition.

Petitioner previously presented a retail project to the Commission, and the Commission orally passed a motion finding that the proposed retail project would violate Condition 15. Based on this determination, Petitioner has been in contact with Honua'ula Partners, LLC ("Honua'ula"), the owner of other parcel encumbered by the D&O (tax map key parcel (2) 3-9-001:169), to coordinate a development plan for the Property that substantially complies with the representations made to the Commission.

Condition 17. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of 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. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Piilani has complied, and intends to further comply, with this condition, and submits this status report to supplement the information provided with its annual reports. All annual reports through 2018 have now been filed with the Commission.

Except as stated above, the responses in the twenty-second annual report are still correct and remain unchanged.

D. No Violations of the D&O.

As noted in Section A.3 of this Status Report, the Commission orally passed a motion finding that Piilani's and Honuaula's proposed uses of the Piilani Parcels and the Honuaula Parcel would violate Conditions 5 and 15 of the D&O, and that Condition 17 had also been violated. As noted in Section B and Section C of this Status Report, Piilani and Honuaula will be revising their

development plans for the Petition Area so that they substantially comply with the Original Plan; upon doing so, there will be no violation of Conditions 5 and 15 of the D&O. Piilani and Honuaula have submitted Annual Reports to the Commission for all relevant years; therefore, the violation of Condition 17 has been cured, and there is no current violation of Condition 17.

Thank you for allowing us the opportunity to provide an update on this matter.

DATED: Honolulu, Hawai'i, July 5, 2018.



RANDALL F. SAKUMOTO

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

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that, on the date noted below, a true and correct copy of the foregoing document was duly served upon the following parties via U.S. mail, postage prepaid:

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DATED: Honolulu, Hawai'i, July 5, 2018.



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