

December 6, 2018

Mr. Daniel Orodenker  
Executive Officer  
Land Use Commission  
235 South Beretania Street, Suite 406  
Honolulu, Hawai'i 96813

VIA EMAIL ONLY:

Daniel.e.orozenker@hawaii.gov

**Re: *In the Matter of the Petition of Kaonoulu Ranch; Docket No. A-94-706***

Dear Mr. Orodenker:

Intervenors hereby submit their opposition to Piilani's motion for continuance and motion for a hearing, submitted to you on December 5, 2018.<sup>1</sup>

**Piilani's Request for an Extension of Time to Respond**

Piilani fails to attach a declaration or to state any legal or factual basis for the need of a total of forty days to respond to a limited procedural motion requesting that the 2013 Stay be lifted.<sup>2</sup> Piilani does not deny that it will have significant time to prepare for the hearing on the adoption of the FOF/COL and for the hearing on the Phase II reverter issue after the Commission rules on Intervenors' Motion. As such, Piilani's request for an extension until January 10 is unreasonable and appears to be motivated by an interest to delay the proceeding rather than for a good faith reason.

In response to an email from Piilani's attorney, dated December 5, 2018, Intervenors offered to stipulate to an agreement of an additional ten days for Piilani's response, thereby giving Piilani at least seventeen days to prepare its opposition memorandum. Intervenors believe this remains reasonable.

A ten day extension also avoids prejudice to Intervenors in two ways. First, Intervenors, over their objections, have been waiting since 2013 to conclude the contested case. Based on Piilani's proposed timeline and proposal for a hearing, it is unlikely that Intervenors' Motion would be decided until February 2019. The hearings that would follow that decision would likely not occur until following months.

Additionally, Intervenors respectfully request that the Executive Officer take into account the fact that the attorney for Intervenors has a previously booked trip to the mainland that is

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<sup>1</sup> Defined abbreviations set forth in Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision ("Intervenors' Motion") are adopted herein.

<sup>2</sup> Intervenors' Motion was served on December 1, 2018, and Piilani received a courtesy electronic copy on November 30, 2018.

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scheduled from January 10 through January 21, 2019, and during that time he will be unable to respond to any filings. See Declaration of Tom Pierce, attached hereto. In light of their attorney's schedule Intervenors would prefer that all potential filings regarding Intervenors' Motion will have been filed with the Commission by year end, or at least prior to January 10, 2019, including any permitted reply memoranda.

Finally, the Commission rule cited by Piilani appears to apply to *continuances* of hearings, not to *extensions* of time to respond. See 15-15-70(f) (discussing *continuances* and *hearings* on motions, rather than extensions of time or enlargements of time). Therefore, while there may be authority from other sources, Piilani's specific citation for the Executive Officer's authority to grant the extension of time appears to be misplaced.

For the foregoing reasons, Intervenors respectfully request that any extension of time granted to Piilani to respond to the 2013 Stay be of a shorter duration, such as the ten days offered by Intervenors.

**Piilani's Request for a Hearing on Intervenors' Motion to Lift the 2013 Stay**

Similar to Piilani's request for an extension of time, Piilani's request for a hearing is void of any legal substance or facts supporting the request, and this is sufficient reason alone to deny the request.

Commission rule § 15-15-70(h) provides that motions not involving the "final determination of a proceeding" may be heard and determined by the Chairperson or another Commissioner. Since Intervenors' motion does not involve a final determination of a proceeding, Intervenors anticipate that the Chairperson or another Commissioner could hear and determine the initial limited issue presented in Intervenors' motion, which is procedural in nature. In this way, scheduling can occur in short order, and the next available hearing on this matter can be used for the remaining contested case issues, the FOF/COL issue and the Phase II issue.

If for some reason, the Commission's representatives or attorneys determine that the Chairperson should not decide Intervenors' motion, the Commission may nonetheless decide Intervenors' motion without a hearing. See Commission rule § 15-15-70(j) (providing that if a hearing is not requested, the Commission "may decide the matter upon the pleadings, memoranda, and other documents filed with the Commission").

The limited issue presented in Intervenors' Motion is the issue of lifting the 2013 Stay and setting hearing dates for adoption of the FOF/COL and for the Phase II issues. The Chairperson or Commission deciding this limited issue may review the record in this docket. There is no need for oral argument from the parties. Therefore, the request for a hearing should be denied.

Nevertheless, if the Executive Officer is inclined to grant Piilani's request for a hearing, this provides additional reason for granting only a limited time extension to Piilani to respond to Intervenors' Motion.

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**Conclusion**

The 2013 Stay was conditioned upon Piilani's promise to seek amendments to the 1995 D&O. Through filings submitted to the Commission in July, Piilani formally announced that it had abandoned its effort to amend the 1995 D&O. As such, it cannot be disputed that the conditions supporting the 2013 Stay no longer exist. Intervenors are requesting that the 2013 Stay be lifted so that the contested case may move forward and not be further delayed. Piilani's due process rights will be protected through hearings regarding the adoption of the FOF/COL and on the Phase II issues. In light of Piilani's failure to provide the Executive Officer with any good faith reason of any sort for the relief it has requested in its motion, it would appear it is solely motivated for the improper purpose of delay, which would be prejudicial to Intervenors. Therefore, Piilani's request for a hearing on lifting the 2013 Stay should be denied and any extension of time granted for Piilani's response to Intervenors' Motion should be of shorter duration.

Very Truly Yours,



Tom Pierce

cc (via email):

Randall F. Sakumoto, Esq.  
Dawn Takeuchi-Apuna, Esq.  
Michael J. Hopper, Esq.  
Curtis T. Tabata, Esq.  
Randall S. Nishiyama, Esq.

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

DECLARATION OF TOM PIERCE

**Filed by:** Maui Tomorrow Foundation, Inc.,  
South Maui Citizens for Responsible Growth  
and Daniel Kanahele

**DECLARATION OF TOM PIERCE**

Tom Pierce, Esq., states as follows:

1. I am over 18 years of age, I am a resident of the County of Maui, State of Hawai`i. I am the attorney representing the above named Intervenors.
2. I have a previously scheduled trip planned to the mainland in January 2019 that cannot be changed. I also have a non-refundable flight to the mainland that was previously purchased. During the time I am on the mainland I will have only limited time to review documents and will be unable to prepare or file formal responses.
3. My flight to the mainland leaves on the evening of Thursday, January 10, 2019. My flight returning to Hawai`i leaves on the evening of Monday, January 21, 2019.

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

DATED: Makawao, Maui, Hawai`i, December 6, 2018.



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TOM PIERCE, ESQ.  
TOM PIERCE ATTORNEY AT LAW LLLC