

Hakoda, Riley K

From: tom@mauilandlaw.com
Sent: Thursday, January 17, 2019 12:11 PM
To: 'Randall F. Sakumoto'
Cc: Orodenger, Daniel E; Hakoda, Riley K; 'Curtis Tabata'; 'Kristin Tarnstrom'; 'Michael Hopper'; Apuna, Dawn T; Funakoshi, Rodney
Subject: RE: A94-706 - Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision
Attachments: 18.12.06 Intervenors' Opposition to Piilani Request for Extension and Hearing.pdf; 18.12.07 Order Granting Extension to Petitioners.pdf

Dear Mr. Orodenger and Parties,

Intervenors respectfully request a twenty day extension in which to respond to the various opposition papers filed by the parties, and we also hereby request courtesy consent to the same by the other parties to assist resolution of the issue. If we understand correctly, there is no pending hearing and an additional twenty days for Intervenors' response would not affect the LUC's schedule. Nor would there be prejudice to the parties from the extension.

As a reminder of the timeline: The parties have had an electronic copy of Intervenors' motion since November 30, 2018. However, they were granted an extension of time to respond until January 10. Intervenors did not receive hard copies of these documents until Tuesday, January 15. The combined pleadings and exhibits are about three inches thick. However, Intervenors' reply is due tomorrow, Friday, January 18 because the tenth day falls on a Sunday. (Copy of the December 7, 2018 order attached.)

I have also attached Intervenors' previous opposition to Petitioner Piilani's request for an extension. As a reminder, Intervenors were not opposed to some extension, and had offered a courtesy ten day extension in their opposition filing; however, they thought that providing forty days of time to respond was unnecessary and might delay the hearing of the matter. We later learned that this was not the case.

Additionally, attached to that opposition was my declaration explaining that I would be on the mainland from January 10 to January 21. I subsequently canceled that flight in order to be available to meet this LUC deadline and others that cropped up thereafter. I have not sought an extension until now from the LUC because I had hoped to keep the matter moving as expeditiously as possible. However, my availability to work on this has been severely restricted by another client matter, which involves preliminary injunctive relief, and of which the County attorneys are aware. I just completed another deadline in that case late yesterday and was finally able to focus on this.

Additionally, while I would ordinarily not raise the issue, I believe that the Piilani petitioners have not effected proper service on the Intervenors by serving by certified mail, which we understand the LUC rules require. Instead, we received by first class mail, although others did serve by certified mail, including Honua'ula. If the certified mail rule remains valid, this provides another reason for granting the extension.

I thank the Executive Director and the parties for their understanding and assistance. I apologize for the late request.

Sincerely,

Tom Pierce

Tom Pierce Attorney at Law LLC

mauilandlaw.com . [LinkedIn](#) . PO Box 798, Makawao, HI 96768 . Phone: 808-573-2428 . FAX: 866-776-6645

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From: Randall F. Sakumoto <Sakumoto@m4law.com>

Sent: Tuesday, December 4, 2018 3:49 PM

To: tom@mauilandlaw.com

Cc: 'Orodenker, Daniel E' <daniel.e.orozenker@hawaii.gov>; 'Hakoda, Riley K' <riley.k.hakoda@hawaii.gov>; 'Curtis Tabata' <cttabata@yahoo.com>; 'Kristin Tarnstrom' <Kristin.Tarnstrom@co.maui.hi.us>; 'Michael Hopper' <Michael.Hopper@co.maui.hi.us>; 'Apuna, Dawn T' <dawn.t.apuna@hawaii.gov>; 'Rodney Y' <rodney.y.funakoshi@hawaii.gov>

Subject: RE: A94-706 - Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision

Tom,

On behalf of Piilani Promenade North, LLC and Piilani Promenade South, LLC, we hereby request a 30-day extension of time to file a reply to your motion. Assuming your motion was filed with the LUC today, 12/4/18, we understand that our reply would be due on 12/11/18. With a 30-day extension, our reply would be due on **1/10/19**. I have conferred with counsel to OP, the County of Maui and Honua'ula Partners and understand that they have no objection to such an extension.

Given the upcoming holiday season and information from the LUC staff that the commission will not be able to hear this motion until sometime in February, we trust your clients will find this extension request to be a reasonable one. If this extension is acceptable, please let me know as soon as possible, and I will circulate a stipulation to that effect for signature by counsel. Thanks, and I look forward to hearing from you.

Randall F. Sakumoto
McCorriston Miller Mukai MacKinnon LLP
P.O. Box 2800
Honolulu, Hawaii 96803-2800
Dir. Tel. No.: (808) 529-7304
Dir. Fax No.: (808) 535-8025
E mail: sakumoto@m4law.com

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From: tom@mauilandlaw.com <tom@mauilandlaw.com>

Sent: Friday, November 30, 2018 4:56 PM

To: 'Orodenker, Daniel E' <daniel.e.orozenker@hawaii.gov>; 'Hakoda, Riley K' <riley.k.hakoda@hawaii.gov>; Randall F.

Sakumoto <Sakumoto@m4law.com>; 'Curtis Tabata' <cctabata@yahoo.com>; 'Kristin Tarnstrom' <Kristin.Tarnstrom@co.maui.hi.us>; 'Michael Hopper' <Michael.Hopper@co.maui.hi.us>; 'Apuna, Dawn T' <dawn.t.apuna@hawaii.gov>; 'Rodney Y' <rodney.y.funakoshi@hawaii.gov>

Subject: A94-706 - Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision

Aloha,

Please find attached an electronic copy of the motion identified in the subject line of this email, to be followed by a hard copy served by U.S. mail.

Sincerely,

Tom Pierce

Tom Pierce Attorney at Law LLLC

mauilandlaw.com . [LinkedIn](#) . PO Box 798, Makawao, HI 96768 . Phone: 808-573-2428 . FAX: 866-776-6645

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2019 JAN 17 P 1:18

December 6, 2018

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

VIA EMAIL ONLY:

Daniel.e.oroedener@hawaii.gov

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

Dear Mr. Orodener:

Intervenors hereby submit their opposition to Piilani's motion for continuance and motion for a hearing, submitted to you on December 5, 2018.¹

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.² 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

¹ 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.

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

12/6/2018

Intervenors' Opposition to Piilani's 12/5/2018 Motion

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TOM PIERCE
ATTORNEY AT LAW
A Limited Liability Law Company

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.

12/6/2018

Intervenors' Opposition to Piilani's 12/5/2018 Motion

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TOM PIERCE
ATTORNEY AT LAW

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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.



TOM PIERCE, ESQ.
TOM PIERCE ATTORNEY AT LAW LLC

DAVID Y. IGE
Governor

MARY ALICE EVANS
Acting Director



LAND USE COMMISSION
STATE OF HAWAII
DANIEL E. ORODENKER
Executive Officer

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

2019 JAN 17 P 1:18

December 7, 2018

Randall F. Sakumoto, Esq.
McCorriston Miller Mukai MacKinnon LLP
P.O. Box 2800
Honolulu, Hawai'i 96803-2800

Dear Mr. Sakumoto:

Subject: Docket No. A94-706/Ka'ono'ulu Ranch: Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision

I am in receipt of your letter dated December 5, 2018, requesting on behalf of Pi'ilani Promenade North, LLC, and Pi'ilani Promenade South, LLC (collectively "Pi'ilani"), a continuance of the deadline to file a response to Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision ("Motion to Conduct Phase II") to January 10, 2019. We understand that you have conferred with counsel to the State Office of Planning ("OP"), the County of Maui ("County"), and Honua'ula Partners, LLC ("Honua'ula"), and they have each joined in your request.

Pursuant to Hawai'i Administrative Rules §15-15-42(a)(1), your request is hereby granted. All responses, including any counter affidavits and memorandums in opposition to the Motion to Conduct Phase II, from Pi'ilani, OP, the County, and Honua'ula shall be due on January 10, 2019. Please be advised that the granting of this extension of time is subject to Intervenors being allowed to file a reply memorandum within ten days after being served with any opposition papers filed by the parties.

Your request that a hearing be set on the Motion to Conduct Phase II is also granted. For your information, the matter has been tentatively scheduled for February 20-21, 2019. The parties will be informed of the exact date, time, and location of the hearing as soon as the information becomes available.

Randall F. Sakumoto, Esq.
December 7, 2018
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Should you have any questions on this matter, please feel free to call me at 587-3822

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel E. Orodener", with a long horizontal line extending to the right.

Daniel E. Orodener
Executive Officer

c: Dawn Takeuchi-Apuna, Esq.
Michael J. Hopper, Esq.
Curtis T. Tabata, Esq.
Tom Pierce, Esq.