



LAND USE COMMISSION
STATE OF HAWAII

2019 MAR -4 A 10: 05

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A94-706
)	
KA'ONO'ULU RANCH)	ORDER SETTING EVIDENTIARY
)	HEARING ON ISSUES PRESENTED
To Amend The Agricultural Land Use)	BY PETITIONERS' MOTION TO
District Boundary Into The Urban Land)	DISMISS THE ORDER TO SHOW
Use District For Approximately 88)	CAUSE PROCEEDING; AND
Acres Of Land At Ka'ono'ulu,)	CERTIFICATE OF SERVICE
Makawao-Wailuku, Maui, Hawai'i,)	
Tax Map Key: 3-9-01: 16, 169, And)	
170 Through 174)	
_____)	

ORDER SETTING EVIDENTIARY HEARING ON ISSUES PRESENTED BY
PETITIONERS' MOTION TO DISMISS THE ORDER TO SHOW CAUSE PROCEEDING

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawai'i.

March 4, 2019 by

Executive Officer



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ORDER SETTING EVIDENTIARY HEARING ON ISSUES PRESENTED BY
PETITIONERS' MOTION TO DISMISS THE ORDER TO SHOW CAUSE PROCEEDING

On February 1, 2019, Pi'ilani Promenade South, LLC, and Pi'ilani Promenade North, LLC (collectively "Pi'ilani" or "Petitioners"), filed a Motion to Dismiss the Order to Show Cause Proceeding; Memorandum in Support of Motion; Declaration of Randall F. Sakumoto; Exhibit "1"; and Certificate of Service (collectively "Motion to Dismiss"), pursuant to Hawai'i Administrative Rules ("HAR") §15-15-70. In its Motion to Dismiss, Pi'ilani requested that the State of Hawai'i Land Use Commission ("Commission") dismiss the Order to Show Cause ("OSC") proceeding because (1) the

Commission lacks the authority to conclude Phase I of the OSC proceeding and commence Phase II of the OSC proceeding; (2) the Commission's oral findings of violation in Phase I of the OSC proceeding are no longer factually accurate and cannot serve as a basis for Phase II of the OSC proceeding; and (3) the Commission does not have the authority to enforce reversion or otherwise reclassify the real property at issue under Docket No. A94-706 through Phase II of the OSC proceeding because Pi'ilani has substantially commenced use of the Petition Area. Pi'ilani further requested a hearing on the Motion to Dismiss.

On February 4, 2019, Honua`ula Partners, LLC ("Honua`ula"), filed a Joinder to Petitioners' Motion to Dismiss the Order to Show Cause Proceeding filed February 1, 2019, and Certificate of Service.

On February 7, 2019, Maui Tomorrow Foundation, Inc.; South Maui Citizens for Responsible Growth; and Daniel Kanahale (collectively "Intervenors") filed a Memorandum in Opposition to Petitioners' Motion to Dismiss the Order to Show Cause Proceeding, Filed 2/1/2019, and Certificate of Service.

On February 12, 2019, the State of Hawai'i Office of Planning ("OP") filed a Response to Petitioner's Motion to Dismiss the Order to Show Cause Proceeding and Certificate of Service.

On February 13, 2019, Pi`ilani filed a Reply Memorandum in Support of Their Motion to Dismiss the Order to Show Cause Proceeding, Filed February 1, 2019, and Certificate of Service.

On February 14, 2019, OP filed a Withdrawal of Response to Petitioner's Motion to Dismiss the Order to Show Cause Proceeding, and Amended Response to Petitioner's Motion to Dismiss the Order to Show Cause Proceeding and Certificate of Service.

On February 14, 2019, the County of Maui Department of Planning ("DP") filed a Response to Petitioners' Motion to Dismiss the Order to Show Cause Proceeding and Certificate of Service.

The Commission considered the Motion to Dismiss at its meeting on February 20, 2019, at the Maui Arts & Cultural Center, Alexa Higashi Meeting Room, One Cameron Way, Kahului, Maui, Hawai`i. Randall F. Sakumoto, Esq.; Lisa W. Cataldo, Esq.; and Catherine A. Taschner, Esq., appeared on behalf of Pi`ilani. Curtis T. Tabata, Esq., appeared on behalf of Honua`ula. Michael J. Hopper, Esq., and Michele McLean appeared on behalf of the DP. Dawn T. Apuna, Esq., and Rodney Funakoshi appeared on behalf of OP. Tom Pierce, Esq. appeared on behalf of the Intervenors.¹

¹ At the beginning of the meeting, Commissioner Gary Okuda disclosed that attorneys at the firm of Pi`ilani's counsel represent adverse parties in two of his pending cases, but that this would not affect his decision-making in this proceeding. There were no objections by the parties to Commissioner Okuda's continued participation in this matter.

At the meeting, the Commission heard public testimony from Mike Moran, Harry Lake, Mark Hyde, and Albert Perez. During his testimony, Mr. Lake, Chief Executive Officer for Koa Partners,² provided a Modified Plan depicting the current development proposal for the Petition Area. Following the receipt of public testimony, Pi`ilani proceeded with its presentation on its Motion to Dismiss. Honua`ula, the DP, and OP followed in turn with their respective arguments on Pi`ilani's Motion to Dismiss. Upon the completion of OP's case, the Commission recessed its proceeding on the Motion to Dismiss.

On February 21, 2019, the Commission reconvened at the Maui Arts & Cultural Center, Alexa Higashi Meeting Room, to consider Pi`ilani's Motion to Dismiss. At this time, Pi`ilani withdrew the Modified Plan of the Petition Area submitted by Mr. Lake from the Commission's consideration and stated, among other things, that they would be proceeding with the original development for the Petition Area as proposed by its predecessor in the docket, Ka`ono`ulu Ranch. Intervenors then presented their arguments on the Motion to Dismiss. Following discussion, a motion was made and seconded to set an evidentiary hearing on the issues presented in Pi`ilani's Motion to

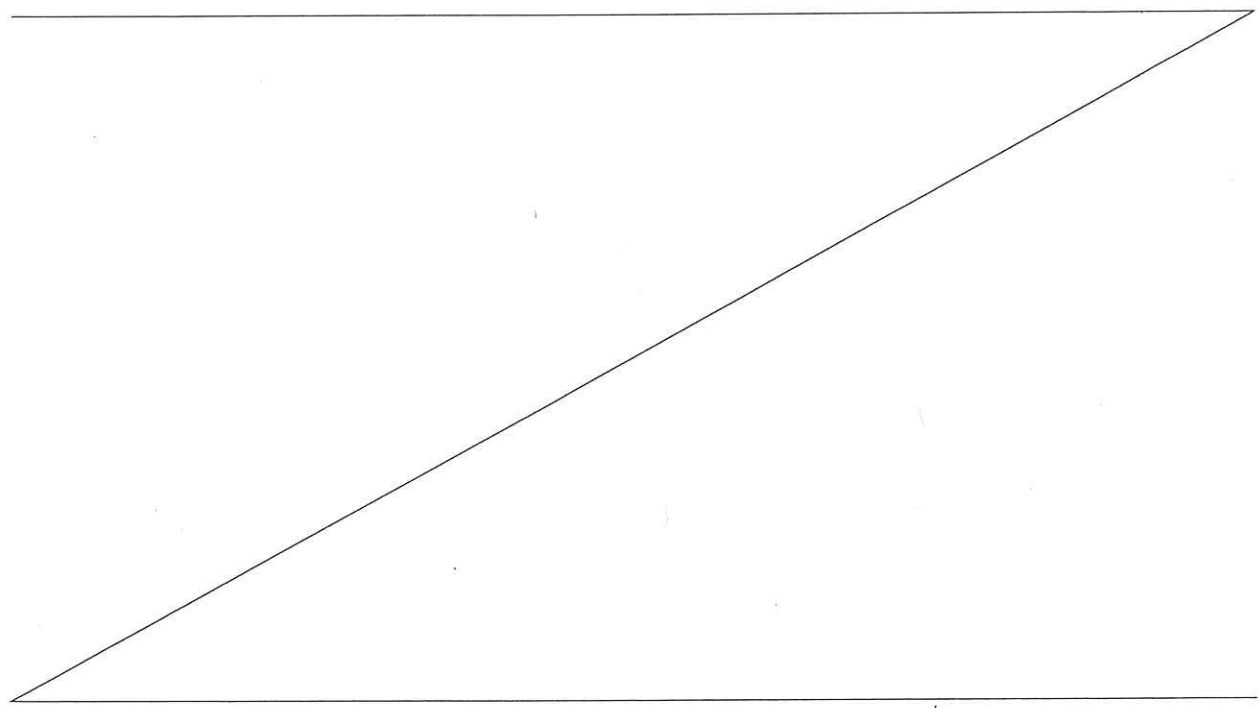
² Koa Partners was retained by Pi`ilani to lead the approval, design, and development efforts, and to identify, contact, and discuss the development of the Petition Area with stakeholders, including the Intervenors.

Dismiss. Upon further discussion, a vote was taken on this motion. There being a vote tally of 8 ayes and 0 nays, the motion passed.³

ORDER

This Commission, having duly considered Pi`ilani's Motion to Dismiss, the oral and written arguments of the parties in the proceeding, and a motion having been made and seconded at a meeting on February 21, 2019, in Kahului, Maui, Hawai`i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS that an evidentiary hearing be set on the issues presented by Pi`ilani's Motion to Dismiss.



³ There are currently eight sitting members on the Commission. The Kaua`i seat is vacant.
Docket No. A94-706 Ka`ono`ulu Ranch
Order Setting Evidentiary Hearing On Issues Presented By Petitioners' Motion To Dismiss The
Order To Show Cause Proceeding

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Wailuku, Hawai'i, this 4th, day of March, 2019, per motion on February 20, 2019.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII

Randall S. Ishiyama
Deputy Attorney General

By 
JONATHAN SCHEUER
Chairperson and Commissioner

Filed and effective on:

03/04/2019

Certified by:


DANIEL ORODENKER
Executive Officer



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DOCKET NO. A94-706

CERTIFICATE OF SERVICE

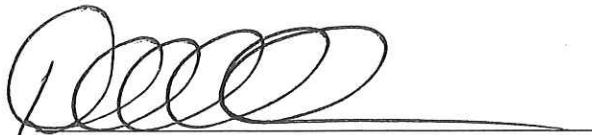
CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER SETTING EVIDENTIARY HEARING ON ISSUES PRESENTED BY PETITIONERS' MOTION TO DISMISS THE ORDER TO SHOW CAUSE PROCEEDIN AND CERTIFICATE OF SERVICE was served upon the following by either by hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		
DAWN TAKEUCHI-APUNA, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
TOM PIERCE PO Box 798 Makawao, Hawaii 96768			X
MICHELE MCLEAN Director, County of Maui Planning Department 250 S. High St Kalana Pakui Bldg Ste 200 Wailuku, HI 96793		X	
MICHAEL HOPPER, Esq. Deputy Corporation Counsel 200 S. High St. Kalana O Maui Bldg 3rd Flr Wailuku, HI 96793			X
McCorriston Miller Mukai MacKinnon LLP RANDALL SAKUMOTO, Esq Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawai'i 96813			X
BENJAMIN M. MATSUBARA, #993-0 CURTIS T. TABATA, #5607-0 Matsubara-Kotake 888 Mililani Street, Suite 308 Honolulu, Hawaii 96813			X

Honolulu, Hawai'i, March 4, 2019.



DANIEL ORODENKER
Executive Officer