

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

September 3, 2013

Via Electronic Mail and U.S. Mail

Mr. Daniel Orodener
Executive Officer
Land Use Commission
Department of Business, Economic
Development and Tourism, State of Hawaii
235 South Beretania Street, Suite 406
Honolulu, Hawai'i 96813

2013 SEP - 9 A 7:36
LAND USE COMMISSION
STATE OF HAWAII

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

Dear Mr. Orodener:

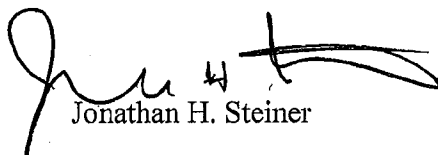
Enclosed herewith are an original and two extra copies of the Eighteenth Annual Report of Piilani Promenade South, LLC and Piilani Promenade North, LLC, Successor Petitioners to Kaonoulu Ranch, for the year 2013.

Piilani Promenade South, LLC, Piilani Promenade North, LLC respectfully request that the Commission accept the enclosed as the Annual Report for 2013.

In addition, we would appreciate it if you could please file-stamp the enclosed copies and return them to our office in the enclosed stamped, self-addressed envelope. Thank you for your assistance in this matter.

Very truly yours,

MCCORRISTON MILLER MUKAI MacKINNON LLP


Jonathan H. Steiner

JHS:ej

Enclosure

cc: Jesse Souki, State Office of Planning (w/enclosure)
William Spence, Director of Planning, County of Maui (w/enclosure)
Bryan Yee, Esq. (w/enclosure)

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

In the Matter of the Petition of

Docket No. A94-706

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

2013 SEP -9 A 7:36
LAND USE COMMISSION
STATE OF HAWAII

**EIGHTEENTH ANNUAL REPORT OF PIILANI PROMENADE
SOUTH, LLC AND PIILANI PROMENADE NORTH, LLC,
SUCCESSOR PETITIONER TO KAONOULU RANCH (2013)**

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 the “Piilani”)¹, successor-in-interest to MAUI INDUSTRIAL PARTNERS, LLC (“MIP”), 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 Condition No. 17 of the Findings of Fact, Conclusions of Law, and Decision and Order issued on February 10, 1995 (the “D&O”), hereby submits its Eighteenth annual report of compliance with the conditions established by said approval, for the year 2013, as follows:

¹ PPS and PPN are Hawaii 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.” The seventh parcel encumbered by the D&O is owned by Honua`ula Partners, LLC (“Honua`ula”). Honua`ula owns tax map key parcel (2) 3-9-001:169, referred to hereinafter as the “Honua`ula Parcel.” This Annual Report only addresses the Piilani Parcels. Piilani understands that Honua`ula will file its own separate annual report.

General Progress of the Project

Kaonoulu Ranch (the "Original Petitioner") obtained a Community Plan Amendment and Change in Zoning for the Petition Area. On May 12, 2005, MIP purchased the fee simple interest in the Petition Area from the Original Petitioner, together with all of the interests in the Petition Area and its entitlements.

MIP actively engaged a consulting team to plan the development of the project consistent with the D&O. MIP also involved the County of Maui and the State of Hawaii Department of Transportation ("SDOT") in this effort. Subdivision of the Petition Area was applied for in September 2003, and civil construction plans for the Petition Area submitted to the County of Maui in May 2005 addressing all requirements for preliminary subdivision approval. Final bonded subdivision approval was received by MIP on August 14, 2009, for both a large lot subdivision of the Petition Area and for an additional subdivided lot in the Petition Area required for construction of County of Maui water system improvements for the subdivision. Subsequent to the finalization of the large lot subdivision, on September 10, 2010, PPS and PPN (i.e., the Successor Petitioner), purchased the Piilani Parcels from MIP.

On April 11, 2012 and April 18, 2012, Maui County issued to Piilani two grading permits, placing Piilani in a position to begin construction of on-site and off-site infrastructure for the Piilani Parcels. However, on May 23, 2012, Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahale (collectively, "Intervenors") filed a Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief (the "Motion for Order to Show Cause"), which was granted on September 10, 2012. 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 Honua'ula had violated the 1995 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. At a meeting on February 7, 2013, a majority of the members of the Commission orally passed a motion finding that Piilani’s and Honua’ula’s proposed uses of the Piilani Parcels and the Honua’ula Parcel would violate Conditions 5 and 15 of the 1995 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 Motion to Stay Phase II of the Order to Show Cause Proceeding. Therein, Piilani represented to the Commission that Piilani intended to file a motion to amend the 1995 D&O to allow Piilani to develop a project different from that originally presented to the Commission when the D&O was issued (hereinafter “the Motion to Amend”). Piilani requested that the Commission Stay Phase II to allow the Commission to consider 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 the Motion to Amend before December 31, 2013, and that no construction on the Property occur during the Stay.

Piilani is in the process of preparing the Motion to Amend, and anticipates that it will be filed prior to the December 31, 2013 deadline. Along those lines, Piilani has prepared and submitted to the Commission an Environmental Impact Statement Preparation Notice for the Commission’s consideration, as the Commission is requested to be the Approving Agency for the anticipated Environmental Impact Statement.

This Eighteenth Annual Report addresses compliance with the conditions of approval in the D&O for the Piilani Parcels, or where appropriate, notes that Piilani will seek to modify said conditions in the Motion to Amend. As Piilani is still in the process of drafting the Motion to Amend and completing the required studies, Piilani reserves the right to seek to amend or delete any and all conditions in the D&O as appropriate, whether or not such amendments to said conditions are specifically indicated herein.

Report on Compliance with Conditions Imposed by Commission

The following states whether the conditions in the approval have been met:

1. The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the County of Maui.

The Community Plan Amendment was approved on March 20, 1998, and the Change in Zoning application was approved by the Maui County Council and became effective on May 25, 1999. As set forth, supra, Piilani will be moving to amend the D&O, to allow the Commission to consider a new proposed project. Piilani is in the process of determining whether it will seek a further amendment to the Kihei-Makena Community Plan as part of the Motion to Amend process.

2. Petitioner shall cooperate with the State Department of Health and the County of Maui Department of Public Works and Waste Management to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

Piilani intends to cooperate when applicable with the State Department of Health and the Department of Public Works and Environmental Management, formerly a part of the Department of Public Works and Waste Management.

3. Petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Waste Management.

Piilani intends to contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities and in fact have included those plans within the civil construction plans approved by the County of Maui.

4. Petitioner shall fund and construct adequate civil defense measures as determined by the State and County Civil Defense agencies.

Piilani intends to fund and construct adequate civil defense measures as determined by the State and County Civil Defense agencies.

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 Kaonoulu 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, except as amended by the Commission. As part of the Motion to Amend, Piilani intends to seek to delete that portion of Condition 5 that the Commission, in Phase I, apparently determined to require Piilani to provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition Area. The State Department of Transportation has indicated that such a frontage road would not be feasible and could create traffic and safety issues, such that the State Department of Transportation would not approve a frontage road.

6. Petitioner shall fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

Piilani intends to fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. Previously approved civil construction plans for the Piilani Promenade project include both potable and non-potable water systems and waste water collection systems within and outside the Piilani Promenade project area. Piilani's new plans that will be presented as part of its Motion to Amend will provide for similar systems. Piilani has committed to construct and dedicate a 1,000,000 gallon water tank to serve the needs of the Kihei-Makena community.

7. Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.

Piilani intends to participate in an air quality monitoring program if required by the Department of Health.

8. Petitioner shall fund the design and construction of its pro-rata share of drainage improvements required as a result of the development of the Property, including oil water separators and other filters as appropriate, and other best management practices as necessary to minimize non-point source pollution into Kulanihakoi Gulch, in coordination with appropriate state and county agencies, such as the following:

a. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, where roofed or unroofed. The concrete floor shall be constructed so as to be able to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.

Piilani intends to comply with this condition, unless amended by the Commission.

b. All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be instructed to prevent any industrial liquid spills onto the bare ground.

Piilani intends to comply with this condition, unless amended by the Commission.

c. Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to

prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code.)

Piilani intends to comply with this condition, unless amended by the Commission.

9. Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be founds, the Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation District. The significance of these finds shall then be determined and approved by the Division, and an acceptable mitigation plan shall be approved by the Division. The Division must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawaii Revised Statutes.

Piilani intends to comply with this condition.

10. A long term preservation plan for the petroglyph stone (Site 50-10-3746) that was removed from the project area shall be reviewed and approved by the State Historic Preservation Division. Long term preservation measures shall be implemented within 60 days after final approval of the preservation plan.

As stated in the Fifth Annual Report (submitted on February 11, 2000), the Petitioner prepared a long term preservation plan which has been approved by the State Historic Preservation Division, Department of Land and Natural Resources, State of Hawaii, a copy of which was transmitted to the Land Use Commission.

11. Petitioner shall contribute its pro-rata share to a nearshore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

Piilani intends to contribute its pro-rata share to a nearshore water quality monitoring program as it is determined.

12. Petitioner shall implement effective soil erosion and dust control methods during construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.

Piilani intends to implement effective soil erosion and dust control methods during construction.

13. Petitioner shall create a buffer zone between lands designated as SF (Single-Family) by the County's Kihei-Makena Community Plan and industrial uses on the Property to mitigate impacts between future residential activities and the proposed industrial development.

Piilani understands its obligations to comply with this condition, and to the extent that it remains applicable following the Motion to Amend, Piilani will comply with this condition.

14. In the event Petitioner sells its interest in the Project, Petitioner shall subject the Property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.

Piilani understands its obligation to comply with this 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, as addressed in the Motion to Amend. In Phase I of the Order to Show Cause Proceeding, Piilani contended that the Piilani Promenade development that had been planned was in substantial compliance with the representations made to the Commission by the Original Petitioner. The Commission found in Phase I that this condition had been violated. Piilani now will present a new proposed development in the Motion to Amend. If the Motion to Amend is granted, Piilani understands that it will be required to develop the Property in substantial compliance with the representations made to the Commission during the Motion to Amend process. In the event that the Motion to Amend is denied, Piilani reserves all rights with respect to Phase II of the Order to Show Cause Proceeding, including any appeal rights.

16. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

Piilani intends to comply with this 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 intends to comply with this condition, and submits this annual report in compliance therewith.

18. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

Petitioner Kaonoulu Ranch recorded a Notice of Imposition of Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92 Hawaii Administrative Rules. Piilani will cause to record any determination of the Commission on its Motion to Amend as appropriate.

19. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property; and (b) shall file a copy of such recorded statement with the Commission.

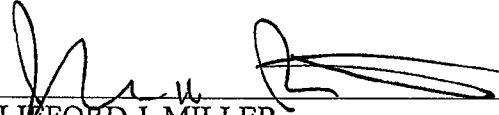
Petitioner Kaonoulu Ranch recorded a Document Listing Conditions to Reclassification of Land with the Bureau of Conveyances of the State of Hawaii, dated April 11, 1995, and has filed a copy of the recorded document with the Commission.

20. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

Piilani acknowledges that the Commission may fully or partially release the conditions provided herein.

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

Dated: Honolulu, Hawai'i, September 3, 2013.



CLIFFORD J. MILLER
JONATHAN H. STEINER

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

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date a true and correct copy of the foregoing document was duly served upon the following parties at their last known address via U.S.

Mail and electronic mail:

Daniel Orodener Daniel.E.Orodener@dbedt.hawaii.gov
Director
Office of Planning, Land Use Commission
235 South Beretania Street, Room 406
Honolulu, Hawai'i 96813

Bryan C. Yee Bryan.C.Yee@hawaii.gov
Deputy Attorney General
Department of the Attorney General
Commerce & Economic Development Division
425 Queen Street
Honolulu, Hawai'i 96813

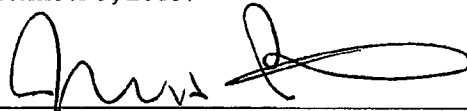
Jesse K. Souki, Director Jesse.K.Souki@dbedt.hawaii.gov
Planning Program Administrator
Office of Planning, Land Use Division
Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawai'i 96813

William Spence, Director William.Spence@co.maui.hi.us
Director, Planning Department
County of Maui
250 S. High Street
Kalana Pakui Building, Suite 200
Wailuku, Hawai'i 96793

Clifford J Miller, Esq. miller@m4law.com
Jonathan H. Steiner, Esq. steiner@m4law.com
500 Ala Moana Boulevard, 4th Floor
Five Waterfront Plaza
Honolulu, Hawaii 96813

Attorneys for Honua'ula Partners, LLC

DATED: Honolulu, Hawai'i, September 3, 2013.



CLIFFORD J. MILLER
JONATHAN H. STEINER

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