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*A Law Corporation*

LAND USE COMMISSION  
STATE OF HAWAII

2020 JUL -7 P 1:32

## Bronster Fujichaku Robbins

ATTORNEYS AT LAW

June 30, 2020

**VIA U.S. MAIL AND EMAIL:**

Daniel.e.orodenker@hawaii.gov

Daniel E. Orodener  
Executive Director  
Land Use Commission, State of Hawai'i  
235 S. Beretania Street, Room 406  
Honolulu, HI 96813

Re: *In the Matter of the Petition of Kaonoulu Ranch;*  
Docket No. A94-706

Dear Mr. Orodener,

We represent Petitioners Pi'ilani Promenade South, LLC and Pi'ilani Promenade North, LLC. As we relayed to you during our conversation on June 4, 2020, we are very concerned about the inappropriate *ex parte* communication by the attorney for the Intervenors, Tom Pierce, with the Land Use Commission ("LUC"). Since our June 4 conversation, I asked Mr. Pierce for a copy of his letter. After first refusing to provide it, Mr. Pierce has sent me on June 23 a copy of his letter addressed to Chair Scheuer through you dated May 26, 2020.

After reviewing his letter, we renew our objections to Mr. Pierce's letter and his supposed mediation proposal. While Mr. Pierce purported to have sent his letter under the mediation process, his letter came after Mr. Sakumoto had advised you and all parties that mediation was unsuccessful and had been concluded. Instead of a legitimate mediation communication, Mr. Pierce's letter is a transparent effort to lead Chair Scheuer and you (and perhaps other commissioners) to believe that adoption of the Office of Planning's ("OP") Proposed Findings of Fact and Conclusions of Law ("Proposed FOF/COL") would have been an acceptable method to conclude this matter. It is not.

Mr. Daniel E. Orodener  
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The adoption of the OP's Proposed FOF/COL would be contrary to the Commission's statutory ability to adopt orders beyond the 365-day time period under HRS § 205-4(g). None of the commissioners who originally participated in Phase I of the Order to Show Cause proceeding is now sitting on the Commission. The current commissioners therefore cannot now simply adopt findings and conclusions when they did not actually hear the evidence and testimony upon which the OP's Proposed FOF/COL is based.

Because the Petitioners have formally withdrawn the 2013 proposed plan for a marketplace, the Commission has no jurisdiction to rule on anything but the 1995 Decision and Order. Any order relating to the 2013 withdrawn plan would be moot because of the withdrawal, and therefore the Commission lacks jurisdiction to issue any such order regarding the 2013 plan.

It is very concerning that Mr. Pierce would send his letter to the LUC without notifying any of the other parties involved, including our office and Mr. Sakumoto's office, especially since you said you personally urged Mr. Pierce to do so. Thus, Mr. Pierce's letter should be ignored and his proposal should be summarily rejected.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Margery S. Bronster', with a long horizontal flourish extending to the right.

Margery S. Bronster  
Rex Y. Fujichaku

cc: Randall Sakumoto, Esq.  
Counsel for all parties