

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII



In the Matter of the Petition of) DOCKET NO. A94-706
)
KAONOULU RANCH) STIPULATION AND ORDER;
) EXHIBIT "N"
To Amend the Agricultural Land Use)
District Boundary into the Urban Land Use)
District for approximately 88 acres at)
Kaonoulu, Makawao-Wailuku, Island of)
Maui, Hawai'i, TMKs: 2-2-02; por. of 15)
_____)

STIPULATION AND ORDER

Petitioners Pi'ilani Promenade South, LLC ("**PPS**") and Pi'ilani Promenade North, LLC ("**PPN**"), both Delaware limited liability companies (collectively "**Pi'ilani**"); Petitioner Honua'ula Partners, LLC, a Delaware limited liability company ("**HPL**") (together with Pi'ilani, "**Petitioners**"); the State of Hawaii Office of Planning ("**OP**"); the County of Maui, Department of Planning ("**County**"); and Intervenor Maui Tomorrow Foundation, Inc., a Hawaii non-profit corporation, South Maui Citizens for Responsible Growth, a Hawaii non-profit corporation, and Daniel Kanahale (collectively, "**Intervenors**") hereby stipulate as follows:

A. PPN is the fee owner of that certain parcel identified as Tax Map Key Non (2) 3-9-001:016 and PPS is the fee owner of those certain parcels identified as Tax Map Key Nos. (2) 3-9-001:170-174 (collectively, the "**Pi'ilani Parcels**");

B. HPL is the fee owner of that certain parcel identified as Tax Map Key No. (2) 3-9-001:169 (the "**HPL Parcel**," and together with the Pi'ilani Parcels, the "**Petition Area**");

C. Pi'ilani and HPL are the successor petitioners in Docket A94-706 with regard to the Petition Area, which is the subject of and is encumbered by that certain Findings of Fact,

EXHIBIT "A"

Conclusions of Law, and Decision and Order, dated February 10, 1995 (the “**1995 D&O**”), issued by the Land Use Commission of the State of Hawai‘i (the “**Commission**”);

D. On May 23, 2012, the Intervenor filed a Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief against Pi‘ilani and HPL (“**Intervenor’s Motion for OSC**”), which motion was granted by the Commission and an Order to Show Cause was issued on September 10, 2012;

E. The Commission divided the Order to Show Cause Proceeding into two phases, wherein the initial proceedings considered whether Pi‘ilani and HPL violated the conditions of the 1995 D&O and the subsequent proceedings would consider the appropriate remedy;

F. At a meeting on February 7, 2013, the Commission determined by oral vote that Pi‘ilani’s proposed use of the Piilani Parcels and HPL’s proposed uses of the HPL Parcels would violate Conditions 5 and 15 of the 1995 D&O, and that Condition 17 had also been violated;

G. On April 18, 2013, Piilani filed a Motion to Stay Phase II of the Order to Show Cause Proceeding.

H. On July 12, 2013, the Commission entered an order, per a motion made on June 27, 2013, granting Piilani’s Motion to Stay Phase II of the Order to Show Cause Proceeding (“**Order Granting Stay of Phase II**”);

I. On December 31, 2013, Piilani filed a Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated February 10, 1995 (“**Piilani’s Motion to Amend the D&O**”);

J. On November 30, 2018, the Intervenor filed a Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision (“**Intervenor’s Motion to Conduct Phase II**”);

K. On January 31, 2019, the Intervenor's filed a Motion to Strike Portions of the Petitioners' Responses Attempting to Improperly Submit Evidence (*"Intervenor's Motion to Strike"*);

L. On February 1, 2019, Piilani filed a Motion to Dismiss the Order to Show Cause Proceeding (*"Piilani's Motion to Dismiss OSC"*);

M. On May 28, 2020, Piilani filed a Motion to Strike Intervenor's Witness List and Exhibit List, Filed March 19, 2019 (*"Piilani's Motion to Strike"*);

N. The parties hereto (collectively, the *"Parties"*) dispute the material issues between them, and Petitioners deny any allegations of wrongdoing or liability, but in an effort to resolve the dispute between them, the Parties have agreed to resolve their differences in accordance with the terms and conditions set forth herein.

Based upon the foregoing, the Parties hereby stipulate as follows:

1. Piilani's development plans which were the subject of the Intervenor's Motion for OSC (the *"2013 Plan"*) had proposed the development of a shopping complex on the Piilani Parcels, to be known as "Piilani Promenade", and which would have contained 385,070 square feet of leasable area within several major buildings and 2,071 parking stalls on three of four major lots ranging in size from 13.129 acres to 30.132 acres. Piilani hereby formally reiterates its withdrawal of the 2013 Plan.

2. HPL's development plans which were also the subject of the Intervenor's Motion for OSC (the *"HPL Workforce Housing Plan"*) had proposed the development of 250 workforce housing units on the HPL Parcel. HPL hereby formally reiterates its withdrawal of the HPL Workforce Housing Plan.

3. In accordance with condition 15 of the 1995 D&O, the Petition Area will be developed in substantial compliance with the representations made by Kaonoulu Ranch to the Commission in Docket No. A94-706 in support of a project that was identified as Kaonoulu Industrial Park.

4. The Parties agree that, subject to the concurrence of the Commission by its adoption of the attached Decision and Order, the new site plan for the Petition Area attached as Exhibit "N" to this Stipulation is substantially consistent with site plans filed by Kaonoulu Ranch in support of a District Boundary Amendment in Docket No. A74-706.

5. Petitioners agree to continue to consult in good faith with the lineal and cultural descendants of the Petition Area and members of the `Aha Moku `O Kula Kai to discuss the terms of access under the conservation easements to be established by Petitioners within the Petition Area as reflected in Exhibit "N".

6. Attached to this Stipulation is Exhibit "N", which is intended by Petitioners to be consistent with the last sentence of Condition 5 of the 1995 D&O. Intervenor, OP and the County Planning Department do not object to the frontage road as identified in Exhibit "N", subject to the review and approval of the State Department of Transportation and the County, and subject to the concurrence of the Commission by its adoption of the attached Decision and Order.

7. The Petition Area will be developed in substantial compliance with the representations made to the Commission, in accordance with Condition 15 of the 1995 D&O.

8. All annual reports previously required to be filed with the Commission pursuant to Condition 17 of the 1995 D&O have now been filed with the Commission.

9. Subject to the Commission taking the specific actions requested immediately below in Paragraph 10, the Parties hereby formally confirm that all pending motions and joinders initiated by any party, including but not limited to the following, are automatically withdrawn:

- i. Piilani's Motion to Amend the D&O;
- ii. Intervenors' Motion to Conduct Phase II;
- iii. Intervenors' Motion to Strike; and
- iv. Piilani's Motion to Strike.

10. The Parties hereby request that the Commission:

a. Determine that there are no current violations of the 1995 D&O and that the new site plan for the Petition Area attached as Exhibit "N" to this Stipulation satisfies the last sentence of Condition 5;

b. Dismiss the Order to Show Cause Proceeding in its entirety, including the Phase II proceeding, based on the stipulations and representations contained herein;

c. Lift the stay imposed by the Order Granting Stay of Phase II.

11. The Parties waive any and all rights of appeal with respect to any part of the Order to Show Cause Proceeding.

12. The Parties shall each bear their own attorneys' fees and costs.

13. Neither this Stipulation nor any short form/memorandum shall be recorded in the Bureau of Conveyances.

14. The Parties expressly represent and warrant to each other that they respectively have the authority to enter and be bound by the terms of this Stipulation, and that the Parties enter into this Stipulation with the advice of counsel.

15. This Stipulation shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Hawai'i.


16. This Stipulation shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties.

17. This Stipulation sets forth the entire agreement between the Parties, and fully supersedes any and all prior and/or contemporaneous agreements or understandings between the Parties, which pertain to the subject matter hereof.

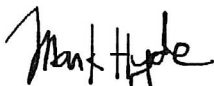
18. This Stipulation shall not be altered, amended, modified, or otherwise changed in any respect, or particular whatsoever, except in a writing duly executed by each Party to this Stipulation.

INTERVENORS:

MAUI TOMORROW FOUNDATION, INC.,
a Hawaii non-profit corporation

By 
Name: Albert Perez
Title: Executive Director

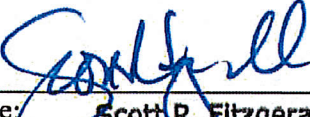
SOUTH MAUI CITIZENS FOR RESPONSIBLE
GROWTH,
a Hawaii non-profit corporation

By 
Name: Mark Hyde
Title: President


DANIEL KANAHELE

PETITIONERS:


PI'ILANI PROMENADE SOUTH, LLC,
a Delaware limited liability company

By  ZP
Name: Scott R. Fitzgerald
Title: President

PI'ILANI PROMENADE NORTH, LLC
a Delaware limited liability company

By  ZP
Name: Scott R. Fitzgerald
Title: President

APPROVED AS TO FORM:


MARGERY S. BRONSTER
REX Y. FUJICHAKU
RANDALL F. SAKUMOTO
Attorneys for Pi'ilani Promenade South, LLC
And Pi'ilani Promenade North, LLC

HONUA'ULA PARTNERS, LLC,
a Delaware limited liability company

By Silverwood, LLC,
a Delaware limited liability company
its authorized representative

By _____
Rick Arambulo, Authorized Signatory

APPROVED AS TO FORM:

CURTIS T. TABATA
Attorney for Honua'ula Partners, LLC

PETITIONERS:

PI'ILANI PROMENADE SOUTH, LLC,
a Delaware limited liability company

By _____
Name: _____
Title: _____

PI'ILANI PROMENADE NORTH, LLC
a Delaware limited liability company

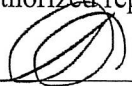
By _____
Name: _____
Title: _____

APPROVED AS TO FORM:

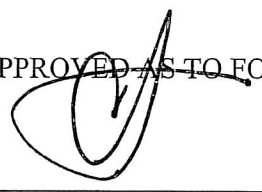
MARGERY S. BRONSTER
REX Y. FUJICHAKU
RANDALL F. SAKUMOTO
Attorneys for Pi'ilani Promenade South, LLC
And Pi'ilani Promenade North, LLC

HONUA'ULA PARTNERS, LLC,
a Delaware limited liability company

By Silverwood, LLC,
a Delaware limited liability company
its authorized representative

By  _____
Rick Arambulo, Authorized Signatory

APPROVED AS TO FORM:



CURTIS T. TABATA
Attorney for Honua'ula Partners, LLC

COUNTY:

COUNTY OF MAUI
DEPARTMENT OF PLANNING

By 
Name: Michele McLean
Title: Planning Director

APPROVED AS TO FORM:

/s/ Michael J. Hopper
MICHAEL J. HOPPER
Attorney for County of Maui,
Department of Planning

OP:

STATE OF HAWAII
OFFICE OF PLANNING

By _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DAWN TAKEUCHI-APUNA
Attorney for State of Hawaii,
Office of Planning

COUNTY:

COUNTY OF MAUI
DEPARTMENT OF PLANNING

By _____
Name: _____
Title: _____

APPROVED AS TO FORM:


MICHAEL J. HOPPER
Attorney for County of Maui,
Department of Planning

OP:

STATE OF HAWAII
OFFICE OF PLANNING

By Rodney Funakoshi
Name: Rodney Funakoshi
Title: Planning Administrator

APPROVED AS TO FORM:



DAWN TAKEUCHI-APUNA
Attorney for State of Hawaii,
Office of Planning

DECISION AND ORDER

IT IS HEREBY ORDERED THAT:

- a. The Commission has determined that there are no current violations of the 1995 D&O;
- b. The Order to Show Cause Proceeding is dismissed in its entirety, including the Phase II proceeding, based on the stipulations and representations contained herein;
- c. The stay imposed by the Order Granting Stay of Phase II is lifted.

Done at _____ Honolulu _____, Hawai'i, this 8th day of July, 2020, per motion on July 8, 2020.

LAND USE COMMISSION
STATE OF HAWAII

By _____

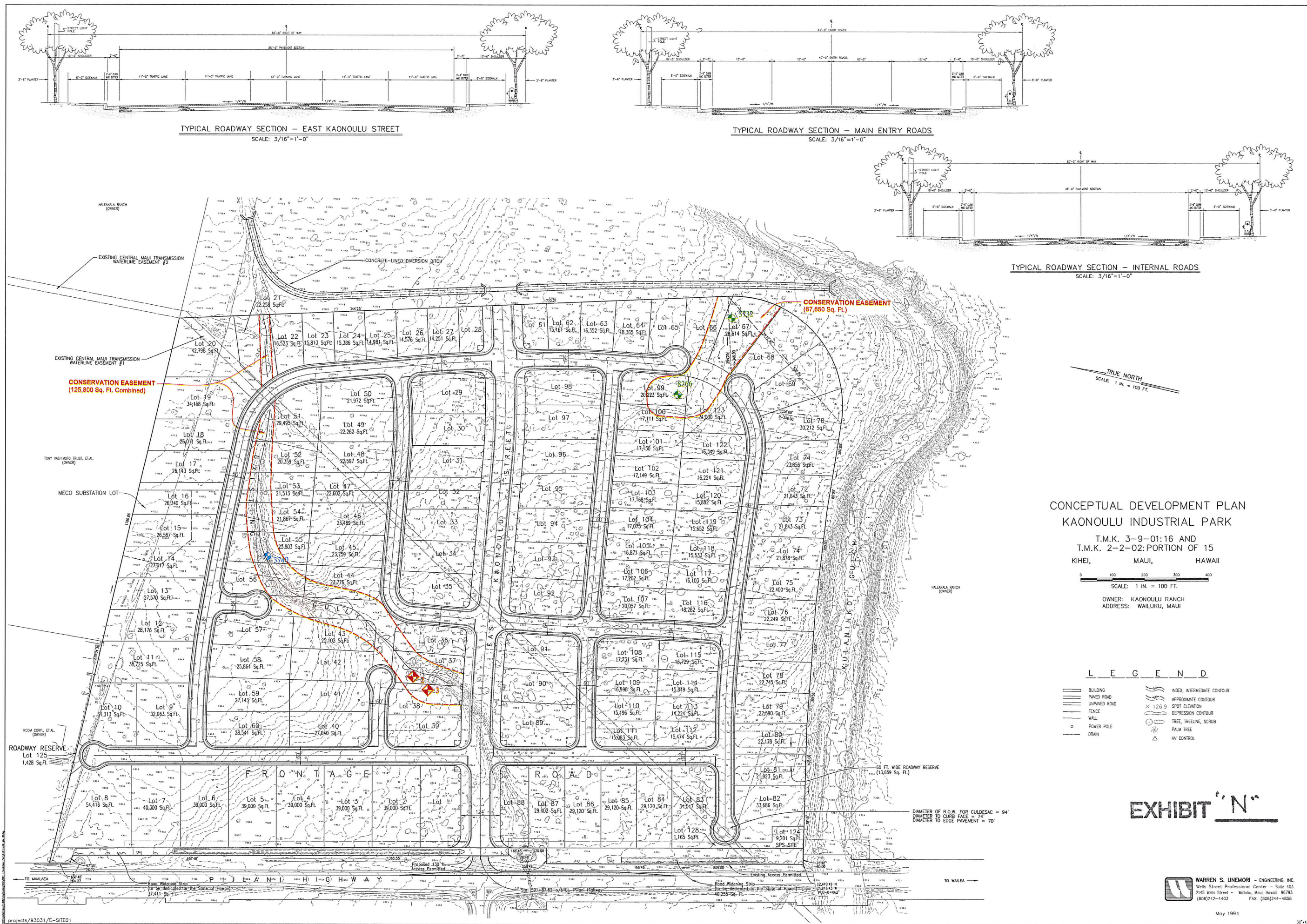
APPROVED AS TO FORM

Deputy Attorney General

Filed and effective on:

Certified by:

DANIEL ORODENKER
Executive Officer



projects/93031/E-SITE01

WARREN S. UNEMORI - ENGINEERING, INC.
Weiss Street Professional Center - Suite 403
2145 Weiss Street - Wailuku, Maui, Hawaii 96793
(808)242-4403 FAX: (808)244-4856

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