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and Daniel Kanahele

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. A-94-706

MOTION FOR A HEARING, ISSUANCE OF  
ORDER TO SHOW CAUSE, AND OTHER  
RELIEF; MEMORANDUM IN SUPPORT;  
EXHIBITS 1-4; AFFIDAVIT OF MARK  
HYDE; CERTIFICATE OF SERVICE

**Filed by:** Maui Tomorrow Foundation, Inc.,  
South Maui Citizens for Responsible Growth  
and Daniel Kanahele

**MOTION FOR A HEARING, ISSUANCE OF ORDER TO SHOW CAUSE,  
AND OTHER RELIEF**

Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele (“Movants”), through their attorney Tom Pierce, Esq., hereby submit this Motion requesting:

1. A hearing from the Hawaii Land Use Commission (“Commission”);
2. An order shortening time for the hearing because of the imminent threat of development of the property, currently in its natural state, as in 1995 at the time of the issues of

an order by the Commission;

3. The issuance of an order to show cause why the property identified below should not revert to its former boundary classification because of the landowners' failure to use the property consistent with the 1995 Commission Order;

4. A contested case hearing on the factual and legal issues supporting reversion of the property's classification; and,

5. An order compelling the Property owners to withdraw all previously filed annual reports that do not correctly represent the status of the project and to file amended annual reports with the Commission, the Office of Statewide Planning and the County of Maui that accurately describe the status of the Property and the project.

The requested relief is warranted and necessary. The landowners are pursuing uses of the property which clearly violate the terms and conditions of the 1995 Commission Order. The County of Maui is failing to enforce the 1995 Commission Order despite its statutory obligation to do so. Two grading permits for the retail shopping mall projects were issued by the County of Maui Public Works Department, one on April 11, 2012 and another on April 18, 2012. Heavy grading equipment was placed on the property on or after April 11, 2012. Earth movement is imminent.

This Motion is filed pursuant to Hawaii Administrative Rules ("HAR") sections 15-15-70, 15-15-93, and Subchapter 7 of HAR 15-15, and is supported by the attached Memorandum of Support.

DATED: Makawao, Maui, Hawaii, May 18, 2012.

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TOM PIERCE  
Attorney for Maui Tomorrow  
Foundation, Inc., South Maui Citizens  
for Responsible Growth, and Daniel Kanahale

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Exhibit	Description
1	Map identifying Property Encumbered by LUC Order and Ownership of Parcels
2	Map of Light Industrial Park Configuration Presented by Petitioner in 1995
3	Excerpts from 2011 Engineering Report for Retail Shopping Center Uses on Property
4	Excerpts from Eclipse Development Group, LLC Website Representing Retail Shopping Center Uses

## MEMORANDUM IN SUPPORT OF MOTION

Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele (“Movants”) submit this memorandum in support of the attached Motion requesting a hearing and for an order to show cause.

### **I. INTRODUCTION**

Through this Motion, Movants seek from the Hawaii Land Use Commission (“Commission”) enforcement of the *Findings of Fact, Conclusions of Law, and Decision and Order*, entered by the Commission on February 10, 1995 (“**1995 Order**” or “**Order**”). (See Order in Commission files, or online at: <http://luc.state.hi.us/comaui/a94-706kaonoulu.pdf>.) The Order was recorded against the property and remains on title today. See *Document Listing Conditions to Reclassification of Land*, recorded Bureau of Conveyances, State of Hawaii, April 13, 1995 as Doc. No. 95-049920.

The Order granted a reclassification of 88 acres of land located in Kihei, Maui, Hawaii, from State “Agricultural” to State “Urban,” but subject to a number of conditions set forth in the Order, including the following:

5. . . . Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area . . . .
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.

The former landowner and petitioner, Kaonoulu Ranch, represented to the Commission that the 88-acre property would be developed into a light industrial park, and presented testimony, plans, as well as engineering, traffic, and marketing studies focused entirely on a light industrial use. Although the property today remains encumbered by the conditions in the Order, most of the property is now being developed into two major retail shopping centers, with a smaller portion slated for workforce housing arising from a zoning condition attached to another large south Maui development. These uses were never proposed by the petitioner, never evaluated by the Commission, never reported in annual reports to the Commission, and never presented to the public, either before the Commission or before the County of Maui when the property

was rezoned M-1 Light Industrial in 1998 - 1999. In addition, plans for the new uses do not show the required frontage and connector roads.

Changing the property's use from light industrial to retail and housing uses constitutes a material breach of the Order. As but one example, Kaonoulu Ranch represented to the Commission that the light industrial park would respond to the warehousing, transportation and distribution needs of local hotels and other commercial enterprises in south Maui, and forecasted that the project would *decrease* traffic congestion in the surrounding area. In contrast, the retail shopping complexes will, among other things, cause over a five-fold *increase* in traffic (from 4,800 trips per day to 38,000 trips per day) making the intersection of Pi'ilani Highway and Kaonoulu Street, according to the new landowners own marketing materials, the busiest intersection on Maui. The workforce housing units likewise present significantly different impacts on the community, none of which have been evaluated or considered.

The Commission is unaware of the changed use because annual reports filed by the landowners contain material misrepresentations and patently false information. Among other things, they conceal the changed uses for the property and fail to disclose that frontage and connector roads will not be constructed notwithstanding the requirement to do so, set forth in the 1995 Order. *See* Fifteenth Annual Report to the Commission, in Commission's file (two reports by current landowners, "HP," "PPS," "PPN," identified below, dated May 23, 2011 and 27, 2011, respectively).

In light of the landowners' (1) actions in contravention of the Order, (2) misrepresentations made to the Commission regarding the status of the light industrial project, and (3) circumvention of the agency review and approval process, including the opportunity for public comment, Movants hereby request a hearing on this Motion pursuant to HAR § 15-15-70(i). Movants further request that the Commission assert its continuing jurisdiction over the 88-acre property and issue an order to show cause upon the landowners as to why the land should not be reverted to its original "Agricultural" classification, as permitted by HAR § 15-15-93(b). Here, reversion may in fact occur because the land remains in the same natural state as it did in 1995 when the Order was issued.

## II. PARTIES AND THE PROPERTY SUBJECT TO THE 1995 ORDER

### A. Movants

**Maui Tomorrow Foundation, Inc.** (“**Maui Tomorrow**”) is a Hawaii Nonprofit corporation that is tax exempt pursuant to Internal Revenue Code § 501(c)(3) and is dedicated to the responsible planning and sound management of Maui’s natural and cultural resources with its principle place of business at 55 N. Church Street, Suite A5, Wailuku, Hawaii.

**South Maui Citizens for Responsible Growth** (“**South Maui Citizens**”) is a Hawaii nonprofit corporation with its principle place of business at 4320 E. Waiola Loop, Kihei, Hawaii, formed to advance, defend, and communicate the principles of responsible growth in South Maui, County of Maui, Hawaii.

**Daniel Kanahale** is a Maui County resident, and owns and occupies a residence in Kihei, Hawaii, and travels Pi`ilani Highway multiple times per week, and is also a concerned and active citizen on planning and other community issues on Maui.

### B. Landowners and Related Parties

**Piilani Promenade South, LLC** (“**PPS**”), a Hawaii limited liability company with mailing address 17802 Skypark Circle, Suite 200, Irvine, California 92604, owns five of the parcels, identified below, encumbered by the Order, as shown further below.

**Piilani Promenade North, LLC** (“**PPN**”), a Hawaii limited liability company, also with mailing address 17802 Skypark Circle, Suite 200, Irvine, California 92604, owns one of the parcels encumbered by the Order, as shown further below.

According to state records, the sole member of PPS and PPN is **Piilani Promenade Partners, LLC**, a Delaware limited liability company.

According to documents submitted to government officials, **Eclipse Development Group, LLC** (“**Eclipse**”), a California Limited Liability Company, with same address as PPN and PPS, 17802 Sky Park Circle, Suite 200, Irvine, California, is the developer of the parcels owned by PPN and PPS. Eclipse is already offering retail space for the development at this internet link: [http://eclipsedevelopmentgroup.com/CS\\_maui.htm](http://eclipsedevelopmentgroup.com/CS_maui.htm).

**Honua`ula Partners, LLC** (“**HP**”) is a Delaware limited liability company with mailing address 1999 Avenue of the Stars, Suite 2850, Los Angeles, California 960067. HP owns one of the parcels encumbered by the Order, as shown further below.

HP’s sole member is **Wailea Associates, LLC**, state of organization unknown. Upon information and belief, HP and Wailea Associates LLC have an interest in a related development on the Island of Maui, referred to as “Wailea 670” or “Honua`ula,” further discussed below.

Upon information and belief, **Charles Jencks**, an individual and resident of Maui, Hawaii, and former Director of Public Works for the County of Maui, and longtime developer and developer’s agent on Maui, has been, or is, the Maui representative for PPS, PPN, Eclipse and HP, as well as PPS and PPN’s predecessor in interest to the Property, Maui Industrial Partners, LLC, as well as the owner(s) of Wailea 670.

**C. The Property Encumbered by the 1995 Order**

The seven lots encumbered by the Order are the following, with the ownership specified in parentheses (collectively the “**Property**”):

1. Parcel (2) 3-9-001-016, 30.13 acres, owned by PPN;
2. Parcel (2) 3-9-001-170, 18.52 acres, owned by PPS;
3. Parcel (2) 3-9-001-171, 19.54 acres, owned by PPS;
4. Parcel (2) 3-9-001-172, 4.9 acres, owned by PPS;
5. Parcel (2) 33-9-001-173, .92 acres, owned by PPS;
6. Parcel (2) 3-9-001-174, .86 acres, owned by PPS;
7. Parcel (2) 3-9-001-169, 13.13 acres, owned by HP

A map identifying the seven lots is attached hereto as **Exhibit 1**, attached hereto and incorporated herein by reference.

### III. JURISDICTION; PROCESS; AUTHORITY OF COMMISSION

#### A. Movants Have Standing

Movants have standing pursuant to HAR § 15-15-93(a), which provides that “[a]ny party or interested person may file a motion with the commission requesting an issuance of an order to show cause upon a showing that there has been a failure to perform a condition, representation, or commitment. . . .” The Commission long ago determined that a person or entity need not be an adjacent landowner to be entitled to standing for a motion requesting an order to show cause. *See, e.g., Kaniakapupu v. Land Use Com’n*, 111 Hawai’i 124 (2006); *Lanai Co., Inc. v. Land Use Com’n*, 105 Hawai’i 296 (2004).

While not required for the purpose of HAR § 15-15-93, Movants also meet the judicial standing standard as persons *aggrieved* by the landowners’ actions in violation of the 1995 Order. Maui Tomorrow is dedicated to the responsible planning and sound management of Maui’s natural and cultural resources. South Maui Citizens seeks to advance, defend, and communicate the principles of responsible growth in South Maui. Both of these nonprofit organizations are, under the law, *aggrieved persons* because the landowners’ actions show not only a blatant disregard for the planning process, which includes agency and public review, but also is a clear violation of the express legal requirements on the use of the Property.

Likewise Daniel Kanahale is a person aggrieved by the Director’s decision. Among other things, Mr. Kanahale will be personally impacted by the five-fold or more increase in traffic from the retail shopping use as opposed to the light industrial use, including the fact that the roads will be not only be more congested but also unsafe because they have been designed only to meet the much lesser light industrial impacts.

Movants therefore meet standing under HAR § 15-15-93(a), as well as under the judicial standard as aggrieved parties. *See Life of the Land v. Land Use Comm’n*, 61 Haw. 3, 8–9, 594 P.2d 1079, 1082–83 (1979) (recognizing that persons living near property sought to be reclassified and those with “personal” and “special” “aesthetic and environmental interests” are “person[s] aggrieved” pursuant to HRS § 91–14(a)).



**B. Movants Have a Right to a Hearing on this Motion**

HAR § 15-15-70 establishes procedures for motions before the Commission. HAR § 15-15-70 (i) provides, “If a hearing on the motion is requested, the executive officer shall set a date and time for hearing on the motion.” The Movants’ right to a hearing in this instant case was confirmed by the Hawaii Supreme Court in *Kaniakapupu v. Land Use Com’n*, 111 Hawai’i 124 (2006). The court confirmed a movant’s right to a hearing on a motion for an order to show cause:

HAR § 15–15–70(i) plainly states that, once a hearing is requested, the executive officer must set a date and time for the hearing on the motion [for an order to show cause]. In other words, if a motion is accompanied by a request for a hearing, the LUC must conduct a hearing on the motion. Inasmuch as the LUC does not have any discretion to determine whether to hold a hearing once a hearing is requested and the [movant] did request a hearing on its motion, the . . . hearing [i]s required by HAR § 15–15–70.

*Id.* at 133 (bracketed material added; some citations and footnotes omitted). Movants have a right to a hearing and hereby request that the Commission set a time and date for the hearing at the earliest practicable time.

**C. The Commission Must Issue an Order to Show Cause for a Breach of Performance**

HAR § 15-15-93(b) provides that (1) after someone has moved the Commission for an order to show cause, and (2) the Commission has reason to believe there has been a breach of performance by the landowners, then the Commission “shall” issue an order to show cause upon the current landowners:

Whenever the commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, the commission shall issue and serve upon the part or person bound by the conditions, representations, or commitments, an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification.

The undisputed facts set forth further below require the Commission to issue an order to show cause.

**D. After a Hearing on the Order to Show Cause, Commission Has the Power to Revert the Property Classification**

As HAR § 15-15-93(b), above, provides, once the Commission has determined a landowner has failed to follow the conditions established by the Commission, the Commission has the power to revert the property to its former classification. The promulgation of HAR § 15-15-93(b) was authorized by Hawai`i Revised Statutes (“HRS”) Chapter 205. The Hawai`i Supreme Court has confirmed the Commission’s authority under HRS Chapter 205 to revert land to its former classification:

HRS § 205–4(g)<sup>47</sup> expressly authorizes the LUC to “impose conditions.” Moreover, “absent substantial commencement of use of the land *in accordance with such representations made* ... in seeking [the] boundary change[,]”<sup>48</sup> the LUC is expressly authorized to order a reversion of land to the prior classification. HRS § 205–4(g) (emphasis added). The language of HRS § 205–4(g) is broad, and empowers the LUC to use conditions as needed to (1) “uphold the intent and spirit” of HRS chapter 205, (2) uphold “the policies and criteria established pursuant to section 205–17,”<sup>49</sup> and (3) to “assure substantial compliance with representations made by petitioner in seeking a boundary change.” *Id.*

*Lanai Co., Inc. v. Land Use Com’n*, 105 Hawai`i 296, 317 (2004) (brackets, quotes and emphasis in original; footnote omitted).

As set forth in the facts further below, there has been no substantial commencement of use of the land. It remains in the same natural state, as it did when the Commission issued the 1995 Order. Therefore, the Commission has the power to revert the Property to its former land classification of “Agricultural.”

**E. Upon Granting the Order to Show Cause, Movants Are Entitled to a Contested Case Hearing**

The *Kaniakapupu* case, and the *Lanai Co.* case before it, also settled a movant’s right to a contested case with rights as a party upon the Commission granting a motion requesting an order to show cause:

The LUC concedes that, “. . . if the LUC grants a motion and issues an order to show cause . . . a contested case [would] be conducted.” *See Lanai Co. v. Land Use Comm’n*, 105 Hawai`i 296, 97 P.3d 372 (2004) (reviewing an agency appeal from an LUC decision arising from an order to show cause).

*Kaniakapupu* , 111 Hawai'i at 136, n.16 (ellipses and bracketed material added).

#### **IV. THE UNDISPUTED FACTS SUPPORT ISSUING AN ORDER TO SHOW CAUSE**

The undisputed facts show that all of the land use entitlements for the Property were obtained by from representing that the Property would be used for light industrial commercial uses. Those land entitlements include a state boundary district amendment, a county community plan amendment, a county change in zoning, and subdivision approval. The undisputed facts also show that once all of the above land entitlements were obtained, the current landowners began pursuing uses that are entirely inconsistent with the conditions of the 1995 Order. The undisputed facts further show the landowners, despite their obligation to do so, never informed the Commission of their new intentions.

##### **A. The Petitioner Represented to the Commission the Property Would Be Used for Light Industrial**

Kaonoulu Ranch (“**Petitioner**”) petitioned the Commission for a boundary amendment on July 6, 1994, seeking to amend the existing land use district boundary for the Property (then tax map key nos. 2-2-02: portion of 15 and 3-9-01:16) from the Agricultural District to the Urban District, “to develop a 123 lot commercial and light industrial subdivision,” aptly named “Kaonoulu Industrial Park.” Order at 1; “Petition for Land Use District Boundary Amendment, Kaonoulu Industrial Park” (“**Petition**”). The project map and layout presented to the Commission depicted a typical light industrial park configuration, as set forth in **Exhibit 2**, attached hereto and incorporated herein by reference.

The Petition was heard on November 1, 1994. Petitioner’s presentation and testimony focused solely on development of an industrial park. The Petition made no reference to a retail shopping center or malls. The Petition spoke only to a boundary amendment to allow construction of a light industrial park. *See, e.g.*, Petition at § VIII, at 4; § XIII, at 10; § XIV, at 13; and § XV, at 14.

Likewise, the marketing study submitted to the Commission by Petitioner focused entirely on the development and sale of individual parcels for light industrial use; no evidence was submitted for a retail shopping mall or malls:

Petitioner proposes to develop the Property as the Kaonoulu Industrial Park, a 123-lot commercial and light industrial subdivision. Improved lots are proposed to be sold in fee simple or leased on a long-term basis. The size of the lots will range from approximately 14,000 square feet to 54,000 square feet.

1995 Order, Finding of Fact, Conclusions of Law portion (“**FOF/COL**”), ¶ 21.

The Order also enunciated a timeline in which Petitioner would meet the conditions (which expired over a decade ago):

Petitioner anticipates that the Project will be available for sales in the fourth quarter of 1996 and that the entire Project can be marketed by the year 2000, assuming the orderly processing of necessary land use approvals and avoidance of undue delays.

FOF/COL ¶ 23.

Traffic relating to the “potential impact of the industrial park” was the only traffic impact analyzed in the Petition. (Appendix B to Petition; “Traffic Impact Analysis Report: Kaonoulu Industrial Park” (“**Traffic Report**”). The Traffic Report spoke entirely to the impact to nearby roadways and the capacity of those roadways to carry expected traffic generated by the industrial park. No analysis of the impact of retail shopping malls was submitted or considered by the Commission. The Traffic Report concluded that “Because the project is expected to provide industrial space in support of resort, residential, and other development in the South Maui area, **regional traffic impacts would be positive** in that travel into and out of the South Maui area would be lessened.” (Emphasis added).

During the hearing, Commissioners expressed both concern and desire that the industrial park remain as such and not allow any substantial commercial or retail uses to intrude. To address the Commissioners’ concerns, counsel for the petitioner caused Mr. Henry Rice, managing partner of Petitioner, to testify that he would personally see that the property be developed as represented – into a light industrial park:

Q. (By Mr. Luna): Mr. Rice, I just had one or two final questions. I guess concern on maybe others in the room would be that the ranch would not be directly

involved if a sale does take place with a developer. Can you make a commitment that the ranch will still be involved to make sure that all these conditions that may be imposed will be carried out?

A. The ranch would absolutely make that commitment. It's to our advantage that we keep the integrity of the park as we have been talking about with respect to the integrity of the properties we have around it for some generation after me, I presume.

Action A94-708 Office of State Planning, State of Hawaii; Hearing A94-706 Kaonoulu Ranch (Maui), Reporter's Transcript ("RT"), at 128, lines 9, 23 – 129.

**B. The Testimony before the Commission Identified the Need for Frontage and Connector Roads**

The utility of a frontage or connector road was captured at the November 1994 hearing in an exchange between Commissioner Kajioka and Petitioner's traffic expert, Mr. Ng:

Q: I'm just wondering whether it may be prudent to establish a condition whereby, perhaps, starting with this petition that we kind of encourage or force a feeder road within the petitioner's properties, adjoining properties, similar to what is being proposed down in Kona. If something like that would help at least prolong the life, so to speak, of Pi'ilani Highway.

A: As I understand you're proposing some kind of connection, say, between this project and in future projects and Ohukai Street or other projects. And I would agree that such a connection could result in less traffic on the highway because somebody leaving this project and going, say, Ohukai Street will have alternative route. I agree it would have, tend to mitigate some of the traffic increases on the highway.

R.T. at 70: 2-17.

**C. The Petitioners' Representations Are Reflected in the Order**

The 1995 Order reflected the representations made by Petitioner. For example, in introducing the facts the Order provides:

Petitioner proposes to develop the Property as the Kaonoulu Industrial Park, a 123-lot commercial and light industrial subdivision. Improved lots are proposed to be sold in fee simple or leased on a long-term basis. The size of the lots will range from approximately 14,000 square feet to 54,000 square feet.

FOF/COL ¶ 21. *See also* FOF/COL ¶ 96 ("Uses are anticipated to primarily be light industrial and commercial uses oriented to serve the Kihei-Makena community"); ¶ 97

(“The Project would provide needed commercial and light industrial business services in the region.”)

The Order reflected Petitioner’s promise to assure that any purchaser of the Property stayed true to the conditions in the Order:

. . . Upon a sale of its equity interest to a developer in the project, Petitioner has represented that it will commit to placing safeguards in the sales documents to assure that conditions for the boundary amendment are carried out.

FOF/COL ¶ 25.

The Order justified the boundary reclassification in part based on the purported need for light industrial uses in the Kihei-Makena region. FOF/COL ¶¶ 36-38. The finding of need was based on various representations of Petitioner, including this one: “Petitioner has represented that the Property presents a convenient location for future commercial and light industrial development, *resulting in the reduction of transportation and other costs*. FOF/COL ¶ 37 (Emphasis added).

The Order also confirmed the need for a frontage road: “The Project fronts the Piilani Highway, which is the primary arterial highway in the region. The Project may result in a decline of intersection conditions *if mitigation measures are not implemented*.” FOF/COL ¶ 68 (Emphasis added). See also ¶ 76 (describing the need for connecting roads).

**D. Before Granting the Boundary Change, the Commission Confirmed its Decision Was Consistent with Community Planning**

The Order reflects that the Commission wanted to assure its decision would be consistent with the intentions of the community to have a light industrial use in the proposed location, as confirmed by the community plan:

The Project is consistent with the current urban designation of the Property in the Kihei-Makena Community Plan, and the Planning Director’s and Maui Planning Commission’s light industrial urban designation in the recommended update of the Kihei-Makena Plan.

FOF/COL ¶ 98.

The Order reflects that the County of Maui would assure consistency with the Order (and, implicitly, the community plan) during the rezoning process:

The Maui County Planning Department represented that they will request that the Maui County Council condition any change of zoning with appropriate limitations on commercial uses allowable under the County light industrial zoning ordinance as was done with Kahului Industrial Park.

FOF/COL ¶ 34.

**E. The Order, which Runs with the Land, Included Conditions for Frontage and Connector Roads and Specifically Limited the Uses of the Property to those Represented by Petitioner**

Based upon the representations made by Petitioner, the Land Use Commission approved a boundary amendment, converting the Property from agricultural to urban, but subject to 20 conditions. Among them were the following pertinent ones (condition numbers in original):

1. The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the County of Maui.
5. Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed [light industrial] development . . . . Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area . . . .
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.*
15. Petitioner shall develop the *Property in substantial compliance with the representations made to the commission. Failure to develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.*
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.
17. Petitioner shall timely provide without any prior notice, *annual reports* to the Commission, the Office of State 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. . . .

18. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances . . . .

(Emphasis added).

In 1995, the Order and the conditions therein were duly recorded with the Bureau of Conveyances. *See Document Listing Conditions to Reclassification of Land*, recorded April 13, 1995 as Doc. No. 95-049920. Today those conditions remain on title, encumbering all portions of the property.

**F. A Community Plan Amendment Was Obtained Based on Representations the Property Would Be Used for Light Industrial**

Condition No. 1 of the Order requires a change in the community plan. In 1998, the Kihei-Makena Community Plan (“**KMCP**”) was amended and restated, at which time the Property was identified on the plan’s land use map as “LI,” which is defined as “warehousing, light assembly, service and craft-type industrial operations.” KMCP at 55, and identifies uses for the Property to be primarily light industrial for improved traffic flow in the Kihei area:

k. Provide for limited expansion of light industrial services in the area south of Ohukai and mauka of Pi`ilani Highway, as well as limited marine-based industrial services in areas next to Ma`alaea Harbor. Provide for moderate expansion of light industrial use in the Central Maui Baseyard, along Mokulele Highway. *These areas should limit retail business or commercial activities to the extent that they are accessory or provide service to the predominate light industrial use. These actions will place industrial use near existing and proposed transportation arteries for the efficient movement of goods.*

(Emphasis added.) Upon information and belief, Petitioner represented to the community plan committee the same information provided to the Commission, including that the Property would be used for light industrial.

**G. A Change in Zoning Was Obtained Based on Representations the Property Would Be Used for Light Industrial**

Effective May 25, 1999, the Property was re-zoned M-1 Light Industrial. The application for rezoning described an industrial park identical to that presented to the Commission in 1994, including the same project layout. The Maui County Planning Commission conducted a public hearing. The traffic engineer who presented to the Land



Use Commission updated his analysis and again reported that the light industrial project would benefit area traffic: “Because the project is expected to provide *industrial space* in support of the resort, residential, and other development in the South Maui area, regional traffic impacts would be positive in that travel into and out of the South Maui area would be lessened.” Update to Traffic Analysis, Kaonoulu Industrial Park at 1 (April 1998) (emphasis added).

**H. Petitioner Annually Informed the Commission that it would Comply with the Conditions in the Order**

As required by the Order, Petitioner filed annual reports with the Land Use Commission. All of them stated, without reservation, that Petitioner would develop the Property in compliance with all conditions contained in the Order, including those requiring development of an industrial park and construction of a frontage road parallel to Pi'ilani Highway, as well as connector roads, and that the use of the Property would be consistent with the Petitioner's representations to the Commission, *i.e.*, it would be used as a light industrial park.

**I. Petitioner Sold the Property Subject to the Conditions in the Order**

Although Petitioner pursued land entitlements for the light industrial project, it never developed it. Instead, in 2005 it sold the 88-acre Property, still encumbered by the 1995 Order, to Maui Industrial Partners, LLC (“MIP”).

**J. MIP Obtained Subdivision Approval by Representing the Property Would Be Used for Light Industrial**

In or about August 2006, MIP filed a “Subdivision Application Form” or forms with the County of Maui Department of Public Works & Environmental Management, Development Services Administration, seeking to subdivide the Property under the name “Kaonoulu Light Industrial.” MIP's engineer stated the purpose of the proposed subdivision was “*To provide much needed industrial lots in South Maui.*” (Emphasis added).

A threshold requirement of the County of Maui subdivision process is the submission of an “Owner's Acknowledgment” that the subdivision, if approved, would not conflict with any existing encumbrances on the land. On August 21, 2006, MIP's

representative, Charles Jencks (“**Jencks**”) executed the Owner’s Acknowledgment, which included a paragraph numbered “4”:

I confirm that I have uncontested legal ownership of the subject property, without any outstanding rights, *reservations or encumbrances* which could nullify the *intended development and use* of this subdivision.

(Emphasis added).

Upon information and belief, MIP was successful in obtaining final subdivision approval by representing that the Property would be used for light industrial, therefore being consistent with the Order and with M-1 County zoning and the L1 KMPC designation. It is not clear why at that time it was necessary to subdivide the property into four building lots in order to carry out the light industrial park originally proposed to the Commission.

**K. The First Breach of Representation – an Affordable Housing Use**

In or around 2006-2008, Jencks was also representing another landowner/developer, Wailea 670, which owns a 670 acre property known as "Wailea 670" or "Honua`ula," which was and is proposed for a residential, retail and golf community located south of the property at issue here. Wailea 670 needed 250 workforce housing units to obtain zoning approval for its proposal. On behalf of his clients (MIP and the owner(s) of Wailea 670), Jencks proposed to the County of Maui that the workforce housing requirement could be met by using a portion of the Property, still owned by MIP. The County of Maui accepted this proposal and rezoned Wailea 670 subject to the requirement that 250 apartments be situated on a portion of the Property.

Subsequent to the County Council approval, in August 2009, MIP conveyed one of the four subdivided building lots, approximately 13 acres in size, to Honua'ula Partners, LLC ("**HP**").

Review of Commission files reveals that this material change was not reported to the Commission by the County of Maui, or by MIP or by HP.

## L. The Second Breach of Representation – Shopping Centers

In or about September, 2010, MIP conveyed the remaining parcels to PPS and PPN. In addition, by agreement dated September 13, 2010, entitled, “Assignment and Assumption of Agreement for Subdivision Approval,” MIP assigned all right, title and interest in previous subdivision agreements for the Property to PPS, and presumably PPN.

Subsequent to purchase in late 2010, Movants have learned PPS, PPN, and Eclipse rapidly unveiled a detailed plan to build retail shopping malls on the Property. This is evidenced by various reports in the media, web sites maintained by the owners and their agents, and grading reports and plans submitted to the County of Maui, some of which are briefly described below:

- Subsurface Investigation Reports prepared by the landowners’ engineers were submitted to the Maui County Department of Public Works in 2011 in support of an application for grading permits (“**Grading Plans**”). Those documents provide numerous references to the newly proposed retail uses, such as this: “Both shopping centers will house a number of retail shops of varying sizes, including national retailers.”). Excerpts from the engineer reports are attached hereto as **Exhibit 3**, and incorporated herein by reference.
- An article appearing in January 29, 2012, edition of the Maui News describes the outlet mall component of the development as what “would be the largest outlet mall in Hawaii.”
- The website for Eclipse describes one of the malls, “Piilani Promenade,” as a “415,000 square foot retail development with national and local retailers.” See generally excerpts from website, attached hereto as **Exhibit 4**, and incorporated herein by reference.
- In another link on the Eclipse web site -- the “Maui Outlets” component of the retail shopping malls -- is described as a “first-class outlet shopping destination” with “gross leasable area of approximately 300,000 square feet.” The retail shopping malls will, according to Eclipse, “result in the project becoming the shopping focal point of the island where tenants will enjoy unprecedented market presence.” See **Exhibit 4**.
- Unlike the Traffic Report submitted to the Commission in 1994 and to the Maui County Planning Commission in 1998, which argued traffic

would be lessened by the light industrial use, the new proposed retail use at the intersection of Pi'ilani Highway and the proposed Kaonoulu Street is predicted by Eclipse to generate over 38,000 cars per day. The intersection itself is described on the website as "what is projected to be the largest intersection on the Island." Eclipse further predicts the traffic will "almost double when the expansion of the "Up Country Road" is completed . . . ." **Exhibit 4.**

- Finally, the layout for the retail shopping malls is entirely different from that presented to the Land Use Commission. The shopping malls feature acres of parking lots fronting both Pi'ilani Highway and the to-be-created Kaonoulu Street extension, with a mix of "big box" stores, fast food restaurants and other retail shops; the shopping malls bear no resemblance to the light industrial site plan presented to the Land Use Commission. Furthermore, no frontage or connector roads are depicted, either on the web site or on grading plans submitted to the County, even though this is a condition of the Order. Compare **Exhibits 3, 4 & 5.**

**M. Despite the New Uses, Representations to the Commission Remain the Same**

HP, PPN and PPS continue to represent to the Commission that they are in full compliance with the 1995 Order. With respect to Condition 15, the new landowners represent: "Successor Petitioner understands its obligation to comply with this condition." With respect to Condition 5, the new landowners represent as follows:

"Successor Petitioner understands its obligation to comply with this condition and in fact has received approval of the civil construction plans for the project from all of the above referenced agencies. This approval was received in August 2009 after over four years of agency review and comment."

*See* Fourteenth (2010) and Fifteenth (2011) Annual reports to the Commission.

**N. No Enforcement of Order by County of Maui**

The County of Maui has an express statutory obligation to enforce the Commission's Order. HRS § 205-12. *Cf. Lanai Co.* 105 Hawai'i at 318 ("The power to enforce the LUC's conditions and orders . . . lies with the various counties.") Nevertheless, the County has failed and refused to enforce any terms in the Order and, in fact, has facilitated the landowners' proposed uses, in violation of the Order. In April

2012 the Landowners obtained approval from the Maui County Director of Public Works to begin mass grading activities on the property for the retail shopping complexes. The Public Works Director has, thus far, failed to rescind the two mass grading permits issued specifically for the proposed retail shopping centers despite Movants' written request for such action. On May 11, 2012, Movants appealed the Public Works Director's decision. No hearing has been scheduled at the time of the filing of the instant Motion to the Commission.

**O. No Change in the Land Since the Order Was Issued in 1995**

Despite the passage of seventeen (17) years, the land is still in essentially the same state as before, and could be returned to its former classification as "Agricultural" without any changes. Although a grading permit has been issued, no earth moving activity has occurred, although one pieces of heavy machinery is present on the Property.

**V. STANDARD OF REVIEW FOR ORDER TO SHOW CAUSE IS MINIMAL**

It was explained in Part III, above, that Movants have a clear right to a hearing on this Motion for an order to show cause. Further, it was shown in Part III, that the Commission must issue an order to show cause if after reviewing the submissions of the Movants, the Commission has "reason to believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner." HAR § 15-15-93(b).

Thus, the Commission's rules establish a two-step process. The *first* step is to determine based on the pleadings, evidence and argument of the parties prior to and at the hearing whether there are sufficient facts at the threshold stage of the matter to warrant requiring the landowners to prove their right to maintain the land use entitlement previously granted to them or their predecessors in interest. The *second* step is to establish proceedings to hear evidence from the parties as to whether the Commission

should revert the land classification. This matter is at the *first* step. As explained in this Part V, Movants have met the minimal burden required at the first step, and therefore an order to show cause must issue.

HAR § 15-15-93(b) establishes a minimal burden of proof at this *first* step of the process, outlined above: An order to show cause should issue if the Commission has “*reason to believe* that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner.” (Emphasis added). The “probable cause” or “reasonable suspicion” standards, applied by government agencies to determine when an investigation should ensue, has been compared to a “reason to believe” standard. *See, e.g., United States v. Device More or Less Labeled Theramatic*, 641 F.2d 1289, 1294 (9th Cir. 1981). The United State Supreme Court has explained the “probable cause” and “reasonable suspicion” standards are “fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed” and will justify an investigation upon “a particularized and objective” finding. *Ornelas v. United States*, 517 U.S. 690, 695-96, 116 S. Ct. 1657, 1661, 134 L. Ed. 2d 911 (1996).

Therefore, the Commission should issue an order to show cause if Movants have raised suspicion of a violation of the conditions in the 1995 Order by reference to facts, which may be verified by others, that the landowners are not fulfilling conditions set forth in the 1995 Order. Movants have done this, as shown below.

## **VI. AN ORDER TO SHOW CAUSE, AND OTHER RELIEF, IS WARRANTED**

As explained below, Movants certainly meet the minimal threshold burden of HAR § 15-15-93(b), and therefore the Commission must issue an order to show cause.

This may be seen by a brief summary of the law and the facts set forth earlier in this Motion.

The State boundary district amendment change from Agriculture to Urban obtained by Petitioner in 1995 was not a blank slate to do any kind of urban use. Instead it was limited by the express conditions and restrictions set forth in the Order. The Order, recorded in the Bureau of Conveyances against the Property, provides constructive notice of the Commission’s specific decisions and conditions with respect to the Property to *all* prospective landowners, including MIP, HP, PPS and PPN. *See, e.g., Fong v. Hashimoto*, 994 P.2d 569, 590 (Haw. Ct. App. 1998) *vacated on other grounds*, 994 P.2d 500 (Haw. 2000) (“Where a covenant is contained in a prior instrument within the successor's direct chain of title conveying that land in fee simple, the successor is charged with constructive notice of the covenant.”) (quoting 9 R. Powell, *Powell on Real Property* § 60.04[2], at 60–74 (1997 rev.)).

Thus, the obligations of Petitioner, here, are also the obligations of Petitioner’s successors. The law provides that the Commission, when it acts to approve a petition for a district boundary change, will file findings of fact and conclusions of law and “impos[e] conditions necessary to uphold the intent and spirit of [HRS ch. 205] or the policies and [the Commission decision-making] criteria . . . ***or to assure substantial compliance with representations made by the petitioner in seeking a boundary change.***” HRS § 205-4(g) (emphasis added). In fact, among the ten Land Use Commission decision-making criteria, one of them is “***[t]he representations and commitments made by the petitioner in securing the boundary change.***” HRS § 205-17(5) (emphasis added). *Cf. Lanai Co.* 105 Hawai’i at 317.

None of the above portions of HRS § 205-4(g) are altered at all by any later county zoning changes on a property, which might be interpreted to be less restrictive (which is an argument anticipated to be made by the landowners). Rather, the

Commission's conditions, if more restrictive, "trump" other county entitlements. *See, e.g.,* HAR § 15-15-24 ("Any and all uses permitted by the counties, either by ordinances or rules may be allowed within th[e Urban] district, ***subject to any conditions imposed by the commission pursuant to section 205-4(g), HRS.***" (See relevant parts of HRS § 205-4(g), in the immediately preceding paragraph of this Motion.)

*The landowners are violating Condition 15.* Here, the representations made by Petitioner to the Commission in 1994 were very clear – all of the representations, including engineering and architectural designs, marketing, economic, and traffic analyses, were geared entirely for a *light industrial use*. The Order and the conditions therein must be read from that perspective, as required by HRS Chapter 205. An abundance of facts show the current landowners are pursuing a radically different development project, namely a large retail shopping project. A large retail shopping center with outlets and retail stores is certainly not a light industrial use. It impacts the surrounding community in an entirely different manner. This is particularly evident from the former and current developer's representations regarding traffic, which have gone up five-fold with the changed use.

*The landowners are violating Condition 15.* Similarly, the new proposed retail shopping center design fails to show the frontage and neighborhood connector roads required by the Order.

Movants have clearly met their burden of showing at this threshold stage that there is a *reason to believe* that landowners are violating Conditions 5 and 15, and possibly other conditions of the 1995 Order. Pursuant to HAR § 15-15-93(b), the Commission must issue an order to show cause.

## **VII. CONCLUSION AND REQUEST FOR ORDER TO SHOW CAUSE AND OTHER RELIEF**

Expedited relief is respectfully requested from the Commission. Harm to the Property, which currently remains in its natural state is imminent. Landowners PPN and PPS have obtained mass grading permits for their retail shopping mall and outlet complexes , and have begun to pre-lease space. The County of Maui Public Works Director refuses to rescind the grading permits. It is possible that HP is also in the process



of obtaining further entitlements necessary to break ground on the 250 workforce housing units for Wailea 670. The retail and affordable housing uses bear no resemblance to the light industrial park that was proposed and has been vetted before the Commission, the Maui County Council, the Kihei-Makena Community Plan Members, and upon which representations various land entitlements were obtained. The roadway plans fail to show frontage and connector roads required by the Commission.

Not only are the landowners violating the clear conditions set forth in the 1995 Order, they are attempting to short circuit the planning process. The public has had no opportunity to weigh in on the retail shopping center use which will have tremendous negative impacts not only on the Kihei community but Maui at large. Further, no government agencies have had the opportunity to evaluate the retail shopping center uses and how they will impact other approved or proposed uses in Kihei or Maui.

The landowners' willful breach of the 1995 Order is also an attempt to obtain an unfair advantage over other landowners and businesses who choose to comply with the law and the regulatory process.

The County of Maui, despite its statutory obligation to do so, has failed to enforce the conditions in the 1995 Order, and has, instead, granted permits permitting the landowners to initiate development of the illegal retail centers.

Therefore, Movants request the following relief:

1. A hearing on this Motion before the Commission;
2. An order shortening time for the hearing because of the imminent threat of development of the Property, currently in its natural state, as in 1995 at the time of the issues of an order by the Commission;
3. The issuance of an order to show cause why the property identified below should not revert to its former boundary classification because of the landowners' failure to use the property consistent with the 1995 Commission Order;
4. A contested case hearing on the factual and legal issues supporting reversion of the property's classification; and,

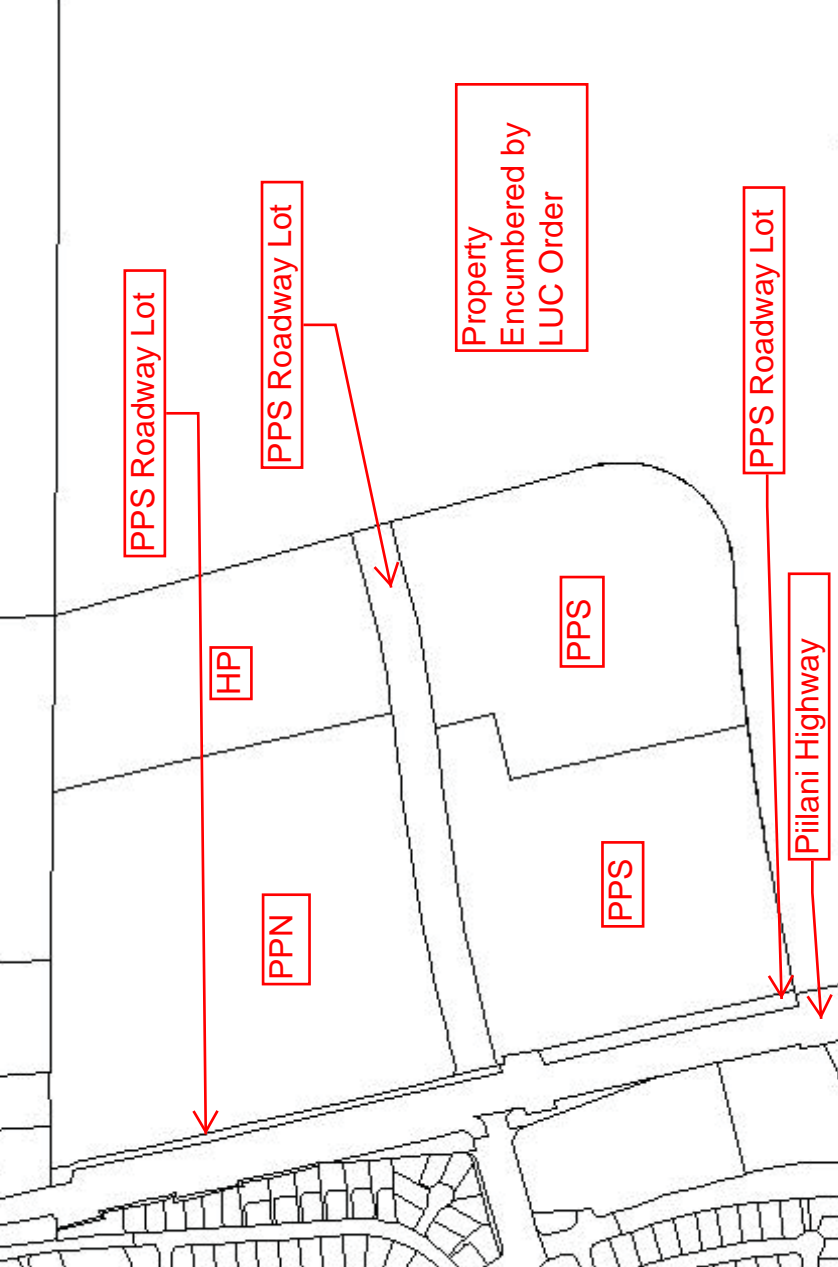
5. An order compelling the Property owners to withdraw all previously filed annual reports that do not correctly represent the status of the project and to file amended annual reports with the Commission, the Office of Statewide Planning and the County of Maui that accurately describe the status of the Property and the project.

DATED: Makawao, Maui, Hawaii, May 21, 2012.

---

TOM PIERCE  
Attorney for Maui Tomorrow  
Foundation, Inc., South Maui Citizens  
for Responsible Growth, and Daniel Kanahele

## **EXHIBIT 1**



PPS Roadway Lot

PPS Roadway Lot

Property Encumbered by LUC Order

PPS Roadway Lot

HP

PPN

PPS

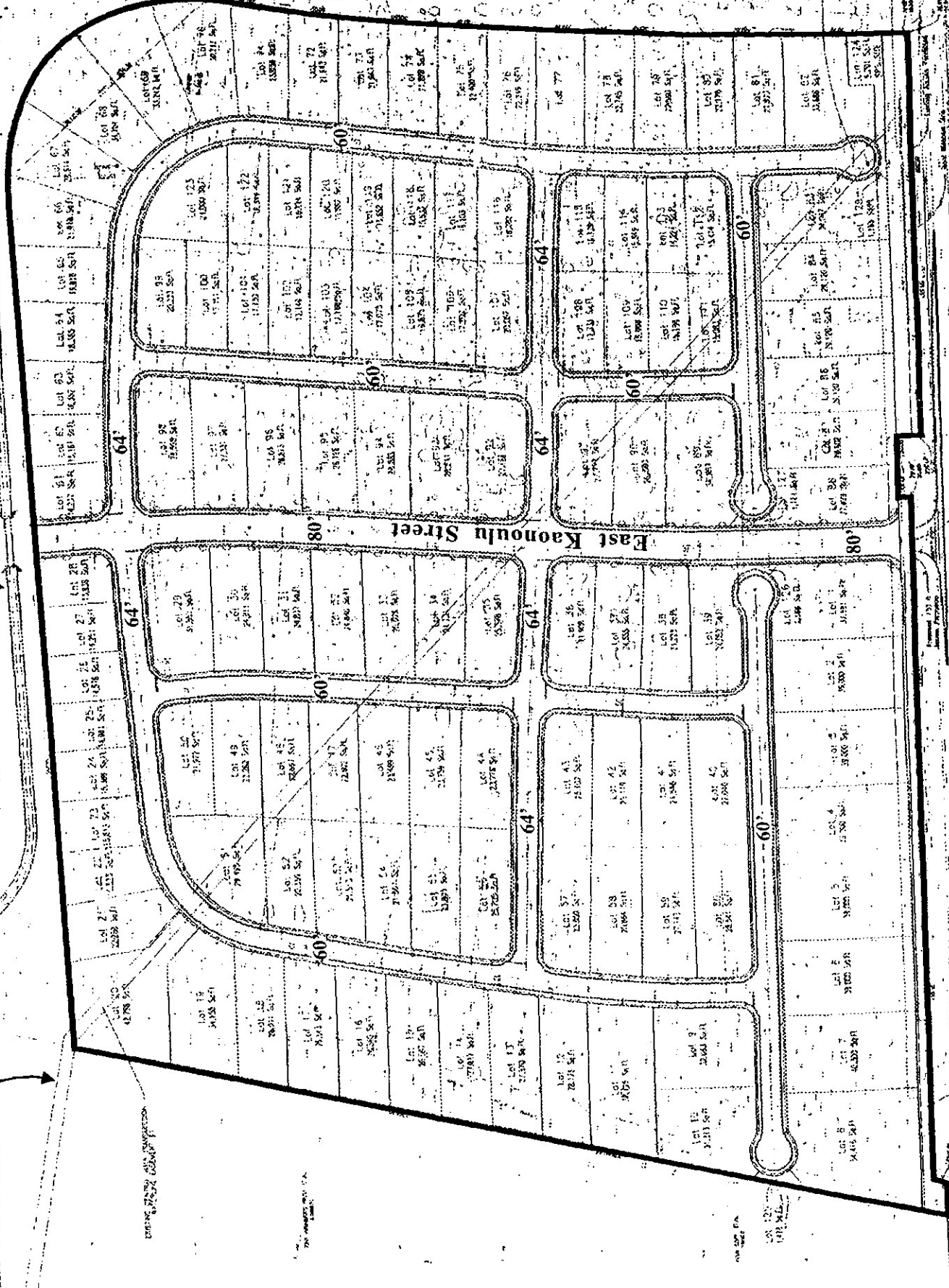
PPS

Piilani Highway

## **EXHIBIT 2**

Waterline Easement #2

Kulanihakoi Gulch



← To Maalaea

Pilihi Highway

Warren S. Unemori Engineering, Inc.

Kaonoulu Industrial Park

Site Plan

Page 2

## **EXHIBIT 3**



**FEWELL  
GEOTECHNICAL  
ENGINEERING, LTD.**

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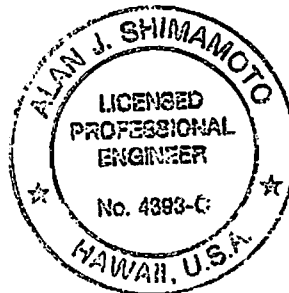
**SUBSURFACE INVESTIGATION REPORT**  
**MASS GRADING FOR LOT 2A**  
**PIILANI PROMENADE NORTH SHOPPING CENTER**  
**KIHEI, MAUI, HAWAII**

for

**PIILANI PROMENADE NORTH, LLC**

by

**FEWELL GEOTECHNICAL ENGINEERING, LTD.**



This report was prepared by  
me or under my supervision.

**By Alan J. Shimamoto, P.E.**

*Alan J. Shimamoto*

**August 15, 2011**



# **SUBSURFACE INVESTIGATION REPORT**

**Mass Grading for Lot 2A  
Piilani Promenade North Shopping Center  
Kihei, Maui, Hawaii**

## **INTRODUCTION**

We have completed a subsurface investigation for Lot 2A to assist Piilani Promenade North, LLC with the geotechnical aspects of its mass grading. Lot 2A will be the site of the Piilani Promenade North Shopping Center in Kihei, Maui, Hawaii. This report presents our findings and conclusions. This work was completed in general accordance with our March 3, 2011 Proposal and your authorization to proceed dated April 6, 2011.

Two related shopping center complexes are planned by affiliated developers, Piilani Promenade North, LLC (PPN) and Piilani Promenade South, LLC (PPS), for the parcels designated as Lots 2A, 2C and 2D in Kihei, Maui, Hawaii. Lot 2A will be developed for the proposed Piilani Promenade North Shopping Center, while the adjoining Lots 2C and 2D will be developed to support the Piilani Promenade South Shopping Center.

Lot 2A is separated from Lots 2C and 2D by the future Kaonoulu Street Extension, which together with an additional street extension and an off-site water tank, is part of the off-site infrastructure improvements for the shopping center. The geotechnical aspects of the design and construction of the off-site infrastructure improvements, including the future Kaonoulu Street Extension, have been previously addressed by others and are not part of this investigation.

Both shopping centers will house a number of retail shops of varying sizes, including large national retailers. Although the proposed footprints of the new buildings are shown on the mass grading plans, the tenants have not been finalized at this time. Additionally, national retailers often perform their own geotechnical engineering for their stores.

Due to the uncertainty with regard to the actual tenants and their geotechnical engineering requirements, the scope of the investigations has been limited to addressing the mass grading of the lots in support of the new shopping centers. We understand that additional geotechnical investigations for the actual building construction will be performed as necessary once the users or tenants of the shopping centers have been determined.

## **PURPOSE AND SCOPE**

At the request of both PPN and PPS, subsurface investigations were undertaken by Fewell Geotechnical Engineering, Ltd. (FGE) for the above three parcels to assist PPN and PPS, and



**FEWELL  
GEOTECHNICAL  
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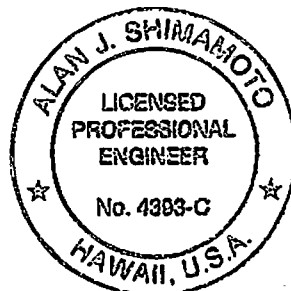
**SUBSURFACE INVESTIGATION REPORT**  
**MASS GRADING FOR LOTS 2C & 2D**  
**PIILANI PROMENADE SOUTH SHOPPING CENTER**  
**KIHEI, MAUI, HAWAII**

for

**PIILANI PROMENADE SOUTH, LLC**


by

**FEWELL GEOTECHNICAL ENGINEERING, LTD.**



This report was prepared by  
me or under my supervision.

**By Alan J. Shimamoto, P.E.**

  
\_\_\_\_\_  
**August 3, 2011**

## **SUBSURFACE INVESTIGATION REPORT**

Mass Grading for Lots 2C & 2D

Piilani Promenade South Shopping Center

Kihei, Maui, Hawaii

### **INTRODUCTION**

A subsurface investigation has been completed to assist Piilani Promenade South, LLC, with the Mass Grading of Lots 2C & 2D. Lots 2C and 2D will be the site of the Piilani Promenade South Shopping Center in Kihei, Maui, Hawaii. This report summarizes our findings and conclusions. This work has been completed in general accordance with our March 3, 2011 Proposal and our Agreement with Piilani Promenade South, LLC, dated April 6, 2011.

Two related shopping center complexes are planned by affiliated developers, Piilani Promenade North, LLC (PPN) and Piilani Promenade South, LLC (PPS), for the parcels designated as Lots 2A, 2C and 2D in Kihei, Maui, Hawaii. Lot 2A will be developed for the proposed Piilani Promenade North Shopping Center, while the adjoining Lots 2C and 2D will be developed to support the Piilani Promenade South Shopping Center.

Lots 2C and 2D are separated from Lot 2A by the future Kaonoulu Street Extension, which together with an additional street extension and an off-site water tank, is part of the off-site infrastructure improvements for the shopping center. The geotechnical aspects of the design and construction of the off-site infrastructure improvements, including the future Kaonoulu Street Extension, have been previously addressed by others and are not part of this investigation.

The shopping centers will house a number of retail shops of varying sizes, including large national retailers. Although the proposed footprints of the new buildings are shown on the grading plans, the tenants have not been finalized at this time. Additionally, national retailers often perform their own geotechnical engineering for their stores.

Due to the uncertainty with regard to the actual tenants and their geotechnical engineering requirements, the scope of the investigations has been limited to addressing the mass grading of the lots in support of the new shopping centers. We understand that additional geotechnical investigations for the actual building construction will be performed as necessary once the users or tenants of the shopping centers have been determined.

## **EXHIBIT 4**

# **ECLIPSE DEVELOPMENT GROUP**

## **RETAIL SPACE AVAILABLE PIILANI PROMENADE 415,000 SQUARE FOOT POWER CENTER PART OF A 65 ACRE RETAIL DEVELOPMENT MAUI, HAWAII**

Eclipse Development Group is pleased to offer for lease a truly irreplaceable first class retail development located on the Island of Maui. The development is located on Piilani Highway, the major north/south arterial for the west side of the Island. Piilani Highway is also the only route into the higher end resort communities of Makena and Wailea. With over 700,000 total square feet of retail Piilani Promenade will capture shoppers from the entire Island.

Piilani Promenade is situated with primary frontage along Piilani Highway (over  $\frac{3}{4}$  of a mile of frontage), the islands major traffic arterial (over 38,000 cars per day), and will be bisected by what will become the "Up County Road" which will ultimately provide direct and quick access to Kahului Airport. Piilani Highway is the connector between the higher end hotel travel destinations of Makena and Wailea, the Kahului Airport and Cruise Ship ports in Kahului; and the northern road to Lahaina, Ka'anapali and Kapalua. These two roads and unparalleled 1<sup>st</sup> class architectural design put this development at "Main & Main" and help make this the new retail and entertainment focal point for tourists and locals alike.

The location of Piilani Promenade benefits from sitting at what is projected to be the largest intersection on the Island which provides easy access to; the tourist population (whose average stay is roughly 9 days on the Island); the permanent population on the Island; and the vacation home owners. In addition to all the high end residential growth planned immediately surrounding Piilani Promenade as well as planned developments further

# ECLIPSE DEVELOPMENT GROUP

down Piilani Highway in Makena (2 planned communities) there is a brand new high school projected for 2014 opening on Piilani Highway roughly a half a mile from the site.

With significant barriers to entry in the market, Piilani Promenade is the shining example of prime retail sites. Taking over 14 years to entitle and being located at Main & Main for traffic on the west end of the Island, this development is one that will likely never be duplicated on the Island of Maui.

Maui currently provides approximately 61 hotels with over 10,600 rooms; 103 condominium projects with over 7,300 rooms; and 40 different Bed and Breakfast properties. Maui attracts approximately 2,900,000 visitors each year which only adds to the already strong demographic base of the Island.

Piilani Promenade will be a roughly 415,000 square foot retail development with national and local retailers which will provide a one-stop shopping experience for the Island. We have tenants that will range from 1,000 square feet up to over 150,000 square feet, and space is available now for those ready to move on this dynamic retail opportunity.

# ECLIPSE DEVELOPMENT GROUP

## OPPORTUNITY HIGHLIGHTS

- ✦ IRREPLACEABLE RETAIL LOCATION
- ✦ SIGNIFICANT BARRIERS TO ENTRY
- ✦ FUTURE TRANSPORTATION CORRIDOR FOR AIRPORT AND UP COUNTRY RESIDENTIAL COMMUNITY
- ✦ LOCATED IN THE MIDDLE OF TOURISM TRAFFIC (MAIN AND MAIN)
- ✦ 2.9 MILLION VISITORS ANNUALLY ( Nine (9) day average stay)
- ✦ STRONG DEMOGRAPHIC BASE WITH AVG HH INCOME IN EXCESS OF \$86,000 PER YEAR
- ✦ ADJACENT HIGH SCHOOL CONSTRUCTION TO BEGIN IN APPROX 2012
- ✦ FUTURE RESORT, RESIDENTIAL, GOLF COURSE IN PLANNING ALONG PIILANI HIGHWAY NEAR THE PROPERTY
- ✦ UNPARALELLED ARCHITECTURAL DESIGN

### **FOR LEASING INFORMATION CONTACT:**

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Executive Vice President  
Eclipse Development Group  
17802 Sky Park Circle #200  
Irvine, Ca 92614  
949-251-8828 (Direct)  
949-251-9979 (Facsimile)

[www.eclipsedevelopmentgroup.com](http://www.eclipsedevelopmentgroup.com)

WALEA

FUTURE  
BUSINESS  
PARK

PLANNED COMMUNITY  
DEVELOPMENT

NEW HIGH  
SCHOOL

PLANNED  
COMMUNITY  
DEVELOPMENT

UP COUNTRY ROAD

PLANNED COMMUNITY  
DEVELOPMENT

KIHEI

KONOULI STREET

PIILANI HIGHWAY

NORTH TO  
KAHULUI AIRPORT  
AND LAHAINA

**ECLIPSE**  
DEVELOPMENT  
**GROUP**







02/11/2019



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SCALE 1/4"=1'-0"  
 ELEVATIONS

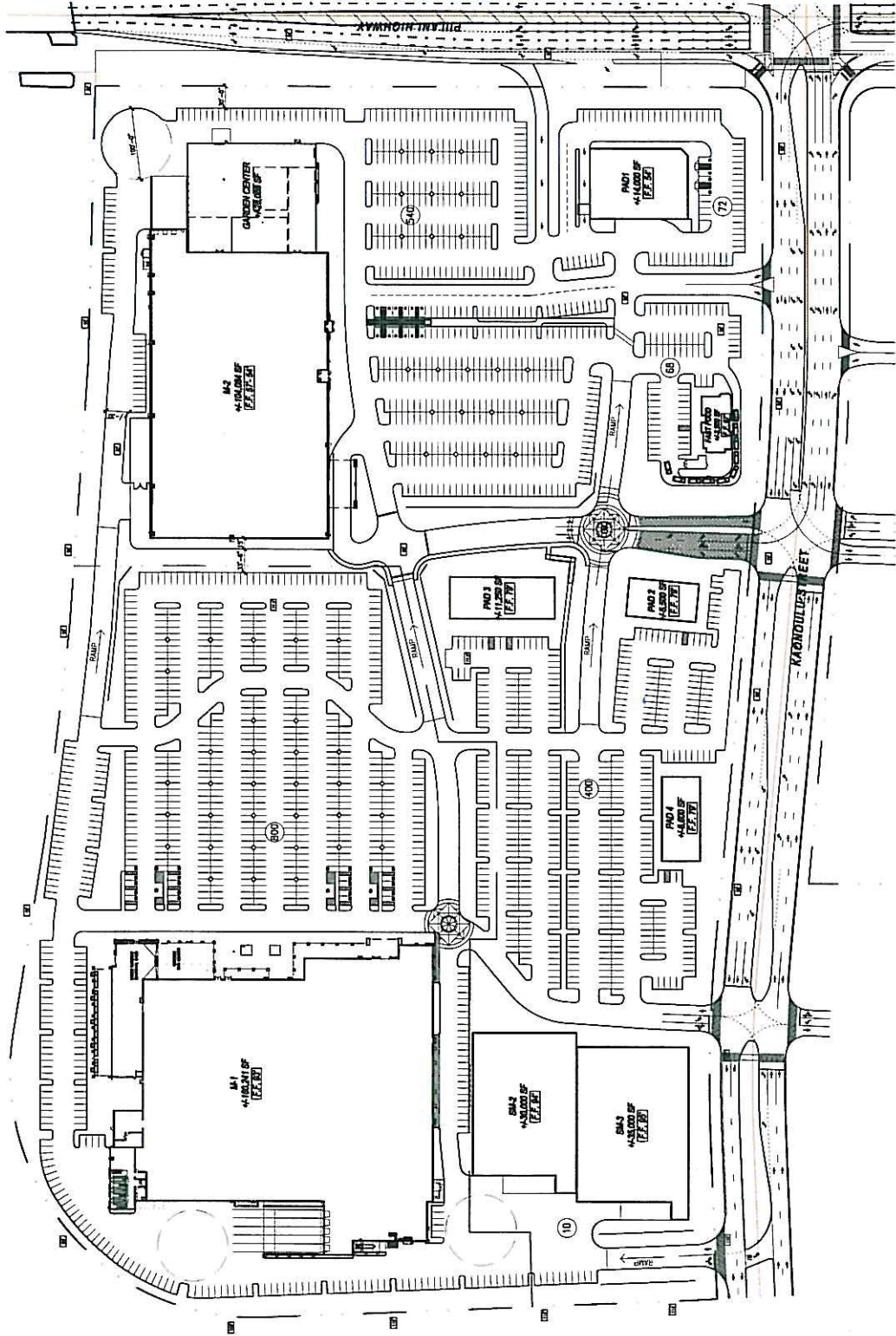
MAUI, HAWAII

MAUI RETAIL CENTER

ARCHITECTS ORANGE  
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 639-9880

**ECLIPSE**  
 DEVELOPMENT  
**GROUP**

17902 Skyhawk Circle, Suite 200  
 Irvine, California 92614  
 Main: 949.251.8555  
 Facsimile: 949.251.9979



**SITE SUMMARY:**

BLDG AREA:	370,173 SF
TOTAL:	415,173 SF
PARKING PROVIDED:	1,690 STALLS
RATIO:	5.1/1,000 SF



2025-148-20 04.17.2011



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**SITE PLAN**

**MAUI, HAWAII**

**ECLIPSE MAUI RETAIL CENTER**



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 Irvine, California 92614  
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**ARCHITECTS ORANGE**  
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 635-9860

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. A-94-706

AFFIDAVIT OF MARK HYDE IN SUPPORT OF:

MOTION FOR A HEARING, ISSUANCE OF ORDER TO SHOW CAUSE, AND OTHER RELIEF

Filed by: Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahale

**AFFIDAVIT OF MARK HYDE IN SUPPORT OF  
MOTION FOR A HEARING,  
ISSUANCE OF ORDER TO SHOW CAUSE, AND OTHER RELIEF**

Mark Hyde states as follows:

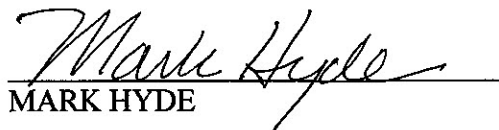
1. I am over 18 years of age. I am a resident of Kihei, Maui, Hawaii. I am the president of South Maui Citizens for Responsible Growth, a Hawaii nonprofit formed to advance, defend, and communicate the principles of responsible growth in South Maui, County of Maui, Hawaii.
2. This affidavit is submitted pursuant to Hawaii Administrative Rule § 15-15-93(a)(5).
3. I have reviewed the facts set forth in the attached Motion For A Hearing, Issuance Of Order To Show Cause, And Other Relief, filed by Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahale (the "Alleged Facts").

4. I have personal knowledge with respect to the Alleged Facts based on my personal review of files at the Hawaii Land Use Commission, at the County of Maui, and information obtained from other sources, including the internet.

5. I hereby declare and verify that, to the best of my knowledge, the Alleged Facts are true and correct.

I, Mark Hyde declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Kihei, Maui, Hawaii, May 21, 2012.

  
MARK HYDE

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

The foregoing document was acknowledged before me this 21<sup>st</sup> day of May, 2012, by MARK HYDE personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the foregoing document and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

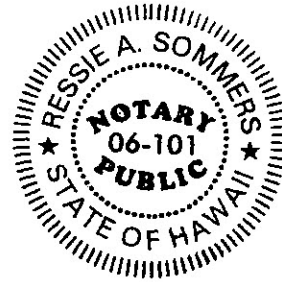
WITNESS my hand and official seal.

R. Sommers

Notary Public, State of Hawaii

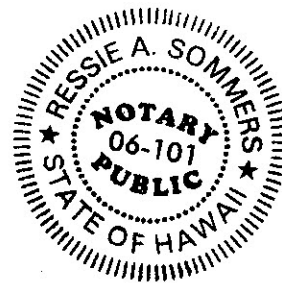
Print Name: RESSIE A. SOMMERS  
Expiration Date: February 26, 2014

My commission expires: \_\_\_\_\_



Doc. Date: <u>undated</u>	No. of Pages: <u>3</u>
Notary Name: <u>Ressie A. Sommers</u>	<u>2<sup>nd</sup></u> Judicial Circuit
Doc. Descrip: <u>Affidavit of Mark Hyde in Support of Motion for a Hearing, Issuance of Order to Show Cause, and other Relief</u>	
<u>R. Sommers</u> Notary Signature	<u>5-21-12</u> Date
	Stamp or Seal

NOTARY PUBLIC CERTIFICATION



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was mailed to the Hawaii Land Use Commission, and has been duly served upon the following at their addresses of record United States Mail, postage prepaid on the date indicated below.

Pi'ilani Promenade South, LLC  
17802 Skypark Circle, Suite 200  
Irvine, CA 92604

via U.S. Mail

Pi'ilani Promenade North, LLC  
17802 Skypark Circle, Suite 200  
Irvine, CA 92604

via U.S. Mail

Honua`ula Partners, LLC  
1999 Avenue of the Stars, Suite 2850  
Los Angeles, California 960067.

via U.S. Mail

DATED: Makawao, Maui, Hawaii, May 21, 2012.

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TOM PIERCE  
Attorney for Maui Tomorrow  
Foundation, Inc., South Maui Citizens  
for Responsible Growth, and Daniel Kanahela