



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

June 26, 2012

Mr. Daniel E. Orodener, Executive Officer
Mr. Norman R. Lezy, Chair
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, HI 96804-2359

Dear Mr. Orodener and Mr. Lezy:

I am writing in regard to an ongoing project that is a source of considerable controversy in the North Kihei area of Maui. A number of residents have talked to me or written to me regarding the planned construction of a shopping center and outlet mall along Pi'ilani Highway, near Kaonoulu Street. The Department of Public Works granted the issuance of mass grading permits for the project on April 18, 2012. Eclipse Development Group, LLC, the project's developer, is already pre-leasing spaces to merchants through its website. Supporters of the project cite the convenience of a local shopping experience, and Mayor Arakawa has publicly claimed the retail center will bring an increase in jobs. Most of my constituents, however, are concerned about the extent to which a 700,000 square-foot retail center will affect traffic, and how such a large project will have other long-term adverse impacts on the area. More importantly, these area residents do not feel that the project has been subjected to a fair hearing, and they do not believe that they have had a fair opportunity to be heard.

The controversy has a connection to a February, 1995, Land Use Commission (LUC) *Decision and Order* in Docket No. A-94-706. The LUC issued the *Order* in response to then-owner Kaonoulu Ranch's 1994 *Petition for District Boundary Amendment*. Kaonoulu Ranch sought the amendment due to its proposed development of eighty-eight acres for "Kaonoulu Industrial Park", a commercial and light industrial subdivision with one hundred twenty-three lots. At the time, the County of Maui had not zoned the property. The LUC's *Order* granted the reclassification of the property from "Agricultural District" to "Urban District", subject to twenty conditions intended to run with the land. Nothing in the *Order* hinted that the land would be used for shopping centers. Further, some of the conditions in the *Order* required the landowner to:

Representative George R. Fontaine, 11th District (Makena, Wailea, Kihei)

Hawai'i State Capitol, 415 S. Beretania St., Room 311, Honolulu, HI 96813

Ph: (808) 586-8525 Fax: (808) 586-8529 repfontaine@capitol.hawaii.gov

Education, Judiciary, Labor & Public Employment, Public Safety & Military Affairs, and Transportation Committees

- "Obtain a Community Plan Amendment and Change in Zoning from the County of Maui."
- "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."
- "Develop the property in substantial compliance with the representations made to the Commission."

In 1998, through Ordinance No. 2641, the County of Maui amended the Kihei-Makena Community Plan, which included the subject property, and designated the land as "Light Industrial" on the Land Use Map. In 1999, through Ordinance No. 2772, the County of Maui designated the zoning of the property as "M-1 Light Industrial District". The property also eventually changed hands, and current landowners include Piilani Promenade North, LLC, and Piilani Promenade South, LLC. It is my understanding that the annual reports that the landowners have filed with the LUC do not make mention of the intended new use of the property.

While the controversy is based on a disagreement between the different sides regarding many issues, there are several issues that are likely relevant to the LUC:

- (1) What, if any, conditions that the LUC placed on the reclassification prevent the current landowners from constructing a shopping center and outlet mall?
- (2) Does the property's current zoning designation prohibit such construction? Chapter 19.24 of the Maui County Code permits the building of retail establishments within an M-1 Light Industrial District. However, that same chapter also states that the M-1 District "is designed to contain *mostly* warehousing and distribution types of activity" (emphasis added).
- (3) Does the property's designation as "Light Industrial" in the Land Use Map prohibit such construction? The 1998 Kihei-Makena Community Plan defines "Light Industrial" as "warehousing, light assembly, service, and craft-type industrial operations".
- (4) Is the State's Department of Transportation (DOT) restricted from approving highway modifications that are inconsistent with the LUC's road construction conditions? The DOT states it has been working with the developer on addressing the impacts such a project will have on highway resources. The frontage and connector roads, however, are not yet developed. The DOT defers to the LUC to enforce the terms of the *Order*.

These questions are not just academic; the outcomes affect real people. As you know, The Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahale filed a *Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief* with the LUC last month for Docket No. A-94-706. The motion essentially seeks to halt construction of the project, based on the marked difference between the original plan for the property and the current plan for the property.

The Maui News has already reported the LUC scheduled a hearing on the *Motion* in August. According to LUC staff, however, that date is only tentative. I write to you, therefore, because it may be appropriate for the LUC to reach out to the community, listen to residents' concerns, provide information on the relevance of the 1995 *Order*, and inform individuals how the LUC's process works.

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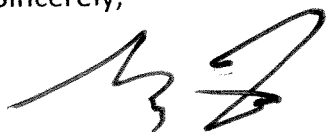
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While I understand that the LUC may be limited in its ability to speak due to the ongoing *Motion*, any assistance would be greatly appreciated.

Please do not hesitate to call or write to me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Fontaine', with a stylized flourish at the end.

State Representative George R. Fontaine
11th District (Makena, Wailea, Kihei)

cc: Governor Neil Abercrombie
Attorney General David M. Louie

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