

**OFFICE OF PLANNING**

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LAND USE COMMISSION  
STATE OF HAWAII  
2012 JUL 13 A 10:12

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A94-706
	)	
KAONOULU RANCH	)	OFFICE OF PLANNING'S RESPONSE
	)	TO MOVANT'S MOTION FOR A
To Amend the Agricultural Land Use	)	HEARING, ISSUANCE OF ORDER TO
District Boundary into the Urban Land Use	)	SHOW CAUSE, AND OTHER RELIEF;
District for approximately 88 acres at	)	EXHIBITS 1-3; CERTIFICATE OF
Kaonoulu, Makawao-Wailuku, Island of	)	SERVICE
Mau, Hawai'i, TMKs: 2-2-02: por. Of 15	)	
and 3-9-01: 16	)	

**OFFICE OF PLANNING'S RESPONSE TO MOVANT'S MOTION FOR A HEARING,  
ISSUANCE OF ORDER TO SHOW CAUSE, AND OTHER RELIEF**

The Office of Planning (OP) supports the Movant's Motion for an order to show cause hearing specifically as it relates to Hawaii Administrative Rules § 15-15-93(b) which states in relevant part as follows:

“(b) Whenever the commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, or the representations made by the petitioner, the commission shall issue and serve upon the party of the 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. “

**I. INTRODUCTION**

OP finds there is “reason to believe” that Petitioner has failed to substantially comply with its representations as required by Condition 15 of the Findings of Fact, Conclusions of Law, and Decision and Order, effective on February 10, 1995 (the “1995 Decision and Order”). Petitioner originally represented that the Petition Area would be developed with a “123-lot

commercial and light industrial subdivision.” See Finding of Fact 21 of the 1995 Decision and Order. It now appears that Petitioner is building apartment buildings and two shopping centers, with no apparent light industrial activity within four lots and a roadway lot. This new use was not accounted for in 1995, and consequently, the conditions imposed in 1995 may not reflect the impacts to issues of statewide concern caused by the new use. Petitioner has apparently chosen not to file a motion to amend the 1995 Decision and Order to bring its actions into compliance. Consequently, an order to show cause hearing should be held. OP does not, however, take any position at this time whether the Petition Area should be reverted. The question of reversion can be decided after an order to show cause hearing is ordered, and may be affected by the subsequent actions of Petitioner.

## **II. FACTUAL SUMMARY**

In 1994, Petitioner filed a Petition to reclassify approximately 88 acres of land from agricultural to urban. After a one-day hearing in which no public testimony was submitted, the Land Use Commission (“LUC”) approved the Petition. On February 10, 1995, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order (the “1995 Decision and Order”) reclassifying the Petition Area subject to certain conditions.

On March 20, 1998, the County approved the Community Plan Amendment for Light Industrial uses in the Petition Area.

On May 25, 1999, the Property was zoned to M-1 Light Industrial by Ordinance No. 2772, Bill No. 27 (1999), with four (4) conditions. The M-1 Light Industrial district allows a variety of uses, including light industrial, commercial, and apartments. The County did not place any conditions or restrictions on the amount of commercial use that could be built on the Petition area. The proposal for the Zoning application was for a 123-lot project, the same as approved by the LUC. See OP Exhibit 1 and 2.

On April 8, 2008, the Maui County Council adopted Ordinance No. 3554, Bill No. 22, A Bill for an Ordinance to Repeal Ordinance No. 2171 (1992) And To Establish Kihei-Makena Project District 9 (Wailea 670) Zoning (Conditional Zoning), For Approximately 670 Acres situated at Paeahu, Palaua, Keauhou, Maui, Hawaii, Condition 5. Under this ordinance, one of the new owners of the Petition Area, Honua‘ula Partners, LLC, was required to provide 250 workforce housing units within the Petition Area. Condition 5 states as follows:

“5. That Honua'ula Partners, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code (the "Residential Workforce Housing Policy"); provided that, 250 of the required workforce housing units shall be located at the Kaonoulu Light Industrial Subdivision and completed prior to any market-rate unit, that 125 of those workforce housing units shall be ownership units, and that 125 of those units shall be rental units. In addition, construction of those workforce housing units shall be commenced within two years, provided all necessary permits can be obtained within that timeframe. Honua'ula Partners, LLC, its successors and permitted assigns, shall provide a minimum two-acre park at the Kaonoulu Light Industrial Subdivision, which shall be credited toward the requirements of Section 18.16.320, Maui County Code, for that subdivision. “

Consequently, Petitioner was aware as early as 2008 that the land use for the Petition Area was changing to include residential units. See OP Exhibit 3.

On August 14, 2009, the County approved the Petitioner's request for a four (4) lot subdivision plus a roadway lot as follows: Lot 2A—30.152 acres; Lot 2B—13.129 acres; Lot 2C—18.519 acres; Lot 2D—19.539 acres, and (roadway) Lot 2E—4.898 acres. This subdivision is consistent with the current proposed use, but differs from the proposal in the zoning application and the map submitted to the LUC in its approval process. See OP Exhibit 2.

On April 18, 2012, the Petitioner obtained a Grading and Grubbing permit. The application for a Grading and Grubbing permit included “Subsurface Investigation Report,” dated August 2011. This is the first government document discovered by the Office of Planning which describes a proposed shopping center for the Petition Area. Paragraph 2 of the Introduction in the Subsurface Investigation Report states that the development is for “Two related shopping center complexes...the shopping centers will house a number of retail shops of varying sizes, including large national retailers.” This proposal for retail shops and the apparent exclusion of light industrial activities differs from the 123-lot light commercial and industrial subdivision approved by the LUC.

The Office of Planning is aware of only two of Petitioner's annual reports filed in the 12 years since the 1995 decision. The first was dated April 7, 2010 and notes that the Petition Area is a large lot subdivision, implying that further subdivisions will occur later. The second faxed on May 19, 2011 similarly notes that the Petition Area is a large lot subdivision, implying that further subdivisions will occur later. Further subdivisions, however, do not appear consistent

with the current proposal for two shopping center complexes. In any case, the construction of apartments and two shopping centers and the apparent exclusion of light industrial activities is not mentioned in the two annual reports that the Office of Planning was able to retrieve.

### **III. ARGUMENT**

The issue before the LUC is not whether the new use is consistent with County zoning or subdivision, rather, the issue is whether the new use is consistent with the LUC's 1995 Order. Petitioner was clearly and specifically notified that the Petition must be developed in substantially compliance with its representations. Condition 15 stated as follows:

“Condition no. 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.”

Despite this clear notice, Petitioner has deviated from its original representations.

#### **A. Uses or Activities**

The Petitioner originally proposed to build a commercial and light industrial subdivision. The clear focus of the proposal was on light industrial uses, with the flexibility to include an unspecified number of commercial lots.

The Project's name was the Kaonoulu Industrial Park, consistent with the Petitioner's focus on light industrial uses. See Finding of Fact 21 of the 1995 Decision and Order. The Land Use Commission (“LUC”) also made a specific determination that the Project “would conform with the proposed Light Industrial designation for the Property. Light industrial uses include warehousing , light assembly, and service and craft-type industrial operations.” See Finding of Fact 32 of the Decision and Order.

Because of these representations, the LUC accepted a market study which focused on the future needs for additional light industrial uses. The market study did not draw conclusions regarding the Project's ability to fill a need in the residential market or even in the commercial market. It is not certain if the change from a light industrial project with some additional commercial use to apartment buildings and two large shopping malls affected the original analyses regarding traffic, job creation, scenic impacts, energy use, water use, solid waste, traffic, or wastewater. But a Project's proposed use can impact associated issues for LUC

decision-making. Given these potential impacts, there is reason to believe that there has been a failure to substantially comply with the representations made by Petitioner.

The addition of apartments would also have made a significant difference in the LUC's analysis regarding impacts to state educational facilities. The 1995 Decision and Order contains no finding or requirement for an educational contribution.

#### **B. Number and Size of Lots**

Petitioner proposed to develop 123 lots. The size of the lots would range from approximately 14,000 square feet to 54,000 square feet. See Finding of Fact 21 of the 1995 Decision and Order. The current approved subdivision contains four (4) lots, ranging in size from 13.129 acres to 30.132 acres, and a roadway lot of 4.89 acres. A comparison of Exhibit No. 7D, labeled, "Conceptual Development Plan Kaonoulu Industrial Park" with the map attached as an exhibit to the Petitioner's subdivision application demonstrates the significant difference in the lot configuration. See OP Exhibit 1 and 2.

The change from 123 lots ranging in size from 14,000 to 54,000 square feet for sale or lease to two related shopping complexes and apartments impacts the market analysis and economic impact. Petitioner will not be selling lots to a number of small businesses, and the number and size of lots significantly impacts the character of the Project. In short, the LUC petition was submitted with one project. The Petitioner is now developing a different project.

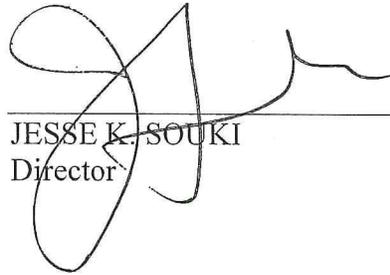
#### **IV. CONCLUSION**

There is a sufficient basis for concluding that the currently proposed project is not in substantial compliance with representations made in the original petition. Changes in use are not unknown to the LUC. But in other cases, Petitioners have come back to the LUC with a motion to amend. The LUC and the parties are then given an opportunity to look at the new proposed use, determine whether the requirements for reclassification have still been met, and consider whether additional or different conditions should be imposed. In this case, Petitioner has not filed a motion to amend. So, this option is not available to the LUC. Consequently, the

Office of Planning recommends that an Order to Show Cause should be issued, and an Order to Show Cause hearing should held, without prejudice to any other procedural options available to Petitioner.

DATED: Honolulu, Hawai'i, this 13th day of July, 2012.

OFFICE OF PLANNING  
STATE OF HAWAI'I



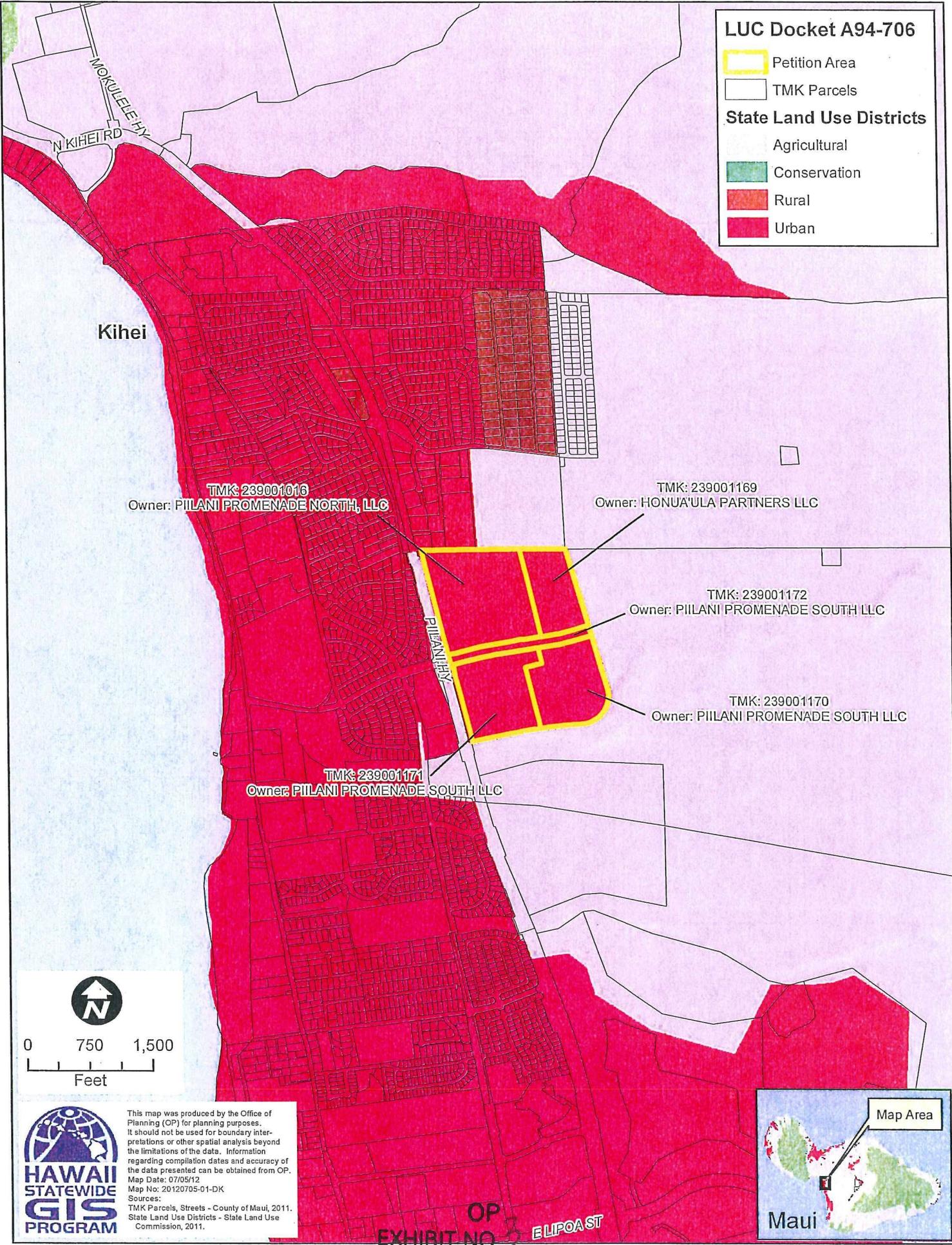
JESSE K. SOUKI  
Director





**LUC Docket A94-706**

-  Petition Area
-  TMK Parcels
- State Land Use Districts**
-  Agricultural
-  Conservation
-  Rural
-  Urban



Kihei

TMK: 239001016  
Owner: PIILANI PROMENADE NORTH, LLC

TMK: 239001169  
Owner: HONU'A'ULA PARTNERS LLC

TMK: 239001172  
Owner: PIILANI PROMENADE SOUTH LLC

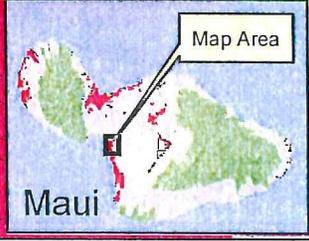
TMK: 239001170  
Owner: PIILANI PROMENADE SOUTH LLC

TMK: 239001171  
Owner: PIILANI PROMENADE SOUTH LLC



This map was produced by the Office of Planning (OP) for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from OP. Map Date: 07/05/12. Map No: 20120705-01-DK. Sources: TMK Parcels, Streets - County of Maui, 2011. State Land Use Districts - State Land Use Commission, 2011.

OP EXHIBIT NO. 3 ELIPOA ST



Docket No. A94-706

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawai'i, this 13th day of July, 2012.



JESSE K. SOUKI  
Director  
Office of Planning