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Testimony before the Land Use Commission
August 24, 2012

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My name is Ann Cua and I have been a Land Use Planner with the County of Maui for almost 30 years. I was the planner assigned to the Petition for Kaonoulu Ranch to amend the Agricultural Land Use District Boundary into the Urban District in 1994. The petition proposed a light industrial subdivision which could include uses permitted in the County of Maui's M-1 Light Industrial Zoning District. The County of Maui's Light Industrial Zoning district is a tiered zoning district which includes business and apartment uses.

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The transcripts of the Land Use Commission proceedings indicate that the petition area could accommodate business and apartment uses in accordance with County zoning and depending on market demands. The Land Use Commission was aware of the broad uses permitted by the County's M-1 Light Industrial Zoning District by its line of questioning of the market feasibility expert. The market feasibility expert indicated that the market would ultimately dictate what was built within the standards of the County zoning district. The Land Use Commission approved the redistricting to the Urban District on February, 1995. The decision and order did not include any conditions restricting the uses within the Urban District. The Planning Director during his testimony indicated that during the change in zoning process, he would request that the County Council limit the amount of commercial uses allowable under the County's light industrial zoning ordinance.

It should be noted that in 2004 the LUC imposed a condition on the Maui Business Park Phase II project limiting 50% of the project acreage to be used and developed for non-retail, light industrial use.

The County Council in March, 1998 adopted the Kihei-Makena Community plan by Ordinance No. 2641. The Community Plan designates the petition area for Light Industrial Use. Based on the County's tiered zoning approach for the M-1 Light Industrial District, the Planning Department has historically interpreted the Light Industrial designation in the Community Plan to allow those uses expressly permitted in the County's M-1 Light Industrial zoning District unless restricted by conditions of zoning.

In April 1998, Kaonoulu Ranch applied for a Change in zoning from the County Agricultural District to the M-1 Light Industrial Zoning District. I was the planner assigned to the Change in zoning application for the Department and was present at the Planning Commission and County Council meetings. The Planning Department in its recommendation to the Maui Planning Commission proposed conditions to limit the amount of commercial use for the project as it did in other similar requests for change in zoning. In this case, the Department recommended "that not less than 70% of the net property developed shall be leased or sold as restricted to uses permitted in the M-1 Light Industrial district,

under Title 19, Chapter 19.24, of the Maui County Code, excluding the uses permitted in the B-1, B-2 and B-3 Districts.” Both the Planning Commission and the County Council did not support the Department’s recommended conditions and as a result no conditions were imposed to limit the uses within the M-1 light industrial district.

In as much as the zoning for the property is M-1 light industrial and there were no conditions imposed by both the State LUC for the District Boundary Amendment and the County Council for the Change in Zoning, the property allows for a variety of uses including apartment, industrial, and commercial uses.

As a planner that has processed a large number of land use permits I am concerned about the implications this order to show cause, based on a “substantial compliance with representations made condition” can have on the overall land use process. The specific zoning and permitted uses of a parcel of land is normally determined at the County level. The LUC is the authority to determine whether or not a petition area should be urbanized. If the LUC determines that a “conceptual site plan” is binding as “representations” made to the Commission then projects would need to come back to the LUC for each change to the plan. I don’t believe this is the intent of the LUC in its role in the land use process.

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utilizing trees and shrubbery shall be constructed along the entire proposed collector road (Hookele Street Extension) to soften the visual impact of the buildings along the road. (Wailuku-Kahului Community Plan Update).

17. **Dual Water System.** Petitioner shall evaluate the feasibility of developing a dual water system for the Project, utilizing non-potable water for landscape irrigation purposes.

18. **Energy Conservation.** Petitioner shall implement energy conservation measures such as the use of solar energy and solar heating and incorporate such measures into the Project.

19. **Project Composition.** For a period of eight (8) years from the date of the County's approval of zoning for the Project a total of at least fifty percent (50%) of the Project acreage shall be (a) used and developed by Petitioner for non-retail, light industrial use and/or (b) sold or leased to and developed and used by third-party buyers for non-retail, light industrial use. For this same eight-year period, simultaneous with Petitioner's development or offer for sale or lease of the Property for retail use, Petitioner shall develop or offer for sale or lease an equal amount of acreage within the Property for non-retail, light industrial use. The phrase "light industrial", as used in this paragraph, includes warehousing and distribution types of activity as well as compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials. It is the intent of this paragraph

that at the end of the above-described eight-year period, to the extent that the Project is developed or in the process of being developed by Petitioner or any third party, no less than fifty percent (50%) of such development or development in process shall be for non-retail, light industrial purposes.

20. **Compliance with Representations to the Commission.** 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.

21. **Notice of Change to Ownership Interests.** 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.

22. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of 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. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

23. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 18th day of March, 2004. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Kihei, Maui, Hawai'i, this 18th day of March, 2004,
per motion on March 18, 2004.

APPROVED AS TO FORM

Russell A. Suzuki
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By Lawrence N.C. Ing
LAWRENCE N.C. ING
Chairperson and Commissioner

By P. Roy Catalani
P. ROY CATALANI
Vice-Chairperson and Commissioner

By Bruce A. Coppa
BRUCE A. COPPA
Vice-Chairperson and Commissioner

By ABSENT
PRAVIN DESAI
Commissioner

By [Handwritten Signature]
KYONG-SU IM
Commissioner

By [Handwritten Signature]
ISAAC FIESTA, JR.
Commissioner

By [Handwritten Signature]
STEVEN LEE MONTGOMERY
Commissioner

Filed and effective on
MAR 25 2004

By [Crossed out Signature]
~~RANDALL B. SAKUMOTO~~
~~Commissioner~~

Certified by:

[Handwritten Signature]
ANTHONY CHING

By [Handwritten Signature]
PETER YUKIMURA
Commissioner