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BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2012 OCT 25 A 7:29

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; Tax Map Key Nos. 2-2-02: por. of 15 and 3-9-01:16

DOCKET NO. A-94-706

DEPARTMENT OF PLANNING,
COUNTY OF MAUI'S MOTION TO
EXCLUDE FURTHER PUBLIC
TESTIMONY; MEMORANDUM IN
SUPPORT OF MOTION;
CERTIFICATE OF SERVICE

Hearing:

Date: November 1 - 2, 2012

Time: 9:30 a.m.

**DEPARTMENT OF PLANNING, COUNTY OF MAUI'S
MOTION TO EXCLUDE FURTHER PUBLIC TESTIMONY**


Department of Planning, County of Maui ("County"), by and through its attorneys, Patrick K. Wong, Corporation Counsel, Michael J. Hopper and Jane E. Lovell, Deputies Corporation Counsel, hereby moves to exclude any further public testimony beyond that already presented in this docket.

The Land Use Commission heard extensive public testimony at the hearing in this docket on August 24, 2012, in which a broad spectrum of viewpoints were expressed, both in favor of, and against, the proposed project. This matter is an adjudicatory proceeding, in which the Commission is sitting as judge and jury, tasked with determining whether the landowner violated the terms and conditions of the Commission's 1995 Decision and Order. Adjudicatory proceedings such as these are exempt from the provisions of Hawaii's Sunshine Law, HRS Chapter 92.

This motion is based on HAR § 15-15-70 and HAR § 15-15-63(b); on HRS § 92-6(2); on the memorandum in support hereof; and on such argument of counsel as may be heard at the hearing on this motion.

Dated: Wailuku, Maui, Hawaii, October 24, 2012

PATRICK K. WONG
Corporation Counsel
Attorney for Department of Planning,
County of Maui

By 
(MICHAEL J. HOPPER
JANE E. LOVELL
Deputies Corporation Counsel

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MEMORANDUM IN SUPPORT OF MOTION

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The Land Use Commission heard extensive public testimony at the hearing in this docket on August 24, 2012, in which a broad spectrum of views were expressed by public witnesses. Over the course of several hours, public witnesses gave testimony in favor of, and against, the proposed shopping mall and affordable housing project at issue in this proceeding. Some of the public witnesses were cross-examined by the parties, and the Commission members also had the opportunity to question the witnesses. Allowing the same public witnesses to testify again, or allowing testimony from new witnesses reiterating points made by previous witnesses, would be unduly repetitious. Given the value of the Commission's time, and the expense and scheduling difficulties inherent in holding Land Use Commission meetings on Maui, public witness testimony should not be re-opened.

This matter is not a public meeting, subject to the state's Sunshine Law,

HRS Chapter 92. Instead, an Order to Show Cause proceeding is judicial in nature. Adjudicatory proceedings such as these are exempt from the provisions of HRS Chapter 92, known as the Sunshine Law.

HRS § 92-6(2) provides in pertinent part that the Sunshine Law does not apply "[t]o adjudicatory functions exercised by a board and governed by [HRS] section 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes."

The Commission's rules expressly provide that the Commission "shall, as a matter of policy provide for the exclusion of . . . unduly repetitious evidence." . Because a broad range of opinions has already been expressed by public witnesses in this docket, by testifiers in support of, and in opposition to, the proposed project, allowing further public testimony is not warranted. The testimony of witnesses disclosed on the parties' witness lists alone will most likely take all of the Commission's available time on November 1 and 2, 2012. Allowing further public testimony, in addition to what has already been received, would unduly prolong the proceedings, adding expense to the Commission and the parties, and preventing a prompt decision by the Commission.

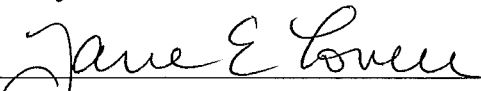
The County does not mean to suggest that the public should be excluded from attending the hearings, or that the Commission's deliberations should be held behind closed doors. HRS § 96-2(b) expressly requires that the Land Use Commission's deliberations take place in open session. Rather, the County asks this Commission to recognize the legal difference between a public meeting, and

a contested case hearing, and to limit testimony to those witnesses disclosed by the parties in order to allow for the most efficient use of the Commission's time and the rendering of a prompt decision.

Public testimony having been closed at the last hearing in this docket, the County respectfully requests that it not be re-opened. County further requests that all testimony received in this contested case be limited to witnesses disclosed on the parties's witness lists, and to such rebuttal or impeachment witnesses as the Commission may allow.

Dated: Wailuku, Maui, Hawaii, October 24, 2012

PATRICK K. WONG
Corporation Counsel
Attorney for Department of Planning,
County of Maui

By 
MICHAEL J. HOPPER
JANE E. LOVELL
Deputies Corporation Counsel

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that a true and correct copy of the foregoing document was duly served on October 24, 2012, upon the following parties, by depositing same in the U.S. Mail, postage prepaid, at their last known addresses:

	METHOD OF SERVICE		
	<u>MAIL</u>	<u>HAND DELIVERY</u>	<u>E-MAIL</u>
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Attorney for Intervenors Maui Tomorrow Foundation, Inc., South Maui Citizens For Responsible Growth, and Daniel Kanahele

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X

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Attorney for State Office of Planning

DATED: Wailuku, Hawaii, October 24, 2012.

PATRICK K. WONG
 Corporation Counsel
 Attorney for County of Maui
 Department of Planning

By 
 MICHAEL J. HOPPER
 JANE E. LOVELL
 Deputies Corporation Counsel