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Attorney for Maui Tomorrow Foundation, Inc.,  
South Maui Citizens for Responsible Growth  
and Daniel Kanahahele

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

DIRECT WRITTEN TESTIMONY OF  
EXPERT MICHAEL FOLEY; EXHIBIT "A"  
[INTERVENORS' EXH. "I-26"]

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

SHOW CAUSE HEARING DATE:  
November 1 & 2, 2012

**DIRECT WRITTEN TESTIMONY OF MICHAEL FOLEY**

Intervenors Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahahele, through their attorney, Tom Pierce, Esq., submit the direct written testimony of Michael Foley set forth below in support of their case. Intervenors reserve the right to call Michael Foley for additional direct testimony, redirect, and rebuttal testimony at the time of the show cause hearing.

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

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TOM PIERCE

**DIRECT WRITTEN TESTIMONY OF MICHAEL FOLEY**

Q. Will you please state your name for the record.

A. Michael Foley.

Q. Are you a resident of Maui County; if so, how long have you been a resident?

A. Yes. I have been a full-time resident of Maui County for 14 years.

Q. Are you currently employed and, if not, what is your background and experience in the field of community planning?

A. I am currently retired after enjoying a long career in the field of community planning that began in 1964 and ended 43 years later in 2007. I served as Maui County's Director of Planning from 2003 – 2007. Prior to that, I was the Planning Director for the towns of Napa, Davis, Woodside and Sausalito, California, Executive Director of the California Tahoe Regional Planning Agency, and worked in a variety of planning and consulting positions for decades. My Curriculum Vitae is attached as Exhibit "A" to this statement. The content of that attachment is true and correct.

Q. What is your educational background?

A. I have a Master of Arts degree in Community Planning and Design from Antioch University (1982), a Bachelor of Arts degree in Urban Geography from California State University, Fresno (1967) and an Associate of Arts degree in Architecture from Monterey Peninsula College (1964).

Q. Are you familiar with the 88 acres of land that is the subject of a decision and order in this case (the "Property")?

A. Yes.

Q. Have you been asked by the Intervenors to give expert testimony with regard to the differences between light industrial use of the Property compared to those proposed by the current landowners to develop the parcel into retail shopping centers and housing uses?

A. Yes.

Q. Do you have an opinion whether there are material differences between these uses, comparing light industrial use to retail shopping centers and housing uses?

A. Yes.

Q. What have you reviewed prior to formulating an opinion regarding different impacts posed by these uses?

A. I reviewed the Petition filed in this matter in July 1994 in support of Kaonoulu Ranch's Petition for Land Use District Boundary Amendment together with select attachments thereto, including the traffic and economic studies and a proposed layout for the "Kaonoulu Industrial Park;" the Findings of Fact, Conclusions of Law, Decision & Order issued by the Hawaii State Land Use Commission in February 1995 with respect to the Property; the Kihei-Makena Community Plan enacted into law by the County of Maui in 1998; the re-zoning ordinance for the Honua'ula/Wailea 670 enacted by the County of Maui in 2008; the FEIS for Honua'ula/Wailea 670; web sites maintained by Eclipse Development describing the proposed Pi'ilani Shopping Center and Outlet Mall as consisting of roughly 700,000 square feet of retail space; two Subsurface Investigation Reports dated August 3, 2011, and August 15, 2011, prepared by Fewell Geotechnical Engineering, Ltd., for Pi'ilani Promenade South, LLC, and Pi'ilani Promenade North, LLC, describing the shopping centers as containing a number of retail shops of varying sizes, including large national retailers; and a proposed site plan for the two

retail shopping centers prepared by the current landowners in addition to a site plan prepared by the owner of the proposed 250 workforce housing units.

In addition, I have reviewed professional literature, treatises and other sources of information which is reasonably relied on by land use planners relating to light industrial and retail uses and land use and community planning, including: Contemporary Urban Planning by John Levy (2004); Cities and Urban Life by J.J Macionis and V.N Parrillo (2010); and Principles & Practices of Urban Planning published by the International City Managers Association.

Finally, I reviewed the Maui County Code relative to creation and adoption of community plans as well as Maui County Code sections dealing with zoning, and the Maui Countywide Policy Plan enacted into law by the County of Maui in March 2010.

Q. Based on what you have reviewed and based upon your background and experience in community planning, and from the perspective of a community planner, is development of the Property into a retail shopping center, an outlet mall and workforce housing a different set of uses compared to a light industrial uses?

A. Yes.

Q. How are they different, in your opinion?

A. They are different in many ways, both in terms of basic use as understood in the community planning field and in terms of impacts.

First, at a very basic level, planners categorize light industrial uses into one set of activities, retail and commercial uses into another and housing into a third. The activities and impacts of each are entirely different. One may look at the Maui County Code (“MCC”) itself to confirm this. For instance, Maui County’s Comprehensive Zoning Ordinance (MMC § 19.04.101, *et seq.*) contains separate definitions and regulations for each. Residential Districts

are defined in MCC section § 19.08, *et seq.*; commercial (including retail) uses are defined in MCC §§ 19.16, 19.18 and 19.20, *et seq.*; and light industrial use is defined in MCC § 19.24, *et seq.* Reading the definitions of each is instructive:

The MCC contains several chapters defining housing: Chapter 19.08 defines “residential districts”; Chapter 19.09 defines “zero lot line residential districts”; Chapter 19.10 defines “two family (duplex) districts”; Chapter 19.11 defines “service business residential districts”; and Chapter 19.12 defines “apartment district.” Each is distinct from the other and each is entirely different from definitions of business and light industrial districts contained in the Code. This is not accidental.

MCC Chapter 19.18 – B-2 entitled “Community Business District,” includes the following general statement in § 19.18.010, “A community business district is intended to provide all types of goods and services for the community, with the exception of those uses generally associated with industrial district, but at a lower intensity than in the central business district.” (Also see § 19.18-B-1, “Neighborhood Business District,” and § 19.20-B-3, “Central Business District.”)

MCC Chapter 19.24 entitled “Light Industrial District,” includes the following general statement: “The M-1 light industrial district is designed to contain mostly warehousing and distribution type of activity, and permits most compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials. Residential uses are excluded from this district.”

This same explicit differentiation is found in the definitions contained in the Kihei-Makena Community Plan (pages 54-55):

- “Single-Family (SF) This includes single-family and duplex dwellings;”

- “Business/Commercial (B) This includes retail stores, offices, entertainment enterprises and related accessory uses;”
- “ Light Industrial (LI) This is for warehousing, light assembly, service and craft-type industrial operations.”

The above distinctions between retail, light industrial, and residential are consistent with literature in the field of planning where it is commonly understood that light industrial uses include such things as warehouses and self-storage facilities; contractor offices with truck, tool and building material storage and light fabrication; automobile repair shops, body shops and tire repair and replacement businesses; boat storage, and often with some small component of commercial activity targeted at serving the needs of the light industrial users, such as a café serving lunch.

On the other hand, typical retail and commercial uses include such things as “big-box” retailers and department stores; banks; restaurants serving lunch and dinner that appeal to the broader community; specialty retailers such as outlet stores and those selling books, jewelry, electronics, office equipment and supplies; construction and garden supply stores; phone stores; gas stations; etc.

Aside from definitional differences between light industrial, retail/commercial and housing uses, there are distinctive functional differences as well. By way of example only, retail uses generally:

- Generate significantly more traffic than light industrial uses;
- Generate traffic at different times of the day and night compared to light industrial uses;
- Have different hours of operation than those typical for light industrial users;
- Employ more people than light industrial uses; and,
- Sell consumer goods and services as opposed to providing industrial goods and services;

In comparison, residential uses generally:

- Impact local schools compared to light industrial uses that do not; and
- Require a different set of social services and facilities (i.e., parks, access to health care facilities, etc.) compared to light industrial users.

Q. Mr. Foley, what is your opinion whether the proposed Pi'ilani Shopping Center and Outlet Mall developments are substantially similar to the Kaonoulu Industrial Park presented to the state Land Use Commission in 1994/1995?

A. The proposed Pi'ilani Shopping Center and Outlet Mall developments are not substantially similar to the proposed development presented by Kaonoulu Ranch in 1994.

Q. What is your opinion as to whether the proposed Honua'ula 250 unit affordable housing project is substantially similar to the Kaonoulu Industrial Park presented to the state Land Use Commission in 1994/1995?

A. It is not.

Q. Do you have an opinion whether the proposed Pi'ilani Shopping Center and Outlet Mall comply with the Kihei-Makena Community Plan?

A. They do not. The Kihei-Makena Community Plan explicitly states that any commercial uses are to be developed on the opposite, *makai*, side of Pi'ilani Highway in four distinct areas (page 17), none of which include the Property. Furthermore, the Community Plan specifically speaks to permitted uses of the Property on page 18, stating that it is to be used for "light industrial services." The same section also provides: "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." The proposed Pi'ilani Shopping Center and Outlet Mall are not accessory to a predominate light industrial use.

In addition, the land use map attached to the Kihei-Makena Community Plan explicitly designates the Property as "LI." As, I testified earlier, this is defined narrowly in the plan "for warehousing, light assembly, service and craft-type industrial operations."

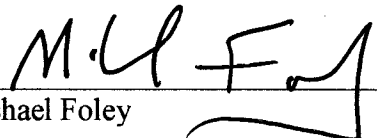
The Community Plan would need to be amended if the Property is to be used for retail and commercial uses other than incidental uses complementary to the predominant light industrial use specified in the plan.

Q. Do you have an opinion whether the proposed Honua'ula housing project complies with the Kihei-Makena Community Plan?

A. It does not, for some of the same reasons just mentioned. The Community Plan calls for light industrial use of the Property, not housing. Without an amendment of the Community Plan, housing is not allowed.

I declare under penalty of law that the foregoing, and any attachments hereto, are true and correct.

DATED: Maui, Hawaii, October 18, 2012.

  
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Michael Foley



**MICHAEL W. FOLEY**

**PLANNING EXPERIENCE: 40 YEARS**

**Planning Director - County of Maui, Hawaii**

1/03 – 1/07 (4 years)

- Advised the Mayor, County Council, three planning commissions, Board of Variances and Appeals, Urban Design Review Board, and other boards regarding all types of land use on the islands of Maui, Lanai, and Molokai
- Supervised the Planning Department, with 60 employees in 3 divisions
- Coordinated various planning projects such as the General Plan update, Coastal Zone management and the Pali to Puamana Parkway
- Enforced policies and regulations in the General Plan, Community Plans, County Code, Historic Districts and Design Guides

**Planning Consultant – Foley & Associates**

4/98 -5/99 (1 year)

- Prepared environmental impact studies for Federal, State and local agencies concerning residential subdivisions, hotels, commercial shopping centers, industrial parks, and public developments.
- Processed development applications for residential subdivisions, office buildings, and commercial projects

**Planning Director – Town of Woodside, CA.**

3/96 – 4/98 (2 years)

- Coordinated 2 year long comprehensive revision of Zoning Ordinance.
- Prepared planning reports for Town Manager, Town Council, Planning Commission and Design Review Board.
- Supervised seven employees, including Planners & Building Inspectors.

**Planning Consultant – Foley & Associates**

4/87 – 3/96 (9 years)

- Served as part-time Planning Director for Cities of Belvedere and Yountville (6 years), and for Towns of Tiburon and San Juan Bautista
- Prepared planning & environmental reports for California cities and counties concerning residential, commercial, industrial, airports, hospitals, annexations, flood control and other public projects
- Coordinated the comprehensive update of three community General Plans

**Planning Director** – City of Sausalito, CA. 8/83 -4/87 (4 years)

- Coordinated preparation of a Specific Plan to protect the 212 acre Marinship working waterfront area
- Prepared planning reports for City Manager, City Council, Planning Commission, Design Review Board & Historic Preservation Board
- Processed development applications for residential, commercial, office, industrial and public projects

**Planning Director/Senior Assoc.** – EIP, San Francisco 3/81-8/83 (2 years)

- Served as Project Manager for the preparation of numerous environmental reports for federal, state and local agencies concerning development projects throughout northern and central California.

**Planning & Redevelopment Director** – City of Napa 1/78 – 3/81 (3 years)

**Planner** – City of Wellington, New Zealand 8/75 -8/77 (2 years)

**Executive Director** – CA. Tahoe Regional Planning Agency 9/74-8/75 (1 year)

**Community Development Director** – City of Davis, CA. 10/70-9/74 (4 years)

**Planning Staff Positions:** (5 years) 2/64 – 10/70 (5 years)  
Menlo Park, CA + Monterey County, CA

**Teaching Positions**

Physical Geography + Geography of Hawaii, Maui College,  
Kahului, HI. (2002- present)  
Environmental Quality, University of California, Davis, CA. (1974)

**Education**

Master of Arts Community Planning & Design, 1982, Antioch University  
Master's Project: "Proposal and Plan for a Napa River State Park"

Bachelor of Arts Urban Geography, 1967, California State University, Fresno

Associate of Arts Architecture, 1964, Monterey Peninsula College