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60536

LAND USE COMMISSION  
STATE OF HAWAII  
2012 OCT 30 A 8:51

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A-94-706
	)	
KAONOULU RANCH	)	HONUUA'ULA PARTNERS, LLC'S
	)	MEMORANDUM IN OPPOSITION
To Amend the Agricultural Land Use District	)	TO MAUI TOMORROW FOUNDATION,
Boundary into the Urban Land Use District	)	INC., SOUTH MAUI CITIZENS FOR
for approximately 88 acres at Kaonoulu,	)	RESPONSIBLE GROWTH and DANIEL
Makawao-Wailuku, Maui, Hawai'i	)	KANAHELE'S PRE-HEARING MOTION
	)	<i>IN LIMINE</i> REGARDING SCOPE OF
	)	EVIDENCE; CERTIFICATE OF SERVICE
	)	
	)	<b>Hearing:</b>
	)	Date: November 1 and 2, 2012
	)	Time: 10:00 a.m.
	)	

HONUA'ULA PARTNERS, LLC'S MEMORANDUM IN OPPOSITION TO MAUI  
TOMORROW FOUNDATION, INC., SOUTH MAUI CITIZENS FOR RESPONSIBLE  
GROWTH and DANIEL KANAHELE'S PRE-HEARING  
MOTION IN LIMINE REGARDING SCOPE OF EVIDENCE

I. INTRODUCTION

Honua'ula Partners, LLC's ("Honua'ula"), by and through their attorneys, McCorrison Miller Mukai MacKinnon LLP, submits this Memorandum in Opposition to Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele's Pre-Hearing Motion in Limine Regarding Scope of Evidence, dated October 24, 2012 ("Motion in Limine"). While Honua'ula agrees that the evidence presented to the Commission should be limited to material relevant to the Order to Show Cause, Honua'ula disagrees entirely with Intervenors' application of that rule to the evidence offered by Honua'ula. The Motion in Limine should be denied as to the exhibits and proposed testimony submitted by Honua'ula.

II. DISCUSSION

A. Material Presented to the Commission in Support of the Petition for Land Use District Boundary Amendment by Kaonoulu Ranch is Relevant.

The Motion in Limine seeks to exclude Honua'ula Exhibits 2 and 3, both of which consist either of materials submitted to the Commission as part of the Original Petitioner's request for a boundary amendment, or testimony to the Commission as part of that request. Honua'ula respectfully submits that the materials submitted to the Commission by the Original Petitioner Kaono'ulu Ranch are directly relevant to the issue of whether Condition 15 of the Decision and Order has been violated. Condition 15 of the Order provides as follows:

*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. (Emphasis added.)*

The materials submitted by the Original Petitioner which Intervenor seek to preclude contain the representations made to the Commission. It is those representations with which the development must substantially comply. This evidence is clearly relevant.<sup>1</sup>

B. Exhibits Regarding Honua'ula's Annual Compliance Report May be Relevant

Intervenor have introduced many exhibits related to the proceedings related to the Wailea 670 project, and are expected to make that project a significant part of their case. Honua'ula Exhibits 6 and 8 are Honua'ula's annual compliance reports, and contain potentially relevant material to rebut the claims of Intervenor with regards to that project. They are potentially relevant, and their admissibility should be determined when they are offered into evidence.

C. Exhibits Regarding Compliance with Zoning and the Community Plan May be Relevant.

Honua'ula Exhibits 9 and 10 are copies of testimony of witnesses who are expected to testify herein for the Department of Planning, County of Maui. Honua'ula has submitted these exhibits as past statements of those witnesses, which may prove cumulative depending on how said witnesses testify. Whether they should be admitted or not should be determined when they are offered into evidence. These two exhibits relate to whether the proposed development complies with the current zoning and the Kihei-Makena Community Plan. Intervenor have attempted to assert both of these issues into this proceeding, and these exhibits rebut Intervenor's evidence.

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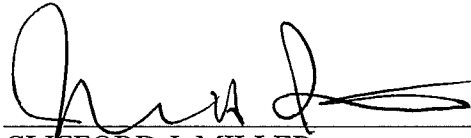
<sup>1</sup> Ironically, two of Intervenor's exhibits, I-1 and I-3, are materials submitted to the Commission as part of the original Petition, and would be excluded under the rationale in the Motion in Limine. In fact, some of the material in Intervenor's Exhibit I-3 is identical to that which they seek to exclude.

Finally, Honua'ula Exhibit 7 relates directly to school impact fees on the Island of Maui, an issue which has been raised by the State Office of Planning. Intervenor's articulate no reason why this exhibit is not relevant or should be excluded.

III. CONCLUSION

For the foregoing reasons, as well as the reasons set forth in by the Department of Planning, County of Maui's Memorandum in Opposition to Intervenor's Motion *In Limine* Regarding Scope of Evidence, the Motion in Limine should be denied.

Dated: Honolulu, Hawai'i, October 30, 2012.

A handwritten signature in black ink, appearing to read 'Clifford J. Miller', written over a horizontal line.

CLIFFORD J. MILLER  
JOEL D. KAM  
JONATHAN H. STEINER

Attorneys for  
HONUA'ULA PARTNERS, LLC

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KAONOULU RANCH	)	CERTIFICATE OF SERVICE
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To Amend the Agricultural Land Use District	)	
Boundary into the Urban Land Use District	)	
for approximately 88 acres at Kaonoulu,	)	
Makawao-Wailuku, Maui, Hawai'i	)	
_____	)	

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this date, a true and correct copy of the foregoing document was duly served upon the following party via U.S. Mail and electronic mail, addressed as follows:

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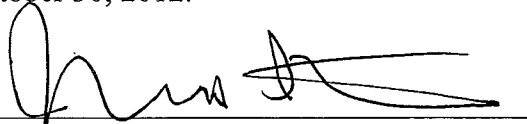
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Dated: Honolulu, Hawai'i, October 30, 2012.

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