

WRIGHT & KIRSCHBRAUN,
A Limited Liability Law Company

DEBORAH K. WRIGHT 4444
KEITH D. KIRSCHBRAUN 4971
DOUGLAS R. WRIGHT 9643
1885 Main Street, Suite 108
Wailuku, HI 96793
Telephone: 808-244-6644
Facsimile: 808-244-1013
Email: firm@wkmaui.com

Attorneys for Petitioners
PU'UNOA HOMEOWNERS ASSOCIATION, INC. and
DEVONNE LANE

LAND USE COMMISSION
STATE OF HAWAII
2015 DEC -4 A 8:31

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

IN THE MATTER OF

) DOCKET NO. DR 15-54

)
) To issue a declaratory order that the proposed
) construction of a homeless encampment and
) commercial campground on 7.9 Acres of a
) 22.7 Acre Parcel Located at Hokiokio Place
) and Lahaina Bypass Road at Maui Tax Map
) Key No. (2) 4-7-003:031 (POR), Lahaina,
) Maui, Hawaii in the agricultural district
) requires a boundary amendment
)
)
)

**PETITION FOR A DECLARATORY
ORDER; EXHIBITS "A" - "B;"
VERIFICATION OF DEVONNE LANE;
CERTIFICATE OF SERVICE**

PETITION FOR A DECLARATORY ORDER

PU'UNOA HOMEOWNERS ASSOCIATION, INC., and DEVONNE LANE, an individual and as a member of the Pu'unoa Homeowners Association, Inc., as interested persons, file this Petition for a Declaratory Order from the State of Hawaii'i Land Use Commission, pursuant to Hawaii Revised Statutes ("HRS") §91-8 and Hawaii Administrative Rules ("HAR") §15-15-98 et seq., of the Land Use Commission Rules of the State of Hawaii'i. The land soil in

question is classified as having a “B” productivity rating under the Land Study Bureau’s Detailed Land Classification System.

I. IDENTIFICATION OF PETITIONERS AND PETITIONERS’ INTERESTS

Petitioner PU’UNOA HOMEOWNERS ASSOCIATION, INC. (“Pu’unoa”), is a Hawaii non-profit corporation formed to act as a neighborhood homeowners’ association, whose members consist of twenty-six (26) owners of agricultural lots having approximately five (5) acres or more of real property each and being located adjacent to, and mauka of, the real property which is the subject of an application for a conditional use and special use permit before the Maui County Planning Commission, Docket No. CP 2014/0002 and SUP2 2014/0006, to establish a homeless tent encampment and commercial campground on agriculturally zoned property. Petitioner DEVONNE LANE (“Lane”) is the President of the Association and is also an owner in the Pu’unoa Subdivision and member of Pu’unoa. The applicant before the County of Maui is Ho’omoana Foundation (“Ho’omoana”). Pu’unoa’s address is c/o its President, DeVonne Lane, 78 Mele Komo Place, Lahaina, Hawaii 96761; its telephone number is 808-446-5906. Lane’s address is 78 Mele Komo Place, Lahaina, Hawaii 96761; her telephone number is 808-446-5906. A list of the Tax Map Key numbers for the Pu’unoa Subdivision lots is attached as Exhibit “A.” Pu’unoa is responsible for the common elements of the Pu’unoa Subdivision and therefore also has an interest in the real property located near to the Application. Pu’unoa’s duties include managing, enforcing and adopting rules, regulations and covenants and conditions for the benefit of all of its members. Having property immediately north to that of the applicant’s, Pu’unoa is uniquely poised to witness the consequences of the implementation of the proposed social safety net experiment and commercial enterprise, neither of which is related to agriculture. Pu’unoa’s members have cultural, recreational, aesthetic, land use and

environmental interests that would be directly and indirectly affected by the proposed campground nearby.

Lane is an individual homeowner and neighbor to the land in question and utilizes the same public services that would be utilized by the proposed campground. On her property she has over 7 dozen fruit trees, as well as laying hens and bee hives. Since the entire area, including where the proposed campground will be located, is designated agricultural (having good and productive soil) by both the State of Hawai'i, County of Maui, West Maui Community Plan, and the recently adopted Maui County 2030 General Plan, the fact that there are protected birds in the area and the same Kau'aula Stream borders and defines both properties, which lead to the ocean, and because of limited public resources in the area, Lane has aesthetic, recreational, environmental, and land use interests in ensuring that Ho'omoana is not developed into a homeless and commercial encampment contrary to agricultural use designations.

II. ISSUE

Does the issuance of a Special Use Permit authorizing a campground, part homeless encampment and part commercially based, in an agricultural district permanently removing land classified as "B" under the Land Study Bureau's Detailed Land Classification System, on 7.9 acres of a 22.7 acre parcel, require a district boundary amendment or can the authority be granted utilizing the Maui County Planning Commission process, not subject to the more thorough review of the Land Use Commission boundary amendment and zoning approval process?

III. FACTS

Ho'omoana, on land owned by Kauaula Land Company, LLC, TMK (2)4-7-003:031 (POR), proposes to build a campground (Kauaula Campgrounds), to include approximately 7.9 acres of an approximately 22.7 acre agricultural parcel located on Maui's West Side along

Hokiokio Place, adjacent to and bounded by the Lahaina By-Pass between the Puamana Planned Unit Development and the agriculturally zoned Pu'unoa community. The project is described as being 7.9 acres of a larger 22.68 acre agricultural site, consisting of a 2 acre campground while reserving 5.9 acres of adjacent agricultural field for possible future uses for the encampment residents. Future agricultural productivity is not a guaranteed or required for the campers. The actual 2 acre area will have up to 26 pods (for up to 80 people) for tents (to be provided by the campers) with the goal of having the "cream of the crop" of homeless setting up tents alongside commercial campers. Homeless campers are expected to pay \$10 a night; commercial campers would pay more. The goal is for the camping fees to underwrite the ongoing expenses of the venture. The campgrounds would provide showers, some sort of toilet facilities, fire pits or campstove areas, a paved parking area and a charging station to campers. Campers would be allowed to stay for as long as approved by the campground manager, which is expected to be two to three months or more for the homeless occupants. While there is mention of the possibility that some campers may wish to participate in some sort of farming on some part of the property in the future as noted above, there is no current requirement that the homeless campers (and certainly not of the commercial campers) engage in agricultural activities. In other words, the possibility of agriculture is discretionary and proposed as a possible accessory to the principal use of the land as an encampment.

Ho'omoana has applied for a State Land Use Commission Special Use Permit and a Conditional Permit through the County of Maui Planning Commission. No application is presently before the State Land Use Commission.

The soil on the land at issue, as noted above, is classified as "B", or land entitled to great protection by statute due to its high capacity for intense cultivation. As shown on attached

Exhibit B, this land is one of the very few areas of prime agricultural land left in West Maui. Another part of the same lot is currently in use as a retirement stable for horses (9 acres); 5.8 acres are part of the Lahaina Watershed Flood Control Project Area. This land used to be used for the cultivation of sugar cane when it was owned by Pioneer Mill, LLC. The Kau'aula Stream flows on one side of the proposed campsite and through Puamana Planned Unit Development to the south and on into the ocean.

The Kau'aula Stream has been designated as a cultural site by the State Historic Preservation Division and for which there is a recommended 60 - 300 yard setback to preserve cultural influences. Additionally, the Newell's shearwater (endangered) and Hawaii dark-rumped petrol (endangered) nest in the West Maui Mountains, with adults and their fledglings flying through this area.

IV. STATUTORY PROVISIONS AND RULES AT ISSUE

HRS §205-2(a)(3) sets forth what lands are classified as agricultural and states the goals with regard to same:

(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intense cultivation;

HRS §205-2(d), with respect to agricultural districts, states that permitted activities on such land shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture...;
- (4) Wind generated energy production...;
- (5) Biofuel production...;
- (6) Solar energy facilities [with limitations]...;
- (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner...;

- (8) Wind machines and wind farms;
- (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection...;
- (10) Agricultural parks;
- (11) Agricultural tourism conducted on a working farm...;
- (12) Agricultural tourism activities [as limited]...;
- (13) Open area recreational facilities;
- (14) Geothermal resources exploration...;
- (15) Agricultural-based commercial operations [roadside stands, agricultural producer retail activities].

HRS §205-4.5(a) speaks to specifically permissible uses in the agricultural districts, for land classified as B, states:

- (a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:
 - (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
 - (2) Game and fish propagation;
 - (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
 - (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm Dwelling," as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
 - (5) Public institutions and buildings that are necessary for agricultural practices;
 - (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps [emphasis supplied];
 - (7) Public, private, and quasi-public utility lines and roadways...
 - (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
 - (9) Agricultural-based commercial operations as described in section 205-2(d)(15) [agricultural based operations such as a roadside stand or retail activities by a producer];
 - (10) Buildings and uses, including mills, storage and processing facilities, ...that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);
 - (11) Agricultural parks;

- (12) Plantation community subdivisions, ... [with regard to a sugar or pineapple plantation];
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations...;
- (14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county...;
- (15) Wind energy facilities...;
- (16) Biofuel processing facilities...;
- (17) Agricultural-energy facilities...;
- (18) Construction and operation of wireless communication antennas...;
- (19) Agricultural education programs conducted on a farming operation...;
- (20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel...;
- (21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6...;
- (22) Geothermal resources exploration...;
- (23) Hydroelectric facilities [as limited]....

HRS §205-5(b), with respect to permissible uses in the agricultural district, states:

Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance.¹ Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2. Ordinances shall include but not be limited to:

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants;
- (3) Activities that may be offered by the farming operation for visitors;
- (4) Days and hours of business operation; and
- (5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter....

¹ The County of Maui has no ordinance allowing campgrounds for extended stays as an accessory use in an agricultural district.

HRS §205-3.1(a) states:

District boundary amendments involving lands in the conservation district, land areas greater than fifteen acres, or lands delineated as important agricultural lands shall be processed by the land use commission pursuant to section 205-4.

HRS §205-3.1(c), with regard to land areas less than fifteen acres, states:

District boundary amendments involving land areas of fifteen acres or less, except as provided in subsection (b), shall be determined by the appropriate county land use decision-making authority for the district and shall not require consideration by the land use commission pursuant to section 205-4; **provided that such boundary amendments and approved uses are consistent with this chapter...**[bolding added].

HRS §205-6 (a), (c) and (d), as to special permits, state:

(a) Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment.

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter;...[bolding supplied]

(d) Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.

HAR §15-15-01 states the purpose of the rules as:

Purpose. This chapter governs the practice and procedure before the land use commission, and shall be construed to secure the just and efficient determination of every proceeding. **This chapter shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the**

State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawai'i. The rules under this chapter are promulgated pursuant to authority provided by sections 205-1 and 205-7, HRS. (emphasis supplied).

HAR §15-15-23 generally states permissible uses as:

Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, except when applicable county ordinances or regulations are more restrictive. Except as otherwise provided in this chapter, **uses not expressly permitted are prohibited.** (emphasis supplied).

HAR §15-15-25(a) notes permissible uses within the “A” agricultural district as:

Permissible uses within the agricultural district on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be those uses set forth in section 205-4.5, HRS.

HRS §205-15 states with regard to conflicts:

Except as specifically provided by this chapter and the rules adopted thereto, neither the authority for the administration of chapter 183C nor the authority vested in the counties under section 46-4 shall be affected.

The County of Maui, at Maui County Ordinance §19.510.070(B), has set forth the following criteria which must be reviewed and, further, a finding has been made that each of the following has been met:

Criteria for Permit. Subject to the provisions of this chapter, the appropriate planning commission shall review and, after a public hearing, may approve a request for a special use if the commission finds that each of the following criteria have been met:

1. The proposed request meets the intent of the general plan and the objectives and policies of the applicable community plan of the county;
2. The proposed request is consistent with the applicable community plan land use map of the county;
3. The proposed request meets the intent and purpose of the applicable district;
4. The proposed development will not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences, and improvements;

5. The proposed development will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the area;
6. That the public shall be protected from the deleterious effects of the proposed use;
7. That the need for public service demands created by the proposed use shall be fulfilled; and
8. If the use is located in the state agricultural and rural district, the commission shall review whether the use complies with the guidelines established in section 15-15-95 of the rules of the land use commission of the State.

The last section (numbered 8) of the foregoing ordinance also pulls in an additional set of five criteria by reference to HAR §15-15-95. The following are the additional criteria:

(c) Certain "unusual and reasonable" uses within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
- (2) The proposed use would not adversely affect surrounding property;
- (3) The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
- (4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

V. STATEMENT OF POSITION AND OF THE CONTROVERSY

Ho'omoana has applied to the County of Maui Planning Department and Maui Planning Commission for special use and conditional use permits in order to put an overnight campground allowing extended commercial and transient stays for up to 80 people on approximately 7.9 acres set aside out of the 22.7 acre agriculturally zoned parcel in West Maui. The extended stay commercial and homeless campground proposed on land soil classified as a B productivity level by the Land Study Bureau is not a permitted use under HRS §205-4.5(a), and is specifically prohibited. Further, such a campground is neither a permitted nor an accessory use under Maui

County Ordinance §19.30A.050, in part because under Maui's ordinances, §19.04.040, a camping unit, including a tent, is to provide temporary living quarters for no more than six consecutive nights in any thirty-day period. The counties are given authority under HRS §205-5(b) to further define accessory agricultural uses (which Maui has done to the exclusion of long-term camping, as it has to in light of HRS §205-4.5(6)). This limited grant of authority to consider other permissible accessory agricultural uses which are consistent with the state's goals and statutory parameters, though, is simply not a blank check to consider any use whatsoever. Similarly, HRS §205-6(a) and (c) allow the counties to grant special permits for unusual and reasonable uses so long as those uses promote the effectiveness and objectives of chapter 205. These provisions, however, do not allow the counties, by ordinance or by special permit, to define away or contradict the statutory restrictions for agricultural uses.

Because the portion of the lot where it will establish the campground is under 15 acres, Ho'omoana believes it does not need to apply for a special use permit through the Land Use Commission. Even if the interpretation that only a portion of the lot need be considered to determine where the application for the special use permit may be filed, the County of Maui is still limited on what special use permits it may approve by statute. HRS §205-6(c) precludes the counties from granting a special use permit unless it promotes uses consistent with the objectives of the chapter which include the preservation of agricultural land. Petitioners believe that since the proposed use is not a permissible use by statute, or a permissible or accessory use by zoning ordinance, the special use permit application through the Maui County Planning Commission in this instance on such prime agricultural land is merely an attempt to circumvent the correct process, i.e., a district boundary amendment petition through the State Land Use Commission.

VI. MEMORANDUM OF AUTHORITIES

The attempt to take prime agricultural land and push it through the local planning commission as an extended stay commercial and transient campground is clearly an attempt to avoid the formal process of a district boundary amendment (advancing a step towards urbanization) end run around the Land Use Commission, to achieve a currently, specifically prohibited commercial use. It is the exact thing that the Hawaii legislature's intent and enacted statutes, the Land Use Commission's rules and the Hawaii courts expressly seek to prevent.

A. The Importance of Agricultural Land In Hawaii and Under Hawaii Law

Agricultural land has always been accorded historical, cultural and economic significance in Hawaii. The importance of agricultural land is specifically referred to in the Hawaii State Constitution in Article II, Section 3: "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." It is with this mandate in mind that the legislature enacted HRS §205-1 *et seq.* and related statutes.

In this instance, HRS §§205-2(d) and 205-4.5 identify those uses suitable for agricultural land, and specifically land classified as "B" in the Land Study Bureau's Detailed Land Classification System. "B" land is considered the second highest productivity level and as shown on Exhibit "B" hereto is in short supply on Maui's West Side. Commercial and transient camping is not a statutorily allowed use either as a principal or as an accessory use for agricultural land and is specifically prohibited. HRS §205-5(b) permits the counties to further define accessory uses within certain parameters. These parameters require the use to be compatible with the already described statutory uses. A commercial and transient campground fits none of the statutorily permissible or accessory or the County of Maui permissible or

accessory use definitions. HRS §205-6(c) allows special uses only so long as they “promote the effectiveness and objectives of this chapter,” Chapter 205.

B. The Special Permit Process Is Not A Substitute For A District Boundary Amendment

Using the special permit process to affect a substantive change to an agriculturally prohibited use, should require a district boundary amendment. As a result of the de facto spot zoning and permanent removal of good agricultural land, the formal process of a boundary district amendment must be implemented.

In *Save Sunset Beach Coalition, et al v. The City and County of Honolulu, et al*, 102 Hawaii 465, 78 P. 3d 1 (Hawaii 2003), the court examined a rezoning of 765 acres from agricultural use to a country district designation. In its review, the Court discussed the interplay among county zoning ordinances, permitted uses and statutorily defined uses, and found

In Hawaii’s land use system the legislature’s statutory districts constitute more of a general scheme, and, presumably, by delegating authority to zone to the counties, the legislature intended that specific zoning be enacted at the county level. We believe that the “consistency doctrine” enunciated in [*Gatri v. Blane*, 88 Hawaii 108, 962 P.2d 367 (1998)] is somewhat instructive in the instant case. Because the uses allowed in country zoning, are prohibited from conflicting with the uses allowed in a State agricultural district, only a more restricted use as between the two is authorized. By adopting a dual land use designation approach, the legislature envisioned that the counties would enact zoning ordinances that were somewhat different from, but not inconsistent with, the statutes.

Id. at p. 482. The Court then specifically addressed the limitations on uses in agricultural districts and the exceptions thereto:

While the counties are empowered to enact zoning ordinances, HRS chapter 205 clearly limits the permissible uses allowed within an agricultural district. HRS §205-4.5(b) states that “uses not expressly permitted in subsection (a) shall be prohibited, except the uses as provided in sections 205-6 and 205-8[.]” (Emphasis added.) Thus, any use permitted by a country designation not expressly permitted in HRS §205-4.5(a) or by virtue of HRS §§205-6 or 205-8 (2001) conflicts with the statutory regime. ...

... However, we observe that the “reasonable and unusual” exception permitted by HRS §205-6 cannot be utilized to circumvent the essential purpose of the agricultural district. In *Curtis*, 90 Hawaii at 397, 978 p.2d at 835, this court held that the “essential purpose [of HRS § 205-6] ...is to provide landowners relief in exceptional situations where the use desired would not change the essential character of the district nor be inconsistent therewith.” *Id.* (emphasis added) citing *Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Comm’n*, 64 Haw. 265, 639 P. 2d 1097 (1982)). Accordingly, while a landowner may request a permit for a use allowed by a country designation but prohibited in an agricultural district, such a permit is appropriate only in an “exceptional situation” that does not contravene the general purpose of an agricultural district. ...

Id. at 482. In some instances, utilizing the catch-all “reasonable and unusual” exception is warranted. For example, a landowner may seek to obtain a special use permit to conduct limited commercial activities consisting of limited culinary farm-to-table gatherings to generate additional income to help make ends meet on land zoned for agricultural use. Such a use should be analyzed pursuant to the criteria set forth at HRS §205-6 concerning “Special Permits.” In this instance, although the culinary farm-to-table proposal is not a specifically enunciated permitted or accessory use, it would appear to qualify as a form of eco or educational tourism promoting farmer-chef relationships and Hawaii agricultural activities, thereby achieving the effectiveness and objectives of Chapter 205.² Further analysis might reveal a significant amount of other reasons which may further justify such a limited commercial venture on agricultural designated lands: the use comports with the County Plan, the use ultimately seeks to use, protect and promote agricultural lands, no additional burden on the community and County, and on and on. As a hypothetical, it shows that appropriate circumstances exist for the issuance of a Special Permit on agriculturally designated lands – those uses which promote the effectiveness and objectives of Chapter 205. Nothing about Ho’omoana’s proposed use promotes the effectiveness and objectives of Chapter 205.

² This hypothetical is based on an actual case; however, Rule 35 of the Hawaii Appellate Rules prevents citation to this case because it is a summary dispositional order filed before July 1, 2008.

Here, there is no exceptional situation that allows for a special permit inconsistent with the statutorily prescribed agricultural uses. Here, the land soil is rated “B” and is good agricultural soil. Ho’omoana has shown no reason to replace the productive soil with commercial and transient encampments. Ho’omoana has argued that the land is otherwise fallow; however, its hollow ultimatum to leave good agricultural land fallow or convert it to an urban use is self-imposed. Ho’omoana has chosen to leave the productive land fallow, but that doesn’t mean that it can’t be made productive for agricultural purposes – converting the land to an urban use is not the only, or the best, alternative. In essence, what Ho’omoana is doing is using the special use permit route to circumvent the more appropriate district boundary amendment process and create unofficial spot zoning to serve its own interests. *See Save Sunset Beach Coalition et al, supra*, at 473 (discussing spot zoning).

The *Waianae Coast* case, cited above, dealt with a proposed recreational theme park to be developed on agricultural land. In that instance the agricultural land’s productivity rating was “E,” much lower than the land in the present case. Even so, after noting that the planning commission used the Land Use District criteria to determine that the criteria were met for a special use permit, being unusual and reasonable under HRS §205-6, and that it would ultimately promote the effectiveness and objectives of HRS Chapter 205, without regard to the acreage involved, the Court held:

...however, we are left with a definite and firm conviction that the recreational theme park proposal fails to comply with the first and critical requirement that the proposed use not run contrary to the objectives sought to be accomplished by the Land Use Laws and Regulations, the counterpart of the statutory mandate that the proposed use promote the effectiveness and objectives of HRS Ch. 205....

As courts have repeatedly recognized, unlimited use of the special permit to effectuate essentially what amounts to a boundary change would undermine the protection from piecemeal changes to the zoning scheme guaranteed landowners

by the more extensive procedural protections of boundary amendment statutes.
[citations omitted]

Id. at pp. 270, 272.

This is a simple issue: HRS Chapter 205 is designed to protect agricultural lands, especially highly productive agricultural land. In *Curtis v. Board of Appeals, County of Hawaii*, 90 Haw. 384, 978 P. 2d 822 (Haw. 1999) the Court reiterated that “...conservation lands must be reserved if practicable, agricultural lands should be protected, and urban lands should be developed in orderly fashion.” *Id.* at 396. If anything, the recognized need to protect agricultural land has only increased.

Similarly, the Land Use Commission has previously addressed the issue of overnight camps on agricultural land:

The enacting statute, HRS Chapter 205, is very clear in prohibiting “overnight camps” as provided in HRS §205-4.5(6), “...but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs and overnight camps. (emphasis added).

...HRS Chapter 205 does not expressly or by implication allow agricultural district lands to be used to accommodate overnight camps or dwellings where there is no apparent evidence of any activity for uses related to farming or animal husbandry.

In the Matter of Pono, Declaratory Order, August 6, 1997³, Docket No. DR97-20, pp. 12 – 13, 14. The vague, possible agricultural use, which will in the future only be accessory to the tent encampment, one that transient campers may, or may not, actually ever participate in, proposed by Ho’omoana to justify its commercial long stay campground, is much like the proposed optional agricultural uses in *Save Sunset Beach* – proposals that are inserted simply to try and avoid the disclosure of the real nature of the project. This is an attempt to create a slippery slope. It’s not that urban land is unavailable, it’s just that it is convenient for the applicant to change the

³ This order was later overruled for Sunshine law violations, but not on the substance of the declaratory ruling.

permitted uses to suit its needs and preferences in this location. After all, in addition to the clear guidance in Chapter 205, the State has further enunciated its objectives and policies for agricultural land:

§ 226-7. Objectives and policies for the economy -- Agriculture.

(a) Planning for the State's economy with regard to agriculture shall be directed towards achievement of the following objectives:

- (1) Viability of Hawaii's sugar and pineapple industries.
- (2) Growth and development of diversified agriculture throughout the State.
- (3) An agriculture industry that continues to constitute a dynamic and essential component of Hawaii's strategic, economic, and social well-being.

(b) To achieve the agriculture objectives, it shall be the policy of this State to:

- (1) Establish a **clear direction for Hawaii's agriculture** through stakeholder commitment and advocacy.
- (2) **Encourage agriculture by making the best use of natural resources.**
- (3) Provide the governor and the legislature with information and options needed for **prudent decision-making for the development of agriculture.**
- (4) Establish **strong relationships between the agricultural and visitor industries** for mutual marketing benefits.
- (5) Foster increased public awareness and understanding of the contributions and benefits of **agriculture as a major sector** of Hawaii's economy.
- (6) Seek the enactment and retention of federal and state **legislation that benefits Hawaii's agricultural industries.**
- (7) **Strengthen diversified agriculture** by developing an effective promotion, marketing, and distribution system between Hawaii's food producers and consumers in the State, nation, and world.
- (8) Support research and development activities that **strengthen economic productivity in agriculture, stimulate greater efficiency, and enhance the development of new products** and agricultural by-products.
- (9) **Enhance agricultural growth** by providing public incentives and encouraging private initiatives.
- (10) **Assure the availability of agriculturally suitable lands** with adequate water to accommodate present and future needs.
- (11) Increase the attractiveness and opportunities for an **agricultural education and livelihood.**

(12) In addition to the State's priority on food, **expand Hawaii's agricultural base** by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises.

(13) Promote economically competitive activities that **increase Hawaii's agricultural self-sufficiency**, including the increased purchase and use of Hawaii-grown food and food products by residents, businesses, and governmental bodies as defined under section 103D-104.

(14) Promote and assist in the establishment of sound financial programs for **diversified agriculture**.

(15) Institute and support programs and activities to assist the entry of displaced agricultural workers into alternative agricultural or other employment.

(16) Facilitate the **transition of agricultural lands in economically nonfeasible agricultural production to economically viable agricultural uses**.

(17) **Perpetuate, promote, and increase use of traditional Hawaiian farming systems**, such as the use of loko i'a, mala, and irrigated lo'i, and growth of traditional Hawaiian crops, such as kalo, 'uala, and 'ulu.

(18) **Increase and develop small-scale farms**.

HRS §226-7 (emphasis supplied). Nowhere in Chapter 205, or the above exhaustive list of policies, is it evident that taking productive agricultural land out of the collective land bank⁴ and converting it to an urban use for the convenience of an individual landowner is encouraged or supported. To the contrary, applicant's proposed use runs against the adopted objectives concerning the use of agricultural lands.

VII. OTHER PARTIES

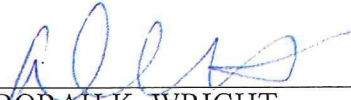
Other parties who may have an interest are the Maui Planning Commission and Ho'omoana, both of whom are being served with a copy of this Petition.

⁴ Of which, only 6% has been identified within the Land Study Bureau's Acreage in State Agricultural District as having the highly productive class "B" rating. The most productive land in the state, rated as Class "A" and "A" represents less than 10% of the total agriculturally designated lands throughout Hawaii. *Future of Agriculture in Hawaii: Hawaii Land Use and Planning Framework*, Jesse Souki (Presentation to the American Planning Association-Hawaii Chapter on October 30, 2013, which can be viewed at <http://www.slideshare.net/jessesouki/future-of-agriculture-in-hawaii>).

VIII. RELATION TO ANY OTHER COMMISSION DOCKET FOR DISTRICT BOUNDARY AMENDMENT OR SPECIAL PERMIT

Petitioners know of no other docket for a district boundary amendment or a special permit which are related to this case.

DATED: Wailuku, Maui, Hawaii; December 2, 2015.



DEBORAH K. WRIGHT
KEITH D. KIRSCHBRAUN
DOUGLAS R. WRIGHT

Attorneys for Petitioners
PU'UNOA HOMEOWNERS ASSOCIATION, INC.
and DEVONNE LANE

PU'UNOA SUBDIVISION LOTS - TAX MAP KEY NOS:

470030300000

470030210000

470030300000

470030220000

470030240000

470030160000

470030230000

470030200000

470030190000

470030010000

470030260000

470030250000

470030170000

470030120000

470030090000

470030040000

470030080000

470030070000

470030060000

470030140000

470030130000

470030150000

470030050000

470030270000

470030100000

470030110000

EXHIBIT "A"

County of Maui
Island of Maui

LSB Classification

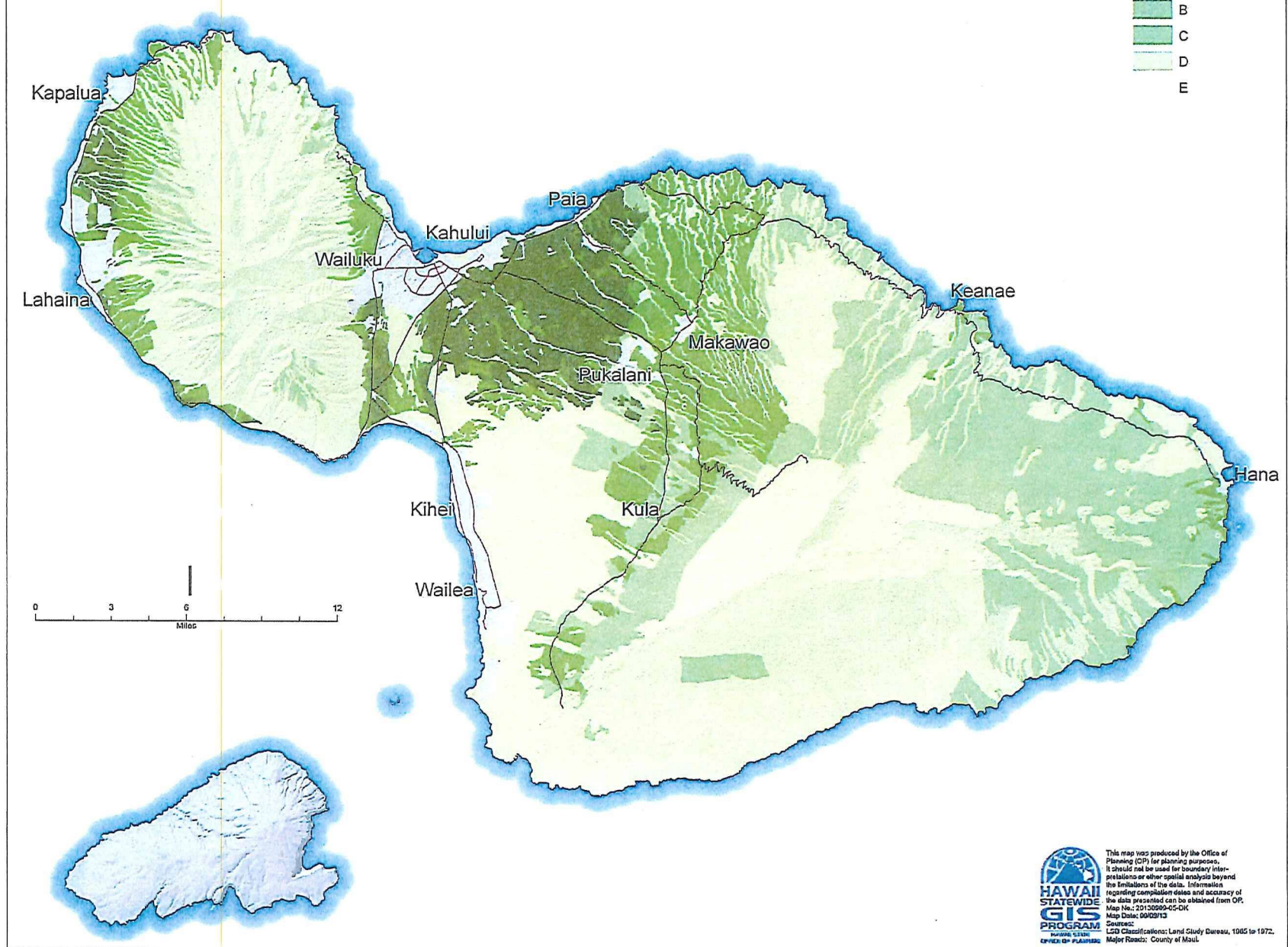
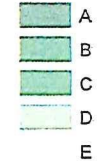


EXHIBIT "B"



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 boundaries of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from OP. Map No.: 2010069-05-DK
Map Date: 06/09/13
Source: LSB Classifications: Land Study Bureau, 1965 to 1972. Major Roads: County of Maui.

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

IN THE MATTER OF) DOCKET NO. _____
)
To issue a declaratory order that the proposed) **VERIFICATION OF DEVONNE LANE**
construction of a homeless encampment and)
commercial campground on 7.9 Acres of a)
22.7 Acre Parcel Located at Hokiokio Place)
and Lahaina Bypass Road at Maui Tax Map)
Key No. (2) 4-7-003:031 (POR), Lahaina,)
Maui, Hawaii in the agricultural district)
requires a boundary amendment)
_____)

VERIFICATION OF DEVONNE LANE

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

DEVONNE LANE, being first duly sworn upon oath, deposes and says that:

1. I am an individual Petitioner to the foregoing Petition for a Declaratory Order (the "Petition") and I am also the President of Petitioner PU'UNOA HOMEOWNERS ASSOCIATION, INC., a Hawaii non-profit corporation and homeowners association, and in those capacities I am qualified to make this Verification.

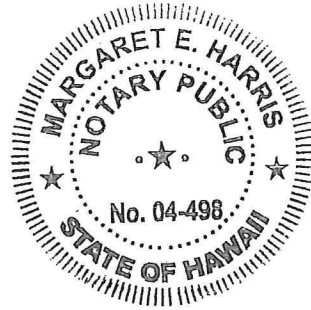
2. I have read the foregoing Petition and Exhibits "A" and "B" thereto, know the contents thereof, and that the same are true and correct to the best of my knowledge, understanding and belief.

FURTHER, Affiant sayeth naught.

Devonne Lane
DEVONNE LANE, individually and as
President of PU'UNOA HOMEOWNERS
ASSOCIATION, INC.

Subscribed and sworn to before me
this 19th day of November, 2015.

M. E. Harris
Printed Name: Margaret E. Harris
Notary Public, State of Hawaii
My commission expires: Sept. 5, 2016



Document Date: <u>undated</u>	# of Pages: <u>2</u>
Name: <u>Margaret E. Harris</u>	Second Circuit
Document Description: <u>Verification</u> <u>of Devonne Lane</u>	
<u>M. E. Harris</u>	
Signature	Date
	<u>11-19-2015</u>
NOTARY CERTIFICATION	



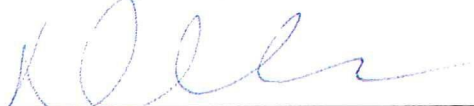
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was duly served upon the following parties, at their last known address indicated below, by depositing a copy with the U.S. Postal Service, First Class Mail, postage prepaid, on Wednesday, December 02, 2015.

Maui Planning Commission
Department of Planning, County of Maui
One Main Plaza
2200 Main Street, Suite 315
Wailuku, HI 96793

Ho'omoana Foundation
33 Lono Avenue, Suite 230
Kahului, HI 96732

DATED: Wailuku, Maui, Hawaii; December 2, 2015.



DEBORAH K. WRIGHT
KEITH D. KIRSCHBRAUN
DOUGLAS R. WRIGHT

Attorneys for Petitioners
PU'UNOA HOMEOWNERS ASSOCIATION, INC.
and DEVONNE LANE