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LAND USE COMMISSION FILED
STATE OF HAWAII

2016 MAR 30 PM 2:26
2016 MAR 32 A 8:17

M. FERNANDEZ-KAHAKAUWILA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorney for Appellant
HO'OMOANA FOUNDATION

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

HO'OMOANA FOUNDATION,	)	CIVIL NO. 16-1-0160(1)
	)	(Agency Appeal)
Appellant,)	
	)	CERTIFICATE OF SERVICE
vs.)	
)	
LAND USE COMMISSION, STATE OF)	
HAWAII; PU'UNOA HOMEOWNERS)	
ASSOCIATION, INC.; and DEVONNE)	
LANE,)	
)	
Appellees.)	

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2016, I caused a file-marked, certified copy of the Notice of Appeal, filed on March 29, 2016, to be duly served via Certified Mail, Return Receipt Requested, to the following at their last known address:

Daniel Orodener
Land Use Commission
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804

Appellee

Deborah K. Wright, Esq.
Keith D. Kirschbraun, Esq.
Douglas R. Wright, Esq.
Wright & Kirschbraun
1885 Main Street, Suite 108
Wailuku, HI 96793

Attorneys for Appellees Pu'unoa Homeowners Assoc.,
Inc. and Devonne Lane

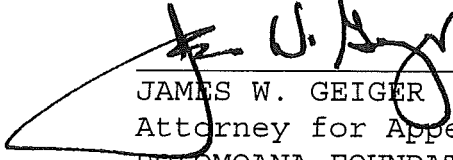
Bryan C. Yee, Esq.
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Michael Hopper, Esq.
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Attorney for County of Maui Department of Planning

DATED: Kahului, Hawai'i, 1998 JUL 20 1998



JAMES W. GEIGER
Attorney for Appellant
HO'OMOANA FOUNDATION

MANCINI, WELCH & GEIGER LLP

LAND USE COMMISSION
STATE OF HAWAII

FILED

2016 MAR 29 PM 2:40

JAMES W. GEIGER 4684-0 2016 MAR 32 A 8:17
305 East Wakea Avenue, Suite 200
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V. ISHIHARA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

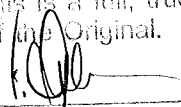
Attorney for Appellant
HO'OMOANA FOUNDATION

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

HO'OMOANA FOUNDATION,	)	CIVIL NO. <u>16-1-0160</u> (1)
	)	(Agency Appeal)
Appellant,)	
	)	NOTICE OF APPEAL; EXHIBITS
vs.	)	"A" - "B"; STATEMENT OF THE
	)	CASE; DESIGNATION OF RECORD ON
LAND USE COMMISSION, STATE OF	)	APPEAL; ORDER FOR
HAWAII; PU'UNOA HOMEOWNERS	)	CERTIFICATION AND TRANSMISSION
ASSOCIATION, INC.; and DEVONNE	)	OF RECORD ON APPEAL
LANE,)	
)	
Appellees.)	

I hereby certify that this is a full, true and correct copy of the Original.

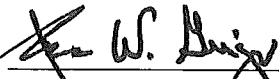


NOTICE OF APPEAL Clerk, Second Circuit Court

Notice is given that Appellant Ho'omoana Foundation ("Appellant"), pursuant to HRS §§ 91-8 and 91-14, HRCP 72, and Article I, Section 5, of the Constitution of the State of Hawaii, appeals to the Circuit Court of the Second Circuit from the Declaratory Order the Land Use Commission of the State of Hawaii (the "Commission") issued on March 3, 2016, in Docket No. DR 15-54, a copy of which is attached hereto as Exhibit "A" and the Order Denying Ho'omoana Foundation's Petition to Intervene entered on March 3, 2016, a copy of which is attached as Exhibit

"B." Appellees have prejudiced the substantial rights of Appellant for the reasons provided in HRS §91-14(g) and as set forth in the Statement of Case filed on this date and attached hereto.

DATED: Kahului, Hawai'i, MAR 28 2016.



JAMES W. GEIGER
Attorney for Appellant
HO'OMOANA FOUNDATION





BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2016 MAR -3 P 9 05

In The Matter Of The Petition Of	)	DOCKET NO. DR15-54
)	
PU'UNOA HOMEOWNERS	)	ORDER DENYING HO'OMOANA
ASSOCIATION, INC., AND	)	FOUNDATION'S PETITION TO
DEVONNE LANE	)	INTERVENE; AND CERTIFICATE OF
	)	SERVICE
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, Hawai'i In The)	
Agricultural District Requires A)	
Boundary Amendment)	

ORDER DENYING HO'OMOANA FOUNDATION'S PETITION TO INTERVENE

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

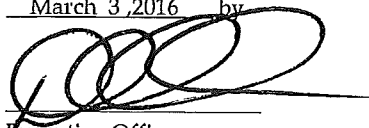
March 3, 2016 by 
Executive Officer

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2016 MAR - 3 P 12:05
LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. DR15-54
)	
PU'UNOA HOMEOWNERS	)	ORDER DENYING HO'OMOANA
ASSOCIATION, INC., AND	)	FOUNDATION'S PETITION TO
DEVONNE LANE	)	INTERVENE
)	
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, Hawai'i In The)	
Agricultural District Requires A)	
Boundary Amendment)	
_____)	

ORDER DENYING HO'OMOANA FOUNDATION'S PETITION TO INTERVENE

On February 19, 2016, Ho`omoana Foundation ("Ho`omoana") filed a Petition to Intervene in the above-entitled docket, pursuant to Hawai`i Administrative Rules ("HAR") §15-15-53.

On February 24, 2016, the State of Hawai`i Land Use Commission ("LUC") met in Kahului, Maui, Hawai`i, to consider the Petition to Intervene. James W. Geiger, Esq., appeared on behalf of Ho`omoana. Also present were Deborah K. Wright, Esq.,

and Douglas R. Wright, Esq., on behalf of the Pu`unoa Homeowners Association, Inc., and DeVonne Lane (collectively "Petitioners"); Bryan C. Yee, Esq., and Lorene Maki on behalf of the State of Hawai`i Office of Planning; and Michael Hopper, Esq., and Kurt Wollenhaupt on behalf of the County of Maui Department of Planning. At the meeting, prior to consideration of Ho`omoana's Petition to Intervene, the LUC duly granted Petitioners' Petition for a Declaratory Order, rendering Ho`omoana's Petition to Intervene moot.

Following discussion, a motion was made and seconded to deny Ho`omoana's Petition to Intervene on the basis that it is moot in light of the LUC's granting of Petitioners' Petition for a Declaratory Order. There being a vote tally of 7 ayes, 0 nays, and 1 excused, the motion carried.¹

ORDER

The LUC, having duly considered Ho`omoana's Petition to Intervene, and a motion having been made at a meeting on February 24, 2016, in Kahului, Maui, Hawai`i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS that Ho`omoana's Petition to Intervene be DENIED.

¹There are currently eight sitting commissioners on the LUC. The one remaining seat is vacant.

ADOPTION OF ORDER

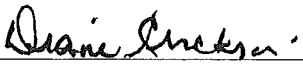
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 3rd, day of March, 2016 per motion on February 24, 2016.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

3/3/2016

Certified by:


DANIEL ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. DR15-54
)
PU'UNOA HOMEOWNERS)
ASSOCIATION, INC., AND) CERTIFICATE OF SERVICE
DEVONNE LANE)
)
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, Hawai'i In The)
Agricultural District Requires A)
Boundary Amendment)
_____)

CERTIFICATE OF SERVICE

I hereby certify that due service of the within document was made by depositing the same with the United States Mail, postage prepaid, or by hand delivery, on March 4, 2016, addressed to:

LEO R. ASUNCION, JR., AICP
Director
Office of Planning
State of Hawaii
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

BY HAND DELIVERY

BRYAN C. YEE, ESQ.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

BY MAIL

WILLIAM SPENCE
Director, County of Maui Department of
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One Main Plaza Bldg., Ste 315
Wailuku, HI 96793

BY MAIL

James W. Geiger, Esq.
Mancini, Welch & Geiger LLP
33 Lono Avenue, Suite 470
Kahului, Maui, HI 96732-1681

BY CERTIFIED MAIL


PATRICK K. WONG, ESQ.
Corporation Counsel
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County of Maui
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BY MAIL

WRIGHT & KIRSCHBRAUN, LLLC
DEBORAH K. WRIGHT
DOUGLAS R. WRIGHT
1885 Main Street, Suite 108
Wailuku, HI 96793

BY CERTIFIED MAIL

DATED: Honolulu, Hawai'i, March 3, 2016.



DANIEL ORODENKER
Executive Officer
State Land Use Commission





BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2016 MAR -3 P 12:02
LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. DR15-54
)	
PU'UNOA HOMEOWNERS	)	DECLARATORY ORDER; AND
ASSOCIATION, INC., AND	)	CERTIFICATE OF SERVICE
DEVONNE LANE)	
)	
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, Hawai'i In The)	
Agricultural District Requires A)	
Boundary Amendment)	

DECLARATORY ORDER

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

March 3 2016 by

Executive Officer

EXHIBIT "B"



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2016 MAR -3 P 12:02
LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. DR15-54
)	
PU`UNOA HOMEOWNERS	)	DECLARATORY ORDER
ASSOCIATION, INC., AND)	
DEVONNE LANE)	
)	
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, Hawai`i In The)	
Agricultural District Requires A)	
Boundary Amendment)	

DECLARATORY ORDER

On December 4, 2015, Pu`unoa Homeowners Association, Inc., and DeVonne Lane, individually and as a member of the Pu`unoa Homeowners Association, Inc. (collectively "Petitioners"),¹ filed a Petition for a Declaratory Order ("Petition"), pursuant to Hawai`i Revised Statutes ("HRS") §91-8 and Hawai`i

¹ Pu`unoa Homeowners Association, Inc., is a Hawai`i non-profit corporation formed to act as neighborhood homeowners' association. The Association consists of 26 owners of 5 or more acre

Administrative Rules ("HAR") §15-15-98(a).

Petitioners requested a declaratory order from the State of Hawai'i Land Use Commission ("LUC") as to whether a proposed overnight campground for homeless and commercial campers with an adjacent agricultural field for possible future uses by the campers ("Project") on an approximately 7.9-acre portion of a 22.678-acre parcel of land, identified as Tax Map Key ("TMK"): (2) 4-7-003: por. 031 ("Property"), within the State Land Use Agricultural District along Hokiokio Place and adjacent to and bounded by the Lahaina Bypass Road between the Puamana Planned Unit Development and the agriculturally zoned Pu`unoa Subdivision, at Lahaina, Maui, Hawai'i, requires a district boundary amendment or may be permitted by a special use permit.

The LUC, having heard and examined the testimony and evidence presented by Petitioners, Ho`omoana Foundation ("Ho`omoana"),² the State of Hawai'i Office of Planning ("OP"), the County of Maui Department of Planning ("DP"), and other public witnesses, at its meeting on February 24, 2016, in Kahului, Maui, Hawai'i, hereby makes the following findings of fact and conclusions of law:

agricultural lots within the Pu`unoa Subdivision. Ms. Lane is the President of the Association and an owner in the Pu`unoa Subdivision.

² Ho`omoana is the developer of the Project.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On December 4, 2015, Petitioners filed the Petition.
2. On January 25, 2016, the DP filed a Position Statement on the Petition.
3. On February 1, 2016, the DP filed a Revised Position Statement on the Petition.³
4. On February 4, 2016, OP filed a Response to the Petition.⁴
5. On February 19, 2016, Ho`omoana filed a Petition to Intervene and Position Statement on the Petition.⁵
6. On February 24, 2016, at its meeting in Kahului, Maui, Hawai`i, the LUC considered the Petition pursuant to HAR §15-15-100. Deborah K. Wright, Esq.,

³ The DP argued that a special use permit is the appropriate vehicle to process the Project, and recommended that the LUC dismiss the Petition pursuant to HAR §15-15-101. The DP noted that a special use permit is required because the Project is not a permitted use on lands with soil classified by the Land Study Bureau's ("LSB") detailed land classification as overall (master) productivity rating class B.

⁴ OP recommended that the LUC declare that the Project is not required to obtain a district boundary amendment. OP argued that the Project's relatively small size, minimal intensity of urban use, potential for reversion to agricultural activity, and incorporation of agriculture into its operation did not give rise for a district boundary amendment. OP believed that processing the Project through the special use permit process did not represent an attempt to circumvent the district boundary amendment process and was not an ad hoc infusion of major urban uses.

⁵ Ho`omoana concurred with the position of the DP. Because Ho`omoana did not know whether, or to what extent, the Project would be successful, Ho`omoana was seeking to operate the Project for a period of time to see whether or not it would be successful through a special use permit.

and Douglas R. Wright, Esq., appeared on behalf of Petitioners. OP, the DP, and Ho`omoana were provided notice of the meeting and were present at the proceeding. Bryan C. Yee, Esq., and Lorene Maki appeared on behalf of OP. Michael Hopper, Esq., and Kurt Wollenhaupt appeared on behalf of the DP. James W. Geiger, Esq., appeared on behalf of Ho`omoana.

7. At this meeting, the LUC entered into the record the written testimonies received on the matter and heard public testimony from Leonard Wilke, Todd Erickson, Rich Holmer, and Gordon Firestein.⁶ The LUC also entered into the record the pleadings filed by OP, the DP, and Ho`omoana and afforded their representatives the opportunity to provide public testimony on the Petition. In their pleadings, OP, the DP, and Ho`omoana did not request a hearing on the Petition as provided for in HAR §15-15-103. The LUC specifically asked Mr. Geiger if he wanted to make a statement on behalf of Ho`omoana, but he declined.⁷

DESCRIPTION OF THE PROPERTY

8. The Property is situated along Hokiokio Place, adjacent to and bounded by the Lahaina Bypass Road between the Puamana Planned Unit Development and the agriculturally zoned Pu`unoa Subdivision, and is identified as TMK: (2) 4-7-003: por. 031, at Lahaina, Maui, Hawai`i. Kua`ula Stream flows on one

⁶ The written testimonies are on file at the LUC office in Honolulu, Hawai`i.

side of the Property. The lots within the Pu`unoa Subdivision are situated immediately mauka of the Property.

9. The Property consists of approximately 7.9 acres of land and represents a portion of the approximately 22.678-acre parcel 31.

10. The Property is situated within the State Land Use Agricultural District.

11. The Property is owned by Kauaula Land Company, LLC, and is leased to Ho`omoana.

12. The Property has soil classified by the LSB's detailed land classification as overall (master) productivity rating class B.⁸ Specifically, the Property is situated on "B87i" rated land.

13. The Property was previously used for sugarcane cultivation.

14. In addition to the Property, parcel 31 includes an approximately 9-acre area used as a retirement stable for horses and approximately 5.8 acres that are part of the Lahaina Watershed Flood Control project area.

PROPOSED USE OF THE PROPERTY

15. Ho`omoana plans to develop the Project as an overnight

⁷ OP, the DP, and Ho`omoana were not parties, but they represented the interests of the State of Hawai`i, County of Maui, and the developer of the Project, respectively, in the proceeding.

⁸ The LSB incorporates a five-class overall productivity rating system, using the letters A, B, C, D, and E, with A representing the class of highest productivity and E the lowest.

campground for homeless and commercial campers with an agricultural field for possible future uses by the campers on the Property. The name of the Project is Kauaula Campground.

16. Under Ho`omoana's proposal, the Project would consist of 2 acres, while the remaining adjacent 5.9 acres would be reserved as an agricultural field to be used by the campground occupants for therapy and work. It is envisioned that the transient campers may work in the agricultural field to supplement their rental fees. Homeless campers are expected to pay \$10 a night, while the commercial campers would be charged more. The camping fees are anticipated to underwrite the expenses of the campground. Although some of the campers may wish to participate in farming activities on the Property, there is no guarantee that the agricultural field would result in future agricultural productivity nor is there a current requirement placed upon the campers to engage in agricultural pursuits.

17. The 2-acre area of the Project would have up to 26 pods for tents accommodating up to 80 people. Tents are to be provided by the campers. It is intended that both the homeless campers and the commercial campers would be camping alongside each other. In addition to the pods, showers, toilet facilities, fire pits or camp stove areas, a paved parking area, and a charging station for campers are proposed. Homeless campers would be allowed to stay for two to three months or

more as approved by the campground manager. It is unclear how long commercial campers would be allowed to use the grounds, but any stay would need to be approved by the manager.

18. Ho`omoana does not know whether there will be sufficient use to justify continued operations, nor does Ho`omoana know whether the Project will prove successful in addressing some of the needs of the homeless in West Maui.

19. The Project is being initiated on a trial basis.

20. Ho`omoana has filed conditional permit (CP 2014/0002) and special use permit (SUP2 2014/0006) applications with the DP for the Project.

21. On July 28, 2015, the County of Maui Planning Commission ("Planning Commission") conducted a public hearing on Ho`omoana's special use permit application. Decision on the application was deferred and the matter is still under consideration by the Planning Commission at this time.

RULING ON PROPOSED FINDINGS OF FACT

Any conclusions of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

JURISDICTION

1. Petitioners are interested persons pursuant to HAR §15-15-98(a), and thus have standing to bring this Petition before the LUC.

2. The LUC has jurisdiction to issue this declaratory order. HRS §91-8, as implemented by subchapter 14 of the LUC's rules, and HAR §§15-15-98 through 15-15-104.1 authorize the LUC to issue a declaratory order "as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation." The LUC's statutes, the applicability of which are put at issue in this Petition, are those sections of HRS chapter 205 which govern the uses permitted on agricultural lands. Without limitation, these sections include 205-4.5(a) (describing permitted uses on lands with soil classified by the LSB's detailed land classification as overall (master) productivity rating class A or B in agricultural districts) and 205-6 (concerning procedures for special use permits of agricultural lands).

3. The LUC has asserted its jurisdiction under questions involving interpretations of HRS §§205-4.5 and 205-6 in the past.

4. The Hawai'i State Legislature enacted HRS §205-6 in 1963 and last amended it in 2005. HRS §205-4.5(a)(6) was enacted in 1976 as Act 199. Act 199 amended HRS chapter 205 by adding a new section, which became HRS §205-4.5. What became HRS §205-4.5 provided in pertinent part:

Sec. 205- Permissible uses within the agricultural district. (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 shall be restricted to the following permitted uses:

(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**;

(b) **Uses not expressly permitted in this section 205- (a) shall be prohibited**, except the uses permitted as provided in section 205-6 and 205-8,...⁹

[Emphases added.]

5. In this case, the clear prohibition of overnight camps on class A and class B rated lands is irreconcilable with the provisions of HRS §205-6 that permit certain "unusual and reasonable uses" within agricultural districts other than for which the district is classified. By expressly prohibiting overnight camps on class A and class B rated lands, the legislature effectively determined that the use of overnight camp facilities on class A and class B rated lands is unreasonable.

6. To adopt the interpretation of Ho'omoana, OP, and the DP that a special use permit may be used to allow the Project on class A and class B rated

⁹ The quoted statutory language above from Act 199 for item (a)(6) and the quoted language above from Act 199 of subsection (b) are the same in 2016 as they were in 1977. The introductory language of subsection (a) has not changed in relevant part; it currently reads as follows: "Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall DR15-54 Pu'unoa Homeowners Association, Inc., and DeVonne Lane
Declaratory Order

agricultural lands despite the clear language to the contrary would mean that the counties could define away completely any statutory restrictions on agricultural uses. It results in treating a clear and explicit statutory prohibition as a nullity, and it results in treating an implicit determination of the legislature that overnight camps on land classified as class A and class B is an unreasonable use on such land as a nullity, and as such must be rejected. The only way that overnight camps such as those proposed in the Project can be allowed on the Property is to change its land use classification to one where overnight camps would be permitted. A change in the land use classification would require a district boundary amendment.

7. Based on the information in the record, the LUC concludes that an overnight camp on the Property is prohibited on lands with soil classified by the LSB's detailed land classification as overall (master) productivity rating class B pursuant HRS §205-4.5(a)(6) and cannot be permitted by a special use permit. The fact that the overnight camp would be initiated on a trial basis inasmuch as it is unknown whether, or to what extent, the overnight camp will be successful, as Ho`omoana argues, or that the overnight camp's relatively small size, minimal intensity of urban use, potential for reversion to agricultural activity, and incorporation of agriculture into its operation, as OP argues, does not alter the statutory prohibition of overnight camps on such lands nor the need for a district boundary amendment to establish its use.

8. Based on the information presented by both Petitioners and Ho`omoana, the LUC concludes that the Project involves lands of 15 acres or less. Pursuant to HRS §205-3.1(c), district boundary amendments involving land areas of 15 acres or less shall be determined by the appropriate county land use decision-making authority.

9. The DP argues that the Petition should be dismissed because the LUC lacks jurisdiction to rule on the matter. HAR §15-15-101 allows the LUC to dismiss a petition for declaratory order that fails in material respect to comply with the requirements of HAR subchapter 14. Having already concluded that the LUC has jurisdiction to issue a declaratory order determining whether the Project for an overnight camp requires a district boundary amendment, the LUC also concludes that the Petition meets the material requirements of said subchapter.

10. HAR §15-15-98(c) allows the LUC to issue a declaratory order "without notice of hearing" to terminate a controversy or to remove uncertainty. The LUC concludes that based on the facts presented at the meeting, the testimony of public witnesses, the pleadings filed, together with the exhibits, the opportunity granted to interested parties to present their views, and the fact that none of the interested parties requested a hearing pursuant to HAR §15-15-103, a hearing is not necessary before issuing a declaratory order in this matter.

the following permitted uses:"

DECLARATORY ORDER

At the LUC's meeting on the Petition on February 24, 2016, in Kahului, Maui, Hawai'i, a motion was made and seconded to deny the Petition. There being no second to this motion, the motion failed. Thereafter, another motion was made and seconded to grant the Petition as the LUC has jurisdiction of this matter because it involves an interpretation of HRS §§205-4.5 and 205-6. Following discussion by the LUC, a vote was taken on this motion. There being a vote tally of 6 ayes, 1 nay, and 1 excused, the motion carried.¹⁰

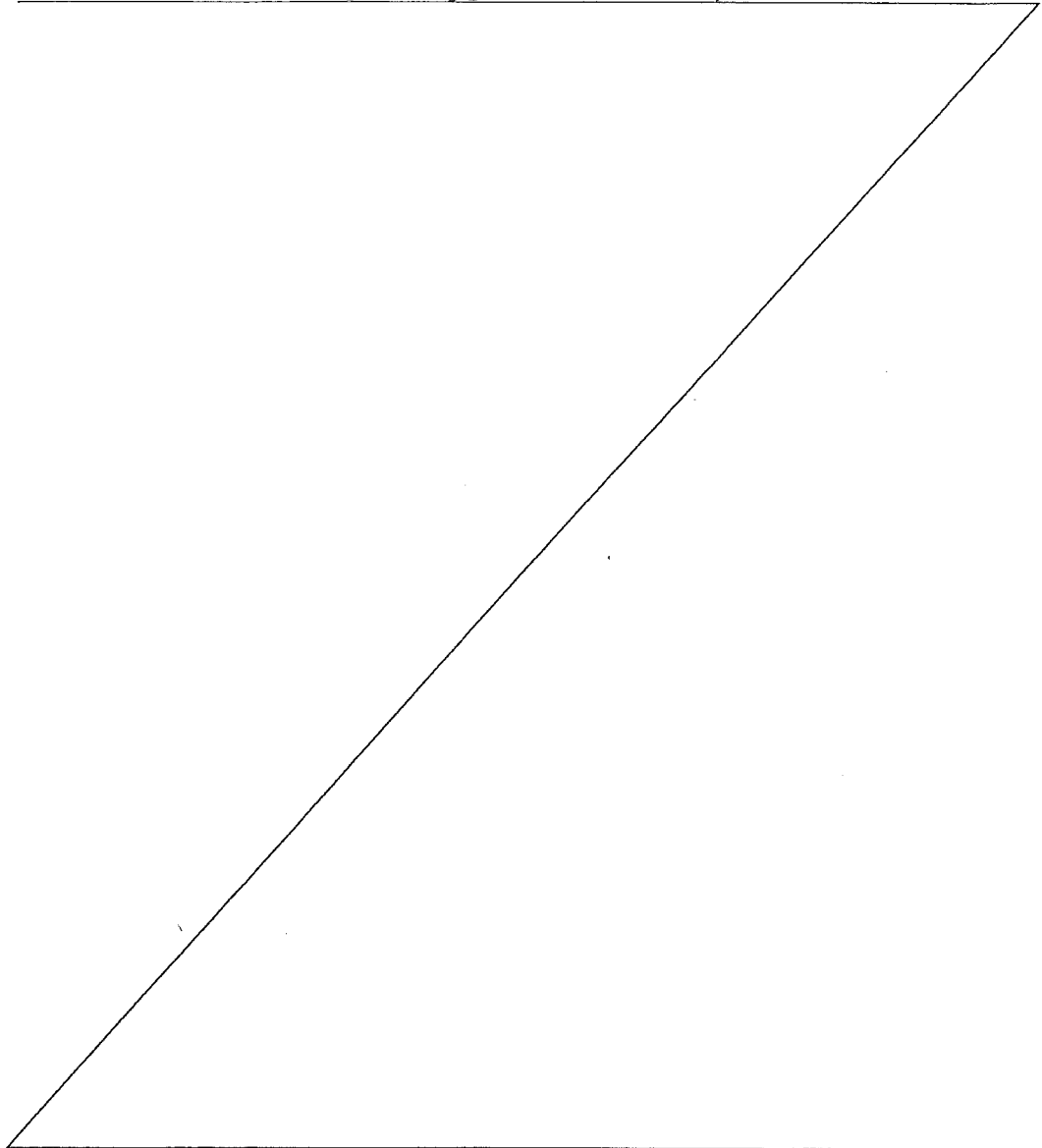
Having duly considered Petitioners' Petition, the oral and written arguments presented by Petitioners, OP, the DP, Ho'omoana, and the other public witnesses in this proceeding, and a motion having been made at the LUC's meeting conducted on February 24, 2016, in Kahului, Maui, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, the LUC hereby RULES as follows:

The LUC has the jurisdiction to act on the Petition, and will exercise its discretion to issue a declaratory order.

¹⁰ Following this motion, another motion was made and seconded to allow chair Edmund Aczon to sign this Declaratory Order on behalf of the LUC given that the LUC would not be able to meet to adopt the form of the Declaratory Order before the passing of the 90-day timeframe in which the LUC is required to act on the Petition after its submission. The motion carried unanimously by voice votes of the commissioners. At the present time, there are eight sitting commissioners on the LUC. The one remaining seat is vacant.

IT IS FURTHER DECLARED that:

Petitioners' Petition is GRANTED. The Project, consisting of an overnight campground on approximately 7.9 acres of land within the State Land Use Agricultural District with soil classified by the LSB's detailed land classification as overall (master) productivity rating class B, is prohibited by HRS §205-4.5(a)(6) and cannot be permitted by a special use permit. Accordingly, a district boundary amendment petition is required to be filed to allow an overnight campground for the Project.



ADOPTION OF ORDER


This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 3rd, day of March, 2016 per motion on February 24, 2016.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII

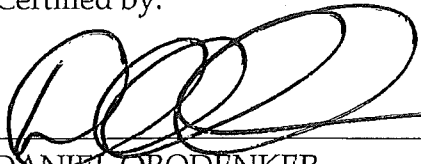

Deputy Attorney General

By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

3/3/2016

Certified by:


DANIEL ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. DR15-54
)
PU'UNOA HOMEOWNERS) CERTIFICATE OF SERVICE
ASSOCIATION, INC., AND)
DEVONNE LANE)
)
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, Hawai'i In The)
Agricultural District Requires A)
Boundary Amendment)
_____)

CERTIFICATE OF SERVICE

I hereby certify that due service of the within document was made by depositing the same with the United States Mail, postage prepaid, or by hand delivery, on March 4, 2016, addressed to:

LEO R. ASUNCION, JR., AICP
Director
Office of Planning
State of Hawaii
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

BY HAND DELIVERY

BRYAN C. YEE, ESQ.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

BY MAIL

WILLIAM SPENCE
Director, County of Maui Department of
Planning
2200 Main St.,
One Main Plaza Bldg., Ste 315
Wailuku, HI 96793

BY MAIL

James W. Geiger, Esq.
Mancini, Welch & Geiger LLP
33 Lono Avenue, Suite 470
Kahului, Maui, HI 96732-1681

BY CERTIFIED MAIL

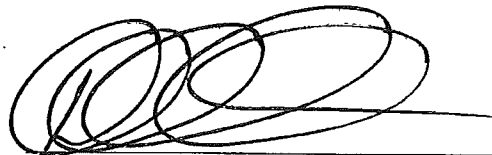
PATRICK K. WONG, ESQ.
Corporation Counsel
Department of the Corporation Counsel
County of Maui
200 S. High St.
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BY MAIL

WRIGHT & KIRSCHBRAUN, LLC
DEBORAH K. WRIGHT
DOUGLAS R. WRIGHT
1885 Main Street, Suite 108
Wailuku, HI 96793

BY CERTIFIED MAIL

DATED: Honolulu, Hawai'i, March 3, 2016.



DANIEL ORODENKER
Executive Officer
State Land Use Commission

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

HO'OMOANA FOUNDATION,) CIVIL NO. _____ ()
) (Agency Appeal)
Appellant,)
) STATEMENT OF THE CASE
vs.)
)
LAND USE COMMISSION, STATE OF)
HAWAII; PU'UNOA HOMEOWNERS)
ASSOCIATION, INC.; and DEVONNE)
LANE,)
)
Appellees.)

STATEMENT OF THE CASE

Appellant Ho'omoana Foundation ("Appellant") submits this Statement of the Case pursuant to HRCP 72(e).

I. IDENTIFICATION OF THE PARTIES

1. Appellant is a Hawaii non-profit organization located in Kahului, Island and County of Maui, State of Hawaii.

2. Appellee Land Use Commission, State of Hawaii ("Commission"), is an agency of the State of Hawaii within the meaning of HRS §91-1(1).

3. The Commission has been delegated the authority, duty and obligation to render declaratory rulings pursuant to HRS §205-7, HRS §91-8 and HAR §15-15-98.

4. Appellee Pu'unoa Homeowners Association, Inc. (the "Association") is a Hawaii non-profit corporation whose

members are owners within the Pu'unoa I Subdivision located in the County of Maui, State of Hawaii.

5. Appellee DeVonne Lane ("Lane") is a member of the Association and an owner of a lot within the Pu'unoa Subdivision.

6. The Commission is sued herein pursuant to the actions taken in connection with a Petition for Declaratory Order in Docket No. DR 15-54.

7. Association is sued herein as the petitioner for the declaratory ruling in Docket No. DR 15-54.

8. Lane is sued herein as the petitioner for the declaratory ruling in Docket No. DR 15-54.

9. Through a Petition for Declaratory Ruling (the "Petition"), Association and Lane sought a determination that a proposed overnight campground with an adjacent agricultural field for use by the campers (the "Project") on 7.9 acres of a 22.678 acre parcel of land identified as Tax Map Key No. (2) 4-7-003:031(por) (the "Property") located within the State Land Use Agricultural District required a district boundary amendment and could not be authorized by issuance of a State Land Use Commission Special Use Permit.

10. The Petition was filed on December 4, 2015.

11. The Petition was set for hearing on February 24, 2016.

12. Before the scheduled hearing, Appellant filed a Petition To Intervene ("Intervention Petition") alleging that its property interests would be adversely impacted by action taken by the Commission if it were not allowed to participate in the proceeding.

13. At the hearing on February 24, 2016, the Commission considered the Petition before considering the Intervention Petition.

14. The Commission determined that an overnight campground was a use specifically prohibited by HRS §204-4.5 in agricultural lands rated A and B, which use could not be authorized by way of a State Land Use Commission Special Use Permit pursuant to HRS §204-6 (the "Declaratory Order").

15. The Commission, without providing Appellant an opportunity to be heard on Intervention Petition, denied the Intervention Petition as being moot (the "Intervention Order").

16. Appellant seeks the reversal of the Declaratory Order as it is contrary to a plain reading of HRS §205-4.5, and is in direct conflict with the Hawaii Supreme Court's interpretation of the same subsection of HRS §205-4.5 rendered in Mahaulepua v. Land Use Commission, 71 Haw. 332, 790 P.2d 906 (1990).

17. Appellant also seeks reversal of Intervention Ruling as Appellant was denied the opportunity to participate as

a party in a proceeding which directly impacted its property rights in violation of Article I, Section 5 of the Constitution of the State of Hawaii.

18. The Commission's actions have prejudiced Appellant's rights for the reasons set forth under HRS §91-14(g).

II. JURISDICTION

19. This Court has jurisdiction over this matter pursuant to HRS §§ 91-8 and 91-14 and HRS §205-4.5 because Appellant is a person aggrieved by a final decision and order of an agency.

20. Venue is proper before this court as all transactions at issue occurred within the County of Maui.

III. HISTORY OF PROCEEDINGS

21. On June 10, 2014, Appellant filed an application with the Maui Planning Commission for a State of Hawaii Land Use Commission Special Use Permit in connection with the Project.

22. On August 22, 2014, Appellant filed with the Maui Planning Commission an application for a County of Maui Conditional Use Permit in connection with the Project.

23. Following determination that the applications were complete, the Maui Planning Commission scheduled the applications for hearing on July 28, 2015.

24. Association sought leave to intervene in the proceedings before the Maui Planning Commission, which motion was denied following hearing because Association failed to establish that its interests were different from those of the general public in connection with the applications.

25. On December 4, 2015, Lane and Association filed a Petition for Declaratory Ruling with the Commission contending that Appellant could not obtain a State Land Use Commission Special Use Permit for the operation of an overnight campground on agricultural land and instead required a District Boundary Amendment for the Project.

26. On February 4, 2016, the State of Hawaii Office of Planning filed a position statement with the Commission in which it advised the Commission that approval of an overnight campground as a use in an agricultural district could be done by way of a district boundary amendment or by way of a special use permit.

27. The Department of Planning, County of Maui filed a position statement and a revised position statement with the Commission on January 20 and January 28, 2016, respectively, in which the Department of Planning of the County of Maui informed the Commission of the pending State Land Use Commission Special Use Permit application and the history of the processing of the

Appellant's State Land Use Commission Special Use Permit application.

28. On February 17, 2016, the Commission issued an agenda for its February 24, 2016, meeting at which the Petition was scheduled for action.

29. On February 19, 2016, Appellant filed the Intervention Petition and a Position Statement regarding the Petition.

30. At its meeting on February 24, 2016, five individuals provided public testimony concerning the Project. The Commission's Chair repeatedly informed those present at the meeting that the Commission was not accepting evidence concerning the merits of the Project and was acting only on the legal aspects of the Petition.

31. Only the Association's and Lane's counsel was given the opportunity to question the witnesses providing public testimony.

32. The State of Hawaii Office of Planning and the County of Maui were asked to provide public testimony, however neither of those agencies provided public testimony.

33. Rather, the County of Maui, through its counsel, and the State Office of Planning, through its counsel, provided their respective positions concerning the Petition to the Commission.

34. Following the close of public testimony, Appellees Lane and Association were given the opportunity to present their case in connection with the Petition for Declaratory Ruling. Neither Lane nor the Association offered evidence in support of the Petition; both made argument only concerning the legal aspects of the Petition.

35. Following the presentation of Lane's and Association's counsel, the Chair of the Commission requested Appellant to state its position concerning the Petition.

36. Thereafter, the Commission went into executive session and upon returning from executive session, took action on the Petition.

37. The Commission, upon motion of a Vice Chairman, granted the Petition, and determined that the specific mention of overnight camping as a non-permitted use in HRS §205-4.5(a)(6) reflected a legislative intent that such use could not be allowed at any time within the agricultural district on lands classified as A or B, requiring that a person who wished to engage in such use change the State Land Use Classification from Agricultural to Urban by way of a District Boundary Amendment.

38. The motion of the Commission passed by a vote of 6 to 1.

39. Thereafter, the Chair of the Commission requested a motion from a member of the Commission to deny Appellant's Intervention Petition as being moot.

40. Before motion was made, Appellant's counsel, without being recognized by the Commission, objected to the proceedings as being prejudicial to Appellant's property rights.

41. The Commission then moved to deny the Intervention Petition to Intervention as being moot, which motion passed on a vote of 7 in favor and 0 against.

IV. STATEMENT OF POINTS OF ERROR

42. The granting of the Petition prejudiced Appellant's substantial rights because the Declaratory Order suffers from the following legal defects. The Declaratory Order is defective because:

- a) it was made upon unlawful procedures;
- b) it is in violation of constitutional or statutory provisions;
- c) it is in excess of the statutory authority or jurisdiction of the agency;
- d) it is affected by other error of law; and
- e) it is arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

43. The denial of the Intervention Petition prejudiced Appellant's substantial rights because the Intervention Ruling suffers from the following legal defects. The Intervention Ruling is defective because:

- a) it was made upon unlawful procedures; and/or
- b) it was arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

44. The Declaratory Order and Intervention Ruling were made upon unlawful procedure. The only parties to the proceeding were Lane and Association. Neither the Planning Department of the County of Maui, which was processing a State Land Use Commission Special Use Permit on the Project, nor the Appellant who had property rights in the Project, were given the opportunity to participate as a party to the action which would include the ability to question members of the public who testified regarding the proceedings, present evidence concerning the Petition, and make a record upon which the Commission could act.

45. Additionally, Appellant was denied the opportunity to participate as a party although its property rights were impacted by the Commission's actions. Appellant holds a lease for the land on which the Project will be located. Appellant has property rights arising from the lease.

Appellant's property rights were impacted by the Commission's actions. Appellant was not allowed to participate as a party in the proceeding yet had its property rights impacted, thereby depriving Appellant of property rights without it having received due process of law.

46. The Declaratory Order is in violation of constitutional or statutory provisions. Section 205-4.5(b), HRS, was ignored by the Commission in rendering the Declaratory Order. That section provides "uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, . . ." (Emphasis added). Subsection (b), HRS §205-4.5, specifically allows uses that are not permitted in HRS §205-4.5(a), provided that the uses are authorized pursuant to a State Land Use Commission Special Use Permit as established in HRS §205-6. Section 205-6, HRS, provides that a county planning commission may permit certain unusual and reasonable uses within the agricultural district other than those which are specifically permitted, provided the applicant meets certain conditions. In the Declaratory Order, the Commission ignored the specific provisions of HRS §§205-4.5(b) and 205-6, rendering the Declaratory Order in violation of statutory provisions.

47. The same subsection of HRS §205-4.5 upon which the Commission issued the Declaratory Order (HRS §205-4.5(a)(6))

was the subject of review in Mahaulepuu v. Land Use Commission, 71 Haw. 332, 790 P.2d 906 (1990). In that case, the Hawaii Supreme Court interpreted HRS §205-4.5(a)(6) exactly opposite to the Commission's interpretation in the Declaratory Order. The Commission in its Declaratory Order found that the inclusion of overnight camps in HRS §205-4.5(a)(6) as a disallowed use was a legislative mandate that such use could not be permitted by way of a State Land Use Commission Special Use Permit. In Mahaulepuu v. Land Use Commission, supra, the Hawaii Supreme Court affirmed the issuance of a State Land Use Commission Special Use Permit for a golf course. Section 205-4.5(a)(6), HRS, identifies golf courses as a disallowed use in the same sentence that identified overnight camps as a disallowed use. The Hawaii Supreme Court, after reviewing the legislative history concerning HRS §205-4.5(a)(6), held that such use could be authorized by way of a special use permit under HRS §205-6. The Declaratory Order is in direct conflict with Mahaulepuu v. Land Use Commission, supra, and the conflict cannot be reconciled or distinguished, rendering the Declaratory Order in violation of statutory provisions.

48. The Declaratory Order was in excess of the statutory authority or jurisdiction of the agency. The very issue before the Commission in the Petition was addressed by the Hawaii Supreme Court in Mahaulepuu v. Land Use Commission,

supra. Section 205-4.5(a)(6), HRS, was interpreted by the Hawaii Supreme Court in connection with the authorization of a golf course by way of a special use permit; the Hawaii Supreme Court held that HRS §205-4.5(b) allowed golf courses as a permissible use on agriculturally classified lands having A and B soils provided the requirements for a special permit under HRS §205-6 were met. The Declaratory Order is in direct conflict with the Hawaii Supreme Court determination, rendering the Declaratory Order in excess of the statutory authority of the Commission.

49. Additionally the Commission engaged in rulemaking in violation of HRS §91-3. The Commission's Declaratory Order forces persons seeking a use not permitted in agricultural lands with soils classified as A and B to obtain a District Boundary Amendment to change the land use classification to allow the proposed use.

50. The Commission's actions are a statement of particular applicability and future effect that implements, interprets or prescribes law or policy, which action is rulemaking under HRS §91-1.

51. The Commission is required to follow specific procedures before it adopts a rule under HRS §91-3.

52. The Commission failed to follow at least the following procedures in taking action at its February 24, 2016 meeting:

- a) provide 30 days' notice for a public hearing;
- b) provide notice of the topic of the proposed rule;
- c) provide a copy of the proposed rule to interested persons; and,
- d) provide that the proposed rule is subject to approval by the governor.

53. The Commission's actions in engaging in rulemaking in violation of rulemaking procedures was in excess of its statutory authority.

54. The Declaratory Order is affected by other error of law. As noted, the Hawaii Supreme Court has issued a ruling directly on point which holds that uses not permitted under HRS §205-4.5(a), including uses specifically identified under such section, are permissible under HRS §205-6 provided the conditions of HRS §205-6 are met. The Commission failed to mention Mahaulepua v. Land Use Commission, supra, which reflects a failure to recognize legal authority directly on point and made no attempt to distinguish the legal authority reflecting a conscious indifference to the opinion of the Hawaii Supreme Court on interpretation of the very statute that the Commission

was interpreting. The Commission's failures in this regard resulted in a Declaratory Order affected by other errors of law.

55. The Declaratory Order and Intervention Ruling were arbitrary, capricious and characterized by an abuse of discretion. During the hearing on the Petition, a Vice Chairman made certain comments on how the Commission should construe a statute which reflected a basic misunderstanding on the application of the rules of statutory construction. The same Commissioner made comments on Appellant's Intervention Petition reflecting a basic misunderstanding in the application of principles of due process. Such actions were arbitrary and capricious and are properly characterized as an abuse of the discretion expected of, and exercised by, Commissioners in the carrying out of their statutory duties.

56. Additionally, the Commission, instead of allowing Appellant to present its Intervention Petition, took action without hearing from Appellant on the Intervention Petition. Such action was arbitrary, capricious, and an abuse of discretion which resulted in the deprivation of Appellant's property rights without due process of law in violation of the Hawaii Constitution.

V. PRAYER FOR RELIEF

Based upon the foregoing, Appellant respectfully requests the Court:

1. Determine that the Commission's denial of the Intervention Petition without hearing substantially prejudiced the rights of Appellant and was improper.

2. Determine that the Declaratory Order is void and must be vacated for being in contravention of the plain reading of HRS §205-4.5(b) and in violation of existing case law which interpreted HRS §205-4.5(a) and (b).

3. Determine that the Commission engaged in unlawful rule-making.

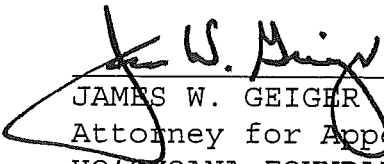
4. Issue an order directing that the Commission rescind its Declaratory Order dated March 3, 2016, and enter an order recognizing that overnight camps can be approved on Agricultural lands with A and B soils by way of a State Land Use Commission Special Use Permit pursuant to HRS §205-6.

5. Issue an Order directing the Commission to rescind the Intervention Ruling.

6. Award Appellant its attorney's fees and costs incurred in this matter.

7. Issue such other and further relief as to which Appellant may be justly entitled.

DATED: Kahului, Hawai'i, MAR 28 2016.



JAMES W. GEIGER
Attorney for Appellant
HO'OMOANA FOUNDATION

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

HO'OMOANA FOUNDATION,	)	CIVIL NO. _____ ()
	)	(Agency Appeal)
Appellant,)	
	)	DESIGNATION OF RECORD ON
vs.	)	APPEAL
)	
LAND USE COMMISSION, STATE OF)	
HAWAII; PU'UNOA HOMEOWNERS)	
ASSOCIATION, INC.; and DEVONNE)	
LANE,)	
)	
Appellees.)	

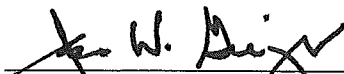
DESIGNATION OF RECORD ON APPEAL

TO: Clerk, Second Circuit Court
State of Hawaii

Pursuant to HRCF 72(d)(1), Appellant Ho'omoana Foundation ("Appellant") designates all files, correspondence and documents maintained by the Land Use Commission of the State of Hawaii, with respect to Docket No. DR 15-54, including, but not limited to, all pleadings, documents, exhibits, transcripts and minutes regarding the Petition and all pleadings or related documents mentioned or relied upon by the Land Use Commission of the State of Hawaii in rendering its decisions and orders in that proceeding.

MAR 28 2015

DATED: Kahului, Hawai'i, _____.



 JAMES W. GEIGER
 Attorney for Appellant
 HO'OMOANA FOUNDATION

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

HO'OMOANA FOUNDATION,) CIVIL NO. _____ ()
) (Agency Appeal)
Appellant,)
) ORDER FOR CERTIFICATION AND
vs.) TRANSMISSION OF RECORD ON
) APPEAL
LAND USE COMMISSION, STATE OF)
HAWAII; PU'UNOA HOMEOWNERS)
ASSOCIATION, INC.; and DEVONNE)
LANE,)
)
Appellees.)

ORDER FOR CERTIFICATION AND TRANSMISSION OF RECORD ON APPEAL

TO: Land Use Commission
State of Hawaii

YOU ARE HEREBY COMMANDED, pursuant to HRCP 72(d)(1), to certify and transmit to this Court, within twenty (20) days of the date below, or within such further time as may be allowed by the Court, the entire comment set forth in the foregoing designation of record on appeal.

This record shall include, but is not limited to, all files, correspondence and documents maintained by the Land Use Commission of the State of Hawaii with regard to the Petition for Declaratory Ruling filed in Docket No. DR 15-54, including, but not limited to, all pleadings, documents, exhibits, transcripts and minutes related to the actions taken by the Land Use Commission in the above-referenced docket number, together

with all pleadings and related documents mentioned or relied upon by the Land Use Commission with respect to the Decision and Order entered in the above-referenced docket number.

DATED: Wailuku, Hawaii, MAR 29 2016.

/sgd/ V. ISHIHARA (seal)

JUDGE OF THE ABOVE-ENTITLED COURT
Clerk