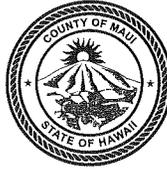


ALAN M. ARAKAWA  
Mayor  
WILLIAM R. SPENCE  
Director  
MICHELE CHOUTEAU McLEAN  
Deputy Director



LAND USE COMMISSION  
STATE OF HAWAII

2016 FEB -1 A 9:42

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

January 28, 2016

MEMO TO: DANIEL ORODENKER  
Executive Director  
Land Use Commission  
State of Hawaii  
P. O. Box 2359  
Honolulu, Hawaii 96804

FROM: Department of Planning, County of Maui  
William R. Spence, Director of Planning  
Clayton Yoshida, Planning Program Administrator *COY*

SUBJECT: **DOCKET No. DR 15-54 / KAUAULA CAMPGROUND**

TRANSMITTED ARE THE FOLLOWING:

COPIES	DATE	DESCRIPTION
Original and Digital Copy	1/28/2016	<b>Revised</b> Position Statement of the Department of Planning, County of Maui, to Petition for a Declaratory Order; Certificate of Service.

- ( ) For your information & files                      ( ) For your review and approval  
( ) For approval & signature                      ( ) See REMARKS below  
( ) Per your request                                      (X) For filing

Attachments

K:\WP\_DOCS\PLANNING\CP\2014\0002\_Kauaula\_Camp\Declaratory\_Ruling\Revised\_LUC\_Transmittal\_Sheet.doc

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII

2016 FEB -1 A 9:45

In the Matter of the Petition of: )  
)  
KAUAULA CAMPGROUND )  
)  
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 )  
\_\_\_\_\_ )

Docket No. DR 15-54

**REVISED POSITION STATEMENT OF THE  
DEPARTMENT OF PLANNING, COUNTY  
OF MAUI ON A PETITION FOR A  
DECLARATORY ORDER; CERTIFICATE  
OF SERVICE**

**REVISED POSITION STATEMENT OF THE DEPARTMENT OF PLANNING,  
COUNTY OF MAUI**

*This is a revised position statement incorporating wording and references from Chapter 15-15, Hawaii Administrative Rules updated on October 11, 2013, which were not discussed in the previous position statement from the County of Maui dated January 20, 2016. Although the Rules regarding dismissal of a petition appear to have become somewhat less specific upon the revision of Chapter 15-15, dismissal of the Petition is still the recommended action in this matter.*

The Department of Planning (Department), County of Maui, finds that the Petition for a Declaratory Order (Petition) requesting a District Boundary Amendment filed by Puunoa Homeowners Association, Inc., and Devonne Lane (Petitioner) relating to the construction of the Kauaula Campground is not supported by the Department. Hoomoana Foundation is proposing the development of the Kauaula Campground on approximately 7.9 acres (Project Site) which is a portion of the larger 22.68 acre agricultural site located along Hokiokio Place adjacent to the Lahaina By-Pass in between the Puamana Planned Unit Development and the gated residential community of Puunoa. The Project Site consists of the 2 acre campground and a 5.9 acre adjacent agricultural field to be used by the campground residents for therapy and work. The Department continues to hold the opinion that the appropriate planning applications for review of this matter are: 1) State Land Use Special Permit with the County of Maui Planning Commission the appropriate approving authority, and a 2) County of Maui Conditional Permit with the Maui County Council the approving authority.

*Declaratory orders; dismissal of petition.* Rule 15-15-101 of the Land Use Commission's rules states: The commission, without notice or hearing, may dismiss a petition for declaratory order that fails in material respect to comply with the requirements of this subchapter. The dismissal shall be in writing and state the reasons therefor.

In this case, the Land Use Commission lacks jurisdiction to rule on this request for a State Special Permit, as jurisdiction lies with the Maui Planning Commission. Chapter 205-6, HRS states that the authority to issue a Special Permit rests with the County Planning Commission where the area of land for which the Special Permit is sought is less than fifteen acres. The land for which the

Special Permit is sought totals 7.9 acres. The Petitioners raise various objections to the issuance of the Special Permit in their petition; however, the proper venue for such objections is before the Maui Planning Commission.

The Maui Planning Commission has already begun consideration of the Special Permit, and has provided notice of the application to property owners and held a public hearing on July 28, 2015. In fact, petitioners testified at the hearing along with many other community members and stakeholders. The decision on the Special Permit was deferred and is still under the Commission's active consideration. It would be both improper and illegal for the Land Use Commission to rule on the issuance of a Special Permit in this case, as that decision lies with the Maui Planning Commission under Chapter 205-6, HRS.

The Petitioners basically argue that the criteria in Chapter 205-6, HRS have not been met in this case. This is clearly an argument to be made (and Petitioners have made) before the Maui Planning Commission. Ultimately the Commission will need to reach a decision on the application. The Planning Commission's decision would be subject to judicial review in accordance with Chapter 91-14, HRS.

In short, a District Boundary Amendment is not the appropriate action in this case; but rather the State Land Use Special Permit currently in review by the appropriate entity, the Maui Planning Commission.

*Reason for a State Land Use Special Permit.* The State Land Use Special Permit is required as overnight camps are not a permitted use on lands with soil classified by the Land Study Bureau's detailed land classification as overall productivity rating class "A" or "B" in the State Agricultural District, and hence require a State Special Permit. The Project Site is located on "B87i" rated land. Additionally, open land recreation uses, structures or facilities including commercial camping requires a County Special Use Permit in the County Agricultural Zoning District, except that if a use described in Maui County Code MCC, Section 19.30A.060 also requires a Special Permit pursuant to Chapter 205, Hawaii Revised Statutes, the state special permit shall fulfill the requirements of MCC, Section 19.30A.060. Hence approval of a Special Permit additionally satisfies the requirements of a County Special Use Permit. The Department considers the campground activity under review as occurring on a portion of the parcel

The subject property is in the State Agricultural District. The proposed uses are consistent with the Agricultural designation of the property. Chapter 205-6, HRS allows for the establishment of "unusual and reasonable" uses in the State Agricultural District through the approval of a State Land Use Special Permit. The Applicant has demonstrated bona fide agricultural activities are occurring on the property as reflected in the agricultural activities on the Project Site at Kalee's Retirement Stables and planned future agricultural operations from campers. The following guidelines are established in determining an "unusual and reasonable use" and the response to these guidelines is indicated as such:

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.*

COMPLIANCE: This section, as specific to the Agricultural District, directly provides broad discretion to the local planning commission to determine if a particular use is consistent and compatible within an area. The existing property meets the objectives of 205 HRS with the current pasture and grazing agricultural use. The proposed campsite will encompass approximately 2 acres or approximately 10% of the larger parcel with an additional 5.9 acre adjacent agricultural field to be used by the campground residents for therapy. The proposed campsite use will not affect the continued pasture and grazing operations. As such, the proposed campsite will not jeopardize compliance with HRS 205 and the rules of the Land Use Commission.

(2) *The proposed use would not adversely affect surrounding property.*

COMPLIANCE: The specific location of the campsite is located within the mauka limits of the 22 acre parcel, adjacent to the new Lahaina Bypass. Based on the proposed site plan, a substantial buffer area will soften the effect of the proposed campsite on surrounding properties. The existing pasture and grazing use will remain in place, unaffected by the proposed campsite. Further, the proposed campsite use does not represent a significant deviation from existing agricultural district standards.

(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.*

COMPLIANCE: The proposed campground use will be generally self-contained and will not require substantial use of public resources to operate, and therefore will not unreasonably burden public agencies in providing roads, streets, sewers, water drainage, school improvements, and fire and police protection. The project will not have a significant impact on natural systems or habitats or cultural resources. The proposed campsite is insignificant in terms of the larger economy of Hawaii and will not represent a threat to existing agricultural resources. Providing housing and life assistance to Maui's homeless residents will be a positive influence on the State's economy and also provide valuable housing assistance for Maui's lowest income group. It is the intention of the Applicant to focus services on the situational/transitional homeless individual as contrasted from that of the chronic homeless who may suffer from severe mental illness or addiction. The homeless individual who has met unfortunate circumstances such as the loss of a job or significant material loss likely will bring with them some resources such as a tent to the campground.

(4) *Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.*

COMPLIANCE: The homeless population on Maui has increased dramatically in recent years, the degree of the problem virtually inconceivable at the time Chapter 205 HRS was originally adopted in 1961. The proposed project aims to provide a site for transitional housing for the homeless community. At the same time, the subject property will continue to be used for agricultural purposes, in consonance with the objectives of HRS 205.

(5) *The land upon which the proposed use is sought is unsuited for the uses permitted within the district.*

COMPLIANCE: The property is designated with an agricultural rating of Class B. The proposed project campground is designated for 2 acres on a larger 22.678 acre parcel, or less than 10% of the total land area of the property. The existing pasture use makes

efficient use of the agricultural productivity of the land. Further, the new campsite will not reduce, minimize, or limit the existing agricultural activities of the larger parcel. Again, an approved, vetted, and implemented farm plan demonstrates that bone fide agricultural operations are occurring on the property as part of the requirements under Chapter 205 HRS.

The county planning commission may impose such protective conditions as it deems necessary in the issuance of a special use permit. The county planning commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, and if appropriate, a time limit for the duration of the particular use, which shall be a condition of the special permit. If the permitted use is not substantially established to the satisfaction of the county planning commission within the specified time, it may revoke the permit. The county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension. Pursuant to HRS Section 205-6 (C), the Commission must also find that the use would promote the objectives and effectiveness of Chapter 205 HRS.

Based on our review of the information provided in the Petition, the Planning Department respectfully requests that the Land Use Commission refuse to issue a declaratory ruling for the reasons stated above. In addition, the Department finds that the State Special Permit is the appropriate process for review of this action, not the District Boundary Amendment process advocated by the Petitioner.

DATED: Wailuku, Hawaii, 1/28, 2016.



WILLIAM SPENCE  
Planning Director  
Department of Planning

In the Matter of the Petition of: )  
 )  
 KAUAULA CAMPGROUND )  
 )  
 To Issue a Declaratory Order that the )  
 Proposed Construction of a Homeless )  
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 Maui, Hawaii, in the Agricultural District )  
 Requires a Boundary Amendment )  
 \_\_\_\_\_ )

Docket No. DR 15-54

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the following on the date indicated below:

DANIEL ORODENKER  
 Executive Director  
 Land Use Commission  
 State of Hawaii  
 PO Box 2359  
 Honolulu, Hawaii 96804

Mail and Electronic Mail

LEO R. ASUNCION, JR  
 Acting Director  
 Office of Planning  
 235 Beretania Street, 6<sup>th</sup> Floor  
 Honolulu, Hawaii 96813

Mail

BRYAN YEE  
 Deputy Attorney General  
 Commerce and Economic Development  
 Department of the Attorney General  
 425 Queen Street  
 Honolulu, Hawaii 96813

Mail

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

Mail

Attorney for Petitioner

HOOMOANA FOUNDATION  
Attn: PETER MARTIN  
33 Lono Avenue, Suite 230  
Kahului, HI 96732

Mail

MANCINI, WELCH & GEIGER, LLP  
JAMES W. GEIGER  
305 E. Wakea Avenue, Suite 200  
Kahului, HI 96732

Mail

MICHAEL HOPPER  
Deputy Corporation Counsel  
Department of the Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

Hand Delivery

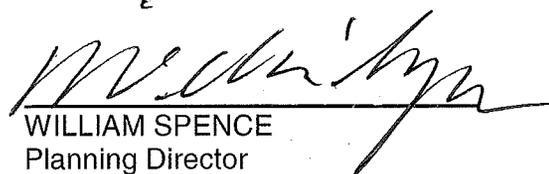
GARY Y. MURAI  
Deputy Corporation Counsel  
Department of the Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

Hand Delivery

PLANNING COMMISSION  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

Hand Delivery

DATED: Wailuku, Hawaii, 1/28, 2016.

  
WILLIAM SPENCE  
Planning Director  
Department of Planning