



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)
ASSOCIATION, INC., AND) DECLARATORY ORDER; AND
DEVONNE LANE) 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)
_____)


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



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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. Kaua`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 Kauauala 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:”

DR15-54 Pu`unoa Homeowners Association, Inc., and DeVonne Lane
Declaratory Order

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

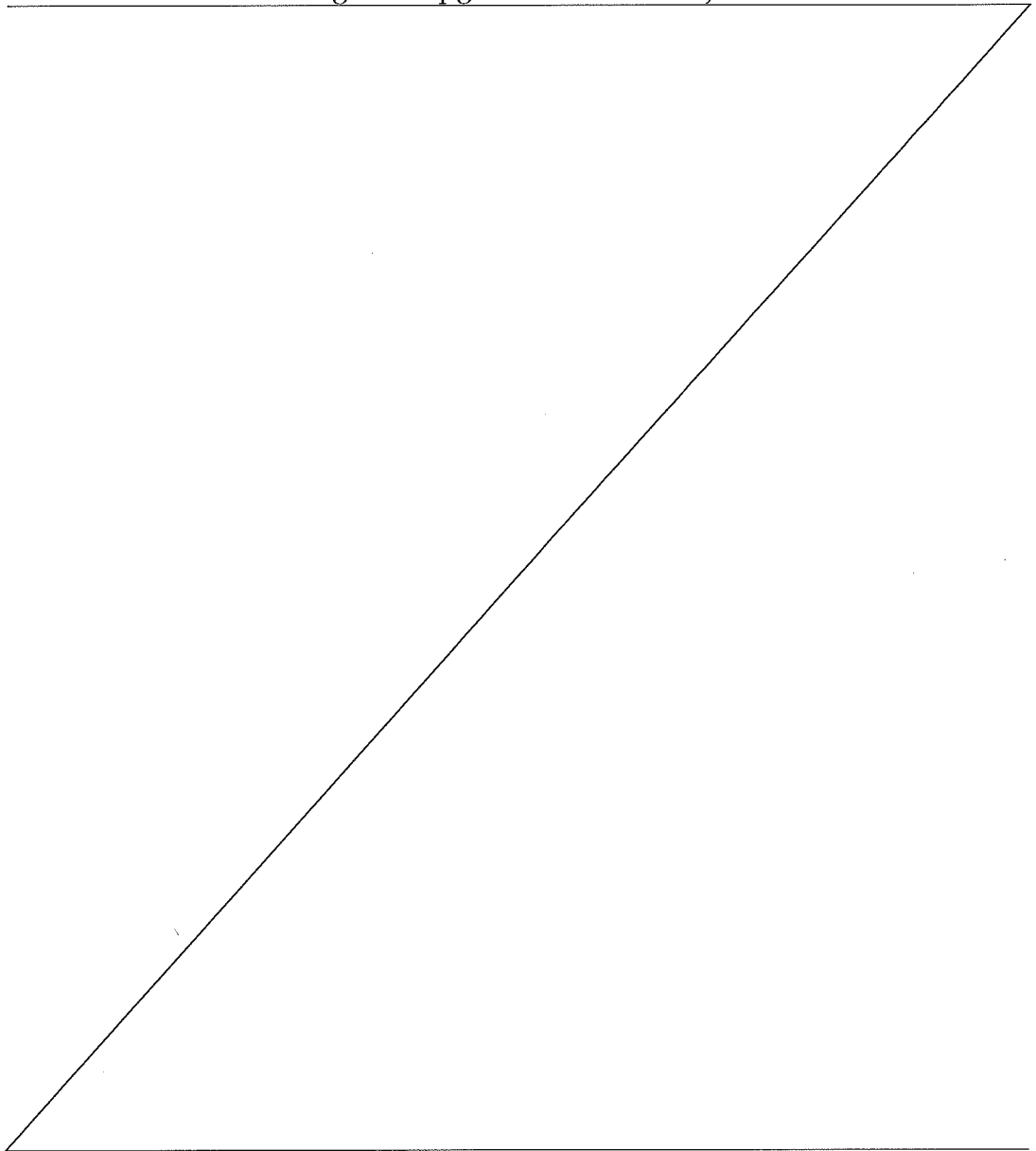
Having duly considered Petitioners' Petition, the oral and written arguments presented by Petitioners, OP, the DP, Ho'omoana, and the other public witnesses in this proceeding, and a motion having been made at the LUC's meeting conducted on February 24, 2016, in Kahului, Maui, Hawai'i, and the motion 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



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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:

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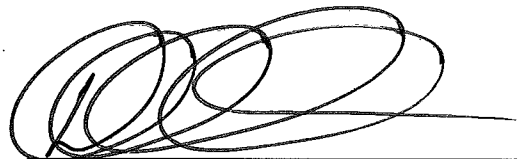
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DATED: Honolulu, Hawai'i, March 3, 2016.



DANIEL ORODENKER
Executive Officer
State Land Use Commission