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LAND USE COMMISSION  
STATE OF HAWAII

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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

<b>In the Matter of the Petition:</b>	)	DOCKET NO. DR15-54
	)	
To issue a declaratory order that the proposed	)	OFFICE OF PLANNING, STATE OF
construction of a homeless encampment and	)	HAWAII'S RESPONSE TO PETITION FOR
commercial campground on 7.9 Acres of a	)	DECLARATORY ORDER
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,	)	CERTIFICATE OF SERVICE
Maui, Hawaii in the agricultural district	)	
requires a district boundary amendment	)	
	)	
	)	
	)	

**OFFICE OF PLANNING, STATE OF HAWAII'S**  
**RESPONSE TO PETITION FOR DECLARATORY ORDER**

Under the particular facts and circumstances of this case, the Office of Planning ("OP") concurs with the County of Maui ("County") that overnight camping and a transient encampment may be permitted under a State Special Permit rather than a District Boundary Amendment.

**I. INTRODUCTION**

Puunoa Homeowners Association, Inc., and Devonne Lane ("Petitioners") filed the present Petition for a Declaratory Order asking whether establishment of a campground, part homeless encampment and part commercially based, on State Agricultural land designated "B"

under the Land Study Bureau system, can be granted a State Special Permit or is it required to obtain a District Boundary Amendment (“DBA”). The Hoomoana Foundation (“Hoomoana”) is proposing to establish the Kauaula Campgrounds to serve a mix of commercial camping and a segment of the transient population. The campground will be developed on a 7.9-acre site, carved out of a larger 22.3-acre parcel. The site is located on the corner of Hokiokio Place and Honoapiilani Highway. Hoomoana is proposing to construct a farm dwelling as a residence for the camp manager and office use. The proposed maximum capacity for the commercial campground will be 26 camping pods for tents and recreational vehicles, two comfort stations with showers, a barn, and 20 parking stalls located on a two-acre area of the lot. The remainder of the site will be used for agriculture. Hoomoana indicated that the transient population may work in the agricultural area of the lot to supplement their rental fees.

## **II. BACKGROUND**

The County of Maui Department of Planning submitted a report to the Maui Planning Commission for their July 28, 2015 meeting. The report indicates that the lot area contains the following existing uses:

- Total Lot area: 22.678 acres
- Lahaina Watershed Flood Control Project Leased Area: 5.8 acres
- Kalee’s Retirement Stables--Existing fenced pasture Area for Safe/Humane Horse and Animal Care: 9 acres
- Proposed Hoomoana Foundation site: 7.9 acres

According to the Department of Planning, the Maui Planning Commission held a public hearing on July 28, 2015 and has deferred a decision on this application.

Hoomoana’s application with the Maui County Department of Planning included a Farm Plan. OP solicited comments on the petition from Department of Agriculture (“DOA”). Their comments are as follows:

- The DOA, through email, indicated that the Farm Plan lacks descriptions on how farming is to be accomplished, and whether the products grown will be sold or eaten on site. The applicant indicates that transient campers may pay for campsite rental from working on the agricultural area, but does not explain whether this will be from “income from crop sales or avoided cost of produce purchase.”

Also, there is no description of the irrigation infrastructure within the property.

### **III. ANALYSIS**

There are two methods by which non-permitted uses may be allowed on Agricultural District land: (1) a district boundary amendment pursuant to Hawaii Revised Statutes (“HRS”) § 205-4; or (2) a special permit pursuant to HRS § 205-6. Because both methods accomplish a similar purpose, there are occasionally efforts to achieve what amounts to a district boundary amendment through a special permit. In *Neighborhood Board No. 24 (Waianae Coast) v. State Land Use Commission, State of Hawaii, 64 Hawaii 265, 266* (Hawaii 1982), the applicant requested a special permit to construct a recreational theme park on 103 acres of agricultural land, including “cultural theme rides, restaurants, fast food shops, retail stores, exhibits, theaters, an amphitheater, a bank, nurseries, twelve acres of parking, a sewage treatment plant, and other related support services.” The Court also described the procedural and substantive differences between these two techniques. In that case, the Court found that a special permit may not “be used as a method of circumventing district boundary amendment procedures to allow the ad hoc infusion of major urban uses into agricultural districts.” *Id.* at 273. Accordingly, the court found that the special permit was not an appropriate method to approve the recreational theme park, and that a district boundary amendment was required. *Id.* at 273.

In contrast, this is an overnight camp on approximately 7.9 acres. Given the relatively small size, minimal intensity of urban use, potential for reversion to agricultural activity, and the incorporation of agriculture into its operation, OP concludes that the request for a Special Permit is not an attempt to circumvent the District Boundary Amendment, that it is not an ad hoc infusion of major urban uses, and that a District Boundary Amendment is not required in this case.

As the project will be developed on less than 15 acres, the determination of whether the use is an unusual and reasonable use pursuant to HRS § 205-6 is within the authority of the County of Maui Planning Commission to decide on this request for a Special Permit.

### **CONCLUSION**

Based upon the particular facts and circumstances of this case, the filing of a Special Permit by the Applicant is appropriate. Accordingly, OP recommends that the LUC declare that the proposed Hoomoana Foundation's Kauaula Campground is not required to obtain a District Boundary Amendment.

DATED: Honolulu, Hawai'i, this 4<sup>th</sup> day of February, 2016.

OFFICE OF PLANNING  
STATE OF HAWAI'I

  
LEO R. ASUNCION  
Director

Docket No. DR15-54

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawaii, this 4th day of February 2016.



LEO R. ASUNCION  
Director  
Office of Planning