

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
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In the Matter of the Petition of
Kenneth Stanley Church and

Joan Evelyn Hildal

To Amend The conservation Land Use District
Boundary Into The Agricultural Land Use

District For Approximately 3.4 Acres Of Land

At Wailea, Island Of Hawaii, Tax Map Keys:
(3) 2-9-003; 029, 060

DOCKET NO. A18-805

PETITIONERS AMMENDED MOTION THAT
THE LAND USE COMMISSION
(the APPROVING
AGENCY ACCORDING TO HRS
CHAPTER 343 and s/s 15-15-50(b), HAR)
ACCEPT AN EXISTING FONSI IN
SUPPORT OF THE PETITION,
WHICH FONSI IS ATTACHED HERETO
AS EXHIBIT 1

PETITIONERS AMMENDED MOTION THAT THE LAND USE COMMISSION
ACCEPT THE EXISTING FONSI, EXHIBIT 1,
AS SUFFICIENT
TO SUPPORT THE PETITION

Comes now, Kenneth Stanley Church and Joan Evelyn Hildal, husband and wife, joint
and equal owners of the Property respectfully move the Land Use Commission of the State of
Hawaii ("LUC") for a motion:

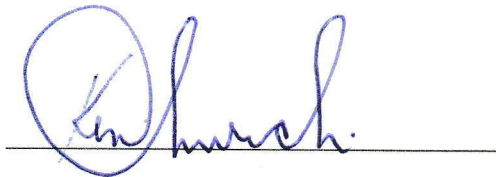
1. to determine that the LUC will be the accepting authority and the approving agency for
an environmental statement under HRS Chapter 343;

2. to determine, through its judgment and experience, that the exhibited, June 22, 2016 Finding Of No Significant Impact ("FONSI"), *ref., Exhibit 1* to this motion, is sufficiently applicable to the Petitioner(s) LUC Petition A18-805 that no new Environmental Impact Statement ("EIS") nor Environmental Impact Statement Preparation Notice ("EISPN") be required.

This motion is brought pursuant to HAR s/s 15-15-70, HRS 343-5, and HAR s/s 11-200-12. In the docket LUC Petition A18 805, Petitioners seek to reclassify approximately 3.4 acres from the Conservation District to the Agricultural District. The Property is classified as Prime Agricultural Land under the ALSISH classification System. The County's zoning for the Property is A20-a. The Property is near coastal. There remains another contiguous State owned ocean-side pali property, contiguous to the Property and makai of the Property, that is zoned in the Conservation Land Use District.

DATED; Hakalau, Hawaii, August 14, 2018

Kenneth Stanley Church



Joan Evelyn Hildal



*Please note: the attached exhibit 1, FONSI has sections of text throughout it (which locations are defined later herein) that describe that the Petitioner(s) fully disclosed to the public the **existing nonconforming agricultural uses and intended continuing nonconforming agricultural uses** of the Property as well as the planned dwelling for the Property described in the FONSI which dwelling is described as being necessary in order that it provide an opportunity for on-site management of the agricultural use of the Property..*

Background.....

No new use is proposed.

The Property.....

1. has currently been in agricultural use, which is generally described as woody orchard species and cultivated field crops, began in 2014 and has continued for an uninterrupted period now exceeding two (2) years,
2. has accessory uses such as a farm dwelling, which is under construction and,
3. has an 720 square foot storage and processing structure which has existed since 2016,
4. has a historic use which has been for continuous agricultural use dating from the mid 1800's to 1992.

Effectively **the Property is fully committed to long term agricultural use and uses accessory to agricultural use** and has been for a current period exceeding two (2) years.

The agricultural use continues to increase in intensity. **No new land use is contemplated nor is likely.** The Petitioned re-zoning will bring the Property's agricultural use into conformance with it's zoning and resultantly secure the Petitioner(s) investments in the agricultural use of the Property including accessory uses to the agricultural use. The Property's use for agriculture, is believed to date back to around 1860. The historical agricultural use of the Property was for sugar cane production which ceased in 1992 .

The attached exhibit #1, a 2016 FONSI, supported the Petitioners' Conservation District Use Permit Application ("CDUA") and resulting Conservation District Use Permit ("CDUP") for a single family dwelling which is under construction, on the Property. The Department of Land and Natural Resources ("DLNR") also issued a permit approval in 2015 for the construction of a 720 square foot agricultural use storage and processing structure on the Property which construction is complete.

The exhibited, *exhibit 1 hereto*, a 2016 EA and resultant exhibited FONSI for the dwelling described, in considerable detail, that the dwelling was intended to support the

Petitioners agricultural uses, including nonconforming agricultural uses of the Property. The application to the DLNR for the agricultural use storage and processing structure accessory was reviewed by the Board of Land and Natural Resources ("BLNR") in 2015. The BLNR determined that an earlier land owner, the McCully(s), FONSI in 2008, which supported their application for a residence on the Property (which was never built), was of sufficient content that it was allowed to support the Petitioners application for the agricultural use storage and processing accessory structure in 2015. A copy of the McCully(s) FONSI may be found attached to the Petitioner(s) Petition A18 805 as it's exhibit 1.

Since purchasing the Property in 2014 the Petitioners also submitted a CDUA to the DLNR to combine and re-subdivide three (3) TMK lots which they purchased from the McCully(s), two (2) of which were the Property. That CDUA was supported by an EA and FONSI. That CDUA resulted in a CDUP and the Property was combined and re-subdivided from three (3) TMK lots to three (3) TMK lots. In 2017 the Petitioner(s) sold one (1) of the three (3) TMK Lots as it was surplus to their needs.

Effectively four (4) EA(s) and FONSI(s) that relate to the Property have been filed and reviewed since 2005. Two (2) of the EA and FONSI were during the period from 2005-9 and supported the McCully(s) petition A05 757 to the LUC to re-zone the Property from the State Land Use Conservation District to the State Land Use Agricultural District and their CDUA for a residence on the Property which was submitted to the DLNR. Two (2) other EA and FONSI were during the period from 2014 to 2017 which supported the Petitioners applications to the DLNR to combine and re-subdivide the Property and for a single family dwellingt on the Property. **One (1) each of the McCully(s) and the Petitioner(s) EA and FONSI described that agriculture was intended or existed on the Property.**

The Property's current appearance is generally regularly mowed field grasses interspersed with woody agricultural plant species, cultivated field areas with agricultural

crops, structures, a roadway and a narrow wild wooded band along the makai coastal pali and also along a small intermittent stream area along the Property's northern border.

The Petitioned zoning will bring the Property's existing "*allowed*" nonconforming agricultural use into conformance with its zoning. HRS 183C-5, and HAR 13-5-7, describe that the Property may continue to be used for agriculture as agricultural use of the Property existed when the State overlaid the State Conservation District on it.

The Petitioner(s) purchased the Property in 2014 and began their current agricultural uses subsequently, which generally includes agricultural woody plant species and cultivated crops including pineapples, sweet potatoes, dragon fruit, garden crops etc. The Petitioner(s) also have established a potted plant nursery on the Property. The DLNR issued a letter to the Petitioners in January of 2017 stating "*agreement*" that the Petitioners may use the Property for nonconforming agriculture, *ref., exhibit 2*.

In 2005 the former owners of the Property, the McCully(s), petitioned the LUC to similarly re-zone the Property, LUC petition A05 757. Particularly the McCully(s) stated an intention in their petition that they intended to build a residence on the Property as well as a large agricultural use greenhouse. That petition was denied. That petition was supported by an EA and FONSI and is shown as *exhibit 1 to the Petitioner(s) Petition A18 805*. The McCully(s) again petitioned the LUC in 2009 that the Property be similarly re-zoned. That Petition was withdrawn before the LUC completed the hearing process. The LUC allowed that petition in 2009 to be supported by the McCully(s) earlier 2005 EA/FONSI without requiring that a new EA be conducted.

The Property is also zoned A-20a by the County which is an agricultural use designation. The Property's current agricultural use was reviewed by the County in 2018 when a SMA Determination was requested by the Petitioner(s) for the agricultural use of the Property. The County issued a Determination that no SMA permit is required and affirmed the County's agricultural designation of the Property as A-20a, *ref., exhibit 3*.

Archaeological and botanical studies of the Property can be found in the 2005, McCully(s) FONSI document supporting the referred LUC petition A05 757 shown in the Petitioner(s) Petition A18 805 as it's exhibit 1. The Botanical study is shown therein also as it's Appendix B and the Archaeological study as it's Appendix C. In 2014 the Petitioner(s) updated the botanical study. It is shown in *exhibit 1 hereto as it's exhibit 1 beginning around it's page 81.*

These studies revealed that there exists no archaeological sites of significant interest on the Property nor does there exist any rare or endangered plant species. The referred McCully(s) earlier 2005 FONSI which supported their LUC Petition A05 757 found that, their then proposed, agricultural use of the Property would have had ***"no significant impact"***, ref., exhibit 1 to Petitioner(s) Petition A18 805. The nonconforming agricultural uses, both present and historically, were subsequently **again described** in the *exhibit 1 to this motion*, which is the FONSI for the dwelling, that is currently under construction on the Property, which FONSI document described that the Petitioner(s) dwelling was necessary in order that the Petitioner(s) may more effectively manage the dynamic nature of their current and expanding agricultural land uses in order to manage and/or reduce any negative environmental effects that may result from their agricultural use of the Property to the surrounding environment. The attached *Exhibit 1*, FONSI document, described that the Property was in agricultural use.

The Petitioners described in approximately forty (40), areas of text in the exhibited residence/dwelling FONSI their existing and intended nonconforming agricultural use of the Property generally stating that the residence would assist the Petitioner(s) good stewardship of their agricultural use of the Property particularly in order to mitigate any negative effects to the environment that may result from the agricultural use. Text references of such exist on pages which are numbered in the FONSI being
pages.....

5, 6 (2 references), 7 (2 references), 10, 17, 18, 20, 23 (2 references), 24, 26, 28 (2 references), 30, 33, 34, 35, 41 (2 references), 42 (4references), 44, 49-50, 53 (2 references), 55, 58, 60, 63 (3references), 72.

Current DLNR **“allowed”** nonconforming agricultural uses of the Property include agriculture and related **cultivation of the Property’s soils** generally on the Property including immediately along it’s makai boundary, the contiguous ocean-side coastal pali property, which is owned by the State, *ref., exhibit 2, DLNR letter to the Petitioner(s)*.

The Petition describes that it is intended that the Petition, if allowed, will result that a **‘buffer zone’** be provided along the makai boundary of the Property which will remain in the State’s Conservation District **in order to add a new and additional level of protection to the environment which is an improvement over the current “allowed” nonconforming agricultural use allowed by the DLNR.** The cultivation of the soils in the *buffer zone* area is proposed to no longer be allowed but such *buffer zone area* will rather be maintained in grasses and woody plant species and also remain in the State Conservation District and future new uses, if applicable, would be subject to review and formal permitting by the DLNR as provided for in HAR 13-5.

