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LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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August 1, 2018

Mr. Ken Church
P.O. Box 1000014
Hakalau, Hawai'i 96710

Dear Mr. Church:

Subject: Land Use Commission Docket No. A18-805 Ken Church and Joan Hildal

This is to acknowledge receipt of the eleven binders comprising the subject Petition For Land Use Boundary Amendment ("Petition") seeking to reclassify approximately 3.368 acres of land from the State Land Use ("SLU") Conservation District to the SLU Agricultural District for agricultural and accessory uses (the "Project") situated at Hakalau, island of Hawai'i, TMK Nos.: (3) 2-9-003: portion of 029 and portion of 060 (the "Petition Area") filed in the subject docket on July 20, 2018, by Ken Church and Joan Hildal ("Petitioner").

The following documents in the subject docket were filed with the LUC on July 20, 2018:

- 1) Petition for Land Use District Boundary Amendment – binders numbered 1 through 11;
- 2) Petitioner's Appendices 1-4, and 6-8; and,
- 3) Petitioner's Exhibits 1-45, 47-48, 50-56, 58-59, 61-78, 80-83, 85-118.

In addition, you supplemented the above with a July 27, 2018, e-mail containing an eight-page index referencing where in your eleven-volume filing to locate the form and contents as required in §15-15-50, Hawai'i Administrative Rules ("HAR").

At the outset we would note that your "Petition" is put together in an unconventional style and is not organized around addressing the form and content requirements in §15-15-50, HAR. Therefore, the LUC staff is having difficulty ascertaining what is contained in the documents and its sufficiency. While there is no legal requirement that documents be filed in a more organized manner, the current form of your submittal may result in a significant delay in processing.

In its current format, we have determined that your Petition is an incomplete filing for several reasons.

1. You have not provided a verification of authorization to file the Petition pursuant to §15-15-39, HAR.
2. You have not met the requirements for filing the Petition pursuant to §§15-15-40 and 47, HAR, in that we have only received one paper copy of the documents. You are required to file the original, one paper copy and an electronic copy of the Petition simultaneously with our office.
3. There is no evidence that the document has been served upon the County, County Planning Commission, the Office of Planning, and any other parties that have a property interest, as required by §15-15-48(a), HAR.
4. You have not provided evidence of meeting the notification requirements of §15-15-50(d), HAR, to send a Notification of Petition Filing to the mailing list provided by the LUC's Chief Clerk.
5. You have not provided an approved or accepted environmental impact statement (EIS) or finding of no significant impact (FONSI). Pursuant to §15-15-50(b), HAR, a petition to reclassify properties from the State Conservation District to any other district requires an environmental impact statement or finding of no significant impact that is approved or accepted by the LUC. Such an approved document needs to be filed with and be part of the petition for boundary amendment. This subsection 15-15-50(b), HAR, must be satisfied before the required review and determination for completeness outlined in subsections 15-15-50(e) and (f), HAR, can proceed. Your filing references three prior environmental assessments completed for the Petition Area.¹ On pages 128-130 of your filing, you discuss the relevance of these previously accepted EA/FONSI to the subject Petition and ask that the LUC find that they sufficiently apply and no additional EA/FONSI would be required. This request will need to be in the form of a motion to the LUC pursuant to §15-15-70, HAR; as the decision whether to accept a prior Chapter 343, HRS, document(s) instead of requiring a new one can only be made by the LUC.
6. You have not met the procedural filing requirements pursuant to §15-15-50(b), (c), (d), and (e), HAR.

Before we can accept the documents for any further processing the procedural requirements of these sections must be met. The substantive information contained in the Petition pursuant to §15-15-50, HAR, will be reviewed further once all the procedural requirements have been met. We reserve the right to provide additional comments not included in this review. The Petition may be deemed as a proper filing upon review of the requested additional information submitted and upon determination by the Executive Officer.

Please be advised that in the event a notice of intent to intervene is filed with the LUC pursuant to §15-15-52(b), HAR, the Petitioner is required to serve a copy of the Petition upon the potential

¹ This refers to the three prior documents that were prepared to comply with Chapter 343, Hawai'i Revised Statutes, and are environmental assessments that were accepted by government agencies with a designation of Finding of No Significant Impact (FONSI): June 22, 2016 (by DLNR for a CDUA); February 8, 2008 (by DLNR for a CDUA); and June 6, 2006 (by LUC for DBA A05-757).

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intervener and file an affidavit of Petitioner or its agent attesting to its compliance with §15-15-48(b), HAR.

Due to the extensive time it has taken to review the documents and to ascertain their sufficiency, should you choose to not follow our recommendations, it is highly likely that staff will have to conduct multiple reviews and be forced to request additional corrections rather than providing a single cohesive letter containing all of staff's analysis/concerns. To avoid a protracted review and to provide you with the most efficient response possible we strongly recommend that the documents be re-filed in a more cohesive and conventional manner.

Please address the above matters as soon as possible. Should you require clarification or further assistance in this matter, please contact Scott A.K. Derrickson, AICP, of my staff at 587-3921.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Orodenker', with a long horizontal line extending to the right.

Daniel E. Orodenker
Executive Officer

c: Rodney Funakoshi, OP
Dawn Takeuchi-Apuna, Esq., deputy Attorney General
Michael Yee, Director, Hawai'i County Planning Department
Joseph Kamelamela, Esq., Corporation Counsel
Amy Self, Esq., deputy Corporation Counsel