

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of Kenneth Stanley Church and Joan Evelyn Hildal APPROVING	DOCKET NO. A18-805 PETITIONERS MOTION THAT USE COMMISSION (the
To Amend The conservation Land Use District HAR)	AGENCY ACCORDING TO HRS CHAPTER 343 and s/s 15-15-50(b),
Boundary Into The Agricultural Land Use EA/FONSI,	ACCEPT AN EXISTING
District For Approximately 3.4 Acres Of Land EXHIBIT 1, AS	ATTACHED HERETO AS
At Wailea, Island Of Hawaii, Tax Map Keys: (3) 2-9-003; 029, 060	SUFFICIENT TO SUPPORT THE PETITION

PETITIONERS MOTION THAT THE LAND USE COMMISSION
ACCEPT AN EXISTING EA ATTACHED
HERETO AS EXHIBIT 1 and resulting notice of FONSI included herein AS EXHIBIT 2
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 2016 Environmental Assessment (“EA”), Exhibit 1 to this motion, and Environmental Finding Of No Significant Impact (“FONSI”), Exhibit 2 to this motion are sufficiently applicable to 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 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 8, 2018

Kenneth Stanley Church _____

Joan Evelyn Hildal _____

Please note: the attached exhibit 1, EA has sections highlighted in yellow background text highlighting in order to show that the Petitioner(s) fully disclosed to the public the existing nonconforming agricultural uses and intended continuing nonconforming agricultural uses as of the Property as well as the planned dwelling for the Property described in the EA and resulting FONSI. Only the text portion of the EA is included in Exhibit 1 in the interest of reducing the volume of the exhibit which would have been close to 300 pages. The exhibit portion of the EA is not included as it consist of close to 200 of the 300 page exhibit. The entire EA can be found online at

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 a period now exceeding 2 years including,
2. accessory uses such as a farm dwelling, which is under construction and,
3. an agricultural use storage and processing structure which has existed since 2016,
4. the Property’s historic use 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 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 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 cultivated agricultural field crops, is believed to date back to around 1860. The historical agricultural use of the Property was for sugar cane production.

The attached exhibit #1, a 2016 EA/FONSI, supported the Petitioners’ Conservation District Use Permit Application (“CDUA”) and resulting Conservation District Use Permit (“CDUP”) for the 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 an agricultural use storage and processing structure on the Property which construction is complete.

The 2016 EA and 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 McCully(s) EA and 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.

Since purchasing the Property in 2014 the Petitioners also submitted a CDUA to the DLNR to combine and re-subdivide 3 TMK lots, 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 3 TMK lots to 3 TMK lots.

Effectively four EA and FONSI have been filed and reviewed since 2005. Two of the EA and FONSI were during the period from 2005-9 and supported the McCully(s) applications to the LUC and the DLNR. Two EA and FONSI were during the period from 2014 to 2017 were during the period from 2014 to present and supported the Petitioners applications to the DLNR. One 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 change will bring the Property’s existing “*allowed*” nonconforming agricultural use and accessory uses (a dwelling and the agricultural use storage and processing structure) into conformance with it’s 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.

In 2005 the former owners of the Property, the McCully(s), petitioned the LUC to similarly re-zone the Property, *ref., 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. 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.

Archaeological and botanical studies of the Property exist and are on file at the LUC as exhibits to the Petition **and** were also exhibits to the earlier referred McCully(s) petitions. 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 2005 FONSI

found that, the then proposed, agricultural use of the Property would have had “*no significant impact*”. The nonconforming agricultural uses, both present and historically, were subsequently **again described** in an EA and resulting FONSI for the dwelling, that is currently under construction on the Property, which EA and FONSI documents described that the 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, EA document, described that the Property was in agricultural use. The Petitioners have highlighted 37 sections of text in the EA in yellow ink background in order that the LUC may easily review that the disclosure of the nonconforming agricultural use of the Property was fully disclosed and described.

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 its makai boundary, the contiguous ocean-side coastal pali property, which is owned by the State. 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.** 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.

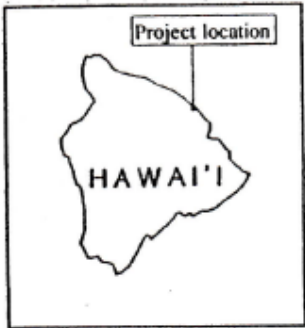
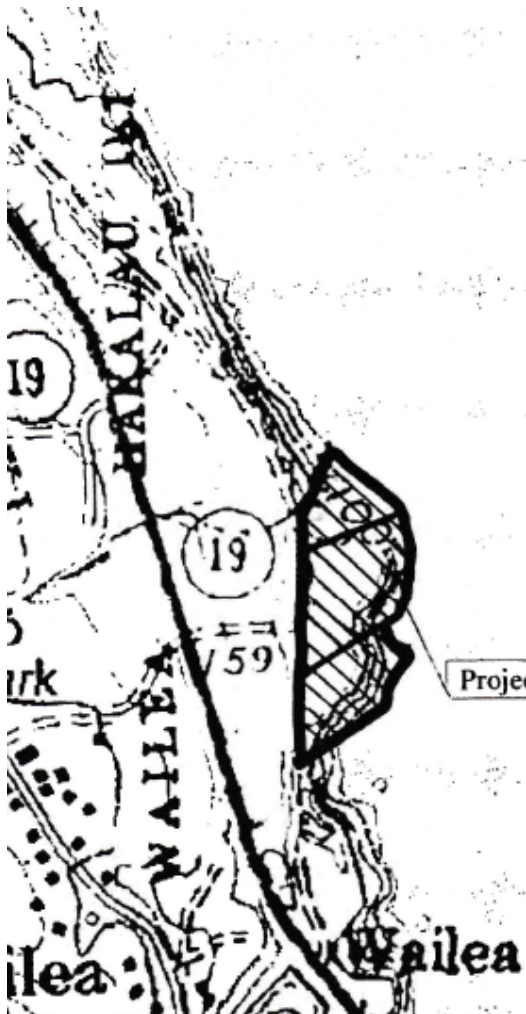


Exhibit 2

Excerpted from the

July 8, 2016 The State of Hawaii Environmental Notice

1. Church Single Family Residence FEA (FONSI) HRS §343-5 Trigger(s) HAR 343-5 (2) Propose any use within any land classified as conservation district by the state land use commission under chapter 205 District(s) Wailea, South Hilo District, Island of Hawai'i TMK(s) (3) 2-9-003: 060, 029, 013
2. Permit(s) Conservation District Use Permit, Approval of individual Waste-water system; Special Management Area (SMA) Assessment Application, Building Permit, Electrical permit, Plumbing permit, Occupancy permit
3. Approving Agency Department of Land and Natural Resources Lauren Yasaka, lauren.e.yasaka@hawaii.gov, (808) 587-0386 151 Punchbowl Street, Room 131 Honolulu, HI 96813
4. Applicant Ken Church, dockline3@yahoo.ca, (954) 261-2788, no land address
5. Consultant None
6. Status Finding of No Significant Impact (FONSI) determination.
7. Comments are not taken on this action.
8. The applicant is applying to construct a single family residence, carport, bale (a 'gazebo like open air' structure under a roof supported by columns often with seating and in this case also a hot tub), swimming pool, hot tub and outdoor cooking structure on lot 060, the north lot; site leveling; repair of an existing access road up to the applied for residence site and a 900 sq. ft. outside car parking area (The repaired road and other vehicle areas will have a crushed rock surface generally 4-6" deep. The open sided garage adjoining the residence will have a concrete pad there under. The existing access road will lead from lot 029, the middle lot to the planned residence location on lot 060, the North lot); septic system for the single family residence; solar panel array on the roof top of the planned single family residence; restoring former grass cover **and/or allowed non-conforming agricultural plantings** to unused disturbed soil areas resulting from the Project; a utility corridor in which a water line and a possible telephone line under the road leading across lot 029 to the planned residence site on lot 060.

