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

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December 11, 2018

Kenneth Church/Joan Hildal
P.O. Box 100014
Hakalau, HI 96710

Dear Mr. Church:

This letter is in response to your e-mail correspondence of December 5, 2015 (see attachment 1) sent to the Commission's e-mail address. Your e-mail stated that you had sent a package to the Commission via USPS on or around November 20, 2018; and asked that we let you know whether that was received. You described the contents as being a cover letter dated November 20; two paper copies of County of Hawai'i TMK maps and files; two paper copies of County of Hawai'i receipt of acceptance for copy of Petition; two copies of an earlier letter we had previously informed you hadn't been received (dated September 3, 2018); and, an electronic disc containing pdf copies of your Petition and Motion.

We received your correspondence on November 26, 2018 that consisted of all the hard copy and electronic documents that you identified in your December 5, 2018 e-mail. These documents are the required copies for: the original Petition filed on July 20, 2018; subsequent additional information on Petition filed on July 31, 2018, Petitioner's Motion to Have the LUC Accept a Prior EA/FONSI filed on August 10, 2018; Petitioner's Amended Motion filed on August 15, 2018; and two copies and an electronic copy of a September 3, 2018 letter intended to provide proof of service for the Petition, Petitioner's Motion and Amended Motion. Thank you for confirming that these documents were intended as copies of previous original filings and that the updated electronic copies were now all in a pdf format. As explained in Hawai'i Administrative Rules (HAR) 15-15-47, all filings by the Petitioner to the Commission must consist of "...one original, and one paper copy and one electronic copy..." These filings should be filed on the same day with our office, not spaced out over time. Timely filing of Petition documents provides Commission staff with the best opportunity to review and comment efficiently.

Your cover letter posed several questions that are answered in the following paragraphs with citations to pertinent Hawai'i Administrative Rules as they apply.

First, the Commission's rules do not state the specific format for electronic files. However, HAR section 15-15-38(d) does require parties to "...submit documents and pleadings in electronic format, as directed by the executive officer." The Executive officer and staff routinely direct anyone filing documents with the Commission to submit them in a standard pdf format that allows them to be put on our website and accessed by the public. Please provide all future electronic filings in the pdf format.

Regarding who the Petitioner must serve a Petition with and when is covered in HAR section 15-15-48(a). A Petitioner must serve copies of the Petition and all supporting documents on the county planning department and the county planning commission, the State Office of Planning (OP), and all persons with a property interest. The county representative you spoke with may have been unfamiliar with our rules; but as Petitioner you were required to serve both the Planning Department and the (Windward) Planning Commission. HAR section 15-15-48(c) directs that copies of all documents after the initial filing only need to be served on the county Planning Department and OP, at the same time the document(s) are filed with the Commission. Also, as part of the Petition itself, in the Form and Contents of Petition, HAR section 15-15-50(c)(5)(C), requires an affidavit of the Petitioner attesting to its compliance with the filing requirements in HAR section 15-15-48.

The use of certified mail is not required but can be used as a confirmation of service should that ever be raised as a question by the Commission or other parties. The submission by OP was hand-delivered to the Commission's office and was accompanied with a signed certificate of service. OP serves documents to the Commission by hand delivery due to their proximity within the same State office building. You are welcome to serve your documents to the Commission in the same manner if you prefer. Commission staff date and time stamps all paper submittals received whether via postal delivery or hand delivery. Upon receipt of filings and date stamping the Commission typically posts these documents to directly to its website for public review.

At this point in time, you have not met all the procedural requirements and your Petition remains incomplete. The most significant requirement is compliance with HAR section 15-15-50(b) for reclassifications from the conservation district to any other district to have an approved environmental impact statement or finding of no significant impact. This subsection needs to be satisfied prior to the required thirty (30) day review of your Petition for completeness (see HAR section 15-15-50(e)). Once the Commission hears and decides on your Motion, staff will review your Petition again and identify items that might remain outstanding.

The Commission has tentatively set aside a date for a hearing on your Motion in late January 2019. We intend to firm up a date in early January and will contact you then. We appreciate your patience in this matter and staff will continue to work with you to understand the Commission's process and filing requirements. Should you have any questions, please contact Scott A.K. Derrickson, AICP, of my staff at 587-3921.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Daniel E. Orodener
Executive Officer

cc: Leo Asuncion, State Office of Planning
Michael Yee, County of Hawai'i Planning Department