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LAND USE COMMISSION  
STATE OF HAWAII

2019 FEB -6 A 9 03

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Attorneys for Petitioner  
HONUA`ULA PARTNERS, LLC

**BEFORE THE LAND USE COMMISSION**

**OF THE STATE OF HAWAI'I**

In the Matter of the Petition of	)	Docket No. A94-706
	)	
KAONOULU RANCH to Amend the	)	HONUA`ULA PARTNERS,
Agricultural Land Use District Boundary into	)	LLC'S MEMORANDUM IN
the Urban Land Use District for approximately	)	OPPOSITION TO
88 acres at Kaonoulu, Makawao-Wailuku,	)	INTERVENORS' MOTION TO
Maui, Hawaii; Tax Map Key Nos. 2-2-02:por.	)	STRIKE PORTIONS OF THE
of 15 and 3-9-01:16	)	PETITIONERS' RESPONSES
	)	FILED JANUARY 31, 2019;
	)	CERTIFICATE OF SERVICE
_____	)	

**HONUA`ULA PARTNERS, LLC'S MEMORANDUM IN  
OPPOSITION TO INTERVENORS' MOTION TO STRIKE PORTIONS  
OF THE PETITIONERS' RESPONSES FILED JANUARY 31, 2019**

Comes now, HONUA`ULA PARTNERS, LLC, by and through its attorneys,  
MATSUBARA, KOTAKE & TABATA, and respectfully submits its Memorandum In  
Opposition to Intervenor's Motion to Strike Portions of the Petitioners' Responses, filed  
January 31, 2019.

Intervenors move to strike declarations, exhibits and discussion relating to the substantial commencement issue that were included in the Honua`ula Partners' Memorandum In Opposition to Intervenors' Motion to Conduct Phase II of Contested Case, filed January 10, 2019.

Facts establishing the existence of substantial commencement were necessary because Intervenors themselves raised the substantial commencement issue in their Motion to Conduct Phase II of Contested Case, dated November 30, 2018 ("Motion to Conduct Phase II"). The LUC rules allow opposing parties to file counter affidavits and memorandums in opposition to motions. See §15-15-70(e), Hawaii Administrative Rules ("HAR").

Intervenors raised the substantial commencement issue because the substantial commencement issue must be decided before the LUC can take action to revert the land. DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC, 134 Hawai'i 187, 212, 339 P.3d 685, 710 (2014).

Substantial commencement is the first issue that must be decided once an order to show cause ("OSC") is issued. Id. Because the substantial commencement issue has not been determined in this case, the OSC proceeding in this case is procedurally defective. The Bridge Aina Lea case states that OSC hearing procedures under HAR § 15-15-93 to revert the land can only be conducted after a finding that there has been no substantial commencement. Bridge Aina Lea, 134 Hawaii at 213, 339 P.3d at 711, fn. 14.

The prosecution of Phase I in this case that has already occurred under HAR § 15-15-93, therefore, improperly presupposes the non-existence of substantial commencement and creates the appearance of prejudging and raises potential due process concerns. See Mauna Kea Anaina Hou v. Board of Land and Natural Resources, 136 Hawaii 376, 389, 363 P.3d 224, 237 (2015) (In an adjudicatory proceeding before an administrative agency, due process of law generally prohibits decisionmakers from being biased, and more specifically, prohibits decisionmakers from prejudging matters and the appearance of having prejudged matters).

Intervenors describe their Motion to Conduct Phase II as a procedural motion and, therefore, it is proper to discuss the procedural defects in Intervenors' motion and in this docket, including but not limited to the substantial commencement issue, and the 365 day statutory deadline in HRS § 205-4(g) which is jurisdictional and cannot be waived. See Hamer v. Neighborhood Housing Services of Chicago, 138 S.Ct. 13, 15-17, 199 L.Ed.2d 249 (2017) (An appeal filing deadline prescribed by statute is considered "jurisdictional," .... The jurisdictional defect is not subject to waiver or forfeiture and may be raised at any time in the court of first instance and on direct appeal).

Therefore, the substantial commencement issue is both a procedural issue and a substantive issue that has been raised by Intervenors, and facts and argument relating to substantial commencement, and other procedural issues, are relevant to Intervenors' Motion to Conduct Phase II, and Intervenors' Motion to Strike should be denied.

DATED: Honolulu, Hawai'i, February 6, 2019.



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88 acres at Kaonoulu, Makawao-Wailuku,	)	
Maui, Hawaii; Tax Map Key Nos. 2-2-02:por.	)	
of 15 and 3-9-01:16	)	
_____	)	

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct file-marked copy of the foregoing document was duly served upon the following parties VIA ELECTRONIC MAIL and AS INDICATED BELOW at their last known address on February 6, 2019:

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and Daniel Kanahale

DATED: Honolulu, Hawai'i, February 6, 2019.



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