

2019 APR 30 P 12:10



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A18-805
)	
KENNETH STANLEY CHURCH AND	)	ORDER DETERMINING (1) THAT THE
JOAN EVELYN HILDAL	)	LAND USE COMMISSION AGREES TO BE
	)	THE ACCEPTING AUTHORITY
To Amend The Conservation Land Use	)	PURSUANT TO CHAPTER 343, HAWAI'I
District Boundary Into The Urban Land	)	REVISED STATUTES; AND (2) DEFERS
Use District For Approximately 3.4 Acres	)	PETITIONER'S REQUEST TO ACCEPT AN
of land at Wailea, Island of Hawai'i, State	)	EXISTING ENVIRONMENTAL
of Hawai'i, consisting of Tax Map Key	)	ASSESSMENT AND FINDING OF NO
Nos. (3) 2-9-003: 029 (por.) and 060 (por.)	)	SIGNIFICANT IMPACT IN SUPPORT OF
	)	ITS PETITION
)	
)	
	)	CERTIFICATE OF SERVICE
)	

ORDER DETERMINING (1) THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI'I REVISED STATUTES; AND (2) DEFERS PETITIONER'S REQUEST TO ACCEPT AN EXISTING ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT IN SUPPORT OF ITS PETITION

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE STATE LAND USE COMMISSION, HONOLULU, HAWAII.

April 30th, 2019

DATE

by

EXECUTIVE OFFICER



LAND USE COMMISSION
STATE OF HAWAII

2019 APR 30 P 12:10

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

KENNETH STANLEY CHURCH AND
JOAN EVELYN HILDAL

To Amend the Conservation Land Use
District Boundary Into the Agricultural Land
Use District Boundaries for Approximately
3.4 acres of land, consisting of Tax Map
Key Nos. (3) 2-9-003: 029 and 060 at
Wailea, Island and County of Hawai'i, State
of Hawai'i

) DOCKET NO. A18-805
)
) ORDER DETERMINING (1) THAT THE
) LAND USE COMMISSION AGREES TO
) BE THE ACCEPTING AUTHORITY
) PURSUANT TO CHAPTER 343, HAWAI'I
) REVISED STATUTES; AND (2) DEFERS
) PETITIONER'S REQUEST TO ACCEPT
) AN EXISTING ENVIRONMENTAL
) ASSESSMENT AND FINDING OF NO
) SIGNIFICANT IMPACT IN SUPPORT OF
) ITS PETITION
)

ORDER DETERMINING (1) THAT THE LAND USE COMMISSION AGREES TO BE THE
ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI'I REVISED
STATUTES; AND (2) DEFERS PETITIONER'S REQUEST TO ACCEPT AN EXISTING
ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT IN
SUPPORT OF ITS PETITION

On July 20, 2018, Kenneth Stanley Church and Joan Evelyn Hildal
("Petitioner") filed a Petition for a District Boundary Amendment and Exhibits 1-
45, 47-48, 50-56, 58-59, 61-78, 80-83, 85-96, and 98-119.¹ The request was to
reclassify approximately 3.4 acres of land at Wailea, Island of Hawai'i, consisting

¹ The following numbered exhibits do not exist in the Petitioner's filings 46, 49, 57, 60, 79, 84, and 97.

of Tax Map Key Nos. (3) 2-9-003: 029 and 060, from the State Conservation District to the State Agricultural District. The Petitioner submitted a filing fee for the Petition written by personal check. Staff informed the Petitioner that pursuant to Hawai'i Administrative Rules ("HAR") §15-15-45.1(b), the filing fee for a district boundary amendment is to be paid via a cashier's check. At that time, Petitioner filed only a single copy of Petition and a compact disk with electronic files of Petition documents, not all of which were in a readily useable PDF format. Staff informed Petitioner that based on a cursory initial review, that their submittal was disorganized and in an unconventional format that would require additional work to be acceptable. Staff provided Petitioner with references to the filing and content requirement sections of the Commission's rules and examples of proper petition filing formats.

On July 31, 2018, Petitioner filed a list providing page numbers within their Petition filing that were intended to supply the information as required in HAR §15-15-50(c). Petitioner also submitted a cashier's check with the required filing fee for a district boundary amendment.

On August 1, 2018, the Commission sent a letter deeming the Petition an incomplete filing and identified several procedural and content deficiencies that would need to be corrected. Staff informed Petitioner that they would need to request, by motion, the Commission to allow a previous Environmental Assessment (EA)/Finding of No Significant Impact ("FONSI" that Petitioner had received to serve as sufficient to meet obligations under HAR §15-15-50(b).

A State land use district boundary amendment does not, by itself, require either an EA or Environmental Impact Statement (“EIS”). However, there is a "trigger" for Commission action pursuant to HRS §343-5(a)(7); an environmental assessment is required for any proposed reclassification of any land within the State Conservation District. The Petitioner is required to file an approved or accepted EA/FONSI as part of the Petition filing pursuant to HAR §15-15-50(b).²

On August 6, 2018, the Commission sent a receipt for the Petition filing fee to the Petitioner.

On August 10, 2018, Petitioner filed a Motion that the Land Use Commission Accept an Existing EA and Resulting Notice of FONSI as Sufficient to Support the Petition, and Exhibit 1. Filing was incomplete, consisting of only a single original.

On August 13, 2018, the Commission sent a letter informing Petitioner that their recent motion filing was incomplete and did not meet requirements of HAR §15-15-47. Staff informed Petitioner that until their submittals conformed to our requirements that no further processing of their Motion would occur.

On August 15, 2018, Petitioner filed an Amended Motion that the LUC Accept an Existing EA/FONSI as Sufficient to Support the Petition, and Exhibits 1-3, and a compact disk of electronic files. Filing was incomplete, consisting of a single original and lacking required affidavits.

² Petitioner has filed a previously accepted EA/FONSI by DLNR in 2016; and, references other previously accepted EA/FONSI by both the LUC and DLNR prior to 2016.

On September 5, 2018, Petitioner filed a copy of its Amended Motion that the LUC Accept an Existing EA/FONSI as Sufficient to Support the Petition, and an electronic file.

On October 31, 2018, the State Office of Planning ("OP") filed a Response to Petitioner's Amended Motion.

On November 15, 2018, Petitioner filed a copy of its Petition, Motion, Amended Motion, and electronic files in PDF format for review.

On November 16, 2018, Commission staff corresponded with Petitioner regarding its November 15, 2018 filing. Since the filing appeared to be different from initial filing, staff requested Petitioner clarify whether it was an exact copy of its first filing. Also, staff attempted to answer several questions Petitioner had raised in its cover letter in the November 15, 2018 filing.

On November 26, 2018, the County of Hawai'i Planning Department ("County") filed its Response to Petitioner's Amended Motion.

On November 26, 2018, Petitioner filed paper and electronic files of: Petition, updated information for Petition exhibits, Petitioner's Motion and Amended Motion; and affidavits. Additionally, the filing also contained two copies of a previously unfiled September 3, 2018 letter to the Commission with proof of service for the Petition, Motion, and Amended Motion, and electronic files for each.

On December 5, 2018, Petitioner requested verification of its filing on or after November 20, 2018, and, asked several questions about filing requirements.

On December 11, 2018, the Commission sent a letter verifying receipt of Petitioner's filing on November 26, 2018, and responses to Petitioner's questions on filing requirements. Petitioner was informed that their filing still failed to meet all procedural requirements and remains incomplete.

On January 14, 2019, the Commission mailed the Meeting Notice and Agenda for the January 23, 2019, meeting on Petitioner's Motion to be held in Hilo, Hawai'i to the Parties, the Statewide and Hawai'i mailing lists. The Meeting Notice and Agenda were also filed with the Lieutenant Governor's office and posted electronically to the Commission website.

On January 23, 2019, the Commission met at Hilo, Hawai'i, to consider Petitioner's Motion to have the Commission (i) determine that it will be the accepting agency for an environmental statement under HRS Chapter 343; and, (ii) deem as sufficient, for purposes of their Petition filing, a previously accepted EA/FONSI by the State Department of Land and Natural Resources ("DLNR") done in June 2016. Ken Church and Joan Hildal appeared as the Petitioner. Dawn Apuna, Esq., and Aaron Setogawa appeared on behalf of the State Office of Planning ("OP"). Ronald Kim, Esq., and Jeff Darrow appeared on behalf of the County of Hawai'i.

At the meeting, there was no public testimony. Petitioner provided a summary of their Motion: that the proposed reclassification of lands within the State Conservation District triggers HRS Chapter 343 compliance; and that the Commission is the appropriate accepting authority for an EA/EIS because the filing of the Petition requires the earliest practicable time to determine whether an EIS is warranted. The County of Hawai'i and OP had no objections to the motion.

During discussion, the Commissioners discussed that the Commission is clearly the appropriate accepting authority for HRS Chapter 343 compliance; however, they felt a need for an opportunity for a thorough review by the Commission and public of a draft EA rather than accepting one previously approved by DLNR for construction of a single-family dwelling. Commissioner Scheuer indicated that the Commission would defer action on acceptance of movant's prior FEA/FONSI and that movant could choose to resubmit or update their previous EA documents to the Commission and OEQC in order to allow for a public review process.

Following discussion, a motion was made and seconded to:

1. identify the Land Use Commission as the "accepting authority" to review and accept the applicant's proposed actions pursuant to HRS Chapter 343;
2. defer Petitioner's request to accept a prior Final EA/Finding of No Significant Impact ("FEA/FONSI") issued by DLNR as sufficient to proceed with their Petition; and,
3. direct the Petitioner to proceed directly to resubmit an updated EA to OEQC for the Commission, government agencies, and public to review during a 30-day public review and comment period.

There being a vote tally of 7 ayes, 0 nays, and 1 excused, the motion carried.

ORDER

This Commission, having duly considered Petitioner's pleadings and motion, the pleadings and comments of the County and OP in this proceeding, and a motion having been made at its meeting on January 23, 2019, at Hilo, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS that the Commission agrees to be the accepting authority pursuant to HRS Chapter 343; and

DEFERS Petitioner's request to accept a previously approved FEA/FONSI by DLNR as sufficient to proceed with the Petition; and,

FURTHER ORDERS and directs the Petitioner to resubmit an updated EA to OEQC for the Commission, government agencies, and public to review during a 30-day public review and comment period.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is filed and certified by this Commission.

Done at Honolulu, Hawai'i, this 30th, day of April, 2019, per motion on January 23, 2019 in Hilo, Hawai'i.

APPROVED AS TO FORM

Randall S. Ashiyama
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAI'I

By [Signature]
JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

04/30/2019

Certified by: [Signature]
DANIEL E. ORODENKER
Executive Officer
State Land Use Commission

LAND USE COMMISSION
STATE OF HAWAII

2019 APR 30 P 12: 11



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A18-805
)	
KENNETH STANLEY CHURCH AND)	
JOAN EVELYN HILDAL)	
	)	CERTIFICATE OF SERVICE
To Amend The Conservation Land Use)	
District Boundary Into The Urban Land)	
Use District For Approximately 3.4 Acres)	
of land at Wailea, Island of Hawai'i, State)	
of Hawai'i, consisting of Tax Map Key)	
Nos. (3) 2-9-003: 029 (por.) and 060 (por.))	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DETERMINING WHETHER THE LAND USE COMMISSION AGREES THAT PETITIONER'S DRAFT ENVIRONMENTAL ASSESSMENT WARRANTS AN ANTICIPATED FINDING OF NO SIGNIFICANT IMPACT IN SUPPORT OF ITS PETITION was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

CERTIFIED MAIL KENNETH STANLEY CHURCH
JOAN EVELYN HILDAL
P.O. Box 100014
Hakalau, Hawai'i 96710

HAND Director
DEL.: Office of Planning
P. O. Box 2359
Honolulu, Hawai'i 96804-2359

HAND DAWN TAKEUCHI-APUNA, Esq.
DEL.: Deputy Attorney General
425 Queen Street
Honolulu, Hawai'i 96813

CERTIFIED MICHAEL YEE, Director
MAIL: County of Hawai'i, Department of Planning
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

CERTIFIED JOSEPH K. KAMELAMELA, Esq.
MAIL: RONALD KIM, Esq.
Corporation Counsel
County of Hawai'i
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, Hawai'i 96720

Dated April 30th 2019

Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Officer