

2019 APR 30 P 12:11



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A18-805
)	
KENNETH STANLEY CHURCH AND	)	FINDINGS OF FACT, CONCLUSIONS OF
JOAN EVELYN HILDAL	)	LAW, AND DECISION AND ORDER
	)	DETERMINING WHETHER THE LAND
To Amend The Conservation Land Use	)	USE COMMISSION AGREES THAT
District Boundary Into The Urban Land	)	PETITIONER'S DRAFT
Use District For Approximately 3.4 Acres	)	ENVIRONMENTAL ASSESSMENT
of land at Wailea, Island of Hawai'i, State	)	WARRANTS AN ANTICIPATED FINDING
of Hawai'i, consisting of Tax Map Key	)	OF NO SIGNIFICANT IMPACT IN
Nos. (3) 2-9-003: 029 (por.) and 060 (por.)	)	SUPPORT OF ITS PETITION
)	
)	
	)	CERTIFICATE OF SERVICE
)	

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

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: 11

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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 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
)
)
)
)
)

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

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.

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 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 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.

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

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.

Petitioner. Also present were Dawn Apuna, Esq., and Rodney Funakoshi on behalf of the State Office of Planning (“OP”); and Ronald Kim, Esq., and Jeff Darrow on behalf of the County of Hawai`i. There was no public testimony.

At the hearing, following discussion, a motion was made, seconded, and approved to: identify the Commission as the accepting authority to review and accept the applicant’s proposed actions pursuant to HRS Chapter 343; to defer Petitioner’s request to accept a prior Final EA/FONSI issued by DLNR as sufficient; and, directed the Petitioner to resubmit an updated EA to OEQC for the Commission, government agencies, and the public to review during a 30-day public review and comment period.

On March 13, 2019, Petitioner filed an updated draft EA and exhibits 1-23 for consideration by the Commission.

On March 18, 2019, the Commission mailed meeting notice and agenda for the March 27-28, 2019 meeting in Kona, Hawai`i to the parties, and the Statewide and Hawai`i County mailing lists.

On March 28, 2019, the Commission met in Kona, Hawai`i to consider Petitioner’s updated draft EA and determine whether the proposed actions would have a significant effect or impact on the environment; and, whether to require the Petitioner to prepare an EA or an Environmental Impact Statement (“EIS”). Ken Church and Joan Hildal appeared as Petitioner. Also present were Dawn Apuna, Esq., on behalf of the State Office of Planning (“OP”); and Ronald Kim, Esq., and Duane Kanuha on behalf of the County of Hawai`i. There was no public testimony. Neither the County nor OP expressed any objections to Petitioner’s draft EA.

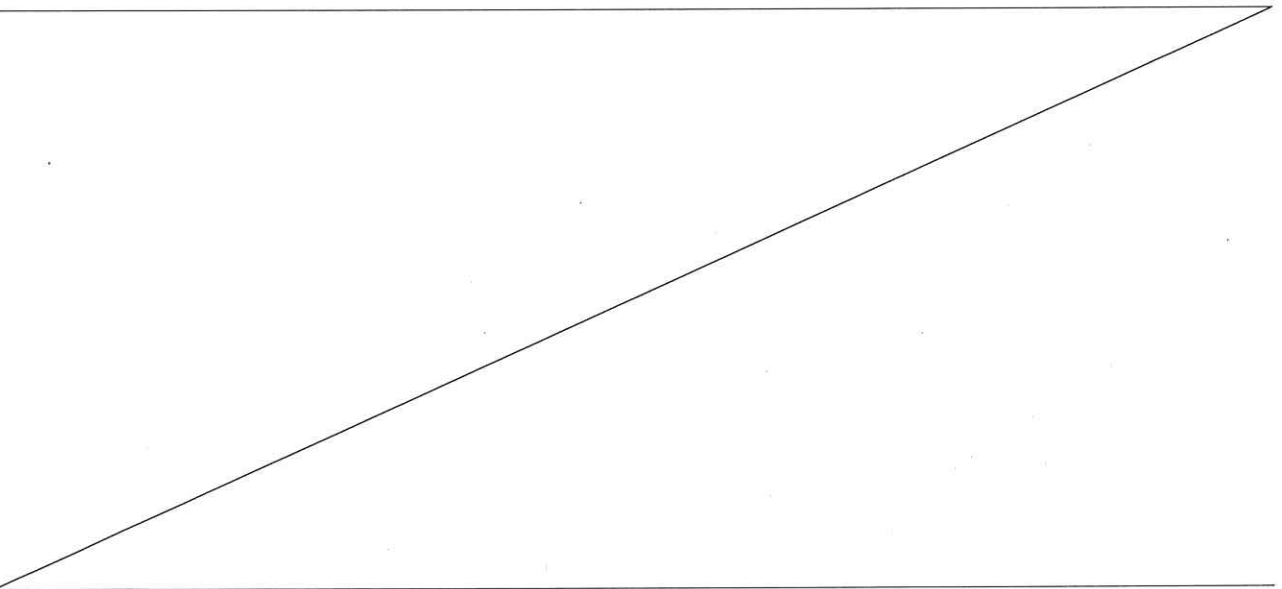
During questioning, the Commission determined that the Petitioner’s proposed action was the reclassification of the subject property from the State Conservation District to the State Agricultural District. The Petitioner stated that this would bring the State land use district classification into

alignment with the historic and current use of the property of agricultural activities. In addition, the Petitioner stated that no additional uses are proposed beyond those that are already occurring and permitted. Commissioners indicated that based on the information provided in the 2019 draft EA and the Petitioner's proposed actions that there does not appear to be a significant impact on the environment.

At the hearing, following discussion, a motion was made and seconded to:

1. Make a determination of an Anticipated Finding of No Significant Impact ("AFONSI") for Petitioner's submitted draft EA as the proposed actions do not appear to have a significant effect or impact on the environment; and,
2. direct the Petitioner to work with LUC staff to put together all necessary documents required by OEQC pursuant to HAR §11-200-11.1 for publication and public review of the draft EA.

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



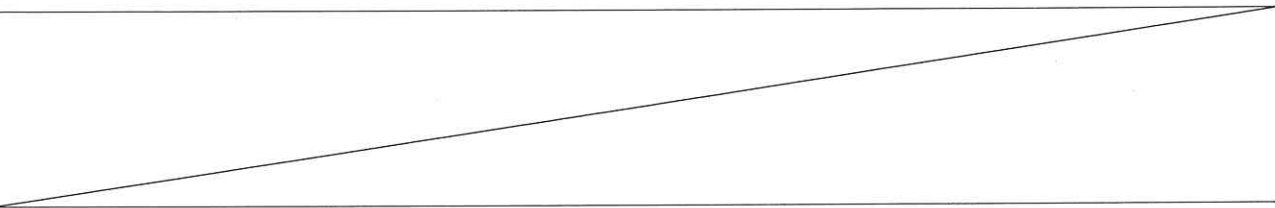
DECISION AND ORDER

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 March 28, 2019, at Kona, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, HAR, and there being good cause for the motion,

HEREBY FINDS that the Commission has made a determination of an Anticipated Finding of No Significant Impact ("AFONSI") for Petitioner's submitted draft EA because:

- Petitioner's submittals (2019 draft EA; 2016 FEA/FONSI; and 2005 FEA/FONSI) and proposed actions do not appear to have a significant effect or impact on the environment;
- Petitioner's draft EA is required for reclassification of lands within the State Conservation District; and,
- Petitioner's prior FEA/FONSI covered uses that might have environmental impact which are now existing on the Property and no new uses beyond those are proposed on the Property pursuant to HRS Chapter 343.

AND ORDERS and directs the Petitioner to work with LUC staff to put together all the necessary documents required by OEQC under HAR §11-200-11.1 for publication of an environmental assessment and 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 March 28, 2019 in Kona, Hawai'i.

APPROVED AS TO FORM

Randall S. Ashiyang
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

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