

May 22, 2019

State of Hawaii Land Use Commission  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

LAND USE COMMISSION  
STATE OF HAWAII

2019 MAY 29 A 7:39

Attn: Scott Derrickson

Dear Mr. Derrickson,

**Subject: A letter (the "Letter") from the County of Hawaii, signed by a staff representative on behalf of Michael Yee, Planning Director to Scott Derrickson, dated May 15, 2019 which was also copied to myself and my wife Joan and (??) the DLNR's OCCL which discussed a Draft Environmental Assessment for Petition A18 805 to rezone our property (the "Property") at Waialea from the State Conservation District to the State Agricultural District.**

My wife and I have read and considered the contents of the Letter and find that it is substantially lacking regarding relevant facts and particularly a statement in the final paragraph on page 1 of the Letter which stated *'No other approvals or permits have been provided to either of the subject parcels.'* is incorrect.

While the Letter encouraged *'If you have any questions regarding this letter, please contact Alex Roy of the Planning Department staff.....'* when we contacted Mr. Roy regarding same and attempted to discuss deficiencies in the Letter he advised that it was *'not a letter of particular significance but rather a formality'* and that deficiencies, if they existed, *'were therefore not necessary to correct'*. None-the-less we feel that if the letter has significance regarding our Petition A18 805 and/or the Draft EA we offer the following.....

First, as an observation, we comment that our telephone discussion with Mr. Roy was difficult and strained. At several points during our attempts to draw Mr. Roy's attention to deficiencies in the letter he described a desire to *'end the discussion "now"'* for an unknown reason. He encouraged that we write any comments that we may have regarding the Letter to Mr. Yee. Therefore we are copying this letter to you, also to Mr. Yee.

We add the following information for the record.....

A SMA Determination request was also made by us to the County regarding our nonconforming agricultural use of the Property and another Determination request was also made to the County regarding our planned residence on the Property. In both cases the County issued an official letter of Determination that both were exempt from a SMA permit.

The County also issued a building permit, electrical and plumbing permits for our residence (the "Residence") on the Property which is presently continuing under construction.

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Our official Property file at the County ought also to reflect that we were issued Department of Health permits for our septic systems for both the residence and the structure accessory to our agricultural use of the Property (the "Accessory Structure").

While it is true that a building permit for the Accessory Structure does not exist, as it is not a County requirement for same, we filed the required Declaration of Compliance (Act 203) with the County. In same regard there also exists a County plumbing permit for same and a notice of completed septic system filed.

The County's property tax division has also conducted inspections of the Property and have confirmed our agricultural use of the Property which was reflected in a substantial reduction in Property taxes.

The Letter also describes SHPD considerations. For the record the County Property file for our Property does contain a professionally authored archaeological and historical study regarding the Property. Regarding same, the SHPD issued a letter which confirmed that there existed no particular concerns and that no further work was required.

The Letter also describes that the County is in the process of re-evaluating shoreline setback rules and regulations. For the record a professional study of the Property regarding same is on file also with the County which described that an 80 ft. setback from the makai pali border of the Property was sufficient. Both the Residence and the Structure Accessory have been located substantially back from same and well in excess of the 80 ft. recommendation. Current County SMA setback requirements are believed to be 40 ft.

The Letter also describes that the Property is located in the "Open" district described in the County's LUPAG mapping system. Petition A18 805 and the draft EA have a copy of a transcript of a County's representative, Norman Hayshi, to LUC petition A05 757 which described, among other things, that.....

- agricultural use of the Property is a County allowed use as it is zoned A20a
- agricultural use buildings, accessory structures, and uses incidental to same are also allowed by the County
- farm dwellings and residences are also an allowed use
- the County's Open designation was made simply to reflect the fact that the Property was already zoned in the State's Conservation District

despite the LUPAG Open designation.

The subject Letter describes '*previous permitting*' as it seemingly refers only to County '*permitting*'. For the record the County file for the Property ought to **also**

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contain copies of the following permitting and determinations etc. ....

- a SPA for fruit tree plantings,
- a SPA for a garden,
- a SPA for the Structure Accessory to the agricultural use of the Property,
- a CDUP for a residence on the Property,
- a Determination that the Petitioner(s) may 'grow sugar cane' which Determination was never requested and copies of a related correspondence file which spanned a period measured in years without a formal Determination that we may conduct general agricultural use of the Property.

If you have any questions regarding this letter please respond by email to dockline3@yahoo.ca or by USPS.

Sincerely,

Handwritten signatures of Ken Church and Joan Hildal. The signature for Ken Church is on the left, and the signature for Joan Hildal is on the right.

Ken Church and Joan Hildal

c.c. Michael Yee, County of Hawaii by U.S.P.S.  
Alex Roy, County of Hawaii, [alex.yoy@hawaiicounty.gov](mailto:alex.yoy@hawaiicounty.gov)  
Jeff Darrow, County of Hawaii, [jeff.darrow@hawaiicounty.gov](mailto:jeff.darrow@hawaiicounty.gov)