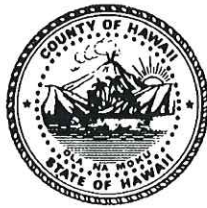


Harry Kim
Mayor



Joseph K. Kamelamela
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Renee N. C. Schoen
Assistant Corporation
Counsel

2019 SEP 17 A 9:06

**COUNTY OF HAWAI'I
OFFICE OF THE CORPORATION COUNSEL**

101 Aupuni Street, Suite 325 • Hilo, Hawai'i 96720 • (808) 961-8251 • Fax (808) 961-8622

TRANSMITTAL

DATE: September 12, 2019

TO: State Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804

FROM: Liza Osorio, Legal Technician I to
Ronald Kim, Deputy Corporation Counsel

RE: In the Matter of the Petition of KU'ULEI HIGASHI KANAHELE and AHIENA KANAHELE, individuals, for a Declaratory Order Concerning the invalid classification of the de facto and improper industrial use precinct on approximately 525 acres of State Land Use Conservation District Lands located in Mauna Kea and Hilo, County of Hawai'i, Tax Map Key No. (3) 4-4-015:009 (por.)

<i>COPIES/ITEMS</i>	<i>DATE</i>	<i>DESCRIPTION</i>
Original and (1) copy	09-12-19	COUNTY OF HAWAI'I PLANNING DEPARTMENT'S STATEMENT OF POSITION AND NON-APPEARANCE AS TO PETITION FOR DECLARATORY ORDERS; CERTIFICATE OF SERVICE

TRANSMITTED FOR:

- | | |
|--|---|
| <input type="checkbox"/> Your information and files | <input type="checkbox"/> Your approval |
| <input type="checkbox"/> Your signature and return | <input type="checkbox"/> Your review and comments |
| <input type="checkbox"/> Your signature and forwarding
as noted below | <input type="checkbox"/> See remarks below |
| <input type="checkbox"/> Per your request | <input checked="" type="checkbox"/> Filing with the LUC |

REMARKS: Enclosed for filing is an original and one copy of the above referenced document. Should you have any questions with regard to the enclosed please do not hesitate to contact our office. Thank you.

JOSEPH K. KAMELAMELA 2493
Corporation Counsel

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LAND USE COMMISSION
STATE OF HAWAII
2019 SEP 17 A 9:06

Attorneys for County of Hawai'i
Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Telephone: (808) 961-8288

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

KU'ULEI HIGASHI KANAHELE and
AHIENA KANAHELE, individuals, for a
Declaratory Order Concerning the invalid
classification of the de facto and improper
industrial use precinct on approximately 525
acres of State Land Use Conservation District
Lands located in Mauna Kea and Hilo, County
of Hawai'i, Tax Map Key No. (3) 4-4-015:009
(por.)

DOCKET NO. DR-19-67

COUNTY OF HAWAII PLANNING
DEPARTMENT'S STATEMENT OF
POSITION AND NON-APPEARANCE AS TO
PETITION FOR DECLARATORY ORDERS;
CERTIFICATE OF SERVICE

**COUNTY OF HAWAII PLANNING DEPARTMENT'S STATEMENT OF POSITION
AND NON-APPEARANCE AS TO PETITION FOR DECLARATORY ORDERS**

The County of Hawai'i Planning Department ("County"), by and through its undersigned attorneys, hereby provides a Statement of Position and Non-Appearance as to the above-captioned Petition for Declaratory Orders to the State Land Use Commission filed on September 3, 2019 ("Petition").

The Petition requests a public hearing for the State Land Use Commission (“Commission”) to make declaratory orders concerning the allegedly improper use of approximately 525 acres of land within the State Land Use Conservation District. The County does not have any interests in the Petition or requested declaratory orders because the County has no zoning jurisdiction over lands within the State Land Use Conservation District, including the lands at issue in the Petition. Accordingly, the County does not intend to appear at any public hearing which the Commission may schedule regarding this matter.

The Hawai‘i Revised Statutes (“HRS”) expressly state that the County does not have jurisdiction over zoning within the State Land Use Conservation District. Counties generally have the power to control land use through zoning pursuant to HRS § 46-4, but HRS § 205-5(a) provides that “the powers granted to counties under section 46-4 shall govern the zoning within the [State land use] districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.” HRS Chapter 183C contains provisions for the Department of Land and Natural Resources to zone and control the use of lands within the Conservation District separately and independently from the County, with no input required from the County. HRS §§ 183C-3 and 183C-4.

The Petition requests orders that: 1) the current uses of the area are not appropriate within the Conservation District, but are industrial and should be within the Urban District, 2) further uses of the area require district boundary amendment procedures to reclassify the lands from the Conservation District to the Urban District, and 3) the cumulative impact of current uses require a district boundary amendment to reclassify the lands from the Conservation District to the Urban District (Petition at 1, 15). All of these requested orders are premised on the lands at issue presently being classified within the State Land Use Conservation District. As the County does not have any zoning or other land use jurisdiction over the State Land Use Conservation

District lands at issue herein, the County does not have interests in the Petition or requested declaratory orders.


Furthermore, the County is not required to be a party in a petition for a declaratory order by statute or rule, in contrast to a petition for a district boundary amendment. See HRS § 205-4(e)(1); HAR § 15-15-52(a) (stating that the County is a required to be a party to a district boundary amendment proceeding). As stated above, in the present case the Petition raises concerns about the allegedly improper use of lands in the State Land Use Conservation District rising to the level of a *de facto* district boundary classification; the Petition itself is not for a boundary amendment and states that it does not relate to any existing Commission docket for a district boundary amendment or special permit (Petition at 2).

Due to the facts above, the County respectfully submits that it does not intend to appear at any hearing which the Commission may schedule on the Petition based on its position that the Petition only pertains to lands that are classified within the State Land Use Conservation District and not subject to County zoning or other County land use controls.

Dated: Hilo, Hawai'i, September 12, 2019.

COUNTY OF HAWAI'I, PLANNING
DEPARTMENT

By



RONALD KIM
Deputy Corporation Counsel
Its attorney

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

LAND USE COMMISSION
STATE OF HAWAII

2019 SEP 17 A 9:07

In the Matter of the Petition of

DOCKET NO. DR-19-67

KU'ULEI HIGASHI KANAHELE and
AHIENA KANAHELE, individuals, for a
Declaratory Order Concerning the invalid
classification of the de facto and improper
industrial use precinct on approximately 525
acres of State Land Use Conservation District
Lands located in Mauna Kea and Hilo, County
of Hawai'i, Tax Map Key No. (3) 4-4-015:009
(por.)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by mailing
the same, postage prepaid, on September 12, 2019:

MARY ALICE EVANS, Director
Office of Planning
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

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Hilo, Hawai'i 96817

Attorney for Petitioners
KU'ULEI HIGASHI KANAHELE and AHIENA KANAHELE

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

Dated: Hilo, Hawai'i, September 12, 2019.

COUNTY OF HAWAI'I, PLANNING
DEPARTMENT

By


RONALD KIM

Deputy Corporation Counsel
Its attorney