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June 22, 2020

TO: Land Use Commission, State of Hawaii
P.O. Box 2359
Honolulu, HI 96804

RE: Petitions for Declaratory Order DR20-69 & DR20-70
Meeting Scheduled for June 25, 2020

The undersigned has further information to present to the Commission.

1. Stated on the LUC website –Current LUC Administrative Rules – 10/18/19,
15-15-03 - Definitions:
“Farm Dwelling means a single family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling” - copy attached.
2. In my previous memorandum to the LUC dated June 19, 2020, I stated that property owners advertising and renting their homes as STVRs were in violation of the CC&Rs of Kohala Ranch. That statement was incorrect. The violation is of the Rules of Kohala Ranch. Attached is a copy of the applicable portion of those Rules.

Please note that in neither the LUC Administrative Rules nor the Kohala Ranch Rules is there any indication that Short Term Vacation Rentals being advertised and rented as resort-style commercial enterprises are in any way permitted.

A handwritten signature in black ink, appearing to read "Peter W. Eising". The signature is written in a cursive style with a large, circular initial.

"Agency hearing" refers only to a hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14, HRS.

"Agricultural park" means the same as in section 166-2, HRS.

"Building" means any structure having a roof, including, but not limited to, attached carports and similar structures.

"Chairperson" means the chairperson of the commission.

"Chief clerk" means the person who is responsible for receiving, recording, and preserving the records of all matters brought before the commission.

"Commission" means the land use commission of the State of Hawai'i.

"Commissioner" means a member of the commission.

"Contested case" means a proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

"District" means an area of land, including lands underwater, established as an urban, agricultural, conservation, or rural district.

"Dwelling" means a building designed or used exclusively for single family residential occupancy, but not including house trailer, multi-family unit, mobile home, hotel, or motel.

"Economic feasibility" means the degree to which the market demand for the proposed project, development, or use by the petitioner is accurately estimated and appears to be substantial enough to indicate the probability of a viable endeavor to justify the boundary amendment.

"Executive officer" means the individual appointed by the commission to be the administrative officer of the commission.

"Facsimile" means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

"Farm dwelling" means a single-family dwelling located on and used in connection with a farm or where

agricultural activity provides income to the family occupying the dwelling.

"Filing" means the submittal of documents with the chief clerk. A document will be considered filed at the time it is received in the chief clerk's office, as evidenced by the date and time endorsed on the document by or at the direction of the chief clerk. Unless otherwise specifically provided in these rules, electronic or facsimile transmission of documents to the chief clerk or executive officer of the commission does not constitute filing. This definition is to be distinguished from the definition for "proper filing" for petitions to amend a district boundary.

"Hearings officer" means a person or persons duly designated and authorized by the commission to conduct proceedings on matters within the jurisdiction of the commission for purposes of taking testimony and to report the person's findings and recommendations to the commission.

"HRS" means the Hawai'i Revised Statutes.

"Intervenor" means a person who properly seeks by application to intervene and is entitled to be admitted

as a party in any contested case proceeding before the commission.

"Land" means all real property in the State including areas under water within the boundaries of the State.

"Landowner" means a person or party with a fee simple interest in the land.

"Lot" means a single parcel of land of record in the real property tax records of the county in which the land is located.

"Map" means the land use district boundaries maps of the commission.

"Meeting" means the convening of the commission for which a quorum is required in order to make a decision or deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction, or advisory power.

"Party" means a person named or admitted as a



KOHALA RANCH COMMUNITY ASSOCIATION

Operation of Drones (Small Unmanned Aircraft)

Private and hobbyist use of drones within Kohala Ranch is prohibited.

Commercial drone use on a one-off basis, for the purpose of listing or surveying real estate, is permitted subject to the following limitations:

- 1) Drone operations must take off from, fly only over, and land on, the property being listed or surveyed. Drones may *not* take off from, fly over, or land on, the property of any other owner and drones may *not* take off from, fly over, or land on, Kohala Ranch Common Areas, including roads.
- 2) Drone operations shall not exceed one-hour.
- 3) Drone operations are prohibited on Sundays and Federal holidays.
- 4) The subject of photographic images recorded during drone operations must be limited to the property being listed or surveyed, though the image background may show distant views of other properties.
- 5) The owner of the property being listed or surveyed and over which the drone operates remains fully responsible for drone operations.
- 6) Drone operations must comply with FAA's "Small Unmanned Aircraft Rules – Part 107." Operators shall provide proof of drone registration and a copy of the operator's FAA Airman Certificate upon request.

Short Term Vacation Rentals

Short term vacation rentals (STVR) which are in violation of Hawaii County Code (HCC) Chapter 25 shall be subject to enforcement by the County of Hawaii pursuant to HCC 25-2-35, including criminal actions and civil fines. In accordance with administrative rule 23-16 (e), "advertising of any sort that offers a property as a STVR shall constitute prima facie evidence that a STVR is operating on the property. The burden of proof shall be on the owner or operator to establish either that the property is not being used as a STVR or that it is being used for such purpose legally." Under Section 7.02 of the Kohala Ranch Declaration of Covenants, Conditions and Restrictions any use of property in violation of County of Hawaii zoning ordinances is a violation of the Covenants. Under Sections 5.02 and 8.03 of the Covenants the Association, through its Board may enforce the Covenants by the imposition of rules and fines established by the Board of Directors of the Kohala Ranch Community Association. The fine for violation of the restriction on Short Term Vacation Rental use shall be \$5,000 (per incident) levied as an individual or specific assessment against the particular lot owner as set forth in the CC&R's Article V, sections 5.02 and 5.05. The imposition of a fine by the Board of Directors shall afford the owner appropriate notice and an opportunity for a hearing, in accordance with any hearing procedures set forth in the Bylaws.