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LAND USE COMMISSION
STATE OF HAWAII

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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	Docket No. A94-706
)	
KAONOULU RANCH to Amend the)	HONUA'ULA PARTNERS, LLC'S
Agricultural Land Use District Boundary)	SUPPLEMENTAL MEMORANDUM
into the Urban Land Use District for)	IN SUPPORT OF PETITIONER'S
approximately 88 acres at Kaonoulu,)	MOTION TO DISMISS THE ORDER
Makawao-Wailuku, Maui, Hawaii; Tax)	TO SHOW CAUSE PROCEEDING,
Map Key Nos. 2-2-02:por. of 15 and 3-9-)	FILED FEBRUARY 1, 2019;
01:16)	CERTIFICATE OF SERVICE
_____)	

**HONUA'ULA PARTNERS, LLC'S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF PETITIONER'S MOTION TO DISMISS THE
ORDER TO SHOW CAUSE PROCEEDING, FILED FEBRUARY 1, 2019**

Comes now, Petitioner HONUA'ULA PARTNERS, LLC, by and through its attorneys, MATSUBARA, KOTAKE & TABATA, respectfully submits its Supplemental Memorandum in Support of Petitioner's Motion to Dismiss the Order to Show Cause Proceeding, filed February 1, 2019.

The Order to Show Cause ("OSC") proceeding should be dismissed for violation of the 365-day deadline of §205-4(g) of the *Hawaii Revised Statutes* ("HRS").

HRS §205-4(g) states the following in relevant part:

Within a period of not more than three hundred sixty-five days after the proper filing of a petition, unless otherwise ordered by a court, or unless a time extension, which shall not exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section 205-17 or to assure substantial compliance with representations made by the petitioner in seeking a boundary change.

§15-15-74 of the *Hawaii Administrative Rules* ("HAR") provides the same the 365-day deadline, as prescribed by §205-4(g).

This 365-day deadline applies to both petitions for district boundary amendments and orders to show cause. *See DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC*, 134 Hawai'i 187, 216, 339 P.3d 685, 714 (2014) ("The LUC was also required to resolve the OSC within 365 days").

In *DW Aina Lea*, 134 Hawaii at 216, 339 P.3d at 714, the Court addressed the issue of when the 365 days begin to run and provided the following guidance:

Moreover, the circuit court correctly concluded that the LUC violated HRS § 205-4(g) in failing to resolve the OSC within 365 days. The circuit court concluded that the OSC had to be resolved by December 9, 2009, i.e., **365 days after the initial OSC was issued** on December 9, 2008. (emphasis added).

In the instant case, the OSC was issued on September 17, 2012, and the 365-day deadline expired on September 17, 2013. Having failed to resolve the OSC by September 17, 2013, the OSC must be dismissed for violating HRS §205-4(g).

The fact that the issue of substantial commencement has not yet been resolved does not alter the requirement that the 365-day deadline starts at the issuance of the OSC. The Court stated that “the LUC must resolve the reversion or reclassification issue within three hundred sixty-five days.” *DW Aina Lea*, 134 Hawai‘i at 213, 339 P.3d at 711. For the purpose of calculating the deadline, it does not matter which procedure is ultimately used to adjudicate the OSC because the 365-day deadline applies to either reclassification or reversion.

In addition, the Order Granting the Motion to Stay, filed July 12, 2013 does not extend the 365-day deadline. Nowhere in the order is there language that extends the 365-day deadline. Neither is there any request in the record to extend the 365-day deadline. But even if an extension were granted, such an extension of the 365-day deadline, beyond 90 additional days, would be invalid.

In *Cabral v. State*, 127 Hawai‘i 175, 182, 277 P.3d 269, 286 (2012), the Court citing *Bowles v. Russell*, 551 U.S. 205, 206–07, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007), stated the following:

In affirming the Court of Appeals' decision, the majority of the Supreme Court clarified the difference between time limit rules that are “jurisdictional” and those that are “claim-processing.” *Id.*

at 210–12, 127 S.Ct. 2360. The Supreme Court emphasized that **only Congress may determine a lower federal court's subject-matter jurisdiction.** *Id.* at 211, 127 S.Ct. 2360. It cited *United States v. Curry*, 47 U.S. 106, 113, 6 How. 106, 12 L.Ed. 363 (1848), for the proposition that **when appeals are not “prosecuted in the manner directed, within the time limited by the acts of Congress, it must be dismissed for want of jurisdiction.”** *Bowles*, 551 U.S. at 210, 127 S.Ct. 2360. As such, the Court stated that the **rules regarding time constraints that are derived from statutes specifically limiting a court's jurisdiction are considered “jurisdictional.”** *Id.* at 210–13, 127 S.Ct. 2360. **“Claimprocessing” rules related to time restrictions, on the other hand, are “court-promulgated” and adopted by the Court for the orderly transaction of business.** *Id.* at 211, 127 S.Ct. 2360. Such rules are not derived from **statutory time constraints** specifically limiting jurisdiction, and can be relaxed at the Court's discretion. *Id.* at 211–13, 127 S.Ct. 2360. (emphasis added).

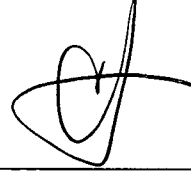
In 2017, the Supreme Court revisited the issue of jurisdictional vs. mandatory claims-processing rules and confirmed that statutory time constraints are jurisdictional and are not subject to waiver or forfeiture. *Hamer v. Neighborhood Housing Services of Chicago*, 138 S.Ct. 13, 130, Fair Empl.Prac.Cas. (BNA) 879, 199 L.Ed.2d 249, 99 Fed.R.Serv.3d 179 (2017).

Hamer makes clear that claims-processing time constraints contained in rules may provide for time extensions based upon waiver or forfeiture, but time deadlines in rules prescribed by statute are jurisdictional and cannot be extended. *Hamer*, 138 S.Ct. at 17.

HRS §205-4(g) is a statutory time constraint, and the 365-day deadline in HAR §15-15-74 is prescribed by §205-4(g). The deadline is therefore jurisdictional and cannot

be waived or forfeited, and the OSC must be dismissed for violating the 365-day deadline and for lack of jurisdiction.

DATED: Honolulu, Hawai'i, June 25, 2020.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be duly served upon the following persons by electronic mail ("EM"), or by mailing said copy, certified mail, return receipt, postage prepaid, first class, in a United States post office ("M") or by hand delivery ("HD") in the manner indicated, addressed as set forth below:

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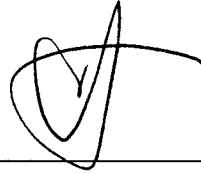
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