

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

June 26, 2020
LAND USE COMMISSION
STATE OF HAWAII

2020 JUL -1 A 9:23

Subject: matters relating to Petition A18-805 and our Request for a Boundary Determination

Dear Mr. Orodenker,

This letter is in response to your email to me dated yesterday advising that I fill out and submit a form electronically that is provided on the LUC's web site for a boundary interpretation in order that my Request for a Boundary Determination (the "Request") by the Commission may proceed.

If you took the time to read my Request for a Boundary Determination by the Commission, which I submitted in the same u.s.p.s. mailed package with my proposed FONSI which was received by your office on June 12th, 2020, and which was subsequently heard by the LUCommission yesterday, June 25th, 2020, it was clearly a request for a **boundary determination by the Commission** and not a request for a **boundary interpretation** by the **Executive Officer**. We already have a boundary interpretation and it was also exhibited to my Request. I cannot understand why you did not **allow** my Request to be heard by the Commissioners as resolving that matter would effectively determine whether the Commission needed to hear and rule on the proposed FONSI yesterday. Even the Deputy Attorney General, who was in attendance at the meeting, stated to the Commissioner(s) that my Request was properly to be determined by the Commissioners.

My Request was effectively to set the correct SLUD boundary question for a Determination by the Commission. I believe that my Request followed HAR 15-15-22 (f) to the letter and I clearly described the basis for the **uncertainty** which exists. Also the current survey map of the Property and the surveyor's meets and bounds description are attached as exhibits to the Request. The exhibited surveyors map also bears the County's stamp on it.

While you referred in an email which you sent to me yesterday that I fill in the form provided on the LUC web site, which is not a requirement for an application according to HAR 15-15-22(f), again, if you had took the time to read my Request it has substantial all of the information described on the form on the LUC web site. There is no shoreline survey because the Property is separated from the ocean by the state owned bluff property.

Please state clearly in a signed letter, hard copy and wet signed and delivered to me by u.s.p.s. whether **you will allow** the Commission to Determine the Requested Boundary Determination which is provided for in HAR 15-15-22(f) or whether **you deny** that the Commission may consider the Request outright as seemingly you have already stated during yesterday's meeting. Then we may consider our legal options on a go-forward-basis.

Also the matter remains that neither my Request nor my Petition A18-805 is properly posted on the Commission web site.

I also recall that you stated to the Commissioner(s) during yesterdays Zoom meeting that the existing boundary interpretation was **final** anyway. Please also confirm that or state otherwise in your letter. Had I been given the opportunity, during yesterday's meeting, I would have described that according to Federal law, the **Model State Administrative Procedure Act**, that in order that a State's administrative body's decision to be **legally final** it must contain certain elements which the existing boundary interpretation for the Property does not. The egress of 30 days cannot make a **preliminary decision** (a boundary interpretation) into a **final decision** unless it also contains the Federally required elements.....

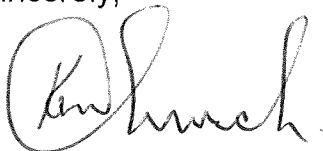
*'The parties must be provided with prompt notice of the **final order or decision which includes** a statement of the available procedures and time limits to seek reconsideration or other administrative relief. Notice of any decision must be served either personally or by mail.'*

A boundary interpretation, which is a **preliminary matter**, cannot have an element that makes it final after 30 days and effectively becomes a **final order** unless it complies with the Federal law.

Finally you suggested that I discuss the matter further with Mr. Derrickson. Perhaps you have forgotten that you emailed me very recently and very emphatically required that *I stop communicating further with your staff!!!!!!!!!!!!!!* The question that seemingly prompted your email was an email that I had sent asking a simple question **'is the LUC an administrative body of the State'?**

Thank you for the prompt reply to my letter which I sent yesterday

Sincerely,

A handwritten signature in black ink that reads "Ken Church". The signature is written in a cursive, slightly slanted style.

Ken Church

- a signed hard copy mailed by u.s.p.s. to Daniel E. Orodenker, Executive Officer for the LUC
- an unsigned electronic version emailed to: Daniel E. Orodenker, Rodney Funakoshi, Michael Yee, Jeff Darrow.