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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

COUNTY OF HAWAII, for a Declaratory Order that "Farm Dwellings" May Not Be Operated As Short-Term Vacation Rentals Under Hawai'i Revised Statutes §§ 205-2 and 205-4.5, and Hawai'i Administrative Rules § 15-15-25

In the Matter of the Petition of:

Linda K. Rosehill, Trustee of the Linda K. Rosehill Revocable Trust dated August 29, 1989, as amended; Thomas B. and Rea A. Wartman; Mark A. Dahlman; Mark B. Chesebro and Caroline Mitchel, Trustees of the First Amendment and Restatement of the 1999 Mark Brendan Chesebro and Caroline Mitchel Revocable Trust U/D/T dated January 6, 1999; Somtida S. Salim, Trustee of the Somtida Salim Living Trust dated February 15, 2007; Todd M. Moses; Psalms 133 LLC; John T. Fenton, Trustee of the John T. Fenton Revocable Trust dated February 27, 2014; Frances T. Fenton, Trustee of the Frances T. Fenton Revocable Trust dated February 27, 2014; Donald J. K. and Stacey S. Olgado; Dirk

Docket Nos. DR 20-69 & DR 20-70

PETITIONERS' RESPONSE IN DOCKET NO. DR 20-70 TO THE COUNTY OF HAWAII'S ARGUMENT DURING THE MEETING ON JULY 24, 2020

DECLARATION OF CALVERT G. CHIPCHASE

EXHIBITS 1 - 2

CERTIFICATE OF SERVICE

and Laura Bellamy Hain, Trustees of the Bellamy-Hain Family Trust dated September 13, 2017; Peter A. Gunawan; Janti Sutedja; Neil Almstead; Doyle Land Partnership; James T. Kelnhofer; Charles E. and Nancy E. Rosebrook; Michael Cory and Eugenia Maston; Paul T. and Delayne M. Jennings, Trustees of the Jennings Family Revocable Trust dated January 5, 2010; Maggholm Properties LLC; Nettleton S. and Diane E. Payne, III

PETITIONERS' RESPONSE IN DOCKET NO. DR 20-70 TO THE COUNTY OF HAWAII'S ARGUMENT DURING THE MEETING ON JULY 24, 2020

1. Eyebrows were raised. The County of Hawai'i (the "**County**") raised eyebrows again when it "agree[d] with the State that **there must be agricultural use or activities** within the confines of a farm dwelling, should the agriculture be related to the farm dwelling. And a farm dwelling can only be operated in connection with agricultural use, and **not simply for residential use** as outlined in HRS Section 205-4.5." Ex. 2 (7/23/20 transcript) at 130:7-13 (Mukai) (emphasis added).

As the Commission will recall, the County took the opposite position during the hearing on June 25, 2020. For example, at the beginning of the hearing, Dr. Stephen Bell testified that he had built his "retirement home" in the Kohala Ranch subdivision. Ex. 1 (6/25/20 transcript) at 76:15-20, 77:7-8. Dr. Bell explained that he was not informed of any requirement to engage in agriculture when he purchased his lot or built his home, *id.* at 79:18-21, and that, "**because [he is] not doing agriculture,**" his only objection is to renting homes for less than 31 days—the

County's definition of "short-term." Ex. 1 (6/25/20 transcript) at 80:14-18 (emphasis added).

The County agreed with Dr. Bell. According to the County, "there's nothing that disallows [Dr. Bell] from **simply having a residence** on an Agricultural Zoned property." Ex. 1 (6/25/20 transcript) at 108:22-24 (emphasis added). Indeed, the County considers Dr. Bell's dwelling a "farm dwelling" "**[e]ven if there [is] no farming going on.**"¹ Ex. 1 (6/25/20) 110:4-11, 111:12-20 (emphasis added) (Yee).

The Commission noticed the inconsistency at the hearing on July 23. As Commissioner Chang put it,

I guess I'm still having a difficulty with your clarification, because I will have to admit, **I see the County's position today to be contradictory** to the line of questioning that the Commission had at the last hearing. You appeared to be very adamant that you don't have to do any farming activity, you could have a single family dwelling on the property and do no farming So I'm really grappling because if there is no time limit on when you do the agricultural activity, who's to say that they're not in compliance with farm dwelling? If they tell you they intend to do it, but they never do it? How do you enforce and judge that if they say they intend to do it, and it's 30 years later?

¹ The colloquy was extensive. See Ex. 1 (6/25/20) 110:4-11, 111:12-20 ("[COMMISSIONER OKUDA:] 'So is it the County of Hawaii's position that a residence may be constructed and lived in on land that's within the Land Use Agricultural District, **even if there's no agriculture taking place on that parcel of property?**' MR. YEE: 'For the record, Michael Yee, Planning Director. **Yes, that is correct.**' [COMMISSIONER OKUDA:] 'So in other words, Mr. Yee, **even if I tell you and, in fact, I tell you in writing that my intention is I do not intend to engage in any agriculture. All I intend to do is build a house to live in. The County of Hawaii would consider that consistent with HRS 205-4.5?**' MR. YEE: 'Yes, and we would consider it a farm dwelling. . . . ' MR. YEE: 'Michael Yee, **yes. They could build a residence and we would consider it a farm dwelling.**' COMMISSIONER OKUDA: 'Even if there was no farming going on?' MR. YES: **Correct.**") (emphasis added).

Ex. 2 (7/23/20 transcript) at 140:1-17 (emphasis added). Unbothered by the contradiction, the County simply answered, “It’s still considered a farm dwelling unit.” (emphasis added).

Pressed by Commissioners Okuda and Chang, the County gave up is “agreement” with the State and confirmed its view that a dwelling is a “farm dwelling” even if it is a “**McMansion**” on an agricultural lot and there is no associated agricultural activity. *See* Ex. 2 at 136:12-24 (“COMMISSIONER OKUDA: ‘My question to you, I was telling you up-front, I have no intention on conducting any farm activity. I’m going to build my **McMansion** on the property. **I’m not going to farm. There's not going to be any agricultural activity.** Will you still allow me to build my mansion when I'm telling you absolutely not, **there will be no agricultural activity?** And when -- let me clarify, when I say will you let me build, I’m asking, what is the County’s position?’ MR. YEE: ‘**I’m still going to say that it’s still a farm dwelling unit.**’) (emphasis added); Ex. 2 (7/23/20 transcript) at 137:8-13 (“COMMISSIONER OKUDA: ‘So even if I tell you straight up-front that there will be **no agricultural activity**, you will still grant me the permit to build the dwelling?’ MR. YEE: ‘**It's still going to be a farm dwelling unit.**’) (emphasis added); Ex. 2 (7/23/20 transcript) at 140:25-141:7 (“COMMISSIONER CHANG: ‘What if there is no illegal use, but **there’s still no farming, no agricultural use five years, 10 years, 15 years**, but there is no other illegal activity, but **there is a dwelling on it, but they never use it for agricultural purposes?**’ MR. YEE:

I'll keep going back that **it's still a farm dwelling unit though.**") (emphasis added).

2. Without a doubt, this case comes down to 31 days. Not only did the County say that Dr. Bell's purely residential use is fine, it explained that Dr. Bell could rent his property for **31 days or more** for purely residential purposes. Here is the exchange with Commissioner Wong:

COMMISSIONER WONG: I'm trying to figure this out. You said that if we -- okay, so let's say, again, **taking Mr. Bell**, let's say I have a property zoned Ag and I rent it to the Chair for **31 days, is that okay?** And it's not a short-term vacation.

MR. MUKAI: **By definition it's not a short-term vacation rental.**

Ex. 1 (6/25/20 transcript) at 7-13 (emphasis added). Under the County Ordinance, any rental "longer than 30" days "**would be allowed under Ag.**" Ex. 1 (6/25/20 transcript) at 116:25-117:1 (Mukai) (emphasis added). Any rental longer than 30 days would be allowed because, "**[b]y [the County's] definition it's not a short-term vacation rental.**" Ex. 1 (6/25/20 transcript) at 118:12-13 (Mukai).

The County would **only** have a problem with Dr. Bell if he tried to rent his home for **less than 31 days**. Here is another exchange with Commissioner Wong:

COMMISSIONER WONG: . . . Sorry, I got to get this straight. So let's say I'm **Mr. Bell**. I have a piece of property. I am not -- it's zoned Ag, and I would say -- I would tell my friends, hey, **come use my house for 29 days**, and just give me a dollar. That would -- that'd be okay? Is that how we're seeing it?

MR. MUKAI: I think we're talking specifically in this case about a short-term vacation rental permit, which is -- I think that's not really the situation that we're dealing with here.

COMMISSIONER WONG: The question I have is, if Mr. Chipchase's clients didn't turn in that if Mr. Chipchase's clients didn't turn in that short-term

vacation rental form, or whatever, to the County, and they just rented it out, that would be okay?

MR. MUKAI: **So having a short-term vacation rental without a permit, yes, that would not be legal.**

Ex. 1 (6/25/20 transcript) at 117:14-118:6 (emphasis added).

3. This case is not about use or whether the owner lives in the home. The County succinctly explained to the Commission that it does not care how the property is used or whether the owner lives there as long as the rental period is 31 days or more. Here is the County's exchange with Commissioner Okuda:

COMMISSIONER OKUDA: If I came into the County and said I was going to build a residence on Agriculturally Districted and zoned land, and I told you in writing, and by the way **I don't plan to live there. I plan to rent it out to somebody for, let's say, longer than 30 or 40-days.** Would you consider me being in violation of any land use ordinance or law?

MR. MUKAI: My understanding -- John Mukai -- **longer periods of rental would be allowed under Ag.**

Ex. 1 (6/25/20 transcript) at 116:14-117:1 (emphasis added).

On the other hand, the County would **not** allow a rental of **less than 31 days to a farmer who intends to farm the land.** As Director Yee confirmed, if a dwelling is advertised "**a farm dwelling for use less than 30 days,**" then, "**by [the County's] definition it's a short-term vacation rental.**" Ex. 1 (6/25/20 transcript) at 124:17-125:10 (emphasis added). Deputy Director Suprenant specifically added that a farmer could not rent his property to "a farmer from Connecticut for 29 days" even if the farmer from Connecticut was "going to plant some papaya trees," because a duration of less than 31 days would still be "a short-term vacation rental."

Ex. 1 (6/25/20 transcript) at 129:11-130:5.

The following table summarizes these different scenarios:

District	Use	Rental period	Allowed?
Agricultural	Residential	None	Yes
Agricultural	Residential	31 days or more	Yes
Agricultural	Residential	Less than 31 days	No
Agricultural	Farming	Less than 31 days	No
Agriculture	Farming	31 days or more	Yes

As we can see, the use of the dwelling does not matter to the County. Nothing but duration matters. A rental for any reason of 31 days or more is okay. A rental for farming purposes of less than 31 days is not. As the County expressly informed the Commission, “the County’s objection **is not** that there’s no agricultural use regarding the short-term vacation rentals, it’s just that it’s a short-term vacation rental” Ex. 1 (6/25/20 transcript) at 117:2-7 (Okuda and Mukai) (emphasis added). The “**only fact**” that “makes it a short-term vacation rental” is that “[w]ithin [the County’s] ordinance [the County has] defined short-term vacation **rentals as less than 31 days.**” Ex. 1 (6/25/20 transcript) at 124:17-125:10 (Chang and Yee) (emphasis added).

4. OP and the County pretend these Petitions are about other things because they do not want the Commission to answer the question before it. During the meeting on July 23, the County quoted page 5 of OP’s Supplemental Response, *see* Ex. 2 (7/23/20 transcript) at 132:14-133:5 (Mukai), which included the following excerpt:

If Petitioners were able and willing to provide facts demonstrating or acknowledging that their dwellings meet all of the STVR elements and at least one of the farm dwelling options, then the Commission could determine that Petitioners were properly operating their farm dwellings as STVRs pursuant to HRS § 205-4.5(a)(4). We can assume that Petitioners meet the three elements of the STVR rental, but Petitioners fail to demonstrate that their farm dwellings are either located on and used in connection with a farm, or are located where agricultural activity provides income to the family occupying the farm dwelling. The check list below illustrates Petitioners' incomplete application of or fulfillment of the two definitions.

- (1) The owner/operator doesn't reside on the building site;
 - (2) The building has no more than 5 rooms to rent on the site;
 - (3) The building is rented for 30 consecutive days or less;
- AND**
- (1) The building is located on and used in connection with a farm;
 - or
 - (2) The building is located where agricultural activity provides income to the family occupying the building.

OP Supplemental Response at 5.

The entire thing is a red herring. The Petitions **do not** ask the Commission to “determine that Petitioners were properly operating their farm dwellings as STVRs” or whether “their farm dwellings are either located on and used in connection with a farm, or are located where agricultural activity provides income to the family occupying the farm dwelling.” *See id.* None of those questions is presented in the Petitions or otherwise before the Commission.

4. Granting the Rosehill Petition does not approve vacation rentals. The narrow issue before the Commission is simply whether the definition of “farm

dwelling” in HRS Chapter 205, as of June 4, 1976, set a minimum rental period of 31 days. That is the only question.

As the Chair explained during the July 23 hearing, “this is a request for a Declaratory Ruling,” which “means the Commission is being asked to **interpret a statute, rule or document** and **not make a determination on the factual dispute.**” Ex. 2 (7/23/20 transcript) at 126:5-9 (Scheuer) (emphasis added). As the Chair observed, “The Commission is taking the **basic facts as undisputed.** What we are here to decide is **the very limited issues presented** by the Petitioner County of Hawai’i and the Petitioners Rosehill, et al.” *Id.* at 126:12-16 (Scheuer) (emphasis added); *see also* Hawai’i Administrative Rules § 15-15-98(a) (“On petition of any interested person, the commission may issue a declaratory order as to the applicability of any **statutory provision** or of any rule or order of the commission to a **specific factual situation.**”) (emphasis added).

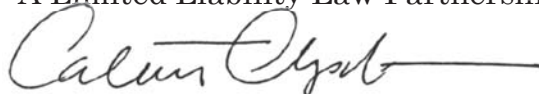
The “undisputed” “facts” are set forth in the specific definitional elements of “short-term vacation rental” in the County Ordinance. The County Ordinance prohibits rentals of less than 31 days on lots created on or after June 4, 1976, in the State Agricultural District. The “statute” to be applied by the Commission is the definition of “farm dwelling” in Chapter 205, as of June 4, 1976. The “very limited” issue is whether the specific factual elements of the County’s definition of short-term vacation rental “irreconcilably conflict” with the definition of “farm dwelling” in Chapter 205. *See* County Petition Mem. at 1. In other words, does Chapter 205 require that farm dwellings be rented for 31 days or more? As admitted by the

County and OP, the answer to that question is “no.” *See, e.g.*, Ex. 1 (6/25/20 transcript) at 92:5-7 (Apuna) (stating that “the definition of ‘farm dwelling’ does not expressly prohibit rentals of 30 days or less”); *id.* at 91:1-6 (Apuna) (“a renter for 30 days or less that farms the land may be allowed under the definition of ‘farm dwelling”); *id.* at 105:4-6 (Mukai) (“there’s no prohibition on farm dwellings being rented for 30 days or less”).

5. Conclusion. Everyone agrees that the “farm dwelling” definition did not regulate the duration of rentals as of June 4, 1976. That is all the Commission needs to say to resolve the very limited issue before it. With that point resolved, the Rosehill Petition should be granted and the County Petition denied.

DATED: Honolulu, Hawai‘i, August 10, 2020.

CADES SCHUTTE
A Limited Liability Law Partnership



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CHRISTOPHER T. GOODIN
Attorneys for Petitioners

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

COUNTY OF HAWAII, for a Declaratory Order that “Farm Dwellings” May Not Be Operated As Short-Term Vacation Rentals Under Hawai’i Revised Statutes §§ 205-2 and 205-4.5, and Hawai’i Administrative Rules § 15-15-25

Docket Nos. DR 20-69 & DR 20-70

**DECLARATION OF
CALVERT G. CHIPCHASE**

In the Matter of the Petition of:

Linda K. Rosehill, Trustee of the Linda K. Rosehill Revocable Trust dated August 29, 1989, as amended; Thomas B. and Rea A. Wartman; Mark A. Dahlman; Mark B. Chesebro and Caroline Mitchel, Trustees of the First Amendment and Restatement of the 1999 Mark Brendan Chesebro and Caroline Mitchel Revocable Trust U/D/T dated January 6, 1999; Somtida S. Salim, Trustee of the Somtida Salim Living Trust dated February 15, 2007; Todd M. Moses; Psalms 133 LLC; John T. Fenton, Trustee of the John T. Fenton Revocable Trust dated February 27, 2014; Frances T. Fenton, Trustee of the Frances T. Fenton Revocable Trust dated February 27, 2014; Donald J. K. and Stacey S. Olgado; Dirk and Laura Bellamy Hain, Trustees of the Bellamy-Hain Family Trust dated September 13, 2017; Peter A. Gunawan; Janti Sutedja; Neil Almstead; Doyle Land Partnership; James T. Kelnhofer; Charles E. and Nancy E. Rosebrook;

Michael Cory and Eugenia Maston;
Paul T. and Delayne M. Jennings,
Trustees of the Jennings Family
Revocable Trust dated January 5,
2010; Maggholm Properties LLC;
Nettleton S. and Diane E. Payne, III

DECLARATION OF CALVERT G. CHIPCHASE

I, Calvert G. Chipchase, hereby declare as follows:

1. I am one of the attorneys Petitioners Linda K. Rosehill, *et al.* in this matter and make this declaration based on personal knowledge.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an excerpt of the Transcript of Proceedings in this matter on June 25, 2020, highlighted by counsel.

2. Attached hereto as **Exhibit 2** is a true and correct copy of an excerpt of the Transcript of Proceedings in this matter on July 23, 2020, highlighted by counsel.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, August 10, 2020.



CALVERT G. CHIPCHASE

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on June 25, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology
and
YouTube Streaming Video link

IIV. Call to Order

VIII. STATUS REPORT

A99-729 Newton Family Limited Partnership (nka
Hawaiian Islands Land Trust)

IX. ACTION

A18-805 Barry Trust (Hawai'i)

* Consider Petitioner's Motion for Issuance
of Negative Declaration or Finding of No
Significant Impact

X. ACTION

A18-805 Church (Hawai'i)

* Consider Petitioner's Motion that the Land
Use Commission Issue a Finding of No
Significant Impact

XI. ACTION

DR20-69 County of Hawaii and DR20-70 Linda
Rosehill, et al

* Consider Petitioners County of Hawaii's
and Linda Rosehill, et al's Stipulation to
Consolidate Order

* Consider Petitioners County of Hawaii's
and Linda Rosehill, et al's Petitions for
Declaratory Orders regarding Short Term
Vacation Rentals as Farm Dwellings

V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

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APPEARANCES:

JONATHAN SCHEUER, Chair (Oahu)
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EDMUND ACZON (Oahu)
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1 system, we will adjourn until 11:15 A.M. when I will
2 physically relocate to the Land Use Commission
3 offices for the continuance of this matter taking up
4 Declaratory Order DR20-69 and DR 20-70 County of
5 Hawaii and Rosehill, et al.

6 With that we are adjourned for the moment
7 in recess.

8 (Recess taken.)

9 DR20-69 DR20-70

10 CHAIRPERSON SCHEUER: Good morning.

11 The next agenda items are both requests for
12 Declaratory Orders DR20-69 County of Hawaii, and
13 DR20-70 Rosehill, et al.

14 Before we begin, I would like to take a
15 moment to explain what these proceedings are about
16 today, and how certain things have to be handled to
17 be sure that we are in compliance with Subchapters 5
18 and 14 of our rules as well as all of the relevant
19 statutory requirements with regard to public
20 meetings.

21 First, please keep in mind this is a
22 request for Declaratory Ruling. That means the
23 Commission is being asked to interpret a statute,
24 rule or document and not to make a determination on a
25 factual dispute.

1 In conclusion, I agree with the analysis
2 submitted by the State Office of Planning, and I have
3 always understood that short-term vacation rentals
4 were never permitted in what was supposed to be a
5 quiet, rural Agricultural District.

6 I respectfully request that you uphold HRS
7 205 as it was originally intended.

8 Thank you for your consideration.

9 CHAIRPERSON SCHEUER: Thank you, Mr. Bell.
10 You are indeed at precisely three minutes.

11 CHAIRPERSON SCHEUER: County of Hawaii.

12 MR. MUKAI: No questions.

13 MR. CHIPCHASE: No questions, Chair.

14 CHAIRPERSON SCHEUER: Commissioners?
15 Commissioner Wong.

16 COMMISSIONER WONG: Hello, Mr. Bell.

17 So the previous testifier, Mr. Eising,
18 stated that the covenants for the Kohala Ranch was
19 done last year for short-term vacation rentals; is
20 that correct?

21 THE WITNESS: Let me add some
22 clarification. It's not the Kohala Ranch CC&Rs, but
23 the Kohala Ranch rules. There was a rule that was
24 enacted by the board of the Community Association
25 which essentially states -- I don't have that right

1 in front of me now -- but it was submitted I believe
2 by Mr. Eising in an exhibit, that the community
3 association is following the lead of the County of
4 Hawaii that these activities are illegal in the Ag
5 Zoned District. And they will now be assessing fines
6 for this sort of activity as prima facie evidence.
7 They have the advertising that these STVR owners are
8 putting out to advertise their short-term vacation
9 rentals.

10 This was enacted, I believe, January 23rd.
11 It was at the last or the second to last board
12 meeting of the Kohala Ranch Community Association. I
13 am not on the board, I am just a simple homeowner on
14 Kohala Ranch.

15 COMMISSIONER WONG: Another question is,
16 are you a farmer?

17 THE WITNESS: No, I am not. I purchased my
18 lot in 2005 in Kohala Ranch with the intention of
19 building my retirement home, which I finished
20 construction on in 2009.

21 As I stated in my testimony, I specifically
22 chose Kohala Ranch because it was in the Agricultural
23 District, and I wanted -- I've always been under the
24 impression that under HRS 205 short-term vacation
25 rental activity was not a permitted use.

1 At the time that I purchased my lot, it was
2 under Ag -- well, the whole of Kohala Ranch is still
3 under Ag zoning. I had had a tax break for about
4 four years until I finished my house and we fenced
5 the property off so it was no longer accessible for
6 cattle grazing. So I'm paying a residential rate,
7 and I am not a farmer at the time, but I have 3.25
8 acres of land.

9 I am just newly retired. I now live
10 full-time here as of about three months ago. And I
11 may very well decide to take up farming at some point
12 in time.

13 COMMISSIONER WONG: So you answered a part
14 of my question about the tax issue.

15 So do you know neighbors who does have
16 short-term vacation rentals, what their tax rates?

17 THE WITNESS: I do not know that.

18 COMMISSIONER WONG: The only other thing
19 is, Mr. Eising's testimony showed some rates of
20 renting their short-term vacation rentals; is that
21 correct?

22 THE WITNESS: Yes.

23 COMMISSIONER WONG: So these people don't
24 have any farm hands on there, or they don't even
25 sell, let's say, grapefruits or tomatoes or anything

1 on their land at all?

2 THE WITNESS: Absolutely not. These are
3 strictly vacation rentals. These are off-island
4 owners. The only time there is any activity there is
5 when the transient vacation renters are occupying the
6 properties, and when the landscape or the pool
7 person, et cetera, is on the property. Otherwise
8 there is no agricultural activity at all.

9 COMMISSIONER WONG: Mr. Bell, you used the
10 term "prima facie". Are you an attorney?

11 THE WITNESS: No, I'm not. I'm a
12 physician.

13 COMMISSIONER WONG: You can answer this, or
14 don't need to, say you don't know, do you believe
15 that these units your neighbors who have short-term
16 vacation rentals should be grandfathered in, yes or
17 no?

18 THE WITNESS: No. I absolutely do not.
19 When I first purchased my lot, and four years later
20 in 2009 when I built my home, this was not an issue.

21 Since that time, or even in more recent
22 times, probably in the last two or three years, maybe
23 a little longer, since the internet has become so
24 available for advertising vacation rentals, Air B and
25 Bs, et cetera, et cetera, we have seen what were

1 previously residential homes had gotten sold. And
2 immediately upon sale, these were turned into
3 short-term vacation rentals strictly as an income
4 generated type of enterprise.

5 So these were for the most part by and
6 large not in existence when I first both purchased my
7 lot in 2005 and finished my home in 2009.

8 There may have been an occasional one here
9 and there, but since that time I now have at least
10 three of these, three of the Petitioners in DR20-70
11 are very close proximity to my home. So I get
12 bombarded from all sides.

13 COMMISSIONER WONG: Thank you for your
14 testimony. No further questions, thank you.

15 CHAIRPERSON SCHEUER: Commissioner Chang.

16 COMMISSIONER CHANG: Thank you, Mr. Bell,
17 for your testimony.

18 When you purchased your home, was there a
19 requirement that you had to do farming or
20 agricultural use?

21 THE WITNESS: To my knowledge there was
22 not. It was an -- Kohala Ranch is an Agricultural
23 Zoned District where there is farming. When I
24 purchased my lot in 2005, we had cattle grazing in
25 the ranch, and cattle would roam on my property.

1 When I built my home, I fenced the property
2 off, but it is still in the Agricultural District. I
3 do pay residential property taxes, but the community
4 of Kohala Ranch itself is in the Agricultural
5 District. Many people have active agricultural farm
6 businesses, some are -- some have sheep, cattle on
7 their lot.

8 As I said, I have just recently -- I'm
9 retired. So I'm trying to figure out what I'm going
10 to be doing for the rest of my life. Farming may
11 very well come into play here at some point.

12 COMMISSIONER CHANG: I just want to
13 clarify.

14 So, Mr. Bell, your objection is not that
15 they're not doing agriculture, because you're not
16 doing agriculture either, it is that they are renting
17 it out as short term rentals; is that correct?

18 THE WITNESS: That is essentially correct,
19 that they are operating short-term vacation rentals
20 in an Agricultural Zoned District, and for those of
21 us who have been living here for several years now,
22 this is all relatively new, or at least the
23 proliferation of these short-term vacation rentals is
24 relatively new in the last few years, particularly
25 the last two, three years.

1 I'm sorry, I've lost my --

2 COMMISSIONER CHANG: One final question.

3 Are a majority of the lots within Kohala
4 Ranch, are they doing agriculture? Are they doing
5 farming? I mean, Mr. Eising, he's doing grapefruit.
6 Are the majority of people in the Kohala Ranch doing
7 farming?

8 THE WITNESS: I really cannot give you an
9 honest opinion on that. Many do. It's somewhat
10 uncomplicated in that -- I really don't know. Some
11 do farming. Some people have sheep. Some have, you
12 know, cows. Some do beehives, et cetera, but I
13 personally have not, you know, gone around the entire
14 3,000 or 4,000 acre ranch and examined everyone's
15 property, so I don't know.

16 COMMISSIONER CHANG: Thank you very much,
17 Mr. Bell.

18 Mr. Chair, I have no further questions.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Chang.

21 Commissioner Okuda.

22 COMMISSIONER OKUDA: Dr. Bell, thank you
23 very much for your testimony.

24 At any time did anyone tell you that Hawaii
25 law, and specifically HRS Section 205-4.5 has like a

1 issue a declaratory order as to the applicability of
2 any statutory provision or of any rule or order of
3 the commission to a specific factual situation."

4 Repeatedly, the Rosehill Petitioners state
5 the issue presented is very narrow and limited to
6 "whether, as of June 4, 1976, Chapter 205 regulated
7 the minimum rental period of "farm dwellings". This
8 is not fact specific.

9 All that Petitioners state is that they
10 have been renting their single-family dwellings in
11 the Agricultural District for 30 days or less. We
12 can assume they are being rented as short-term
13 vacation rentals because they are disputing the
14 County's short-term vacation rental ordinance, but
15 oddly they never provide the Commission with the
16 actual use of their farm dwellings by the renters.

17 This is not a "specific factual situation"
18 upon which this Commission can apply the definition
19 of "farm dwelling" because it turns in either
20 direction depending upon these additional, critical
21 facts. Are the renters farming the land, or is there
22 agricultural activity providing income to renters?
23 Or are the renters vacationers or tourists?
24 Petitioners don't say. These are necessary details
25 to assist you, the Commission, in your decision.

1 For example, a renter for 30 days or less
2 that farms the land may be allowed under the
3 definition of "farm dwelling". But a renter for 30
4 days or less who does not farm the land, but is
5 merely renting as a vacationer would be prohibited
6 under the definition of "farm dwelling".

7 As a result, Petitioners are putting forth
8 a speculative or purely hypothetical scenario which
9 does not involve an existing situation or one which
10 may reasonably be expected to occur in the near
11 future because it lacks these important details.
12 This is a ground for denial of the Petition for
13 Declaratory Order pursuant to HAR Section
14 15-15-100(a)(1)(A).

15 HAR 15-15-104 states: "An order disposing
16 of a petition shall apply only to the factual
17 situation described in the petition or set forth in
18 the order. It shall not be applicable to different
19 fact situations or where additional facts not
20 considered in the order exist." Thus, even with a
21 favorable ruling Petitioner, such a ruling cannot be
22 applied before the County because it will require
23 additional facts.

24 Consequently, Petitioner's Petition fails
25 to set forth a question, the resolution of which will

1 resolve the controversy before the County Planning
2 Commission.

3 Based on the foregoing, the Commission
4 should grant the County's Petition, and deny the
5 Rosehill Petition in that even though the definition
6 of "farm dwelling" does not expressly prohibit
7 rentals of 30 days or less, farm dwellings may not be
8 used for 30 days or less as a short-term vacation
9 rental, and because Petitioner fails to provide the
10 Commission with a specific enough factual situation
11 upon which a declaratory ruling can be made.

12 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
13 Commissioners, are there questions for Ms. Apuna?

14 COMMISSIONER WONG: Chair.

15 CHAIRPERSON SCHEUER: Commissioner Wong.

16 COMMISSIONER WONG: Ms. Apuna, question.
17 If you know, answer; if you don't, just say you don't
18 know.

19 Do you know that the short-term vacation
20 rentals are paying general excise or TAT?

21 MS. APUNA: Do I know if these specific
22 Petitioners are paying TAT?

23 COMMISSIONER WONG: Or general excise tax
24 for their rentals, vacation rentals?

25 MS. APUNA: I would not know specifically

1 if Petitioners, whether they are or not, but I think
2 generally they are subject to State tax.

3 COMMISSIONER WONG: So the other question I
4 have is Mr. Bill, the former guy testified before
5 you, the witness, stated he's not a farmer but he
6 lives on-site. So that's okay for Ag District,
7 correct?

8 MS. APUNA: It's not. It's an interesting
9 question. I think it's how you enforce it. I think
10 people, they are on agricultural properties but as
11 far as how the County is able to enforce and make
12 sure that that owner or tenant is actually farming
13 the land is a question of being able to see that
14 that's happening.

15 But I think generally the Ag District
16 would -- the intent is to have people farming the
17 land.

18 COMMISSIONER WONG: So the other question I
19 have is, for Ag District, you have to be farming such
20 as someone does grapefruit or, you know, raising
21 goats or doing something agriculture, correct?

22 MS. APUNA: Correct.

23 COMMISSIONER WONG: So let's say I live on
24 an ag lot and I just grow one papaya tree. Would
25 that be considered agricultural?

1 MR. CHIPCHASE: We believe consolidation is
2 appropriate for reasons set out in the Petition and
3 as that's been done in this hearing, the
4 consolidation we believe is the most efficient and
5 cleanest way to approach this issue.

6 So we respectfully ask that the stipulation
7 for consolidation be approved and granted.

8 CHAIRPERSON SCHEUER: Thank you very much.
9 Sorry, one brief moment.

10 Commissioners, do you have any comments or
11 questions before we take a vote on the stipulation to
12 accept the Stipulation to Consolidate?

13 Mr. Orodenker, do we need a motion to that
14 effect?

15 EXECUTIVE OFFICER: I don't believe so, Mr.
16 Chair, since it's stipulated.

17 CHAIRPERSON SCHEUER: Okay, so it's so
18 stipulated.

19 So then we can go on and, County, you can
20 start with presenting your main case.

21 MR. MUKAI: Thank you, Mr. Chair, and
22 Commissioners.

23 In this case the Rosehill Petitioners state
24 that, quote, the only question before the Commission
25 is whether as of June 5th, 1976, Chapter 205

1 prohibited leases, in parenthesis, the same thing as
2 rentals of farm dwellings for a period of less than
3 31 days.

4 The County agrees that there's no
5 prohibition on farm dwellings being rented for
6 30 days or less. But as we pointed out in our
7 Petition, it has to be framed in terms of
8 agricultural use in connection with HRS 205, Section
9 2(d)(7) which specifically defines farm dwellings,
10 and farm dwellings as defined in HRS 205-4.5 (a)(4)
11 notes that within the Agricultural District for farm
12 dwelling, which is defined specifically in Section 4.

13 We're here to determine whether the renting
14 of a dwelling as an STVR to an outside party, I mean,
15 we're here to determine whether it's a permitted use
16 in this matter.

17 The Rosehill Petitioners note that the
18 owner of a farm dwelling does not need to reside in
19 the dwelling. Again, the County agrees. However, it
20 must be agriculturally related and has to be framed
21 in terms of agricultural use.

22 The Hawaii Administrative Rules Section
23 15-15-03 defines a farm dwelling as a single-family
24 dwelling located on and used in connection with a
25 farm where agricultural activity provides income to

1 the family occupying the dwelling.

2 So you simply cannot isolate portions of
3 HRS 205-4.5 and expand it to make an argument that
4 somehow short-term vacation rentals are a permissible
5 use of a farm dwelling on lots created after June 4,
6 1976.

7 And as we set forth in our Petition, the
8 definitions and uses for farm dwellings and
9 short-term vacation rentals are in conflict, as a
10 STVR, by its very definition in Hawaii County Code
11 Section 25-1.5, which notes that the owner or
12 operator does not exclusively occupy the unit as a
13 single family or even live on-site.

14 The STVR owner must reside offsite and
15 temporarily rent the use of the unit to others.

16 We would submit that this is in contrast to
17 a farm dwelling that a family unit occupies while
18 obtaining income from agricultural activities on a
19 farm that the family owns in fee or leasehold.

20 With regard to the uses of farm dwellings,
21 an STVR's they're very distinct. A farm dwelling by
22 its very nature is used in connection with a farm,
23 why else would you call it a farm dwelling. It needs
24 to be used in support of, and an accessory to a
25 farming operation. And a farm dwelling's purpose is

1 to be a bona fide agricultural service and use which
2 supports and an accessory to agricultural activities.

3 The purpose of a short-term vacation rental
4 is to provide transient transient accommodations or
5 housing that will be temporarily rented for a period
6 of 30 days or less.

7 I apologize, but yesterday in the afternoon
8 I emailed to all the Parties and the Land Use
9 Commission two exhibits that I hope are in your
10 possession today.

11 One would be -- and I apologize, because I
12 just ran across this -- but the first exhibit and if
13 none of you have it, we will make it available, we
14 will provided it as soon as this hearing is
15 completed.

16 But the first one is what is called a Farm
17 Dwelling Notice, and this has to be filed with the
18 County of Hawaii Planning Department. The
19 residential use on the farm dwelling is not
20 prohibited but they must file this document. And in
21 fact, someone like Mr. Bell who testified earlier, we
22 would submit that his --

23 CHAIRPERSON SCHEUER: County, one moment.

24 I want to confirm with the parties that
25 indeed this was received.

1 First all, Rosehill, et al., Cal, did you
2 receive this?

3 CHIPCHASE: Yes, Chair, we did.

4 CHAIRPERSON SCHEUER: Okay. And I'm aware
5 that at very late last night, the Administrative
6 Officer for the Land Use Commission received your
7 email, but I don't know that those were transmitted
8 due to the late hour to the Commissioners themselves.
9 Mr. Orodenker?

10 MR. MUKAI: Again, I apologize for the
11 submission yesterday afternoon, but we'll make sure
12 that all Commissioners have the two exhibits.

13 CHAIRPERSON SCHEUER: Thank you. You can
14 continue with your oral.

15 MR. MUKAI: So with regard to this first
16 exhibit, we would submit that I think there was an
17 inquiry with one of the Commissioners as to whether
18 Mr. Bell's property or his residence, why can't he
19 just live there and not perform farming activities?
20 He has to file this Farm Dwelling Notice with the
21 County, and his residence is considered a farm
22 dwelling. And there's nothing that disallows him
23 from simply having a residence on an Agricultural
24 Zoned property.

25 The second exhibit that I transmitted for

1 the Commissioners' review would just simply be an
2 additional Farm Dwelling Application Agreement. And
3 we would point out that on this Notice a Farm
4 Dwelling does, in fact, reference Section 205-4.5
5 Section (a)(4) as a single-family dwelling located on
6 and used in conjunction with a farm.

7 And by the very description, we would
8 submit that a short-term vacation rental is simply
9 not used in connection with a farm, with agricultural
10 supporting activities, from which the unit's
11 occupants are paying income.

12 So as such, and we would submit that the
13 County of Hawaii respectfully request that the
14 Commission rule that farm dwelling may not be used as
15 short-term vacation rentals pursuant to HRS 205-2 and
16 205-4.5, and also sections 15-15-03 of the Hawaii
17 Administrative Rules.

18 CHAIRPERSON SCHEUER: Thank you very much.

19 Is that it for now?

20 MR. MUKAI: Yes, Mr. Chair.

21 CHAIRPERSON SCHEUER: Commissioners,
22 questions for the County of Hawaii?

23 Commissioner Okuda, followed by
24 Commissioner Chang.

25 COMMISSIONER OKUDA: Thank you very much,

1 Mr. Chair.

2 Question to the County and anyone on the
3 County's table or room can answer this question.

4 So is it the County of Hawaii's position
5 that a residence may be constructed and lived in on
6 land that's within the Land Use Agricultural
7 District, even if there's no agriculture taking place
8 on that parcel of property?

9 MR. YEE: For the record, Michael Yee,
10 Planning Director.

11 Yes, that is correct.

12 COMMISSIONER OKUDA: So in other words, the
13 County of Hawaii sees no violation of HRS Section
14 205-4.5, if I were to build a very large mansion, you
15 know, square footage the largest that the County
16 would allow under its applicable zoning code, and if
17 I told you flat out, by the way, I'm not going to do
18 any agriculture, and if I see anybody in my family
19 trying to grow anything, I'm going to cement over
20 with my cement truck. And that in your view would be
21 permissible under HRS 205-4.5?

22 MR. YEE: Michael Yee, again.

23 I would just state again that we allow
24 people to build a residence on agricultural land, and
25 it is a farm dwelling.

1 CHAIRPERSON SCHEUER: Sorry, I think I
2 actually have to swear you in procedurally, Mr. Yee.

3 Do you swear or affirm the testimony you're
4 going to give is the truth?

5 MR. YEE: I do.

6 CHAIRPERSON SCHEUER: Thank you.

7 MICHAEL YEE

8 Was called as a witness by and on behalf of the
9 County, was sworn to tell the truth, was examined and
10 testified as follows:

11 EXAMINATION

12 COMMISSIONER OKUDA: Thank you, Chair.

13 So in other words, Mr. Yee, even if I tell
14 you and, in fact, I tell you in writing that my
15 intention is I do not intend to engage in any
16 agriculture. All I intend to do is build a house to
17 live in. The County of Hawaii would consider that
18 consistent with HRS 205-4.5?

19 MR. YEE: Yes, and we would consider it a
20 farm dwelling.

21 CHAIRPERSON SCHEUER: We cannot see you.
22 Identifying yourself before speaking is very
23 important, for the record.

24 MR. YEE: Michael Yee, yes. They could
25 build a residence and we would consider it a farm

1 dwelling.

2 COMMISSIONER OKUDA: Even if there was no
3 farming going on?

4 MR. YES: Correct.

5 COMMISSIONER OKUDA: Thank you, Mr. Chair.
6 No further questions.

7 CHAIRPERSON SCHEUER: Thank you,
8 Commissioner Okuda.

9 Commissioner Chang.

10 COMMISSIONER CHANG: Thank you very much,
11 Chair.

12 To the County of Hawaii, I just want to
13 follow up. So how do you tax agricultural property
14 that has a farm dwelling on it? Is it taxed
15 agriculture? Is it taxed residential? How do you
16 tax it?

17 MR. MUKAI: On behalf of County, John
18 Mukai. We don't tax. This department does not tax.
19 So I don't think anyone in the room can answer this
20 question now. I apologize for that.

21 COMMISSIONER CHANG: Okay. That's
22 unfortunate.

23 Let me ask you this question. Can you
24 confirm that the Petitioner's applied to the Hawaii
25 County to certify their property as short-term

1 COMMISSIONER OHIGASHI: Was there any --
2 the Petitioners that Mr. Chipchase represent, did any
3 of them sign that agreement?

4 MR. MUKAI: Not to my knowledge.

5 COMMISSIONER OHIGASHI: So your records
6 would show no -- none of the members of his -- who he
7 is representing, has signed that agreement?

8 MR. YEE: Michael Yee. We would have to go
9 into each file to confirm that the Farm Dwelling
10 Notice was signed by each property.

11 COMMISSIONER OHIGASHI: I probably won't be
12 here when you -- when Mr. Chipchase comes up, so I
13 won't be able to ask him that question. Thank you.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Ohigashi.

16 Commission Okuda.

17 COMMISSIONER OKUDA: Thank you, Mr. Chair.

18 And anyone at the County can answer this
19 question. This is a followup to the last series of
20 questions.

21 So can you tell me then if the County is
22 not requiring active farming to allow a person to
23 build a residence on Agriculturally Districted
24 property, what then is the real difference between a
25 short-term rental of renters who come onto the

1 property, who are not going to be engaged in any type
2 of farm activity, and the person who lives in the
3 house that they built, which you say you will
4 approve, even if that person is not also engaged in
5 farming?

6 I mean, what is the rational difference
7 between the two?

8 MR. MUKAI: John Mukai for the County.

9 First, the short-term vacation rental, it's
10 in a resort-type zoning area. And, again, the
11 renting of the dwelling as an STVR to an outsider is
12 not a permitted use, and STVRs cannot be used as a
13 farm dwelling.

14 COMMISSIONER OKUDA: Well, may I ask this
15 question then.

16 If I came into the County and said I was
17 going to build a residence on Agriculturally
18 Districted and zoned land, and I told you in writing,
19 and by the way I don't plan to live there. I plan to
20 rent it out to somebody for, let's say, longer than
21 30 or 40-days.

22 Would you consider me being in violation of
23 any land use ordinance or law?

24 MR. MUKAI: My understanding -- John
25 Mukai -- longer periods of rental would be allowed

1 under Ag.

2 COMMISSIONER OKUDA: So in other words, the
3 County's objection is not that there's no
4 agricultural use regarding the short-term vacation
5 rentals, it's just that it's a short-term vacation
6 rental; correct?

7 MR. MUKAI: Yes, yes.

8 COMMISSIONER OKUDA: Thank you. No further
9 questions, Mr. Chair.

10 CHAIRPERSON SCHEUER: Thank you very much,
11 Commissioner Okuda.

12 Commissioner Wong.

13 COMMISSIONER WONG: Thank you, Chair.

14 Sorry, I got to get this straight. So
15 let's say I'm Mr. Bell. I have a piece of property.
16 I am not -- it's zoned Ag, and I would say -- I would
17 tell my friends, hey, come use my house for 29 days,
18 and just give me a dollar. That would -- that'd be
19 okay? Is that how we're seeing it?

20 MR. MUKAI: I think we're talking
21 specifically in this case about a short-term vacation
22 rental permit, which is -- I think that's not really
23 the situation that we're dealing with here.

24 COMMISSIONER WONG: The question I have is,
25 if Mr. Chipchase's clients didn't turn in that

1 short-term vacation rental form, or whatever, to the
2 County, and they just rented it out, that would be
3 okay?

4 MR. MUKAI: So having a short-term vacation
5 rental without a permit, yes, that would not be
6 legal.

7 COMMISSIONER WONG: I'm trying to figure
8 this out. You said that if we -- okay, so let's say,
9 again, taking Mr. Bell, let's say I have a property
10 zoned Ag and I rent it to the Chair for 31 days, is
11 that okay? And it's not a short-term vacation.

12 MR. MUKAI: By definition it's not a
13 short-term vacation rental.

14 COMMISSIONER WONG: Sorry, local boy is a
15 little confused on this issue now.

16 Because I'm trying to get my head around
17 this one. So you're saying as long as I turn in this
18 form to say I'm having a short-term vacation rental,
19 and on Ag land, that it won't be allowed; but if I'm
20 a farmer who's renting out my property to someone
21 that's not going to do farming, it's okay?

22 MR. MUKAI: April.

23 MS. SUPRENANT: Aloha, this is April --
24 (audio difficulty.)

25 CHAIRPERSON SCHEUER: Hold on. First of

1 all, I'm having some audio issues with you, and then
2 I also have to swear you in.

3 Do you swear or affirm the testimony you're
4 about to give is the truth?

5 THE WITNESS: I do.

6 APRIL SURPRENANT

7 Was called as a witness by and on behalf of the
8 County was sworn to tell the truth, was examined and
9 testified as follows:

10 EXAMINATION

11 MS. SURPRENANT: April Surprenant,
12 Acting Deputy Planning Director for Planning.

13 So the permit that we are talking about,
14 specifically with the Rosehill Petition, has to do
15 with nonconforming uses. So in the law in the
16 County's zoning code, short-term vacation rentals are
17 only allowed in certain zones, Ag is not one of them.
18 However, when the law was brought into play, we
19 allowed for some nonconforming uses that were already
20 in operation under very clear parameters in the law.

21 And so if people who met those parameters
22 and they included all of the information that was
23 needed by the timeframe that was required, and they
24 met all of those conditions as spelled out in our
25 code, then we issued them a nonconforming use

1 COMMISSIONER OKUDA: Let me be more
2 specific.

3 What in the State law, either State law or
4 appellate cases, because this is really a question of
5 the requirements of Chapter 205-4.5 where does it say
6 it is permissible to have residential use of
7 agricultural land without modified or actual
8 agriculture taking place.

9 MS. CHOW: Looks like the County got lost
10 for a little bit.

11 MS. SURPRENANT: April, we're still here
12 verbally.

13 COMMISSIONER OKUDA: I don't want to take
14 up any time. The parties can supplement the record
15 if necessary.

16 MR. MUKAI: This is John Mukai. I would
17 again direct the Commission to HRS 205-4.5, Section
18 4, which specifically talks about farm dwellings and
19 uses in connection with the farm, including clusters
20 of single-family farm dwellings permitted within
21 agricultural parks developed by the State, or where
22 agricultural activity provides income to the family
23 occupying the dwelling.

24 Again, we would point out to the Commission
25 that the exhibit we submitted yesterday, the

1 residence is considered a farm dwelling on the
2 agricultural land.

3 CHAIRPERSON SCHEUER: Just noting for the
4 record that we have yet to receive the exhibit as
5 Commissioners. Commissioner Chang.

6 COMMISSIONER CHANG: County, I'm going to
7 go down the same line of questioning. Mr. Chipchase
8 may not even have to say anything.

9 So I'm trying to understand, because I
10 think the Office of Planning provided their
11 testimony -- well, provided their position. And I
12 think that it joined in the County's position. And
13 as I understood the Office of Planning's position is
14 that you have to look at the zoning, and it's
15 agriculturally zoned, Agricultural District, so it
16 has to be in support of ag use.

17 So the question I have for the County, if
18 the Petitioner filed this Farm Dwelling Notice, and
19 not as a short-term vacation rental, and they
20 advertise it as a farm dwelling for use less than
21 30 days, 29 days, that would be a permissible use
22 under the County's interpretation?

23 MR. YEE: Michael Yee, Planning Director of
24 Hawaii County. If they're renting less than 30 days,
25 by definition it's a short-term vacation rental, and

1 so if they're not in a permitted area or have a
2 permit, then it's not.

3 COMMISSIONER CHANG: What happens if they
4 have, let's say they've got, you know -- if the fact
5 that they are renting it for less than 30 days, that
6 is what makes it a short-term vacation rental? Is
7 that the only fact?

8 MR. YEE: Michael Yee.

9 Within our ordinance we have defined
10 short-term vacation rentals as less than 30 days.

11 COMMISSIONER CHANG: And they have to be in
12 a Resort Zoned area?

13 MR. MUKAI: Correct, only in certain
14 districts. And that was John Mukai, sorry.

15 COMMISSIONER CHANG: But you are taking a
16 different position from Office of Planning.

17 The farm dwelling or the residential use
18 does not have to be in support of agriculture. Your
19 interpretation is that it can be a residence, no
20 agricultural use on the property, it's in
21 Agricultural District, but it's not -- the County's
22 interpretation is it does not have to be related to
23 agricultural use.

24 MR. MUKAI: Our zoning code allows it.

25 COMMISSIONER CHANG: If the Land Use

1 Commission decided, based upon this Petition, that
2 our interpretation is that it has to be associated
3 with agricultural use, how does that affect the
4 County of Hawaii? Because your laws can be stricter
5 but it cannot be more liberal.

6 MR. YEE: Well, I think the impact --
7 Michael Yee.

8 There would be a serious impact of trying
9 to have first, farm dwelling unit, which are
10 residences, have to show agricultural activity before
11 the owner could build the residence. If we went
12 around through the State of Hawaii having to require
13 folks to start agricultural activity, and then say,
14 hey, it's okay for you to build your residence there
15 on this property, it would be very difficult to
16 administer that way.

17 To a certain extent, I think we certainly
18 have many owners who buy property, ag land, who have
19 every intention of wanting farming, but they're going
20 to build the residence first and then start
21 agriculture down the road.

22 COMMISSIONER CHANG: Wouldn't you also
23 agree that there are many owners who purchase
24 agricultural lands and put on a dwelling not with the
25 intention of farming, so that they are taking away

1 Chipchase's presentation, that we will want to ask
2 further questions of the County, and perhaps after
3 the County's response, further questions from Mr.
4 Chipchase.

5 Is that acceptable to both parties?

6 MR. MUKAI: That's fine.

7 MR. CHIPCHASE: Certainly, Chair.

8 CHAIRPERSON SCHEUER: Thank you.

9 Did you have something further,
10 Commissioner Wong?

11 COMMISSIONER WONG: The other question for
12 the County for now is, let's say the dwelling was
13 built legally and was initially for farming, then
14 wanted to do a short-term vacation rental, how would
15 you stop them? Would you tell them to tear down the
16 entire house? I mean, how would you stop them
17 besides fines?

18 MS. SURPRENANT: April Surprenant.

19 So, again, short-term vacation rentals are
20 not allowed on ag land, and so if they were found to
21 do that, which we are putting things in place to help
22 fine those individuals who are trying to do
23 short-term vacation rentals, advertising short-term
24 vacation rentals without the required permit, in
25 order to enforce this legislation, which is similar

1 to what other counties are doing within the State,
2 they may get away with it for a time until they're
3 caught, so then they would receive fines and be
4 required to stop even renting as a short-term
5 vacation rental, but they would obviously be able to
6 maintain their residence and could use the land for
7 agricultural purposes.

8 COMMISSIONER WONG: So going onto that
9 issue, again, I think I asked this question, I just
10 want it reaffirmed.

11 So let's say I am a farmer. I built the
12 property legally. And I'm going to rent it out to a
13 farmer from Connecticut for 29 days, and he's going
14 to plant some papaya trees. That would be legal?

15 MS. SURPRENANT: April Suprenant.

16 Generally speaking, no. However, the
17 primary way that we will identify those individuals
18 who are trying to rent as short-term vacation
19 rentals, we are putting those mechanisms in place to
20 enforce that law.

21 COMMISSIONER WONG: I just wanted to make
22 sure, because let's say I'm not renting as short term
23 but renting it as a farming experience on Hawaii.

24 So, you know, it's a different statement.
25 (Inaudible).

1 MS. SURPRENANT: It's still a short-term
2 vacation rental. If you're bringing people in to
3 stay on the property for a short period of time and
4 the owner is not residing there, it's still
5 considered a short-term vacation rental. It's
6 possible that there are some activities on ag land
7 that could qualify under the State statutes and under
8 the county zoning code that may qualify to be able to
9 apply for a special permit, but obviously that's not
10 before us today.

11 COMMISSIONER WONG: So let me take it a
12 little step further.

13 Let's say I have this -- I want to say a
14 mansion, but I have a six bedroom house on property,
15 and I am a farmer on-site, and I bring someone in,
16 and I'm still living there, would that be okay?

17 MS. SURPRENANT: April Surprenant.

18 Under our definition of short-term vacation
19 rental, that does not qualify, the short term
20 vacation rental, so it's not prohibited. If the
21 owner is living on the premises, then that does not
22 fall under our statute for short-term vacation
23 rental.

24 COMMISSIONER WONG: No other questions for
25 now, Chair. Thank you.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioners? Commission Cabral.

3 VICE CHAIR CABRAL: Thank you. This line
4 of questioning and answers brings up more questions
5 to me.

6 My understanding of it is really not what
7 the structure of the building looks like, or what it
8 was originally permitted as or originally used as,
9 but really what the current usage is, i.e., if I were
10 to go out there and it's zoned agriculture, but the
11 usage I wanted to put on it was to put a 7-11-type
12 store in it, that is clearly retail, that is an
13 unpermitted use.

14 I guess my question is to Hawaii County and
15 probably to April, are we talking sort of a similar
16 kind of question, it's not a permitted use, I can't
17 put the 7-11 in my agriculturally zoned house, even
18 though when I built the house it was okay to have it
19 as a house to live in?

20 Trying to clarify. I know it's very
21 complicated and it's very important. Over here it's
22 a big thing. I keep wanting to focus on what is the
23 usage of the property, not how did the property get
24 to that usage, but what is the current usage?

25 So 7-11 is not permitted on Agricultural

CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on June 25, 2020 at 9:02 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

12 I further certify that I am not of counsel for
13 any of the parties hereto, nor in any way interested
14 in the outcome of the cause named in this caption.

15 Dated this 25th day of June, 2020, in Honolulu,
16 Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
22
23
24
25

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on July 23, 2020
Commencing at 9:03 a.m.

Held via ZOOM by Interactive Conference Technology

VII. Call to Order

VIII. STATUS REPORT

A02-737 U of N BENCORP (Hawai'i)

IX. ACTION

A02-737 U OF N BENCORP (Hawai'i)

* Consider Motion to Rescind Order to Show Cause or to Continue Hearing on Order to Show cause filed May 8, 2019

X. HEARING AND ACTION

* A02-737 U OF N BENCORP (Hawai'i)

Hear evidence, deliberate and take action on Order to Show Cause issued March 29, 2019

XI. ACTION

DR20-69 County of Hawaii and DR20-70 Linda Rosehill, et al

* Consider Petitioners, County of Hawaii's and Linda Rosehill, et al's Petition for Declaratory Orders regarding Short Term Vacation Rentals as Farm Dwellings

XII. CONTINUED HEARING AND ACTION (If Necessary)

A17-804 Hawaiian Memorial Life Plan, Ltd (O'ahu)

* Petition for District Boundary Amendment

XIII. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
3 EDMUND ACZON, Vice Chair (Oahu)
GARY OKUDA (Oahu)
4 LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)
5 DAWN CHANG (Oahu)
DAN GIOVANNI (Kauai)

6
7 STAFF:

8 JULIE CHINA, ESQ.
Deputy Attorney General

9 DANIEL ORODENKER, Executive Officer
RILEY HAKODA, Chief Clerk
10 SCOTT DERRICKSON, AICP/Planner

11 DAWN APUNA, ESQ.
Deputy Attorney General
12 RODNEY FUNAKOSHI, Planning Program Administrator
LORENE MAKI, Planner
13 State of Hawaii, Office of Planning

14 JOHN MUKAI, ESQ.
DIANA MELLON-LACEY, ESQ.
15 Deputy Corporation Counsel
MICHAEL YEE, Planning Director
16 APRIL SURPRENANT
Acting Deputy Planning Department
17 County of Hawai'i

18 CALVIN CHIPCHASE, ESQ.
CHRISTOPHER GOODIN, ESQ.
19 Attorney for Linda Rosehill, et al

20 KATHERINE GARSON, ESQ.
DEREK SIMON, ESQ.
21 JULIE ANJO, ESQ.
ALLEN ANJO, ESQ.
22 Attorneys for U of N Bencorp

23

24

25

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning. It 9:03 a.m.

3 This is the July 23rd, 2020 Commission
4 meeting which is being held using interactive
5 conference technology link videoconference
6 participants and other interested individuals of the
7 public via ZOOM and internet conferencing program to
8 comply with the State and County official directives
9 during the current pandemic health crisis. Members
10 of the public are viewing the meeting via the ZOOM
11 webinar platform.

12 I would like to stress to everyone the
13 importance of speaking slowly, clearly and directly
14 into your microphone, and that before speaking,
15 please state your name and identify yourselves for
16 the record.

17 This is especially important for rooms with
18 multiple people, such as who is actually talking.
19 That way we have one camera.

20 Also please be aware only (frozen screen).

21 COMMISSIONER WONG: Chair, you were
22 freezing half way through the introduction, so I
23 think we missed a couple things.

24 CHAIRPERSON SCHEUER: Where did I --

25 MR. HAKODA: Right at the start, Chair.

1 MS. GARSON: Thank you very much for your
2 time today. We really appreciate it.

3 CHAIRPERSON SCHEUER: It's 2:03. We will
4 do a five minute recess to 2:08 to allow the next
5 party to come in on DR20-69 and DR20-70, Rosehill, et
6 al.

7 (Recess taken.)

8 CHAIRPERSON SCHEUER: Reconvening at 2:09,
9 and we have to finish our proceedings today at 3:00
10 o'clock. We'll see how far we get.

11 VICE CHAIR CABRAL: I have a hurricane
12 heading towards me.

13 COMMISSIONER GIOVANNI: Chair, I'm
14 confirming I have a hard stop at 3:00 o'clock.

15 CHAIRPERSON SCHEUER: Got it. Thank you
16 very much.

17 (Recess.)

18 DR20-69 DR20-70

19 CHAIRPERSON SCHEUER: It's 2:10 P.M. Our
20 next agenda item are the continued proceedings on the
21 consolidated Declaratory Orders, DR20-69 County of
22 Hawaii, and DR20-70 Rosehill et al.

23 Before we begin, I would like again take a
24 moment to explain what these proceedings are about
25 and how certain things have to be handled in order to

1 ensure we are in compliance with Subchapters 5 and 14
2 of our rules, as well as all of the relevant
3 statutory requirements with regard to public
4 meetings.

5 First, I ask everyone to keep in mind that
6 this is a request for a Declaratory Ruling. That
7 means the Commission is being asked to interpret a
8 statute, rule or document and not to make a
9 determination on a factual dispute.

10 While certain facts may be important to
11 making an interpretation of law, in this type of
12 proceeding the facts are not really in dispute. The
13 Commission is taking the basic facts as undisputed.
14 What we are here to decide is the very limited issues
15 presented by the Petitioner County of Hawai'i and the
16 Petitioners Rosehill, et al.

17 Therefore, this is not, nor can it be, a
18 contested case hearing where evidence is presented,
19 where witnesses are provided and allowed to be
20 cross-examined. I would remind everyone of that.

21 Again, the facts are not in dispute. The
22 application of law to accept facts is being heard
23 today.

24 Next, I would like to impress upon everyone
25 that under Subchapter 14 of our rules, the only true

1 parties to these proceedings are the declarants or
2 Petitioners, the County of Hawai'i and Rosehill, et
3 al.

4 Everyone else, including the Office of
5 Planning, are in effect public witnesses. After the
6 witness has completed their testimony, the County of
7 Hawai'i, Rosehill, et al, and the Commissioners will
8 be given the opportunity to ask questions.

9 Also, after all public witnesses have had a
10 chance to speak, including OP, the representatives
11 for County of Hawai'i and Rosehill, et al, will be
12 given as much time as they reasonably need to
13 complete their cases.

14 Let me just say, due to the late time and
15 the hard stop at 3:00 o'clock, I expect that we will
16 have to continue this proceeding yet again to
17 August 12th.

18 Upon completion of all testimony, the
19 Commission will ask questions and come to a decision.

20 Will the petitioning parties for Docket
21 DR20-69 and DR20-70 please identify themselves for
22 the record?

23 MR. MUKAI: Good afternoon, John Mukai,
24 Deputy Corporation Counsel on behalf of County of
25 Hawai'i. Also present is Diana Mellon-Lacey, Deputy

1 reside on the building site, has no more than five
2 bedrooms for rent on the building site, and is rented
3 for a period of 30 consecutive days or less.

4 The County is not arguing about the
5 duration of the farm dwellings being rented for
6 30 days or less, or whether the owner of the farm
7 dwelling not needing to reside in the dwelling, but
8 the use, we would stress the use of the farm dwelling
9 is essential in determining whether the Rosehill
10 Petitioners may use their farm dwellings as vacation
11 rentals.

12 Hawaii Revised Statute 205D(7) specifically
13 defines farm dwellings as an agricultural with
14 accessory. And in turn farm dwellings as defined in
15 HRS Section 205-4.5(a)(4) notes that is within the
16 Agricultural District, A) Section 4, farm dwelling is
17 defined as follows:

18 It's defined as employee housing, farm
19 buildings, or activities or uses related to farming
20 and animal husbandry.

21 Farm dwelling, as used in this paragraph
22 means a single-family dwelling located on and used in
23 connection with a farm, including clusters of single
24 family farm dwellings permitted within agricultural
25 parks developed by the State where agricultural

1 activity provides income to the family occupying the
2 dwelling.

3 A farm dwelling's purpose is to be a bona
4 fide agricultural service and use which supports and
5 is an accessory to agriculture activities.

6 The purpose of a short-term vacation rental
7 is to grow transient accommodations or housing that
8 will be temporarily rented for a period of 30 days or
9 less.

10 A short-term vacation rental is equivalent
11 of like a resort or hotel accommodation which
12 provides lodging for visitors or transients for the
13 purposes of tourism or vacation.

14 We have also reviewed the Office of
15 Planning's Supplemental Submission, and we would
16 direct the Commission to page 5, the first full
17 paragraph which reads:

18 If the Petitioners are able and willing to
19 provide facts demonstrating or acknowledging that
20 their dwellings meet all of the STVR elements, and at
21 least one of the farm dwelling options, then the
22 Commission could determine that Petitioners were
23 operating their farm dwellings as STVRs pursuant to
24 HRS 205-4.5(a)(4).

25 We can assume that the Petitioners meet the

1 three elements of the STVR rental, but the Petitioner
2 failed to demonstrate that their farm dwellings are
3 either located on and used in connection with a farm,
4 or are located where agricultural activity provides
5 income to the family occupying the farm dwelling.

6 It's the County's position that under a
7 scenario where a farm dwelling on agriculturally
8 zoned property can qualify for a vacation-type
9 rental, that it would be governed by the short term
10 overnight accommodations as agricultural tourism as
11 defined pursuant to HRS Section 205-2(d)(12). The
12 County believes that the Commission should not or
13 cannot combine the definitions of short-term vacation
14 rentals and farm dwellings as they are, we believe,
15 separate and distinct uses.

16 And we would -- after this, we would ask
17 Ms. Apuna if she could clarify the Office of
18 Planning's position on this matter. But based on our
19 submissions and the law, we submit that the County
20 requests that the State Land Use Commission uphold
21 the intent of its State Land Use law by finding in
22 favor of the County of Hawaii, and declaring that a
23 short-term vacation rental is not a permitted use of
24 a farm dwelling in the Agricultural District.

25 Thank you.

1 CHAIRPERSON SCHEUER: Thank you, Mr. Mukai.
2 Commissioners, questions for Hawaii County?
3 Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you very much,
5 Mr. Chair. Thank you, Mr. Mukai.

6 Mr. Mukai, can I call your attention to the
7 response filed by the Rosehill Petitioners, which was
8 filed July 21, 2020, at 6:42 A.M., and specifically
9 calling your attention to Footnote 1 on page 3 which
10 quotes or recites from the transcript, which was
11 attached, I believe, to that filing as Exhibit 1,
12 which was the colloquy that I had between -- or with
13 your Planning Director Michael Yee.

14 Do you see that Footnote 1?

15 MR. MUKAI: Yes, Commissioner. And in
16 fact, at this time I would -- if you wish, I can have
17 Mr. Yee, who is here, clarify the position.

18 COMMISSIONER OKUDA: Can I ask an initial
19 foundational question?

20 Was that testimony, which was given under
21 oath, was that accurate testimony, or was that not
22 accurate testimony?

23 MR. MUKAI: We believe it is accurate. In
24 fact, I can have Mr. Yee explain in context what was
25 being said and his responses.

1 COMMISSIONER OKUDA: I'll leave it to the
2 Chair whether that's --

3 CHAIRPERSON SCHEUER: Is it necessary at
4 this time, Commissioner Okuda, for your purposes?

5 COMMISSIONER OKUDA: Yeah, maybe, because I
6 just want to find out -- let me just say this.

7 It seems like what the County is stating
8 now is contradicted by that statement, which is laid
9 out in Footnote 1.

10 CHAIRPERSON SCHEUER: So narrowly, let's
11 allow Mr. Yee to qualify. He was sworn in earlier.

12 MICHAEL YEE

13 Having been previously called as a witness on behalf
14 of the County of Hawai'i, was previously sworn to
15 tell the truth, was examined and testified as
16 follows:

17 EXAMINATION

18 MR. YEE: Michael Yee, Planning Director.

19 When you look at that citation, you can see
20 that I clearly stated that we consider it to be a
21 farm dwelling unit. And so, you know, we're
22 committed to the agricultural activity that has to
23 occur, but as I had said that day, that
24 administratively it's problematic to try to have
25 every property with the first farm dwelling unit to

1 show they have ag activity when they're ready to
2 build their first home on it.

3 So it's not to say that agricultural
4 activity isn't important, but equally we feel like
5 somebody should be able to build their house first on
6 a property.

7 So I don't see it being in conflict,
8 because the use as a farm dwelling as for somebody
9 residing in it is much different than trying to have
10 people reside in it or occupy it as vacation rental
11 24/7.

12 COMMISSIONER OKUDA: My question to you, I
13 was telling you up-front, I have no intention on
14 conducting any farm activity. I'm going to build my
15 McMansion on the property. I'm not going to farm.
16 There's not going to be any agricultural activity.
17 Will you still allow me to build my mansion when I'm
18 telling you absolutely not, there will be no
19 agricultural activity?

20 And when -- let me clarify, when I say will
21 you let me build, I'm asking, what is the County's
22 position?

23 MR. YEE: I'm still going to say that it's
24 still a farm dwelling unit. And people right now
25 have to sign a Farm Dwelling Agreement with us on

1 that unit.

2 And although they may say that they're
3 going to not perform agricultural activities, it
4 doesn't necessarily take away from residing in that
5 house.

6 When you place a use like a vacation
7 rental, you certainly eliminate that option.

8 COMMISSIONER OKUDA: So even if I tell you
9 straight up-front that there will be no agricultural
10 activity, you will still grant me the permit to build
11 the dwelling?

12 MR. YEE: It's still going to be a farm
13 dwelling unit.

14 COMMISSIONER OKUDA: And even if I told you
15 I'm putting some deed restrictions on my deed to say
16 there will be no farming activity on this property,
17 you would still give me a permit, you, meaning the
18 County, to build the dwelling?

19 MR. MUKAI: No, you cannot do that, because
20 by ag, by it's very nature, it would have to have
21 agricultural activities connected to the property.
22 This is John Mukai, sorry.

23 COMMISSIONER OKUDA: I understand that,
24 but -- okay. Thank you very much. I heard your
25 responses. Thank you. Thank you, Mr. Chair.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioner Chang.

3 COMMISSIONER CHANG: Thank you, Mr. Chair.

4 Mr. Mukai, Mr. Yee, I have the same line of
5 questioning as Commissioner Okuda.

6 Mr. Yee, as I understand your explanation,
7 you are of the opinion that they can build the farm
8 dwelling first before they actually start a farming
9 activity. Is that correct? Is that what you're
10 saying?

11 MR. YEE: That is correct. But right now
12 people fill out a Farm Dwelling Agreement when they
13 want to build that first one.

14 COMMISSIONER CHANG: Is there a time period
15 upon which you have to do the farming, according to
16 you?

17 MR. YEE: Realistically, no, we don't.

18 COMMISSIONER CHANG: So I guess the
19 question I have for you is:

20 Couldn't the plaintiffs come forward and
21 say we're going to -- we're planning on doing
22 farming, we haven't started it yet. And it's -- I
23 mean, how can you then deny that that's not a farm
24 dwelling? Because you have no time period if they
25 tell you, they complete the form, and they say, oh,

1 but we're going to do farming in the future. Not
2 just yet. That's just --

3 I'm having a really difficult time
4 understanding your chronology of the use of the land.

5 When I read 205, it would appear as if the
6 farming comes first. And there needs to be some
7 agricultural activity, and that the dwelling is
8 associated -- is connected to that, not that there's
9 a dwelling first, because what is the guarantee that
10 they'll ever do farming or agriculture?

11 MR. YEE: One way I take a look at this is,
12 we're also looking at the uses that occur on an
13 agricultural lot. So somebody could build a farm
14 dwelling unit, their first one. And they can say we
15 are doing X, Y, Z. As long as it's not a use that's
16 unrestricted, they can proceed. So it may not be a
17 vacation rental.

18 Say somebody takes up another activity on
19 their agriculture that is not a permitted use. We
20 would go in and say this is not a permitted use, and
21 issue a violation. That's why we're asking for
22 Declaratory Ruling on this to understand is this a
23 permitted use, just like we wouldn't allow a junkyard
24 to occur on ag land, we would site someone for that,
25 and if not, then there's a problem.

1 COMMISSIONER CHANG: I guess I'm still
2 having a difficulty with your clarification, because
3 I will have to admit, I see the County's position
4 today to be contradictory to the line of questioning
5 that the Commission had at the last hearing. You
6 appeared to be very adamant that you don't have to do
7 any farming activity, you could have a single family
8 dwelling on the property and do no farming,

9 So I'm really grappling because if there is
10 no time limit on when you do the agricultural
11 activity, who's to say that they're not in compliance
12 with farm dwelling? If they tell you they intend to
13 do it, but they never do it? How do you enforce and
14 judge that if they say they intend to do it, and it's
15 30 years later?

16 MR. YEE: It's still considered a farm
17 dwelling unit.

18 I'm trying to think in my mind if somebody
19 builds a single-family dwelling unit and say they
20 didn't use it and they created a commercial activity
21 in it, then they'd be in violation, and we might not
22 even find out ten years down the road. Ten years
23 down the road it changes hands, and it's an illegal
24 use of it. We would enforce then.

25 COMMISSIONER CHANG: What if there is no

1 illegal use, but there's still no farming, no
2 agricultural use five years, 10 years, 15 years, but
3 there is no other illegal activity, but there is a
4 dwelling on it, but they never use it for
5 agricultural purposes?

6 MR. YEE: I'll keep going back that it's
7 still a farm dwelling unit though.

8 COMMISSIONER CHANG: I think your
9 explanation is -- that's your explanation, all right.
10 Thank you.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Chang. Commissioner Ohigashi.

13 COMMISSIONER OHIGASHI: I think I
14 understand what you're trying to say. Correct me if
15 I am wrong. You're trying to say that, look, we're
16 going to authorize the building of single family
17 dwelling or a dwelling on the property. And they're
18 going to sign this agreement and say it's a farm
19 dwelling.

20 So the only use on that property is an
21 agricultural type of use. The only use that the
22 dwelling has is that allowed use, your question is,
23 whether or not a STVR is allowed use like
24 agriculture?

25 MR. YEE: That is correct.

1 COMMISSIONER OHIGASHI: I understand your
2 position. You're going to allow dwellings on there,
3 so long as they sign this dwelling agreement, that's
4 it. It's up to them to pursue what is legal on the
5 property. And the question is, is agricultural use
6 legal, yes. So they can do it. Is STVR legal on the
7 property? That's what you're asking, whether or not
8 an agricultural zone is legal to do?

9 MR. YEE: That's correct, is that use
10 allowable.

11 COMMISSIONER OHIGASHI: I just wanted to
12 understand your position. Thank you.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Ohigashi.

15 Commissioners, I would note -- I would note
16 for Mr. Yee, that his counterpart on Maui County
17 actually thinks a junkyard is an allowable use on
18 agricultural lands according to our proceedings two
19 weeks ago, even on important agricultural land.

20 Is there anything further right now from
21 the Commissioners, questions for the County?

22 If not, Mr. Chipchase, there's time for you
23 now. You could use some of it now. I don't know how
24 much time you want or need. We are not going to get
25 through all our proceedings today during the extended

CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on July 23, 2020, at 9:03 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

12 I further certify that I am not of counsel for
13 any of the parties hereto, nor in any way interested
14 in the outcome of the cause named in this caption.

15 Dated this 23rd day of July, 2020, in Honolulu,
16 Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
22
23
24
25

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

COUNTY OF HAWAII, for a Declaratory Order that “Farm Dwellings” May Not Be Operated As Short-Term Vacation Rentals Under Hawai’i Revised Statutes §§ 205-2 and 205-4.5, and Hawai’i Administrative Rules § 15-15-25

Docket Nos. DR 20-69 & DR 20-70

CERTIFICATE OF SERVICE

In the Matter of the Petition of:

Linda K. Rosehill, Trustee of the Linda K. Rosehill Revocable Trust dated August 29, 1989, as amended; Thomas B. and Rea A. Wartman; Mark A. Dahlman; Mark B. Chesebro and Caroline Mitchel, Trustees of the First Amendment and Restatement of the 1999 Mark Brendan Chesebro and Caroline Mitchel Revocable Trust U/D/T dated January 6, 1999; Somtida S. Salim, Trustee of the Somtida Salim Living Trust dated February 15, 2007; Todd M. Moses; Psalms 133 LLC; John T. Fenton, Trustee of the John T. Fenton Revocable Trust dated February 27, 2014; Frances T. Fenton, Trustee of the Frances T. Fenton Revocable Trust dated February 27, 2014; Donald J. K. and Stacey S. Olgado; Dirk and Laura Bellamy Hain, Trustees of the Bellamy-Hain Family Trust dated September 13, 2017; Peter A. Gunawan; Janti Sutedja; Neil Almstead; Doyle Land Partnership; James T. Kelnhofer; Charles E. and Nancy E. Rosebrook; Michael Cory and Eugenia Maston; Paul T. and Delayne M. Jennings, Trustees of the Jennings Family Revocable Trust dated January 5, 2010; Maggholm

Properties LLC; Nettleton S. and Diane
E. Payne, III

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document will be served on the below-named parties by e-mail or U.S. Mail, postage prepaid:

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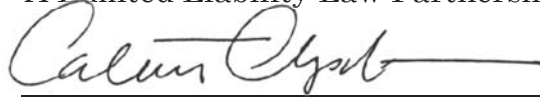
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State of Hawaii & Office of Planning

DATED: Honolulu, Hawai'i, August 10, 2020.

CADES SCHUTTE
A Limited Liability Law Partnership

A handwritten signature in cursive script, appearing to read "Calvert G. Chipchase", written over a horizontal line.

ROY A. VITOUSEK III
CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN
Attorneys for Petitioners