

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A05-761
)	
ERIC A. KNUDSEN TRUST)	ORDER DENYING
)	UNTIMELY APPLICATION
To Amend The Agricultural Land Use District)	TO INTERVENE
Boundary Into The Urban Land Use District)	
For Approximately 127.490 Acres Of Land At)	
Po`ipū, District Of Koloa, Island And County)	
Of Kaua`i, State Of Hawai`i, Tax Map Keys:)	
2-8-13: Por. 1; 2-8-14: Por. 1, 2, 3, Por. 4, Por. 19)	
And Por. Lot 19-B (Hapa Road))	
_____)	

ORIGINAL

ORDER DENYING UNTIMELY APPLICATION TO INTERVENE

On January 12, 2007, Llewelyn Kaohelauii; James Kimokeo, Jr.; Rupert Rowe; Grace Bacle; Terrie Hayes; and Hui Malama O Kane i olo uma (collectively "Hui") filed via e-mail an untimely Application To Intervene ("Application") in the above-entitled docket pursuant to section 15-15-52, Hawai`i Administrative Rules ("HAR").

In its Application, the Hui stated that because posting of notice was undertaken during the holiday season, two members of the Hui, James Kimokeo, Jr., and Llewelyn Kaohelauii, were out of town visiting family and friends, and therefore were unable to file a timely application to intervene.¹ The Hui also pointed out that Mr. Kaohelauii was involved in the Puwalu Hoohanohano I Na Kapuna Ke Kumu Ike

¹ The notice of hearing was published in *The Garden Island* on December 15, 2006, and in the *Honolulu Star-Bulletin*, *Hawaii Tribune-Herald*, *West Hawaii Today*, and *Maui News* on December 18, 2006. Pursuant to section 15-15-52(e), HAR, an application to intervene is required to be filed with the Land Use Commission ("Commission") with proof of service on all parties within 15 days after the notice of hearing is published. Based on the publication dates, the deadline to intervene expired on January 2, 2007.

Hawaii, and that the death of President Gerald Ford created an additional federal holiday to justify the Hui's untimely filing of its Application. The Hui further stated, among other things, that Messrs. Kimokeo and Kaohelaulii and Ms. Bacle believe they have a beneficiary interest in the Petition Area, and that the reclassification of said area would increase drainage impacts on properties downstream, including significant archaeological sites that are used for traditional and cultural practices.

The Commission considered the Application at its meeting on January 18, 2007, in Makena, Maui, Hawai'i. James Kimokeo, Jr., and Rupert Rowe appeared on behalf of the Hui. Walton D. Y. Hong, Esq., appeared on behalf of Petitioner Eric A. Knudsen Trust. Bryan C. Yee, Esq., and Abe Mitsuda appeared on behalf of the State Office of Planning ("OP"). James K. Tagupa, Esq., of the County of Kaua'i Attorney Office previously notified the Commission staff that he would not be present at this proceeding, and in fact was not present. Mr. Tagupa also advised the Commission staff that the County of Kaua'i took no position on the Application.

At the meeting, the Hui explained that the timeframe in which to file a timely application to intervene in this matter was very limited as both Hui members, Messrs. Kaohelaulii and Kimokeo, were out of town and President Gerald Ford had just passed away.

Petitioner argued that the Application should be denied as the Hui failed to show good cause as to why the untimely filing of its Application should be permitted.

OP declined to take a position on the Application and deferred to the Commission on this matter.

Notwithstanding the untimeliness of the Application, Petitioner argued that the Application should be denied on the basis that it failed to demonstrate how the members of the Hui will be directly or immediately affected by the reclassification of the Petition Area that its interest in the proceedings is clearly distinguishable from that of the general public or the other parties. Petitioner noted that if the Hui is claiming an interest in the Petition Area, these proceedings were not the proper forum in which to address that claim. Petitioner maintained that traditional and customary rights of native Hawaiians could be protected by OP in the proceeding, and therefore the Hui's participation is unnecessary. Petitioner agreed with the Hui's assertion that its interest should be represented by the Office of Hawaiian Affairs, the State Historic Preservation Division, and the federal government. Petitioner added that the Hui could express its concerns as public witnesses. Moreover, Petitioner pointed out that it will have engineering witnesses who can be cross-examined by the parties in regard to Petitioner's proposed drainage mitigation measures. Finally, Petitioner asserted that the admission of the Hui would not add anything to the proceedings except to make them lengthier and render them unmanageable.

In response to Petitioner's arguments opposing the Hui's Application, the Hui reiterated its concerns that the reclassification of the Petition Area would increase

drainage impacts and cause flooding to downstream properties, endangering life and property including the heiau located makai of the Petition Area.

Following discussion, a motion was made and seconded to deny the Hui's Application on the grounds that it was untimely and there was insufficient basis to establish good cause for the untimeliness. There being a vote tally of 6 ayes and 3 absent, the motion carried.

ORDER

This Commission, having duly considered the Hui's untimely Application, the arguments of the parties present in the proceeding, and a motion having been made at a meeting on January 18, 2007, in Makena, Maui, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that the Hui's untimely Application be DENIED.

LAND USE COMMISSION
STATE OF HAWAII

By Lisa Judge
LISA JUDGE
Chairperson and Commissioner

APPROVED AS TO FORM:

Heidi Jackson
Deputy Attorney General

Filed and effective on
2/12/07

Certified by:
Anthony J. H. Ching
ANTHONY J. H. CHING, Executive Officer

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To Amend The Agricultural Land Use District)
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Of Kaua'i, State Of Hawai'i, Tax Map Keys:)
2-8-13: Por. 1; 2-8-14: Por. 1, 2, 3, Por. 4, Por. 19)
And Por. Lot 19-B (Hapa Road))
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Denying Untimely Application To Intervene was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular mail as noted:

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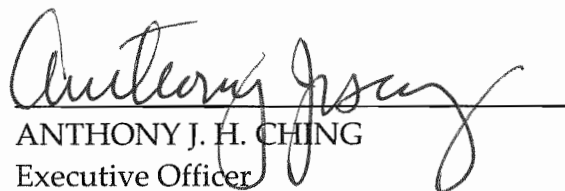
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Dated: Honolulu, Hawaii, 2/12/07.


ANTHONY J. H. CHING
Executive Officer