

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition

of

DEPARTMENT OF PLANNING,
COUNTY OF MAUI,

for a declaratory ruling on the
interpretation and applicability of H.R.S.
Chapter 205.

DOCKET NO. DR02-27

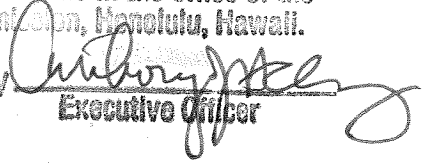
ORDER DENYING PETITION
FOR LAND USE
DECLARATORY ORDER

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

JAN 9 2003

Date

by


Executive Officer

ORDER DENYING PETITION FOR LAND USE DECLARATORY ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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For A Declaratory Ruling On The)	
Interpretation And Applicability Of)	
H.R.S. Chapter 205)	
_____)	

ORDER DENYING PETITION FOR LAND USE DECLARATORY ORDER

On October 8, 2002, the Department of Planning, County of Maui ("Petitioner), filed a Petition For Land Use Declaratory Order ("Petition"), pursuant to section 15-15-98 et seq., Hawai`i Administrative Rules ("HAR"), and section 91-8, Hawai`i Revised Statutes ("HRS"). Petitioner sought a declaratory ruling from the Land Use Commission ("Commission") that clarified the interpretation of sections 205-2 and 205-4.5, HRS, as to whether and when any religious use on land within the State Land Use Agricultural District required a special permit pursuant to section 205-6, HRS.

Petitioner specifically requested that the Commission determine whether Hale O Kaula, Inc. ("HALE"), a religious organization, was required to obtain a special permit to use its 5.85-acre agriculturally-designated parcel located at Anuheha Place, Pukalani, Maui, and identified as TMK 2-3-08: 32, for Sunday, Friday night, and at least one additional night during the week for exclusively religious uses either outside of or

within HALE's existing agricultural building where the primary use of the parcel would continue to be agricultural.¹ Petitioner noted that HALE's claim that the religious use would be secondary to the primary agricultural use of the parcel raised a question as to whether the presence of multiple allowable and non-allowable uses on the parcel required that a special permit be obtained for the non-allowable uses even if said uses were not the primary use.

On October 28, 2002, Petitioner filed a Supplemental Exhibit To Petition For Land Use Declaratory Order Filed October 8, 2002.

On November 15, 2002, Charles H. Hurd, Esq., counsel for HALE, filed a letter requesting that this Commission dismiss the Petition for lack of jurisdiction.

On November 21, 2002, the Office of Planning ("OP") filed a Memorandum In Response To Department Of Planning, County Of Maui's Petition For Land Use Declaratory Order Filed October 8, 2002.

On November 29, 2002, Petitioner filed a letter responding to Mr. Hurd's November 15, 2002, letter to this Commission.

On December 5, 2002, the Commission met in Honolulu, Hawai'i, to consider the Petition pursuant to section 15-15-100, HAR. Madelyn S. D'enbeau, Esq.,

¹ The church has a congregation composed of approximately 60 people and is associated with the Fellowship of the Living Word. Uses would include prayer, worship, spiritual teaching, and study of the bible.

and John E. Min appeared on behalf of Petitioner. John W. K. Chang, Esq., and Abe Mitsuda provided testimony on the Petition on behalf of OP.

At the meeting, the Commission pointed out, among other things, that pursuant to section 15-15-102(4), HAR, the matter was not within the jurisdiction of this Commission given that section 205-6, HRS, provided the counties with the authority to grant special permits for certain unusual and reasonable uses involving lands that are 15 acres or less within the Agricultural District.

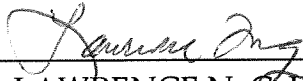
Thereafter, a motion was made and seconded to deny the Petition. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 7 ayes, 0 nays, and 2 absent, the motion carried.

ORDER

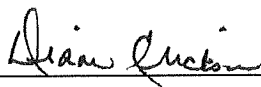
Having duly considered the Petition, the written and/or oral arguments presented by Petitioner, HALE, and OP, and a motion having been made at a meeting conducted on December 5, 2002, in Honolulu, Hawai`i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS that the Petition be DENIED.

Dated: Honolulu, Hawai'i, JAN 9 2003

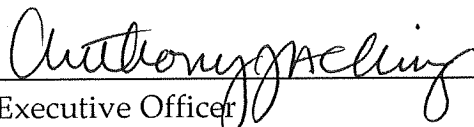
LAND USE COMMISSION
STATE OF HAWAII

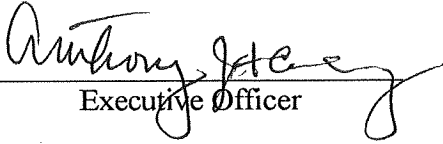

By LAWRENCE N. C. ING
Chairperson and Commissioner

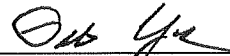
APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
January 9, 2003

Certified by:

Executive Officer


Executive Officer

By 
PETER YUKIMURA
Commissioner

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CERTIFICATE OF SERVICE

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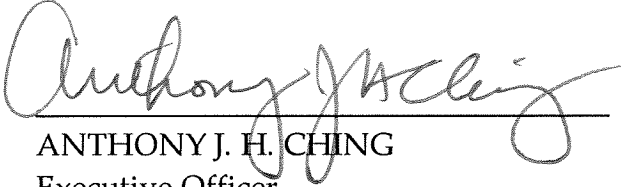
I hereby certify that a copy of the Order Denying Petition for Land
Use Declaratory Order was served upon the following by either hand delivery or
depositing the same in the U. S. Postal Service by certified mail:

CERT. MR. BRIAN MOTO, Esq.
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CERT. MR. MICHAEL FOLEY
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CERT. CHARLES H. HURD, Esq.
Hurd & Luria
201 Merchant Street, Suite 1500
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 10th day of January, 2003.



ANTHONY J. H. CHING
Executive Officer