NO. SCWC-29440

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

KAUAI SPRINGS, INC., Petitioner/Appellant-Appellee, vs. PLANNING COMMISSION OF THE COUNTY OF KAUA‘I, Respondent/Appellee-Appellant.	ON APPLICATION FOR A WRIT OF CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS ICA NO. 29440 ICA Opinion: April 30, 2013 ICA Judgment: May 30, 2013 Circuit Court: Civil No. 07-1-0042 Circuit Court of the Fifth Circuit Hon. Kathleen N. A. Watanabe Judgment: September 23, 2008

RESPONSE TO APPLICATION FOR A WRIT OF CERTIORARI

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RESPONSE TO APPLICATION FOR A WRIT OF CERTIORARI

Respondent/Appellee-Appellant Planning Commission of the County of Kaua‘i ("Planning Commission") responds to the Application for a Writ of Certiorari filed by Petitioner/Appellant-Appellee Kauai Springs, Inc. ("Kauai Springs"), filed on July 29, 2013. The Application should be denied, and the case permitted to return to the Planning Commission for proceedings consistent with the Opinion of the Intermediate Court of Appeals ("ICA"), filed on April 30, 2013.

The Application takes issue with the ICA's determinations that Kauai Springs, by its own conduct, assented to delays in the Planning Commission's decision on Kauai Springs' application for three business-related permits. The Application, however, fails to acknowledge the existence of ordinances, applicable here, that allow for extensions of permit decision deadlines with the assent of the applicant. Moreover, the record reflects that Kauai Springs actively participated in hearings on its permits, and even amended its permit application, after the deadlines for two of the three permits had passed, and it never claimed that the two permits were deemed approved by operation of statute. Kauai Springs also argues that remand is inappropriate because the circuit court correctly determined that the Planning Commission held duties under the public trust doctrine. In a separate conclusion, however, the circuit court held that there was nothing in the record to suggest that Kauai Springs' actual or proposed use of spring water might affect water resources subject to the public trust, and it was for this reason, among others, that the ICA vacated and remanded the case to the Planning Commission. The Application therefore presents no compelling reasons for this Court's acceptance of the Application.

I. STATEMENT OF THE CASE

Kauai Springs operates a water processing, bottling, and distribution facility on property located in Koloa, Kaua‘i. Administrative Record of the proceedings before the Kaua‘i Planning Commission, numbered 000001 to 000684 ("KPC"), at 605-07. The majority of the property is designated "Agriculture District (A)" by the Kaua‘i General Plan with a portion zoned "Open District (O)." KPC at 605-07. Kauai Springs holds a fifteen-year lease on the property. Record on Appeal ("ROA") V.2 at 168 ¶ 4; KPC at 246.

The water bottled and sold by Kauai Springs originates as spring water from a cave on Kahili Mountain, several miles away. KPC at 450-51, 605-07. EAK Knudsen Trust ("Knudsen Trust") purportedly owns the cave. KPC at 261-62. The water is transported to the subject

property by a gravity-fed system owned by Grove Farm Company. KPC at 241. The system was formerly used to irrigate the Koloa ahupua‘a, KPC at 261-62, and presently serves fifty to sixty customers including Kauai Springs. KPC at 415. The water reaches Kauai Springs' bottling facility through a tap into a pipe crossing the subject property. KPC at 605. The water is then purified, bottled into five-gallon containers, and delivered to customers. KPC at 242, 606.

In 2003, Kauai Springs applied for, and was granted, a Class IV Zoning Permit and a Building Permit to erect a "watershed" on the property. KPC at 476-78. The County Planner who was originally assigned to process the application noted that the watershed "looked . . . like any other ag. building at the time." KPC at 246. However, the "watershed" was actually a semi-automated water-bottling facility capable of filling at least 1,000 five-gallon bottles per day. KPC at 242-43. Kauai Springs bottled and sold water for over two years without seeking any other land-use permits. KPC at 245. Under Kaua‘i's Comprehensive Zoning Ordinance ("CZO"), industrial processing and packaging is generally not permitted in Agricultural and Open Districts. Hawai‘i Revised Statutes ("HRS") § 205-4.5 (2006); Kaua‘i County Code ("KCC") §§ 8-7.2, 8-8.2 (1987); ROA V.2 at 46-47 (Zoning Compliance Notice (May 15, 2006)).

On May 15, 2006, the Kaua‘i Planning Department ("Planning Department") issued a cease and desist letter, giving notice of violations, including "processing and packaging without the proper permits" and "[i]ndustrial processing and packaging" in an Agricultural District. ROA V.2 at 46-47 (Zoning Compliance Notice (May 15, 2006)).

Acknowledging that the permits were necessary "for the purpose of harvesting and packaging spring water in the Agricultural District," Kauai Springs applied for three permits on July 5, 2006: (1) Use Permit U-2007-1; (2) Special Permit SP-2007-1; and (3) Class IV Zoning Permit Z-IV-2007. KPC at 657 (Application) ¶ 4, 682 (Planning Department Intake Form). Kauai Springs initially sought to greatly expand its operations. At public hearings subsequently held before the Planning Commission, Kauai Springs explained that it wanted the permits to cover an approximate *fourteen-fold increase* in the harvesting of water (from 2,500 gallons per week to 35,000 gallons per week). KPC at 241-42. The request also sought no restrictions on the size of bottles and an increase from two to ten delivery vans. KPC at 214, 219.

Early in the course of hearings on the permit applications, on July 28, 2006, this Court issued its opinion in Kelly v. 1250 Oceanside Partners, 111 Hawai'i 205, 225, 140 P.3d 985, 1005 (2006), holding that the State Constitution "mandates that the County does have an obligation to conserve and protect the [S]tate's natural resources."

Kauai Springs' application included a supplemental document attempting to explain how its operations and use of water met the requirements for Use and Special Permits. KPC at 657-661. While stating that "the process of bottling water has minimal impact on the land and the surrounding areas," and that "[t]here is *currently* excess water in the system," there was no support for the conclusions, and no evidence that that the proposed fourteen-fold increase would carry no adverse consequences. KPC at 658 ¶¶ 3, 5 (emphasis added).

During the public hearings, the Planning Commission sought more information about the volume and impact of Kauai Springs' present and proposed water use. At the August 8, 2006, public hearing, the Knudsen Trust admitted that it did not know exactly how much water was supplied from the system, but speculated that it was roughly in excess of five million gallons per day. KPC at 263. No evidence of any measurement or calculation was presented. When questioned about the effect of its water use on other users, Kauai Springs claimed that the spring emits 275,000 gallons per day. KPC at 221 (Sept. 26, 2006 Hearing). Again, no evidence of any measurement or calculation was presented. The Planning Commission also sought input from numerous State and local agencies,[1] including the Commission on Water Resource Management ("CWRM"), see KPC at 674, 411, 409, 408 and 407, and the Public Utilities Commission ("PUC"). See KPC at 459, 418, 417.

The Planning Commission's evaluation was complicated by Kauai Springs' often unclear and contradictory representations. See, e.g., KPC at 560 (Staff Report for the Sept. 26, 2006, Hearing) ("The Applicant was also asked to define what it wanted more clearly."). For example, although Kauai Springs initially sought permission to bottle 35,000 gallons per week, four months into the process it changed that amount to 7,000 gallons per week.

> I think with Barbara [Pendragon] there was some discussion of growth and the fact that his business may grow and we are not seeking any sort of growth. We

[1] The agencies contacted included the Engineering Division, Water Department, State Health Department, State Historical Preservation Division, State Land Use Commission, State Office of Planning, State Department of Agriculture and the Commission on Water Resource Management. KPC at 674.

> agree that that is not appropriate at this time. So what we are asking for is permission to bottle 1,000 gallons of water a day.

KPC at 197 (Comments of Harvey Cohen, Esq., counsel for Kauai Springs, Nov. 14, 2006 Hearing). Kauai Springs' owner, Mr. Satterfield, confirmed his intent to amend the original application—thereby limiting the volume of water to be bottled and transported.

> Mr. Satterfield: 1,000 gallons a day is what we are asking to amend it to.
>
> Staff (Barbara Pendragon): That is 2 vans?
>
> Mr. Satterfield: Yes.
>
> Staff (Barbara Pendragon): Its 2 vans not 10 vans which had been asked for at a previous meeting so this is an amendment of that request?
>
> Mr. Satterfield: Correct.

KPC at 214; KPC at 438-39. At a subsequent meeting, however, Kauai Springs reversed itself and again sought a fourteen-fold increase in capacity. KPC at 170. As late as the November 14 and 28, 2006, hearings, Committee members were still uncertain about the number of hours Kauai Springs intended to operate on a daily basis. KPC at 170-71, 173, 210-13.

In total, the Planning Department's evaluation of Kauai Springs' application continued for 203 days. Delays and continuances were necessary to account for: (1) five hearings wherein numerous unexpected issues arose, KPC at 1-264; (2) time-consuming consultations with various agencies, including correspondence with CWRM and PUC continuing into late November 2006, KPC at 438; (3) attempts to schedule a field trip to the water source, which were ultimately thwarted when Knudsen Trust refused to admit the public, KPC at 450; (4) efforts to reconcile uncertainties, inconsistencies and changes relating to Kauai Springs' application, see, e.g., KPC at 170-71, 173, 197, 210-13, 214; and (5) the inability or reluctance on the part of Kauai Springs and other agencies to address outstanding issues, KPC at 344 ¶ 18.[2]

Throughout this period, Kauai Springs continued to attend and participate in meetings, amend and re-amend its application, and negotiate with the Planning Commission regarding the nature of any approved permits. For instance, the Planning Commission considered granting conditional permits allowing Kauai Springs to independently provide evidence of compliance with zoning and public trust requirements. On November 28, 2006, Kauai Springs agreed to

[2] "The delay in reaching a decision on this proceeding was attributed to staff's effort in obtaining additional information relating to the Applicant's authority and right to obtain and extract water for commercial purposes." KPC at 344 ¶ 18.

accept a conditional Use Permit so that the Planning Commission could review any subsequent change of ownership. See KPC at 175. Kauai Springs also agreed to a "conditioned approval, conditioned on clarifying some of these water right issues." KPC at 134 (Comments of Harvey Cohen, Esq.).

On January 23, 2007, with no time remaining to debate satisfactory conditions, the Planning Commission voted to deny all three permits and issued its Findings of Fact, Conclusions of Law, Decision and Order. KPC at 71, 72, 342-47. The reason for the denial was the Planning Commission's conclusion that Kauai Springs failed to carry its burden of proving "that all applicable requirements and regulatory processes relating to water rights, usage, and sale are satisfactorily complied with . . . ." KPC at 346 ¶ 3. The Planning Commission also based its decision on the fact that Kauai Springs made no attempt to investigate water rights from the beginning. KPC at 134-35.

At the February 13, 2007 hearing addressing Kauai Springs' request for reconsideration, which was denied, Kauai Springs' counsel offered to accept conditions and waive the automatic-approval deadlines to permit more time to obtain declaratory rulings. See KPC at 2, 4.

II. ARGUMENT

A. Kauai Springs Assented to the Delay Through Its Conduct, Including Amendments to Its Application.

By its conduct, Kauai Springs led the Planning Commission to reasonably believe that Kauai Springs assented, permissibly, to a delay in the final decision on the permits. Kauai's CZO, which the Application does not acknowledge, explicitly allows permit decision deadlines to be extended with the assent of the applicant. For example, the relevant automatic-approval provision for a Use Permit specifically allows the applicant to assent to a delay:

> If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article*, unless the applicant assents to a delay*, the application shall be deemed approved.

KCC § 8.19.5(g) (emphasis added); see also id. § 8-20.6 (Use Permit procedure follows deadlines for Class III Zoning Permit). An identical provision applies to the required Class IV Zoning Permit. Id. § 8-19.6(e).[3]

[3] The force of these assent provisions should carry even more weight in light of the Legislature's recent declaration that automatic approval is "poor public policy" and "can lead to negative consequences for the community." See 2006 Haw. Sess. L. Act 280, § 1.

"Assent" is defined as "verbal or nonverbal conduct *reasonably interpreted* as willingness." Black's Law Dictionary 124 (8th ed. 2004) (emphasis added). Its forms include apparent assent, which is "given by language or conduct that while not necessarily intended to express willingness, would be understood by a reasonable person to be so intended and is actually so understood"; constructive assent, which is "imputed to someone based on conduct"; and implied assent, which is "inferred from one's conduct rather than from direct expression." Id. Thus, a determination of whether Kauai Springs assented to a delay of the automatic-approval deadlines properly considered whether Kauai Spring' words or conduct were *understood by the Planning Commission* to manifest Kauai Spring' willingness to postpone a final decision. See Opinion at 21-23.

On the record here, Kauai Springs' conduct, including its amendments of its permit applications, could only reasonably be understood as assenting to delays. For example, at a November 14, 2006 hearing, almost a month after the Use Permit deadline had elapsed and more than one week after the Class IV Zoning Permit deadline had passed, Kauai Springs, through its attorney, *amended* its original application to seek approval for only the current needs of the water-bottling operation rather than allowing for company growth. Later, at a November 28, 2006 hearing, Kauai Springs' attorney retracted the earlier amendment and asked the Planning Commission to consider its original application, which contemplated company growth, and Kauai Springs' attorney also continued to negotiate for the granting of a conditional Use Permit, "conditioned on clarifying some of these water right issues." KPC at 134. Weeks later at the January 23, 2007 Hearing, Kauai Springs and its counsel continued to argue against the proposed Decision and Order denying the three permits. KPC at 67-69, 72. At the February 13, 2007 Hearing, Kauai Springs offered to accept conditional permits and asked for a continuance to obtain more evidence relevant to the "remaining issues." KPC at 2-3. These actions were reasonably and objectively interpreted as manifesting Kauai Springs' assent to delay the final action on the Use and Class IV permits, particularly because they included amendments to the application. As found by the ICA, at no point in time did Kauai Springs assert that its permit application had been automatically approved. See Opinion at 23.

1. The ICA Properly Determined that HRS § 92-13.5 Does Not Invalidate the Ordinances' Provision for Delays with the Applicant's Assent.

Kauai Springs argues that HRS section 91-13.5(e) is not "ambiguous," Application at 8, suggesting, incorrectly, that the ICA held the statute to be ambiguous "because it does not specify that the reasons for extending deadlines listed in subsection (e) are exclusive." This argument mischaracterizes the ICA's analysis.

The question the ICA actually addressed was whether section 92-13.5 invalidates relevant *ordinances* that deem permits approved in the absence of agency action within set timeframes *unless the applicant assents to delay*. See Opinion at 18.

HRS section 91-13.5 requires state and county agencies to adopt rules specifying a maximum time period for decisions on business or development-related permits. This statute states in relevant part:

> (a) Unless otherwise provided by law, an agency shall adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval; . . .
>
> . . .
>
> (c) All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license, or approval within the established maximum period of time, or the application shall be deemed approved; provided that a delay in granting or denying an application caused by the lack of quorum at a regular meeting of the issuing agency shall not result in approval under this subsection; provided further that any subsequent lack of quorum at a regular meeting of the issuing agency that delays the same matter shall not give cause for further extension, unless an extension is agreed to by all parties.
>
> . . .
>
> (e) The maximum period of time established pursuant to this section *shall be extended* in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.

(Emphases added.)

The ICA observed that even prior to the adoption of HRS section 91-13.5, the County had adopted maximum time periods for the Planning Commission to act on the types of permits at issue here. Opinion at 17-18. The ordinances governing Use Permits and Class IV Zoning Permits provide that, "[i]f the Planning Director or the Planning Commission fails to take action

within the time limits prescribed in this Article, *unless the applicant assents to a delay*, the application shall be deemed approved." KCC § 8-19.5(g); KCC § 8-19.6(e) (emphasis added).

On appeal, Kauai Springs argued that if the county ordinances allow assent to extend the deadlines, they violate the superior state law set forth in HRS § 91-13.5 and are invalid. See Opinion at 18 (citing HRS § 46-1.5(13) (Supp. 2005) (counties have the power to enact ordinances "not inconsistent with, or tending to defeat, the intent of any state statute"); HRS § 50-15 (2012 Repl.) ("there is expressly reserved to the state legislature the power to enact all laws of general application throughout the State . . . , and neither a charter nor ordinances adopted under a charter shall be in conflict therewith."). Kauai Springs argued that HRS section 91-13.5(e)'s inclusion of three circumstances under which the agency-designated time periods must be extended, implies the exclusion of all others. Kauai Springs argued that the County ordinances are therefore "in conflict" with HRS § 91-13.5(e) and are invalid because they allow assent to extend the deadlines. Opinion at 18-19. The ICA disagreed.

The ICA reasoned, first, that HRS section 91-13.5 *is silent* as to whether counties may provide for assent provisions by code or rule. HRS section 91-13.5(e)'s provision of *mandatory* reasons for extending the time periods—national disaster, state emergency, or union strike—"does not necessarily indicate an intent to preclude counties from adopting other reasons why the time periods *may* be extended." Opinion at 19 (emphasis added). Thus, the ICA could have ended its analysis there, because there is no inherent conflict between the ordinances and the statute.

The ICA proceeded, however, in its analysis. As to the question of "whether HRS § 91-13.5 prohibits the challenged assent provisions," the ICA held, "HRS § 91-13.5 is ambiguous," because it "*neither explicitly allows or disallows* the adoption of rules or ordinances which provide that the period for automatic approval may be extended." Opinion at 19-20. Looking to the legislative history in the face of this perceived ambiguity, the ICA held that the "legislative history as a whole contemplates flexibility in rule-making and a balance between streamlining on one hand and constitutional demands, public input, and environmental concerns on the other hand," leading it to conclude that "the challenged assent provisions do not conflict with HRS § 91-13.5." Opinion at 20.

Kauai Springs argues in the Application that "[t]he ICA failed to recognize the fact that any concerns for flexible rulemaking [were] accounted for by the legislature giving agencies the

power to set their own deadlines, and by allowing counties to opt out entirely." Application at 9. To the contrary, the fact that the Legislature allowed the counties to set their own time limits and *to opt out entirely* if they chose soundly supports the rule-making flexibility the ICA noted. If the Legislature had intended that agencies be confined to any specific deadlines without exception, the Legislature would have established those deadlines itself and would not have permitted the counties to opt out. It would be inconsistent, and illogical, for the Legislature, on one hand, to permit counties to elect not to establish deemed-approved deadlines at all but, on the other hand, to preclude counties from permitting extensions of any such deadlines when warranted by the circumstances and with the assent of the applicant.

Kauai Springs' reliance on the rule of statutory construction that, "the express mention of a particular provision may imply the exclusion of that which is not included," Application at 8, is misplaced, as the rule does not apply here. As stated by the Hawai'i Supreme Court, "[t]he inclusion of a specific matter in a statute implies the exclusion of another 'only where in the natural association of ideas the contrast between a specific subject matter which is expressed and one which is not mentioned leads to an inference that the latter was not intended to be included within the statute.'" Int'l S&L Ass'n v. Wiig, 82 Hawai'i 197, 201, 921 P.2d 117, 212 (1996) (quoting 82 C.J.S. Statutes § 333, at 670 (1953)). Section 91-13.5(e) dictates circumstances—natural disaster, state emergency or union strike—in which the deadlines mandatorily "shall be extended." The inclusion of such mandatory extensions does not suggest that the Legislature intended to prohibit counties from identifying other circumstances in which deadlines *could be* extended. The application of *expressio unius est exclusio alterius* to section 91-13.5(e) arguably precludes the CZO from creating other situations in which the automatic approval deadlines "must" be extended, but the CZO provisions at issue do not create such mandatory extensions. Moreover, and consistent with this distinction, the mandatory extensions in section 91-13.5(e) do not require the assent of the applicant, but apply regardless of whether the applicant assents. The ICA was correct in determining that the assent provisions in KCC section 8-19.5(g) and KCC section 8-19.6(e) do not conflict with HRS section 91-13.5.

2. The Use and Class IV Permits Did Not Vest.

Kauai Springs' argument that the Use and Class IV Permits had vested is incorrect, as Kauai Springs through its own conduct led the Planning Commission to reasonably believe that Kauai Springs assented to a delay in the final decision on the permits. Again, at the

November 14, 2006 hearing, almost a month after the Use Permit deadline had elapsed and more than one week after the Class IV Zoning Permit deadline had passed, Kauai Springs *amended* its application to seek approval for only the current needs of the water-bottling operation rather than allowing for company growth, and later, at a November 28, 2006 hearing, it retracted the earlier amendment and asked the Planning Commission to consider its original application, which contemplated company growth. Kauai Springs plainly did not understand the permits to have vested. And, even though Kauai Springs never asserted that the permits had vested, it would be impossible to determine the scope of any such permits, given Kauai Springs' repeated amendments to its application. Moreover, as found by the ICA, at no point in time did Kauai Springs assert that its permit application had been automatically approved.

3. The Remand is Like Any Other Remand on Appeal.

Kauai Springs' complaint that the ICA's opinion notes no time limit for the Planning Commission's consideration on remand, Application at 10, fails to differentiate the remand here from any other on an appeal. For that reason alone the argument is without merit. Moreover, the ICA remanded the case for the Planning Commission's review under specific standards and criteria, and that review necessarily will take time. And, as the ICA correctly held, Kauai Springs through its own conduct assented to delays in the decision-making process, and it should not now be heard to complain of delays.[4]

B. The ICA Properly Remanded the Case Upon Finding the Circuit Court's Conclusions Erroneous.

1. The Circuit Court Did Not Recognize a Duty Under *Kelly*.

Despite the unadorned argument in the Application at 11, the circuit court's conclusions of law demonstrate that the circuit court did *not* recognize that public trust concerns were at issue in this case:

> 63. Decisions on permit applications must be grounded in fact and the Record, not speculation, *and the Record in this case is devoid of any evidence that Kauai Springs[']* existing or proposed use might affect water resources subject to the *public trust.*

[4] While Kauai Springs complains of delays, it also bears responsibility for delays in concluding this matter. Pursuant to Rule 40.1 of the Hawai'i Rules of Appellate Procedure, Kauai Springs was required to file its Application within thirty days of the ICA's Judgment. Kauai Springs not only requested and obtained a thirty-day extension of that filing deadline, it filed its Application at the end of that extended deadline.

ROA V.2 at 188 (emphasis added). It was for this reason that the ICA analyzed the constitutional and statutory authority to conclude that "as in Kelly, the County's public trust duty under article XI, section I of the Hawai'i Constitution, '*[c]oupled with* the State's power to create and delegate duties and responsibilities to the various counties through the enactment of statutes,'" "establishes that the County (through the Planning Commission) had a duty to conserve and protect water in considering whether to issue the Use Permit and the Class IV Zoning Permit to Kauai Springs." Opinion at 33; see also Opinion at 33-35 (similarly analyzing Special Permit).

The ICA also held that Kauai Springs' application sought to continue operating a spring water bottling facility, and "[t]he spring water utilized by Kauai Springs is held in trust for the common good and therefore the proposed use does have an impact on a public trust resource." Opinion at 35. The Court noted that the record reflects that Kauai Springs "currently bottles between 1,500 and 2,500 gallons of water per week and proposes an increase to at least 35,000 gallons of water per week. Thus, the record clearly contains evidence that Kauai Springs' existing and proposed use of the Property directly affects a public trust resource." Id. For this reason, the ICA vacated the circuit court's COL 63. Id.

2. Kauai Springs Failed to Carry Its Own Burden.

Kauai Springs attempts to argue that the Planning Commission argued that "its own process was inadequate." Application at 11. To the contrary, the Planning Commission's position has consistently been that it has a duty under the public trust to consider Kauai Springs' use of water, that Kauai Springs' use of water affects a public trust resource, and Kauai Springs itself bears a burden to establish that its use of water is consistent with the public trust. Moreover, the ICA agreed, stating, "because Kauai Springs seeks to use the water for economic gain, this case requires that the Planning Commission give the permit application a higher level of scrutiny" and, even though Kauai Springs' use of the water is not illegal or improper per se, "Kauai Springs carries the burden to justify the use of the water in light of the purposes protected by the public trust." Opinion at 40; see also id. at 48 ("[T]he Planning Commission can and should require Kauai Springs to carry the burden of justifying its use of water for economic gain in light of the purposes protected by the public trust.").

III. CONCLUSION

For the foregoing reasons, the Application presents no compelling reasons for this Court's acceptance of the Application. The Application should therefore be denied, and the case permitted to return to the Planning Commission for proceedings consistent with the ICA's Opinion.

DATED: Honolulu, Hawai'i, August 8, 2013.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and complete copy of the foregoing document will be duly served upon the following by electronic court filing (JEFS), hand delivery (HD) and/or by mailing said copy, postage prepaid, first class, in a United States post office at Honolulu, Hawai‘i (M), in the manner indicated, addressed as set forth below:

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