



# Housing And Civil Enforcement Cases Documents

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UNITED STATES OF AMERICA,

Plaintiff,

**COMPLAINT**

v.

Maui County

Defendant.

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The United States of America alleges:

1. This action is brought by the United States to enforce the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*
2. This Court has jurisdiction over this action under 28 U.S.C. § 1345.
3. Venue is proper because the claims alleged herein arose in the District of Hawai'i. 28 U.S.C. § 1391.
4. Under the Maui County Code, Defendant Maui Planning Commission has authority to regulate and restrict the use of land and structures within its borders, including granting special land use permits for properties of less than 15 acres.
5. For purposes of RLUIPA, the Defendant constitutes a "government." 42 U.S.C. §2000cc-5(4)(A)(ii).
6. Hale O Kaula Church is a nonprofit, Hawai'i corporation. It has operated a church and held public worship services in the County of Maui, Hawai'i since 1960. Hale O Kaula means "House of the Prophets." It has approximately sixty members who live in and around Pukalani, County of Maui, Hawai'i.
7. The "Joseph Ministry" is one of the core practices of the Hale O Kaula Church's mission. The Joseph Ministry requires the Church to "provide sustenance from a life enriched environment that preserves God's people alive and healthy." Key functions to achieve this mission include: food management, production, storage and distribution; ecosystem management; soil restoration, gardening, greenhouse, orchard and permaculture management, which emphasize the enrichment of local ecosystems through the use of perennial agriculture; and holistic health and healing.

8. The Hale O Kaula Church usually holds two religious services a week: one during the week (from 7:00 p.m. to 10:00 p.m.) and one on Sunday morning (from 8:00 a.m. to 1:00 p.m.). The mid-week attendance is roughly ten members and the Sunday attendance is roughly forty members, including children. There are occasional administrative meetings throughout the week averaging 10 attendees. Saturdays are typically "work days" where members work on agricultural projects and maintain structures and landscaping on the land.

9. For purposes of RLUIPA, Hale O Kaula Church constitutes a "religious assembly or institution."

10. Currently, the majority of the Hale O Kaula Church's religious activities are conducted in a small building on a parcel of land located in Haiku, Maui. The Haiku property is less than one-half acre in size and the facility is inadequate to meet the Church's current needs.

11. In order to continue and to expand its facilities and practice of the Joseph Ministry, the Hale O Kaula Church purchased 5.85 acres of land in Pukalani in 1990. The Pukalani property is located within the State Agricultural District on the County's land use map and is zoned Agriculture in accordance with Maui County Code, §19.30A. The Pukalani property is located near the end of Anuheia Place, a private residential road, and contains a residence, an agricultural building, a shade house and a generator building.

12. On December 20, 1999, Hale O Kaula Church submitted a Special Use Permit application to the Defendant seeking to use the existing agricultural building on the Pukalani property for religious activities and to construct a second floor to that structure that would be used for church services, a library, offices and storage.

13. For purposes of RLUIPA, the proposed use of the existing structure and the proposed second floor addition for church services constitute "religious exercise." 42 U.S.C. §2000cc-5(7)(A)-(B).

14. Pursuant to Section 205-6(a) of the Hawai' i Revised Statute, a county planning commission is authorized to permit certain "unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified."

15. The State Land Use Commission's rules, Section 15-15-95(b), allow a special use permit to be issued for "certain 'unusual and reasonable' uses within agricultural and rural districts." There are five guidelines for determining whether an "unusual and reasonable use" should be allowed by special permit:

- a. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, Hawai' i Revised Statute, and the rules of the commission;
- b. The desired use would not adversely affect surrounding property;

- c. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
- d. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

16. The Department of Planning for the County of Maui issued a Report to the Maui Planning Commission regarding Hale O Kaula's application. The Report concluded that the applicant's proposed use is consistent with the County's General Plan objective and policies. The Report further indicated that:

- a. the applicant's property utilizes a private water system;
- b. the proposed use will have no adverse impact on police, fire protection, and medical services, subject to a "hold harmless" agreement, which was executed, as requested by the Department of Fire Control;
- c. the Department of Transportation reviewed the application and found that the proposed Church will not have a significant impact on Kula Highway, a state facility; and
- d. there would be short term noise and air quality impacts during the construction phases of the project.

17. On April 30, 2001, Maui Planning Commission Hearing Officer, Judith Neustadter Fuqua recommended denial of the Hale O Kaula Church's application for a Special Use Permit, finding that the use of the subject property as sought by the Church was not an "unusual and reasonable use" under the relevant codes and rules. She found that the use of the Subject Property sought by the Church would adversely affect the properties along Anuheia Place by creating unacceptable levels of traffic and noise in an isolated agricultural neighborhood. In addition, she found that the use of the Subject Property sought by the Church would burden public agencies to provide water, police, and fire protection.

18. On June 27, 2001, the Maui Planning Commission adopted Hearing Officer Fuqua's recommendations and unanimously voted to deny Hale O Kaula Church's special use permit application.

19. Between 1976 and 1996, the Defendant has granted special use permits to other denominational churches in districts zoned for agricultural use in Maui County.

20. Other entities or activities that have greater than or equal impact on the levels of traffic and noise and/or burden on public agencies are either permitted as of right or regularly granted special use permits by the Defendant.

21. For purposes of RLUIPA, the Defendant's denial of a special use permit to the Church constitutes "land use regulation[s]." 42 U.S.C. §2000cc-5(5).

22. The Defendant's denial of the Church's special use permit application violates Section (2)(a)(1) of RLUIPA. 42 U.S.C. 2000cc(a)(1).

- a. The denial of the permit represents the imposition or implementation of a land use regulation in a manner that imposes a substantial burden on the religious exercise of the Hale O Kaula Church and its members.
- b. The substantial burden created by the denial of the special use permit does not further a compelling government interest, or even if it does, it is not the least restrictive means of furthering that compelling government interest.
- c. The substantial burden created by the denial of the special use permit affects, or the removal of that substantial burden would affect, commerce within the meaning of Section 2(a)(2) of RLUIPA.
- d. The Defendant's denial of the Church's special use permit constituted the imposition or implementation of land use regulations whereby defendant made, or had in place formal or informal procedures or practices of, individualized assessments regarding the Church's special use permit application within the meaning of Section 2(a)(2) of RLUIPA.

23. The Defendant's denial of the Church's special use permit application constitutes the imposition or implementation of a land use regulation that discriminated, and continues to discriminate, against Hale O Kaula Church on the basis of religion or religious denomination in violation of Section 2(b)(2) of RLUIPA. 42 U.S.C. §2000cc(b)(2).

WHEREFORE, the United States prays that the court enter an ORDER that:

1. Declares that the defendants' policies and practices, as alleged herein, violate RLUIPA; and
2. Enjoins the defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from (a) applying its laws in a manner that substantially burdens Hale O Kaula Church's religious exercise and (b) discriminating against Hale O Kaula Church on the basis of religion or religious denomination.

The United States further prays for such additional relief as the interests of justice may require.

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