

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the matter of the Petition of )	DOCKET NO. BR93-692
)	)
OFFICE OF STATE PLANNING, )	HEARING OFFICER' S
STATE OF HAWAII )	PROPOSED FINDINGS OF
)	FACT, CONCLUSIONS OF
To Amend the Urban Land Use )	LAW, AND DECISION AND
District Boundary into the )	ORDER
Conservation Land Use District )	)
for Approximately 23 . 642 Acres at )	)
Diamond Head, Honolulu, Island )	)
of Oahu, State of Hawaii, Tax )	)
Map Key Numbers: 3-1-42: 10, 21, )	)
23, 24, 25, 36, and 37 )	)
)	)

HEARING OFFICER'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

The Office of State Planning, State of Hawaii ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on October 8, 1993, pursuant to sections 205-4 and 205-18, Hawaii Revised Statutes ("HRS"), and chapter 15-15, Hawaii Administrative Rules ("HAR"), to amend the State land use district boundary by reclassifying approximately 23.642 acres of land in the Urban District situated at Diamond Head, Honolulu, Island of Oahu, State of Hawaii, identified as Tax Map Key Numbers of the First Division: 3-1-42: 10, 21, 23, 24, 25, 36, and 37 ("Property"), into the Conservation District.

The duly-appointed Hearing Officer of the Land Use Commission, State of Hawaii, having heard and examined the testimony, evidence and argument of counsel presented during the hearings; Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and the response of the City and County of Honolulu Planning Department, hereby makes the following

proposed findings of fact, conclusions of law, and decision and order:

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On October 8, 1993, Petitioner filed a Petition for Land Use District Boundary Amendment ("Petition").

2. No petitions for intervention were received by the Commission.

3. On February 3, 1994, a prehearing conference on the Petition was held at Honolulu, Hawaii, with the Hearing Officer and all parties in attendance. At the prehearing conference, the parties exchanged available exhibits, exhibit lists, and witness lists.

4. On March 10, 1994, a hearing was held before the duly-appointed Hearing Officer, Benjamin M. Matsubara, Esq. ("Hearing Officer") pursuant to a public notice published in the Honolulu Star-Bulletin on January 14, 1994.

5. The Hearing Officer allowed Luci Pfaltzgraff and Celia Podorean to testify as public witnesses.

### DESCRIPTION OF THE PROPERTY

#### General Characteristics

6. The Property consists of approximately 23.642 acres situated along the eastern exterior slope of Diamond Head Crater. The Property is generally located adjacent to the western edge of Diamond Head Road north of 22nd Avenue. Parcels 36 and 37 are situated approximately 300 feet north of parcel 10. The Property

is entirely State-owned. (T. 3/10/94. P.71. L.17-20.; Petitioner's Exhibit A. P.3 through 4.; Petitioner's Exhibit 1. P.3 through 5.; Petitioner's Exhibit 2.; Petitioner's Exhibit 3.; Petitioner's Exhibit 5.; Petitioner's Exhibit 6. P.1 through 2.)

7. Except for parcels 36 and 37, the Property is contiguous to the existing Conservation District on its western boundary and contiguous to the Urban District on all other sides. Parcels 36 and 37 are surrounded entirely by the Urban District. (Petitioner's Exhibit A. P.4.; Petitioner's Exhibit 1. P.3.; Petitioner's Exhibit 3.; Petitioner's Exhibit 6. P.2.)

8. The Property extends up to approximately the 200-foot contour with general slopes of 20 to 30 percent. The Property lies just below the deep, narrow ravines that define Diamond Head Crater. (Petitioner's Exhibit A. P.5.; Petitioner's Exhibit 1. P.3., P.8.; Petitioner's Exhibit 6. P.2.)

9. Average precipitation at Diamond Head is 25 inches per year. During the winter months, when much of the rain occurs, precipitation often results from storm situations. In contrast, the drier summer months generally experience brief tradewind showers. Throughout the year, rainfall is most likely to occur during the night or early morning and least likely during midafternoon. (Petitioner's Exhibit 1. P.8.; Petitioner's Exhibit 6. P.2 through 3.)

10. The Property's climate is characterized by a two-season year: the May through September summer season and the October through April winter season. The warmest month of the year

is August with an average temperature of 78.4 degrees Fahrenheit; the coolest month is February with an average temperature of 71.9 degrees Fahrenheit. (Petitioner's Exhibit 1. P.7.; Petitioner's Exhibit 6. P.3.)

11. The Property's wind pattern is dominated by tradewinds in the 14 miles per hour range. The trades are especially prevalent during the summer months when they prevail 80 to 90 percent of the time. During the winter months, the trades occur just 50 to 80 percent of the time. Very high winds are not common to the Property. The high rim of Diamond Head Crater distorts the wind flow, creating localized wind patterns in the area. Because the tradewinds usually break apart the clouds along the Koolau Range crest, the Property experiences relatively little cloudiness. (Petitioner's Exhibit 1. P.7 through 8.; Petitioner's Exhibit 6. P.3.)

12. The United States Department of Agriculture Soil Conservation Service's Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii classifies the soils within the Property as follows:

- a. Makalapa clay, 6 to 12 percent slopes (MdC)
- b. Makalapa clay, 12 to 20 percent slopes (MdD)

(Petitioner's Exhibit A. P.5.; Petitioner's Exhibit 1. P.9 through 11.; Petitioner's Exhibit 4.; Petitioner's Exhibit 6. P.3 through 4.)

13. The University of Hawaii Land Study Bureau's (LSB) Detailed Land Classification - Island of Oahu (1972) has given a portion of the Property an agricultural productivity rating of "E."

The ratings range from a high productivity rating of "A" to the lowest productivity rating of "E." The remainder of the Property is classified as urban land. (Petitioner's Exhibit A. P.5.; Petitioner's Exhibit 1. P.11 through 12.; Petitioner's Exhibit 6. P.4.)

14. The State Agricultural Lands of Importance to the State of Hawaii (ALISH) system does not classify the lands in the Property. (Petitioner's Exhibit A. P.5.; Petitioner's Exhibit 1. P.12.; Petitioner's Exhibit 6. P.5.)

15. The Flood Insurance Rate Map classifies the Property as Zone X, Other Areas, which are areas determined to be outside the 500-year flood plain. (Petitioner's Exhibit A. P.5.; Petitioner's Exhibit 1. P.13.; Petitioner's Exhibit 6. P.5-)

#### Existing Uses

16. The Property is presently used by workers and visitors to Diamond Head Crater who travel on an unnamed road running through the Property. There is also a scenic lookout where tour buses and vans stop. Parcels 36 and 37 contain abandoned small storage facilities. The Property is otherwise in a natural state. Existing uses would be allowed to continue in the Conservation District pursuant to section 183-41(b), HRS, and Title 13, chapter 2, HAR. (Petitioner's Exhibit A. P.6.; Petitioner's Exhibit 1. P.5.; Petitioner's Exhibit 6. P.5.)

#### PROPOSAL FOR RECLASSIFICATION

17. The Petition is based on a recommendation made by Petitioner in the Report entitled State Land Use District Boundary

Review Oahu ("Boundary Review Report") prepared as part of the Five-Year Boundary Review conducted by Petitioner. The Boundary Review Report recommends that the Property be reclassified to the Conservation District for protection of Diamond Head Crater's significant scenic resources. The proposed reclassification is a Priority 1 recommendation. (T. 3/10/94. P.72. L.24-25.; P.73. L.1-4.; Petitioner's Exhibit 1. P.1.; Petitioner's Exhibit 6. P.5.)

18. The purpose of the Five-Year Boundary Review was to conduct a comprehensive, statewide evaluation of State Land Use Districts. Based on this evaluation, certain areas currently outside of the Conservation District but containing conservation resources as defined in section 205-2(e), HRS, have been recommended for reclassification to the Conservation District. (Petitioner's Exhibit 6. P.6.)

19. The Department of Land and Natural Resources ("DLNR") is planning a greenway along Diamond Head Road. No other uses are planned at this time. If future DLNR plans include other uses, they will likely be passive and consistent with the character of Diamond Head State Monument. (T. 3/10/94. P.77. L.13-16.; Petitioner's Exhibit 6. P.6.)

20. Existing uses of the Property will be allowed to continue as non-conforming uses pursuant to section 183-41(b), HRS, and Title 13, chapter 2, HAR. (Petitioner's Exhibit A. P.6.; Petitioner's Exhibit 6. P.5.)

PETITIONER'S FINANCIAL CAPABILITY  
TO UNDERTAKE THE PROPOSED DEVELOPMENT

21. Pursuant to section 15-15-50(c)(8), HAR, Petitioner is a State agency and is not required to demonstrate financial capability. (Petitioner's Exhibit A. P.7.; Petitioner's Exhibit 6. P.6.)

STATE AND COUNTY PLANS AND PROGRAMS

22. The Property is located within the State Land Use Urban District as shown on the Commission's Official Map, O-13 (Honolulu). (T. 3/10/94. P.72. L.24-25.; P.73. L.1-3.; Petitioner's Exhibit 6. P.6.)

23. Petitioner published the Boundary Review Report in 1992. The reclassification of the Property to the Conservation District is supported by this report. (T. 3/10/94. P.72. L.24-25.; P.73. L.1-4.; Petitioner's Exhibit 1. P.1.; Petitioner's Exhibit 6. P.6 through 7.)

24. The Property is designated as Parks and Recreation and Military in the City and County of Honolulu's Primary Urban Center Development Plan Map. (Petitioner's Exhibit A. P.9.; Petitioner's Exhibit 1. P.30.; Petitioner's Exhibit 6. P.7.)

25. The City and County of Honolulu has zoned the Property P-2 (General Preservation) and F-1 (Military and Federal Preservation). (T. 3/10/94. P.80. L.9-12.; Petitioner's Exhibit 6. P.7.)

26. The Property falls within the Special Management Area designated by the City and County of Honolulu. The proposed reclassification is in general conformance with the objectives and

policies of Special Management Areas set forth in section 205A-2, HRS. (Petitioner's Exhibit A. P.7 through 8.; Petitioner's Exhibit 1. P.28.; Petitioner's Exhibit 6. P.7.)

NEED FOR THE PROPOSED RECLASSIFICATION

27. Diamond Head Crater is one of the world's most well-known and recognized natural landmarks. It can be viewed from the sea, the air, and from much of Oahu's south shore. Diamond Head's highest point, Leahi Point, offers an unparalleled panorama of Honolulu and its environs. Reclassification of the Property from the Urban District to the Conservation District is necessary to protect the significant scenic resources of Diamond Head from development. (T. 3/10/94. P.73. L.17-25.; Petitioner's Exhibit 1. P.1 through 2.; Petitioner's Exhibit 6. P.7.)

28. The scenic value of Diamond Head led to the initial creation of Diamond Head State Monument in 1962 by gubernatorial Executive Order No. 2000 issued by Governor William A. Quinn. (Petitioner's Exhibit 1. P.2.; Petitioner's Exhibit 6. P.7 through 8.; Petitioner's Exhibit 10.)

29. In 1965, the Hawaii State Legislature enacted Act 249 which statutorily designated Diamond Head State Monument and also designated the Monument as a historic site. In 1968, Diamond Head was designated a National Natural Landmark, and in 1975, the City and County of Honolulu established the Diamond Head Historic, Cultural and Scenic District No. 2 to protect views of the monument. (Petitioner's Exhibit 1. P.2.; Petitioner's Exhibit 6. P.8.)

30. Presently, the Diamond Head State Monument law is codified as section 6E-32, HRS. Section 6E-32(b), HRS, identifies six of the seven parcels within the Property as "...essential to the unimpaired preservation of the visual and historic aspects of Diamond Head..." The Property is not now formally set aside as part of Diamond Head State Monument, although section 6E-32(b), HRS requires the six parcels, among several others identified, to be returned to the DLNR from other State and Federal agencies for inclusion within the monument. (T. 3/10/94. P.73. L.17-25.; P.77. L.19-25.; P.78. L.1-6.; P.78. L.15-25.; Petitioner's Exhibit 1. P.3.; Petitioner's Exhibit 6. P.8.)

#### ECONOMIC IMPACTS

31. The visitor industry is the State's leading industry and relies on Hawaii's scenic beauty and natural resources. The proposed reclassification will help to preserve the visual integrity of Diamond Head, Hawaii's most recognizable landmark. (Petitioner's Exhibit 1. P.19.; Petitioner's Exhibit 6. P.8.)

32. No economic activities will be displaced as a result of the proposed reclassification. Because the Petition requests reclassification to the Conservation District, the reclassification will not result in an increase in employment opportunities or economic development. (Petitioner's Exhibit 1. P.20., P.23.; Petitioner's Exhibit 6. P.9.)

## SOCIAL IMPACTS

33. The reclassification of the Property will benefit society by preserving the scenic resources of Diamond Head. Diamond Head Crater dominates views of the south shore of Oahu, and for many, it is the preeminent symbol of Hawaii. (Petitioner's Exhibit 1. P.23.; Petitioner's Exhibit 6. p. 9.)

## IMPACTS UPON RESOURCES OF THE AREA

### Agricultural Resources

34. The Land Study Bureau and the Soil Conservation Service have rated the soils of the Property as generally unsuitable for agricultural uses. Therefore, the proposed reclassification will not have any adverse impacts upon the Property's agricultural resources. (Petitioner's Exhibit A. P.5.; Petitioner's Exhibit 1. P.9 through 12., P.17.; Petitioner's Exhibit 6. P.10.)

35. There are no agricultural activities presently taking place on the Property. (Petitioner's Exhibit 1. P.17.; Petitioner's Exhibit 6. P.10.)

### Flora and Fauna

36. The Petitioner reviewed The Nature Conservancy's Hawaii Heritage Program (HHP) database to determine the presence of rare or endangered plants and animals. Based on this review, no endangered plant or animal species are suspected to occur in the Property. (Petitioner's Exhibit 1. P.13 through 14.; Petitioner's Exhibit 6. P.10.)

37. The endangered Hawaiian short-eared owl, pueo, may include the Property as part of its habitat range. (Petitioner's Exhibit 1. P.14.; Petitioner's Exhibit 6. P.10.)

38. The Property's flora and fauna populations will benefit from being placed into the Conservation District. Many of the threats to their habitats, including grading, urban development, and pesticides, will be greatly diminished in the Conservation District. (Petitioner's Exhibit 1. P.16.; Petitioner's Exhibit 6. P.10.)

#### Archaeological/Historical Resources

39. The State Historic Preservation Division believes that there are no historical or archaeological sites in the Property. A survey conducted in 1988 by the State Historic Preservation Division over TMX-3-1-42:21 found only litter related to military use. (Petitioner's Exhibit 1. P.14.; Petitioner's Exhibit 6. P.10 through 11.)

40. If any historical or archaeological sites do exist in the Property, the proposed reclassification to the Conservation District would have a beneficial impact by more strictly regulating the types of uses allowed. (Petitioner's Exhibit 1. P.15.; Petitioner's Exhibit 6. P.11.)

#### Ground Water Resources

41. The Property falls within the Honolulu Aquifer Sector, Waialae system. A portion of this aquifer system is basal (fresh water in contact with seawater), unconfined (the water table is the upper surface of the saturated aquifer), and geologically

classified as sedimentary. The remainder of the system is basal, confined (aquifer bounded by impermeable or poorly permeable formations, and top of saturated aquifer is below groundwater surface), and geologically classified as flank. (Petitioner's Exhibit 1. P.12.; Petitioner's Exhibit 6. P. 11.)

42. The primary means for protecting groundwater from pollution is the Underground Injection Control (UIC) program, Title 11, Hawaii Administrative Rules. The UIC program governs the location, construction, and operation of injection wells. No wells in the vicinity of the Property are known to be contaminated. (Petitioner's Exhibit 1. P.13.; Petitioner's Exhibit 6. P.11.)

43. The proposed reclassification of the Property will reduce the risk of groundwater contamination by restricting the types of uses allowed above the aquifer. (Petitioner's Exhibit 1. P.16.; Petitioner's Exhibit 6. P.11.)

#### Recreational Facilities

44. The Property is presently not used for any recreational activities. (Petitioner's Exhibit 6. P.12.)

45. The DLNR, Division of State Parks considers passive recreation use most suitable for the Diamond Head State Monument area. Some of the recreational uses which may be compatible in the vicinity of the Property include picnicking, walking and jogging, hiking, bicycling, and informal play/active games. The proposed reclassification of the Property would be compatible with these types of recreational activities. (T. 3/10/94. P.77. L.13-16.;

Petitioner's Exhibit 1. P.17.; Petitioner's Exhibit 6. P.12.)

#### Scenic Resources

46. As described in the Boundary Review Report, the Property is being proposed for reclassification to the Conservation District because it is an integral component of views of Diamond Head Crater. (T. 3/10/94. P.72. L.24-25.; P.73. L.1-4.; Petitioner's Exhibit 6. P.12.)

47. The proposed reclassification of the Property is intended to prevent development from occurring on the Property which would spoil vistas of Diamond Head Crater. (Petitioner's Exhibit 1. P.1 through 2.; Petitioner's Exhibit 6. P.12.)

#### Cultural Resources

48. The Property contains no known cultural resources. (Petitioner's Exhibit 1. P.12.)

49. The proposed reclassification of the Property would protect any unknown cultural resources in the Property. (Petitioner's Exhibit 1. P.12.)

#### ENVIRONMENTAL QUALITY

##### Noise and Air

50. Traffic on Diamond Head Road and the unnamed road are the primary sources of noise in the Property. (Petitioner's Exhibit 1. P.15.; Petitioner's Exhibit 6. P.13.)

51. Carbon monoxide (CO) is the primary air pollutant in the Property. CO has a relatively long half-life and is a main component of automobile emissions. Still, CO levels are well below State and Federal standards and are expected to decrease in the

next few years as emissions per vehicle quantities decrease faster than the increase in traffic volume. (Petitioner's Exhibit 1. P.15.; Petitioner's Exhibit 6. P.13.)

#### Water Quality

54. Reclassification of the Property to the Conservation District will have a positive effect on the Property's hydrological conditions. The Property's natural vegetation will be left intact, preventing rapid runoff and excessive erosion. Further, contamination of groundwater resulting from residential or other urban uses would be highly unlikely once the Property is placed into the Conservation District. (Petitioner's Exhibit 1. P.16.; Petitioner's Exhibit 6. P.13.)

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

55. The availability or adequacy of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, roads, and police and fire protection will not be affected by the Petition. (Petitioner's Exhibit 1. P.22 through 23.; Petitioner's Exhibit 6. P.9.)

#### COMMITMENT OF STATE FUNDS AND RESOURCES

56. No significant long term commitment of State funds or resources is involved. The availability or adequacy of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, roads, and police and fire protection will not be affected or unreasonably burdened by the proposed reclassification to the Conservation District. The public agency which would be impacted is the DLNR since additional effort may be

required to administer and enforce regulations in the newly added Conservation District lands. (T. 3/10/94. P.74. L.10-25.; Petitioner's Exhibit 1. P.22 through 23.; Petitioner's Exhibit 6. P.9.)

CONFORMANCE TO CONSERVATION DISTRICT STANDARDS

57. The reclassification of the Property would result in an extension of the existing Conservation District. (Petitioner's Exhibit A. P.4.; Petitioner's Exhibit 1. P.3.)

58. The proposed reclassification is in conformance with section 205-2(e), HRS, as that section states that Conservation Districts shall include areas necessary for:

"...preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes..."

(T. 3/10/94. P.73. L.5-12.; Petitioner's Exhibit 1. P.20.; Petitioner's Exhibit 6. P.13 through 14.)

59. Reclassification is in conformance with the following standards of the Conservation District set forth in section 15-15-20, HAR:

Section 15-15-20 (4): It shall include lands necessary for the conservation, preservation, and enhancement of scenic, cultural, historic or archeologic sites and sites of unique physiographic or ecologic significance...

Section 15-15-20 (5): It shall include lands necessary for providing and preserving parklands...

Section 15-15-20 (7): It shall include lands with topography, soils, climate, or other related environmental factors that

may not be normally adaptable or presently needed for urban, rural, or agricultural use...

Section 15-15-20 (8): It shall include lands with a general slope of twenty percent or more which provide for open space amenities or scenic values...

(T. 3/10/94. P.73. L.5-12.; Petitioner's Exhibit 1. P.20 through 21.; Petitioner's Exhibit 6. P.14.)

60. Reclassification is consistent with the objectives of the Resource subzone of the Conservation District, Title 13, Chapter 2, HAR. According to Title 13, chapter 2, HAR, the criteria for the inclusion of lands in the Resource subzone include: lands necessary for providing future parkland and lands presently used for national, State, County, or private parks. The Property meets the criteria of the Resource subzone more closely than the other subzones i.e., the Protective, Limited, General, or Special, because of its proposed inclusion into the Diamond Head State Monument. Although strictly speaking a monument is not a park, the administration of the monument falls under the DLNR, Division of State Parks. Reclassification to the Conservation District is intended to enhance, not restrict, the Property's proposed designation as a State monument. (T. 3/10/94. P.74. L.10-25.; P.82. L.21-25.; P.83. L.1-11.)

CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

61. The proposed reclassification of the Property is generally consistent with the following objectives and policies of the Hawaii State Plan:

Section 226-11, HRS: Objectives and Policies for the physical environment--land based, shoreline, and marine resources.

(a)(1): Prudent use of Hawaii's land-based, shoreline, and marine resources.

Section 226-11(b)(1), HRS: Exercise an overall conservation ethic in the use of Hawaii's natural resources.

Section 226-11(b)(9), HRS: Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes.

Section 226-12, HRS: Objectives and Policies for the physical environment--scenic, natural beauty, and historic resources.

(a) Planning for the State's physical environment shall be directed towards achievement of the objective of enhancement of Hawaii's scenic assets, natural beauty, and multi-cultural/historical resources.

Section 226-12(b)(1), HRS: Promote the preservation and restoration of significant natural and historic resources.

Section 226-12(b)(3), HRS: Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.

Section 226-12(b)(4), HRS: Protect those special areas, structures, and elements that are an integral and functional part of Hawaii's ethnic and cultural heritage.

Section 226-13, HRS: Objectives and Policies for the physical environment--land, air, and water quality.

Section 226-13(a)(2), HRS: (Objective) Greater public awareness and appreciation of Hawaii's environmental resources.

Section 226-13(b)(2), HRS: Promote the proper management of Hawaii's land and water resources.

Section 226-13(b)(8), HRS: Foster recognition of the importance and value of the land, air, and water resources to Hawaii's people, their cultures, and visitors.

(T. 3/10/94. P.74. L.1-6.; Petitioner's Exhibit 1. P.24 through 26.; Petitioner's Exhibit 6. P.14 through 16.)

62. The proposed reclassification of the Property is generally consistent with the following priority guidelines of the Hawaii State Plan:

Section 226-104(b)(9), HRS: Direct future urban development away from critical environmental areas or impose mitigating measures so that negative impacts on the environment would be minimized.

Section 226-104(b)(10), HRS: Identify critical environmental areas in Hawaii to include but not be limited to the following: ...open space and natural areas: and scenic resources.

Section 226-104(b)(12), HRS: Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.

Section 226-104(b)(13), HRS: Protect and enhance Hawaii's shoreline, open spaces, and scenic resources.

T. 3/10/94. P.74. L.1-6.; Petitioner's Exhibit 1. P.26.; Petitioner's Exhibit 6. P.16.)

63. The proposed reclassification of the Property is generally consistent with the objectives of the State Conservation Lands Functional Plan. (Petitioner's Exhibit 1. P.27.; Petitioner's Exhibit 6. P.16.)

#### CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

64. The proposed reclassification of the Property will have a beneficial impact upon coastal resources by retaining the Property in its natural, vegetative state. (Petitioner's Exhibit 6. P.16.)

65. The Petition is in conformance with the following objectives and policies of the Coastal Zone Management Program:

Section 205A-2(b)(3), HRS: Scenic and open space resources;

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Section 205A-2(c)(3), HRS: Scenic and open space resources;

(A) Identify valued scenic resources in the coastal zone management area;

(C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources.

(Petitioner's Exhibit 1. P.27 through 28.; Petitioner's Exhibit 6. P.17.)

#### CONFORMITY TO COUNTY PLANS

66. The General Plan for the City and County of Honolulu is a policy document containing objectives and policies addressing the health, safety, and welfare of Oahu's people. (Petitioner's Exhibit 1. P.28.; Petitioner's Exhibit 6. P.17.)

67. The proposed reclassification of the Property conforms to the following General Plan objectives and policies for the Natural Environment:

Objective A: To protect and preserve the natural environment.

Policy (1): Protect Oahu's natural environment, especially the shoreline, valleys, and ridges, from incompatible development.

Policy (10): Increase public awareness and appreciation of Oahu's land, air, and water resources.

Objective B: To preserve and enhance the natural monuments and scenic views of Oahu for the benefit of both residents and visitors.

Policy (1): Protect the Island's well-known resources: its mountains and craters; forests and watershed areas; marshes, rivers, and streams...

Policy (2): Protect Oahu's scenic views, especially those seen from highly developed and heavily traveled areas.

(T. 3/10/94. P.80. L.9-10. ; Petitioner's Exhibit 1. P.28 through 29.; Petitioner's Exhibit 6. P.17 through 18.)

68. The proposed reclassification of the Property conforms to the following General Plan objective and policy for Economic Activity:

Objective B: To maintain the viability of Oahu's visitor industry.

Policy (8): Preserve the well-known and widely publicized beauty of Oahu for visitors as well as residents.

(T. 3/10/94. P.80. L.9-10.; Petitioner's Exhibit 1. P.29.; Petitioner's Exhibit 6. P.18.)

69. The Property is in the Primary Urban Center Development Plan ("DP") region. According to the City's Development Plan maps, the Property is designated Parks and Recreation and Military. (T. 3/10/94. P.74. L.6-9.; P.80. L.9-10.; Petitioner's Exhibit A. P.9.; Petitioner's Exhibit 1. P.30.; Petitioner's Exhibit 6. P.18.)

70. Section 32-2.2(a)(1) of the DP identifies Diamond Head as a high priority open space area. Section 32-2.2(a)(2) further states that the view of Diamond Head is important for protection. Finally, section 32-2.2(b)(2)(G) states that:

"The present open space nature and character of dominant physical features along the perimeter of this area shall be preserved and enhanced. These features directly contribute to the present attractiveness and quality of the area as well as to the surrounding communities. They include...views of Diamond Head and the ocean."

(T. 3/10/94. P.80. L.9-15.; Petitioner's Exhibit 1. P.30.;  
Petitioner's Exhibit 6. P.18.)

71. The City and County of Honolulu has zoned the Property P-2 (General Preservation) and F-1 (Military and Federal Preservation). A zoning designation of P-1 (restricted Preservation) would be more appropriate for the Property should it be reclassified to the Conservation District. (T. 3/10/94. P.80. L.18-25.; Petitioner's Exhibit 6. P.19.)

72. Petitioner represented that it would coordinate with the DLNR to assure that DLNR's recommendations for a subzone for the Property will permit passive recreational use of the Property consistent with DLNR, State Parks Division's plans for the area. (T. 3/10/94. P.82. L. 14-20.)

#### RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

#### CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS, and the Hawaii Land Use Commission Rules under chapter 15-15, HAR, and upon consideration

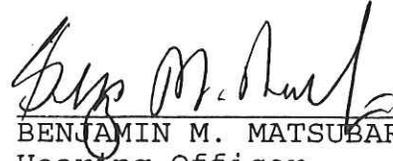
of the Land Use Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property consisting of approximately 23.642 acres of land in the Urban District situated at Diamond Head, Honolulu, Island of Oahu, State of Hawaii, identified as Tax Map Key Numbers of the First Division: 3-1-42: 10, 21, 23, 24, 25, 36, and 37, into the Conservation District is reasonable, nonviolative of section 205-2, HRS, and is consistent with the Hawaii State Plan set as forth in chapter 226, HRS.

PROPOSED ORDER

IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. BR93-692 by Petitioner Office of State Planning, State of Hawaii, consisting of approximately 23.642 acres of land in the Urban District situated at Diamond Head, Honolulu, Island of Oahu, State of Hawaii, identified as Tax Map Key Numbers of the First Division: 3-1-42: 10, 21, 23, 24, 25, 36, and 37, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified into the State Land Use Conservation District, and that the State Land Use District Boundaries are amended accordingly, subject to the following condition:

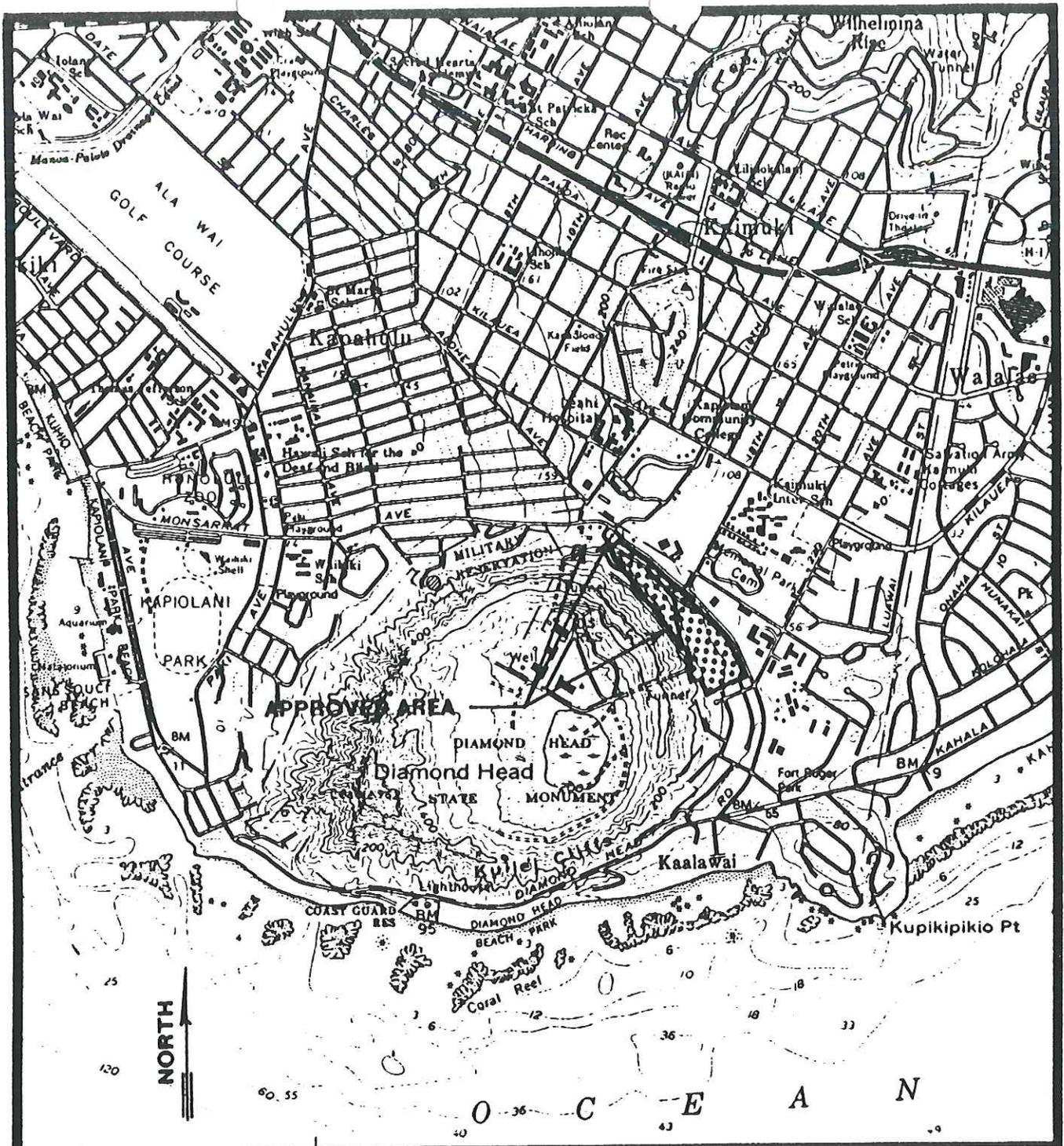
Petitioner shall ensure that the Property is placed into the proper Conservation District Subzone by working with the Department of Land and Natural Resources in their determination of the proposed subzone.

Dated: Honolulu, Hawaii this 26th day of April 1994.



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BENJAMIN M. MATSUBARA  
Hearing Officer

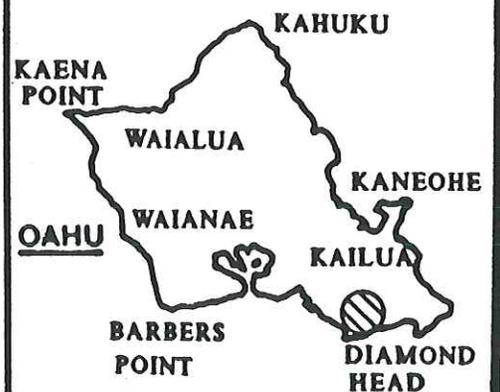


**LOCATION MAP**

BR93-692 / OFFICE OF STATE PLANNING,  
STATE OF HAWAII

T.M.K.: 3-1-42: 10, 21, 23, 24, 25, 36, & 37  
FORT RUGER, DIAMOND HEAD, OAHU

SCALE: 1" = 2,000 ft. ±



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. BR93-692  
)  
OFFICE OF STATE PLANNING, ) CERTIFICATE OF SERVICE  
STATE OF HAWAII )  
)  
To Amend the Urban Land Use )  
District Boundary into the )  
Conservation Land Use District )  
for Approximately 23.643 Acres at )  
Diamond Head, Honolulu, Island )  
of Oahu, state of Hawaii, Tax )  
Map Key Numbers: 3-1-42: 10, 21, )  
23, 24, 25, 36, and 37 )  
)  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director  
Office of State Planning  
State of Hawaii  
P.O. Box 3540  
Honolulu, Hawaii 96811-3540  
Attention: Ms. Mary Lou Kobayashi

RICK J. EICHOR, ESQ.  
Department of the Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813

ROBIN FOSTER, Chief Planning Officer  
Planning Department  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 26th day of April 1994.



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BENJAMIN M. MATSUBARA, ESQ.  
Hearing Officer