

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
C. BREWER PROPERTIES, INC. )  
To Amend the Conservation Land Use )  
District Boundary to Reclassify )  
Approximately 16.489 acres into the )  
Agricultural Land Use District, and )  
to amend the Agricultural Land Use )  
District Boundary to Reclassify )  
Approximately 0.167 acre into the )  
Conservation Land Use District, )  
TMK: 5-2-02: 10 (por.), at )  
Kalihiwai, Kilauea, Kauai, Hawaii )  
\_\_\_\_\_ )

DOCKET NO. A90-661  
C. BREWER PROPERTIES,  
INC.

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

MAY 28 1991

Date

by

*Esther Reed*  
Executive Officer

MAY 28 10 03 AM '91  
LAND USE COMMISSION  
STATE OF HAWAII

ORDER ADOPTING HEARING OFFICERS  
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER WITH MODIFICATIONS TO CONDITIONS

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This matter came on for consideration on May 2, 1991 at the meeting of the Land Use Commission (hereinafter "Commission") of the State of Hawaii, held in Honolulu, City and County of Honolulu, State of Hawaii. Appearing for the Petitioner, C. Brewer Properties, Inc., were Walton D.Y. Hong, Craig Champion and Pete Moynahan; for the Department of Planning, County of Kauai, was Peter M. Morimoto; and for the Office of State Planning were Rick Eichor and Karen Yamamoto. Hearing Officer Benjamin M. Matsubara was present. The Office of State Planning filed exceptions to the Hearing Officer's Report, recommending the addition of three conditions. Subsequently, the Petitioner filed suggested changes to the Office of State Planning's recommended condition number 1.

There were no objections from the parties to the addition of the Office of State Planning's recommended conditions, as modified by Petitioner's suggested changes to recommended condition number 1.

The Commission, after careful review of the Hearing Officer's report and recommendations and the proposed recommended conditions, as modified by Petitioner, the record and files herein, with good cause existing and upon motion duly passed,

HEREBY adopts the Hearing Officer's Report with modification to the conditions. Accordingly, the Commission hereby adopts the findings of fact, conclusions of law and decision and order as follows:

C. Brewer Properties, Inc., a Hawaii corporation (hereinafter "Petitioner"), filed a Petition on September 11, 1990, pursuant to Chapter 205, Hawaii Revised Statutes, as amended, to amend the land use district boundary for approximately 16.489 acres from the Conservation to the Agricultural Land Use District, and approximately 0.167 acre from the Agricultural to the Conservation Land Use District, at Kalihiwai, Kilauea, Island of Kauai, State of Hawaii, Tax Map Key number 5-2-02: 10 (por.) (hereinafter "Property") for incorporation into an agricultural subdivision.

The Hearing Officer, having duly considered the record in this docket, the testimony of the witnesses and the evidence

introduced herein, makes the following proposed findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On September 11, 1990, Petitioner filed a Petition for amendment of land use district boundary and an environmental assessment.
2. The Petition was served upon the Office of State Planning (hereinafter "OSP"), Department of Business and Economic Development, Planning Commission of the County of Kauai, Planning Department of the County of Kauai, and Kilauea Agronomics, Inc. by Walton D. Y. Hong, attorney for the Petitioner.
3. By Findings of Fact, Conclusion of Law and Decision and Order for a Determination of a Negative Declaration for a State Land Use District Boundary Amendment dated October 17, 1990, the Commission did not require an Environmental Impact Statement for the subject Petition, and accepted the Petition for filing as of September 27, 1990.
4. On December 13, 1990, the Petitioner filed an Amended Petition for Boundary Amendment.
5. On January 22, 1991, the Petitioner filed a Second Amended Petition for Boundary Amendment.
6. On February 1, 1991, a prehearing conference was held with all parties in attendance.

7. On February 8, 1991, all parties stipulated to Stipulation for Withdrawal of the Second Amended Petition for Boundary Amendment dated January 18, 1991, pursuant to an agreement reached at the prehearing conference held on February 1, 1991.

8. On February 15, 1991, Hearing Officer Benjamin M. Matsubara, Esq. conducted a hearing on the Petition pursuant to notice published in the Honolulu Advertiser and the Garden Island on December 28, 1990.

9. The Commission did not receive any requests for intervention.

10. The Commission received seven timely requests from Michael W. Warriner, E. Alan Kennett, Michael M. Dyer, Michael R. Strong, Jack N. Gushiken, Wayne K. Katayama, and James A. Frazier to testify as public witnesses. Only Michael R. Strong and Jack N. Gushiken testified at the hearing.

11. The Commission received one untimely written statement from 1000 Friends of Kauai, through its board member Michael H. Kido, which was accepted without objection into evidence on February 15, 1991.

12. Subsequent to the hearing, the Petitioner and the County of Kauai filed a Stipulation For Withdrawal of County of Kauai's Opposition to Petition and Imposition of Building Setback Area.

13. On April 16, 1991, the Petitioner, the Office of State Planning and the County of Kauai stipulated to

Stipulation For Withdrawal of Office of State Planning's and County of Kauai's Opposition to Petitioner and Imposition of Conservation Easement Area.

DESCRIPTION OF THE PROPERTY

14. The Property is situated in the Kilauea area, mauka of Kuhio Highway, abutting and overlooking the Kalihiwai River Valley from the east.

15. The 16.489-acre portion of the Property, which is being proposed for reclassification from the Conservation to the Agricultural District, is situated along the edge of the cliff of the river valley. The 0.167-acre portion, which is being proposed for reclassification from the Agricultural to the Conservation District, is situated over the edge of the pali of the river valley.

16. The Kalihiwai River is characterized as a perennial (i.e., constantly flowing) stream, which supports native aquatic species. The natural vegetation covering the slopes of the river valley is full and lush, and serves as nesting grounds for threatened seabirds. In its entirety, the Kalihiwai River Valley is classified Conservation, Resource (R) Subzone.

17. Situated to the east and adjacent to the 16.489-acre portion of the Property is the Kalihiwai Reservoir, which can be characterized as a lake. The reservoir, and surrounding wetlands provide foraging opportunities for waterbirds.

18. To the north (makai) and east of the 16.489-acre portion of the Property are Agricultural District lands consisting of the Kalihiwai Ridge large-lot agricultural subdivision: Phase I (including guava orchards and aquaculture ponds) to the north, and Phase II to the east.

19. The Property was formerly used by Kilauea Plantation for sugar cane cultivation, but is presently vacant and overgrown with shrubs and grasses.

20. The Property was owned by Kilauea Agronomics, Inc., a subsidiary of C. Brewer and Company, Limited. Kilauea Agronomics, Inc. had authorized the Petitioner to submit and process the subject petition, as evidenced by letter of authorization dated August 22, 1990. Kilauea Agronomics, Inc. has since conveyed the Property to the Petitioner, as reflected in the Petitioner's Limited Warranty Exchange Deed dated January 15, 1991 and recorded in the Bureau of conveyances of the State of Hawaii as Document No. 91-5771.

21. The elevation of the Property ranges from 390 feet to 495 feet. Slopes are generally 0% to 20%. Annual rainfall is 100 to 110 inches.

22. The soils of the Property are identified by the Soil Conservation Service (SCS) Soil Survey as Pooku silty clay (PmB, PmC), and Rough mountainous land (rRT). The soils are well-drained, are more than 20 inches deep, and have slopes of 0 to 8 percent. Principal uses of this soil are pasture, sugarcane, wildlife habitat, woodland, and water supply.

23. The Rough mountainous land (rRT) occurs in mountain areas, and consists of very steep land broken by numerous intermittent drainage channels. The soil mantle is very thin, and the land surface is dominated by deep, V-shaped valleys, with extremely steep side slopes and narrow ridges between the valleys. Twenty to 40 percent of the total acreage for this soil is made up of rock land, rock outcrop, soil slips, and eroded spots. This soil type is not suitable for agriculture and should be protected from erosion hazard.

24. The Agricultural Lands of Importance to the State of Hawaii (ALISH) classifies the 16.489-acre portion of the Property as "Prime". However, the Land Study Bureau (LSB) Overall Productivity Rating for about 80% of the parcel is rated "E15". The pasture carrying capacity of the "E15" soil has been estimated at 10 to 30 acres per animal and while the quantity of forage is good, the quality of the forage is poor because the feed is soggy and lacking in dry matter and nutrients.

25. According to the Flood Insurance Rate Map (FIRM), the Property is not located within any flood hazard zone or designated floodway.

#### PROPOSAL FOR RECLASSIFICATION

26. The Property is part of a larger project--the 872-acre Kalihiwai Ridge-Phase II agricultural subdivision, which the Petitioner is presently in the process of subdividing. The Kalihiwai Ridge-Phase II agricultural

subdivision would consist of 28 lots, ranging in size from 5.2 acres to 354.862 acres, which would allow 85 to 100 farm dwellings. All of the lots would be used primarily for "agricultural/residential" purposes.

27. Selling prices of the lots will be based on the market at the time of sale. Depending upon size and location of the lots, the prices of individual lots are estimated to range from \$50,000 an acre to \$100,000 an acre. The minimum selling price for individual lots would be \$450,000, with the largest lots being about \$900,000. The preliminary projected cost for the subdivision improvements and infrastructure and professional services, exclusive of land costs, is estimated at \$6,500,000. The major factors in determining the sales prices of the proposed agricultural subdivision lots are market supply and demand, and competition. The agricultural productivity of the Property is not a prime consideration in establishing the sales prices of the proposed lots.

28. Of the 872 acres contained in the Kalihiwai Ridge-Phase II agricultural subdivision, 817 acres (including the 0.167-acre portion of the Property) are presently within the Agricultural District. The remaining 55 acres (including the 16.489-acre portion of the Property) are within the Conservation District.

29. The Kalihiwai Ridge-Phase II project received tentative approval, subject to 17 conditions, from the Kauai County Planning Commission in December 1989. One of the

conditions required the applicant to obtain a Conservation District Use Application (CDUA) for subdivision of the Conservation District portion of the project.

30. The 55 acres of the Kalihiwai Ridge-Phase II agricultural subdivision which extend into the Conservation District were the subject of a Conservation District Use Application (CDUA) submitted to the Department of Land and Natural Resources (DLNR) by Kilauea Agronomics, for subdivision purposes. The CDUA was approved, subject to a number of conditions, in November 1990. One of the conditions for CDUA approval was that the applicant obtain approval of the subject petition from the Land Use Commission (LUC). Documentation demonstrating such approval must be submitted to DLNR within two years of the CDUA approval.

31. Petitioner proposes the shifting of the Conservation/ Agricultural District boundaries toward the edge of the cliff of the Kalihiwai River Valley. Petitioner believes that the 16.489 acres being proposed for reclassification from the Conservation to the Agricultural District, with slopes of 0% to 20%, is suitable (i.e., flatter slopes) for agricultural activity. The 0.167 acres being proposed for reclassification from the Agricultural to the Conservation District slope down over the edge of the cliff toward the Kalihiwai River at slopes in excess of 20%, and are not suitable (i.e., steeper slopes) for agricultural activity.

32. The proposed reclassification would affect 5 of the 28 Kalihiwai Ridge-Phase II lots. These 5 lots would allow for up to 4 additional farm dwellings. The five affected lots are summarized below:

<u>Lot #</u>	<u>(1) Total lot acreage</u>	<u>Existing</u>			<u>per- mitted no. of farm dwell- ings</u>	<u>Acres proposed for - reclassi- fication to Agr'l Dist.</u>	<u>With Reclassification</u>		
		<u>Acres in Cons. Dist.</u>	<u>Acres in Agr'l Dist.</u>	<u>per- mitted no. of farm dwell- ings</u>			<u>Acres in Cons. Dist.</u>	<u>Acres in Agr'l Dist.</u>	<u>per- mitted no. of farm dwell- ings</u>
3	57.3	57.3	0	0	0	57.3	0	0	
13	10.8	9.3	1.5	1	7.0	2.3	8.5	3	
14	5.6	5.3	0.3	0	4.2	1.1	4.5	2	
15	5.2	3.2	2.0	1	1.8	1.4	3.8	1	
16	<u>33.9</u>	<u>11.8</u>	<u>22.1</u>	<u>5</u>	<u>3.2</u>	<u>8.5</u>	<u>25.4</u>	<u>5</u>	
Totals	<u>112.8</u>	<u>86.9</u>	<u>25.9</u>	<u>7</u>	<u>16.2</u>	<u>70.6</u>	<u>42.2</u>	<u>11</u>	

33. Each of the lots would gain only a small amount of Agricultural District lands, ranging from 0 to 7.0 acres.

34. Lot 3 "...consists primarily of Kalihiwai Reservoir. This lot shall be designated a 'Lake Lot' under the CC&R's and shall only be used for recreational purposes by members and guests of members of the Kalihiwai Ridge Community Association". Lot 3 would not be gaining any additional Agricultural District lands.

35. Affordable housing was not addressed by the Petitioner, as the issue of affordable housing affects

residential use of property, and the subject properties must be kept in agricultural use under the County's zoning ordinances and the March 16, 1977 agreement with the State of Hawaii.

PETITIONER'S FINANCIAL CAPABILITY  
TO UNDERTAKE THE PROPOSED DEVELOPMENT

36. Petitioner's Consolidated Unaudited Balance Sheet as of December 30, 1990 reflects total assets at \$78,721,000. Total liabilities were \$14,885,000 and stockholders' equity was \$63,836,000.

STATE AND COUNTY PLANS AND PROGRAMS

37. The Property is within the State Land Use Conservation Land Use District, which coincides with the County of Kauai General Plan's Open designation.

NEED FOR THE PROPOSED DEVELOPMENT

38. Market data for sales of agricultural lots in the Kilauea area during the past several years show fairly brisk sales.

39. There still appears to be a pent-up demand for agricultural lots in the Kilauea area, reflected by checks with realtors on the Kauai Northshore. One realtor, who noted that the demand for such lots is stronger than ever, has a list of 298 prospective purchasers of agricultural lots.

40. Petitioner states that "agricultural activities are not a permitted use within the 'Conservation' district, Resource subzone, without a Conservation District Use Permit issued by the Board of Land and Natural Resources. The typical

processing time for a Conservation District Use Permit is 5-6 months. The reclassification of the subject area will allow permitted agricultural activities on the flatter lands without requiring the landowner to obtain a Conservation District Use Permit. The Petitioner believes that this will promote and enhance permitted agricultural activities on the subject land."

Resource Subzone, Conservation District Lands

41. The Property is subzoned Resource (R). The objective of the Resource (R) subzone, as set forth in §13-2-13 of the Department of Land and Natural Resources (DLNR) Administrative Rules, is "to develop, with proper management, areas to ensure sustained use of the natural resources of those areas".

42. The Property is but a portion of the Resource subzone which contains the Kalihiwai River and the steep, vegetated lands flanking the river. According to the 1969 State of Hawaii Land Use Districts and Regulations Review, the Kalihiwai River Valley was included in the Conservation District due to its "extreme scenic significance to the Island of Kauai". Along with other river valleys on the island, the Kalihiwai River Valley provides the "potential for a continuity in the recognition of water and land management from the mountains to the sea; the recognition of a basic and functional character of the landscape and the natural resources of the island."

43. OSP believes that the Resource Subzone, Conservation District lands of the Kalihiwai River Valley, including the Property, have important natural resource value. Areas of the Kalihiwai River Valley's natural resource value include (but are not limited to): wildlife habitat; aquatic ecosystems; stream water quality; and scenic and visual resources.

#### Wildlife Habitat

44. The Property is situated approximately four miles inland from the Kilauea Point National Wildlife Refuge. The Refuge is used by large colonies of wedge-tailed shearwaters and red-footed boobies as nesting grounds. Other seabird species such as Laysan albatross, the great frigate-bird, and the red-tailed tropicbird also nest at the Refuge.

45. The State Department of Land and Natural Resources (DLNR) indicates that it has visited the project site, and found considerable habitat likely used by the threatened Newell's Shearwater for nesting. "In fact, a nesting colony was found not too far from the project site several years ago". According to DLNR, the Newell Shearwater species nests in uluhe fern (which has been identified on the Property), on partially forested cliffs and ridges.

46. The proposed project (i.e., earth-clearing, construction, heavy machinery, and associated erosion, drainage, noise and air quality impacts) may adversely affect or alter the nesting environment of the threatened species.

Aquatic Ecosystems/Stream Water Quality

47. The August 1990 (Draft) State of Hawaii, Hawaii Stream Assessment ranks the Kalihiwai River's resources as follows (based on ranks of outstanding, substantial, moderate and limited):

. Aquatic resources: Outstanding

The Kalihiwai River was given an "outstanding" rank for its aquatic resources because of the presence of a number of native aquatic resources, including nakea and nopili, which are fishes, and hihiwai, which is a mollusk. There have been a total of 11 native species observed in the Kalihiwai River.

. Riparian resources: Substantial

The Kalihiwai River was given the "substantial" rank for its riparian resources due to the presence of the following elements: Threatened or Endangered Birds; Waterbird Recovery Habitat; Rare Plants and Communities; Protected Area; Wetlands; and Native Forest.

. Cultural resources: Substantial

The Kalihiwai River was given the "substantial" rank for its cultural resources due to the presence of a number of sites, site specific significance, and valley significance as a whole district.

. Recreational resources: Substantial

The Kalihiwai River was given the "substantial" rank for its recreational resources due to the diversity of experiences or some experiences of high quality, based on such inventory elements as nature study areas, hiking, scenic views.

48. The Hawaii Stream Assessment also identifies the Kalihiwai River as a "Special Area", having characterized the river under estuary/embayment; wetlands; and priority aquatic

sites, high quality streams, national natural landmarks. Estuaries are defined as "deep, characteristically brackish coastal waters in well defined basins with a continuous or seasonal surface connection to the ocean that allows entry of marine fauna". Embayments are described as "land confined and physically protected marine waters with restricted openings to open coastal waters..." Wetlands serve as reservoirs for storm-water, groundwater recharge areas, filters for water-borne pollutants before they reach groundwater and/or inshore waters, habitat for waterbirds, and open space.

49. The Hawaii Stream Assessment states that "Hawaii's streams are small and fragile. They can affect and be affected by actions far beyond their boundaries. Instream flows may be affected by distant tunnels and wells, native aquatic species are affected by channelization, and runoff and erosion from the mountains and urban areas end up downstream, and thus on the reefs and beaches. Consequently, it is inappropriate to consider management of Hawaii's streams in segments. Rather, it is necessary to look at the entire stream within the context of its entire watershed. Developments and other management decisions should be reviewed for their impact on these areas."

#### Scenic/Visual Resources

50. The mauka lands in the Kilauea area, particularly around the Kalihiwai River Valley, provide a green, sweeping scenic landscape to those traveling on the Kuhio Highway.

51. Petitioner's Exhibit M (Visual Analysis) shows the profile line of sight from one point on Kuhio Highway (at the Kalihiwai River) to the Property, indicating that the line of vision to the Property would be blocked by the meandering ridges of the Kalihiwai River Valley. Exhibit M fails to address whether there are any other points from which the Property can be viewed.

52. OSP staff has viewed the long stretch of the Kalihiwai River Valley's southern ridge from the guava orchards up mauka from an area on Kuhio Highway further north of the Kalihiwai River Valley. The proposed project could impact this view.

#### Fauna

53. Appendix D (Avifauna and Feral Mammals Assessment) of Petitioner's Exhibit K (Environmental Assessment) makes note that the assessment is based on a one-day bird and mammal field survey conducted in March 1990. Appendix D states that "a brief survey such as this one can at best provide a limited perspective of the wildlife present in the area. Not all species will necessarily be observed during the actual survey, in addition, the number of species and the relative abundance of each species may vary throughout the year due to available resources and reproductive success."

54. Appendix D indicates the Property's proximity to the Kalihiwai River Valley, Kalihiwai Reservoir and surrounding wetlands, which serve as habitats for a variety of species.

Although no seabirds were observed during the survey, Appendix D notes that the Red-footed Booby and Wedge-tailed Shearwater nest at Kilauea, Kauai. In addition, the endangered Newell's Shearwater (Ao) nests in the mountains on Kauai. Petitioner's avifaunal consultant did not observe any seabirds on the Property.

55. According to the State Department of Land and Natural Resources (DLNR), the Kalihiwai River Valley serves as nesting grounds for the endangered Newell's Shearwaters. The optimum time for determining their presence is between April and October, by listening for their call and visual observations. (Petitioner's avifaunal survey was conducted in March). According to DLNR, a Newell's Shearwater nesting colony was found not too far from the Property.

56. Native species--both endemic and indigenous--were observed during the survey. The only resident native (endemic) bird species observed was the Hawaiian Duck (Koloa). These Koloa were seen flying from the Kalihiwai River in the direction of the aquaculture ponds located makai of the Property. "Koloa are more common on Kauai than elsewhere in the State and they often occur in mountain streams as well as coastal wetlands". Appendix D indicates that other possible endemic birds which may frequent the Property include the Short-eared Owl (Pueo), Common Moorhen (Alae Ula), American Coot (Alae Keokeo), and Black-necked Stilt or Aeo. "The

Kalihiwai Reservoir and the surrounding wetlands offer foraging opportunities for waterbirds."

57. The only resident native (indigenous) bird species observed was the Black-crowned Night Heron (Aku'u). The only migratory native (indigenous) bird species recorded was the Pacific Golden Plover.

58. Fourteen exotic (introduced) bird species were observed. The subject property supports a relative abundance of these bird species. Other bird species may also frequent the area.

59. One feral cat was observed, and although rats and mice were not seen, they undoubtedly occur in the area.

60. Appendix D states that "records of the endemic and endangered Hawaiian Hoary Bat are sketchy, but the species does occur on Kauai. Little is known of their natural history, distribution and ecological requirements". Although the Hawaiian Hoary Bat was not observed during the survey, Appendix D acknowledges that they potentially could occur in the area.

61. Appendix D indicates that "Kalihiwai Reservoir and surrounding wetlands including the nearby aquaculture ponds provide foraging and nesting opportunities for native waterbirds. Any development on the adjacent lands should recognize this potential and be designed in such a way as to avoid negative impacts to these wetlands. This would include pollution by pesticides and herbicides". Appendix D adds that "clearing of the dense brush that covers the site would result

in a decline in species which prefer thickets for cover and foraging." However, "the creation of open short grass habitat would result in an increase in the number of Pacific Golden Plover and would permit the Western Meadowlark to take advantage of this area."

#### Flora

62. Appendix C (Botanical Assessment) of Petitioner's Environmental Assessment (hereinafter "EA") indicates that the Property was under sugarcane cultivation. "The abandoned fields are now overgrown by weedy scrub vegetation, and a few remnant patches of sugarcane can still be found..." A variety of introduced or alien scrubs and grasses are found in the Property.

63. Appendix C indicates that "a dense strawberry guava forest with scattered trees of kukui, hala, guarumo and Java plum is found along the bluff's edge. A few trees of ohia, 25 to 30 ft. tall can be found just beyond where the bluff's edge drops steeply into Kalihiwai Valley. In general, the forest is so dense that very little light reaches the forest floor..."

64. A few species native to the Hawaiian Islands--ohia, hala, Pycneus, and ricegrass--can be found on the site, mostly on the bluff's edge. According to Appendix C, none of these plant species is officially listed as threatened or endangered. Appendix C states that there is little of

botanical interest, and the proposed change in land use is not expected to have a significant negative impact on the botanical resources.

65. However, as stated earlier, the threatened Newell's Shearwater nests in uluhe fern, which Appendix C identifies as locally abundant.

#### Groundwater Resources

66. The State Department of Health (DOH) notes that the Property is located above UIC line (i.e., areas likely to support potable water supplies).

67. Petitioner's environmental engineering consultant, George Yuen, indicated that it is very unlikely that pesticides and herbicides to be used on the Property would get into the groundwater and find its way to the river valley.

#### Air and Aural Quality

68. Petitioner's EA indicates that the air and aural quality in the area are "excellent". The only impacts on air and aural quality may result from project construction. Mitigation measures proposed include "various techniques in accordance with applicable erosion control standards". Petitioner does not expect significant negative impacts on the air and aural quality of the area.

#### Archaeological Resources

69. Appendix A (Archaeological Study) of the Petitioner's EA indicates that a cultural feature--an irrigation ditch along the ridge west of the reservoir--was

found. However, no archaeological or historic surface features were identified. Appendix A concluded that no further archaeological work was necessary at this location.

70. The State Department of Land and Natural Resources (DLNR) comments that the proposed action should have "no effect" on significant historic sites in the area. However, DLNR has concerns about the adjacent agricultural lands, as detailed below:

- . Historic Preservation Program has been asked by the Office of State Planning (OSP) to evaluate the significance of the reservoir in the immediately adjacent agricultural lands. Thus, DLNR would like to obtain information on the reservoir--a description of construction style and its age.
- . The archaeological report only addressed the Conservation District lands. The adjacent agricultural lands may contain significant historic sites, particularly in gulches which have been unaltered by sugar cane. It would be desirable for such gulch lands to also undergo archaeological survey prior to any planned land alteration, if those gulch areas are to be impacted in the future.

#### Recreational Resources

71. The Petitioner's EA indicates that "recreational facilities in the region are primarily associated with ocean-related State and County resources along Kauai's north shore and private facilities provided by the Princeville resort community. Access to shoreline and coastal resources will not be affected. Although the population in the area may increase to a limited extent, the capacity of existing recreational facilities should not be significantly affected."

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Wastewater Treatment and Disposal

72. Petitioner's EA indicates that "sewage collection, treatment, and disposal will be undertaken in accordance with applicable State Department of Health (DOH) regulations. Inasmuch as the site is located mauka of the DOH Injection Control line, septic systems with leach fields as approved by DOH will be utilized."

73. DOH has the following comments:

- . The subject area is in a proposed critical wastewater disposal areas determined by the Kauai County Wastewater Advisory Committee. In the future, no cesspools will be allowed in the subject area.
- . It has been determined that the subject project is not within a County Sewer system service area.
- . At this time, the proposed disposal system consists of septic systems with leach fields. Although this proposal meets the current requirements of Chapter 11-62, Wastewater Systems, proposed revisions to the chapter may require that a centralized wastewater treatment facility or individual wastewater systems with higher degree of treatment be utilized.
- . If the developer decides to use a private treatment works, the provisions of Chapter 11-62, Subchapter 2 must be complied with. However, DOH reserves the right to review all detailed wastewater plans for conformance to applicable uses.
- . If drywells are used to dispose of rainfall runoff water, a UIC permit to operate the drywells must be obtained by the owner.

### Water Service

74. Petitioner's EA states that all proposed subdivision parcels will be serviced by the central water distribution system owned and operated by the County of Kauai. All necessary on-site water distribution system improvements will be funded by the Petitioner in accordance with County of Kauai requirements.

75. The Kauai County Department of Water (DW) comments that "it has no objections to the subject petition, provided the developer is aware that approval of any actual subdivision or development will be dependent on the adequacy of the source, storage and transmission facilities existing at that time. At the present time, due to the wide range in elevation of the proposed subdivision lots, water service cannot be provided unless water booster pumps, pipelines and a 100,000 gallon storage tank are installed by the subdivider." DW indicates that it has "recommended that final subdivision approval not be granted until the subdivider prepares and gets DW's approval of construction plans for necessary water system facilities and either constructs or posts a performance bond for construction". In addition, DW states that "the subdivider must pay the applicable charges in effect at the time of receipt which currently amounts to \$12,180 in Facilities Reserve Charges. Also, the subdivider must contribute his proportionate share of costs to the developers of the Crater

Hill subdivision as provided in the Department's Rules; finally, construction improvements for the Kalihiwai Ridge Subdivision, Unit I, (S-77-105) must be completed and accepted by the Department of Water."

Highway and Roadway Services and Facilities

76. According to Petitioner's EA, the 872-acre Kalihiwai Ridge- Phase II agricultural subdivision would consist of 85 to 100 possible farm dwellings, although 42 to 50 homes (approximately 50 percent build-out) would be a more realistic build-out. Based on this proposed number of units, the subdivision will generate 85 to 100 cars if each family had two cars. Given the capacity of Kuhio Highway and existing traffic conditions, the subdivision will not significantly impact the surrounding transportation system. The proposed reclassification of 16.489 acres from the Conservation to the Agricultural District could generate between 2 and 4 additional vehicles on the foregoing basis.

77. The State Department of Transportation (DOT) states that the developer should provide improvements to the existing access of Kalihiholo Road to Kuhio Highway, including left-turn storage, deceleration, and acceleration lanes. The developer should bear the costs of all improvements. In addition, plans for construction work to be done within the State highway right-of-way should be submitted to the Highways Division for review and approval.

### Drainage

78. According to the petition, "the subject property is within the Kalihiwai River Valley drainage basin. Overlooking the Kalihiwai River Valley, the natural drainage pattern over the subject area is to the northwest into the valley. The proposed reclassification and use will not result in any changes to this drainage pattern..." OSP notes that the drainage basin of the Kalihiwai Reservoir also influences the Property.

79. As indicated earlier, the Kalihiwai River Valley and the Kalihiwai Reservoir serve as habitats for a variety of birds, including threatened or endangered species. The proposed uses could cause significant negative impact upon these waters, including sedimentation and contamination, thus altering the species' habitat.

### Schools

80. The petition indicates that "existing public schools to serve the subject area include Kilauea Elementary School, Hanalei Elementary School, and Kapaa High School. The maximum potential of four additional permitted farm dwelling units resulting from the requested reclassification will not result in a significant number of students to burden the public education system.

81. The State Department of Education (DOE) comments that the subject petition will have a "negligible impact" on the public schools in the area.

Police and Fire Protection

82. The petition states that "the proposed reclassification, with its potential maximum of 4 additional farm dwellings, will result in only a marginal increase in the need for police and fire protection."

Electrical and Telephone Service

83. The petition states that "utilities, such as electricity, telephone, gas, and television cable, can be provided to the subject property by the appropriate public utilities without reduction in quality and level of service."

Solid Waste Disposal

84. The petition states that "solid waste will be disposed of in County facilities through regular periodic pick-ups by the County operators. Other solid waste can also be disposed of by the homeowner at the Hanalei refuse transfer station."

CONFORMANCE WITH THE HAWAII STATE PLAN

85. The proposed reclassification is generally consistent with the objectives and policies of the Hawaii State Plan, Chapter 226, HRS as follows:

- |                  |  |
|------------------|--|
| Section 226-7(2) | It will encourage diversified agriculture.                     |
| Section 226-6(1) | It will encourage diversification of employment opportunities. |
| Section 226-6(2) | It will encourage diversification of the economic base.        |

Section 226-7(8)            It will promote the growth of tropical fruits and flowers, and encourage overall entrepreneurial activity.

CONFORMANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

86. The proposed reclassification is in accordance with the standards set forth in Section 15-15-19 of the Hawaii Land Use Commission Rules for reclassification of 16.489 acres into the Agricultural District in that:

a. The proposed reclassification will include lands with significant potential for grazing or other agricultural uses.

b. The subject property is contiguous to the remaining agriculturally classified lands in the Kalihiwai Ridge, Phase II subdivision. It is suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics.

c. Although the subject property has not been in intensive agricultural use for two years prior to the filing of the petition herein, the proposed land is being requested to be placed into, not taken out of, the Agricultural district.

87. The subject 16.489 acres are less in accordance with the standards for the Conservation district than the Agricultural district in that:

a. It is not necessary for protecting watersheds, water resources and water supplies.

b. It is not susceptible to floods and soil erosion.

c. It is not necessary for the protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami and flooding, to volcanic activity or landslides.

d. The land is not used for state or national parks.

e. There are no cultural, historical or archaeological sites necessary to be conserved, preserved or enhanced on the subject property.

f. The subject property does not contain any unique physiographic or ecologic significance necessary to be preserved.

g. The subject property is not necessary for the providing or preservation of parklands, wilderness and beach preserves.

h. The subject property is not necessary for conserving natural ecosystems of endemic plants, fish and wildlife.

i. The subject property is not below the shorelines.

j. The subject property does not include lands with topography, soils, climate or other related environmental factors that are not normally adaptable or needed for agricultural use.

k. The subject property does not include lands with slopes of more than 20%.

1. Although lands suitable for farming and other agricultural activities may be placed within the Conservation district, the subject property is better suited for inclusion within the Agricultural district in that it is physically similar to the Agricultural classified lands abutting it to the east.

88. The 0.167 acre proposed for reclassification to the Conservation district, that area which is over the edge of the bluffline overlooking the Kalihiwai River Valley, is similar to the abutting lands within the Kalihiwai River Valley classified Conservation, and in the interest of consistency, should be contained in the Conservation district.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding not adopted by the Commission herein, or rejected by clear contrary finding of fact herein, are hereby denied and rejected.

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

### CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, and the Hawaii Land Use Commission Rules, the Commission finds upon the clear preponderance of the evidence that the reclassification of 16.489 acres at Kalihiwai, Kilauea, Island of Kauai, State of Hawaii, from the Conservation to the Agricultural District for agricultural uses and the reclassification of 0.167 acre at Kalihiwai, Kilauea, Island of Kauai, State of Hawaii, from the Agricultural District to the Conservation District for conservation uses subject to the conditions set forth in the Order, conforms to the standards established in the Hawaii Land Use Commission Rules, Chapter 15-15-, Hawaii Administrative Rules, is reasonable, non-violative of Section 205-2, Hawaii Revised Statutes, as amended, and, the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

### DECISION AND ORDER

IT IS HEREBY ORDERED that a portion of the Property, which is the subject of Docket No. A90-661 filed by C. Brewer Properties, Inc., consisting of approximately 16.489 acres at Kalihiwai, Kilauea, Island of Kauai, and identified as Kauai Tax Map Key: 5-2-02: portion of 10, and approximately identified on Exhibit "1" attached hereto and incorporated by reference herein, shall be and the same is hereby reclassified from the Conservation District to the Agricultural District and the State Land Use District Boundaries are amended accordingly,

and approximately 0.167 acres of land at Kalihiwai, Kilauea, County of Kauai, and identified as Kauai Tax Map Key: 5-2-02: portion of 10, and approximately identified on Exhibit "1" attached hereto and incorporated by reference herein, shall be and the same is hereby reclassified from the Agricultural District to the Conservation District, and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. Conditions as set forth in the attached Stipulation (Exhibit 2 attached hereto) between the parties dated April 16, 1991 (original full-sized Exhibit A on file with the Commission).

2. Petitioner and subsequent owners of the Property shall ensure that, during the period of their respective ownership of the Property, that the proposed development and use of the Property will not adversely affect (e.g., pollution by pesticides and herbicides) the Kalihiwai Reservoir and surrounding wetlands, and the Kalihiwai River and valley lands. Should the proposed development and use of the Property during the period of their respective ownership degrade the quality of these waters, wetlands and lands, the Petitioner or subsequent owners responsible for such degradation shall fund and implement the necessary mitigation actions to the satisfaction of the State Department of Health and State Department of Land and Natural Resources.

3. Petitioner and/or any subsequent landowner shall immediately stop work on the impacted area and contact the Historic Preservation Division, State Department of Land and Natural Resources should any significant cultural remains hereto undiscovered or not reflected in the archaeological study such as artifacts, shells, bones, or charcoal deposits, human burial, rock or coral alignments, pavings or walls of historic or prehistoric significance be encountered during the development of the Property.

4. Petitioner shall fund the design and construction of all transportation improvements necessitated by the Project identified by and to the satisfaction of the State Department of Transportation.

5. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

6. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

7. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Kauai, Planning Department in connection with the

status of the subject project and the Petitioner's progress in complying with the conditions imposed.

8. The Land Use Commission may fully or partially release these conditions as to all or any portions of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.



