

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A05-758
	)	
A CHARITABLE FOUNDATION	)	FINDINGS OF FACT,
CORPORATION, a Nevada non-profit	)	CONCLUSIONS OF LAW,
corporation	)	AND DECISION AND
	)	ORDER
To Amend The Agricultural Land Use	)	
District Boundary Into The	)	
Conservation Land Use District For	)	
Approximately 28.759 Acres Of Land	)	
And The Conservation Land Use	)	
District Boundary Into The Agricultural	)	
Land Use District For Approximately	)	
5.219 Acres Of Land At Pūpūkea,	)	
Koʻolaupia And Waialua, Oʻahu,	)	
Hawaiʻi, Tax Map Keys: 5-9-23: Por. 1;	)	
5-9-24: 1; And 6-1-02: Por. 22	)	
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FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND DECISION AND ORDER

A CHARITABLE FOUNDATION CORPORATION, a Nevada non-profit corporation ("Petitioner")<sup>1</sup>, filed its Petition For District Boundary Amendment ("Petition") on March 15, 2005, pursuant to chapter 205, Hawaii Revised Statutes ("HRS"), and chapter 15-15, Hawaii Administrative Rules ("HAR"), to amend the State land use district boundary to reclassify approximately 28.759 acres of land at Pūpūkea, Koʻolaupia, Oʻahu, Hawaii, identified as Tax Map Keys: ("TMK") 5-9-24: 1 and 5-9-23:

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<sup>1</sup> Petitioner's principal address is 2657 Windmill Parkway, Suite #220, Henderson, Nevada, 89074.

por. 1 ("Petition Area A"), from the State Land Use Agricultural District to the State Land Use Conservation District for donation to the Department of Land and Natural Resources, State of Hawai'i ("DLNR"), as a State Park Reserve and to amend the State land use district boundary to reclassify approximately 5.219 acres of land at Pūpūkea, Waialua, O'ahu, Hawai'i, identified as TMK: 6-1-02: por. 22 ("Petition Area B"), from the State Land Use Conservation District to the State Land Use Agricultural District for agricultural use (Petition Area A and Petition Area B are collectively referred to as the "Petition Areas").

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence, and arguments of counsel presented during the hearing, and having duly considered the Stipulated Petitioner's Proposed Findings Of Fact, Conclusions Of Law, And Decision & Order by Petitioner, the State Office of Planning ("OP"), and the City and County of Honolulu Department of Planning and Permitting ("DPP"), hereby makes the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On March 15, 2005, Petitioner filed the Petition and a Draft Environmental Assessment ("DEA"), pursuant to sections 343-5(a)(7), HRS, and 11-200-6(b)(1)(F), HAR.

2. On April 7, 2005, the Commission determined that the DEA warranted an anticipated finding of no significant impact ("FONSI"), subject to Petitioner providing supplemental information to address the specific comments and requests of the Commission.

3. On May 17, 2005, the Commission filed its Order Determining That The Draft Environmental Assessment Dated March 2005 Warrants An Anticipated Finding Of No Significant Impact.

4. On August 29, 2005, Petitioner filed the Final Environmental Assessment ("FEA").

5. On September 2, 2005, Petitioner filed an Errata to Petition for District Boundary Amendment.

6. On September 8, 2005, the Commission approved the FEA and issued a FONSI, subject to Petitioner's revision of the FEA to reflect the proper nomenclature of the future park area and to expand the discussion of the proposed action's relationship to the significance criteria in section 11-200-12, HAR.

7. On September 9, 2005, the Commission went on a field trip to the Petition Areas.

8. On September 23, 2005, Petitioner filed its revised FEA.

9. On October 11, 2005, Petitioner filed a Second Errata to Petition for District Boundary Amendment.

10. By letter dated October 12, 2005, the Executive Officer of the Commission deemed the Petition a proper filing as of October 11, 2005.

11. On October 25, 2005, the Commission filed its Findings Of Fact, Conclusions Of Law, And Decision And Order Determining A Finding Of No Significant Impact For A State Land Use District Boundary Amendment.

12. On November 7, 2005, the City and County of Honolulu ("City and County") filed its Statement of Position of the Department of Planning and Permitting in Support of Petition.

13. On November 8, 2005, the OP filed its Statement of Position of the Office of Planning in Partial Support of the Petition.

14. On November 9, 2005, a prehearing conference was conducted in Conference Room 405 of the Leiopapa A Kamehameha Building, 235 South Beretania Street, 4th Floor, in Honolulu, Hawai'i, with representatives of Petitioner, the OP, and the City and County present.

15. On November 9, 2005, the Notice of Hearing for the January 5 and 6, 2006, Commission hearing was published in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, Maui News, and The Garden Island.

16. On November 22, 2005, the Commission filed its Prehearing Order.

17. On November 23, 2005, the City and County filed its Testimony of the Department of Planning and Permitting in Support of Petition.

18. On November 29, 2005, Petitioner filed an Affidavit of Publication of Notice of Hearing, an Affidavit of Mailing of Notice of Hearing, and an Affidavit of Filing with the Lieutenant Governor's Office of Notice of Hearing.

19. On December 16, 2005, the OP filed its Testimony of the Office of Planning in Partial Support of the Petition. The OP recommended that Petition Area B remain in the State Land Use Conservation District.

20. On December 16, 2005, Petitioner filed its Petitioner's List of Exhibits and List of Witnesses and Attachments "A" and "B."

21. On January 5, 2006, the Commission conducted a hearing on the Petition in Honolulu, Hawai'i. Entering appearances were Dr. David S. Druz; Benjamin M. Matsubara, Esq.; and Curtis T. Tabata, Esq., for Petitioner; Randolph Hara and Lori Ann K. K. Sunakoda, Esq., Deputy Corporation Counsel, for the City and County; and Laura H. Thielen, Director of the OP; Gregg K. Kinkley, Esq., Deputy Attorney General; Abe Mitsuda; and Lorene Maki for the OP. Henry Curtis provided public testimony.

22. On January 5, 2006, Petitioner filed its Exhibits 21 and 22.

23. At the conclusion of the January 5, 2006, hearing, the Commission closed the evidentiary portion of the hearing, subject to Petitioner filing its Exhibit 23.

24. On January 25, 2006, Petitioner filed an Affidavit of Filing of Petitioner's Exhibit 23 and Exhibit 23.

DESCRIPTION OF THE PETITION AREAS

25. The Petition Areas are located at Pūpūkea in the Ko'olaupia and Waialua Districts, Island of O'ahu, State of Hawai'i, and consist of: (i) Petition Area A, which is approximately 28.759 acres, and is identified by TMKs: 5-9-23: 1 (portion) and 5-9-24: 1; and (ii) Petition Area B, which is approximately 5.219 acres, and is identified by TMK: 6-1-02: 22 (portion).

26. TMK: 5-9-23: 1 is approximately 14.457 acres in its entirety, while TMK: 5-9-24: 1 is approximately 24.227 acres in its entirety. TMK: 6-1-02: 22 is approximately 55.491 acres in its entirety. Collectively, the three parcels consist of approximately 94.175 acres ("Property").

27. Fee simple ownership of the Property, including the Petition Areas, is vested in Petitioner.

28. The Petition Areas are situated along a ridge in Pūpūkea overlooking Waimea Valley, approximately 6.25 miles east of Hale'iwa town center on O'ahu's North Shore. The Pūpūkea residential and agricultural community is located to the north and east of the Petition Areas. A fallow and undeveloped approximately 212-acre Agricultural District parcel, identified as TMK: 5-9-05: 4, is located to the west

of the Petition Areas. Pu'u o Mahuka Heiau, a State monument and the largest heiau on O'ahu, is located to the northwest of the Petition Areas.

29. Access to TMKs: 5-9-23: 1 and 5-9-24: 1 is provided by Maulukua Road. Access to TMK: 6-1-02: 22 is provided by a 14-foot-wide perpetual easement running north from the parcel across the adjacent 212 acres, identified as TMK: 5-9-05: 4, that are in the State Land Use Agricultural District.

30. The Petition Areas were used for pineapple cultivation by Honolulu Pineapple Company sometime between the 1910s to the 1960s. The Petition Areas have since been fallow and undeveloped. Currently, a tour operator, "Happy Trails," utilizes a well-established trail system that traverses the Petition Areas as well as other adjacent properties in a horseback riding operation.

31. Elevations within the Petition Areas range from approximately 440 feet above mean sea level ("msl") to approximately 720 feet above msl.

32. The Petition Areas have slopes ranging from 0 to 10 percent to over 50 percent.

33. The median annual rainfall in the vicinity of the Petition Areas is estimated between 40 and 70 inches. Historically, January and February are the wettest months of the year, and June through September are the driest months. Trade winds predominate from the northeast at 10 to 25 miles per hour ("mph"). On occasion, these tradewinds can approach 50 mph. The trades are especially prevalent during the



summer months between May and September. From October through April, storm-generated Kona winds become a common occurrence bringing moisture laden clouds to the Petition Areas. The annual mean temperature of the Petition Areas is approximately 75°F. Temperatures range between a low of 50°F and a high of 96°F.

34. According to the United States Department of Agriculture, Soil Conservation Service, the Petition Areas contain Helemano Silty Clay, 30 to 90 percent slopes (HLMG); Wahiawa Silty Clay, 3 to 8 percent slopes (WaB); Manana Silty Clay, 3 to 8 percent slopes (MpB); Manana Silty Clay, 12 to 25 percent slopes, eroded (MpD2); and Paaloa Silty Clay, 3 to 12 percent slopes (PaC).

35. According to the Land Study Bureau Detailed Land Classification system, the Petition Areas have a productivity rating of "B," "C," and "E."

36. According to the "Agricultural Lands of Importance in the State of Hawaii" system, the Petition Areas consist of "Prime Agricultural Land" and "Other Important Agricultural Land." Petition Area B is classified as "Prime Agricultural Land."

37. The Petition Areas fall within areas of undetermined Flooding or Flood Zone "D," as determined by the Federal Emergency Management Agency Federal Flood Insurance Rate Map.

## PROPOSAL FOR RECLASSIFICATION

38. Petitioner is seeking the reclassification of Petition Area A from the State Land Use Agricultural District to the State Land Use Conservation District to facilitate the consolidation of TMKs: 5-9-23: 1, 5-9-24: 1, and 6-1-02: 22 and the subdivision of the consolidated lands to convey Petition Area A and approximately 50.272 acres of adjacent land, identified as TMK: 6-1-02: por. 22, that are already in the State Land Use Conservation District to the DLNR for a State Park Reserve.<sup>2</sup> It is anticipated that the requisite entitlements necessary to convey the 79.031 acres to the DLNR will be sought within one year from Commission approval.

39. The approximately 79.031 acres to be donated to the State of Hawai'i for the creation of a new State Park Reserve will come under the jurisdiction and management responsibility of the DLNR.

40. The DLNR has expressed its willingness to accept management jurisdiction of Petition Area A, in addition to the adjacent Conservation District lands, as a State Park Reserve and an extension of Pu'u o Mahuka Heiau State Monument for the following reasons:

a. Promotes open space along the northern rim of Waimea Valley which in turn, promotes the historical landscape for Pu'u o Mahuka Heiau;

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<sup>2</sup> The reclassification of Petition Area A is necessitated, in part, by the DPP's opposition to the creation of a parcel (i.e., Petition Area A and TMK: 6-1-02: por. 22) that is dual zoned which has access through an easement.

b. Promotes the view corridors of Waimea Valley, including the length of the valley or ahupua`a from the mountains to the sea; and

c. Provides passive recreational opportunities for visitors to Pu`u o Mahuka Heiau and the neighboring Pūpūkea community, including walking trails, lookouts, and potential picnic sites.

41. Petitioner is seeking the reclassification of Petition Area B from the State Land Use Conservation District to the State Land Use Agricultural District for agricultural use. Petitioner will retain Petition Area B and approximately 9.925 acres of adjacent land, identified as TMK: 5-9-23: por. 1, that are already in the State Land Use Agricultural District.

42. Petitioner currently has no specific plans for the development of the approximately 15.144 acres of land it will retain. Petitioner has represented that if Petition Area B is reclassified from the State Land Use Conservation District to the State Land Use Agricultural District, Petitioner will seek to consolidate and resubdivide the 15.144 acres of land into two Agricultural District parcels that will be limited to agricultural uses with the potential development of farm dwellings. Potential agricultural uses include low elevation crops that are grown commercially on small farms in Hawai`i, or which are grown in support of a country lifestyle. Such crops would include those that do well in the surrounding area, such as flowers and nursery products. In addition, the land would be suitable for a small number of domestic farm

animals, such as horses, chickens, ducks, and goats. It is estimated that such development could be completed within five to seven years from Commission approval. Petitioner is willing to restrict the subdivision of Petition Area B and the adjacent Agricultural District land to two zoning or subdivided lots.

43. Petitioner has represented that it will prepare an agricultural plan for Petition Area B.

44. In the absence of an agricultural plan, the OP believes that Petition Area B would be more appropriate for the State Land Use Rural District where residential uses are allowed with agricultural activity. The OP would support reclassification of Petition Area B from the State Land Use Conservation District to the State Land Use Agricultural District if there were approved plans for agricultural activities.

45. The reclassification of Petition Area A and its subsequent donation for a State Park Reserve is not expected to have any impact on the housing needs of low income, low-moderate income, and gap groups due to the nature of the proposed use. The reclassification of Petition Area B for agricultural use is not anticipated to have any impact on the housing needs of low income, low-moderate income, and gap groups. Should employees be required for farming activities, any farm dwellings that are developed could provide onsite housing to accommodate the workers.

## PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

46. Petitioner's total net assets and net income for year ending 2004 is \$3,402,716.30 and \$166,707.48, respectively.

47. Petitioner has the financial capability to undertake the potential development of farm dwellings with agricultural uses on Petition Area B.

## STATE AND CITY AND COUNTY PLANS AND PROGRAMS

48. Petition Area A is currently designated in the State Land Use Agricultural District. Petition Area B is currently designated in the State Land Use Conservation District. The designation of the Petition Areas is reflected on the Commission's official map, O-3 (Waimea).

49. The North Shore Sustainable Community Land Use Map designates the Petition Areas as Agriculture and Preservation.

50. Petition Area A is zoned General Agricultural (AG-2) and Petition Area B is zoned Restricted Preservation (P-1). If the Petition Areas are reclassified and if Petitioner goes through with its plans, Petitioner will need to obtain a zoning amendment of Petition Area A to Restricted Preservation (P-1) and Petition Area B to General Agricultural (AG-2) from the City and County.

51. Petition Area A is not within the boundaries of the City and County Special Management Area ("SMA"). Petition Area B is within the boundaries of the SMA such that future development will be subject to the SMA permit review.

## NEED FOR THE PROPOSED DEVELOPMENT

52. Petition Area A offers unique and valuable view planes overlooking Waimea Valley that should be preserved by dedicating the land to the DLNR to ensure that Petition Area A remains open space.

53. Petitioner does not have any specific plans to develop Petition Area B. In the event Petition Area B were to be developed to its maximum including farm dwellings with agricultural uses, such developments should be absorbed in the current real estate market.

## ECONOMIC IMPACTS

54. The reclassification of Petition Area A and its subsequent donation to the DLNR for a State Park Reserve will not have any adverse economic impact to the State or the City and County as no employment generated activities are proposed. The reclassification of Petition Area B will not have any adverse economic impact to the State or City and County given the nature and scale of any agricultural use that may occur on the land.

## SOCIAL IMPACTS

55. The reclassification of the Petition Areas is not anticipated to have a significant impact on the population of Pūpūkea. The reclassification of Petition Area A will preserve lands for public recreational use that will benefit and enhance the social welfare of the community. The reclassification of Petition Area B is not anticipated to

have any adverse social impacts upon the community given the nature and scale of any agricultural use that may occur on the land.

## IMPACTS UPON THE RESOURCES OF THE AREA

### Agricultural Resources

56. Commercial agriculture began in the Pūpūkea Ahupua`a as early as the 1860s with the production of sugarcane. Pineapple production began in the uplands in 1910 when Honolulu Pineapple Co., Ltd., acquired a lease for lands surrounding the Pu`u o Mahuka Heiau. Cultivation of pineapple continued until the 1960s.

57. Prior to western contact, Waimea Valley was known to have been a well-populated and intensively cultivated district. The Waimea Ahupua`a has undergone significant changes in post-cultural times. After the floods in the late 1800s, occupation of the valley declined. Presently, much of the Waimea Ahupua`a is used for recreational/tourist industry purposes.

58. There is no current agricultural cultivation of any kind within the Petition Areas. The reclassification of Petition Area A and its subsequent donation to the DLNR for a State Park Reserve will promote the preservation of open space, view planes, and the natural state of the area for future generations, without decreasing any current agricultural cultivation.

59. Decision Analysts Hawai`i, Inc., prepared a report entitled *Pupukea Ridge: Agricultural Suitability of Lands Proposed for Redistricting to Agriculture* dated April

2005. Petition Area B is suitable for agriculture. This assessment is based on the quality of the soil, a large amount of solar radiation and rainfall (50 inches per year), good access, and reasonable trucking distance to the Honolulu markets and to shipping terminals.

#### Flora and Fauna Resources

60. A botanical survey of Petition Area B was undertaken by Botanical Consultants, Inc., in December 2004. Three distinct vegetation types were observed: (i) ironwood trees, seedlings and saplings; (ii) grass species such as Hilo grass, Henry's crab grass, foxtail grass, Guinea grass, sourgrass, and low flowering plants such as *Calypocarpus vialis* Less. and brass buttons; and (iii) Weedy scrub. The only native species found on this site was a single vegetative Bidens (Ko'oko'olau) plant. Petition Area B is now dominated by alien plant species and there are no known candidate, proposed, or listed threatened or endangered plant species on Petition Area B.

61. A fauna survey of Petition Area B was undertaken by Botanical Consultants, Inc., in March 2005. No rats, mice, or mongoose were seen but they are assumed to be present. Two species of doves were seen and heard at all three listening sites: spotted doves (*Streptopelia chinensis*) and zebra doves (*Geopelia striata*). The next most plentiful species was mynas (*Acridotheras tristis*). Less common species were Brazilian cardinals (*Paroaria coronata*) and house sparrows (*Passer domesticus*). One migratory golden plover (*Pluvius dominica*) was observed. Except for the visiting golden



plover, all observed birds are introductions and can be found at low elevations near houses on all of the Hawaiian Islands.

#### Archaeological/Historical/Cultural Resources

62. An Archaeological Inventory Survey Report was prepared by Archaeological Consultants of the Pacific, Inc., in February 2005 for Petition Area B and the approximately 9.925 acres of adjacent Agricultural District land. The survey consisted of a 100 percent surface survey. One site considered significant to the interests of historic preservation was identified. This site consisted of the remains of a former water tank on Petition Area B. It is believed that this structure is more than 50 years old and was used in association with the pineapple industry. Sufficient information on the structure has been recovered, and no further archaeological work is recommended.

63. A Cultural Impact Assessment was prepared by Archaeological Consultants of the Pacific, Inc., in August 2002. In addressing Hawaiian cultural practices and cultural features the assessment consisted of historic background research and community consultations. Two individuals were consulted regarding the cultural significance of Petition Area B and the approximately 9.925 acres of adjacent Agricultural District land and the possible impacts from the reclassification of the Petition Areas: Mr. Butch Heleman and Ms. Alice Greenwood.

64. Several cultural sites are located within the Pūpūkea and Waimea Ahupua`a. Pu`u o Mahuka Heiau is on the National and State Register of Historic Places and is one of the most significant and largest heiau on O`ahu. The Pu`u o Mahuka Heiau State Monument is located to the northwest of the Petition Areas.

65. Habitation in Petition Area B and the approximately 9.925 acres of adjacent Agricultural District land would have been unlikely prior to pre-contact era, because of the location of the Pu`u o Mahuka Heiau on the ridge. Habitation would not have occurred in such proximity to the heiau. The need for continued access to burial caves on the ridge in the vicinity of the heiau was raised during the interviews.

66. The proposed reclassification and subsequent donation of Petition Area A, together with adjacent Conservation District lands, will help to preserve and promote the cultural and historical landscape for Pu`u o Mahuka Heiau, and preserve and promote the culturally significant view corridors of Waimea Valley, including the length of the valley or ahupua`a from the mountains to the sea. Any other cultural, scenic, historical, or archaeological sites existing on Petition Area A will also most likely be preserved and promoted by the donation to the DLNR for the purpose of establishing a State Park Reserve.

#### Groundwater Resources

67. The Petition Areas are situated within the Kawaihoa aquifer system of the North Aquifer Sector. This aquifer is basal (fresh water in contact with seawater),

unconfined (the water table is the upper surface of the saturated aquifer), and occurs in flank (horizontally extensive) lavas.

68. The Petition Areas are located in the critical wastewater disposal area as determined by the O'ahu Waterway Advisory Committee and in an unsewered area. It is also located above the State Department of Health's ("DOH") Underground Injection Control Line and in the Board of Water Supply's "No Pass Zone." The purpose of the No Pass Zone is to protect underground drinking water aquifers from contamination, which could result from the ground disposal of wastewater.

69. There is no significant risk of groundwater contamination as a result of any agricultural uses that may occur on Petition Area B. Current pesticides are designed to prevent their migration. In addition, groundwater is located deep below Petition Area B, and there are no groundwater wells downgradient of Petition Area B.

#### Recreational Resources

70. A well-established trail system that is currently used by a tour operator, "Happy Trails," for its horseback riding operation traverses the Petition Areas. Petitioner currently maintains the trails and has committed to their continued maintenance following the donation of Petition Area A and the adjacent Conservation District land to the DLNR for a State Park Reserve.

71. The proposed donation of Petition Area A will facilitate the creation of a new State Park Reserve that will provide passive recreational opportunities for the general public.

#### Scenic Resources

72. The Petition Areas are situated along a ridge in Pūpūkea. The reclassification of Petition Area A and its subsequent donation to the DLNR for a State Park Reserve will preserve the natural character of the northern ridgeline above Waimea Valley and prevent any future/incompatible development from occurring. The ridgeline is readily visible from Waimea Beach, Waimea Valley, and sections of Kamehameha Highway between Hale`iwa and Waimea.

73. Petition Area B is neither visible from Kamehameha Highway nor from publicly accessible portions of Waimea Valley. Petition Area B is over one mile inland from the highway and obscured by the valley ridge. It is anticipated that there will be no visual impacts from any farm dwellings that may be developed on Petition Area B.

#### ENVIRONMENTAL QUALITY

##### Noise

74. The Petition Areas are bordered by a residential neighborhood and undeveloped land, and is subject to a very low noise level. The reclassification of the Petition Areas will not significantly impact the noise level in the area.

### Air Quality

75. The character of the Petition Areas, prevailing winds, and proximity to the ocean all combine to buffer the area against significant airborne pollutants; therefore, air quality is very good. The reclassification of the Petition Areas will not significantly impact the air quality in the area.

### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

#### Highways and Roadway Facilities

76. Access to TMKs: 5-9-23: 1 and 5-9-24: 1 is provided by Maulukua Road. Access to TMK: 6-1-02: 22 is provided by a 14-foot-wide perpetual easement running north from the parcel across the adjacent 212 acres, identified as TMK: 5-9-05: 4, that are in the State Land Use Agricultural District. This easement is currently overgrown with vegetation. Until such time that this easement is cleared and opened for access, Petitioner has entered into a Lease of Right of Way agreement with the landowner of an adjacent parcel in which the landowner has agreed to (i) allow the public to enter the landowner's parcel to access the trails within Petition Area A and (ii) provide parking for recreational users. It is anticipated that the reclassification of the Petition Areas will not significantly impact the traffic in the area.

#### Water Service

77. Water service for the Petition Areas is provided via a 12-inch waterline along Maulukua Road and an 8-inch waterline along Maulukua Place. The

reclassification of the Petition Areas is not expected to significantly impact the existing water facilities.

#### Wastewater Disposal

78. The Petition Areas are located in an unsewered area. Any farm dwellings on Petition Area B and the approximately 9.925 acres of adjacent land in the Agricultural District will be limited to a maximum of two septic tanks or individual wastewater systems by the DOH. Petitioner intends to adhere to the DOH's wastewater regulations.

#### Drainage

79. There are no surface waters or wetlands present on the Petition Areas. Intermittent surface water runoff associated with episodes of heavy rainfall drain into the Kalahopele Gulch to the north and west of the Petition Areas. The existing drainage conditions on the Petition Areas are not expected to be adversely impacted as a result of any agricultural uses that may occur on Petition Area B.

#### Solid Waste Disposal

80. Municipal solid waste is collected curbside on Maulukua Road. Collected waste is taken to Kawaihoa transfer station where it is consolidated and compacted before being transferred to the H-Power facility at Campbell Industrial Park for incineration and power generation. No significant impacts to any of the existing facilities are expected as a result of the reclassification of the Petition Areas.

### Police and Fire Protection

81. Police protection is provided through the Wahiawa Police Station, located at 330 North Cane Street in Wahiawa, approximately 17 miles from the Petition Areas.

82. Fire protection is provided by the Sunset Fire Station, located at 59-719 Kamehameha Highway, approximately 1.25 miles from the Petition Areas.

83. The reclassification of the Petition Areas is not anticipated to adversely impact these police and fire protection services.

### Medical Services

84. Emergency medical services are provided by Emergency Medical Services, located at 66-420 Hale'iwa Road in Waialua. The reclassification of the Petition Areas is not anticipated to adversely impact these services.

### Electricity and Telephone Service

85. Electrical power is provided by Hawaiian Electric and telephone service is provided by Hawaiian Telcom via overhead distribution lines along Maulukua Road. The reclassification of the Petition Areas is not expected to adversely impact these services.

### COMMITMENT OF STATE FUNDS AND RESOURCES

86. The reclassification of the Petition Areas will not require the State of Hawai'i to incur any significant costs. Petitioner will gift Petition Area A to the

DLNR as part of a State Park Reserve. At the present time, there are no State funds and resources available to manage the area for public use. The DLNR, Division of State Parks, would need to request funding from the Legislature following receipt of the land from Petitioner. Any agricultural use on Petition Area B will be small in scale and will not require a significant commitment of State funds and resources.

CONFORMANCE TO CONSERVATION AND AGRICULTURAL DISTRICT STANDARDS

87. The reclassification of Petition Area A conforms to the standards for determining Conservation District boundaries as stated in section 15-15-20, HAR:

- a) Petition Area A is intended for use as a State Park Reserve.
- b) Petition Area A includes lands necessary for the conservation, preservation, and enhancement of scenic, cultural, historic, or archaeological sites and sites of unique physiographic or ecological significance.
- c) Petition Area A includes lands necessary for providing and preserving parklands, wilderness, and for conserving natural ecosystems.
- d) Petition Area A includes lands with a slope of 20 percent or more which provide for open space amenities or scenic values.



- e) Petition Area A includes lands suitable for farming, flower gardening, operation of nurseries or orchards, growing of commercial timber, grazing, hunting, and recreational uses including facilities accessory to those uses when the facilities are compatible with the natural physical environment.

88. The reclassification of Petition Area B conforms to the standards for determining Agricultural District boundaries as stated in section 15-15-19, HAR:

- a) Petition Area B includes lands that are suitable for low-elevation crops that are grown commercially on small farms in Hawai'i.
- b) Petition Area B includes lands that are suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats.
- c) Petition Area B includes lands that are contiguous to Agricultural District lands.

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

89. The reclassification of Petition Area A for the creation of a State Park Reserve and of Petition Area B for agricultural use is in general conformance with the goals, objectives, policies, and priority guidelines of the Hawai'i State Plan, including the following:

State Goals: The State goals set forth in section 226-4, HRS:

Section 226-4(2): "A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people."

Section 226-4(3): "Physical, social, and economic well-being, for individuals and families in Hawai'i, that nourishes a sense of community responsibility, of caring, and of participation in community life."

State Objectives: The State objectives set forth in sections 226-6, 226-7, 226-11, 226-12, 226-13, and 226-23, HRS.

State Policies: The State policies set forth in chapter 226, HRS, including the following:

Section 226-6(b)(14): "Promote and protect intangible resources in Hawai'i, such as scenic beauty and the aloha spirit, which are vital to a healthy economy."

Section 226-7(b)(2): "Encourage agriculture by making best use of natural resources."

Section 226-7(b)(9): "Enhance agricultural growth by providing public incentives and encouraging private initiatives."

Section 226-11(b)(1): "Exercise an overall conservation ethic in the use of Hawai'i's natural resources."

Section 226-11(b)(3): "Take into account the physical attributes of areas when planning and designing activities and facilities."

Section 226-11(b)(4): "Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage."

Section 226-11(b)(7): "Provide public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion."

Section 226-11(b)(8): "Pursue compatible relationships among activities, facilities, and natural resources."

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

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

Section 226-12(b)(2): "Provide incentives to maintain and enhance historic, cultural, and scenic amenities."

Section 226-12(b)(3): "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): "Protect those special areas, structures, and elements that are an integral and functional part of Hawai'i's ethnic and cultural heritage."

Section 226-12(b)(5): "Encourage the design of developments and activities that complement the natural beauty of the islands."

Section 226-13(b)(2): "Promote the proper management of Hawai'i's land and water resources."

Section 226-13(b)(4): "Encourage actions to maintain or improve aural and air quality levels to enhance the health and well-being of Hawai'i's people."

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

Section 226-23(b)(4): "Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved."

Section 226-23(b)(5): "Ensure opportunities for everyone to use and enjoy Hawai'i's recreational resources."

Section 226-23(b)(6): "Assure the availability of sufficient resources to provide for future cultural, artistic, and recreational needs."

Section 226-23(b)(10): "Assure adequate access to significant natural and cultural resources in public ownership."

State Priority Guidelines: The following State priority guidelines:

Section 226-104(b)(10): "Identify critical environmental areas in Hawai'i to include but not be limited to the following: watershed and recharge areas; wildlife habitats (on land and in the ocean); areas with endangered species of plants and wildlife; natural streams and water bodies; scenic and recreational shoreline resources; open space and natural areas; historic and cultural sites; areas particularly sensitive to reduction in water and air quality; and scenic resources."

Section 226-104(b)(11): "Identify all areas where priority should be given to preserving rural character and lifestyle."

Section 226-104(b)(12): "Utilize Hawai'i'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): "Protect and enhance Hawai'i's shoreline, open spaces, and scenic resources."

90. The reclassification of the Petition Areas and the proposed and potential uses of the respective areas are in conformity with the policies of the following Functional Plans:

Agriculture Lands: The policies set forth in the Agriculture Lands Functional Plan, including the following:

Policy B(2): "Encourage the development of Hawai'i's agricultural industries."

Conservation Lands: The policies set forth in the Conservation Lands Functional Plan, including the following:

Policy IIC(2): "Expand and enhance outdoor recreation opportunities and other resource uses."

Policy IID(1): "Develop and expand resources to protect natural shorelines and wilderness recreation areas."

Policy IID(3): "Develop recreational and archaeological resources on the shoreline and mauka areas."

Recreation: The policies set forth in the Recreation Functional Plan, including the following:

Policy I-A(4): "Develop areas mauka of existing beach parks to increase their capacities and to diversify and encourage activities away from the shoreline."

Policy II-A(2): "Plan and develop camp sites and other recreational amenities in mauka areas."

Policy III-D(1): "Give priority to acquiring public access to selected shoreline and mauka recreation areas."

91. The reclassification of the Petition Areas will preserve and protect views and vistas, preserve and protect natural resources, encourage agricultural development, and provide passive recreational opportunities for the general public that are compatible with the natural environment.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

92. The Petition Areas are within the Coastal Zone Management ("CZM") Area. The reclassification of the Petition Areas and the proposed and potential uses of the respective areas are in general conformance with the applicable objectives and policies of the CZM Program. The reclassification of the Petition Areas will preserve and protect the views and vistas from and to the shoreline, preserve and protect natural resources, and provide the general public with a source of recreational opportunities.

CONFORMANCE WITH THE CITY AND COUNTY GENERAL PLAN

93. The reclassification of the Petition Areas is in general conformance to the following objectives of the City and County General Plan:

Economic Activity

Objective C: "To maintain the viability of agriculture on O`ahu."

Natural Environment

Objective A: "To protect and preserve the natural environment."

Objective B: "To preserve and enhance the natural monuments and scenic views of O`ahu for the benefit of both residents and visitors."

Culture and Recreation

Objective D: "To provide a wide range of recreational facilities and services that are readily available to all residents of O`ahu."

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or the other parties to this proceeding 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 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

1. Pursuant to chapter 205, HRS, and the Commission's Rules under chapter 15-15, HAR, and upon consideration of the Commission's decision-making criteria under section 205-17, HRS, this Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Areas, consisting of approximately 28.759 acres of land in the State Land Use Agricultural District at Pūpūkea, Ko`olauloa, O`ahu, Hawai`i, identified as TMKs: 5-9-24: 1 and 5-9-23: por. 1, to the State Land Use Conservation District for donation to the DLNR as a State Park

Reserve and approximately 5.219 acres of land in the State Land Use Conservation District at Pūpūkea, Waialua, Oʻahu, Hawaiʻi, identified as TMK: 6-1-02: por. 22, to the State Land Use Agricultural District for the potential development of farm dwellings with agricultural uses, and subject to the conditions in the Order below, conforms to the standards for establishing the Conservation District boundaries and Agricultural District boundaries, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

2. Article XII, Section 7, of the Hawaiʻi State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupuaʻa tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customary and traditionally exercised native Hawaiian rights to the extent feasible. Public Access Shoreline Hawaiʻi v. Hawaiʻi County Planning Commission, 79 Hawaiʻi 425, 450, n.43, 903 P.2d 1246, 1271, n.43 (1995), certiorari denied, 517 U.S. 1163, 116 5. Ct. 1559, 134 L.Ed.2d 660 (1996).



3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. Ka Pa`akai O Ka `Aina v. Land Use Commission, 94 Hawai`i 31, 3 P.3d 1068 (2001).

4. Based on past archaeological surveys of Petition Area B, Petition Area B is unlikely to contain archeological resources. Should any resources be found during any future construction, Petitioner or any future owner will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites.

5. The future donation of 79.031 acres of land, which will include Petition Area A, will preserve any archaeological or cultural aspects of the area.

6. Article XI, Section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

7. There are no threatened and endangered species of flora and fauna or species of concern in Petition Area B.

8. No natural resources will be negatively impacted by the reclassification of the Petition Areas. The donation of Petition Area A to the DLNR for a

State Park Reserve will preserve open space and protect the natural resources of the area.

9. Article XI, Section 3, of the Hawai`i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

10. The reclassification of Petition Area B will enable the potential development of farm dwellings with agricultural uses, such as flower cultivation and the raising of domestic farm animals.

11. Article XI, Section 7, of the Hawai`i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai`i's water resources for the benefit of its people.

12. The reclassification of the Petition Areas will not significantly impact Hawai`i's water resources.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that (i) Petition Area A, consisting of approximately 28.759 acres of land in the State Land Use Agricultural District at Pūpūkea, Koʻolaupia, Oʻahu, Hawai`i, identified as TMKs: 5-9-24: 1 and 5-9-23: por. 1, as approximately shown in Exhibit "A" attached hereto and incorporated herein by reference, shall be and is hereby reclassified to the State Land Use Conservation District

and the State Land Use District Boundaries shall be amended accordingly; and (ii) Petition Area B, consisting of approximately 5.219 acres of land in the State Land Use Conservation District at Pūpūkea, Waialua, O`ahu, Hawai`i, identified as TMK: 6-1-02: por. 22, as approximately shown in Exhibit "A" attached hereto and incorporated herein by reference, shall be and is hereby reclassified to the State Land Use Agricultural District and the State Land Use District Boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Areas will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS HEREBY FURTHER ORDERED that the reclassification of Petition Area A from the State Land Use Agricultural District to the State Land Use Conservation District and Petition Area B from the State Land Use Conservation District to the State Land Use Agricultural District shall be subject to the following conditions:

1. **Conveyance of Lands for a State Park Reserve.** Petitioner shall, upon receiving all necessary entitlements and governmental approvals, proceed with the consolidation, re-subdivision, and conveyance of approximately 79.031 acres of land, which shall include Petition Area A and adjacent Conservation District land, to

the DLNR for a State Park Reserve, to be kept in perpetuity for the public good in maintenance and preservation of the view planes, open space, recreational values, and the cultural, historical, and natural qualities of Pūpūkea Ridge.

2.     **Farm Dwelling.** Farm dwelling(s) on Petition Area B, if any, shall be consistent with the DOH's sewage disposal rules and regulations. Any single-family dwelling on the lot shall be a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

3.     **Agricultural Uses.** Any future use of the retained 15.144 acres of land, which includes Petition Area B, shall be consistent with City and County zoning, and Petitioner or any future owner shall not subdivide the retained 15.144 acres into more than two zoning or subdivided lots.

4.     **Maintenance of Trail System.** With the approval of the DLNR, Petitioner shall be responsible for maintaining the existing trail system as currently configured in Petition Area A and the adjacent Conservation District land at its own cost following the conveyance of Petition Area A and the adjacent Conservation District land to the DLNR until such time as the DLNR decides to accept responsibility for the maintenance, or ten years from the date of this Decision and Order, whichever occurs first.

5. **Previously Unidentified Burial/Archaeological/Historic Sites.**

Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of development of the Petition Areas, then all development activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

6. **Compliance with Representations to the Commission.** Petitioner shall comply with the representations made to the Commission. Failure to so comply may result in reversion of the Petition Areas to their former classification, or change to a more appropriate classification.

7. **Notice of Change to Ownership Interests.** 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 Petition Areas, prior to any development of the Petition Areas.

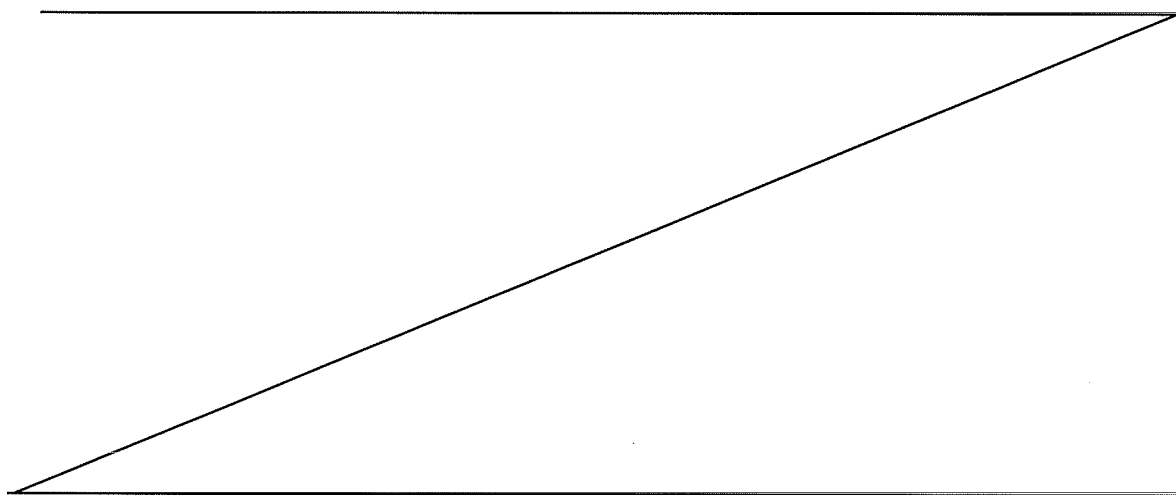
8. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the OP, and the DPP in connection with the status of the Petition Areas and Petitioner's progress in complying with the conditions

imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

9. **Release of Conditions Imposed by the Commission.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Areas upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

10. **Recording of Conditions.** Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Areas are subject to conditions imposed herein by the Commission in the reclassification of the Petition Areas, and (b) shall file a copy of such recorded statement with the Commission.

11. **Recording of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.



## ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 21st day of April, 2006, as conforming to the vote taken on Oahu on March 3, 2006. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.


Any person aggrieved by this decision and order may seek judicial review in accordance with the provisions of HRS section 91-4.

Done at Honolulu, Hawai'i, this 21st day of April, 2006, per motion on March 3, 2006.

APPROVED AS TO FORM

  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

By   
RANDALL F. SAKUMOTO  
Chairperson and Commissioner

By   
STEVEN LEE MONTGOMERY  
Vice-Chairperson and Commissioner

By \_\_\_\_\_ (absent)  
LISA M. JUDGE  
Vice-Chairperson and Commissioner

By Thomas Contrades  
THOMAS CONTRADES  
Commissioner

By Michael D. Formby  
MICHAEL D. FORMBY  
Commissioner

By Kyong-Su Im  
KYONG-SU IM  
Commissioner

Filed and effective on  
APR 24 2006

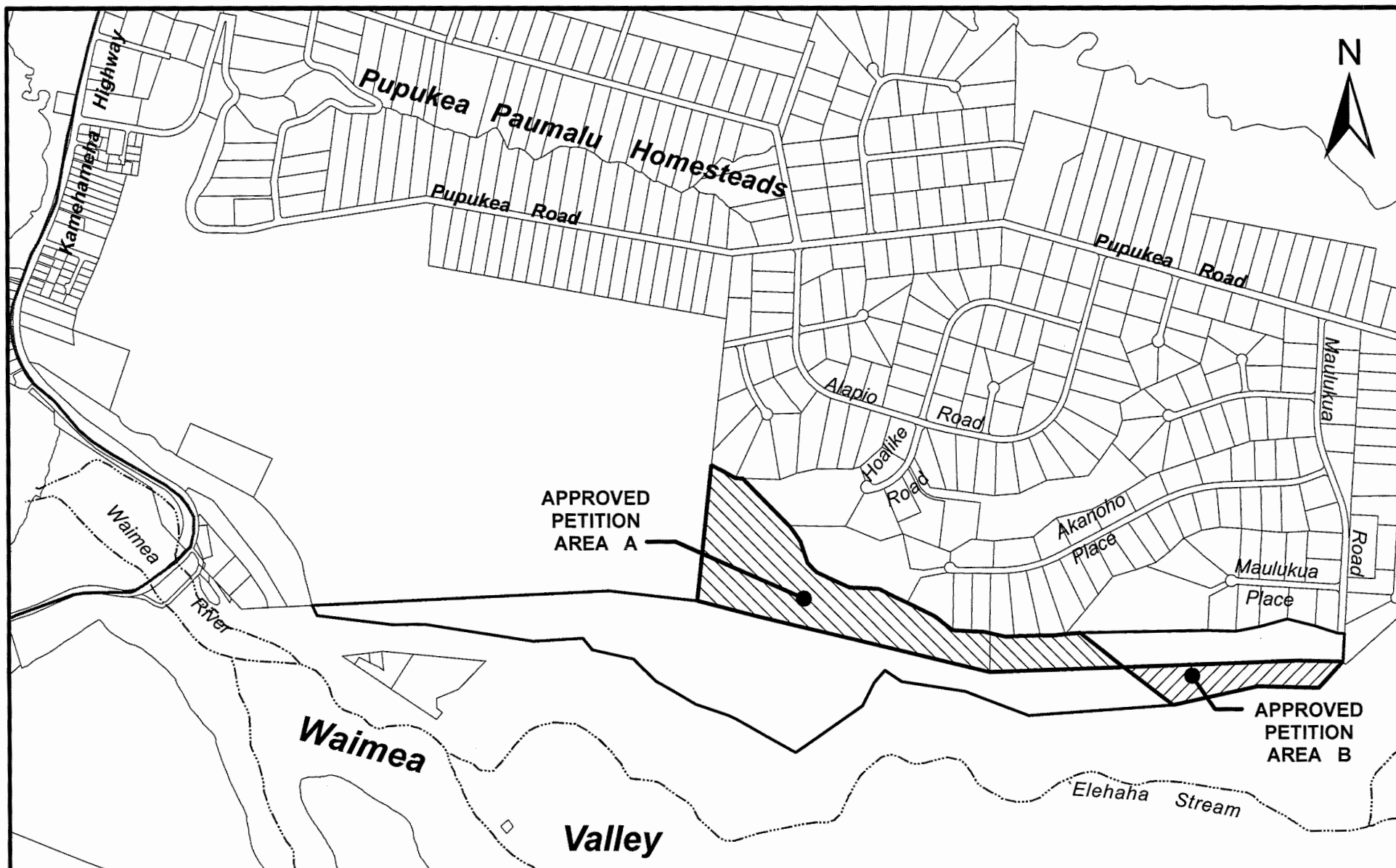
By Duane Kanuha  
DUANE KANUHA  
Commissioner

Certified by:

Anthony J. H. Ching  
ANTHONY J. H. CHING

By Ransom Piltz  
RANSOM PILTZ  
Commissioner





**A05-758 A CHARITABLE FOUNDATION CORPORATION,  
a Nevada non-profit corporation**

**LOCATION MAP**

Tax Map Keys: 5-9-23: por. 1, 5-9-24: 1 & 6-1-02: por. 22

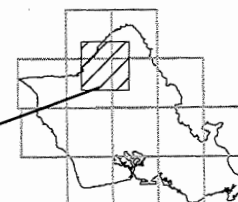
Pupukea, Ko'olauloa and Waialua, O'ahu, Hawai'i

Scale: 1" = 1,000 feet

**Exhibit "A"**

**O'ahu**

Map  
Location



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A05-758
	)	
A CHARITABLE FOUNDATION	)	CERTIFICATE OF SERVICE
CORPORATION, a Nevada non-profit	)	
corporation	)	
	)	
To Amend The Agricultural Land Use	)	
District Boundary Into The	)	
Conservation Land Use District For	)	
Approximately 28.759 Acres Of Land	)	
And The Conservation Land Use	)	
District Boundary Into The Agricultural	)	
Land Use District For Approximately	)	
5.219 Acres Of Land At Pūpūkea,	)	
Koʻolauloa And Waialua, Oʻahu,	)	
Hawaiʻi, Tax Map Keys: 5-9-23: Por. 1;	)	
5-9-24: 1; And 6-1-02: Por. 22	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the 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 regular or certified mail as noted:

DEL.        LAURA H. THIELEN, Director  
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              Honolulu, Hawaii 96804-2359

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Dated: Honolulu, Hawaii, APR 24 2006.

  
\_\_\_\_\_  
ANTHONY J. H. CHING  
Executive Officer