



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

ORIGINAL

In the Matter of the Petition)	Docket No. BR09-784
)	
of)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, AND DECISION AND ORDER
OFFICE OF PLANNING, STATE OF)	
HAWAI'I)	
)	
To Amend the Land Use District Boundary of)	
Certain Lands Situated at Ka Iwi State Park)	
and Queen's Beach, Maunaloa, Island of)	
O'ahu, State of Hawai'i, Identified by Tax)	
Map Key No. 3-9-011:002 (por.), Consisting)	
of Approximately 215 acres from the Urban)	
District to the Conservation District)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

This is to certify that this is a true and correct copy of the document on file in the office of the

State Land Use Commission, Honolulu, Hawai'i.

June 29, 2010 by

Executive Officer



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition)	Docket No. BR09-784
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**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER**

OFFICE OF PLANNING, STATE OF HAWAI'I ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on October 21, 2009 ("Petition"), pursuant to Hawai'i Revised Statutes ("HRS") Section 205-18, and Hawai'i Administrative Rules ("HAR") Chapter 15-15, to amend the land use district boundary to reclassify approximately 215 acres of land, situated at Ka Iwi State Park and Queen's Beach, Maunaloa, Island of O'ahu, State of Hawai'i, Tax Map Key No. 3-9-011: portion of 2, ("Petition Area"), from the State Land Use Urban District to the State Land Use Conservation District. The reclassification is necessary to implement the recommendation of the State Land Use District Boundary Review in 1992 and to preserve the Petition Area as a park.

The Land Use Commission (“Commission”), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On October 21, 2009, the Commission received Petitioner’s Petition for Land Use District Boundary Amendment (“Petition”), including Exhibits 1-12.
2. On October 21, 2009, the Commission received the Notification of Petition Filing and the Affidavit of Deborah Emerson attesting to the service of the Notification of the Petition Filing.
3. On February 24, 2010, the Commission received the statewide publication of notice of hearing.
4. On March 17, 2010, the Commission received the City and County of Honolulu’s statement of position, list of witnesses, list of exhibits, and Exhibits 1-8.
5. On March 18, 2010, the Commission received Petitioner’s list of witnesses, list of Exhibits, and Exhibits 13 and 14.
6. On March 30, 2010, the Commission received Petitioner’s first amended list of Exhibits, and Exhibit 15.
7. On April 6, 2010, the Commission received Petitioner’s second amended list of Exhibits, and Exhibits 16-18.

8. On April 7, 2010, the Commission received written correspondence from Senator Fred Hemmings, Rene Garvin, Jeannine Johnson, Don Williams, and Kuli'ou'ou/Kalani Iki Neighborhood Board No. 2.

9. On April 8, 2010, the Commission received written correspondence from Representative Gene Ward, Representative Lyla Berg, Councilman Charles Djou, Ursula Retherford, Adrienne and Sam King, Doug Cole, Miya Tsukazaki, Greg Knudsen, Kaumaka Wong, Natalie Iwasa, Hawai'i Thousand Friends, Hawai'i Kai Neighborhood Board, Livable Hawai'i Kai Hui, Ka Iwi Coalition, Save Sandy Beach, and O'ahu Land Trust.

10. On April 8, 2010, the Commission held evidentiary hearings in this docket on O'ahu, Hawai'i.

11. On April 8, 2010, Representative Lyla B. Berg, Representative Gene Ward, Mardi LaPrade, Cynthia K. L. Rezentes, Jeannine Johnson, Miya Tsukazaki, Greg Knudsen, Elizabeth Reilly, Kaumaka Wong, Shirley Lum, Art Mori, and Doug Cole provided oral public testimony in support of the Petition.

12. On April 8, 2010, the Commission closed the evidentiary portion of the proceedings.

Description of the Petition Area

13. The Petition Area consists of approximately 215 acres of land, situated at the Ka Iwi State Scenic Shoreline and Queen's Beach, Maunaloa, Island of O'ahu, City and County of Honolulu, State of Hawai'i, Tax Map Key No. 3-9-011: portion of 2.

14. The Petition Area is owned in fee simple by the State of Hawai'i (SOH) and SOH has provided its written authorization through the Department of Land and Natural Resources to Petitioner to file the Petition.

15. The Petition Area is situated on the eastern tip of the island of O‘ahu on the makai side of Kalaniana‘ole Highway between Sandy Beach and Makapu‘u Lookout.

16. The Petition Area is bordered on the northern edge by Makapu‘u Beach which is in the Conservation District, on the southern edge by Queen’s Beach which is in the Conservation District, on the eastern edge by the ocean, and on the western edge by Kalaniani‘ole Highway, beyond which is the Hawai‘i Kai Golf Course in the Urban District.

17. The topography of the area is composed of a coastal zone known as Queen’s Beach, a valley (Kealakīpapa Valley), a rocky headland (Makapu‘u Head), and a coastal bench cut into the sea cliff at the base of Makapu‘u Head.

18. Queen’s Beach was inundated by the 1946 tsunami and low elevation lands mauka of the shoreline remain vulnerable to future tsunamis. FEMA’s 2007 FIRM ratings are AE and VE for portions of the Petition Area adjacent to the Queen’s Beach shoreline and inlets.

19. The last statewide land use district boundary review completed in 1992 recommended that the Petition Area be reclassified from Urban to Conservation.

20. In 1991, the land was owned by Bishop Estate and eventually purchased by the State of Hawai‘i in 2001.

Proposal for Reclassification

21. The reclassification of the Petition Area to the Conservation District is being requested in order to conform to the 1992 State Land Use District Boundary Review recommendation and to help preserve its scenic, cultural, and recreational resources as a state scenic shoreline.

22. The reclassification will bring the Petition Area into conformance with its current use and help ensure that the Petition Area will be maintained for that use.

23. No changes will be made to the Petition Area or its use because of the reclassification.

24. The Office of Environmental Quality Control determined that an environmental assessment would not be needed because there is no development or change in land use and therefore no impact that is associated with the Petition.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

25. Pursuant to §15-15-50(c)(8), HAR, Petitioner is a State agency and is not required to demonstrate financial capability. Moreover, no development of the Petition Area is being proposed.

STATE AND COUNTY PLANS AND PROGRAMS

26. The Petition Area is located within the State Land Use Urban District.

27. Petitioner published the State Land Use District Boundary Review, O'ahu in 1992. The reclassification of the Petition Area to the Conservation District is supported by this report

28. The reclassification of the Petition Area is consistent with the objectives and policies of the City and County of Honolulu's General Plan and the vision, policies, principles, and guidelines of the East Honolulu Sustainable Communities Plan.

29. The City and County of Honolulu has zoned the Property P-2 (Preservation).

30. The Petition Area falls within the Special Management Area delineated in City and County of Honolulu Maps. The proposed reclassification is in general conformance with the objectives and policies of Special Management Areas set forth in §205A-2, HRS.

NEED FOR THE PROPOSED RECLASSIFICATION

31. The Petition Area is a part of the Ka Iwi State Scenic Shoreline.
Docket No. BR09-784 Office Of Planning, State Of Hawai'i
Findings Of Fact, Conclusions Of Law, And Decision And Order

32. In 2007, the Hawai'i Tourism Authority estimated that 241,000 people visit the Ka Iwi State Scenic Shoreline, although actual attendance may be higher.
33. The Petition Area provides important and unique scenic resources.
34. The Petition Area was purchased in part with federal monies to establish a scenic shoreline.
35. Many visitors go to the Petition Area for whale watching.
36. The Petition Area provides recreational opportunities to the public, including hiking, fishing, surfing, swimming, and exploring the tidal pools and inlets.
37. The Petition Area contains historic resources, including the remnants of the old King's road (Keala Kīpapa Roadway), the Alan Davis Wall and sea pool, fishing shrines, and Pele's Chair.
38. The Hawaiian Sedge and clover fern are threatened or endangered species of plants which are protected within the Petition Area.
39. The Department of Land and Natural Resources, as owner of the land, supports the petition for reclassification.
40. The City and County of Honolulu supports the petition for reclassification because it is consistent with the long-range vision, land use plans, policies, and principles of the East Honolulu Sustainable Communities Plan.
41. The Hawai'i Kai Neighborhood Board and the Kuli'ou'ou Kalani Iki Neighborhood Board support the petition for reclassification.

ECONOMIC AND SOCIAL IMPACTS

42. Because the Petition does not propose any new uses for the Petition Area, there are no anticipated negative impacts to the economy, employment opportunities, or society.

43. Hawai'i's visitor industry relies, in part, on scenic beauty and natural landscapes. The proposed reclassification will help to preserve the spectacular views and wilderness character of the Ka Iwi coastline and will exert a positive impact on O'ahu's economy.

44. The proposed reclassification will benefit society by preserving a variety of unique and important resources.

IMPACTS UPON RESOURCES IN THE AREA

45. Because the Petition does not propose any new uses for the Petition Area, there are no anticipated negative impacts, including any negative impacts to agricultural resources, flora and fauna, archaeological or historical resources, groundwater resources, recreational facilities, scenic resources, or cultural resources.

46. There are no agricultural activities taking place in the Petition Area. The soils in the Petition Area reflect both the relatively recent volcanic activity (29,000 to 41,000 years ago) that created the cones, craters, and lava flows of the area and the rise and fall of the sea that deposited blocks of marine limestone and sand, cut a sea cliff around Makapu'u Head and a shore bench at the base of Makapu'u Lookout. Reclassification will not impact agriculture. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) system did not rate the Petition Area

47. The Petition Area includes 115 plant species of which nine are endemic, including an endangered water fern, *Marsilea villosa*, and Hawaiian cotton, ma'o or *Gossypium sandvicense*. The Hawaiian cotton at Ka Iwi is unique in that it supports a dependent host weevil, *Rhyncogonus simplex*, whose range is limited to these plants. The tide pools and inlets serve as a protected environment for reef fish, crabs, shrimp, and lobsters; also, octopus, snails, oysters, sea cucumbers and sea urchins. In years past, pueo (Hawaiian owls) are believed to

have hunted over the grasslands at dusk. Reclassification of the Petition Area to Conservation will help to protect these flora and fauna resources.

48. The Petition Area contains the old King's road (Keala Kīpapa Roadway), the Alan Davis Wall and sea pool, fishing shrines, and Pele's Chair. Reclassification of the Petition Area to Conservation will help to protect these archaeological and cultural resources.

49. Ka Iwi State Scenic Shoreline protects a number of recreational opportunities. The Makapu'u Lighthouse access road provides a safe and easy hike for people of almost any physical ability level, including those in strollers and wheelchairs. There are other informal trails throughout the park. Shore fishing is pursued from the coastal bench at the base of Makapu'u Head. Picnicking along the Queen's Beach shoreline is popular. Off-road vehicles are now prohibited due to the potential for erosion damage; however, many O'ahu residents use the informal trail system makai of the highway. Swimming and wading in tide pools and looking for shells and bits of beach glass are other recreational activities. Reclassification of the Petition Area to Conservation will help to protect these recreational opportunities.

50. The sweeping panoramic views within Ka Iwi State Scenic Shoreline encompass the shoreline of eastern O'ahu from Mōkapu Crater to the north around Makapu'u to Koko Head to the south. Within the view plane are the dramatic volcanic landforms that extend out into the Ka Iwi Channel. Makapu'u Head is a remnant of the Ko'olau shield volcano which formed the eastern portion of the island of O'ahu approximately 2.5 million years ago. The Koko Rift Zone was one of the last areas of volcanic activity on O'ahu. From 41,000 to 29,000 years ago, Koko Head, Koko Crater, Kalama Valley flows, and Mānana and Kāohika'ipu Islands were created, plus other smaller tuff cones and lava flows. Reclassification of the Petition Area to Conservation will help to protect these scenic resources from urbanization.

51. In pre-contact times, Kealakipapa Valley was the site of Wāwāmalu Village and a portion of the King's Highway that connected Waimānalo and Maunaloa. In 1909, the Makapu'u Lighthouse and access road were constructed. In the 1930's, J. Gilbert McAllister conducted an archaeological survey that identified thirteen historical sites within the entire Ka Iwi area. A reconnaissance survey done in 1984 failed to find any of the shoreline surface sites, with the exception of the road remnant, probably because they were obliterated by the 1946 tsunami. The 1984 survey did find two new sites, a cliff face cave and a midden pile. From 1932 until 1946, Alan S. Davis leased Kealakipapa Valley and Queen's Beach and built a family home named Wāwāmalu Ranch after the village that once existed there. The ranch was destroyed in the 1946 tsunami, leaving only a portion of a stone wall and the saltwater swimming pool enclosure. From 1922 through World War II and after, the U.S. Government leased sites and constructed an observation station, pillboxes, gun stations, and bomb-proof shelters for personnel and ammunition at Makapu'u Head. Reclassification of the Petition Area to Conservation will help to protect these historic resources from urbanization.

ENVIRONMENTAL QUALITY

52. Because the Petition does not propose any new uses for the Petition Area, there are no anticipated negative impacts to environmental resources, including air quality, noise, or water quality.

53. The proposed reclassification will have a positive effect on the Petition Area's hydrological conditions since urban development, which is often the source of accelerated runoff and erosion, will not be allowed. The potential for groundwater contamination from pesticides and residential or other urban uses is also greatly reduced on Conservation District lands.

Similarly, the coastal zone, including Kaloko Inlet, Ka‘ili‘ili Bay, Kaho‘oha‘iha‘i Inlet and tide pools will benefit from the greater restrictions on land uses in the Conservation District.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES and COMMITMENT OF STATE FUNDS AND RESOURCES

54. Because no changes will be made to the Petition Area, there are no anticipated negative impacts to public services or facilities and no significant long term commitment of State funds or resources is involved.

CONFORMANCE TO CONSERVATION DISTRICT STANDARDS

55. Section 205-2(e), Hawai‘i Revised Statutes, states that Conservation Districts shall include areas necessary for:

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

The Petition Area is a popular scenic and historic area which provides park lands and beach reserves, recreational swimming, fishing, and hiking, and protects threatened or endangered plant life, and is a significant and necessary component of the larger Ka Iwi Scenic Shoreline.

56. The reclassification is in conformance with the standards of the Conservation District set forth in section 15-15-22, HAR, which states that the Conservation District shall include:

(2)...land's susceptibility to inundation by tsunami...

Queen's Beach was inundated by the 1946 tsunami and low elevation lands mauka of the shoreline remain vulnerable to future tsunamis.

(3)...lands used for national or state parks;

(4) ...lands necessary for the conservation, preservation, and enhancement of scenic, cultural, historic, or archaeological sites and sites of unique physiographic or ecological significance;

The Ka Iwi State Scenic Shoreline protects access to the stunning scenic views from Makapu'u Head for public enjoyment.

(5) ... lands necessary for providing and preserving parklands, wilderness and beach reserves...

The subject property has been threatened with development in the past which would have limited the public's ability to enjoy this wilderness park and beach area.

CONFORMANCE WITH THE HAWAI'I STATE PLAN

57. The proposed reclassification is in conformance with the following objectives and policies of the Hawai'i State Plan, Chapter 226, HRS.

§226-11, HRS: Objectives and policies for the physical environment – land based, shoreline, and marine resources.

§226-11(a)(1), HRS: Prudent use of Hawai'i's land based, shoreline, and marine resources.

§226-11(a)(2), HRS: Effective protection of Hawai'i's unique and fragile environmental resources.

In support of these objectives, the proposed reclassification is consistent with the following Hawai'i State Plan Policies:

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

§226-11(b)(2), HRS: Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.

§226-11(b)(6), HRS: Encourage the protection of rare or endangered plant and animal species and habitats native to Hawai‘i.

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

The reclassification of the Petition Area into the Conservation District will protect unique and irreplaceable resources. Park management, public education and interpretive activities are other components for resource protection.

§226-12, HRS: Objectives and policies for the physical environment – scenic, natural beauty, and historic resources.

§226-12(a), HRS: Planning for the State’s physical environment shall be directed towards achievement of the objective of enhancement of Hawai‘i’s scenic assets, natural beauty, and multi-cultural/historic resources.

In support of this objective, the proposed reclassification is consistent with the following Hawai‘i State Plan policies:

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

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

§226-12(b)(4), HRS: Protect those special areas, structures, and elements that are an integral and functional part of Hawai‘i’s ethnic and cultural heritage.

The Ka Iwi coastline provides views of the ocean and shoreline of southeastern O‘ahu that are unique, and contains various historic sites accessible to the public. The intent of the proposed reclassification is to preserve these resources of the Petition Area.

§226-13, HRS: Objectives and policies for the physical environment – land, air, and water quality.

§226-13(a)(1), HRS: Maintenance and pursuit of improved quality in Hawai‘i’s land, air, and water resources.

§226-13(a)(2), HRS: Greater public awareness and appreciation of Hawai‘i’s environmental resources.

The reclassification of the Petition Area to the Conservation will help ensure that passive recreational activities will continue that do not impact air, land and water quality.

In support of these objectives, the proposed reclassification is consistent with the following Hawai‘i State Plan policies:

§226-13(b)(2), HRS: Promote the proper management of Hawai‘i’s land and water resources.

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

The proposed reclassification promotes proper management of and fosters recognition of the value of land, air and water quality.

§226-23, HRS: Objective and policies for socio-cultural advancement – leisure.

§226-23(a), HRS: Planning for the State’s socio-cultural advancement with regard to leisure shall be directed towards the achievement of the objective of the adequate provision of resources to accommodate diverse cultural, artistic, and recreational needs for present and future generations.

In support of this objective, the proposed reclassification is consistent with the following Hawai‘i State Plan policy:

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

Conservation District protection will help to ensure that the recreational resources of the Petition Area, including hiking, fishing, and swimming will be available for future generations to enjoy.

PRIORITY GUIDELINES OF THE HAWAI'I STATE PLAN

58. The proposed reclassification is also in conformance with the following priority guidelines set forth in Chapter 226, HRS:

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

§226-104(b)(10), HRS: Identify critical environmental areas in Hawai'i to include but not be limited to the following...wildlife habitats (on land and in the ocean); areas with endangered species of plants and wildlife...scenic and recreational shoreline resources; open space and natural areas; historical and cultural sites...and scenic resources.

§226-104(b)(12), HRS: 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.

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

The proposed reclassification recognizes that the Ka Iwi coastline contains unique scenic and recreational shoreline resources that deserve the protection of the Conservation District.

STATE FUNCTIONAL PLANS

59. Section 226-55, HRS, requires Functional Plans for various functional areas e.g., transportation, conservation, etc. These plans are one of the implementing mechanisms of the Hawai'i State Plan. The State Functional Plans outline specific strategies and implementing actions to carry out the long-term objectives of the State. The proposed reclassification is in

general conformance with the objective and policies of the State Conservation Lands Functional Plan. The following objective relates most directly to the proposed reclassification:

Objective IIB: Protection of fragile or rare, natural resources.

The proposed reclassification will protect the Ka Iwi State Scenic Shoreline's native coastal vegetation and tide pools.

CONFORMANCE WITH CHAPTER 205A, THE COASTAL ZONE MANAGEMENT PROGRAM

60. The proposed reclassification meets the following objectives of §205A-2, HRS, Coastal Zone Management Program:

§205A-2 (b) (1) Recreational resources;

(A) Provide coastal recreational opportunities accessible to the public.

§205A-2 (b) (2) Historic resources;

(A) Protect, preserve, and where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

§205A-2 (b) (3) Scenic and open space resources;

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

§205A-2 (b) (4) Coastal ecosystems;

(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

§205A-2 (b) (6) Coastal hazards;

(A) Reduce hazard to life and property from tsunamis, storm waves, stream flooding, erosion, subsidence, and pollution.

§205A-2 (b) (8) Public participation;

(A) Stimulate public awareness, education, and participation in coastal management.

§205A-2 (b) (9) Beach protection;

(A) Protect beaches for public use and recreation.

§205A-2 (b) (10) Marine resources;

(A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

The proposed reclassification meets the following policies of §205A-2, HRS:

§205A-2 (c) (1) Recreational resources;

(A) Improve coordination and funding of coastal recreational planning and management; and

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

* * *

(iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources...;

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

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

* * *

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

The proposed reclassification identifies, preserves, and protects a valued scenic and ecological resource consistent with the above coastal zone management objectives and policies. The Petition Area lies within the Special Management Area as defined by the City and County of Honolulu. The applicable objectives and policies of §205A-2, HRS, as described above, also apply to Special Management Areas.

RULINGS ON PROPOSED FINDINGS OF FACT

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

Any conclusion of law herein improperly designated as a finding of fact 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, Hawai'i Revised Statutes, and the Commission Rules under Chapter 15-15, Hawai'i Administrative Rules, and upon consideration of the Commission decision-making criteria under HRS Section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 215 acres of land in the State Land Use Urban District at Ka Iwi State Scenic Shoreline and Queen's Beach, Maunaloa, Island of O'ahu, Tax Map Key No. 3-9-011: portion of 2 to the State Land Use Conservation District conforms to the standards for establishing the boundaries of the State Land Use Conservation District, is reasonable, not violative of HRS

Section 205-2 and is consistent with the policies and criteria established pursuant to HRS Sections 205-16, 205-17, and 205A-2.

2. Article XII, section 7, of the Hawai‘i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai‘i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by *ahupua‘a* 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 customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai‘i v. Hawai‘i County Planning Commission*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (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, 7 P.3d 1068 (2000). The reclassification of the Petition Area into the Conservation District is consistent with Article XII, section 7 of the Hawai‘i State Constitution and *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, 94 Hawai‘i 31, 7 P.3d 1068 (2000).

4. 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. The reclassification of the Petition Area into the Conservation District is consistent with Article XI, Section 1 of the Hawai‘i State Constitution.

5. 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. The reclassification of the Petition Area into the Conservation District is consistent with Article XI, Section 7 of the Hawai'i State Constitution.

6. Pursuant to Chapter 183C, HRS, the State Board of Land and Natural Resources and the State Department of Land and Natural Resources have the legal authority to establish and enforce land use regulations on Conservation District lands.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 215 acres of land in the State Land Use Urban District at Ka Iwi State Scenic shoreline and Queen's Beach, Maunaloa, Island of O'ahu, Tax Map Key No. 3-9-011: portion of 2, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Conservation District, and the State Land Use District boundaries shall be amended accordingly.

DATED: Honolulu, Hawaii, this 29th day of June, 2010.

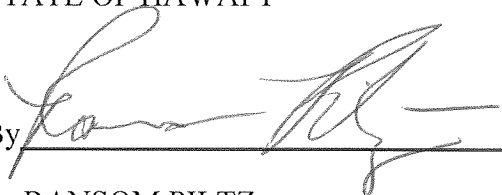
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing Order this 29th day of June, 2010. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawaii, this 29th day of June, 2010, per motion on June 4, 2010.

LAND USE COMMISSION

STATE OF HAWAII

By  _____

RANSOM PILTZ

Chairperson and Commissioner

By  _____


VLADIMIR PAUL DEVENS

Vice-Chairperson and Commissioner

APPROVED AS TO FORM

 _____

Deputy Attorney General

By  _____

REUBEN S. F. WONG

Vice-Chairperson and Commissioner

By (excused) _____

KYLE CHOCK

Commissioner

By Thomas Contrades

THOMAS CONTRADES

Commissioner

By Lisa M. Judge

LISA M. JUDGE

Commissioner

By Duane Kanuha

DUANE KANUHA

Commissioner

Filed and effective on:

June 29, 2010

By (excused)

NORMAND LEZY

Commissioner

Certified by:

Orlando Davidsion

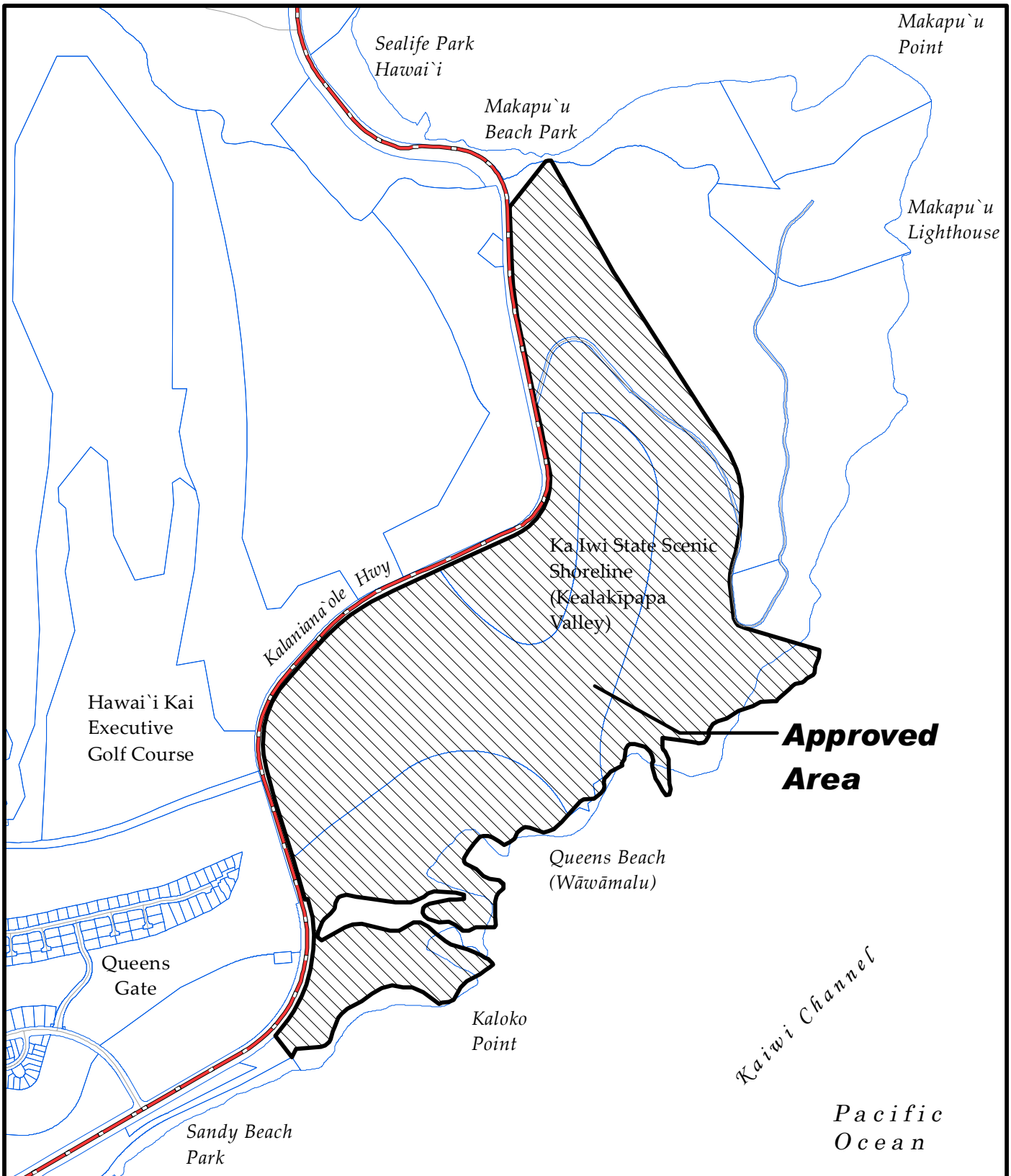
By Nicholas W. Teves, Jr.

ORLANDO DAVIDSION

NICHOLAS W. TEVES, JR.

Executive Officer

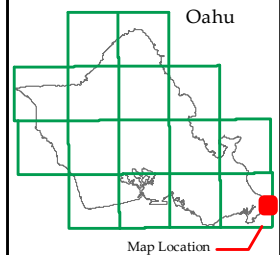
Commissioner



BR09-784 OFFICE OF PLANNING, STATE OF HAWAII
LOCATION MAP

TAX MAP KEY: 3-9-011: portion 002
 Ka Iwi State Scenic Shoreline and
 Queen's Beach, Maunaloa, Oahu, Hawaii
 Scale 1" = 1,000 ft.

EXHIBIT "A"





**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition)	Docket No. BR09-784
)	
of)	CERTIFICATE OF SERVICE
)	
OFFICE OF PLANNING, STATE OF)	
HAWAII)	
)	
To Amend the Land Use District Boundary of)	
Certain Lands Situated at Ka Iwi State Park)	
and Queen's Beach, Maunaloa, Island of)	
Oahu, State of Hawaii, Identified by Tax)	
Map Key No. 3-9-011:002 (por.), Consisting)	
of Approximately 215 acres from the Urban)	
District to the Conservation District)	

CERTIFICATE OF SERVICE

I hereby certify that this 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:

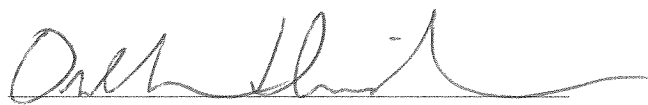
	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
ABBEY SETH MAYER, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawaii 96813	X		

Docket No. BR09-784 Office Of Planning, State Of Hawaii

Findings Of Fact, Conclusions Of Law, And Decision And Order

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale `Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813			X
Carrie Okinaga, Esq. Dawn Takeuchi-Apuna Corporation Counsel City & County of Honolulu 530 South King Street Honolulu, Hawaii 96813			X
David Tanoue, Director Department of Planning and Permitting City and County of Honolulu 650 South King Street Honolulu, Hawaii 96813		X	

Honolulu, Hawai'i, June 29, 2010.



ORLANDO DAVIDSON

Executive Officer