

CADES SCHUTTE LLP

CALVERT G. CHIPCHASE 7757  
CHRISTOPHER T. GOODIN 8562  
MOLLY A. OLDS 11330  
1000 Bishop Street, Suite 1200  
Honolulu, Hawai'i 96813-4216  
Telephone: (808) 521-9200

LAND USE COMM.  
STATE OF HAWAII

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THIRD CIRCUIT  
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Attorneys for Petitioners/Appellants

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

In the Matter of the Petition of

HONOIPU HIDEAWAY, LLC

For Boundary Interpretation of certain  
land consisting of approximately 17.5470  
acres situated at 56-102 Old Coast  
Guard Road, Tax Map Key No. (3) 5-6-  
001-074, Kapaa-Upolu, North Kohala,  
County of Hawai'i, State of Hawai'i.

CIVIL NO. \_\_\_\_\_  
(Agency Appeal)

Docket No. DR 21-73

NOTICE OF APPEAL

STATEMENT OF THE CASE

EXHIBIT 1

DESIGNATION OF THE RECORD  
ON APPEAL

ORDER TO CERTIFY AND  
TRANSMIT THE RECORD ON  
APPEAL

CERTIFICATE OF SERVICE

NOTICE OF APPEAL

Notice is hereby given that Honoipu Hideaway, LLC ("**Appellant**") appeals to the Circuit Court of the Third Circuit from the Order Denying Petition for Declaratory Order filed February 28, 2022, by the State of Hawai'i Land Use Commission ("**Commission**") in Docket No. 21-73. The appeal concerns the Commission's denial of Appellant's request to correct the location of a State Land Use District Boundary line



pursuant to its authority under Hawai'i Revised Statutes Chapter 205 and Hawai'i Administrative Rules § 15-15-22(f). The grounds for this appeal are set forth in the Statement of the Case, which is filed with this Notice. A copy of the Order is attached as Exhibit 1.

This appeal is brought pursuant to Hawai'i Revised Statutes Chapter 91 and Hawai'i Rule of Civil Procedure 72.

DATED: Honolulu, Hawai'i, March 30, 2022.

CADES SCHUTTE  
A Limited Liability Law Partnership

/s/ Christopher T. Goodin  
CALVERT G. CHIPCHASE  
CHRISTOPHER T. GOODIN  
MOLLY A. OLDS  
Attorneys for Appellants  
HONOIPU HIDEAWAY, LLC

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

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001-074, Kapaa-Upolu, North Kohala,  
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Docket No. DR 21-73

**STATEMENT OF THE CASE**

**STATEMENT OF THE CASE**

This statement of the case is submitted by Honoipu Hideaway, LLC ("**Appellant**"). Appellant alleges as follows:

**A. Regulatory Background**

1. This is an appeal from a decision of the State of Hawai'i Land Use Commission ("**Commission**") denying Appellant's Petition for Declaratory Order filed June 25, 2021, to locate the line separating the Conservation and Agricultural district boundaries along the road that runs through Appellant's property.

2. The land in Hawai'i is divided into State Land Use Districts ("**SLUD**") by the Commission. The boundary lines between these districts are drawn by the Commission on the SLUD boundaries maps. In 1964, the state-wide zoning designated land as within the Agricultural, Rural or Urban SLUD. Subsequently, the Conservation SLUD category was added. The Conservation SLUD boundary lines were first shown on the SLUD Boundaries Map H-3 dated 1969 ("**1969 LUC Map**").

3. Over the years, there have been three versions of the SLUD boundaries map for the H-3 Mahukona quadrangle. The first was published in 1964, the second in 1969 and the third in 1974. From map to map, the Commission reviewed and drew the location of the SLUD district boundaries in accordance with its authority under Hawai'i Revised Statutes ("**HRS**") § 205-2.

4. In 1969, a district boundary review was commissioned to review the SLUD district boundaries and make recommendations to the Commission. This review and the actions taken by the Commission in redrawing the SLUD boundary lines were documented in the 1969 State of Hawaii Land Use Regulations Review (“**1969 Review**”). See Eckbo, Dean, Austin & Williams, State of Hawaii Land Use Regulations Review 86 (1969).

5. The “most extensive phase of th[is] study” was the “review of district boundaries.” *Id.* at 11. In explaining how district boundaries were initially drawn and making further recommendations, the authors noted the following:

Four major conditions have been recognized and recommendations based upon these conditions have been made for the new Conservation District boundaries.

1. Where a plantation road, farm road, access way or public road exists at the edge of the agricultural use within reasonable proximity to the shoreline, it was used as the boundary between the Agriculture and Conservation Districts.

*Id.* at 86 (emphases added).

6. The Commission reviewed and redrew the SLUD boundary lines again in 1974. The SLUD Boundaries Map H-3 dated 1974 (“**1974 LUC Map**”) is the official map that delineates the current SLUD district boundaries. See Hawai‘i Administrative Rules (“**HAR**”) § 15-15-17(b).

7. In some instances, there is uncertainty regarding the actual location of the SLUD district boundary lines at the parcel scale. To resolve uncertainty, the executive officer of the Commission has the authority to interpret the location of the SLUD district boundary lines. Guidance on how to interpret these lines is provided in the Commission rules. See HAR § 15-15-22(a)–(e). Applying these rules, the executive officer issues SLUD boundary interpretations upon written application. See HAR § 15-15-22(a)–(e)

8. When application of the Commission rules “cannot resolve an uncertainty concerning the location of any district line, the [C]ommission, upon written application or upon its own motion, shall determine the location of those district lines.” HAR § 15-15-22(f).

**B. Jurisdiction and Venue**

9. This Court has jurisdiction pursuant to HRS §§ 91-8 and 91-14.

10. Venue is proper in this Circuit under HRS § 603-36(5).

**C. The Property**

11. Appellant owns a property that abuts the shoreline. This parcel is comprised of approximately 17.5470 acres of Tax Map Key No. (3) 5-6-001-074, situated at Kapaa-Upolu, North Kohala, Island and County of Hawai'i (the "**Property**").

12. A road runs through the Property along the coastline. To the north, the road is identified as Upolu Point Road. The name changes to Old Coast Guard Road shortly before it crosses through the Property (the "**Road**").

13. The current Conservation district boundary line bisects the Property and places approximately 4.794 acres in the Conservation district. The remaining 12.228 acres of the parcel are within the Agricultural district.<sup>1</sup>

14. To the north, the line separating the Conservation and Agricultural districts follows the *mauka* edge of the Road, excepting areas of historical, recreational or other significance. The land *mauka* of the Road is in the Agricultural District, and the land *makai* of the Road is in the Conservation District.

15. The line separating the Conservation and Agricultural districts that runs through the Property is not consistent with this pattern. Instead, the Conservation district boundary line cuts through the Property behind the Road, placing the entire Road and portions of the homes on the Property (homes that were constructed before 1969) in the Conservation district.

16. To clarify the uncertainty regarding the location of the district boundary line, Appellant sought a district boundary interpretation on January 3, 2020.

17. Commission staff issued a boundary interpretation on October 27, 2020 (the "**October 2020 Interpretation**").

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<sup>1</sup> As shown on the Shoreline Survey, 0.525 acres of the Property are in the erosion area and the Conservation District. Including this 0.525 acres, the total area of the Property in the Conservation district is 5.319 acres. The total size of the Property is 17.5470 acres.



18. The October 2020 Interpretation concluded the Conservation district was in part delineated by a trail or roadway.

19. Relying on a Shoreline Survey completed in October 2019 and the 1974 LUC Map, the Commission staff concluded that 4.794 acres (plus the 0.525 acres comprising the erosion area) are within the Conservation district.

20. In conducting the survey of the Property, the surveyor drew the line separating the Conservation and Agricultural districts as it is shown on the 1974 LUC Map. Commission staff followed the boundary line as it is shown on the 1974 LUC Map and the survey. Because the surveyor and staff relied on the 1974 LUC Map, the 1974 LUC Map essentially provided the sole source of information for the boundary interpretation.

21. On September 15, 2021, the executive officer sent an Errata to the October 2020 Interpretation correcting the dates in the original interpretation and concluding that the line separating the Conservation and Agricultural districts was demarcated by a 300-foot setback from the line of the wave action, rather than following in part a trail or roadway.

22. Neither the October 2020 Interpretation or the Errata interprets the line separating the Conservation and Agricultural districts line in the correct location on the Property.

#### **D. The Mapping Error**

23. The Road, which has been in its current location since 1961, is incorrectly depicted on the 1974 LUC Map.

24. Prior to 1961, there was a dirt road in the vicinity that did not hug the coastline or run through the Property.

25. Rather, the dirt road rounded out toward the shoreline and turned into the Property at a southeastward direction at approximately a ninety-degree angle. The location and curvature of the road as it existed prior to 1961 was correctly depicted on the 1957 United States Geological Survey (“USGS”) Map for Mahukona (“**1957 USGS Map**”).

26. In 1961, the dirt road was reconstructed and paved to service the newly built Loran Coast Guard Station. The reconstructed road hugged the shoreline and cut through the Property.

27. This reconstructed road is the same Road that runs through the Property today and in the same location.

28. The 1982 USGS Map for Mahukona ("**1982 USGS Map**") depicts the Road in the proper location on the Property.

29. Despite the Road being constructed in 1961, the correct location of the Road was not reflected on the SLUD Boundaries Map H-3 dated 1964 ("**1964 LUC Map**"). Instead, the 1964 LUC Map followed the 1957 USGS Map. Accordingly, the 1964 LUC Map shows the dirt road as it was mapped on the 1957 USGS Map for Mahukona. The dirt road no longer existed in the location shown on the 1964 LUC Map.

30. While the 1957 USGS Map was accurate, the 1964 LUC Map failed to correctly depict the Road as it existed at the time the map was drawn. An accurate rendering would have reflected the Road running along the coastline.

31. The 1964 LUC Map does not include the line separating the Conservation and Agricultural districts. The Conservation boundary line first appears on the 1969 LUC Map.

32. The 1969 LUC Map used the 1964 LUC Map as the base.

33. In turn, the 1974 LUC Map used the 1969 LUC Map as the base.

34. In this way, the error on the 1964 LUC Map was carried forward to the 1969 and 1974 LUC Maps. All three SLUD boundaries maps correctly depict the dirt road as it existed **prior** to 1961. All three maps incorrectly depict the Road as it exists post-1961, in the same location it exists today.

35. The error on the 1964 LUC Map is significant because it impacts the location of the line separating the Conservation and Agricultural districts on the 1969 LUC Map, which in turn impacts the location of the line separating the districts on the 1974 LUC Map. Specifically, the line separating the districts follows the location of the prior road.

36. Drafters of the 1969 LUC Map intended the Conservation boundary line to follow the *mauka* edge of any roadway in the area. Land *makai* of what they believed to be the location of the road was placed in the Conservation district. Land *mauka* of what they believed to be the location of the road was retained in the Agricultural district.

37. This conclusion is confirmed by the 1969 Review, which provides four conditions that were followed by the Commission in drawing the Conservation district boundary lines in 1969. Per the first condition, where a plantation road, farm road, access way or public road exists at the edge of the agricultural use within reasonable proximity to the shoreline, it was used as the boundary between the Agriculture and Conservation Districts. *See* 1969 Review at 86.

38. A map depicting agricultural uses on the island was included in the 1969 Review and shows that the lands where the Property is located were “presently used for grazing.” 1969 Review at 43.

39. Consistent with this expressed intent, if the Road had been drawn in the correct location on the 1964 LUC Map, the district boundary line drawn on the 1969 and 1974 LUC Maps would have followed the Road. The Conservation district boundary line would not have included the land *mauka* of the Road.

#### **E. Request for Declaratory Order**

40. On June 25, 2021, Appellant submitted a Petition for Declaratory Order, Verification of Petition and Exhibits 1 through 26. The Petition explained that the application of the Commission’s rules of interpretation could not resolve the uncertainty regarding the location of the line separating the Conservation and Agricultural district boundary lines.

41. Accordingly, the Petition requested the Commission exercise its authority under HAR § 15-15-22(f) to locate the boundary line separating the Conservation and Agricultural Districts in the correct location on the Property. Specifically, the Petition requested the Commission locate the boundary line as following the Road.

42. The County of Hawai’i (“County”) filed a Statement of No Position and Notice of Non-Appearance on September 14, 2021.



43. On December 13, 2021, the Office of Planning and Sustainable Development (“OPSD”) filed a Position Statement with the Commission.

44. The Commission received public testimony from Marcelle Loren as well as Linda and Marty Halbritter on December 20, 2021. The testifiers wrote in support of locating the district boundary line in the correct location along the Road.

45. At its December 22, 2021 meeting, the Commission met via Zoom interactive video conferencing to consider the Petition. Calvert G. Chipchase and Christopher T. Goodin appeared on behalf of Appellant. Nathan Eggen was also present as a representative of Appellant. Alison Kato appeared on behalf of OPSD. Jean Campbell appeared on behalf of the County.

46. The Commission denied Appellant’s request.

47. The Commission entered its Order Denying Petition for Declaratory Order on February 28, 2022.

#### **F. The LUC Applied the Wrong Standard**

48. The denial of the Petition was premised on the Commission’s conclusion that Appellant failed to present “conclusive” or “compelling” evidence that the line separating the Conservation and Agricultural districts drawn on the LUC maps is wrong.

49. A petition for declaratory order asks the Commission to rule on a question of law and not to settle factual issues. On a petition for declaratory ruling, the evidence is not in dispute, so the application of an evidentiary standard is not necessary. The Commission merely applies the law to the undisputed facts.

50. In the event it is proper for the Commission to weigh evidence, the correct standard is “preponderance of the evidence,” not “clear and convincing,” “conclusive” or “compelling.”

51. Yet throughout its Order, the Commission consistently applied the wrong standard by finding Appellant did not present “conclusive” or “compelling” evidence that the line separating the Conservation and Agricultural districts as depicted on the 1964, 1969 and 1974 LUC Maps is wrong.

52. The Commission's application of a heightened standard was wrong as a matter of law.

**G. Findings of Fact in the Commission's Order**

53. The Order's Finding of Fact ("FOF") ¶ 44 states:

The Commission did not find that Petitioner's evidence was conclusive that the Road was intended to be used as a mapping landmark in the manner described by Petitioner.

54. FOF ¶ 44 is clearly erroneous, affected by violation of due process and other error of law, arbitrary, capricious, and characterized by abuse of discretion or clearly unwarranted exercise of discretion. The evidence shows the Commission intended to follow roads where they existed at the edge of an agricultural use within a reasonable proximity of the shoreline. The evidence shows that the lands where the Property is located were used for grazing. The Commission applied the wrong standard. The correct standard is preponderance of the evidence, not "conclusive." Moreover, the Commission necessarily concluded that its staff had incorrectly interpreted the boundary as following a line 300 feet from the shoreline. Yet the Commission reverted, without evidence, to placing the boundary along the prior location of the road.

55. FOF ¶ 45 states:

The Commission did not find that Petitioner's evidence was conclusive that a mistake had been made in the 1969 LUC Map or that the mistake was similarly carried through to the 1974 LUC Map.

56. FOF ¶ 45 is clearly erroneous, affected by violation of due process and other error of law, arbitrary, capricious, and characterized by abuse of discretion or clearly unwarranted exercise of discretion. The evidence shows that an error exists on the 1964, 1969 and 1974 LUC Maps because the Road is not depicted in the correct location. The Commission applied the wrong standard. The correct standard is preponderance of the evidence, not "conclusive." Moreover, the Commission necessarily concluded that its staff had incorrectly interpreted the boundary as following a line 300 feet from the shoreline. Yet the Commission reverted, without evidence, to placing the boundary along the prior location of the road.

57. FOF ¶ 47 states:

Petitioner's assertion that the road was the edge of the agricultural use on the Property was not supported by the evidence as the Agricultural Uses map was not of sufficient detail to determine whether that assertion is correct. Pet. Ex. 21.

58. FOF ¶ 47 is clearly erroneous. It fails to note that the evidence shows the Commission intended to follow roads where they existed at the edge of an agricultural use within a reasonable proximity of the shoreline. The Commission also concluded that the October 2020 Interpretation was correct and that the interpretation determined that "the conservation district was in part delineated by a trail or roadway." COL ¶ 13; FOF ¶ 41. The evidence shows that the lands where the Property is located were used for grazing.

59. FOF ¶ 48 states:

The existence of the Coast Guard Loran station *mauka* of the road since 1944 is inconsistent with Petitioner's characterization of the road as the demarcation of the edge of agriculture as there is no indication that agriculture was practiced in connection with the Coast Guard station. OPSD Memo. at 4. See also Pet. Ex. 14, pg. 1-2 ("Landscaping is an endless job, and 100 acres are a lot to cover with grass and shrubs and trees").

60. FOF ¶ 48 is clearly erroneous. It fails to note that the evidence shows the Commission intended to follow roads where they existed at the edge of an agricultural use within a reasonable proximity of the shoreline. The Commission also concluded that the October 2020 Interpretation was correct and that the interpretation determined that "the conservation district was in part delineated by a trail or roadway." COL ¶ 13; FOF ¶ 41. The evidence shows that the lands where the Property is located were used for grazing.

61. FOF ¶ 48 is clearly erroneous because it relies on the OPSD Memo, which included a map stating, "This map is produced by the Office of Planning (OP) for planning purposes only. It should not be used for boundary interpretations . . . ."

62. FOF ¶ 49 states:

There were no records of the Coast Guard or any other party disputing the Conservation district boundary line prior to the filing of this declaratory ruling request.

63. FOF ¶ 49 is clearly erroneous, affected by violation of due process and other error of law, arbitrary, capricious, and characterized by abuse of discretion or clearly unwarranted exercise of discretion, because it is irrelevant whether other parties, including the federal government, disputed the boundary line. Because the line was incorrectly located based on an undisputed mapping error, the line should be corrected.

#### **H. The Order's Conclusions of Law**

64. The Order's **Conclusions of Law** ("COL") ¶ 12 states

The Commission did not find any compelling evidence that the LUC maps demarcation lines were improperly drawn.

65. COL ¶ 12 is affected by violation of due process and other error of law because it applies the wrong standard. The proper standard is preponderance of the evidence, not "compelling."

66. COL ¶ 13 states:

Based on the information provided by Petitioner and the presentation and arguments of the Parties during the proceedings, the Commission concluded that:

- a. The Conservation district line was placed in the correct location on the State Land Use District Boundaries Map H-3, dated 1974 ("1974 LUC map").
- b. The boundary interpretation that Commission staff provided to Petitioner on October 19, 2020, was correct.
- c. There was no error in the map used by the Commission to draw the original State Land Use Conservation district lines and

The Commission Staff accurately determined the location of the Conservation district line in its boundary interpretation.

67. COL ¶ 13 is based on clearly erroneous findings of fact, affected by violation of due process and other error of law, arbitrary, capricious, and characterized by abuse of discretion or clearly unwarranted exercise of discretion. The Commission necessarily concluded that its staff had incorrectly interpreted the boundary as



following 300 feet from the shoreline. Yet the Commission reverted, without evidence, to placing the boundary along the prior location of the road.

68. In COL ¶ 13, the Commission concluded that the October 2020 Interpretation “was correct.”

69. The Commission further found in FOF ¶ 41 that the October 2020 Interpretation concluded that “the conservation district was in part delineated by a trail or roadway.”

70. In the record before the Commission, there was substantial evidence that the Road was incorrectly depicted on the 1974 LUC Map.

71. In the record before the Commission, there was no substantial evidence that the Road was correctly depicted on the 1974 LUC Map.

72. In the record before the Commission, there was no substantial evidence that the Commission intended to incorrectly depict the Road on the 1974 LUC Map.

73. Based on the record before the Commission, there was an error in the map used by the Commission to draw the original State Land Use Conservation district lines.

74. Based on the record before the Commission, the Conservation district line was placed in the incorrect location on the 1974 LUC Map.

75. Based on the record before the Commission, the Commission Staff did not accurately determine the location of the Conservation district line in its October 2020 Interpretation.

76. Because the October 2020 Interpretation “was correct” in determining that the “the conservation district was in part delineated by a trail or roadway,” and because the Road was incorrectly depicted on the 1974 LUC Map, the conservation district line follows the Road in its location when the conservation district was established.

77. Consistent with the Commission’s own findings and conclusions and based on the record before the Commission, as a matter of law the Commission erred when it failed to determine that the conservation district line follows the Road in its location when the conservation district was established.



**I. The Order's Order Section**

78. The Order's order section states:

Having duly considered the Petition and the written and oral arguments presented by Petitioners, the pleadings filed by OPSD, and the County, as well as public comments received, and a motion having been made at the meeting conducted via ZOOM virtual meeting technology on December 2[2], 2021 from various locations in Hawai'i, and the motion having received the affirmative votes required by HAR § 15-15-13, and there being good cause for the motion, this Commission ORDERS that the Petition be DENIED.

79. The order is based on clearly erroneous findings of fact, affected by violation of due process and other error of law, arbitrary, capricious, and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

80. The Order has prejudiced the substantial rights of Appellant.

WHEREFORE, Appellant prays as follows:

A. That the Court reverse the Commission's Order because, consistent with the Commission's own findings and conclusions and based on the record before the Commission, as a matter of law the Commission erred when it failed to determine that the conservation district line follows the Road in its location when the conservation district was established;

B. Alternatively, that the Court vacate the Commission's Order and remand the matter to the Commission with instructions, including but not limited to an instruction to apply the preponderance of the evidence standard; and

C. That the Court award the Appellant costs and grant such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, March 30, 2022.

CADES SCHUTTE  
A Limited Liability Law Partnership

/s/ Christopher T. Goodin

CALVERT G. CHIPCHASE  
CHRISTOPHER T. GOODIN  
MOLLY A. OLDS  
Attorneys for Appellant  
HONOIPU HIDEAWAY, LLC

LAND USE COM.  
STATE OF HA

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BEFORE THE LAND USE COMMISSION  
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In the Matter of the Petition of

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DOCKET NO. DR 21-73

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Road, Tax Map Key No. (3) 5-6-001-074,  
Kapaa-Upolu, North Kohala, County of  
Hawaii, State of Hawaii.

ORDER DENYING  
PETITION FOR  
DECLARATORY ORDER

ORDER DENYING PETITION FOR DECLARATORY ORDER

AND

CERTIFICATE OF SERVICE

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, HAWAII.

Date 2/28/2022

BY  
DANIEL E. ORODENKER  
Executive Officer



LAND USE COMMISSION  
STATE OF HAWAII

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ORDER DENYING  
PETITION FOR  
DECLARATORY ORDER

ORDER DENYING PETITION FOR DECLARATORY ORDER

On June 6, 2021, Honoipu Hideaway LLC ("Petitioner"), through their attorney Calvert G. Chipchase Esq., filed a Petition For Declaratory Order ("Petition"); Verification of Petition, pursuant to Hawaii Revised Statutes ("HRS") §91-8, and Hawaii Administrative Rules ("HAR"), §15-15-98 *et seq.*; Exhibits 1 – 26, and Certificate of Service.

Petitioners requested a declaratory order for Boundary Interpretation from the State of Hawaii Land Use Commission ("Commission") to determine the location of the State Land Use district boundary line pursuant to its authority under Hawaii Administrative Rules ("HAR") §15-15-22.



Petitioner sought an interpretation of the land use district lines of certain lands consisting of approximately 17.5470 acres of Tax Map Key No. (3) 5-6-001-074, situated at Kapaa- Upolu, North Kohala, Island and County of Hawai'i ("Petition Area"), in the State Land Use Agricultural and Conservation District pursuant to HAR §15-15-22(f).

Specifically, Petitioner sought a ruling that would find:

- 1) That the Conservation district line has not been placed in the correct location following an apparent mapping error on the State Land Use District Boundaries Map H-3, dated 1974 ("1974 LUC map").
- 2) The boundary interpretation that Commission staff provided to Petitioner on October 19, 2020, was also incorrect.
- 3) The error is not due to any fault of the Commission staff. The source of the problem is an error in the map used by the Commission to draw the original State Land Use Conservation district lines and that because of this error, the usual application of HAR § 15-1522(a)- (e) is ineffective to determine the location of the Conservation line; and accordingly, uncertainty regarding the correct location of the Conservation boundary line remains.
- 4) That the Commission will determine the location of the Conservation district line and, consistent with the Petition and the intent of the drafters of the State Land Use Conservation district lines, set the district line along the *mauka* edge of the road.

This Commission having heard and examined the testimony and evidence presented by Petitioners, the State Office of Planning and Sustainable Development ("OPSD"), the County of Hawai'i ("County"); and the filings and public testimony submitted via electronic mail; at its

meeting on December 22, 2021 via ZOOM virtual meeting technology, hereby makes the following findings of fact, conclusions of law, and decision and order:

### **FINDINGS OF FACT**

#### **Procedural History**

1. On June 6, 2021, Honoipu Hideaway LLC (“Petitioner”), through their attorney Calvert G. Chipchase Esq., filed a Petition for Declaratory Order, Verification of Petition Exhibits 1 – 26, and Certificate of Service.
2. On June 28, 2021, the Commission received Petitioner’s filing fee with cashier’s check for \$1000.
3. On September 8, 2021, the Commission received Petitioner’s survey of the subject property reflecting the location of the Conservation District Boundary along the edge of the road.
4. On September 14, 2021, the County of Hawai‘i (“County”) filed a Statement of No Position and Notice of Non-Appearence.
5. On September 15, 2021, the Commission sent an Errata letter regarding Boundary Interpretation to Petitioner.
6. On October 11, 2021, the Commission received Petitioner’s Response to the LUC Errata letter.
7. On December 6, 2021, Petitioner through their attorney filed a Supplemental Memorandum in Support of Petition for Declaratory Order for Boundary Interpretation; Declaration of Nathan Eggen, Declaration of Miles S. Horie, Exhibits 1 – 32, and Certificate of Service.

8. On December 13, 2021, the Commission received OPSD's Position Statement on Petition for Declaratory Order, Exhibits 1-4.
9. On December 13, 2021, the Commission mailed an agenda and hearing notice for a meeting on December 22-23, 2021 to the Petitioner; and, the Statewide, email, Kaua'i and Hawai'i Island mailing lists.
10. On December 16, 2021, the Petitioner filed a Supplemental Exhibit List, Exhibits 33-34.
11. On December 20, 2021, the Commission received public testimony via electronic mail, from the Marcelle Loren and Linda and Marty Halbritter.
12. On December 22, 2021, the Commission received Petitioner's Revised Exhibit List and Supplemental Exhibits 35-39.
13. On December 22, 2021, the Commission met via ZOOM interactive virtual technology, to consider the Petition pursuant to HAR §15-15-100. Calvert Chipchase, Esq., appeared on behalf of Petitioner and Nathan Eggen, who was also present.
14. OPSD and County were present at the proceeding. Alison Kato, Esq. appeared on behalf of OPSD; and Jean Campbell, Esq. for County.
15. There were no Commissioner disclosures.
16. At the meeting the LUC entered into the record, the written public testimonies received on the Petition, including the written submissions filed by OPSD, and afforded those present the opportunity to provide public testimony on the Petition. There was no public testimony.

### **Description of the Property**

17. The Property is situated in situated at Kapaa - Upolu, North Kohala, Island and County of Hawai'i, Tax Map Key No. (3) 5-6-001-074 and consists of approximately 17.5470 acres of land. Pet.pg. 1
18. The Property is situated completely within in the State Land Use Agricultural and Conservation Districts. Pet.pg. 1
19. The Property is owned by Petitioner Honoipu Hideaway, LLC, a Hawai'i limited liability company whose mailing address is 1001 Bishop Street, Suite 2685A, Honolulu, Hawai'i, 96813. Pet.pg. 2
20. The Loran Transmitting Station Hawaii was originally built in June of 1944 and consisted of seven Quonset huts on about twenty acres of land at Upolu Point, Island of Hawaii. Pet. Ex. 14, pg. 1-1.
21. In March, 1951, permanent buildings were completed to replace the Quonset huts. *Id.*
22. In 1960 eighty more acres of land were acquired, bringing the total to nearly one hundred acres. The existing buildings and equipment were removed and a totally new station was constructed on the site. The new "A-C" Loran Coast Guard Station was completed on June 2, 1961 and consisted of six buildings and four duplex family units. Pet. Ex. 14, pg. 1-2.
23. There is a road that runs parallel to the coastline *makai* of where the Loran Coast Guard Station was built.

### **Description of the Request**

24. Petitioner filed the Petition pursuant HAR§ 15-15-22 Interpretation of district boundaries. Pet.pg. 1
25. HAR§ 15-15-22 provides:
- (a) Except as otherwise provided in this chapter:
    - (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;
    - (2) Land having an elevation below the shoreline as stated by section 205-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to sections 501-33 and 669-1, HRS, unless otherwise designated on the land use district maps, shall be included in the conservation district;
    - (3) All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps; and
    - (4) All water areas within the State are considered to be within a district and controlled by the applicable district rules.
  - (b) All requests for boundary interpretations shall be in writing and include the tax map key identification of the property and a print of a map of the property. All requests for boundary interpretations involving shoreline properties shall be accompanied by a survey map showing the locations of the shoreline as provided for in section 205A-42, HRS. Any erosion or accretion through natural processes shall be reflected on the map. Further, any shoreline structure, piers, and areas of man-made fill which were constructed or completed since the date of adoption of the state land use district boundaries existing as of the date of the request for interpretation shall be verified on the map.
  - (c) The executive officer may request the following information:
    - (1) Additional copies of the print, including a reproducible master map of the print or an electronic copy in a recognized format of the executive officer's designation; and
    - (2) Additional information such as, but not limited to, tax map key maps, topographic maps, aerial photographs, certified shoreline surveys, and subdivision maps relating to the boundary interpretation.
  - (d) The executive officer may use all applicable commission records in determining district boundaries.
  - (e) The following shall apply whenever uncertainty exists with respect to the boundaries of the various districts:
    - (1) Whenever a district line falls within or abuts a street, alley, canal, navigable or non-navigable stream or river, it may be deemed to be in the midpoint of the foregoing. If the actual location of the street, alley, canal, navigable or non-navigable stream or river varies slightly from the location as shown on the district map, then the actual location shall be controlling; and
    - (2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling; and



- (3) Unless otherwise indicated, the district lines shall be determined by the use of the scale contained on the map.
- (f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines.
26. Petitioner argued that subsections (a) to (e) do not resolve the uncertainty surrounding the conservation district boundary and is seeking for the Commission to determine the location of the district lines based on HAR§15-15-22(f). Pet.pg. 1-2
27. Petitioner referred to the State of Hawai‘i Land Use Districts and Regulations Review prepared for the Commission in 1969 by Eckbo, Dean, Austin & Williams to identify the four major conditions that were recognized and from which recommendations were based upon for the Conservation District Boundaries: Pet. Exh. 21
28. The State of Hawai‘i Land Use Districts and Regulations Review provides that:
1. Where a plantation road, farm road, access way or public road exists at the edge of the agricultural use within reasonable proximity to the shore-line, it was used as the boundary between the Agriculture and Conservation Districts.
  2. Where a vegetation line such as a windbreak or row of trees more clearly marks the edge of the agricultural practice, this was used.
  3. In cases where the shoreline is bounded by steep cliffs or a pali, the top of the ridge was used.
  4. Where no readily identifiable physical boundary such as any of the above could be determined, a line 300 feet inland of the line of wave action was used.
29. The Petitioner sought a declaratory order from the Commission requiring that the Commission exercise its authority to determine that the location of the State Land Use Conservation district line that runs through the Petition Area is along the edge of the

Road, rather than through the *mauka* portion of the Petition Area as depicted in an October 19, 2020 LUC boundary interpretation obtained for the Property.

30. It was Petitioners' position that the proper location of the Conservation district line is along the *mauka* edge of the road rather than through the *mauka* portion of the Petition Area. Pet.pg. 18
31. Petitioner requested that the Commission exercise its authority to determine the location of the State Land Use Conservation district line that runs through the Petition Area per HAR §15-15-22(f) and stated that the process set out in the HAR subsections has failed to resolve the uncertainty concerning the location of the district boundary line and looked to the Commission to exercise its jurisdiction to determine the district line. Pet.pg. 4
32. It was Petitioners' position that the current conservation line within the Petition Area is not consistent with how, to the north of the Petition Area, the Conservation district boundary line follows the mauka edge of the Road, excepting areas of historical, recreational or other significance. The land mauka of the land is in the Agricultural District, and the land *makai* of the Road is in the Conservation District. Pet.pg. 6
33. It is Petitioner's position that the conservation boundary line within the Petition Area is not consistent with this pattern. The Petitioner sought a district boundary interpretation on January 8, 2020 (the "Request") and states that the Commission staff relied on a Shoreline Survey completed in October 2019 ("Shoreline Survey") and the 1974 map, and concluded that the entire 4.794 (plus the 0.525 acres comprising the erosion area) was within the Conservation district. Pet.pg. 6

34. It was the Petitioner's position that in conducting the survey of the Petition Area the surveyor drew the Conservation district boundary line as it is shown on the 1974 LUC map and that Commission staff, in issuing the boundary interpretation on October 19, 2020, followed the boundary line as it is shown on the 1974 LUC map and the survey. Because the surveyor and staff both relied on the 1974 map, the 1974 map essentially provided the sole source of information for the boundary interpretation. Petitioner contended that the Road, which has been in its current location since 1961, is incorrectly depicted on the 1974 LUC map. Pet.pg. 7
35. Petitioner recognized that the 1964 LUC map did not include the Conservation district boundary and that the Conservation boundary line first appeared on the LUC map dated 1969 (the 1969 LUC map used the 1964 LUC map as the base), and the 1974 LUC map used the 1969 LUC map as the base. Pet.pg. 10
36. It is Petitioners' position that the 1964 LUC map failed to correctly depict the Road as it existed at the time the map was drawn, and that an accurate rendering would have reflected the Road running along the coastline. (See Petitioner's Exhibit 17- 1982 USGS Map of Mahukona).
37. Petitioner argued that the error on the 1964 LUC map was carried forward to the 1969 and 1974 LUC maps with all three LUC maps incorrectly depicting the dirt road as it existed prior to 1961. Pet.pg. 11
38. Petitioner asserted that the drafters of the 1969 LUC map intended the Conservation boundary line to follow the mauka edge of any roadway in the area and that land makai of what they believed to be the location of the road was placed in the Conservation

district. Land mauka of what they believed to be the location of the road further was retained in the Agricultural district. Pet.pg. 12

39. Petitioner concluded that if the Road had been drawn in the correct location on the 1964 LUC map, the district boundary line drawn on the 1969 and 1974 LUC maps would have followed the Road as well, resulting in the Conservation district boundary line not including the land *mauka* of the Road. Pet.pg. 15-16, 18-19

#### **LUC Staff Boundary Interpretation**

40. LUC staff initially conducted its boundary review on October 19, 2020, and concluded that all 5.319 acres of the Petition Area were within the Conservation District. The LUC staff relied on a copy of the Shoreline Survey, a survey of the Petition area and the 1974 LUC map to make its determination.
41. Subsequent to October 19, 2020, the Commission discovered an error in the dates and map references used in the October 19, 2020, boundary interpretation and mailed an errata notice to Petitioner on September 15, 2021 to confirm that the area in question was in the SLU Agricultural District based on the original 1964 District Boundary Map H3, Mahukona Quadrangle effective dated August 23, 1964. The correct SLU Agricultural/Conservation Districts was established during the 1969 Boundary Review when the Commission proposed and approved the 300' setback from the "line wave action" or shoreline for the subject parcel and the surrounding area. (In the original LUC analysis, the conservation district was in part delineated by a trail or roadway. The actual demarcation or reference point was redefined in 1969, rendering the 1964 determination inapplicable.)

42. The September 15, 2021 boundary errata correspondence noted that the SLU Agricultural/Conservation District designation for the subject parcel as depicted on the SLUC 1969 District Boundaries Map H-3, Mahukona Quadrangle, effective dated August 4, 1969, and is unchanged for the current SLU District Boundaries Map H-3, Mahukona Quadrangle, effective dated December 20, 1974.
43. The Petitioner was also provided with a copy of the survey map entitled "Shoreline Survey Map of Lot 19-A as Shown on Map 34 of Land Court Application 1120", with the certification of the SLU District Boundaries for reference.

#### **LUC Findings**

44. The Commission did not find that Petitioner's evidence was conclusive that the Road was intended to be used as a mapping landmark in the manner described by Petitioner.
45. The Commission did not find that Petitioner's evidence was conclusive that a mistake had been made in the 1969 LUC Map or that the mistake was similarly carried through to the 1974 LUC Map.
46. Petitioner did not provide any other plausible theory regarding the basis for the placement of the Conservation district boundary line at the location depicted on the 1969 LUC Map such that the Commission could conclude that the Conservation district boundary line was improperly located on the 1969 LUC Map.
47. Petitioner's assertion that the road was the edge of the agricultural use on the Property was not supported by the evidence as the Agricultural Uses map was not of sufficient detail to determine whether that assertion is correct. Pet. Ex. 21.
48. The existence of the Coast Guard Loran station mauka of the road since 1944 is inconsistent with Petitioner's characterization of the road as the demarcation of the



edge of agriculture as there is no indication that agriculture was practiced in connection with the Coast Guard station. OPSD Memo. at 4. *See also* Pet. Ex. 14, pg. 1-2 (“Landscaping is an endless job, and 100 acres are a lot to cover with grass and shrubs and trees”).

49. There were no records of the Coast Guard or any other party disputing the Conservation district boundary line prior to the filing of this declaratory ruling request.

### **CONCLUSIONS OF LAW**

1. 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.

### **Jurisdiction**

2. HRS § 91-8 allows any interested person to petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of an agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.
3. Petitioners are interested persons pursuant to HRS § 91-8 and HAR § 15-15-98(a), and thus have standing to bring this Petition before the Commission.
4. The Commission has jurisdiction to issue this declaratory order. HRS § 91-8, as implemented by the Commission’s administrative rules HAR §§ 15-15-98 through 15-

15-104.1, authorize the Commission to issue a declaratory order “as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation.” The Commission’s statutes, the applicability of which are put at issue in this Petition, are those sections of HRS Chapter 205 that govern the authority to reclassify land.

5. HAR § 15-15-98(c) allows the Commission to issue a declaratory order “...without notice of hearing” to terminate a controversy or to remove uncertainty. The Commission concluded that based on the facts presented at the meeting, the pleadings filed, together with the exhibits, the opportunity of Petitioner to present their views, and the fact that neither Petitioner requested a hearing pursuant to HAR §15-15-103, a hearing is not necessary before issuing a declaratory order in this matter.
6. HAR §15-15-100(a)(1)(D) provides that the Commission can deny the petition where “the petition requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission.”
7. The Commission relied on this authority to determine that the declaratory ruling process was proper. Without limiting the foregoing, the Commission concluded that the declaratory ruling procedure could be invoked by the Petitioner in this matter.

Based on the text and structure of the statute, its legislative history, and relevant caselaw, we agree with Wal-Mart that the declaratory ruling procedure was not intended to be utilized to seek review of agency determinations that have already been made and which have not been timely appealed.

HRS § 91-8, entitled “Declaratory rulings by agencies,” provides that:

Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any

rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

HRS § 91–8 (emphasis added).

As both the title (“Declaratory rulings by agencies”) and the pertinent text (“a declaratory order as to the applicability [of a statute, agency rule, or order]”) make clear, the declaratory ruling procedure of HRS § 91–8 is meant to provide a means of seeking a determination of whether and in what way some statute, agency rule, or order, applies to the factual situation raised by an interested person. It was not intended to allow review of concrete agency decisions for which other means of review are available. Reading HRS § 91–8 in a common sense fashion, and bearing in mind the plain meaning of the term “applicability,” it cannot seriously be maintained that the procedure was intended to review already-made agency decisions. For such decisions, like the DPP Director's issuance of the CUP to Wal-Mart, the agency has already spoken as to the “applicability” of the relevant law to the factual circumstances at hand—implicitly or explicitly it has found the relevant legal requirements to be met. There is no longer a question of how the relevant laws, in this case the LUO, “apply.”

Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of City & Cty. of Honolulu,

114 Haw. 184, 196–97, 159 P.3d 143, 155–56 (Hawaii 2007).

### **Jurisdiction to Redistrict Land**

8. Haw. Rev. Stat. § 205-2(a) provides the State Land Use Commission with the authority to place lands within one of the four major land use districts: Urban, Rural, Agricultural, and Conservation. “The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts.”

9. Haw. Rev. Stat. § 205-2(a)(4) further provides standards for the Commission in determining the initial boundaries of each district, including, specifically the Conservation District:

In establishment of the boundaries of conservation districts, the “forest and water reserve zones” provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed “conservation districts” and, effective July 11, 1961, the boundaries of the forest and water reserve zones, theretofore established pursuant to act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

10. Haw. Rev. Stat. § 205-2(e) provides standards for the types of lands to be included in the Conservation District:

Conservation Districts shall include areas necessary for protecting watersheds and water sources; 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; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation districts shall also include areas for geothermal resource exploration and geothermal resources development, as defined under section 182-1.

11. Haw. Rev. Stat. § 205-3.1(a) provides that the State Land Use Commission is the government body to process district boundary amendments involving State Conservation District lands:

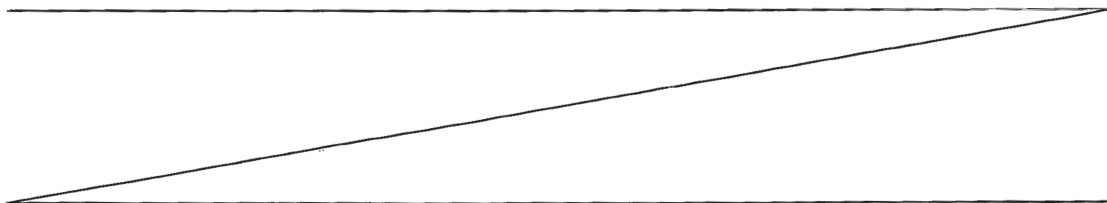
District boundary amendments involving lands in the conservation district, land areas greater than fifteen acres, or lands delineated as important agricultural lands shall be processed by the land use commission pursuant to section 205-4.

12. The Commission did not find any compelling evidence that the LUC maps demarcation lines were improperly drawn.
13. Based on the information provided by Petitioner and the presentation and arguments of the Parties during the proceedings, the Commission concluded that:
  - a. The Conservation district line was placed in the correct location on the State Land Use District Boundaries Map H-3, dated 1974 ("1974 LUC map").
  - b. The boundary interpretation that Commission staff provided to Petitioner on October 19, 2020, was correct.
  - c. There was no error in the map used by the Commission to draw the original State Land Use Conservation district lines and

The Commission Staff accurately determined the location of the Conservation district line in its boundary interpretation.

#### ORDER DENYING PETITION FOR DECLARATORY ORDE

Having duly considered the Petition and the written and oral arguments presented by Petitioners, the pleadings filed by OPSD, and the County, as well as public comments received, and a motion having been made at the meeting conducted via ZOOM virtual meeting technology on December 23, 2021 from various locations in Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, this Commission ORDERS that the Petition be DENIED.



ADOPTION OF DECLARATORY ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, O'ahu, Hawai'i, this 28th, day of February, 2022, per motion on  
December 23, 2021.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



\_\_\_\_\_  
Deputy Attorney General

By

  
\_\_\_\_\_  
JONATHAN LIKEKE SCHEUER  
Chairperson and Commissioner

Filed and effective on:

2/28/2022

Certified by:



\_\_\_\_\_  
DANIEL ORODENKER  
Executive Officer





LAND USE COMMISSION  
STATE OF HAWAII

2022 FEB 28 A 9:48

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

HONOIPU HIDEAWAY, LLC

DOCKET NO. DR 21-73

For Boundary Interpretation of certain  
land consisting of approximately 17.5470  
acres situated at 56-102 Old Coast Guard  
Road, Tax Map Key No. (3) 5-6-001-074,  
Kapaa-Upolu, North Kohala, County of  
Hawaii, State of Hawaii.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that an ORDER DENYING PETITION FOR DECLARATORY 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:

CERT. CADES SCHUTTE LLP (For Honoipu Hideaway LLC)  
MAIL CALVERT G. CHIPCHASE  
1000 Bishop St. Suite 1200  
Honolulu, HI 96813

REG. Jean Campbell, Esq.  
MAIL Deputy Corporation Counsel  
County of Hawaii  
101 Aupuni Street, Suite 325  
Hilo, HI 96720

REG Zendo Kern, Director  
MAIL County of Hawaii, Planning Department  
Aupuni Center  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

REG Bryan Yee, Esq.  
MAIL Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, HI 96813

REG Mary Alice Evans, Director  
MAIL Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

Dated: Honolulu, Hawai'i, 2/28/2022



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DANIEL E. ORODENKER  
Executive Officer

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

In the Matter of the Petition of

HONOIPU HIDEAWAY, LLC

For Boundary Interpretation of certain  
land consisting of approximately 17.5470  
acres situated at 56-102 Old Coast  
Guard Road, Tax Map Key No. (3) 5-6-  
001-074, Kapaa-Upolu, North Kohala,  
County of Hawai'i, State of Hawai'i.

CIVIL NO. \_\_\_\_\_  
(Agency Appeal)

Docket No. DR 21-73

**DESIGNATION OF THE RECORD  
ON APPEAL**

**DESIGNATION OF THE RECORD ON APPEAL**

TO: CLERK, THIRD CIRCUIT COURT, STATE OF HAWAII

Pursuant to Rule 72(d) of the Hawai'i Rules of Civil Procedure, Appellant Honoipu Hideaway, LLC by and through his counsel, Cades Schutte LLP, hereby designates as the Record on Appeal the following:

All records, files, pleadings, motions, memoranda, letters, exhibits, notices, applications, petitions, declarations, correspondence, affidavits, audio recordings (of all meetings, conferences, and hearings), transcripts (of all meetings, conferences, and hearings), minutes, decisions and orders filed with or by, or otherwise maintained by the State of Hawai'i Land Use Commission, regarding the proceedings for State of Hawai'i Land Use Commission Docket No. DR 21-73, and all other records and evidence related to this action.

DATED: Honolulu, Hawai'i, March 30, 2022.

CADES SCHUTTE  
A Limited Liability Law Partnership

/s/ Christopher T. Goodin  
CALVERT G. CHIPCHASE  
CHRISTOPHER T. GOODIN  
MOLLY A. OLDS  
Attorneys for Appellants  
HONOIPU HIDEAWAY, LLC

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

In the Matter of the Petition of

HONOIPU HIDEAWAY, LLC

For Boundary Interpretation of certain land consisting of approximately 17.5470 acres situated at 56-102 Old Coast Guard Road, Tax Map Key No. (3) 5-6-001-074, Kapaa-Upolu, North Kohala, County of Hawai'i, State of Hawai'i.

CIVIL NO. \_\_\_\_\_

(Agency Appeal)

Docket No. DR 21-73

**ORDER TO CERTIFY AND  
TRANSMIT THE RECORD ON  
APPEAL**

**ORDER TO CERTIFY AND TRANSMIT THE RECORD ON APPEAL**

TO: STATE OF HAWAII LAND USE COMMISSION

Daniel Orodener  
Executive Director  
235 South Beretania Street, Suite 406  
Honolulu, Hawai'i 96813

YOU ARE HEREBY ORDERED, pursuant to Rule 72(d)(1) of the Hawai'i Rules of Civil procedure and in accordance with Hawai'i Revised Statutes, Section 91-9(3), to certify and transmit to this Court within twenty (20) days of the date of this Order, or within such further time as may be allowed by this Court, the entire records of all relative proceedings pertaining to Appellant, including but not limited to:

All records, files, pleadings, motions, memoranda, letters, exhibits, notices, applications, petitions, declarations, correspondence, affidavits, audio recordings (of all meetings, conferences, and hearings), transcripts (of all meetings, conferences, and hearings), minutes, decisions and orders filed with or by, or otherwise maintained by the State of Hawai'i Land Use Commission, regarding the proceedings for State of Hawai'i Land Use Commission Docket Nos. DR 21-73, and all other records and evidence related to this action.

DATED: \_\_\_\_\_, Hawai'i, \_\_\_\_\_.

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CLERK OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

In the Matter of the Petition of

HONOIPU HIDEAWAY, LLC

For Boundary Interpretation of certain  
land consisting of approximately 17.5470  
acres situated at 56-102 Old Coast  
Guard Road, Tax Map Key No. (3) 5-6-  
001-074, Kapaa-Upolu, North Kohala,  
County of Hawai'i, State of Hawai'i.

CIVIL NO. \_\_\_\_\_  
(Agency Appeal)

Docket No. DR 21-73

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document  
will be duly served on the following by first class mail, postage prepaid:

ELIZABETH A. STRANCE (U.S. MAIL)  
Corporation Counsel  
Office of the Corporation Counsel  
101 Aupuni Street, Suite 325  
Hilo, HI 96720  
Email: [elizabeth.strance@hawaiicounty.gov](mailto:elizabeth.strance@hawaiicounty.gov)

ZENDO KERN  
County of Hawai'i Planning Department (U.S. MAIL)  
101 Pauahi Street, Suite 3  
Hilo, HI 96720

*County of Hawaii & Planning Department*

HOLLY T.M. SHIKADA (U.S. MAIL)  
Attorney General  
BRYAN C. YEE  
Deputy Attorney General  
425 Queen Street  
Honolulu, HI 96813  
Email: [Holly.T.Shikada@hawaii.gov](mailto:Holly.T.Shikada@hawaii.gov) and [Bryan.C.Yee@hawaii.gov](mailto:Bryan.C.Yee@hawaii.gov)



MARY ALICE EVANS (U.S. MAIL)  
Director, Office of Planning  
P.O. Box 2359  
Honolulu, HI 96804-2359  
Email: [maryalice.evans@hawaii.gov](mailto:maryalice.evans@hawaii.gov)

*State of Hawai'i & Office of Planning and Sustainable Development*

DATED: Honolulu, Hawai'i, March 30, 2022.

CADES SCHUTTE  
A Limited Liability Law Partnership

**/s/ Christopher T. Goodin**

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CALVERT G. CHIPCHASE  
CHRISTOPHER T. GOODIN  
MOLLY A. OLDS  
Attorneys for Appellants  
HONOIPU HIDEAWAY, LLC