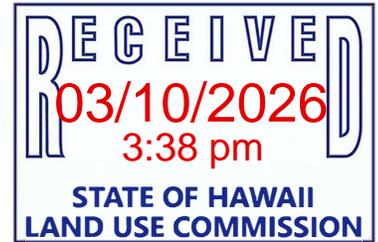


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HONOIPU HIDEAWAY, LLC



BEFORE THE LAND USE COMMISSION
OF THE 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.

DOCKET NO. DR21-73

**PETITIONER'S MEMORANDUM
ON REMAND**

**FOURTH SUPPLEMENTAL
EXHIBIT LIST**

EXHIBIT 40-52

CERTIFICATE OF SERVICE

PETITIONER'S MEMORANDUM ON REMAND

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I. INTRODUCTION

We come back to the Commission on remand from the Hawai'i Supreme Court. In its decision, the Supreme Court concluded that the Commission must decide this case under the “preponderance of the evidence” standard, rather than the “higher” “conclusive” or “compelling” evidence standard that the Commission had applied in the prior proceeding. *Honoipu Hideaway, LLC v. Land Use Comm'n*, 156 Hawai'i 367, 371, 376, 575 P.3d 24, 28, 33 (2025) (copy of decision attached as Ex. 40). The “preponderance of the evidence” standard asks merely whether a fact is more likely than not. *Id.* This is the amount of “evidence sufficient to tip the scale slightly in [a person's] favor” *Id.* at 376, 575 P.3d at 33 (quotations omitted).¹ Using this standard, the Commission must “make new findings of fact and conclusions of law.” *Id.* at 377, 575 P.3d at 34.²

As the Supreme Court explained, “[t]his case concerns the correction of an alleged error in a conservation district boundary map on Hawai'i Island.” *Id.* at 377, 575 P.3d at 34. The 1957 United States Geological Survey (“USGS”) map for Mahukona, North Kohala shows a road in the area where Petitioner's property is located. Ex. 13A (1957 USGS map). The road crosses into Petitioner's property and immediately and sharply turns makai. *Id.* The road is shown in the same location on the Commission's 1964, 1969, and 1974 maps of the area. Ex. 3 (1964 Commission map); Ex. 4 (1969 Commission map); Ex. 5 (1974 Commission map). The boundary line between the Conservation District and the Agricultural District was drawn in the 1969 map. Ex. 4. The boundary line follows the mauka side of the road. *Id.*

Here is the issue: The road shown on these maps as being in the same location from 1957 to 1974 was in fact moved, extended, and realigned makai in 1961. The realigned road is in the same location today.

¹ By contrast, a “clear and convincing” standard of evidence requires a showing that “the existence of a fact be highly probable.” *Honoipu Hideaway*, 156 Hawai'i at 376, 575 P.3d at 33 (quotations omitted).

² The Exhibits and evidence from the prior hearing in December 2021 remain before the Commission. The parties may supplement the evidence and present arguments at the hearing scheduled for April 2026.

The road realignment was part of the reconstruction and expansion of the Loran Coast Guard Station. The road realignment is shown in the Coast Guard records, aerial photographs, and maps. *See* Ex. 16 (1961 Coast Guard photo of road); Ex. 17 (1961 Coast Guard photo of residences and road); Ex. 15 (1961 article about road realignment); Ex. 11 (1965 aerial photograph showing realigned road and not showing the old road); Ex. 14 (1969 Coast Guard information book about station reconstruction in 1960-61); Ex. 13 (1982 USGS map).

Putting these facts together, the road was accurately shown in the 1957 USGS map when the map was created. But, because the road was moved in 1961, the Commission did not accurately depict or follow the road when it first drew the Conservation District boundary line in 1969.

This is the mapping “error” the Supreme Court mentioned in its decision. *Honoipū Hideaway*, 156 Hawai‘i at 377, 575 P.3d at 34. To “correct[]” the mapping error, *see id.*, the Commission is asked to interpret the boundary line it drew in 1969 as following the actual location of the road in 1969. This request breaks down into three basic questions.

First, is it more likely than not that the Commission intended to follow the road as it existed in 1969 in setting the boundary line? The answer is yes. The boundary line closely traces the old location of the road. *See* Ex. 8 (1982 USGS map overlay showing location of the old road in light blue double dashed lines and the location of the boundary line in a yellow dashed line). Confirming the intent to follow the road, the Commission has repeatedly interpreted the boundary line as following the same road. *See supra* section II.A. This approach is consistent with the Commission’s guidelines for setting boundaries, which directs the Commission to prefer boundary lines along roads and access ways. *See id.* Taken together, the Commission more likely than not intended to follow the direction of the road in setting the boundary line across the property.

Second, is it more likely than not that the road had been realigned before the Commission set the boundary line in 1969? The answer to that question is yes. The

road was realigned before the Commission set the boundary in 1969. Ex. 4. The Commission’s 1969 map does not depict the road in the correct location.

Third, what is the applicable rule to correct a mapping error? The “boundary interpretation” rule was discussed by the Supreme Court in its decision. The Court explained that “district boundary interpretation under HAR § 15-15-22 functions to resolve uncertainties about the spatial relationship between the LUC map and the land the map represents.” *Honoipu Hideaway*, 156 Hawai‘i at 373, 575 P.3d at 30 (citing HAR § 15-15-22(e)). “The LUC has interpreted uncertainty to include clear mapping errors.” *Id.* The Petition here is made pursuant to this rule.

To illustrate how the rule has been applied in past cases, where the Commission intended to set the boundary line by following a landmark (like the top of a pali or cliff) and there was a mapping error in locating a landmark, the Commission has interpreted the boundary line as following the actual location of the landmark at the time the boundary line was drawn. *See* Ex. 22-23 (Commission *Stengle* order concerning pali); *Honoipu Hideaway*, 156 Hawai‘i at 373-74 n.8, 575 P.3d at 30-31 n.8 (summarizing *Stengle*).

Here, because the Commission intended to set the boundary line following a landmark (the road) and there was a mapping error in locating the landmark, the Commission is asked to interpret the boundary line as following the actual location of the landmark (the road) at the time the boundary line was drawn in 1969. In the sections below, we begin with background on this matter and then move into the analysis of the requested boundary interpretation.

II. BACKGROUND

A. The Property in Mahukona, North Kohala.

Petitioner owns a shoreline parcel located at 56-102 Old Coast Guard Road (the “**Property**”) in Kapaa-Upolu, North Kohala. The Property is identified by TMK No. (3) 5-6-001-074 and consists of approximately 17.5470 acres.

The two buildings on the Property are residences. The residences were built in 1961 as part of the Loran Coast Guard Station (the “**Station**”).³ See Ex. 14 (U.S. Coast Guard Loran Station Hawaii General Information Book 1969 at 1-2 (stating the Station included “six buildings and four duplex family units”); 12/22/21 Tr. at 85:10-11, 104:8-10 (noting that the residences were built in 1961).⁴

The federal government owned the Property until 2000, at which point ownership changed hands to Parker Ranch. 12/22/21 Tr. at 112:2-9.

Petitioner purchased the Property in 2018. *Id.* at 91:4-5. Petitioner is a family-owned limited liability company held by Nathan Eggen (“**Nathan**”), his wife, and other family members. 12/22/21 Tr. at 80:23-6. Upon purchasing the Property, Nathan obtained permits to repair the residences so he and his wife could live there. *Id.* at 125:18-20. Nathan and his wife reside on the Property in one of the residences. *Id.* at 85:10-11, 99:19. Family members visit and stay at the other residence. *Id.* at 99:19-21.

Neighbors have provided supportive public testimony in this proceeding. As one neighbor explained, Nathan “has made a positive contribution to this area by cleaning up decrepit military buildings, garbage, squatting, crime, drugs, and making the shoreline area better for the public.” Ex. 41 (Public Testimony of Marcelle “Malu” Loren (submitted by email 12/19/21)); *see also* Ex. 42 (Public Testimony of Linda & Marty Halbritter (next door neighbors) (submitted by email 12/18/22)); Ex. 52 (Public Testimony of Stephen Smith (neighbor) (submitted by email 12/20/21)). Nathan has approached all his neighbors, including DHHL, about this Petition, and “across the

³ Petitioner’s Exhibits 1-39 were admitted during the prior hearing. 12/22/21 Tr. at 33:25-35:35:12 (admitting Ex. 1-34); *id.* at 176:11-23 (admitting Ex. 35-39).

⁴ The Property is only a portion of the former Loran Coast Guard Station. The Station also covered the adjacent parcel to the north presently owned by the State of Hawai’i Department of Hawaiian Homelands (“**DHHL**”).

One of the residences on Petitioner’s Property encroaches into DHHL’s property. Petitioner has a “boundary agreement” with DHHL as to this issue. 12/22/21 Tr. at 99:4-6.

board there's strong support and no negative feedback from any of them." 12/22/21 Tr. at 88:4-17.

There are fruits planted in the yard, including "avocados, bananas, coconuts, [and] mangos." *Id.* at 83:17-18. The trees were "put in when the Coast Guard was here for the people that lived there." *Id.* at 83:15-17. The Coast Guard "planted the entire property with fruit for each of the homes and the people that lived there to give them . . . sources of food because especially back in 1960, this [area] was extremely remote." *Id.* at 86:10-20 (Nathan recounting conversations with "the former facility manager for the Coast Guard who operated the property," "Arthur Greiner"). "There was very little choice for . . . fresh goods and produce." *Id.* at 86:20-21.

The mauka portion of the Property is used for "pasture," and Petitioner has "cows in for part of the year for fire control . . ." *Id.* at 83:22-24.

B. The Road.

Below is a historic photograph from 1961 of one of the residences at the Station visible on the mauka side of the extended and relocated road:



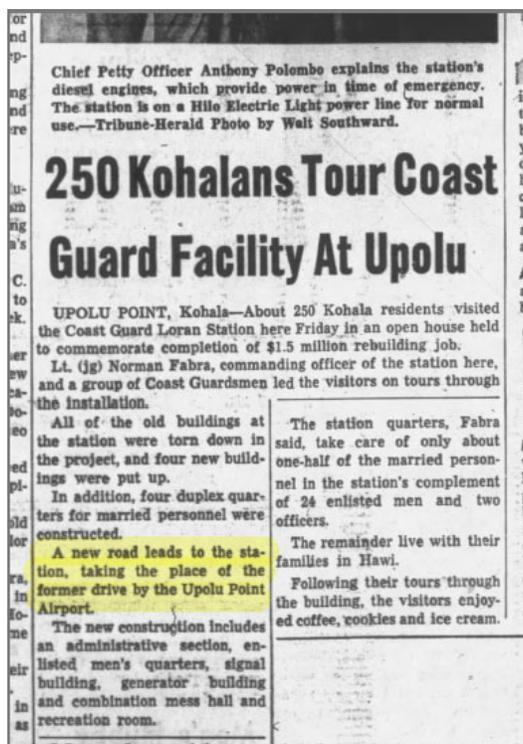
Ex. 16 (1961 USGS photograph); *see also* Ex. 17 (1961 USGS photograph showing road).

The road—presently known as Old Coast Guard Road—runs through the makai portion of the Property:



Petition Ex. 3 (County of Hawai'i Real Property Tax Office Property description map).

This road was realigned to its current location in 1961 as part of the reconstruction of the Loran Coast Guard Station:



Ex. 14 (article from Hawaii Tribute-Herald, 10/3/1961). The realigned road is also shown in the photograph produced above, Exhibit 16, as well as in Exhibit 17, another

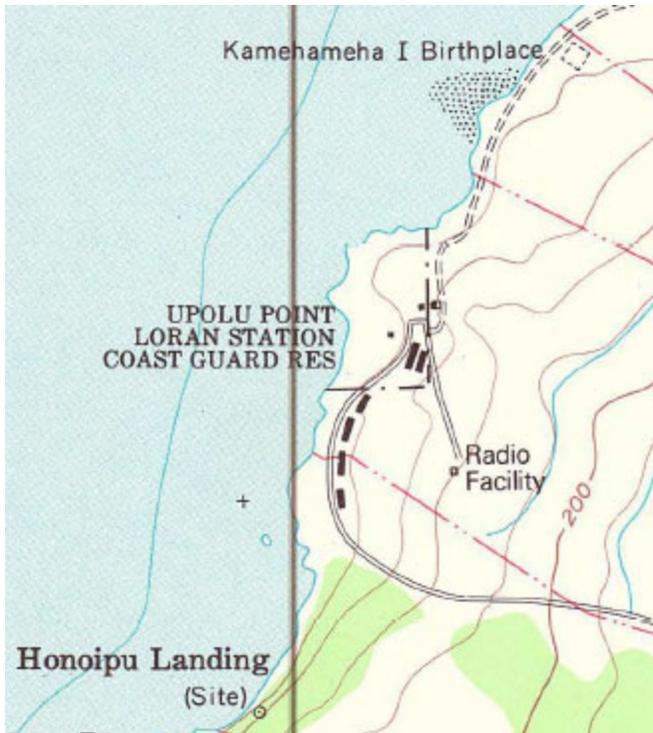
1961 USGS photograph of the road, and in Exhibit 11, a 1965 USGS aerial photograph showing the road.

Before the realignment in 1961, the Upolu Point road coming south from Upolu Airport Road turned sharply makai immediately after crossing the northern boundary of the Property. This is shown on the 1957 USGS map of the area.



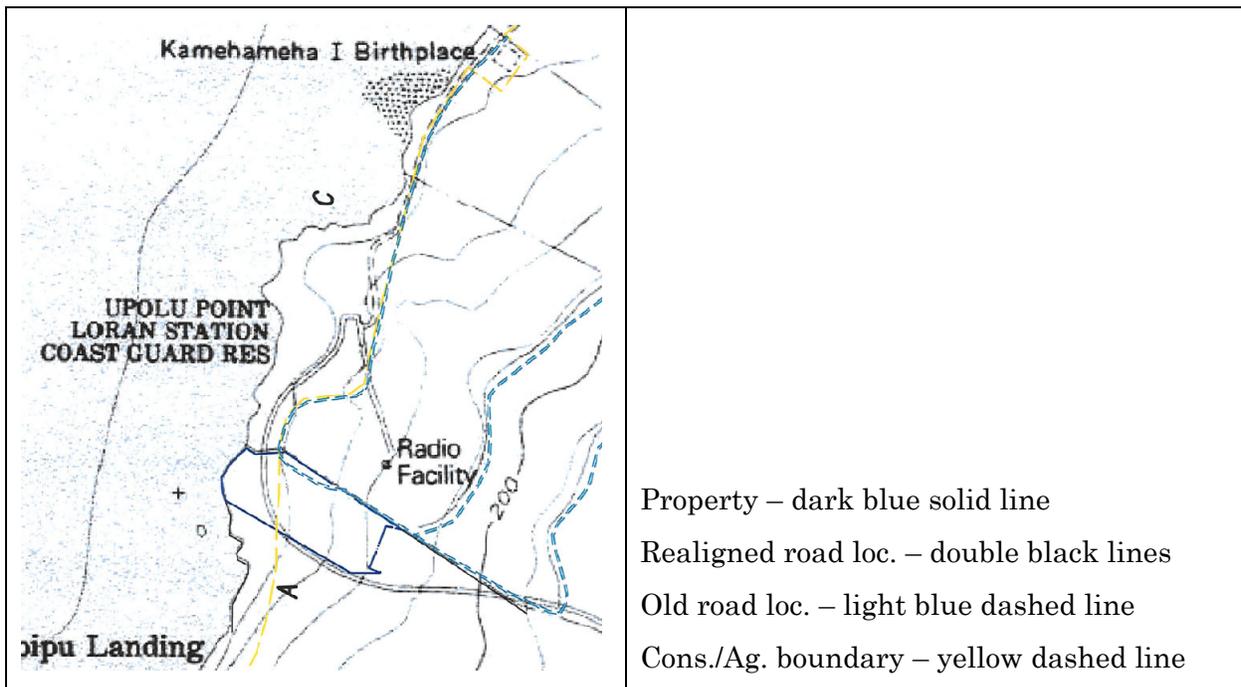
Ex. 13A (1957 USGS map of area). The old location of the road went around the old Coast Guard base shown on this map.

After the realignment in 1961, the road was moved makai and extended further south where it crossed through the entire Property and turned more gradually makai at the southern boundary of the Property to head inland. The Coast Guard base was reconstructed at the same time. Ex. 14 (1969 Coast Guard information book about station reconstruction in 1960-61); Ex. 16 (1961 Coast Guard photo of road); Ex. 17 (1961 Coast Guard photo of residences and road); Ex. 15 (1961 article about road realignment). The realigned and extended road went through the new base. The continuation of the road was named Coast Guard Road. This road extension is shown on the 1965 aerial (Ex. 11) and the 1982 USGS map of the area. See Ex. 13B (1982 USGS map of area). The Old Coast Guard Road is in the same location today. Here is the 1982 USGS map:



Ex. 13B (1982 USGS map of area).

We put these data points together in Exhibit 8. Exhibit 8 is an annotated version of the 1982 USGS map showing the realigned location of the road, the old location of the road, and Property:



Ex. 8 (1982 USGS Map annotated prepared by Engineers Surveyors Hawaii, Inc. (Miles Horie)).

The realigned location of the road is shown in the solid double black lines. The map has been annotated to show the Property in a dark blue solid line and the old location of the road in light blue, double dashed lines. The old location of the road was taken from the 1957 USGS map in Exhibit 13A. There is also a yellow dashed line, which we will come back to in a moment.

The road realignment in 1961 is a critical point in time. Three years later in 1964, the Commission adopted its map for the area. Ex. 3. The 1964 Commission map shows the road in the same now-inaccurate location as it was shown in the 1957 USGS map. *Id.* Similarly, in the 1969 Commission map, the road is shown in the old location. Ex. 4. The boundary line drawn by the Commission in the 1969 map closely follows what the Commission believed to be the mauka edge of the road. *Id.* The same boundary line is annotated in the yellow dashed line in Exhibit 8 above. As we can see in Exhibit 8 and in the 1969 Commission map (Ex. 4), the Commission followed the direction of the road in setting the boundary line. The boundary line and the old location of the road are the same in the 1974 Commission map. Ex. 5.

In summary, the Commission followed the old location of the road in setting the boundary line in 1969 because it relied on an outdated map. *See* Ex. 4, 8. This is the mapping error. The location of the road had been realigned makai in 1961.

C. The Petition.

As the Hawai'i Supreme Court noted, this Petition seeks "correction of an alleged error in [the] conservation district boundary map" *Honoipu Hideaway*, 156 Hawai'i at 369, 575 P.3d at 26. Specifically, this Petition asks the Commission to interpret the boundary line as following the actual location of the road as it existed in its realigned location in 1969.

The Commission has used the "boundary interpretation" rule many times. In other cases, when the intent was to set the boundary line based on a landmark and there was a mapping error in locating the landmark, the Commission has interpreted the boundary line as following the actual location of the landmark. For example, when

the intent was to set the boundary line based on the location of a pali or cliff and the landmark was incorrectly located on the map, the Commission interpreted the boundary line as following the actual location of the pali or cliff. *See Ex. 22 (Stengle declaratory order)*.⁵

Commission staff indicated that Nathan should follow the same “boundary interpretation” procedure here. 12/22/21 Tr. at 95:16-96:7; *id.* at 115:1-5.⁶

⁵ In *Stengle*, the Commission amended the Conservation District boundary line on the 1974 LUC Map for the H-59 Papaaloa Quadrangle pursuant to its authority under HAR § 15-15-22(f) to reflect the intent of the drafters as documented in the 1969 Review 30 years later. The official LUC map showed the Conservation District boundary line as following a 200-foot contour line as the “top of the pali.” Ex. 22 (Commission *Stengle* order) at 4-5. The petitioners pointed out that the Conservation District boundary line as represented on the official map was incorrect because the 200-foot contour line on the map did not reflect the actual location of the top of the pali. *Id.* After submitting two boundary interpretation requests and a topographical survey depicting the accurate location of the pali, petitioners sought a declaratory order pursuant to HAR § 15-15-22(f) requesting that the Commission correct the location of the district boundary line. *See id.* at 6. Granting the request in part, the Commission relied on the intent of the drafters as recorded in the 1969 Review and interpreted the Conservation District boundary line as being along the actual location of the “top of the pali,” rather than along the 200-foot contour line as drawn on the LUC map. *Id.* at 6-7.

Stengle is not the only time the Commission has corrected boundaries because they are inconsistent with the Commission’s stated intent. In the declaratory decision of *In re Harold K.L. Castle Foundation*, LUC Docket No. DR96-19 (1996), the Commission clarified and corrected the boundary classification for a property that had been erroneously included in the Conservation District in part because, at the time of the prior classification, the portion of the property placed within the Conservation District included urban improvements, specifically a roadway for egress to a drive-in theater and ramps to control drainage affecting the theater. Ex. 43 (*Castle* declaratory order) at 9. Likewise, in the declaratory decision titled *In the Matter of the Petition of City & County of Honolulu*, Docket No. DR99-22, the LUC determined that the boundary between the Agricultural District and the Conservation District was incorrectly drawn to include a public road. Ex. 44 (Honolulu declaratory order) at 6. The commission corrected the boundary to include the road within the Agricultural District based on the conclusion that the road was actively used to access agricultural and government facilities at the time of the 1969 boundary review. *Id.* at 6-9.

⁶ At the prior hearing in 2021, Nathan was asked why he decided to pursue a boundary interpretation rather than a boundary amendment. 12/22/21 Tr. at 95:13-

The “boundary interpretation” rule is set out in Hawai‘i Administrative Rules (“HAR”) § 15-15-22. *See* HAR § 15-15-22(a)-(e). Subsection (f) empowers the Commission to “determine the location” of the district lines wherever the application of the interpretative rules in subsections (a) through (e) “cannot resolve an uncertainty concerning the location of any district line,” *Id.* § 15-15-22 (f) (emphasis added). As explained at length in the Petition, subsections (a) through (e) do not resolve the uncertainty concerning the location of the district line.

In its decision, the Hawai‘i Supreme Court provided an overview of the “boundary interpretation” rule and its application by the Commission in past cases:

Honoipu’s petition for a declaratory order requested that the LUC interpret the district boundaries on its property under HAR § 15-15-226 and “determine” the location of the conservation district boundary along the existing road rather than its current location on the LUC map. That is to say, Honoipu believes the district boundary as depicted on the LUC map was unintended and in error, thus uncertainty exists. HAR § 15-15-22, which was promulgated under the LUC’s general authority to promulgate rules under HRS §§ 205-1 (2017) and -7 (2017), permits limited review by the LUC to “resolve an uncertainty concerning the location of any district line” and “determine the location of those district lines.” HAR § 15-15-22(f). **Thus, district boundary interpretation under HAR § 15-15-22 functions to resolve uncertainties about the spatial relationship between the LUC map and the land the map represents. *See, e.g.,* HAR § 15-15-22(e). The LUC has interpreted uncertainty to include clear mapping errors.**[Footnote 8]

[Footnote 8:] The LUC has granted petitions for declaratory orders brought pursuant to HAR § 15-15-22 where it found the LUC map manifestly differed from its stated intent. *See In re Stengle*, Docket No. DR99-21 (Mar. 24, 1999), as amended (Mar. 25, 1999) (ordering the LUC map be amended to reflect a district boundary along the top ridge of the pali as intended by its drafters); *In re Harold K.L. Castle Found.*, Docket No. DR96-19 (Nov. 25, 1996) (ordering the LUC map be amended to include the entire property in the urban district based on existing urban improvement on property consistent with legislative intent); *In re City and Cnty. of Honolulu*, Docket No. DR99-22 (Nov. 9, 1999) (ordering the LUC map be amended to reflect a district boundary following an actively used road as intended by its drafters).

15. Nathan explained, “I’m a normal person and an amendment takes . . . several years at best to be carried out.” *Id.* at 96:2-4.” “You have to do an environmental impact statement that costs \$100,000.” *Id.* at 96:4-5.

Honoipu Hideaway, 156 Hawai‘i at 373-74 & n.8, 575 P.3d at 30-31 & n.8 (emphasis added). Accordingly, upon the finding of a mapping error, the Commission is authorized to interpret the boundary line to correct the error.

In the initial hearing in 2021, the Commission concluded that the evidence was not “compelling” or “clear.” *Id.* at 371, 376, 575 P.3d at 28, 33.

On appeal, the Hawai‘i Supreme Court concluded that the applicable standard did not require “compelling” or “clear” evidence. *Id.* Instead, the applicable standard required merely a “preponderance” of evidence or, in other words, a showing that a fact was more likely than not. *Id.*

The Court noted that, during the prior proceeding, Petitioner had “offered cartographic and photographic evidence to suggest that the conservation district boundary on the property was erroneously drawn in its present location and was instead properly located following the new road.” *Id.* at 370, 575 P.3d at 27. The Court concluded that the Commission erred in requiring conclusive or compelling evidence, explaining as follows:

We now turn to whether, as asserted by the State, the preponderance of the evidence standard was properly applied. We conclude on the record before us that it was not. **The LUC expressly found that Honoipu failed to produce “conclusive” evidence that a mistake had been made on the LUC map and that the conservation district was intended to follow the location of the new road**

Ultimately, the LUC concluded along the same lines, stating in its conclusion of law ¶ 12 that “[t]he Commission did not find any compelling evidence that the LUC maps [sic] demarcation lines were improperly drawn.” (Emphasis added.) Taken together, these indicia support a conclusion that the *LUC erroneously applied a heightened burden of proof* when it denied Honoipu’s petition for declaratory order. . . .

Because we cannot say Honoipu’s substantial rights were not prejudiced by the error, we conclude the LUC committed reversible error when it applied a heightened burden of proof in its findings of fact. *See* HRS § 91-14(g). We vacate and remand the case to the LUC to make new findings of fact and conclusions of law, applying the preponderance of the evidence standard, consistent with this opinion.

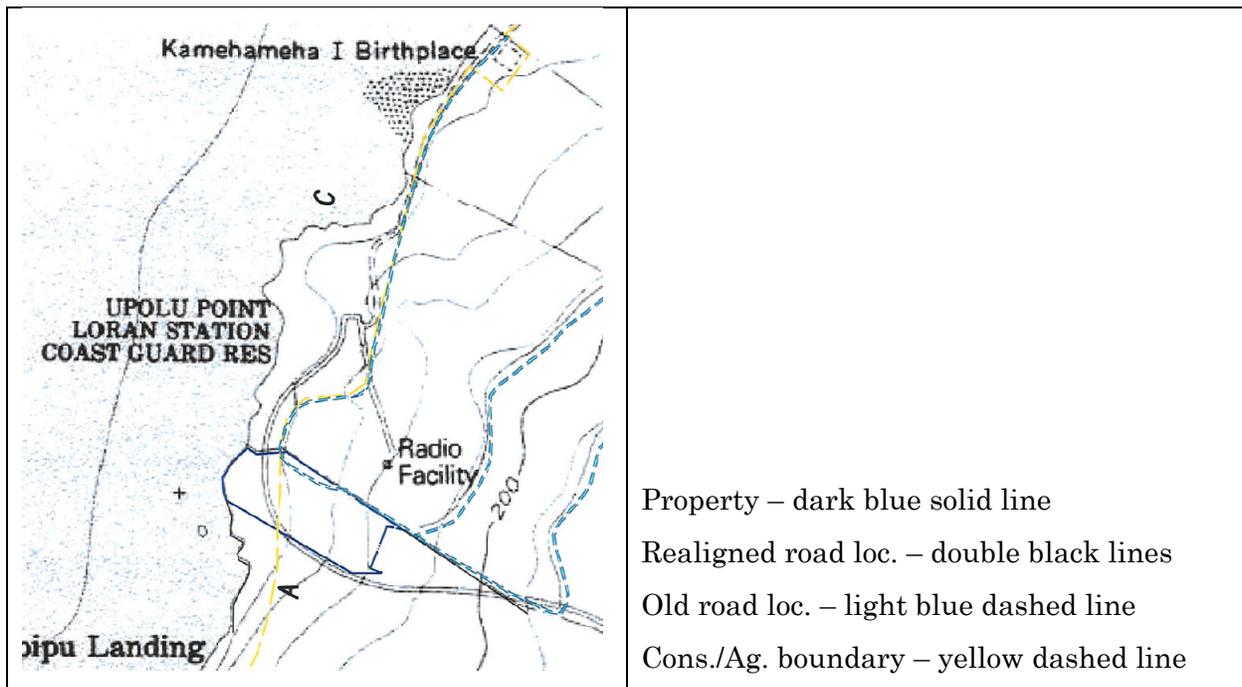
Honoipu Hideaway, 156 Hawai‘i at 377, 575 P.3d at 34 (emphasis added).

III. ANALYSIS

Applying the “preponderance of the evidence” standard as directed by the Hawai‘i Supreme Court, it is more likely than not that the Commission intended to follow the direction of the road as it existed in 1969 in setting the boundary line. It is also more likely than not that the road had been realigned in 1961. The Commission followed the wrong map. To correct the mapping error, Petitioner respectfully asks that the Commission interpret the boundary line as following the actual, realigned location of the road as it existed in 1969.

A. Is it more likely than not that the Commission intended to follow the direction of the road as it existed in 1969 in setting the boundary line?

Yes. First, the intent to follow roads is shown in the maps. As shown in Exhibit 8 and the other maps reviewed above, the boundary set by the Commission (shown in yellow lines) closely followed the direction of the road (shown in light blue lines):

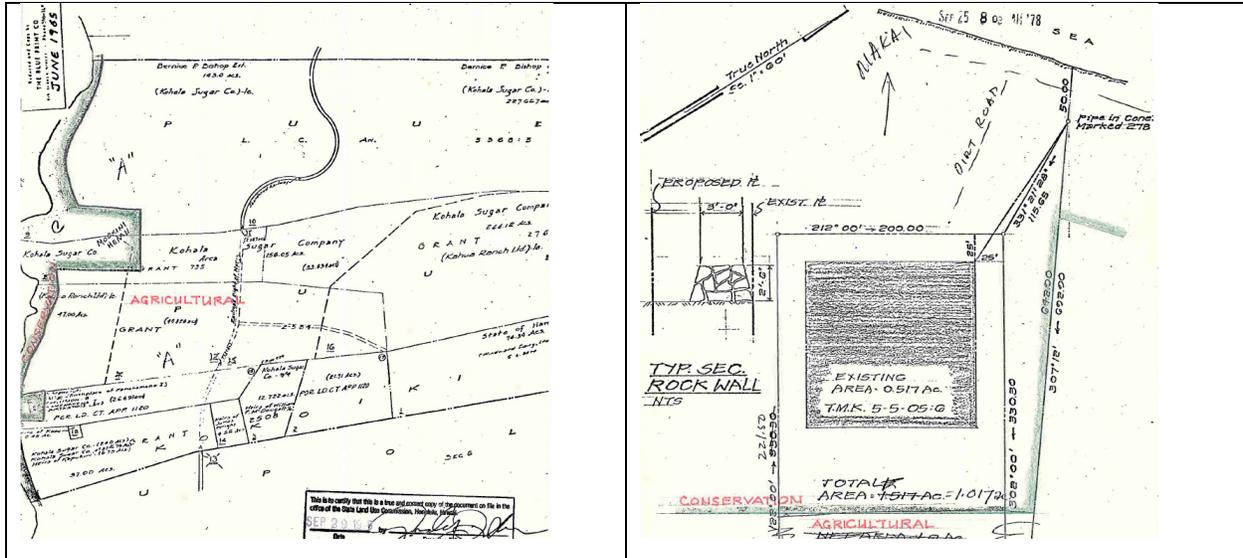


Ex. 8 (1982 USGS Map annotated). The Commission’s 1969 map shows the same thing. Ex. 4.

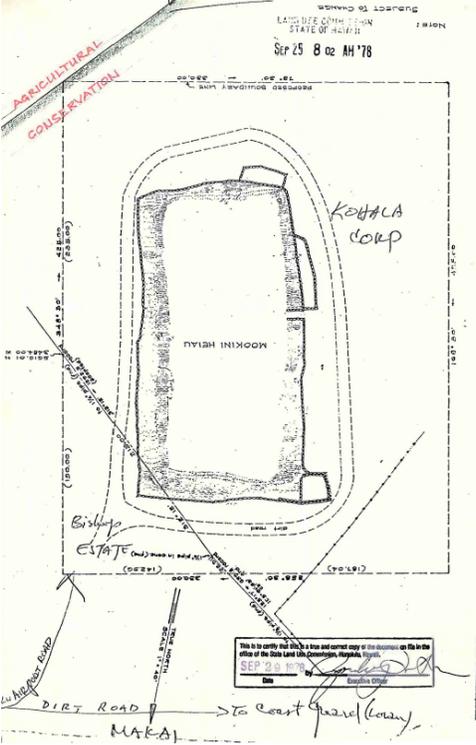
Second, for shoreline parcels in the immediate vicinity of the Property, the Commission has consistently interpreted the boundary line as following the same road that starts at Upolu Airport and continues to the former Loran Coast Guard Station (the Property). Exhibit 49 is a Geographic Information System map from Hawai'i County's Real Property Tax website showing the Property outlined in light blue, other parcels referenced in the Commission's prior boundary interpretations in yellow, and Upolu Airport on the far right:



The Commission illustrated the boundary for the first four parcels highlighted in yellow in 1978 (TMK No. 5-5-005-004, 5-5-005-005, 5-5-005-017, 5-5-005-009). The Commission's boundary interpretation shows that the boundary generally follows the mauka side of the "dirt road," except for the areas that contain the birthplace of King Kamehameha I and Mookini Heiau:



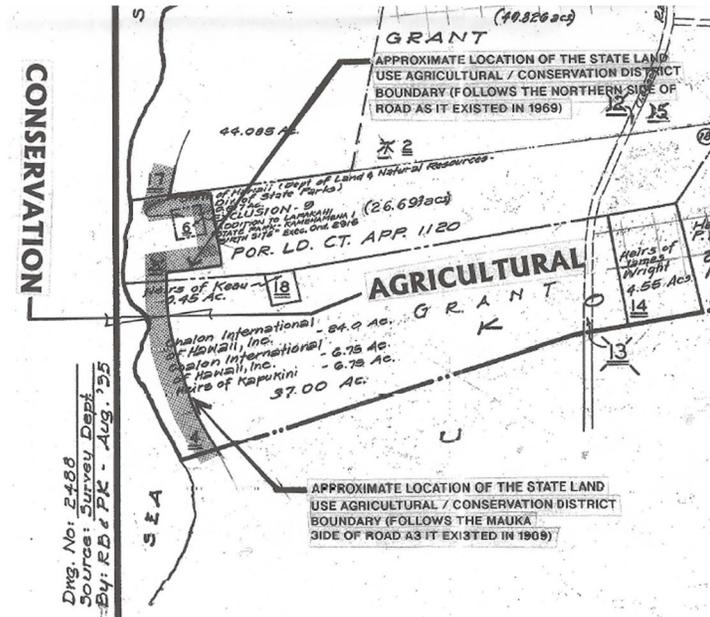
Ex. 51 (Boundary Interpretation for TMK No. 5-5-005-006, in Kohala, pages 2-3). Page three of the same boundary interpretation states that the “DIRT ROAD” leads “To Coast Guard (Loran)”:



Id. (page three).

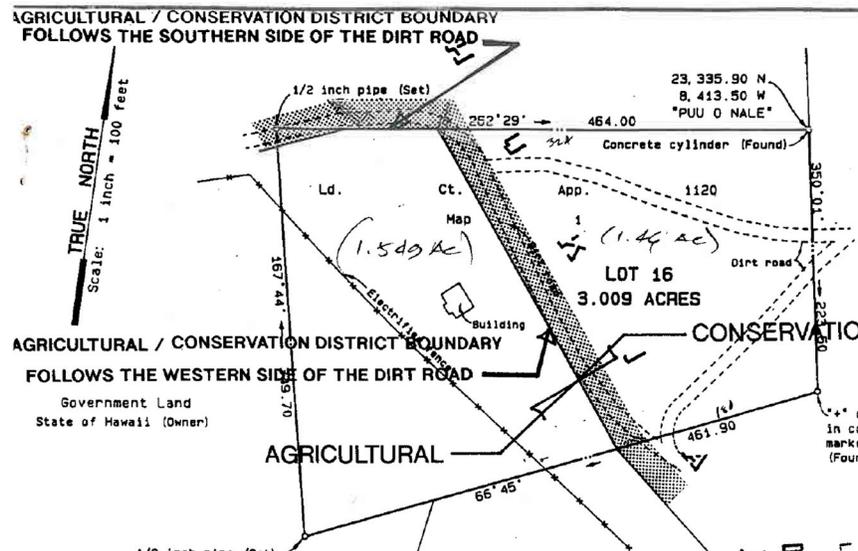
The first parcel on the right highlighted in yellow in Exhibit 49 (TMK No. 5-5-005-004) was the subject of a boundary interpretation again in 1998. As to this parcel, the

Commission made a boundary interpretation that the boundary line “FOLLOWS THE MAUKA SIDE OF THE ROAD AS IT EXISTED IN 1969” (except for the area that contains the birthplace of King Kamehameha I):



Ex. 48 (Boundary Interpretation No. 98-03 for TMK No. 5-5-05:4, in Kokoiki, North Kohala, page 2) (emphasis added).

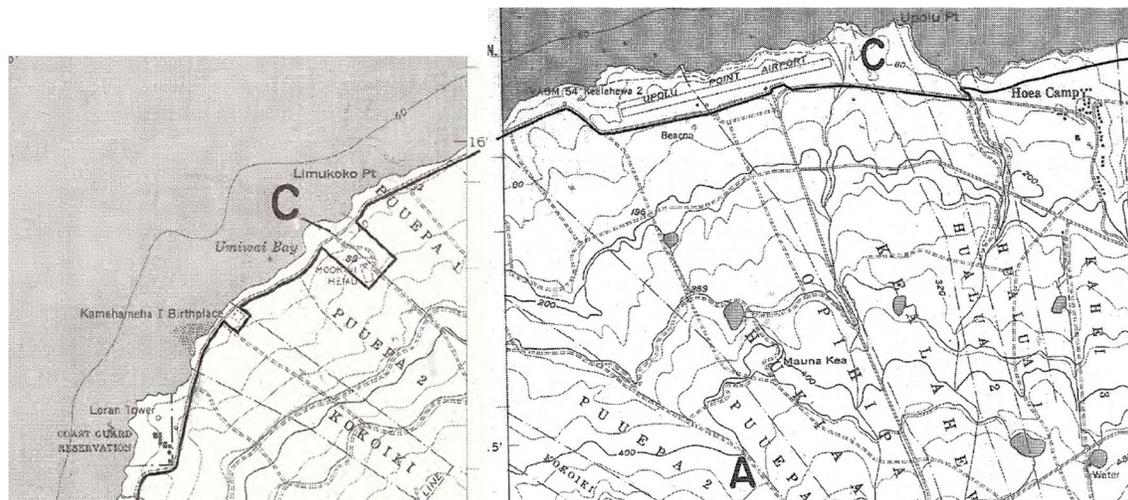
The last parcel on right highlighted in yellow in Exhibit 49 (TMK No. 5-5-006-006) is located eight lots away from the Property. As to this parcel, the Commission made a boundary interpretation that the boundary line follows “THE SOUTHERN SIDE OF THE DIRT ROAD”:



Ex. 47 (Boundary Interpretation No. 95-50 for TMK No. 5-5-006:6, in Upolu Airport, North Kohala, page 2). This parcel (TMK No. 5-5-006-006) is shown on the boundary map for Hawi, which is located immediately to the east of the Mahukona map. Ex. 50 (1974 Commission map for Hawi).

In another boundary interpretation map for inland property shown in the Hawi map (TMK No. 5-3-006-021), the map depicts the shoreline and notes that the shoreline “CONSERVATION / AGRICULTURAL DISTRICT BOUNDARY” “FOLLOWS MAUKA SIDE OF DIRT ROAD AS IT EXISTED AUGUST 4, 1969.” Ex. 46 (Boundary Interpretation No. 08-09, in Ainakea, North Koahala, page 3).⁷

The road shown in these boundary interpretations is part of the same road at issue in this matter, as shown by the Commission’s maps for Mahukona (Ex. 5) and Hawi (Ex. 50):



Third, in originally setting the boundaries, the Commission’s general guidelines set the boundary lines along roads and access ways in the area. *See* Ex. 1 (1969 Land Use Districts and Regulations Review at 86 (“Four major conditions have been recognized and recommendations based upon these conditions have been made for

⁷ For a parcel located to the south of the Property, the Commission issued Boundary Interpretation No. 90-12 for TMK No. 5-7-3:1, 2, 3, 4, 7, 8, 10, 13, 15, in Mahukona, North Kohala. These shoreline parcels are few miles to the south of the Property. The Commission determined that the boundary follows the “MAUKA SIDE OF OLD ‘JEEP TRAIL.’” Ex. 45 (Boundary Interpretation No. 90-12 for TMK No. 5-7-3:1, 2, 3, 4, 7, 8, 10, 13, 15, in Mahukona, North Kohala, page 2).

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.”).⁸

Using any other guideline for setting the boundary would lead to an absurd result. Following the old location of a road is obviously an absurd result.

In the absence of a road or other landmark in the area, the Commission’s guidelines set the boundary line with a 300-foot setback from the shoreline. *See* Ex. 1 at 86. Exhibit 6 shows what a 300-foot setback would look like for the Property:

⁸ The road served as the edge of agricultural use in reasonable proximity to the shoreline. The map in the 1969 Review explains that the lands were presently used for grazing. Ex. 39 at 43; Ex. 35 (excerpt of map with TMK overlay). Coast Guard and federal government correspondence confirms that the land for the station fell within the medium pastureland category, while the lands surrounding the station were also being cultivated for sugarcane. Ex. 33 (federal memorandum noting that Station “land seems to fall into the medium pasture land category”); Ex. 34 (Coast Guard speed letter, noting nearby land was used for “CANE”). Moreover, Nathan testified that the former Coast Guard facility manager had explained to him that the Property had been cultivated by the Coast Guard to provide fresh produce for the Station. 12/22/21 Tr. at 83:15-18, 86:10-21. Further, the aerial photo from 1965 shows the Property as including a pasture with buildings and a road. Ex. 11 (1965 USGS aerial photograph).

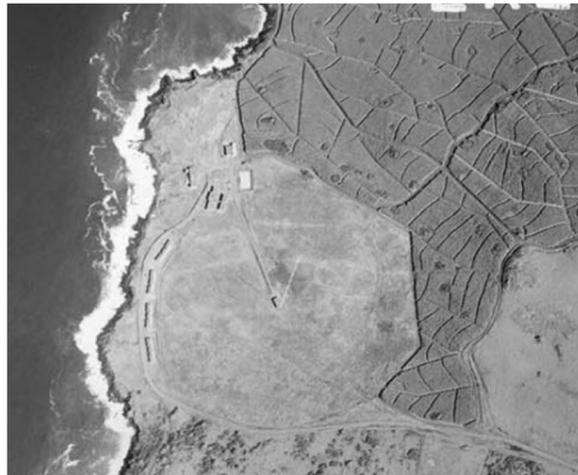
The Commission's 1969 Review makes no mention of a clear vegetative line in this area, *see* Ex. 39 at 36, nor is the Property bounded by steep pali.

In sum, more likely than not, the Commission's intent was to set the boundary line following the direction of the road as it existed in 1969. Petitioner has satisfied its burden.

B. Is it more likely than not that the road was realigned before the Commission drew the boundary line in 1969?

Yes. *See* Ex. 16 (1961 Coast Guard photo of road); Ex. 17 (1961 Coast Guard photo of residences and road); Ex. 15 (1961 article about road realignment); Ex. 14 (1969 Coast Guard information book about station reconstruction in 1960-61); Ex. 13 (1982 USGS map).

This USGS aerial photograph from 1965 shows the realigned location of the road and does not show the old location of the road:



Ex. 11 (1965 aerial photograph showing the realigned road and not showing the old road).

The road had moved by the time the Commission drew the boundary line in 1969. Ex. 4 (1969 Commission map). The Commission's 1969 map does not depict the road in the correct location. This is the mapping error.

C. What is the applicable rule to correct a mapping error?

As the Hawai'i Supreme Court observed, the "boundary interpretation" rule in HAR § 15-15-22 "functions to resolve uncertainties about the spatial relationship

between the LUC map and the land the map represents.” *Honoipu Hideaway*, 156 Hawai‘i at 373, 575 P.3d at 30 (citing HAR § 15-15-22(e)). “The LUC has interpreted uncertainty to include clear mapping errors.” *Id.*

Under this rule, where the Commission intended to set the boundary line by following a landmark (like the top of a pali or cliff) and there is a mapping error in locating a landmark, the Commission has interpreted the boundary line as following the actual location of the landmark at the time the boundary line was drawn. *See Ex. 22-23* (Commission *Stengle* order and amendment). Accordingly, in this case, because the Commission intended to set the boundary line following a landmark (the road) and there was a mapping error in locating the landmark, the Commission is asked to interpret the boundary line as following the actual location of the landmark (the road) at the time the boundary line was drawn in 1969.

Following the Commission’s established “boundary interpretation” rule and past cases promotes public confidence in the Commission as a government institution. As the Hawai‘i Supreme Court has explained, prior agency decisions “generally provide a guide to action that the agency may be expected to take in future cases.” *Application of Hawaiian Elec. Co.*, 81 Hawai‘i 459, 468, 918 P.2d 561, 570 (1996) (quotations omitted).

This requested boundary interpretation will help Petitioner in a meaningful way. The Hawai‘i Supreme Court recounted Nathan’s testimony on this issue:

[Nathan] testified to his motivation for seeking a boundary interpretation, explaining that because the residences on the property are located in the conservation district and subject to special management area, “it’s just a very burdensome process for just living and using my home” because many simple tasks require advance government approval.[Footnote 4]

[Footnote 4:] [Nathan] Eggen described the burdens imposed by the current district boundary location:

You know, [the conservation district boundary] makes it hard to do things as simply as landscaping or planting trees. You know, installing an irrigation system, trying to get solar panels, you know, to reduce my energy costs. Things like repaving my driveway. All those things, you know, they can be done in conservation but they take, you know, a significant amount of extra procedure. Some of them take years to go through the process.

Require, you know, lots of permits and approvals. . . . It's not about that being, you know, good or bad but it's just a very burdensome process for just living and using my home. And I think that correcting this issue would really simplify our lives.

Honoipu Hideaway, 156 Hawai'i at 370 & n.4, 575 P.3d at 27 & n.4; *see also* 12/22/21 Tr. at 82:10-83:3.

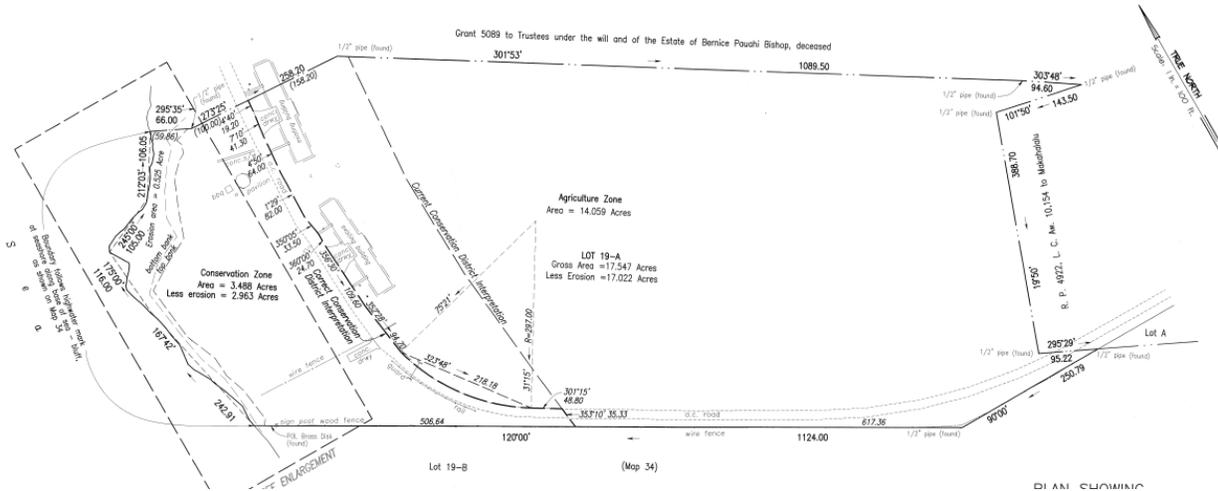
Petitioner does not have plans to develop the Property. 12/22/21 Tr at 85:5-8. As Nathan previously explained, because this is a shoreline parcel the entire Property is still subject to the Special Management Area regulations and almost 4 acres would remain in the Conservation District near the shoreline, "there's no potential land use action that could be done by [him] or anyone ever that wouldn't go through the most rigorous form of regulation from the State of Hawaii" *Id.* at 85:17-20.

Beyond this Property, the broader implications of this requested boundary interpretation are limited. The road was also realigned in the lot to the north of the Property. That parcel to the north is owned by DHHL.

IV. CONCLUSION

By a preponderance of the evidence, the Commission intended to follow the road as it existed in 1969 in setting the boundary line. As of that date, the road had moved from where it was depicted on the map. In accordance with the Commission's established "boundary interpretation" rule, the Commission should interpret the boundary line as following the actual location of the road as it existed in 1969. The requested boundary interpretation is shown in Exhibit 19:

¹⁰ Under the current boundary, approximately 4.794 acres of the parcel are within the Conservation District and 12.228 acres are within the Agricultural District. *See* Petition at 5. Under the corrected boundary interpretation, 2.963 acres of the parcel will be in the Conservation District and 14.059 will be in the Agricultural District. Ex. 19 (survey).



Ex. 19 (survey showing requested “Correct Conservation District Interpretation”).

We thank the Commissioners and staff for their consideration of this Petition.

DATED: Honolulu, Hawai‘i, March 10, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Christopher T. Goodin

 CALVERT G. CHIPCHASE
 CHRISTOPHER T. GOODIN
 Attorneys for Petitioner
 HONOIPU HIDEAWAY, LLC

BEFORE THE LAND USE COMMISSION
OF THE 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.

DOCKET NO. DR21-73

**FOURTH SUPPLEMENTAL
EXHIBIT LIST**

FOURTH SUPPLEMENTAL EXHIBIT LIST

Honoipu Hideaway, LLC, a Hawai'i limited liability company, respectfully submits this fourth supplemental exhibit list that adds Exhibits 40-52. These exhibits are attached.

Ex.	Description
1.	Eckbo, Dean, Austin & Williams, State of Hawaii Land Use Regulations Review (1969)
2.	Land Use Commission Rules (1964)
3.	1964 LUC Map Certified
4.	1969 LUC Map Certified
5.	1974 LUC Map Certified
6.	Overlay Property with 300-ft Setback
7.	Overlay Map 300-ft Setback
8.	1982 USGS Map Overlay
9.	1954 Aerial Excerpt
10.	1954 Aerial
11.	1965 Aerial Excerpt
12.	1965 Aerial Original
13.	1982 USGS Certified Map

Ex.	Description
13A.	1957 USGS Certified Original
13B.	1982 USGS Certified Map
14.	Loran Station Info Book
15.	250 Kohalans Article
16.	1961 USCG Road Picture
17.	1961 USCG House Picture
18.	GIS Aerial Photo
19.	Corrected Boundary Survey
20.	Overlay New Road Current Line
21.	Application of Hawaiian Electric Company Inc.
22.	<i>Stengle</i> Declaratory Order
23.	<i>Stengle</i> Amendment
24.	<i>Church</i> Petition
25.	<i>Linge v. Hawaii Government Employees Association AFSCME Local 152 AFL-CIO</i>
26.	Civil Jury Instructions 3.3
27.	<i>Waikiki Marketplace Investment Co. v. Chair of Zoning Board of Appeals of City and County of Honolulu</i>
28.	<i>Denning v. Maui County</i>
29.	<i>Nakamine v. Board of Trustees of Employees Retirement System</i>
30.	<i>Lucas v. South Carolina Coastal Council</i>
31.	<i>Penn Central Transportation Co. v. City of New York</i>
32.	County Zoning Map
33.	Office Memorandum dated March 17, 1959
34.	U.S. Coast Guard Speed Letter dated September 18, 1959
35.	1969 Review Agricultural Uses Map TMK Overlay Excerpt
36.	1969 Review Agricultural Uses Map TMK Overlay
37.	1954 USGS Aerial Excerpt TMK Overlay
38.	1954 USGS Aerial TMK Overlay

Ex.	Description
39.	Eckbo, Dean, Austin & Williams, State of Hawaii Land Use Regulations Review (1969) (Full Copy)
40.	<i>Honoipu Hideaway, LLC v. Land Use Comm’n</i> , 156 Hawai‘i 367, 575 P.3d 24 (2025)
41.	Public Testimony of Marcelle “Malu” Loren (submitted by email 12/19/21)
42.	Public Testimony of Linda & Marty Halbritter (submitted by email 12/18/22)
43.	<i>In re Harold K.L. Castle Foundation</i> , LUC Docket No. DR96-19 (1996), available at https://luc.hawaii.gov/wp-content/uploads/2014/01/DR96-19_11-25-96.pdf
44.	<i>In the Matter of the Petition of City & County of Honolulu</i> , Docket No. DR99-22, available at https://luc.hawaii.gov/wpcontent/uploads/2022/03/DR99-22_11-9-99.pdf
45.	Boundary Interpretation No. 90-12, in Mahukona, North Kohala
46.	Boundary Interpretation No. 08-09, in Ainakea, North Kohala
47.	Boundary Interpretation No. 95-50, in Upolu Airport, North Kohala
48.	Boundary Interpretation No. 98-03 for TMK No. 5-5-05:4, in Kokoiki, North Kohala
49.	GIS map of the Property in this matter (TMK No. (3) 5-6-001-074), and properties including TMK No. 5-5-005-004, TMK No. 5-5-005-005, TMK No. 5-5-005-017, and TMK No. 5-5-005-009.
50.	1974 Commission map for Hawi, North Kohala
51.	Boundary Interpretation for TMK No. 5-5-005-006, in Kohala
52.	Public Testimony of Stephen Smith (submitted by email 12/20/21)

DATED: Honolulu, Hawai'i, March 10, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Christopher T. Goodin

CALVERT G. CHIPCHASE
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HONOIPU HIDEAWAY, LLC

156 Hawai'i 367
Supreme Court of Hawai'i.

HONOIPU HIDEAWAY, LLC, Appellant-Appellant,
v.
State of Hawai'i, LAND USE COMMISSION, Appellee-Appellee.

SCOT-24-0000498

|
August 28, 2025

Synopsis

Background: Littoral property owner appealed from decision of the Land Use Commission (LUC) denying its petition for declaratory order requesting LUC determine conservation district boundary, due to belief that LUC relied on outdated maps showing incorrect location of a road to draw LUC map. Appeal was transferred nunc pro tunc to the Supreme Court.

Holdings: The Supreme Court, [Recktenwald](#), C.J., held that:

[1] as a matter of first impression, LUC must apply preponderance of the evidence standard to its findings of fact on district boundary interpretation absent rulemaking to the contrary;

[2] LUC failed to properly apply preponderance of the evidence standard; and

[3] LUC committed reversible error when it applied a heightened burden of proof in its findings of fact.

Vacated and remanded.

West Headnotes (21)

[1] **Administrative Law and Procedure** 🔑 [Conclusions of law in general](#)

Under the Administrative Procedure Act, an agency's conclusions of law are reviewable by courts for being in violation of constitutional or statutory provisions, or for being in

EXHIBIT 40

excess of the agency's statutory authority or jurisdiction, or for being affected by other error of law. [Haw. Rev. Stat. § 91-14\(g\)\(1, 2, 4\)](#).

[2] Administrative Law and Procedure 🔑 [Review of Procedural Matters in General](#)

Under the Administrative Procedure Act, questions regarding procedural defects for an agency's decisions are reviewable by courts for being made upon unlawful procedure. [Haw. Rev. Stat. § 91-14\(g\)\(3\)](#).

[3] Administrative Law and Procedure 🔑 [Substantial evidence](#)

Under the Administrative Procedure Act, an agency's findings of fact are reviewable by courts for being clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. [Haw. Rev. Stat. § 91-14\(g\)\(5\)](#).

[4] Administrative Law and Procedure 🔑 [Discretion of agency; abuse of discretion](#)

Under the Administrative Procedure Act, an agency's exercise of discretion is reviewable by courts for being arbitrary, or capricious, or characterized by abuse of discretion, or a clearly unwarranted exercise of discretion. [Haw. Rev. Stat. § 91-14\(g\)\(6\)](#).

[5] Appeal and Error 🔑 [Statutory or legislative law](#)

The interpretation of a statute is a question of law which is reviewed de novo.

[6] Statutes 🔑 [Language](#)

Fundamental starting point for statutory interpretation is the language of the statute itself.

[7] Statutes 🔑 [Plain language; plain, ordinary, common, or literal meaning](#)

Where the statutory language is plain and unambiguous, court's sole duty is to give effect to its plain and obvious meaning.

[8] Statutes 🔑 [Language and intent, will, purpose, or policy](#)

Implicit in the task of statutory construction is foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself.

[9] **Statutes** 🔑 What constitutes ambiguity; how determined

When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

[10] **Administrative Law and Procedure** 🔑 Construction

The general principles of construction which apply to statutes also apply to administrative rules.

1 Case that cites this headnote

[11] **Administrative Law and Procedure** 🔑 Plain language; plain, ordinary, or common meaning

As in statutory construction, courts look first at an administrative rule's language.

1 Case that cites this headnote

[12] **Administrative Law and Procedure** 🔑 Clarity and ambiguity; multiple meanings

If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning.

1 Case that cites this headnote

[13] **Zoning and Planning** 🔑 Power to modify or amend in general

Absent uncertainty, district boundary interpretation is not the appropriate vehicle to change a district boundary; recourse must instead be made to the district boundary amendment procedures required by law. [Haw. Rev. Stat. §§ 205-3.1, 205-4](#); [Haw. Admin. Rules § 15-15-22](#).

[14] **Zoning and Planning** 🔑 Decisions of boards or officers in general

Like other final agency decisions and orders, Land Use Commission (LUC) orders disposing of petitions for declaratory orders are subject to judicial review under the Administrative Procedure Act. [Haw. Rev. Stat. §§ 91-8, 91-14\(g\)](#); [Haw. Admin. Rules § 15-15-14](#).

[15] Evidence 🔑 **Standard, Degree, or Quantum of Proof**

The purpose of fixing a particular standard of proof is to instruct the factfinder concerning the degree of confidence that society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.

[16] Administrative Law and Procedure 🔑 **Degree of Proof**

Absent a statute or court rule requiring a higher standard, administrative hearings are governed by a preponderance of the evidence standard. [Haw. Rev. Stat. § 91-1 et seq.](#)

[17] Zoning and Planning 🔑 **Boundaries of districts**

Land Use Commission's (LUC) findings of fact in a declaratory order on district boundary interpretation must apply preponderance of the evidence standard absent rulemaking to the contrary. [Haw. Rev. Stat. §§ 91-1 et seq., 205-1 et seq.](#); [Haw. Admin. Rules §§ 15-15-14, 15-15-98, 15-15-100](#).

[18] Zoning and Planning 🔑 **Boundaries of districts**

Land Use Commission (LUC) failed to properly apply preponderance of evidence standard, and instead, erroneously applied heightened burden of proof when it denied littoral property owner's petition for boundary interpretation to correct alleged error in location of conservation district boundary on land use district boundaries map, where it expressly found lack of "conclusive" evidence and stated in its conclusion of law that Commission did not find any compelling evidence that LUC maps' demarcation lines were improperly drawn. [Haw. Rev. Stat. §§ 91-8, 91-14\(g\)\(4\)](#); [Haw. Admin. Rules § 15-15-14](#); [Haw. Admin. Rules § 15-15-22](#).

[19] Zoning and Planning 🔑 **Boundaries of districts**

Land Use Commission's (LUC) application of heightened burden of proof, rather than preponderance of evidence standard in its findings of fact could have changed outcome

on littoral property owner's petition for boundary interpretation to correct alleged error in location of conservation district boundary on land use district boundaries map, such that it could not be said that owner's substantial rights were not prejudiced, and thus, PUC committed reversible error. [Haw. Rev. Stat. §§ 91-8, 91-14\(g\)\(4\)](#); [Haw. Admin. Rules § 15-15-22](#); [Haw. Admin. Rules § 15-15-14](#).

[20] Administrative Law and Procedure 🔑 Prejudice; prejudicial error

Administrative Law and Procedure 🔑 Particular Errors

Administrative Procedures Act precludes judicial reversal or modification of an administrative decision even where affected by error of law unless substantial rights of the petitioner may have been prejudiced. [Haw. Rev. Stat. § 91-14\(g\)](#).

[21] Administrative Law and Procedure 🔑 Agency expertise in general

The Supreme Court defers to those agencies with the na‘auao (knowledge/wisdom) on particular subject matters to get complex issues right.

APPEAL FROM THE LAND USE COMMISSION (CASE NO. 3CCV-22-0000088; AGENCY DOCKET NO. DR21-73)

Attorneys and Law Firms

[Calvert G. Chipchase](#) and [Christopher T. Goodin](#), Honolulu, for appellant

[Miranda C. Steed](#), Honolulu, for appellee

[RECKTENWALD](#), C.J., [McKENNA](#), [EDDINS](#), [GINOZA](#), AND [DEVENS](#), JJ.

OPINION OF THE COURT BY [RECKTENWALD](#), C.J.

***369 **26 I. INTRODUCTION**

This case concerns the correction of an alleged error in a conservation district boundary map on Hawai‘i Island. Appellant Honoipu Hideaway, LLC (Honoipu) seeks to use district boundary interpretation under [Hawai‘i Administrative Rules \(HAR\) § 15-15-22](#) (eff. 2019) to correct

an alleged error in the location of the conservation district boundary on the 1974 Land Use District Boundaries map. The Land Use Commission (LUC) denied Honoipu's petition, rejecting Honoipu's suggested interpretation of the district boundary. Honoipu appealed the LUC's Order Denying Petition for Declaratory Order, arguing, *inter alia*, the LUC imposed an incorrect burden of proof for its findings of fact. We hold that, absent rulemaking to the contrary, the proper burden of proof is the preponderance of the evidence standard. Because we conclude the LUC applied a heightened burden of proof, we vacate and remand to the LUC.

II. BACKGROUND

Honoipu purchased 17.547 acres of littoral property in Kapaa-Upolu, North Kohala, Island and County of Hawai'i, for \$905,000 in 2018. According to the State Land Use District Boundaries Map H-3 (Māhukona), dated 1974, the property consists of approximately 4.794 acres within the conservation district and 12.228 acres within the agricultural district.¹ The petition contends that the district boundary between the conservation district and the agricultural district on Honoipu's property follows the location of an old dirt road, rather than a newer road that had been built makai of the original road in 1961, prior to the drawing of the first LUC map in 1964. Had the LUC map followed the makai location of the new road as of 1961, 1.813 acres of land currently within the conservation district would have fallen within the agricultural district. Honoipu believes the LUC relied on outdated maps showing the incorrect location of the road to draw the LUC map.

¹ Because 0.525 acres of the total 5.319 acres of Honoipu's parcel that falls within the conservation district was identified as an erosion area in 2021, this petition only involves the remaining 4.794 acres within the conservation district.

Honoipu petitioned the LUC for a declaratory order requesting that the LUC “determine” the conservation district boundary along the mauka edge of the road as it actually existed in 1974, which Honoipu contended ***370 **27** was consistent with the LUC's intent. Relying on the 1969 State of Hawai'i Land Use Districts and Regulations Review, Honoipu argued that the LUC intended to follow the new road and erred in maintaining the district boundary where the old road had been located.²

² The State of Hawai'i Land Use Districts and Regulations Review report, prepared by Eckbo, Dean, Austin & Williams to document the recommendations and actions in the 1969 Five-Year Boundary Review, provides in relevant part:

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.
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.

Eckbo, Dean, Austin & Williams, State of Hawai'i Land Use Districts and Regulations Review 86 (1969) (emphasis added).

In response, the LUC staff issued a report acknowledging that the road had been moved makai of its original location, but explained that the old road roughly corresponded to a 300-foot setback from the coastline and concluded that the LUC “likely” retained the 300-foot setback to avoid a costly and unnecessary redrawing of the district boundaries. Thus, LUC staff concluded that the LUC map was properly drawn as intended.

A public hearing was held,³ at which Honoipu's attorney gave a presentation in support of its petition and at which one of Honoipu's managing members who resides on the property, Nathan Eggen, gave sworn testimony. During the presentation, Honoipu's attorney offered cartographic and photographic evidence to suggest that the conservation district boundary on the property was erroneously drawn in its present location and was instead properly located following the new road. Following the presentation, Eggen testified to his motivation for seeking a boundary interpretation, explaining that because the residences on the property are located in the conservation district and subject to special management area, “it's just a very burdensome process for just living and using my home” because many simple tasks require advance government approval.⁴

³ No oral testimony from the general public was given.

⁴ Eggen described the burdens imposed by the current district boundary location:
You know, [the conservation district boundary] makes it hard to do things as simply as landscaping or planting trees. You know, installing an irrigation system, trying to get solar panels, you know, to reduce my energy costs. Things like repaving my driveway. All those things, you know, they can be done in conservation but they take, you know, a significant amount of extra procedure. Some of them take years to go through the process. Require, you know, lots of permits and approvals.... It's not about that being, you know, good or bad but it's just a very burdensome process for just living and using my home. And I think that correcting this issue would really simplify our lives.

The Office of Planning and Sustainable Development (OPSD) opposed Honoipu's petition for a declaratory order, both in a December 13, 2021 statement of position and at the December 22, 2021 hearing. At the hearing, OPSD opposed the petition on the basis that it did not “find sufficient reason to believe that the current official boundary is incorrect or that petitioner's alternate interpretation is instead the correct one.” The County of Hawai‘i also appeared at the hearing but took no position, stating, “It's the county's belief that a determination regarding changes to state land use boundaries is the jurisdiction of the LUC and not the county.”

Following the hearing, the LUC voted unanimously to deny Honoipu's petition. One of the LUC Commissioners, Commissioner Giovanni, explained his rationale supporting the motion to deny Honoipu's petition:

You know, for me, I have a very high bar when it comes to the LUC making a change of a district boundary from conservation to agriculture or other. And I always look to a [district boundary amendment] *371 **28 as being the proper course of action. In this case, they're looking for a simple declaratory ruling that would remedy the situation from the perspective of the landowner. I get it. I understand it. It is a simpler course of action. But for me, the case would have to

be overwhelmingly compelling because I have such a high bar when it comes to conservation land. I think that [Honoipu's attorney] put forth a reasonable explanation. I think that it would be possible to put forward contrary reasonable explanations and I think the [OPSD] has done that to some extent. I really believe that this matter would be -- if the landowner is so inclined to pursue it, would be better and more appropriately addressed by the LUC in a [district boundary amendment]. I know that's more complicated, more expensive, but that's the risk you take when you buy conservation land. I will be supporting the motion.

(Emphasis added.)

In its Order Denying Petition for Declaratory Order, filed February 28, 2022, the LUC specifically found that Honoipu failed to present conclusive evidence of a mapping error:

44. The Commission did not find that Petitioner's evidence was conclusive that the [new] 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.

....

47. Petitioner's assertion that the [new] 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.

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.

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.

(Emphasis added) (record citations omitted).

As such, the LUC made the following relevant conclusions of law:

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 [sic]

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

(Emphasis added.)

Honoipu timely appealed the LUC's order to the Circuit Court for the Third Circuit and, pursuant to our recent decision in [Honoipu Hideaway, LLC v. Land Use Commission](#), 154 Hawai'i 372, 550 P.3d 1230 (2024), the appeal was transferred nunc pro tunc to this court.

III. STANDARD OF REVIEW

A. Agency Appeals

A court's review of administrative agency decisions is governed by [HRS § 91-14\(g\)](#) (Supp. 2016), which provides:

Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative *372 **29 findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

[1] [2] [3] [4] “Under [HRS § 91-14\(g\)](#), conclusions of law are reviewable under subsections (1), (2), and (4); questions regarding procedural defects under subsection (3); findings of fact under subsection (5); and an agency's exercise of discretion under subsection (6).” [Rosehill v. Land Use Comm'n](#), 155 Hawai'i 41, 50, 556 P.3d 387, 396 (2024) (quoting [In re Kanahele](#), 152 Hawai'i 501, 510, 526 P.3d 478, 487 (2023)).

B. Statutory Interpretation

[5] [6] [7] [8] [9] “The interpretation of a statute is a question of law which this court reviews de novo.” [Kanahele](#), 152 Hawai'i at 509, 526 P.3d at 486 (quoting [Keep the N. Shore Country v. Bd. of Land & Nat. Res.](#), 150 Hawai'i 486, 50[3], 506 P.3d 150[, 167] (2022)).

In reviewing questions of statutory interpretation, we are guided by the following principles:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

[State v. Castillon](#), 144 Hawai'i 406, 411, 443 P.3d 98, 103 (2019) (quoting [Panado v. Bd. of Trs., Emps.' Ret. Sys.](#), 134 Hawai'i 1, 1[1], 332 P.3d 144, 15[4] (2014)).
[Rosehill](#), 155 Hawai'i at 49, 556 P.3d at 395.

C. Interpretation of Administrative Rules

[10] [11] [12] The general principles of construction which apply to statutes also apply to administrative rules. As in statutory construction, courts look first at an administrative rule's language. If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning.

[Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of the City and Cnty. of Honolulu](#), 114 Hawai'i 184, 194, 159 P.3d 143, 153 (2007) (citations omitted).

IV. DISCUSSION

On appeal, Honoipu presents three points of error, challenging: (1) the LUC's application of a heightened burden of proof for its factual findings; (2) the LUC's findings of fact ¶¶ 44, 45, 47, 48, and 49; and (3) the LUC's conclusions of law ¶¶ 12 and 13, as well as its denial of the petition. We first address the appropriate burden of proof, which is dispositive.

A. District Boundary Interpretation is Only Proper Where the Location of a District Boundary is Uncertain

As an initial matter, Honoipu's petition for declaratory order does not seek a district boundary amendment. Amendment of a conservation district boundary must satisfy the rigorous procedural and substantive safeguards mandated by [HRS § 205-4\(h\)](#) (2017),⁵ *373 **30 including proof by “clear preponderance of the evidence that the proposed boundary is reasonable ... and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17.” [HRS § 205-16](#) (2017) provides “No amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai‘i state plan.” [HRS § 205-17](#) (2017) requires the commission to consider, inter alia, the “impact of the proposed reclassification” on the “[p]reservation or maintenance of important natural systems or habitats” and “[m]aintenance of valued cultural, historical, or natural resources.” [HRS § 205-17\(3\)](#). [HAR § 15-15-50](#) (eff. 2019), effectuating [HRS §§ 205-4](#) and [-17](#), requires, inter alia, “an approved environmental impact statement or finding of no significant impact” and a “written disclosure and analysis addressing Hawaiian customary and traditional rights under [a]rticle XII, section 7 of the Hawai‘i State Constitution.” [HAR § 15-15-50\(b\), \(c\)\(21\)](#).

⁵ “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 [HRS] section 205-4.” [HRS § 205-3.1\(a\)](#) (2017) (emphasis added).

[13] Instead, Honoipu's petition for a declaratory order requested that the LUC interpret the district boundaries on its property under [HAR § 15-15-22](#)⁶ and “determine” the location of the conservation district boundary along the existing road rather than its current location on the LUC map. That is to say, Honoipu believes the district boundary as depicted on the LUC map was unintended and in error, thus uncertainty exists. [HAR § 15-15-22](#), which was promulgated under the LUC's general authority to promulgate rules under [HRS §§ 205-1](#) (2017) and [-7](#) (2017),⁷ permits limited review by the LUC to “resolve an uncertainty concerning the location of any district line” and “determine the location of those district lines.” [HAR § 15-15-22\(f\)](#). Thus, district boundary interpretation under [HAR § 15-15-22](#) functions to resolve uncertainties about the spatial relationship between the LUC map and the land the map represents. See, e.g., [HAR § 15-15-22\(e\)](#). The LUC has interpreted uncertainty *374 **31 to include clear mapping errors.⁸ See [Rosehill](#),

155 Hawai'i at 58, 556 P.3d at 404 (“If the statute was silent or ambiguous as to the question at hand, the court would defer to the administrative agency's reasonable interpretation of the statute.”). Absent uncertainty, district boundary interpretation is not the appropriate vehicle to change a district boundary; recourse must instead be made to the district boundary amendment procedures required by law. HAR § 15-15-22; HRS §§ 205-3.1, -4.

6 HAR § 15-15-22, “Interpretation of district boundaries,” provides in relevant part:

(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....

(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.

The executive officer may employ, or require that the party requesting the boundary interpretation employ, at its sole expense, a registered professional land surveyor to prepare a map for 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;

(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.

(Emphasis added.)

7 HRS § 205-1, which establishes the LUC, provides in relevant part that “[the LUC] shall adopt rules guiding its conduct.” HRS § 205-7, which governs the adopting, amendment, and repeal of its rules, provides “The [LUC] shall adopt, amend or repeal rules relating to matters within its jurisdiction in the manner prescribed in chapter 91.”

8 The LUC has granted petitions for declaratory orders brought pursuant to HAR § 15-15-22 where it found the LUC map manifestly differed from its stated intent. See *In re Stengle*, Docket No. DR99-21 (Mar. 24, 1999), as amended (Mar. 25, 1999) (ordering the LUC map be amended to reflect a district boundary along the top ridge of the pali as intended by its drafters); *In re Harold K.L. Castle Found.*, Docket No. DR96-19 (Nov. 25, 1996) (ordering the LUC map be amended to include the entire property in the urban district based on existing urban improvement on property consistent with legislative intent); *In re City and Cnty. of Honolulu*, Docket No. DR99-22 (Nov. 9, 1999) (ordering the LUC map be amended to reflect a district boundary following an actively used road as intended by its drafters).

B. The Appropriate Burden of Proof is Preponderance of the Evidence

First, Honoipu argues that the LUC erred in applying a heightened burden of proof in its findings of fact. Honoipu points to the LUC's express findings that the evidence proffered by Honoipu was neither “conclusive” nor “compelling” as to the LUC map drafter's intent or the presence of a mapping error. Instead, Honoipu contends that the burden of proof for findings of fact before the LUC should be the preponderance of the evidence standard in the absence of any rulemaking to the contrary. The State variously asserts that the LUC did not err because either no burden of proof applied or because the LUC properly applied the preponderance of the evidence standard

when making its findings. What burden of proof, if any, applies to the LUC's findings of fact in a declaratory order appears to be a question of first impression.

The State argues that because the LUC's review under [HAR § 15-15-22](#) is a limited review of its own records and not a necessary evidentiary hearing, no burden of proof applies to its factual findings. The State is wrong.

1. HAR § 15-15-59 imposes some burden of proof on the party initiating an LUC proceeding

District boundary interpretations are petitions for declaratory orders brought pursuant to [HRS § 91-8](#) and [HAR subchapter 14, §§ 15-15-98 to -104.1](#). When resolving a petition for declaratory order, the LUC may either grant or deny the petition without a hearing,⁹ or set the petition for a hearing. [HAR §§ 15-15-100](#) (eff. 2019) (providing that the LUC must either grant, deny, or set a hearing for a petition for declaratory order within 90 days of its submission). Whether the LUC holds a hearing on a petition for declaratory order, including for district boundary interpretation petitions, is at the LUC's discretion. [HAR § 15-15-103](#) (“The commission may, but shall not be required to, conduct a hearing on a petition for declaratory order.”). Thus, because a boundary interpretation hearing is not “a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing,” it is not a contested case for purposes of the Hawai‘i Administrative Procedure Act (HAPA). [HRS § 91-1](#) (defining contested case); [Kanahele, 152 Hawai‘i at 511, 526 P.3d at 488](#) (quoting [Lingle v. Haw. Gov't. Emps. Ass'n AFSCME, Local 152, AFL-CIO, 107 Hawai‘i 178, 184, 111 P.3d 587, 593 \(2005\)](#) (“[D]iscretionary hearings are not contested cases because they are not required by law.”)). Therefore, the preponderance of the evidence standard required by [HRS § 91-10](#) would not apply.¹⁰ However, ***375 **32** that does not mean that no burden of proof would apply.

⁹ The LUC may also “dismiss a petition for declaratory order that fails in material respect to comply with the requirements of this subchapter.”

¹⁰ [HRS § 91-10](#), “Rules of evidence; official notice,” provides in relevant part: “In contested cases: ... (5) [e]xcept as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.”

Instead, [HAR § 15-15-100](#) provides that when the LUC “[s]et[s] the petition for hearing before the commission,” “[t]he procedures set forth in subchapter 7 shall be applicable.” [HAR § 15-15-100\(a\) \(e\)](#). Subchapter 7, [HAR §§ 15-15-51 to -76](#), which governs LUC hearings, in turn provides that “the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion.” [HAR § 15-15-59\(a\)](#) (eff. 2019). While subchapter 7 does not define the requisite burden of proof, [HAR § 15-15-59](#) makes clear that in proceedings before the LUC,¹¹ including district boundary interpretation, some burden of proof applies.

11 HAR § 15-15-03 (eff. 2019) defines a “proceeding” for the purposes of chapter 15 of the HAR:

“Proceeding” means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:

- (1) Petitions for district boundary amendment;
- (2) Petitions for special permit;
- (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
- (4) Petitions for declaratory orders under section 91-8, HRS;
- (5) An investigation or review instituted or requested to be initiated by the commission; and
- (6) All other matters in the administration of chapter 205, HRS.

[14] Requiring a burden of proof is consistent with our precedent and the HAPA, which permits judicial review of agency decisions. Like other final agency decisions and orders, orders disposing of petitions for declaratory orders are subject to judicial review under HRS § 91-14(g). Lingle, 107 Hawai'i at 186, 111 P.3d at 595 (“[W]e hold that orders disposing of petitions for declaratory rulings under HRS § 91-8 are appealable ... pursuant to HRS § 91-14.”). As relevant here, HRS § 91-14(g) provides the LUC's findings of fact in a declaratory order will be affirmed unless they are “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” See HRS § 91-14(g)(5); Rosehill, 155 Hawai'i at 50, 556 P.3d at 96 (quoting In re Kanahahele, 152 Hawai'i at 510, 526 P.3d at 487).

Absent a burden of proof, judicial review of district boundary interpretation orders would be impossible. If we were to accept as true the State's argument that no burden of proof applies, judicial review of the LUC's findings of fact in a declaratory order would be thwarted because, without a burden of proof to weigh the evidence against, the court could not determine whether the agency's findings were clearly erroneous. In effect, any evidence, no matter how slight, and any inference made therefrom would be sufficient to defeat effective and meaningful review. Such a result would be contrary to our precedent and the legislature's manifest intent to permit judicial review of agency decisions.¹²

12 In 2016, the legislature acted to give this court direct review of the LUC's final decisions. See HRS § 205-19 (2017) (allowing appeals of final LUC decisions, including of contested cases, “directly to the supreme court for final decision”); see also id. § 91-8 (2017) (“Orders disposing of petitions [for declaratory order] ... shall have the same status as other agency orders.”).

2. The LUC's findings of fact must apply the preponderance of the evidence standard absent rulemaking to the contrary

Because we conclude that some burden of proof must apply, we now turn to what standard is required. Honoipu argues that the preponderance of the evidence standard is the lowest standard and that nothing in the LUC's three sources of authority - the HAPA, HRS §§ 91-1, et seq.; the Commission's enabling statutes, HRS §§ 205-1, et seq.; and the Commission's own rules, HAR §§ 15-15-1, et seq. - requires or justifies the imposition of a higher “conclusive” or “compelling” standard. The State, in its briefing, does not expressly address this issue; instead, the State argues that should the preponderance standard apply, it was satisfied here.

[15] “The purpose of fixing a particular standard of proof is to ‘instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness *376 **33 of factual conclusions for a particular type of adjudication.’ ” [Masaki v. General Motors Corp.](#), 71 Haw. 1, 13-14, 780 P.2d 566, 574 (1989) (quoting [In re Winship](#), 397 U.S. 358, 370, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (Harlan, J., concurring)). This court has explained that “[t]he law has evolved three standards of levels of proof for different types of cases”: preponderance of the evidence, clear and convincing, or beyond a reasonable doubt. [Iddings v. Mee-Lee](#), 82 Hawai‘i 1, 13, 919 P.2d 263, 275 (1996) (quoting [Masaki](#), 71 Haw. at 14, 780 P.2d at 574).

In most civil proceedings, such as a case involving a monetary dispute between private parties, the plaintiff must show by a “preponderance of the evidence” that his or her claim is valid. Under the preponderance standard, the parties share the risks of an erroneous verdict in roughly equal fashion. The preponderance standard directs the factfinder to decide whether “the existence of the contested fact is more probable than its nonexistence.” As one commentator points out, to prevail, “[a] plaintiff need only offer evidence sufficient to tip the scale slightly in his or her favor, and a defendant can succeed by merely keeping the scale evenly balanced.”

At the other end of the spectrum, in criminal proceedings, the government is required to prove its case “beyond a reasonable doubt.” Society has judged that it is significantly worse for an innocent [person] to be found guilty of a crime than for a guilty [person] to go free. Therefore, as stated by the Supreme Court, “[w]here one party has at stake an interest of transcending value—as a criminal defendant his [or her] liberty—this margin of error is reduced as to him by the process of placing on the other party the burden ... of persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt.”

The level of proof between these two extremes is that of “clear and convincing” evidence....

....

Thus, “clear and convincing” evidence may be defined as an intermediate standard of proof greater than a preponderance of the evidence, but less than proof beyond a reasonable doubt required in criminal cases. It is that degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established, and requires the existence of a fact be highly probable.

[Iddings](#), 82 Hawai‘i at 13-14, 919 P.2d at 275-76 (quoting [Masaki](#), 71 Haw. at 14, 780 P.2d at 574) (citations omitted) (brackets and ellipses in original).

[16] Consistent with other jurisdictions across the country, we hold that absent a statute or court rule requiring a higher standard, administrative hearings are governed by a preponderance of the evidence standard. See 2 Am. Jur. 2d [Administrative Law](#) § 316 (“The general standard of proof for administrative hearings is by a preponderance of the evidence.”); [Steadman v. SEC](#), 450 U.S. 91,

102 n.22, 101 S.Ct. 999, 67 L.Ed.2d 69 (1981) (“[T]he APA ha[s] traditionally been held satisfied when the agency decided on the preponderance of the evidence.”); [Craven v. State Ethics Comm'n](#), 390 Mass. 191, 454 N.E.2d 471, 476 (1983) (“Proof by a preponderance of the evidence is the standard generally applicable to administrative proceedings.”); [Seherr-Thoss v. Teton Cnty. Bd. of Cnty. Comm'rs](#), 329 P.3d 936, 944 (Wyo. 2014) (“The normal standard of proof in administrative hearings is the preponderance-of-the-evidence standard.”); [In re Black Hills Power, Inc.](#), 889 N.W.2d 631, 636 (S.D. 2016) (“[T]he burden of proof for administrative hearings is preponderance of the evidence.”).

Adopting the preponderance of the evidence standard is also consistent with other recent LUC declaratory orders disposing of district boundary interpretation petitions brought under [HAR § 15-15-22](#). *E.g.*, [In re Church](#), Docket No. DR21-72 (Mar. 15, 2022), recon. denied (applying preponderance of the evidence standard in a declaratory order denying boundary interpretation petition).

[17] The LUC would be entirely within its power to engage in rulemaking to impose a higher burden of proof in petitions for declaratory orders generally, or for district boundary interpretation involving conservation ~~*377~~ ****34** lands specifically. [HRS § 205-1\(c\)](#) (“[The LUC] shall adopt rules guiding its conduct[.]”); *see also id.* [§ 91-8](#) (“Each agency shall adopt rules prescribing the form of the petitions [for declaratory orders] and the procedure for their submission, consideration, and prompt disposition.”). However, no such rulemaking has occurred. Therefore, we hold that a petitioner's burden of proof for district boundary interpretation is the preponderance of the evidence.

3. The LUC erred when it applied a heightened burden of proof in its findings of fact

We now turn to whether, as asserted by the State, the preponderance of the evidence standard was properly applied. We conclude on the record before us that it was not. The LUC expressly found that Honoipu failed to produce “conclusive” evidence that a mistake had been made on the LUC map and that the conservation district was intended to follow the location of the new road:

44. The Commission did not find that Petitioner's evidence was conclusive that the [new] 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.

(Emphasis added.)

Similarly, at the hearing, Commissioner Giovanni explained that he believed something more than the preponderance of the evidence standard applied:

You know, for me, I have a very high bar when it comes to the LUC making a change of a district boundary from conservation to agriculture or other. And I always look to a [district boundary amendment] as being the proper course of action. In this case, they're looking for a simple declaratory ruling that would remedy the situation from the perspective of the landowner. I get it. I understand it. It is a simpler course of action. But for me, the case would have to be overwhelmingly compelling because I have such a high bar when it comes to conservation land. I think that Mr. Chipchase put forth a reasonable explanation. I think that it would be possible to put forward contrary reasonable explanations and I think the [Office of Planning and Sustainable Development] has done that to some extent. I really believe that this matter would be -- if the landowner is so inclined to pursue it, would be better and more appropriately addressed by the LUC in a [district boundary amendment]. I know that's more complicated, more expensive, but that's the risk you take when you buy conservation land.

[18] Ultimately, the LUC concluded along the same lines, stating in its conclusion of law ¶ 12 that “[t]he Commission did not find any compelling evidence that the LUC maps [sic] demarcation lines were improperly drawn.” (Emphasis added.) Taken together, these indicia support a conclusion that the LUC erroneously applied a heightened burden of proof when it denied Honoipu's petition for declaratory order. See [HRS § 91-14\(g\)\(4\)](#); [Citizens Against Reckless Dev., 114 Hawai'i at 193, 159 P.3d at 152](#).

[19] [20] However, as this court has noted, “the Administrative Procedures Act ... precludes judicial reversal or modification of an administrative decision even where affected by error of law ... unless substantial rights of the petitioner may have been prejudiced.” [Paul v. Dep't of Transp., 115 Hawai'i 416, 431, 168 P.3d 546, 561 \(2007\)](#) (quoting [Survivors of Medeiros v. Maui Land & Pineapple Co., 66 Haw. 290, 293, 660 P.2d 1316, 1319 \(1983\)](#)); [HRS § 91-14\(g\)](#) (providing that a reviewing court “may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced”). Because we cannot say Honoipu's substantial rights were not prejudiced by the error, we conclude the LUC committed reversible error when it applied a heightened burden of proof in its findings of fact. See [HRS § 91-14\(g\)](#). We vacate and remand the case to the LUC to make new findings of fact and conclusions of law, applying the preponderance of the evidence standard, consistent with this opinion.

***378 **35 C. We Decline to Reach Honoipu's Other Challenges to the LUC's Findings of Fact and Conclusions of Law**

[21] Next, Honoipu challenges specific findings of fact and conclusions of law made by the LUC in its order denying its district boundary interpretation petition. In the absence of findings applying the appropriate burden of proof, we decline to weigh in on the merits of Honoipu's petition; instead, in keeping with our precedent, “we defer to those agencies with the *na‘auao* (knowledge/wisdom) on particular subject matters to get complex issues right. ‘Ku‘ia ka hele a ka na‘au ha‘aha‘a

(hesitant walks the humble hearted).’ ” [Rosehill](#), 155 Hawai'i at 59, 556 P.3d at 405 (quoting [City & Cnty. of Honolulu v. Sunoco LP](#), 153 Hawai'i 326, 363, 537 P.3d 1173, 1210 (2023) (Eddins, J., concurring)).

V. CONCLUSION

For the foregoing reasons, we vacate the LUC's Order Denying Petition for Declaratory Order, filed February 28, 2022, denying Honoipu's Petition for Declaratory Order for Boundary Interpretation, filed June 25, 2021, and remand to the LUC for further proceedings consistent with this opinion.

All Citations

156 Hawai'i 367, 575 P.3d 24

Hakoda, Riley K

From: Marcelle "Malu" Loren 808-545-1000 texts welcome
<mloren@islandmortgagehawaii.com>
Sent: Sunday, December 19, 2021 4:32 PM
To: DBEDT LUC
Subject: [EXTERNAL] Comment on DR21-73 - Honoipu Hideaway LLC

Aloha State Land Use Commissioners and Staff,

My name is Marcelle Loren and I have lived at 56-2898 Haleakala View Place in Puakea Bay Ranch since 1993.

I can see the property in question at Old Coast Guard Road from my property and from our equestrian trails and park.

Nathan Eggen has made a positive contribution to this area by cleaning up decrepit military buildings, garbage, squatting, crime, drugs, and making the shoreline area better for the public. I support Nathan's petition to correct the conservation boundary error.

Correction of this public record is the right thing to do. It also does not impact me or this area.

--
Marcelle "Malu" Loren
Direct Cell: 808-545-1000 texts welcomed
56-2898 Haleakala View Place | POB 457 | Hawi | Hi | 96719

EXHIBIT 41

Hakoda, Riley K

From: bubbleglo@aol.com
Sent: Saturday, December 18, 2021 8:31 PM
To: DBEDT LUC
Subject: [EXTERNAL] Public Comment on DR21-73

Aloha Land Use Commissioners,

My name is Linda Halbritter. My husband and I have lived at 56-105 Old Coast Guard Road since 1990 more than 31 years. My home is directly above my neighbor Nathan and Adrian's home at 56-102 Old Coast Guard Road.

I support their petition to correct this state mapping error which has put a big unnecessary burden on their home and lives.

Their presence has been a wonderful improvement to the neighborhood - they have cleaned up the ugly abandoned buildings, reduced crime and drugs, and made the shoreline more accessible to everyone.

Correcting this map mistake will not impact me or any of my neighbors.

Mahalo,
Linda & Marty Halbritter

EXHIBIT 42

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. DR96-19
HAROLD K.L. CASTLE FOUNDATION) DECLARATORY ORDER
For a Declaratory Order Clarifying)
and Correcting the Boundary)
Reclassification of the Land Use)
Commission Under Decision and Order)
Dated June 2, 1975, in Docket No.)
074-8 and Boundary Interpretation)
Dated September 15, 1992, in)
Boundary Interpretation No. 92-40)

NOV 25 9 25 AM '96
LAND USE COMMISSION
STATE OF HAWAII

DECLARATORY ORDER

EXHIBIT 43

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

In the Matter of the Petition of)	DOCKET NO. DR96-19
)	
HAROLD K.L. CASTLE FOUNDATION)	DECLARATORY ORDER
)	
For a Declaratory Order Clarifying)	
and Correcting the Boundary)	
Reclassification of the Land Use)	
Commission Under Decision and Order)	
Dated June 2, 1975, in Docket No.)	
074-8 and Boundary Interpretation)	
Dated September 15, 1992, in)	
Boundary Interpretation No. 92-40)	
<hr/>		

DECLARATORY ORDER

PETITIONER'S INTEREST

Harold K.L. Castle Foundation ("Petitioner") filed a Petition for Declaratory Order, pursuant to sections 15-15-98 and 15-15-22(b)(6), Hawai'i Administrative Rules ("HAR"). Petitioner is the owner in fee simple of approximately 24.059 acres of land located at the northwest corner of Kalaniana'ole Highway and the Kapa'a Quarry Road in Kailua, island of O'ahu, State of Hawai'i, and identified as TMK 4-2-14: 4 ("Property").

Petitioner filed the instant Petition for Declaratory Order "for a declaratory order clarifying and correcting the boundary reclassification of the Land Use Commission under Decision and Order dated June 2, 1975 in Docket No. 074-8 and boundary interpretation dated September 15, 1992 in Boundary Interpretation No. 92-40."

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On September 30, 1996, Petitioner filed its Petition for Declaratory Order, Joinder to Petition for Declaratory Order, and Petitioner's Memorandum in Support of Petition for Declaratory Order.

2. On October 28, 1996, the City and County of Honolulu Planning Department ("Planning Department") filed comments in response to the Petition for Declaratory Order. The Planning Department commented that it had no objections for a declaratory order to clarify that the Property is entirely within the Urban District.

3. On October 29, 1996, Petitioner filed an Amendment to Petition for Declaratory Order and Joinder to Petition for Declaratory Order. Petitioner also filed a Supplemental Memorandum in Support of Petition for Declaratory Order and an Affidavit of Chester Koga of R.M. Towill Corporation, a planning, engineering, and surveying firm.

4. On October 31, 1996, Petitioner filed a Second Supplemental Memorandum in Support of Petition for Declaratory Order and an Affidavit of James T. Funaki, Esq.

5. On November 1, 1996, at its meeting in Honolulu, Hawai'i, the Land Use Commission ("Commission") took action to consider the Petition for Declaratory Order.

POSITION OF PETITIONER

6. Petitioner contends that the Commission should interpret the boundary between the Conservation District and the

Urban District in such a manner that the entire 24.059-acre Property would be located within the Urban District. Petitioner argues that this would be consistent with the overall purpose of Chapter 205 of the Hawai'i Revised Statutes, as amended ("HRS"), and more particularly consistent with the basis and intent of the Commission upon which the reclassification was determined in the 1975 Order.

DESCRIPTION AND BACKGROUND OF THE PROPERTY

7. The Property in question is currently identified as TMK 4-2-14: 4. The Property was originally a portion of a 343.996-acre tract of land, identified as TMK 4-2-14: 2.

8. The Property is located within the State Land Use Urban and Conservation Districts as represented in State Land Use District Boundaries Map O-14 (Mokapu).

9. The Property is located at the northwest corner of Kalaniana'ole Highway and the Kapa'a Quarry Road in Kailua, island of O'ahu, State of Hawai'i.

10. In 1963, the Property was leased by Kaneohe Ranch Company, Limited ("Kaneohe Ranch"), to Consolidated Amusement Company, Limited ("Consolidated"), which proposed to construct the Kailua Drive-In Theater on the Property. Harold K.L. Castle, then owner in fee of the Property, managed the Property and the tract of which it was a part through Kaneohe Ranch, of which he was the sole stockholder. He joined in the lease as lessor.

11. In 1963-1964, Consolidated constructed the Kailua Drive-In Theater, the roadway for egress from the theater, and the slope ramps to control drainage on the Property. The real

property tax assessor assigned the Property its current tax map key number, following the issuance of the lease to Consolidated and the construction of the theater.

12. On August 23, 1964, the Property was classified within the Urban District with the final adoption of the State land use district boundaries.

13. Upon the death of Harold K.L. Castle in 1967, the executors of the Harold Castle Estate dissolved Kaneohe Ranch. The Property was conveyed to Petitioner, which is the successor in interest of Kaneohe Ranch as lessor of the Property. Currently, the remaining 319.937-acre parcel is owned by the Teixeira Family Trust and Michael John Won Suk Shin and Dean Lawrence In Suk Shin, Joinders to the Petition for Declaratory Order herein.

14. In 1974, Commission Boundary Review Docket No. 074-8 proposed the reclassification of approximately 50 acres of land located at Kapa'a, island of O'ahu, from the Urban District to the Conservation District because (i) no urban development was evident on the 50 acres and (ii) portions of the area contained steep slopes which were not suitable for urban development. According to the 1974 Boundary Review Information Meeting and Public Hearing Maps for O'ahu, a portion of the Property was proposed for reclassification to the Conservation District under Docket No. 074-8.

15. By Decision and Order dated June 2, 1975, the Commission reclassified approximately 50 acres of land from the Urban District to the Conservation District in Docket No. 074-8.

The Decision and Order identified the affected lands as TMK 4-2-14: por. 2, which composed the tract of land of which the Property was originally a part and which was undeveloped and in its natural state. The Decision and Order did not include the Property, identified as TMK 4-2-14: 4, in the reclassification to the Conservation District. However, State Land Use District Boundaries Map O-14 (Mokapu), adopted by the Commission following the 1974 Boundary Review, and effective December 20, 1974, delineated the district boundary to include a portion of the Property containing the roadway for egress from the theater and the areas designedly graded for slope ramps within the Conservation District.

16. In 1991, Consolidated assigned its interest in the lease of the Property to Windward Park, Inc. ("Windward Park"), which had intended to develop a golf driving range on the Property. At the time Consolidated assigned its interest to Windward Park, Petitioner had agreed to sell its leased fee interest in the Property to Windward Park.

17. A title search of the Property for purposes of the conveyance was subsequently conducted. The title search revealed that the Property, first leased to Consolidated in 1963, was never legally subdivided out of the 343.996-acre tract of land. An application was subsequently filed with the City and County of Honolulu Department of Land Utilization ("DLU") to subdivide the 343.996-acre tract of land into two lots consisting of the 24.059-acre Property and the remaining 319.937-acre parcel.

18. In conjunction with the subdivision application, a boundary interpretation request for the 343.996-acre tract, including the Property, was submitted to the Commission. Boundary Interpretation No. 92-40 dated September 15, 1992, was subsequently prepared which placed the drive-in theater parking lot, picture screen, service building, projection area, playground, and ticket box within the Urban District and placed the roadway for egress from the drive-in theater and the areas graded for slope ramps within the Conservation District.

19. Staff based the delineation of the district boundary on its review of Docket No. 074-8; the July 21, 1976, boundary interpretation; and specifically on the representation of the district boundaries on the Commission's State Land Use District Boundaries Map O-14 (Mokapu). A copy of Boundary Interpretation No. 92-40 was provided to the Department of Land and Natural Resources ("DLNR").

20. DLU was unable to process the subdivision application for the 343.996-acre tract of land upon information from DLNR that a portion of the Property was designated within the Conservation District, and that any subdivision of land in the Conservation District was not only subject to DLNR approval but also contrary to DLNR policy.

21. Petitioner determined that Boundary Interpretation No. 92-40 placed approximately 19.617 acres of the Property within the Urban District and approximately 4.442 acres of the Property within the Conservation District.

22. Windward Park subsequently abandoned its plans for a golf driving range on the Property, and in 1996, assigned its interest in the Consolidated lease to Le Jardin Academy, Inc. ("Le Jardin"). Le Jardin plans to relocate its existing K-8 school to the Property and to expand to include a high school.

23. 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

JURISDICTION

1. Jurisdiction of the Commission to consider the request of Petitioner is authorized under §§15-15-98 and 15-15-22(b)(6), HAR.

REMEDY

1. Petitioner is requesting the Commission to issue a declaratory order clarifying and correcting the boundary reclassification of the Land Use Commission under Decision and Order dated June 2, 1975, in Docket No. 074-8 and Boundary Interpretation No. 92-40 dated September 15, 1992.

APPLICABLE LEGAL AUTHORITIES

1. Section 205-2(1), HRS, provided the standards for determining the boundaries of the Urban District at the time of the reclassification by stating:

In the establishment of boundaries of urban districts those lands that are now in urban use and

a sufficient reserve area for foreseeable urban growth shall be included.

2. Part II of the State Land Use District Regulations, Sub-Part B. 2.7.(a), effective August 4, 1969, stated as follows:

"U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:

(a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

3. The roadway for egress from the drive-in theater and the slope ramps graded to control drainage affecting the drive-in theater were constructed during 1963-64 and constituted urban improvements that were in place on the subject 4.442-acre portion of the Property at the time of the June 2, 1975, issuance of the Decision and Order in Docket No. 074-8.

4. The June 2, 1975, Decision and Order issued in Docket No. 074-8 did not include the Property, identified as TMK 4-2-14: 4, in the reclassification to the Conservation District.

DECLARATORY ORDER

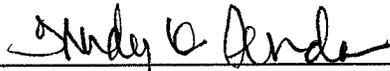
FOR GOOD CAUSE APPEARING, the Commission hereby rules that the boundary reclassification under Decision and Order issued on June 2, 1975, in Docket No. 074-8 and Boundary Interpretation No. 92-40 dated September 15, 1992, is clarified and corrected to reflect that the 24.059-acre Property, identified as TMK 4-2-14: 4, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated entirely within the State Land Use Urban District.

Accordingly, this Commission determines that State Land Use District Boundaries Map O-14 (Mokapu) be amended to reflect that the 24.059-acre Property is designated entirely within the State Land Use Urban District.

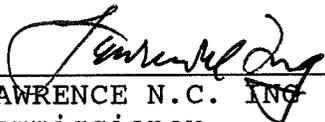
DOCKET NO. DR96-19 - HAROLD K.L. CASTLE FOUNDATION

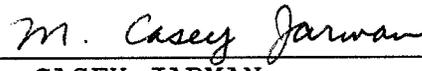
Done at Honolulu, Hawai'i, this 25th day of November 1996,
per motion on November 1, 1996.

LAND USE COMMISSION
STATE OF HAWAI'I

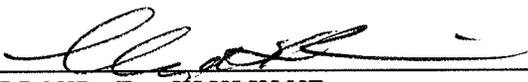
By 
TRUDY K. SENDA
Chairperson and Commissioner

By 
RUPERT K. CHUN
Vice Chairperson and Commissioner

By 
LAWRENCE N.C. ING
Commissioner

By 
M. CASEY JARMAN
Commissioner

By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

By 
LLOYD F. KAWAKAMI
Commissioner

By 
MERLE A. K. KELAI
Commissioner

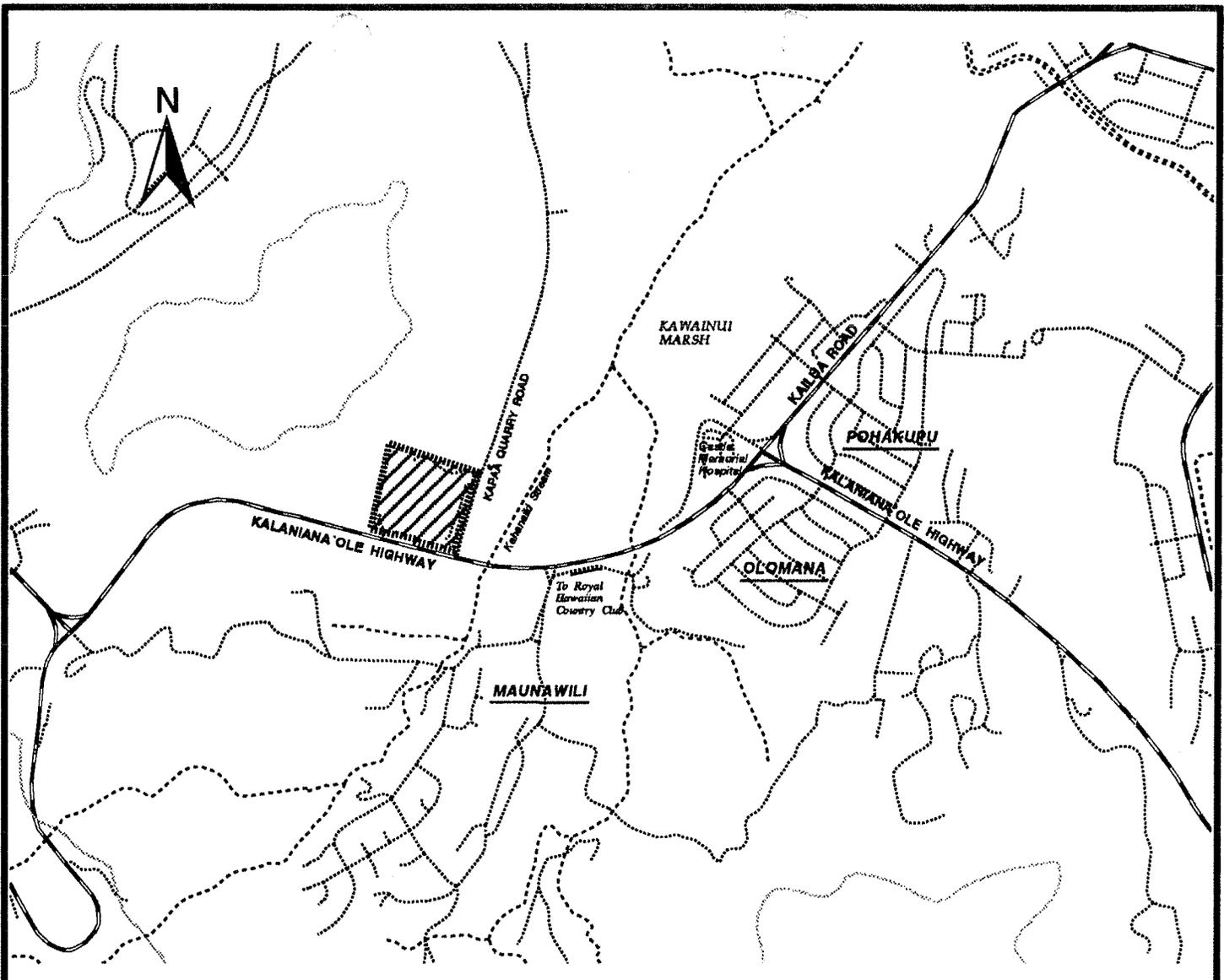
Filed and effective on
November 25, 1996

Certified by:


Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By 
JOANN N. MATTSO
Commissioner



**DR96-19
HAROLD K.L. CASTLE
FOUNDATION**

LOCATION MAP

TAX MAP KEY: 4-2-14: 4

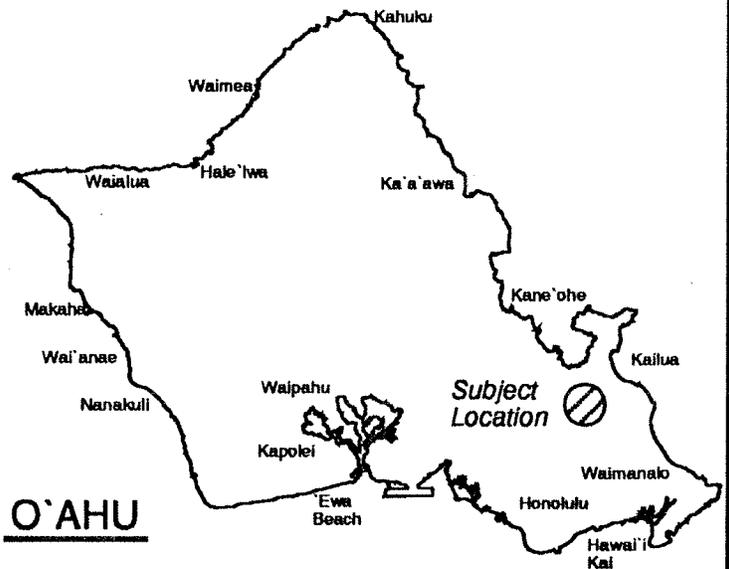
KAILUA, O'AHU, HAWAII

SCALE: 1" = 2,000 ft.



SUBJECT PROPERTY

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
CITY AND COUNTY OF HONOLULU)
For a Declaratory Order Clarifying)
and Correcting the Boundary)
Reclassification of the Land Use)
Commission under its 1969 Five-Year)
Boundary Review Dated August 14,)
1969, and Boundary Interpretation)
No. 99-12 Dated July 30, 1999)

DOCKET NO. DR99-22
DECLARATORY ORDER

LC 4 V 6-100 MM
LAND USE COMMISSION
STATE OF HAWAII

DECLARATORY ORDER

EXHIBIT 44

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

In the Matter of the Petition of)	DOCKET NO. DR99-22
)	
CITY AND COUNTY OF HONOLULU)	DECLARATORY ORDER
)	
For a Declaratory Order Clarifying)	
and Correcting the Boundary)	
Reclassification of the Land Use)	
Commission under its 1969 Five-Year)	
Boundary Review Dated August 14,)	
1969, and Boundary Interpretation)	
No. 99-12 Dated July 30, 1999)	
<hr/>		

DECLARATORY ORDER

PETITIONER'S INTEREST

The City and County of Honolulu through its Department of Design and Construction ("Petitioner") filed a Petition for Declaratory Order, pursuant to sections 15-15-98 and 15-15-22(f), Hawai'i Administrative Rules ("HAR"). Petitioner is the owner in fee simple of TMK 9-3-02: 9 situated at Kapakahi in the northwestern part of the Waipio Peninsula, Waipahu, O'ahu, Hawai'i. TMK 9-3-02: 9 includes an approximately 1.927-acre portion of the Waipahu Depot Street right-of-way ("Property").

Petitioner filed the instant Petition for Declaratory Order "for a declaratory order clarifying and correcting the boundary reclassification of the Land Use Commission under its 1969 five-year boundary review dated August 14, 1969 and boundary interpretation dated July 30, 1999 in Boundary Interpretation No. 99-12."

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On September 1, 1999, Petitioner filed its Petition for Declaratory Order.
2. On October 15, 1999, the Office of Planning ("OP") filed its Testimony of the Office of Planning. OP commented that based on its review of the information provided, it had no objections to the Petition for Declaratory Order. However, OP expressed concern regarding the impact of planned improvements within the Property, street improvements, and future use of Waipahu Depot Street on Kapakahi Stream and the Pouhala Bird Sanctuary. OP further stated that all potential impacts should be mitigated and monitored during construction and over the operational life of the Waipahu Depot Street and associated infrastructure. Finally, OP raised concerns that the existing and planned uses for much of the north-central peninsula were no longer agricultural. OP noted that if the predominant land use pattern for this area was to be urban, then it would be more appropriate to reclassify these parcels to the State Land Use Urban District for urban use.
3. On October 15, 1999, the Department of Land and Natural Resources ("DLNR") filed a Statement in Support of Docket No. 99-22, stating that it had no objection to the removal of the Property from the State Land Use Conservation District. DLNR noted that as an actively utilized roadway, the Property has no limited resource value and that its inclusion within the State Land Use Agricultural District was not expected to adversely

impact the adjoining Conservation District resources. On October 21, 1999, DLNR filed written testimony reiterating its support for the Petition for Declaratory Order.

4. On October 18, 1999, the City and County of Honolulu Department of Planning and Permitting filed a letter in support of the Petition for Declaratory Order, stating that i) the Agricultural District designation of the Property would be consistent with its actual historical use and with the intent of the Land Use Commission's ("Commission") 1969 Five-Year Boundary Review; ii) proposed improvements to Waipahu Depot Street were significantly linked to the development of the Waipio Peninsula Recreation Complex that was approved by Ordinance No. 97-27 on June 12, 1997; iii) development of the Recreation Complex was consistent with the preferred plan of the Waipahu Town Plan which called for a Recreation Anchor on the Waipio Peninsula; iv) the Review Draft of the Central O'ahu Sustainable Communities Plan further supported the development of the Recreation Complex; and v) the granting of the Petition for Declaratory Order would enable the City and County of Honolulu to proceed in a timely and cost effective manner with infrastructural improvements required for the Recreation Complex. On October 21, 1999, the City and County of Honolulu filed a letter reiterating its support for the Petition for Declaratory Order.

POSITION OF PETITIONER

5. Petitioner contends that this Commission should interpret the boundary between the State Land Use Conservation District and the State Land Use Agricultural District in such a

manner that the Property is designated within the State Land Use Agricultural District. Petitioner argues that such an interpretation would be consistent with the overall purpose of Chapter 205, Hawai'i Revised Statutes, and more particularly with the basis and intent of this Commission upon which the reclassification was determined in the 1969 Five-Year Boundary Review.

6. Petitioner states that a declaratory order clarifying that the Property is designated within the Agricultural District is necessary to enable Petitioner to proceed with proposed infrastructural improvements required for the Recreation Complex in a timely and cost effective manner.

DESCRIPTION AND BACKGROUND OF THE PROPERTY

7. The Property in question is an approximately 1.927-acre portion of the Waipahu Depot Street right-of-way. The Property is currently designated within the State Land Use Conservation District, as represented by the State Land Use District Boundaries Map, O-9 (Waipahu). The Agricultural and Conservation District boundaries relative to the Property were established in the 1969 Five-Year Boundary Review as part of this Commission's reclassification of approximately 87 acres of wetland and partially submerged lands at Kapakahi situated on the western edge of the Waipio Peninsula to the Conservation District in light of the area's significant wildlife resource values. This Commission adopted the State Land Use District Boundaries Map on August 14, 1969, as the then official maps of this Commission.

8. The Property, as part of Waipahu Depot Street, was historically used by Oahu Sugar Company as an access route to transport its employees and equipment from the Waipahu Sugar Mill to its agricultural operations at the Waipio Peninsula. Waipahu Depot Street was also the principal access route for the City and County of Honolulu's refuse vehicles destined for the Waipahu Incinerator and/or the Waipahu Landfill.

9. By letter dated May 25, 1999, Mr. Lee Sichter on behalf of Petitioner requested a boundary interpretation pursuant to section 15-15-22, HAR, to determine the location of the Agricultural District and Conservation District boundary relative to the Property with this Commission. Boundary Interpretation No. 99-12 dated July 30, 1999, was subsequently prepared on Petitioner's map entitled "Waipio Peninsula Soccer Park Off-Site Infrastructure." The boundary of the Agricultural District and Conservation District was determined to follow the eastern side of Waipahu Depot Street, placing said street within the Conservation District.

10. Staff based its determination of the location of the Agricultural District and Conservation District boundary on this Commission's official map, State Land Use District Boundaries Map, O-9 (Waipahu), which represented the district boundary on the eastern side of Waipahu Depot Street.

11. In early 1999, Petitioner began construction of a 300-acre soccer park as part of the Recreation Complex in the central portion of the Waipio Peninsula on lands owned by

Petitioner and on lands leased from the United States of America ("USA"). A condition of the lease between Petitioner and the USA requires that non-potable irrigation water be provided by Petitioner to the soccer park as well as to agricultural lands on the southern portion of the Waipio Peninsula. Petitioner plans to address this requirement with the construction of a 20-inch irrigation pipeline. The development of the soccer park will also require the construction of a 6-inch sewer force main and a 4-inch potable water line. Widening of the existing pavement and the possible addition of curbs, gutters, and sidewalks are also planned. These infrastructure improvements are planned to be constructed on the Property.

12. Waipahu Depot Street currently serves four existing facilities owned by the City and County of Honolulu: the Honolulu Fire Department's Waipahu Maintenance Facility, the Waipahu Refuse Convenience Center, the Waipahu Sewer Pump Station, and the Ke Kula Maka'i Police Academy.

13. Waipahu Depot Street is planned to be used as an alternate access route to the soccer park.

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

CONCLUSIONS OF LAW

JURISDICTION

1. Jurisdiction of this Commission to consider the request of Petitioner is authorized under sections 15-15-98 and 15-15-22(f), HAR.

REMEDY

1. Petitioner is requesting this Commission to issue a declaratory order clarifying and correcting the boundary reclassification of this Commission under its 1969 Five-Year Boundary Review dated August 14, 1969, and Boundary Interpretation dated July 30, 1999, in Boundary Interpretation No. 99-12.

APPLICABLE LEGAL AUTHORITIES

1. The "State of Hawaii Land Use Districts and Regulations Review" documented the Commission's process in establishing the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized four major standards for shoreline conservation areas and provided recommendations based on these standards. Of relevance here is Standard No. 1, which states:

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 (p. 86).

2. The report further documented this Commission's actions with respect to the establishment of the Conservation District boundaries at Kapakahi by stating:

[A]t Kapakahi on the west loch of Pearl Harbor there are major wildlife resources which should be included within the Conservation District (p. 48).

3. The Property, as part of Waipahu Depot Street, was actively used for agricultural and other purposes at the time of the 1969 Five-Year Boundary Review.

A. DECLARATORY ORDER

FOR GOOD CAUSE APPEARING, this Commission hereby rules that the boundary reclassification of this Commission under its 1969 Five-Year Boundary Review dated August 14, 1969, and Boundary Interpretation dated July 30, 1999, in Boundary Interpretation No. 99-12 are clarified and corrected to reflect that the Property, consisting of approximately 1.927 acres of land, approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated within the State Land Use Agricultural District.

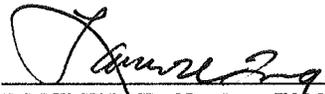
Accordingly, this Commission determines that State Land Use District Boundaries Map, O-9 (Waipahu), be amended to reflect that the Property is designated within the State Land Use Agricultural District.

IT IS FURTHER ORDERED that Petitioner shall mitigate and monitor all potential impacts of the planned improvements within the Property, street improvements, and future use of Waipahu Depot Street upon Kapakahi Stream and the Pouhala Bird Sanctuary during construction and over the operational life of Waipahu Depot Street and associated infrastructure.

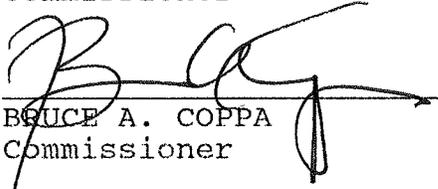
Done at Honolulu, Hawai'i, this 9th day of November 1999,
per motions on October 21, 1999 and November 4, 1999

LAND USE COMMISSION
STATE OF HAWAII

By 
MERLE A. K. KELAI
Chairperson and Commissioner

By 
LAWRENCE N.C. HNG
Vice Chairperson and Commissioner

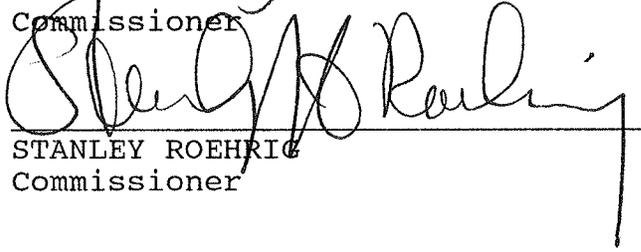
By 
P. ROY CATALANI
Commissioner

By 
BRUCE A. COPPA
Commissioner

By (absent)
PRAVIN DESAI
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

By 
M. CASEY JARMAN
Commissioner

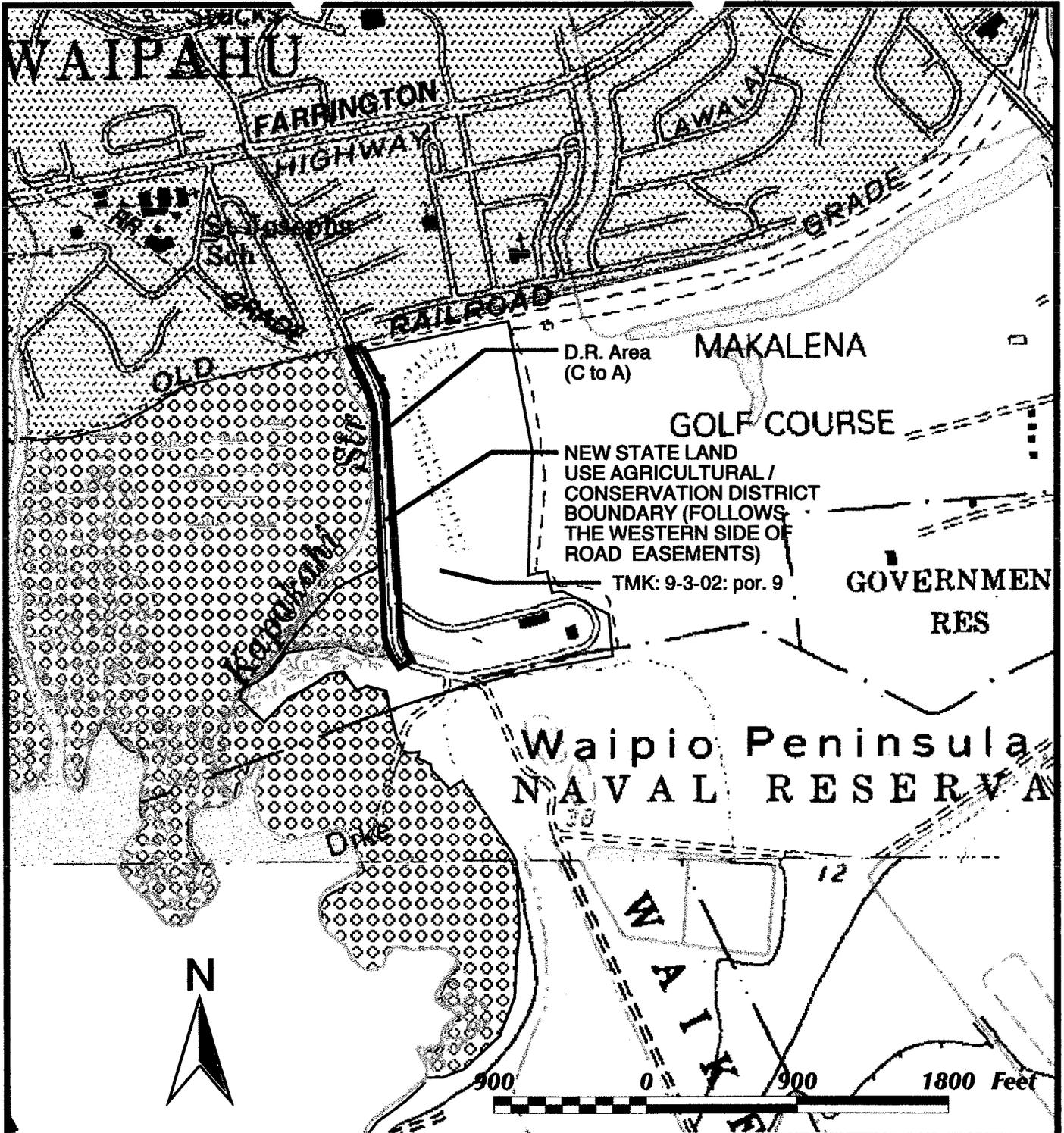
By 
STANLEY ROHRIG
Commissioner

By (absent)
PETER YUKIMURA
Commissioner

Filed and effective on
November 9, 1999

Certified by:


Executive Officer



DR99-22 CITY AND COUNTY OF HONOLULU

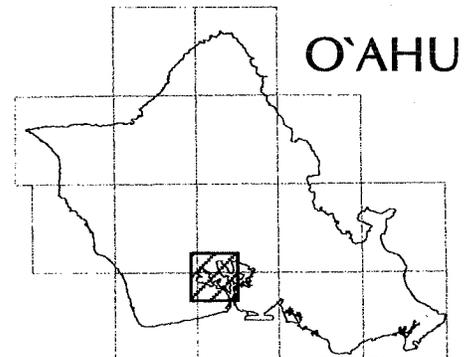
LOCATION MAP

TMK: 9-3-02: por. 9
 Waipio Peninsula, Waipahu, O'ahu, Hawai'i

Exhibit "A"

LEGEND:

-  URBAN
-  CONSERVATION
-  AGRICULTURAL



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

In the Matter of the Petition of) DOCKET NO. DR99-22
CITY AND COUNTY OF HONOLULU) CERTIFICATE OF SERVICE
For a Declaratory Order Clarifying)
and Correcting the Boundary)
Reclassification of the Land Use)
Commission under its 1969 Five-Year)
Boundary Review Dated August 14,)
1969, and Boundary Interpretation)
No. 99-12 Dated July 30, 1999)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. RANDALL FUJIKI, Director
Department of Design and Construction
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

CERT. LEE WILLIAM SICHTER
Belt Collins Hawaii
680 Ala Moana Boulevard, Suite 100
Honolulu, Hawaii 96813

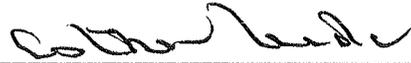
CERT. JAN NAOE SULLIVAN, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

DEL. DAVID W. BLANE, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

CERT. ROBERT SMITH
Pacific Islands Manager
U.S. Fish and Wildlife Service
300 Ala Moana Blvd., Room 3-122
Honolulu, Hawaii 96850

CERT. TIMOTHY E. JOHNS, Chairperson
 Department of Land & Natural Resources
 P. O. Box 621
 Honolulu, Hawaii 96809

DATED: Honolulu, Hawaii, this 9th day of November 1999.



ESTHER UEDA
Executive Officer



STATE OF HAWAII

DEPARTMENT OF BUSINESS
AND ECONOMIC DEVELOPMENT

LAND USE COMMISSION

Room 104, Old Federal Building, 335 Merchant Street
Honolulu, Hawaii 96813 Telephone: 548-4611

JOHN WAIHEE
Governor

RENTON L.K. NIP
Chairman

FREDERICK P. WHITTEMORE
Vice Chairman

2 ref
4-90-141

COMMISSION MEMBERS:

Lawrence F. Chun
Sharon R. Himeno
Allen K. Hoe
Allen Y. Kajfoka
Eusebio Lapenia, Jr.
James M. Shinno
Elton Wada

ESTHER UEDA
Executive Officer

March 20, 1990

Mr. Christopher Kimura
PBR Hawaii
1042 Fort Street Mall, Suite 300
Honolulu, Hawaii 96813

Dear Mr. Kimura:

SUBJECT: Boundary Interpretation 90-12

Tax Map Key: 5-7-3: 1, 2, 3, 4, 7, 8, 10, 13, & 15

Location: North Kohala, Hawaii

Requested By: Christopher Kimura

Pursuant to your request of February 28, 1990,
we have delineated the State's Land Use District boundaries on
the enclosed map.

Very truly yours,

Esther Ueda

ESTHER UEDA
Executive Officer

Enclosure: Boundary Interpretation Map dated March 20, 1990.

cc: William Paty, BLNR Chairman, Attn: Conservation Affairs Office
Duane Kanuha, Hawaii Planning Director
Glenn Y. Sato, Tax Maps & Records Supervisor,
C&C of Honolulu, Department of Finance

EXHIBIT 45

MAR 22 1990



TMK:5-7-02:11
232.852 AC.

TMK:5-7-03:16
43.226 AC.

TMK:5-7-03:12
0.060 AC.

TMK:5-7-03:02
67.449 AC.

TMK:5-7-03:10
102.295 AC.

TMK:5-7-03:13
14.960 AC.

TMK:5-7-03:07
0.062 AC.

TMK:5-7-03:01
0.500 AC.

TMK:5-7-03:08
0.172 AC.

TMK:5-7-03:04
0.363 AC.

TMK:5-7-03:15
3.000 AC.

TMK:5-7-03:03
30.3921 AC.

LEGEND

STATE LAND USE

A	AGRICULTURE
C	CONSERVATION

- NOTE:**
1. CONTOUR INTERVAL: 2'
 2. VERTICAL DATUM: MEAN SEA LEVEL
 3. ORIGIN OF COORDINATES: PUU O NALE
 4. COMPILED BY PHOTOGRAMMETRIC METHODS FROM PHOTOGRAPHY TAKEN 11-23-89 AT AN ALTITUDE OF 5750' ABOVE MEAN TERRAIN
 5. TAX MAP PARCELS PLOTTED FROM TAXATION MAPS BUREAU, TAX MAP #5-7-02 & 5-7-03, JAN. 3, 1990
 6. CONSERVATION DISTRICT BOUNDARY FOR TMK:5-7-02:11 PLOTTED FROM STATE LAND USE INTERPRETATION, 2/12/86

STATE LAND USE BOUNDARY INTERPRETATION MAHUKONA

The boundary as located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

MAR 20 1990
Date by Executive Officer

Boundary Interpretation No. 90 12'

MAHUKONA, NORTH KOHALA, HAWAII

AREA SCALE		NORTH	LINEAL SCALE (FEET)	
2 ACRES			200 100 0 200 400 800	
1 AC.	.5 AC.			
	.5 AC.			

PREPARED FOR:
CHALON INTERNATIONAL

TOPOGRAPHY BY:
R. M. TOWILL

PREPARED BY:
PBR HAWAII

DATE:
FEBRUARY 1990

REVISED:
UNDETERMINED

PBR HAWAII
LANDSCAPE ARCHITECTURE
PLANNING
ENVIRONMENTAL STUDIES
1042 FORT STREET, SUITE 300
HONOLULU, HAWAII

STATE OF HAWAII
FEB 28 11 08 AM '90



LINDA LINGLE
Governor

JAMES R. AIONA, JR.
Lieutenant Governor

THEODORE E. LIU
Director

MARK K. ANDERSON
Deputy Director

COMMISSIONERS:

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Chairperson (Maui)

DUANE KANUHA
Vice Chair (Hawai'i)

KYLE CHOCK
(At Large)

THOMAS CONTRADES
(Kauai)

VLADIMIR P. DEVENS, ESQ.
(At Large)

NORMAND R. LEZY, ESQ.
(At Large)

RANSOM A.K. PILTZ
(At Large)

NICHOLAS W. TEVES, JR.
(At Large)

REUBEN S.F. WONG, ESQ.
(Oahu)

COMMISSION STAFF:

ORLANDO "DAN" DAVIDSON
Executive Officer

BERT K. SARUWATARI
Senior Planner

FRED A. TALON
Drafting Technician

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235 Beretania Street, Suite 406
Honolulu, Hawai'i 96813

Tel.: 587-3822 Fax: 587-3827

Mailing Address:
LAND USE COMMISSION
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

E-Mail Address:
luc@dbedt.hawaii.gov

2008 NOV 14 PM 2:20
LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i
PLANNING DEPARTMENT
COUNTY OF HAWAII

November 12, 2008

Mr. Gregory R. Mooers, President
Mooers Enterprises, LLC
P.O. Box 1101
Kamuela, Hawaii 96743

Dear Mr. Mooers:

Subject: Boundary Interpretation No. 08-09
Tax Map Key: 5-3-006: 021,
Ainakea, North Kohala, Hawaii

This is in response to your July 7, 2008, request for a boundary interpretation of the subject parcel. We apologize for the lateness of our response.

We specifically reviewed the official State Land Use (SLU) District Boundaries Map H-13, Hawi Quadrangle and previously prepared boundary interpretations filed within our office.

Please be advised the SLU Agricultural / Conservation District Boundary for the subject parcel was established on August 4, 1969, which follows the mauka side (southern side) of a dirt road at that time.

Enclosed is portion of the official SLU District Map H-13, Hawi Quadrangle for your reference. We also included a map with County of Hawai'i parcel data relative to an approximate SLU Agricultural / Conservation District boundaries which is consistent with the official map.

Should you require clarification or further assistance, please feel free to call Fred Talon or Bert Saruwatari of my staff at (808) 587-3822.

Sincerely,

ORLANDO DAVIDSON
Executive Officer

Enclosure

- c: Samuel J. Lemmo, Administrator, Dept. of Land and Natural Resources, Office of Conservation and Coastal Lands (w/enclosure)
- * Christopher Yuen, Planning Director, County of Hawaii Planning Department (w/enclosure)
- Mike McCall Valuation Analyst, Mapping Section, Real Property Tax Division, County of Hawaii (w/enclosure)
- Lisa Nahoopii, GIS Analyst, County of Hawaii (w/enclosure)

EXHIBIT 46



Pacific Ocean



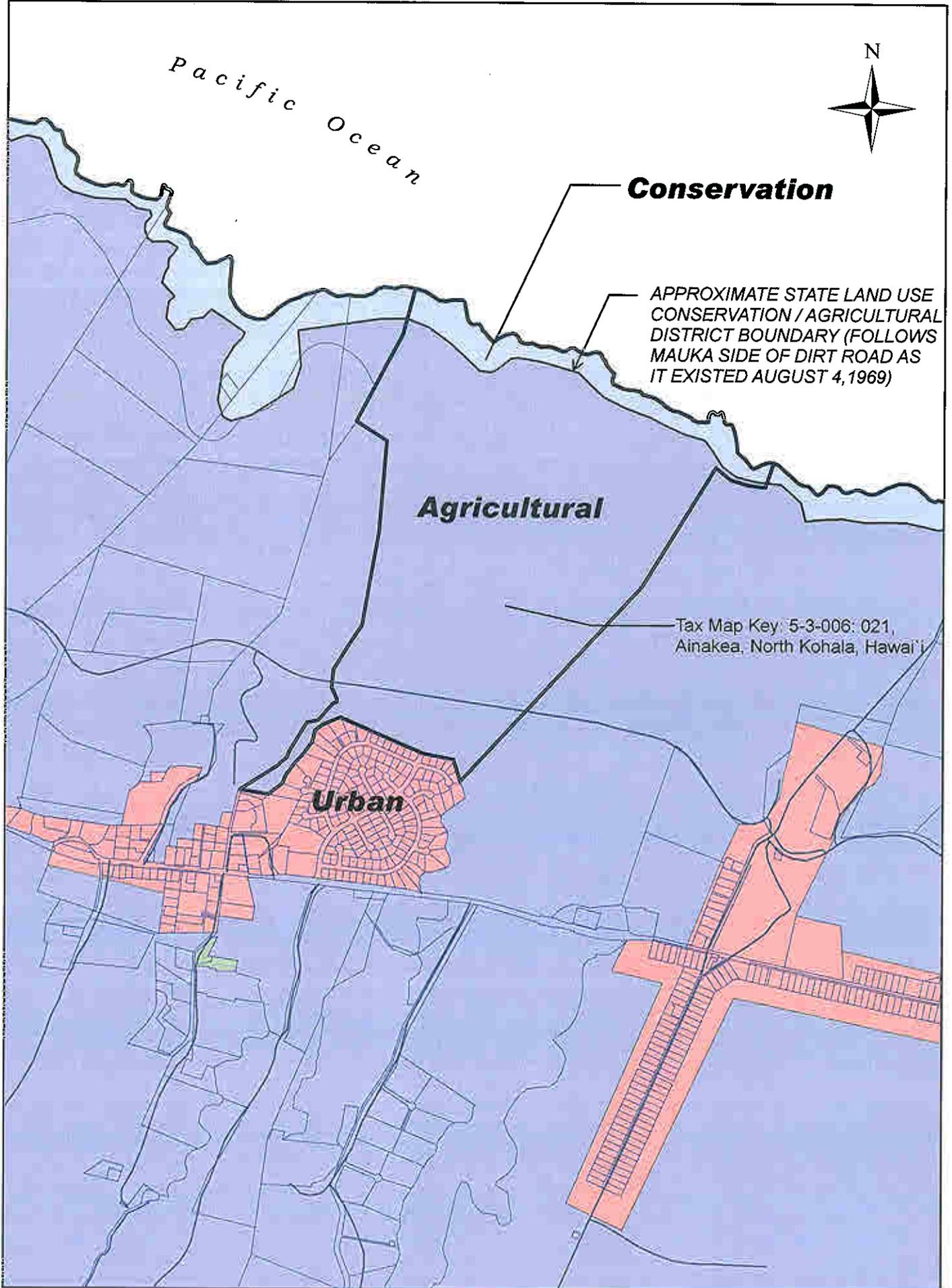
Conservation

APPROXIMATE STATE LAND USE
CONSERVATION / AGRICULTURAL
DISTRICT BOUNDARY (FOLLOWS
MAUKA SIDE OF DIRT ROAD AS
IT EXISTED AUGUST 4, 1969)

Agricultural

Tax Map Key: 5-3-006: 021,
Ainakea, North Kohala, Hawai'i

Urban



BENJAMIN J. CAYETANO
GOVERNOR



ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
Room 104, Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813
Telephone: 587-3822
January 9, 1996

1996-61

Mr. Ted Baldau
Project Engineer
Reid & Associates, Inc.
75-166 Kalani Street, Suite 201
Kailua-Kona, Hawaii 96740

Dear Mr. Baldau:

Subject: BOUNDARY INTERPRETATION No. 95-50 for Tax Map Key No.: 5-5-06: 6,
Upolu Airport, North Kohala, Hawaii

Pursuant to your December 11, 1995 letter requesting a boundary interpretation for the subject parcel, please be advised that we have determined an approximate location of the State Land Use Agricultural / Conservation District boundary.

Our determination is based on the Commission's records and official maps currently on file at our office and the information that you provided.

A copy of your map with an approximate State Land Use Agricultural / Conservation District boundary delineated is enclosed for your reference.

If you have any questions, please call Fred Talon or Bert Saruwatari of my staff at 587-3822.

Sincerely,


ESTHER UEDA
Executive Officer

encl.: Boundary Interpretation Map dated January 9, 1996

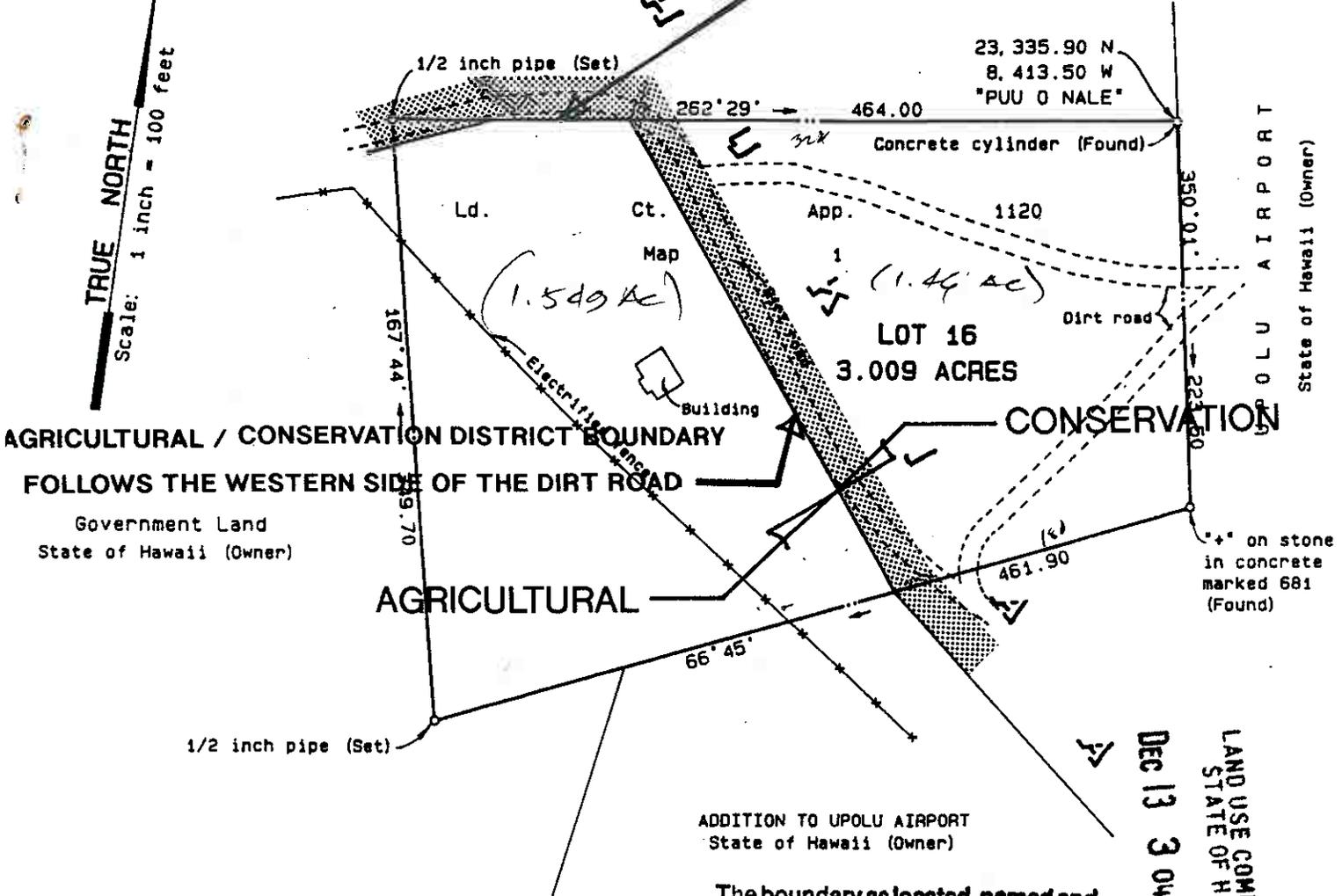
cc: Michael Wilson, BLNR Chairperson (w/encl.)
Attn: Dean Uchida, Land Management
Virginia Goldstein, County of Hawaii Planning Director (w/encl.)
* Glenn Y. Sato, Tax Maps & Records Supervisor (w/encl.)
C&C of Honolulu, Dept. of Finance

EXHIBIT 47

JAN 12 1996

AGRICULTURAL / CONSERVATION DISTRICT BOUNDARY
FOLLOWS THE SOUTHERN SIDE OF THE DIRT ROAD

TRUE NORTH
Scale: 1 inch = 100 feet



AGRICULTURAL / CONSERVATION DISTRICT BOUNDARY
FOLLOWS THE WESTERN SIDE OF THE DIRT ROAD

Government Land
State of Hawaii (Owner)

U P O L U A I R P O R T
State of Hawaii (Owner)

AGRICULTURAL

CONSERVATION

on stone
in concrete
marked 681
(Found)

ADDITION TO UPOLU AIRPORT
State of Hawaii (Owner)

Dec 13 3 04 PM '95
LAND USE COMMISSION
STATE OF HAWAII

MAP SHOWING
LOT 16
OF LD. CT. APP. 1120 (AMENDED)
AS SHOWN ON MAP 1

AT HUKIAA, NORTH KOHALA
ISLAND AND COUNTY OF HAWAII, STATE OF HAWAII

The boundary as located, named and
delineated is hereby certified as the
actual Land Use District Boundary
adopted by the State Land Use
Commission, Honolulu, Hawaii.

JAN 09 1996
Date by *Crystal Thomas Yamasaki*
Executive Officer

NOTES :

1. Features shown hereon represent conditions existing on February 26, 1994.
2. The distances shown between lot lines and features are based on selected found boundary monumentation and acceptable tolerances for property of this nature.



This map was prepared by me or
under my direct supervision.

Crystal Thomas Yamasaki
CRYSTAL THOMAS YAMASAKI
Registered Professional Land Surveyor
State of Hawaii Certificate Number LS-4331



TAX MAP KEY: 5-5-06:06 (3RD DIVISION)
DISK NO.: 495

FIELD BOOK NO.: 978

PROJECT NO.: 14080
DATE: MARCH 7, 1994

WES THOMAS & ASSOCIATES, INC.
-- Land Surveyors --
75-5722 Kalawa Street
Kailua-Kona, Hawaii 96740

Boundary Interpretation No. 95 50

BENJAMIN J. CAYETANO
GOVERNOR



ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION

P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

February 6, 1998

Steven S.C. Lim, Esq.
P. O. Box 701
Hilo, Hawai`i 96721

No Change

Dear Mr. Lim:

Subject: BOUNDARY INTERPRETATION No.: 98-03 for Tax Map Key: 5-5-05:
4, Kokoiki, North Kohala, Hawai`i

Pursuant to your January 28, 1998, letter requesting a boundary interpretation for the subject parcel, please be advised that we have determined an approximate location of the State Land Use Agricultural / Conservation District boundary.

Our determination is based on the Commission's records and official maps currently on file at our office.

A copy of your map with an approximate State Land Use Agricultural / Conservation District boundary delineated is enclosed for your reference.

If you have any questions, please call Fred Talon or Bert Saruwatari of my staff at 587-3822.

Sincerely,

ESTHER UEDA
Executive Officer

EU:rg

encl: Boundary Interpretation Map dated February 6, 1998

cc: Michael D. Wilson, BLNR Chairperson (w/encl.)
Attn: Dean Uchida, Land Division
Virginia Goldstein, Hawai`i County Planning Director (w/encl.)
X Glenn Y. Sato, Tax Maps & Records Supervisor (w/encl.)
C&C of Honolulu, Department of Finance

EXHIBIT 48

FEB 12 1998

CORRECTED
 SEP 7 1938
 OCT 6 1938
 JAN 10 1939
 MAY 10 1940
 JAN 20 1943
 JUL 13 1943
 JUL 1 1943
 OCT 5 1943
 JAN 24 1944
 JAN 27 1944
 JUL 8 1948
 OCT 31 1949
 JUN 26 1951
 NOV 29 1952
 JUL 27 1953
 JUN 1 1954
 MAR 3 1955
 MAR 11 1959
 JUN 1 1960
 MAR 19 1961
 MAR 25 1961
 FEB 2 1962
 APR 15 1962
 MAY 18 1968
 OCT 20 1971
 DEC 1 1975
 MAR 1 1977
 MAR 1 1980

LAND USE COMMISSION
 STATE OF HAWAII
 b7c
 1988 JUN 30 A 4
Boundary Interpretation No. 98-03

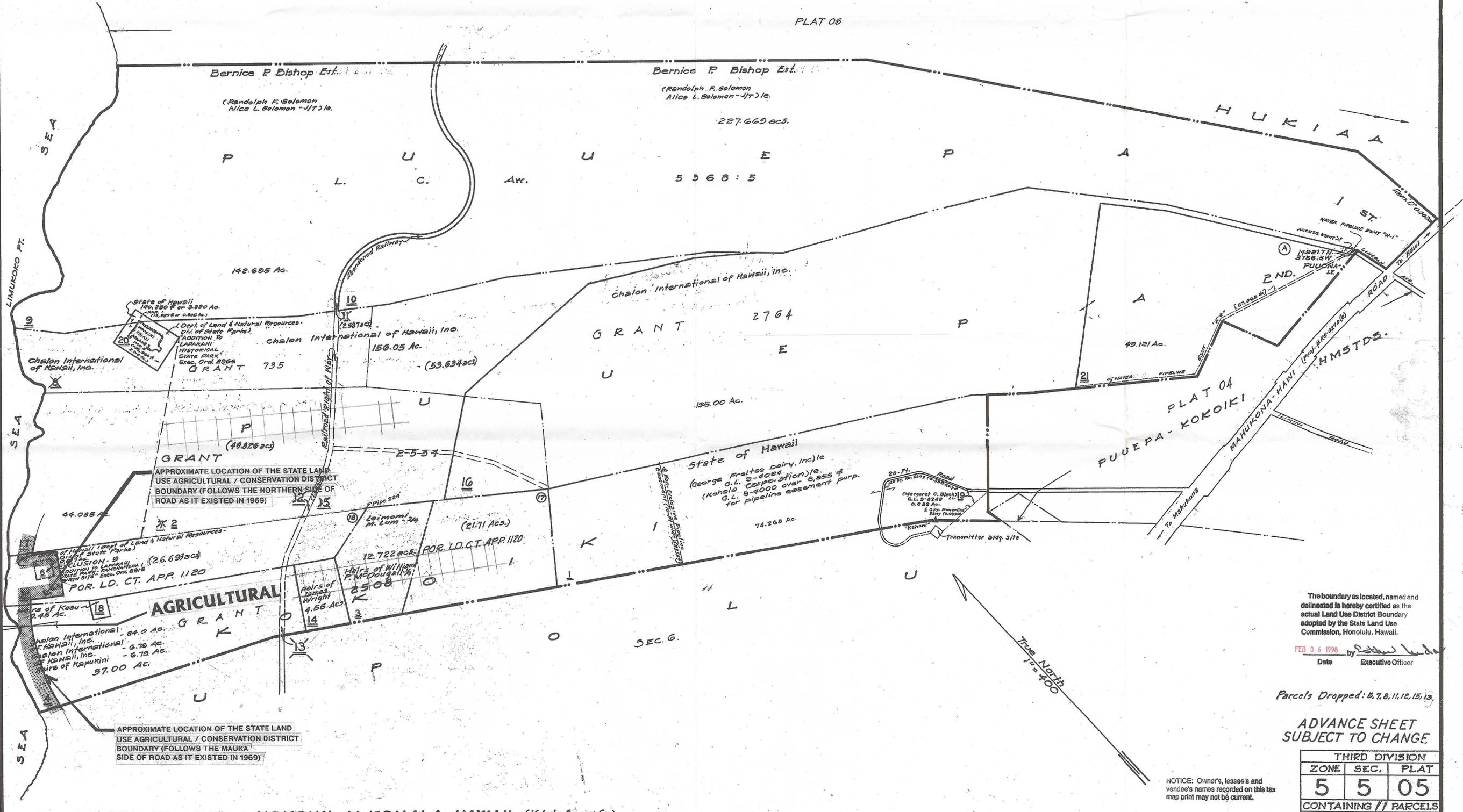
O P I H I P A U

PLAT 06

Bernice P. Bishop Est. (Randolph F. Solomon, Alice L. Solomon-Jr.)
 227,660 acs.

P U E P A

HUKIAA



APPROXIMATE LOCATION OF THE STATE LAND USE AGRICULTURAL / CONSERVATION DISTRICT BOUNDARY (FOLLOWS THE NORTHERN SIDE OF ROAD AS IT EXISTED IN 1969)

AGRICULTURAL GRANT

APPROXIMATE LOCATION OF THE STATE LAND USE AGRICULTURAL / CONSERVATION DISTRICT BOUNDARY (FOLLOWS THE MAUKA SIDE OF ROAD AS IT EXISTED IN 1969)

The boundary as located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

FEB 06 1998 by [Signature] Executive Officer

Parcels Dropped: 5, 7, 8, 11, 12, 15, 13

ADVANCE SHEET SUBJECT TO CHANGE

THIRD DIVISION		
ZONE	SEC.	PLAT
5	5	05
CONTAINING // PARCELS		
Scale: 1 in. = 400 ft.		

NOTICE: Owner's, lessee's and vendee's names recorded on this tax map print may not be current.

PRINTED JAN 29 1998

Portions PUEPA 1ST & 2ND, & KOKOIKI, N. KOHALA, HAWAII (Kohala Sugar Co.)

Dwg. No: 2488
 Source: Survey Dept
 By: RB & PK - Aug. '95

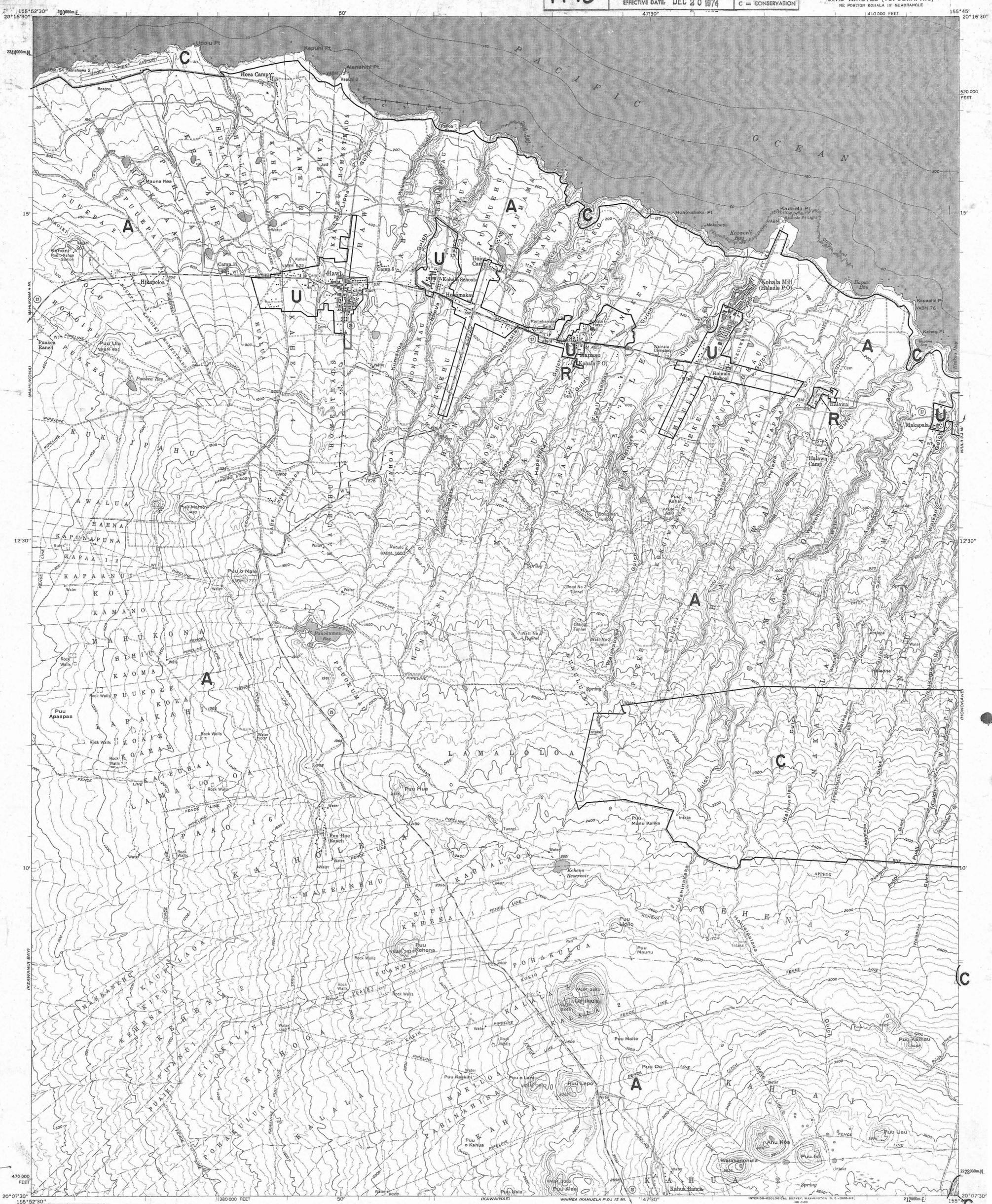
LAND USE COMMISSION STATE OF HAWAII

Boundary Interpretation No. 98-03

LAND USE DISTRICT BOUNDARIES

DISTRICT MAP H-13	STATE OF HAWAII	DISTRICTS
	LAND USE COMMISSION	U = URBAN
	DEPT. OF PLANNING & ECONOMIC DEVELOPMENT	R = RURAL
	EFFECTIVE DATE: DEC 20 1974	A = AGRICULTURAL
		C = CONSERVATION

HAWI QUADRANGLE
HAWAII—HAWAII CO.
ISLAND OF HAWAII—NORTH KOHALA DISTRICT
9x7.5 MINUTES (TOPOGRAPHIC)
NE PORTION KOHALA 15' QUADRANGLE



BOUNDARY AMENDMENTS		
DOCKET NO.	OWNER	DATE
AB4-563	GILBERT & MARGARET McCONNEL	A to U NOV. 27, 1984
AB4-573	OCEANIC PROPERTIES	A to U MAY 21, 1985
SLU 87-9	STELLA CHANG	A to U MAY 31, 1988
SLU 89-3	LANI APODACA	A to R JAN. 10, 1990
H.F.D.C. 90-1	Halaia Teachers Housing	A to U AUG. 10, 1990
AB0-476	DPED	A to U 7/30/80

SCALE 1:24000
CONTOUR INTERVAL 40 FEET
DATUM IS MEAN SEA LEVEL
DEPTH CURVES IN FEET—DATUM IS MEAN LOWER LOW WATER
SHORELINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER
THE MEAN RANGE OF TIDE IS APPROXIMATELY 2 FEET

ROAD CLASSIFICATION
Medium duty ——— Light duty ———
Unimproved dirt ——— State Route ○

HAWAII, HAWAII
NE PORTION KOHALA 15' QUADRANGLE
N2007.5—W15545.9x7.5
1957

first STATE OF HAWAII *file*
LAND USE COMMISSION
Suite 1795
Pacific Trade Center
190 S. King Street
Honolulu, Hawaii 96813

October 2, 1978

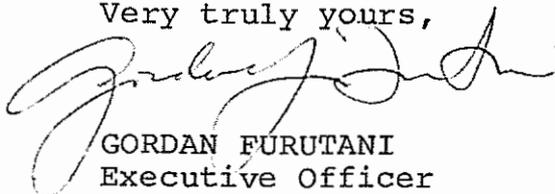
Mr. Sidney Fuke, Planning Director
Hawaii County Planning Department
25 Aupuni Street
Hilo, Hawaii 96720

Dear Mr. Fuke:

SUBJECT: Boundary Interpretation *— 2nd*
Tax Map Key: 5-5-05: 6
Location: Kohala, Hawaii
Requested By: Board of Land & Natural Resources

For your information, we are enclosing herewith a copy of a map for the above subject property on which a boundary interpretation was completed by this office.

Very truly yours,

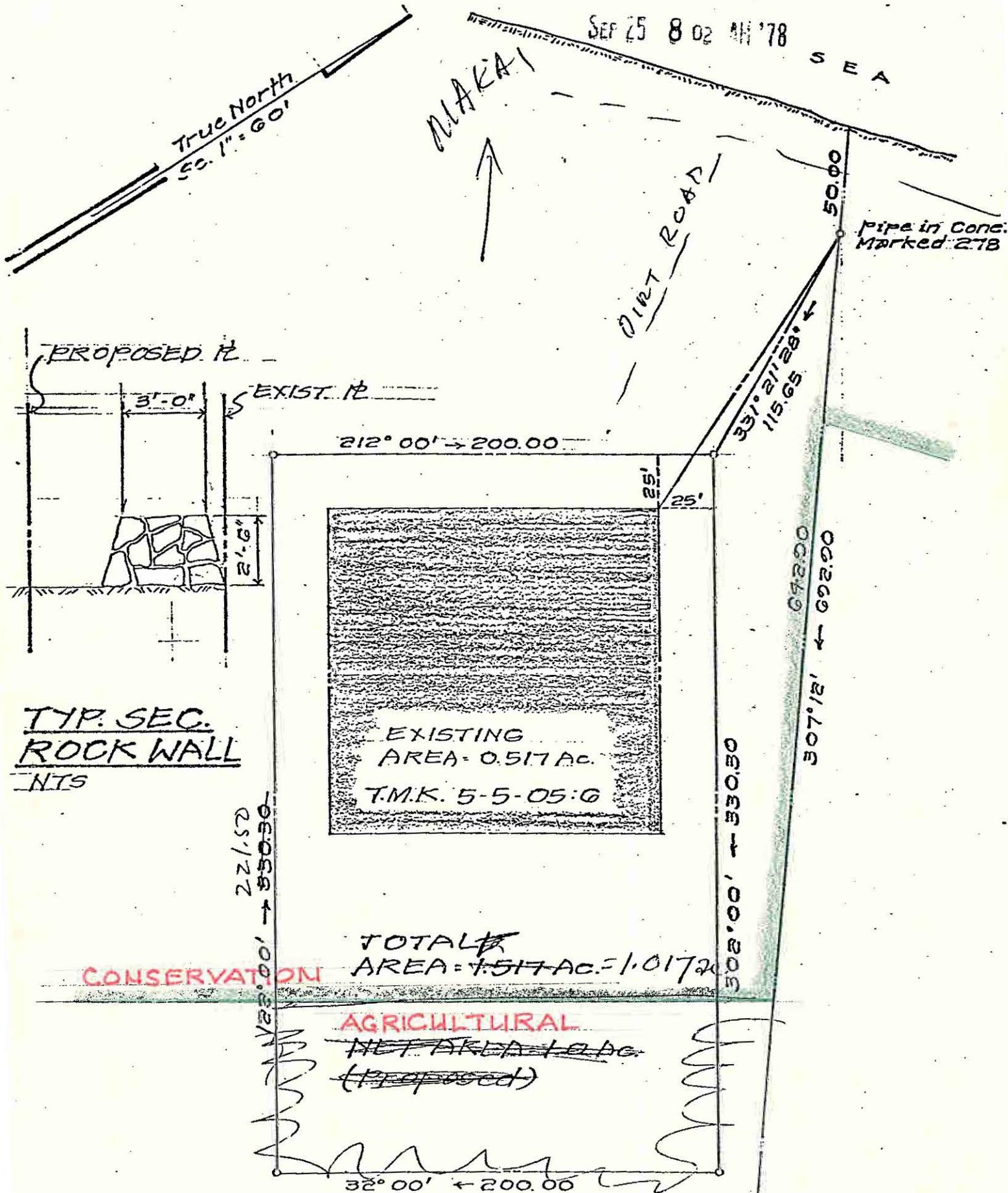

GORDAN FURUTANI
Executive Officer

Encl.

EXHIBIT 51

SEP 25 8 02 AM '78

SEA



TYP. SEC.
ROCK WALL
NTS

EXISTING
AREA - 0.517 AC.
T.M.K. 5-5-05:6

TOTAL
AREA = 1.517 AC. = 1.0172

~~AGRICULTURAL~~
~~NET AREA 1.4 AC.~~
~~(PROPOSED)~~

CONSERVATION

32° 00' ← 200.00

MAKA

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.

SEP 29 1978

Date by *[Signature]* Executive Officer

KAMEHAMEHA I BIRTH SITE
KOHALA, HAWAII

From: [Stephen Smith](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] Declaratory Ruling 21-73 Comments
Date: Monday, December 20, 2021 12:03:05 PM

Aloha our names are Kriseda and Stephen Smith our home is at 56-104 Old Coast Guard Rd. Hawi, HI. We abutt the Eggans property at 56-102 Old Coast Guard Rd. We support their petition to correct this state zoning error and fixing it will not impact our property.

They are great for our neighborhood. They have done an amazing job of cleaning up the huge eyesore military base and making the shoreline safer and more open for the many hikers and fishermen and women and for everyone else.

They are wonderful neighbors who work hard to make the area much nicer than it has been for years and years.

Mahalo,
Kriseda and Stephen Smith

EXHIBIT 52

BEFORE THE LAND USE COMMISSION
OF THE 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
Hawaii'i, State of Hawaii'i.

DOCKET NO. DR21-73

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certify that on this date, a copy of the foregoing document was duly served on the following persons at their last known address by email and by depositing a copy in the U.S. mail, postage prepaid:

RENEE N.C. SCHOEN
Corporation Counsel
JEAN K. CAMPBELL
Deputy Corporation Counsel
Office of the Corporation Counsel
101 Aupuni Street, Suite 325
Hilo, HI 96720
Email: JeanK.Campbell@hawaiicounty.gov

JEFF DARROW
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, HI 96720
Email: planning@hawaiicounty.gov

County of Hawaii and Planning Department

ALISON KATO
Deputy Attorney General
425 Queen Street
Honolulu, HI 96813
Email: alison.s.kato@hawaii.gov

MARY ALICE EVANS
Director
Office of Planning
P.O. Box 2359
Honolulu, HI 96804-2359
Email: maryalice.evans@hawaii.gov

*State of Hawaii and Office of Planning and Sustainable
Development*

DATED: Honolulu, Hawai'i, March 10, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Christopher T. Goodin
CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN
Attorneys for Petitioner
HONOIPU HIDEAWAY, LLC