

A83-554 - FARMS OF KAPUA
Decision and Order Errata Sheet

"Tax Map Key 8-0-06: Portion of Parcel 3" on
pages 27 and 29 of the Decision and Order should be
"Tax Map Key 8-9-06: Portion of Parcel 3".

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
FARMS OF KAPUA)	DOCKET NO. A83-554
To Amend the Conservation Land Use)	FARMS OF KAPUA
District Boundary into the Agri-)	
cultural Land Use District for)	
Approximately 6,102 Acres at Kapua,)	
South Kona, Hawaii, Tax Map Key:)	
8-9-06: Portion of Parcel 3)	
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DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
FARMS OF KAPUA, LTD.) DOCKET NO. A83-554
To Amend the Conservation Land Use) FARMS OF KAPUA, LTD.
District Boundary into the Agri-)
cultural Land Use District for)
Approximately 6,102 Acres at Kapua,)
South Kona, Hawaii, Tax Map Key:)
8-9-06: Portion of Parcel 3)

FINDINGS OF FACT, CONCLUSIONS OF LAW.

DECISION AND ORDER

Farms of Kapua, Ltd., a California limited partnership (hereinafter referred to as "Petitioner"), filed this Petition on June 16, 1983, pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundary of approximately 6,102 acres of land situate at Kapua, South Kona, Hawaii (Hawaii TMK: 8-9-06: Portion of Parcel 3) (hereinafter referred to as the "Subject Property") from Conservation to Agriculture. The Land Use Commission (hereinafter referred to as the "Commission"), having heard and examined the testimony, evidence, argument of counsel, the proposed findings of fact and conclusions of law, presented at the hearing, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On June 27, 1983, the Commission, by unanimous action, ruled that the proposed agricultural development does not constitute a "significant effect" pursuant to Chapter 343, Hawaii Revised Statutes, and issued a negative declaration.

2. The Office of Hawaiian Affairs filed and subsequently withdrew a Petition for Intervention.

3. Pa'apono of Milolii, Inc., filed a timely Petition for Intervention and was admitted by the Commission as an interested party to the proceedings on October 26, 1983.

4. The Commission denied a Petition for Intervention filed by Elizabeth Ann Stone, President of Honest Environmental Citizens Against Progress, who failed to appear at the hearing on said petition.

5. The Commission held hearings on the petition on October 26, 27, 1983; February 27, 28; May 15, 16; and July 9, 10, 1984 pursuant to notices published in the Hawaii Tribune Herald and the Honolulu Advertiser on September 20, 1983; January 20, 1984; April 19, 1984 and June 20, 1984 respectively. The Commission served notices by certified mail on all parties.

6. Petitioner filed a Motion to Withdraw the negative declaration on November 25, 1983. On December 1, 1983, the Commission reconsidered its negative declaration of July 29, 1983, and required Petitioner to prepare and submit an Environmental Impact Statement pursuant to Chapter 343 of Hawaii Revised Statutes.

7. Petitioner filed its Draft Environmental Impact Statement with the Commission on February 21, 1984, and filed its Revised Environmental Impact Statement with the Commission on April 5, 1984. The Commission accepted Petitioner's Revised Environmental Impact Statement on May 15, 1984.

8. The Commission and all parties conducted a site inspection of the Subject Property on February 27, 1984.

DESCRIPTION OF THE SUBJECT PROPERTY AND ADJACENT LANDS

9. Petitioner purchased approximately 6,527 acres of land, including the Subject Property, under agreement of sale dated March 9, 1982 (the "Agreement of Sale"). Lands of Kapua, Ltd., a Hawaii general partnership, is the fee simple owner of the Subject Property.

10. The Subject Property is located in the southernmost portion of South Kona District, 20 miles south of Captain Cook and 20 miles northwest of South Point.

11. Petitioner's entire 6,527 acre property is located within the Conservation Land Use District in Kapua, South Kona, Hawaii. Petitioner proposes to reclassify approximately 6,102 acres of this land from the Conservation District to the Agricultural District. Petitioner does not seek reclassification of approximately 425 acres, which will remain in the Conservation District.

12. The Subject Property extends from the coast through broken lava terrain into the scattered forest at an elevation of approximately 1,200 feet.

13. The Subject Property includes approximately five miles of shoreline from Kalapili, just south of Okoe Bay, to Ahualoa. Small bays and inlets dot the northern portion of the coastline with reefs extending several hundred feet into the water. The southern portion consists primarily of bluffs of lava dropping off into the ocean. The Subject Property is bounded on the north side by the land of Okoe, on the mauka side by existing macadamia orchards, on the south side by the land of Kaulanamauna and on the makai side by the Pacific Ocean.

14. The elevation gradient of the shoreline is the greatest on the northern portion, and lessens southward along the coast. An elevation of 200 feet is reached approximately 2,000 feet inland from Okoe Bay, 3,000 feet

inland of O'e'a Bay, 7,000 feet inland of Niuou Point and 7,000 to 8,000 feet from Kanewa'a Point and Ahualoa. Most of the area between the shoreline and the 150 foot elevation contains slopes of up to five percent.

15. Petitioner and its predecessors have used the mauka portion of the Subject Property in recent years for cattle grazing. The makai portion of the Subject Property has been largely unused. The United States Navy utilized a major section of the central makai part of the area as a bombing target range until the mid-1960's.

16. Most of the vegetation on the Subject Property is comprised of guinea grass, fountain grass, 'ilima and koa haole.

17. Major sections of the inland portion of the Subject Property have been extensively modified in recent historic times by chain-dragging or bulldozer grubbing for preparation of cattle pastures.

PROPOSAL FOR DEVELOPMENT

18. Petitioner's proposed project will involve multi-agricultural uses of the Subject Property. These uses will include a macadamia orchard, a controlled pasture area for cattle, an area for the research and development of alternative crops and an area for aquaculture facilities.

19. Petitioner proposes to cultivate macadamia on approximately 1,710 acres of land, on the mauka portion of the Subject Property.

20. Petitioner proposes to plant approximately 2,472 acres between the macadamia orchard and the aquaculture facility in a combination of koa haole (leucaena) and guinea grass. Petitioner proposes to acquire wean calves from other ranches to place in this area.

21. Petitioner proposes to develop a 20 acre site on which Petitioner will erect the feedlot corrals, feed storage bunkers and working facilities as the unirrigated and irrigated pastures come into production.

22. Petitioner proposes to collect manure from the cattle to supply some of the necessary nutrients to cultivate the marine shrimp, the brine shrimp and spirulina in the aquaculture facility.

23. Petitioner proposes to cultivate koa haole on approximately 200 acres of the Subject Property on an intensive basis. Petitioner plans to utilize a 200 acre area for the research and development of other possible crops to cultivate, such as aloe vera and crownflower.

24. Petitioner proposes to build aquaculture farms in five 200 acre modules in an area of approximately 1,500 acres below the 150 foot elevation and 300 feet mauka of the shoreline. Petitioner will arrange the actual siting of the

modules in a pattern which preserves the significant archaeological features of the coastline area. The aquaculture facilities will consist of a series of ponds and raceways, and common support facilities, such as a hatchery and laboratories.

25. Petitioner has proposed as the primary species for its aquaculture operations those species with primary potential for cultivation at the site. Petitioner primarily desires to cultivate marine shrimp, mahimahi, blue green algae (spirulina) and brine shrimp. Petitioner secondarily desires to cultivate those species whose culture is possible because of the opportunity to append their culture to the primary species (seaweeds, oysters, clams, mullet and tilapia).

26. The proposed project will require on-site construction of a roadway system, irrigation water systems and agricultural improvements constructed by the Petitioner to County standards. Several wells will be developed within the macadamia orchard. The water distribution and storage systems and cesspools will be private. They will be maintained by the Petitioner.

27. Off-site improvements will include the extension of electrical and telephone lines and the resurfacing of existing access roads from Mamalahoa Highway.

28. Petitioner estimates that the cost of the on-site infrastructure improvements will be approximately \$9,300,000.00.

29. Petitioner will commence development of the proposed agricultural activities as soon as all governmental approvals are secured. Petitioner will develop the koa haole pasture area in increments of approximately 400 acres per year, over six years. Petitioner will grade and plant the macadamia area in increments of approximately 500 acres per year, over three years. Petitioner will develop a 200 acre koa haole cultivation and the 200 acre research and develop areas as soon as source water is developed. Petitioner will develop the first of the aquaculture modules within the first five years.

PETITIONER'S FINANCIAL CAPABILITY

TO UNDERTAKE THE PROPOSED DEVELOPMENT

30. The Petitioner's unaudited balance sheet dated October 31, 1982, lists \$21,963,834.00 in assets, including land valued at \$15,009,482.00. Notes payable secured by land amount to \$12,775,000.00. Subscriptions receivable from the limited partners are \$5,450,000.00 by April 1, 1984 and \$825,000.00 from the general partner payable as the financial needs of the partnership require.

STATE AND COUNTY PLANS AND PROGRAMS

31. The subject area is classified conservation by the State Land Use Commission. The property is within the Limited (L), Reserve (R) and General (G) subzones of the Conservation District.

32. The Land Use Pattern Allocation Guide Map of the County of Hawaii General Plan designates the property as Conservation except for a strip found along the shoreline which is designated Open.

33. The County zoning designation for the property is Open (O). An approximately 500 foot wide strip along the shoreline is situated within the Shoreline Management Area.

NEED FOR AGRICULTURAL DEVELOPMENT

34. The demand for shrimp has increased four-fold since 1967. Natural stocks are unlikely to provide for future demands. A major opportunity and need for a shrimp aquaculture industry exists.

35. The demand for mahimahi in the State of Hawaii is over 6,000,000 pounds per year and continues to rise. Of this demand, only about 3% is caught fresh by local fishermen while the remainder must be imported as frozen fillets.

36. Mahimahi is not yet a viable product in an aquaculture facility.

37. Brine shrimp or Spirulina is a source of protein that can be used as feed for shrimp, mahimahi, chickens and pigs. The State imports more than \$8.5 million worth of protein feed ingredients or approximately 27,000 tons annually.

38. There is an established market for oyster products on a world, national and local level. In 1975, worldwide oyster consumption was 770,000 metric tons round weight. The United States consumed about 60 percent of this figure, or about 454,000 metric tons. Annual consumption in Hawaii ranges from 500,000 to 550,000.

39. There are no commercial enterprises culturing algae for the Hawaii market. Market analysis indicates that there is sufficient local demand to utilize an additional 316,000 pounds per year.

40. A major advantage of the Subject Property is the size of the area available. Very few sites in Hawaii will permit multiple aquaculture use. The site is also considered ideal for aquaculture because of its long southern exposure to the sun and its location on the leeward side of Mauna Loa, which shelters the site from the northeast tradewinds.

41. The U.S. mainland market potential for macadamia nuts in 1990 has been estimated at 32,200,000 pounds. Current marketing is less than 4,000,000 pounds,

including macadamia nuts taken home from Hawaii by visitors. It has been estimated that 28,000 acres would be required to supply the U.S. and Hawaii market alone and that an additional 21,000 acres would be required to supply the rest of the world. The total need has been estimated as 49,000 acres.

42. The macadamia nut acreage in the State of Hawaii amounted to 13,700 acres in 1981 and an estimated additional 15,000 acres is expected to be planted within the next 10 years. Foreign plantings are minimal at present, but may pose serious competition to Hawaii in 20 years.

43. The total planted acreage in the State of Hawaii would be slightly in excess of requirements to meet the projected 1990 market potential for Hawaii and the U.S. mainland. However, Petitioner does not anticipate that all of the acreage would be in full bearing by 1990, since macadamia trees reach full maturity at approximately 16 years of age.

44. Petitioner should be able to market its output of nuts since planting at an early date would enhance the opportunity to develop markets for macadamia nut products prior to serious competition from potential domestic and foreign producers.

45. There is a market potential for aloe vera. The United States imports about 400 tons of aloe per year. At the present time there are only about four thousand acres in production in the United States and it appears that there is a great market for this product.

46. There is a steady increase in the importation of U.S. mainland and foreign beef and a corresponding decline in beef production in the State of Hawaii. Data showing this trend from 1971 to 1981 are as follows:

<u>Year</u>	<u>U.S. Mainland Imports in #</u>	<u>Foreign Imports in #</u>	<u>Hawaii Prod.</u>	<u>Hawaii Prod. as a % of Total Consumption</u>
1971	23,900,000	16,500,000	34,000,000	46%
1976	39,900,000	20,400,000	32,300,000	35%
1981	45,600,000	16,500,000	28,700,000	30%

47. The 2,500 acres of controlled pasture could support approximately 875 to 1,000 head of cattle. This assumes no irrigation, 70% pasture coverage and supplemental haole koa green chop feed.

IMPACT ON RESOURCES OF THE AREA

Agriculture

48. Predominant soil types at the Subject Property are Kaimu Series in the mauka section and a'ala lava in the makai section. Kaimu soils are well adapted to macadamia

production. The areas with a'a lava can be used for macadamia production under appropriate preparation and cultural methods.

49. The only agricultural activity that presently occurs on-site is cattle grazing. The proposed project would intensify cattle grazing. There are other lands in West Hawaii, at similar elevations, with similar rainfall and soils, which are vegetated with koa haole and are successfully used for cattle grazing.

50. Petitioner proposes irrigation only in the macadamia orchard, the 200 acre koa haole cultivation area and the 200 acre research and development area. Rainfall in the area is relatively low and evenly distributed. The porous characteristics of the ground precludes the occurrence of surface runoff. It is unlikely that there would be any soil erosion from irrigation runoff.

51. Petitioner proposes to return waste water from the aquaculture system to the soil by infiltration ditches rather than dispersion wells. Petitioner will collect the brackish water in a culture trough for seaweed in order to remove any contaminants before the water infiltrates into the underlying lava.

Vegetation

52. Much of the subject area consists of Scrub Grasslands dominated by fountain grass and Natal redtop. Trees are more prevalent in the mauka than in the makai regions. Vast areas are nearly devoid of vegetation. Another extensive vegetation type is the koa haole. Some areas are dominated by Kiawe Forest, consisting of kiawe trees up to 30 feet tall. Coastal vegetation is relatively sparse.

53. Manuka Natural Area Reserve is immediately south of the petition area. The boundaries of the koa haole pasture at Farms of Kapua would be fenced to prevent animals from straying into the Reserve and spreading koa haole.

54. Petitioner proposes to set aside approximately 20 acres which include kauila and bobea trees to be managed as a preserve.

Fauna

55. Almost all of the mammals found on the site are introduced species. Mammals and birds which frequent the area will relocate to other areas. It is expected that these animals will return when the crops that are planted mature enough to provide suitable food and shelter.

56. Only two native birds, the Io and the Pueo, were sighted on or near the borders of the Subject Property. Since these birds now forage over macadamia orchards,

pasture land and other vegetation on the Kona coast, the proposed action would have no adverse impact on these species.

57. The only endangered mammal known to be present in the South Kona area is the Hawaiian Hoary Bat. Since the bat is highly mobile, any species located on the Subject Property would normally relocate to more suitable environs such as the Manuka Natural Area Reserve located immediately south of the subject project.

Coastal Water Quality and Marine Biology

58. The Department of Health has classified offshore waters of the subject area as Class AA.

59. Petitioner proposes no action on the shore or within offshore waters and does not propose to make any point discharge of treated or untreated sewage, or discharge of effluent from the aquaculture facility directly into offshore waters. Petitioner will set the koa haole pasture area back 2,000 feet from the shoreline. The Petitioner will leave this setback area of approximately 425 acres in the Conservation District.

60. There are several anchialine ponds between Okoe Bay and Ninou Point, ranging in size from a few square feet to slightly less than a quarter acre. The smaller ponds are all found between 5 to 100 feet from the

coastline. A single large pond is approximately 100 yards from the coastline. None of the ponds are included in the area to be reclassified.

61. Petitioner proposes to put water utilized by the aquaculture facility through a series of trenches with seaweed which will clean residual nutrients from the water. The clean water will then be placed in a percolation pond.

Historical/Archaeological Resources

62. Dr. Paul Rosendahl conducted a 100% pedestrian coverage archaeological field reconnaissance on the Subject Property for the coastal portion of the project area.

63. Department of Land and Natural Resources' (DLNR) records indicate that there are numerous archaeological sites within the parcel which contains research and interpretative value. Dr. Rosendahl has confirmed that these sites are currently listed in the Statewide Archaeological Inventory.

64. Dr. Rosendahl discovered a total of 41 new sites in addition to 21 which were previously recorded. Dr. Rosendahl found the greatest density and variety of archaeological sites in the northern coastal zone. This area contained examples of virtually every type of site and feature. The best known feature in this area is the slide of the Ahole Holua Complex which is regarded as one of the

best preserved within the State. The holua complex is not part of the Subject Property.

65. Approximately 425 acres adjacent to the Subject Property contain a significant amount of archaeological findings. The Petitioner will retain this area in the Conservation District.

66. The northern portion of the area designated for aquaculture has some archaeological sites. Petitioner will locate aquaculture modules after the completion of additional survey of this area in order to preserve significant sites.

67. Petitioner will conduct further archaeological reconnaissance surveys within the Subject Property that were not covered in the earlier survey. Petitioner will determine the scope of further archaeological work in consultation with the appropriate State and County officials.

68. Petitioner will preserve or salvage any archaeological site found worthy of such action by the appropriate State and County agencies.

69. Petitioner will provide access to identified burial sites on the Subject Property that are brought to the developer's attention.

70. Specific facilities plans for utilities will follow additional archaeological work. If any significant archaeological sites are found, Petitioner's archaeologist will recommend, pursuant to the resource management plan that is adopted, whether preservation is necessary or if salvage excavation is appropriate.

Natural Hazards

71. Petitioner will construct the proposed aquaculture area approximately 300 foot inland. The shoreline fronting the aquaculture area consists primarily of bluffs of lava dropping off into the ocean. Elevations 300 feet inland of the proposed aquaculture area range from approximately 26 to 40 feet, well above the Corps of Engineers' estimates for the near-shore 100-year tsunami inundation area with a height of 7 to 8 feet.

72. The property is not subject to flooding from the 100-year flood and is designated Zone C, or area of minimal flooding, according to the Federal Flood Insurance Rate Map.

Soils

73. Petitioner will clear and grub the Subject Property in increments. Petitioner will plant crops immediately after clearing and grubbing to prevent dust generation.

Socio Economic Characteristics

74. Unemployment for the Island of Hawaii in 1982 was 9.9%. The statewide unemployment figure was 6.7%. Unemployment figures for the areas surrounding the Subject Property are -- Ka'u: 15.1%, South Kona: 8.6%, North Kona: 7.3%

75. Implementation of the proposed project will expand the agricultural and economic value of the Subject Property.

76. Macadamia nuts will add to the export base of Hawaii County. Petitioner proposes to market the seafood products from the aquaculture facilities on Oahu or on the mainland. These products will also add to the County's export base.

77. The cattle will provide nutrients for the marine shrimp, brine shrimp and spirulina, reducing the amount of manufactured feeds that must be imported from the mainland or Asia.

78. Petitioner predicts that the proposed agricultural activities will be expanded to provide long-term employment for approximately 160 individuals.

79. The people of Milolii are primarily native Hawaiian fishermen and do not desire the type of jobs that Petitioner has to offer.

80. Petitioner expects that the proposed project will generate greater property tax revenues per acre than are currently being assessed. Licenses, permits and other fees will also generate additional tax revenue to the County. Petitioner does not predict that County expenditures for facilities and services will increase appreciably as a result of the development.

Recreational Resources

81. Petitioner will provide lateral access along the shoreline and will maintain the same level of mauka-makai access by permission that presently exists.

82. Petitioner doesn't propose any development along the shore and within the offshore waters. The Commission will keep a strip along the coastline, ranging from 300 feet to one-half mile inland in the Conservation District.

Water Resources

83. Petitioner estimates it will require three wells to satisfy average demands for irrigation water and a total of four to five wells to satisfy worst-case situations.

84. The rainfall at the Subject Property at the 400 feet elevation averages 30 inches per year, at the 1,100 foot elevation, rainfall averages 46 inches per year and at

foot elevation, rainfall averages 46 inches per year and at the 150-400 foot elevation, rainfall averages to 25-30 inches per year.

85. No one has tested the ground water resources of the site. The annual average rainfall in the principal recharge zone for the aquifer beneath Kapua reaches 75 inches and over a larger area, 50 to 75 inches.

86. Historical records of rainfall data in this area indicate that the occurrence of a severe drought on the Subject Property would be rare.

87. Dr. John Mink, in his hydrology study, indicated that there is a substantial amount of ground water in the area of the Subject Property and that there is adequate ground water to accommodate Petitioner's proposed development.

88. The State well at Okoe, which is less than one mile from the Kapua boundary, produces water which is too saline for irrigation.

89. Petitioner would have to mix water from the Okoe well with water of a lower chloride content to irrigate macadamia trees. Petitioner could also use water from Okoe well to meet koa haole irrigation needs.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Water

90. With the exception of the Okoe well, no one is developing any potable water well within 20 miles of Kapua. The nearest active wells are near Naalehu in Ka'u and northward in South Kona toward Kealakekua, in aquifers separate and remote from the aquifer underlying Kapua.

91. Petitioner estimates the potable water requirements for employees of the macadamia orchard, cattle operations and aquaculture modules to be 3,200 gallons per day. Petitioner proposes to truck in this water for the employees on the site.

92. Petitioner proposes to site the irrigation wells within the macadamia orchard at locations consistent with acceptable water quality and transmission and storage requirements. Petitioner will drill these wells in phases along with the planting and expansion of the orchards.

93. Petitioner proposes to use a central water pumping facility with two wells and three pumps to provide brackish water for the aquaculture facility.

94. Petitioner proposes to design and construct a new distribution system for both irrigation water and brackish water at the Petitioner's own expense to serve the

proposed development. If the State grants Petitioner permission to take water from the Okoe well, Petitioner will install approximately 13,000 linear feet of transmission lines to bring water from the well to a mixing point within the Subject Property.

Sewage Disposal

95. The proposed project will not be dependent on County facilities for sewage disposal or solid waste. Petitioner proposes to construct several cesspools pursuant to the State's Public Health Regulations and will have private solid waste collection service.

Drainage

96. Rapid natural drainage on the Subject Property occurs due to the porous condition of the ground.

Traffic and Roads

97. Access to the site is from Mamalahoa Highway. Mamalahoa Highway, a two-lane, two-way highway, affords only major arterial access to the project area. There are two unimproved dirt roads which afford access to the interior of the Subject Property from the highway. Several jeep roads extend from these roads.

98. Petitioner proposes to construct a private 60 foot right-of-way with 20 foot pavement from the mauka portions of the Subject Property to the aquaculture facility.

99. Mamalahoa Highway can accommodate an hourly volume of 2,000 vehicles in both directions. The peak hour traffic on the highway in the Kapua area presently ranges from 114 to 139 vehicles per hour in both directions.

Power and Telephone

100. Hawaii Electric Light Company, Inc., and Hawaiian Telephone Company will overhead power lines and telephone lines along the Mamalahoa Highway extending to the Subject Property. The power supply for the proposed project will be a three-phase type.

101. The Petitioner will construct an electrical substation, at its expense, in order to enable Hawaii Electric Light Company, Inc., to provide power to the site.

Protective Services

102. County of Hawaii proposes to provide police, fire and ambulance service from the Captain Cook civic center complex, approximately 20 miles away from the Subject Property.

Public Schools

103. Students from kindergarten to the eighth grade in the area surrounding the Subject Property within the South Kona Judicial District attend Hookena Elementary/

Intermediate School in Captain Cook. Konawaena Intermediate/High School in Kealahou provides instruction for students grades seven through twelve.

104. The children of the employees of the project area are not expected to impact adversely the schools of the area because most of the employees are expected to be from nearby areas.

CONFORMANCE WITH CHAPTER 205, HRS

105. The proposed project is compatible with existing uses in the area. Petitioner presently uses the upper 1,200 acres of the Subject Property for cattle grazing with koa haole as the primary feed. Petitioner proposes to graze cattle on approximately 2,500 acres of controlled pasture.

CONFORMANCE TO THE HAWAII STATE PLAN

106. One of the agriculture objectives of the Hawaii State Plan, Chapter 225, Section 7(a), is to encourage "continued growth and development of diversified agriculture throughout the State."

107. To achieve this agriculture objective, a policy of the State Plan, Chapter 225, Section 7(b), is to "expand Hawaii's agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture and other potential enterprises."

108. Chapter 225, Section 103(d), has established the following as a "priority action" for diversified agriculture and aquaculture: (b) "Encourage the use of public and private resources to develop agricultural and aquacultural activities which have economic growth potential."

109. Petitioner's proposal for a "multi-agricultural use" of the Subject Property is based on a management plan to enable Petitioner to achieve economic success and to protect and conserve physical and cultural resources of the area.

CONCLUSIONS OF LAW

The Commission concludes that the partial approval of Petitioner's request to reclassify approximately 6,102 areas from the Conservation to the Agricultural District at Kapua, South Kona, County of Hawaii, State of Hawaii and the amendment to the district boundaries accordingly is reasonable and non-violative of Chapter 205, Section 2, Hawaii Revised Statutes, and Rule 2-2 of the State Land Use District Regulations of the Land Use Commission, subject to the conditions stated herein.

The Commission further concludes that a portion of the Subject Property, approximately 64 acres along the shoreline and representing an additional 200 feet inland setback area shall be retained in the Conservation District.

ORDER

IT IS HEREBY ORDERED that a portion of the property, which is the subject of this Petition, Docket No. A83-554, consisting of approximately 6,039 acres situate at Kapua, South Kona, Island and County of Hawaii, State of Hawaii, for the purpose of developing a "multi-agricultural use," Third Division Tax Map Key: 8-0-06: Portion of Parcel 3, and more specifically identified on Exhibit A attached hereto and incorporated by reference herein, shall be and hereby is reclassified from the Conservation to the Agricultural District and the district boundaries are amended accordingly subject to the following conditions:

1. Petitioner shall submit to the Commission a new map of the Subject Property showing the Conservation line 300 feet inland and the acreage contained within the 300 feet setback area.
2. Petitioner may only subdivide the Subject Property for the expressed purpose of implementing the agricultural and aquaculture plan as represented to the State Land Use Commission; and that there shall be no homes constructed except as directly related to the operation and maintenance of the agricultural and aquaculture plan as recommended.

3. Petitioner shall conduct an archaeological reconnaissance of all areas, which will be impacted by development, and shall send the findings to the Department of Land & Natural Resources, Historical Preservation Office, for review and comment before commencing development, which findings the Historical Preservation Office must approve.
4. Petitioner shall maintain public access routes along the shoreline and shall provide the same degree of mauka-makai access and afford access along such routes to identified burial sites to family and friends, that presently exists.

These conditions may be fully or partially released by the Commission as to all or any portion of the Subject Property upon timely motion and provision of adequate assurance of satisfaction of these conditions by the Petitioner.

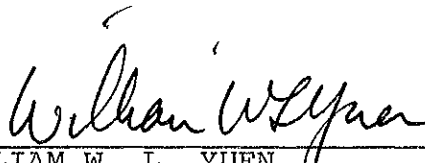
IT IS HEREBY FURTHER ORDERED that the balance of the Subject Property in this Petition, Docket No. A83-554, consisting of approximately 63 acres and identified on Exhibit A attached hereto and incorporated by reference herein, situated at Kapua, Island and County of Hawaii,


State of Hawaii, Third Division Tax Map Key 8-0-06: Portion of Parcel 3, shall be and hereby is denied reclassification into the Agricultural District and, therefore, remains in the Conservation District.

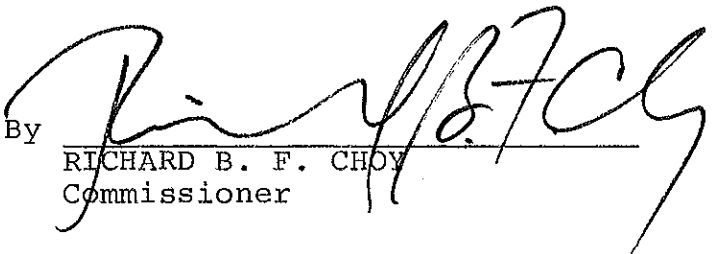
DOCKET NO. A83-554 - FARMS OF KAPUA

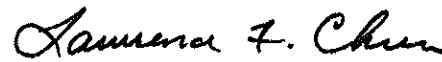
Done at Honolulu, Hawaii, this 28th day of February,
1985, per motions on November 14, 1984 and December 18, 1984.

LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN
Chairman and Commissioner

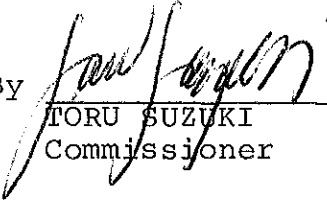
By 
TEOFILO P. TACBIAN
Vice Chairman and Commissioner

By 
RICHARD B. F. CHOY
Commissioner


By 
LAWRENCE F. CHUN
Commissioner

By 
WINONA E. RUBIN
Commissioner

DOCKET NO. A83-554 - FARMS OF KAPUA

By 

TORU SUZUKI
Commissioner

By 

FREDERICK P. WHITTEMORE
Commissioner

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8-9-06: Portion of Parcel 3)
_____)

CERTIFICATE OF SERVICE

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

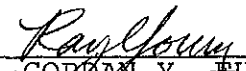
KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

ALBERT LONO LYMAN, Planning Director
Hawaii County Planning Department
25 Aupuni Street
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ROY Y. TAKEYAMA, Attorney for Petitioner
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PA'APONO and its individual members
c/o Meredith Lenell
Attorney for Intervenors
P. O. Box 861
Captain Cook, Kona, Hawaii 96704

DATED: Honolulu, Hawaii, this 28th day of February, 1985.



GORDON Y. FURUTANI
Executive Officer

DOCKET NO. A83-554 - FARMS OF KAPUA

A copy of the Land Use Commission's Decision and Order was served by regular mail to the following on February 28, 1985.

Everett Kaneshige, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

RONALD IBARRA, Corporation Counsel
Office of the Corporation Counsel
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

JOHN FARIAS, JR., President
Agricultural Concepts, Inc.
615 Piikoi Street
Suite 1510
Honolulu, Hawaii 96814

WILLIAM E. H. TAGUPA
Office of Hawaiian Affairs
567 South King Street, Suite 100
Honolulu, Hawaii 96813

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A83-554
FARMS OF KAPUA, LTD.) FARMS OF KAPUA, LTD.
To Amend the Conservation Land)
Use District Boundary into the)
Agricultural Land Use District)
for Approximately 6,102 Acres at)
Kapua, South Kona, Hawaii, Tax Map)
Key: 8-9-06: Portion of Parcel 3)

JUN 26 1983
LAND USE COMMISSION

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER ON REMAND HEARING
FOR FURTHER PROCEEDINGS WITH RESPECT TO
ARCHAEOLOGY AND THE IMPLEMENTATION AND
IMPACT OF 1983 SENATE RESOLUTION NUMBER 65

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A83-554
FARMS OF KAPUA, LTD.)	FARMS OF KAPUA, LTD.
To Amend the Conservation Land)	
Use District Boundary into the)	
Agricultural Land Use District)	
for Approximately 6,102 Acres at)	
Kapua, South Kona, Hawaii, Tax Map))	
Key: 8-9-06: Portion of Parcel 3)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER ON REMAND HEARING
FOR FURTHER PROCEEDINGS WITH RESPECT TO
ARCHAEOLOGY AND THE IMPLEMENTATION AND
IMPACT OF 1983 SENATE RESOLUTION NUMBER 65

Pursuant to the Order of the Honorable Shunichi Kimura, Judge of the Circuit Court of the Third Circuit, State of Hawaii, issued on May 28, 1986, in Civil Case Number 85-431, which remanded the case to the Land Use Commission for further proceedings with respect to the provision in the order calling for a substantially greater archaeological reconnaissance survey of the "mauka" areas, and the provision in the order calling for more evidence regarding the implementation of the 1983 Hawaii Senate Resolution Number 65 "Requesting Further Action On The Designation of a State Natural Recreational and Historic Park at Kapua, Honomalino, Okoe, Kaulanamauna, and Manuka Districts in South Kona and Kau, Island of Hawaii," and the provision for evidence on the impact that the requested classification change will have on the implementation of S.R. No. 65; the Land Use Commission (hereinafter "Commission"),

having conducted proceedings consistent with the Order on October 14, 1987, April 26, 1988, October 28, 1988, December 2, 1988, January 26, 1989, and March 10, 1989, and having heard the testimony and examined the evidence presented during the remand hearings, the parties' proposed findings of fact, conclusions of law and decision and order, and the parties' responses to proposed findings of fact, conclusions of law and decision and order, hereby makes the following supplemental and/or modified findings of fact to the Commission's Findings of Fact, Conclusions of Law and Decision and Order dated February 28, 1985 (hereinafter "First Decision and Order"):

SUPPLEMENTAL AND/OR MODIFIED FINDINGS OF FACT

The Commission's findings of fact numbers 1 to 8 in its First Decision and Order are supplemented with the following findings of fact:

1. On June 16, 1983, Farms of Kapua, Ltd., a California limited partnership (hereinafter "Petitioner"), filed this Petition pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundary of approximately 6,102 acres of land situated at Kapua, South Kona, Hawaii, identified as Hawaii Tax Map Key: 8-9-06: Portion of Parcel 3 (hereinafter "Property") from the Conservation District to the Agricultural District.

2. On February 28, 1985, the Commission issued its Decision and Order which reclassified approximately 6,039 acres

of the Property from the Conservation District into the Agricultural District subject to four conditions. The remaining balance of the Property, approximately 63 acres, was retained in the Conservation District.

3. On May 28, 1985, Pa'apono of Milolii, Inc. (hereinafter "Intervenor") filed a Motion to Amend Order, which the Commission denied by Order issued on June 4, 1985.

4. On July 3, 1985, Intervenor filed a Notice of Appeal with the Third Circuit Court to appeal the First Decision and Order.

5. On May 28, 1986, the Honorable Shunichi Kimura, Judge of the Third Circuit Court, issued an Order Remanding Case for Further Proceedings with the following instructions:

"NOW THEREFORE IT IS HEREBY ORDERED:

"1. That Appellee STATE LAND USE COMMISSION shall require the parties to provide substantially greater archaeological reconnaissance survey of the "mauka" areas;

"2. That the parties provide more evidence regarding the implementation of the 1983 Hawaii Senate Resolution No. 65 Requesting Further Action On The Designation of a State Natural Recreational and Historic Park at Kapua, Honomalino, Okoe, Kaulanamauna, and Manuka Districts in South Kona and Kau, Island of Hawaii, and provide evidence on the impact that the requested reclassification change will have on the implementation of S.R. No. 65;

"3. That this matter shall be remanded for proceedings consistent with this order."

6. On September 18, 1987, Farms of Kapua, filed a Motion to Continue Hearing to provide the Petitioner's archaeological consultant with sufficient time to provide a completed archaeological reconnaissance survey of the "mauka areas".

7. On September 25, 1987, Petitioner, the Department of Business and Economic Development¹ of the State of Hawaii (hereinafter "State" or "OSP"), the County of Hawaii Planning Department (hereinafter "County") and Intervenor, filed a Stipulation For Continuance of Hearing.

8. On October 14, 1987, the Commission, through its appointed hearing officer Commissioner Frederick Whittemore, reopened the hearing on this docket pursuant to notice published in the Honolulu Advertiser and the Hawaii Tribune Herald on September 4, 1987. The hearing officer approved Petitioner's request to continue the hearings on this matter for a period not to exceed six months.

9. On April 11, 1988, Petitioner filed a Motion for Continuance of Hearing to provide the parties with sufficient

¹The Department of Business and Economic Development replaced the Department of Planning and Economic Development as the party representing the State of Hawaii's interest in the proceedings before the Commission. Subsequently, The Office of State Planning replaced the Department of Business and Economic Development as the party representing the State of Hawaii's interest.

time to review the complete archaeological reconnaissance survey.

10. On April 19, 1988, Intervenor, the State and the County filed Stipulation to Petitioner's Motion for Continuance of Hearing.

11. On April 26, 1988, the Commission, through its appointed hearing officer, approved Petitioner's request to continue the hearings on this matter to a date to be set a minimum of sixty days from the date of the submission of the completed archaeological reconnaissance survey.

12. On May 19, 1988, Petitioner filed Exhibit R-1 "Archaeological Reconnaissance Survey Farms of Kapua Mauka Lands Project Area".

13. On October 20, 1988 Intervenor's attorney, James Ireijo, notified the Commission that he was withdrawing as Intervenor's counsel.

14. On October 21, 1988, Intervenor filed a Motion to Continue Hearing to allow Intervenor's new counsel, Native Hawaiian Legal Corporation, sufficient time to review the case files on this petition.

15. On October 21, 1988, a stipulation to Intervenor's Motion to Continue Hearing by Petitioner, State and the County was filed.

16. On October 21, 1988, the County filed a Motion Seeking Clarification of the Scope and Procedures to be Utilized for the Continued Hearings on the remand proceedings.

17. On October 28, 1988, the County withdrew its October 21, 1988 Motion and the Commission granted Intervenor's request to continue the hearings to December 1, 1988.

Findings of Fact number 62 through 70, inclusive in Commission's First Decision and Order, regarding Impact On Resources of the Area Historical/Archaeological Resources subsection, are modified and supplemented by the following findings of fact:

Historical/Archaeological Resources

18. During the period November 8-20, 1982, Paul H. Rosendahl, Ph.D, Inc. (hereinafter "PHRI") conducted an archaeological reconnaissance survey of the Property and adjoining lands (hereinafter "1983 Survey"). This survey included conducting some preliminary historical documentary research into available archaeological reports, inventory forms and records and some other kinds of documentary materials. Preliminary socio-cultural research, including some informant work within the local community, was also conducted and included the preparation of a plan for addressing relevant socio-cultural issues.

19. The 1983 Survey by PHRI covered an area consisting of approximately 7,400 acres and is bound on the north by the Land of Okoe 1 & 2, on the east by a fenceline demarcating the approximate limits of the existing macadamia orchard, on the south by the Land of Kaulanamauna, and on the west by the shoreline and includes the Property.

20. The 1983 Survey consisted of 100% coverage of the zone extending from the shoreline to 1,500 feet inland, from the northern to the southern boundary of Kapua. In addition, a 100% surface or pedestrian coverage was conducted of selected inland survey areas. The survey areas were stratified on the basis of both natural and environmental factors, previously recorded sites, and general archaeological knowledge. A total of 26 survey areas were surveyed. The sample coverage of the total project survey area was more than 20% - with 100% coverage of the coastal area and approximately 15% coverage of the inland area.

21. PHRI's 1983 Survey identified 56 sites in the 7,400-acre area consisting of 21 previously recorded Hawaii Register of Historic Places sites and 35 new sites which were assigned designated state inventory numbers.

In addition, eight more sites were added to the list of designated sites during the preparation of Petitioner's Environmental Impact Statement (hereinafter "EIS") for a total of 64 sites.

22. The northern coastal portion of the 1983 survey area in which the greatest density and variety of archaeological remains occur, corresponds generally to the approximately 425 acres adjacent to the Property which Petitioner proposed, in its Petition, to retain in the Conservation District.

The 1983 Survey indicates that the sites and features tend to concentrate to the north of the survey area with the greatest density and variety of archaeological remains located within the coastal zone, which contained almost every site type identified. The best known feature in this area is the slide of the Ahole Holua Complex which is regarded as one of the best preserved within the State. The holua complex is not part of the Property.

Inland portions of the 1983 Survey area had a lesser variety and density of sites.

23. In December of 1983, Matthew Spriggs of the Department of Anthropology, University of Hawaii-Manoa, conducted a reconnaissance field trip to the Property and recorded 18 sites. Sprigg's reconnaissance field trip generally covered areas in the inland and southern portions of the Property which were areas not previously covered by Dr. Rosendahl.

24. PHRI conducted a second archaeological survey of the Property during 1987 and 1988 (hereinafter "1988 Survey").

25. The archaeological surface reconnaissance for the 1988 Survey was conducted during the period October 26, 1987 through March 11, 1988. The field survey areas were based on aerial reconnaissance of the Property, the results of previous survey work, and the various vegetation patterns and types of terrain contained on the Property. Ground coverage was 100% in

the Grassland, Native Forest, Kiawe Forest, and Secondary Grassland zones. Coverage was circa 94.5% in the Scrub Grassland zone, circa 80.0% in the Secondary Forest/Scrub Zone, circa 88.8% in the Koa-Haole Thicket Kipuka zone, and circa 56.7% in the Barren/Sparse Vegetation zone. All areas bordering trails, regardless of the zones in which they were in, were covered 100%.

26. The 1988 Survey included resurveying nearly 100% of the area inspected during the 1983 Survey and Sprigg's 1983 survey. The only areas not resurveyed were small portions in Survey Areas A4 and V2, identified in the 1983 Survey, and a portion of the southeast corner of the Property which was only partially inspected because it had been mechanically altered.

27. The 1988 Survey covered approximately 5,784 acres of Lands at Kapua (hereinafter "Survey Area"). The Survey Area generally corresponds with the location of the Property except the exclusion of a narrow strip of land between 500 feet from the shoreline and 1,000-1,500 feet inland from the shoreline along the central and southern Kapua coast and approximately depicted as the area bounded by the "Seaward Limit of Petition Area" boundary, "Limits of Project Area" boundary, and the boundary between Kapua and Kaulanamauna on Figure 5 of the "Site Location Map" identified as Petitioner's Exhibit R1.

28. According to PHRI, the scope of work for the 1988 Survey was based on discussions with Virginia Goldstein, staff

planner and historic sites specialist with the County of Hawaii Planning Department, Dr. Ross Cordy, chief archaeologist with the Historic Sites Section of the Department of Land and Natural Resources (hereinafter "DLNR-HSS"), and a review of available background literature. The scope of work was as follows:

1) Conduct 100% coverage low-level (approximately between 30-50 feet in altitude) aerial reconnaissance by helicopter of the 5,784-acre project area, with special emphasis on (a) following out any foot trails present and plotting them on aerial photographs and/or maps, (b) identifying all sites observed, and (c) identifying areas devoid of sites (e.g., recent lava lands and mechanically altered lands);

2) Conduct variable coverage (partial up to 100%), variable intensity (30- to 90-foot intervals) ground reconnaissance of the previously unsurveyed parts of the project area (approximately 4,908 acres), with relatively higher intensity coverage being given to undisturbed lands and relatively lower intensity coverage to mechanically altered lands;

3) Conduct interviews with any appropriate and available local informant sources; and

4) Analyze field and informant interview data, and prepare appropriate reports.

29. In addition, in areas where visibility allowed, sweeping intervals were expanded to 30 to 50 meters. Conversely, where lands were irregular, intervals were reduced to ensure that no sites were missed.

30. Pursuant to Dr. Cordy's request, PHRI conducted hydration-rind and radiometric dating analyses of volcanic glass and carbon samples collected at the site.

31. The PHRI 1988 Survey identified a total of 297 sites (54 previously identified and 243 new sites). The sites that were found in the Survey Area are typical of the known range of formal (relating to feature) and functional types of traditional Hawaiian sites.

The range of formal sites included: walls, platforms, enclosures, terraces, cairns, trails, petroglyphs, surface midden and coral scatters, modified caves/tubes, mounds, pahoehoe and aa excavations, modified outcrops, pits, overhangs, ramps, modified sinkhole areas, leveled/cleared areas, boulder/cobble concentrations, alignments, filled depressions/cracks, slab-line firepits, cupboards, abraded depressions, and basins. Also present were compound feature types.

The range of functional types included: temporary habitation, habitation, agricultural, marker, transportation, burial, religious, quarry, water catchment and storage, refuge, tool manufacturing, recreation and miscellaneous historic

functions. There were also a small number of sites for which the function was indeterminate.

32. According to PHRI, the nature and patterning of the sites found in the Survey Area appears to replicate the general nature and patterning of sites that is known to extend throughout most of north and south Kona from the Kailua-Keauhou vicinity to Kapua. The archaeological resources at Kapua are not exceptional or unique in comparison to other historic resources in central West Hawaii.

33. According to PHRI, the most common formal feature type in the Survey Area were mounds (23% of the total features). Other common feature types that were found included - terraces (16% of the total features); cairns (12%); lava tubes, caves, and sinkholes (7%); pahoehoe excavations (6%); pits and pit complexes (6%); C-shape walls (4%); enclosures (4%); platforms (3%); and trails (3%).

34. PHRI indicates that temporary habitations were the most frequent functional site types - comprising approximately 33% of the total number of sites. Other common functional site types included - agricultural (18%); marker (13%); transportation (13%); habitation (9%); quarry (7%); burial (4%); and religious (3%).

35. The 1988 Survey indicates that the sites on the Survey Area were concentrated primarily in three areas - along the eight primary coastal inland oriented trail systems; along

the major lava tube systems which traverse the southern portion of the petition area; and in the several kipuka which extend across the northern portion and northern inland part of the Survey Area.

36. PHRI indicates that its age determination analyses suggest early habitation at Kapua occurred in mid-800 A.D., recurrent use of temporary habitations began in the late 1200's and continued into the early 1800's with the most intensive period of use between 1450 to 1600 A.D.

37. According to Dr. Rosendahl of PHRI, nine previously identified sites, which are part of the Property outside of the Survey Area and located approximately in the coastal strip between the shoreline Conservation District and the Survey Area, in addition to the 297 sites identified in the Survey Area for a total of 306 sites, were considered in its analyses for significance.

38. According to PHRI, 241 of the total 306 sites that were identified through archaeological surveys on the Property, which includes the Survey Area, are assessed as being significant solely for their information content or research value. No further archaeology work is recommended for 123 of these 241 sites. For the remaining 118 of these 241 sites, further data collection was completed and PHRI concluded that the physical preservation of these 118 sites is not considered essential. The remaining 65 sites are assessed as significant

and are recommended either for preservation "as is", or preservation with some level of interpretive development.

39. PHRI's determination of significance was based on factors which have been generally accepted by Hawaii's archaeological community, i.e., sites which were culturally important to native Hawaiians. It classified these sites into 4 basic types: 1) Heiau or other religious structures; 2) trails; 3) burials and 4) petroglyphs. However, PHRI's classification of these sites were based on its ability to identify sites in the field and PHRI recognizes that there is a possibility of misidentifying sites.

40. The State Department of Land and Natural Resources (hereinafter "DLNR") indicates that the archaeological survey coverage of the Property is near completion with only a few minor sites likely to be still unidentified.

41. DLNR-HSS agrees with PHRI that the 123 sites are no longer significant because they were significant solely for their information content.

42. DLNR-HSS generally agrees with the recommendations of PHRI that 174 significant sites still exist in the inland areas. However, DLNR-HSS indicates that there should be an addition of a minimum of seven significant sites (five sites for data recovery and two sites for preservation) in the coastal strip adjacent to the shoreline Conservation

District, for a total of 181 significant historic sites in the Property.

43. DLNR-HSS indicates that PHRI's site-specific recommendations are acceptable and points out that of the seven sites in the southern coastal strip 2 must be added for preservation for a total of 64 sites to be preserved and 5 must be added for data recovery for a total of 117 sites to undergo data recovery.

44. The sites recommended for preservation by PHRI are generally clustered into three areas:

- 1) Along a corridor following a lava tube cave system which runs inland in the south central area;
- 2) Along a set of trails in the north central area; and
- 3) Along the northern border in the Kipuka lands.

These corridors also include a large number of sites recommended for archaeological data recovery. However, a few isolated sites outside of the clusters are also being recommended for preservation.

45. DLNR-HSS recommends the preservation of the aforesaid three corridors with a buffer zone around each site as well as the preservation of all sites outlined in yellow on Attachment 1 of OSP's Exhibit R-2. DLNR-HSS indicates that it may be more practical to preserve the corridors and a few isolated sites rather than preserve a large number of small areas.

46. The DLNR-HSS also recommends that Petitioner implement a historic preservation mitigation plan which must have two elements:

- 1) A plan to ensure adequate preservation of specific historic sites; and
- 2) A plan to ensure adequate archaeological data recovery of other historic sites.

The preservation plan must clearly provide adequate buffer zones around all sites to be preserved. The objectives of the buffer zones are to include adequate protection of the visual integrity of the sites and provide for protection of the sites against damage from humans.

47. Intervenor's archaeologist Dr. Paul Cleghorn agrees in concept with the recommendation of DLNR-HSS that the three mauka-makai corridors be set aside as historic preserves.

48. Although Petitioner has not agreed to the DLNR-HSS recommendation with respect to preserving the three mauka-makai corridors, Petitioner indicates that more specific site plans are necessary before the boundaries of the corridors and/or buffer zones could be delineated. Petitioner represents it will work with DLNR-HSS on delineating buffer zones around archaeological sites designated for preservation during the development of its historic preservation mitigation plan.

Findings of fact numbers 81 and 82 (Impact On Resources of the Area, subsection Recreational Resources,) in

Commission's First Decision and Order are supplemented with the following findings of fact:

Recreational Resources

49. The concept for a state park from Honomalino, South Kona to Manuka, Kau, on the island of Hawaii was initiated in 1971 by Senate Resolution No. 267 requesting the Board of Land and Natural Resources (hereinafter "BLNR") to conduct a feasibility study for a natural, recreational and historic park in this area. The proposed park would include state-owned lands in the ahupuaa of Honomalino, Okoe, Kaulanamauna, and Manuka as well as the ahupuaa of Kapua which includes the Property.

50. In 1971 the BLNR adopted the concept of a primitive type park in the general location of Honomalino to Manuka but did not delineate definite park boundaries.

51. In 1983, Senate Resolution No. 65 was adopted by the State Senate and requested DLNR to renew plans to create a park from Honomalino to Manuka. In conjunction with Senate Resolution No. 65, the Legislature appropriated \$50,000 to conduct a feasibility study for the wilderness park concept (hereinafter "proposed wilderness park").

52. In 1986, the DLNR Division of State Parks (hereinafter "DLNR-DSP") initiated a suitability study for the proposed wilderness park in response to Senate Resolution No. 65. Resource studies of botany, wildlife, archaeology, aquatic and recreational uses are part of the study.

53. The study area covers approximately 15,000 acres and includes the areas of Honomalino, Okoe, Kapua, Kaulanamauna and Manuka.

The study area includes a half-mile strip of land along the coastline from the northern boundary to the southern boundary of the Kapua Ahupuaa.

54. The State of Hawaii owns land to the north and south of the Property. To the south is the Manuka Natural Area Reserve. A wilderness park through the Property would provide access along the shoreline to tie in the publicly owned areas that have recreational, archaeological and natural resources.

55. The objective in the wilderness park concept is to maintain an open, natural character along the shoreline from Honomalino to Manuka.

56. The intent of DLNR is to limit the number of people in the wilderness area to insure adequate protection of the resources such as archaeological sites. The distance from Honomalino to Manuka is approximately 13 miles. DLNR-DSP believes that a hiking trail along that shoreline would be a valuable recreational experience.

57. OSP believes that a mitigation plan for the proposed wilderness park would need to include keeping access to the park areas limited, keeping intrusive visual elements away from the Conservation District lands, and eliminating or disguising physically intrusive elements. DLNR recommends that

their State Parks Planning Branch staff approve any such plan and verify its execution.

58. In the northern portion of the coastline fronting the Property, DLNR recommends a half-mile wide corridor for potential incorporation into the proposed wilderness park.

59. In the southern portion of the coastline fronting the Property, DLNR is willing to accept a 500-foot corridor for potential incorporation into the State wilderness park, but is waiting for the mitigation plan from the Petitioner for a final determination.

60. OSP indicates that in order to further define the parameters of the proposed wilderness park between the Honomalino and Manuka areas, a 2000-foot buffer area inland from the shoreline is recommended. OSP's recommendation is due to the presence of archaeological sites along the shoreline together with aesthetic access and certain cultural values.

61. OSP believes a setback of about 2000 feet from the shoreline along the coast of Kapua would balance the State's interest in promoting agriculture and aquaculture and implementing a wilderness park concept for the makai portions of the Property.

62. OSP points out that Petitioner may be able to use portions of the Property within the 2000-foot setback area, which would remain in the Conservation District, for aquaculture activities through a Conservation District Use Permit from the Board of Land and Natural Resources.

RULING ON PROPOSED FINDINGS OF FACT

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

In addition, the findings of fact adopted herein supplement and/or modify findings of fact of the Commission's Decision and Order dated February 28, 1985, as incorporated herein; and where findings of fact adopted herein are contrary to findings of fact in the Commission's February 28, 1985, Decision and Order, the findings of fact adopted herein shall prevail.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, and the Hawaii Land Use Commission Rules, the Commission concludes that the provisions of the May 28, 1986 Third Circuit Court Order Remanding Case for Further Proceedings have been satisfied, and that based upon a preponderance of the evidence, that the reclassification of the Property, except for a 2000-foot wide area along the coastline of the Property subject to conditions in the Order, is reasonable, non-violative of Section 205-2, Hawaii Revised Statutes, and is consistent with the policies and criteria set forth in Sections 205-16 and 205-17, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Commission's Decision and Order shall be supplemented and amended to require that the southwest portion of the Property located between the makai boundary of the Property to a parallel inland boundary with depth of 2,000 feet from the certified shoreline as identified by the Department of Land and Natural Resources and consisting of not less than 478 acres and approximately identified on Amended Exhibit A attached and incorporated by reference, shall be and hereby is denied reclassification into the Agricultural District, and shall remain in the Conservation District.

IT IS FURTHER ORDERED that the remainder of the property consisting of not more than 5,624 acres shall be reclassified from the Conservation District to the Agricultural District subject to the conditions imposed by the Commission in its February 28, 1985 Decision and Order, and that the following additional condition be attached:

1. CONDITION FOR A HISTORIC PRESERVATION MITIGATION PLAN

Petitioner shall develop a historic preservation plan to treat the 181 significant historic sites in the areas to be developed and the sites in the areas left in Conservation. This plan shall have two elements: (a) a preservation plan and (b) an archaeological data recovery plan. The preservation plan will cover, at a minimum, the 64 sites recommended for preservation with the understanding that other sites may be


shifted from data recovery to preservation. This preservation plan must include protection of sites in the lands to be left in Conservation as well as in the lands to be developed. This preservation plan must clearly delineate adequate buffer zones around all sites to be preserved in the lands to be developed with buffers that are adequate to protect the visual integrity of the sites. This plan must also cover short-term protection measures--measures that will ensure protection of these sites during construction. This plan must also cover long-term preservation measures to include such concerns as greater access, visual intrusion of development elements, interpretive signs' location and text, potential vandalism and litter control. The archaeological data recovery plan will cover the 117 sites recommended to undergo data recovery with the understanding that some of these sites may be preserved as an alternative--in which case they will be covered in the preservation plan. This plan must ensure the recovery of a reasonable and adequate amount of the significant information in these sites. This plan must discuss major relevant research questions, data needed to address these questions, specific tasks to be undertaken at each site, the schedule for the report completion, and procedures for archiving the recovered remains. Both component plans must be approved by the State's Historic Sites Section before they are executed to ensure adequacy. The Historic Sites Section must also verify the

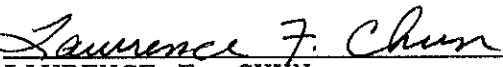
successful completion of these plans to ensure that the plans are adequately executed. Construction shall not occur in the vicinity of the significant historic sites until these plans are approved, with proof of approval submitted to the Commission, until the archaeological data recovery fieldwork is successfully executed, and until the short-term protection element of the preservation plan is put into effect.

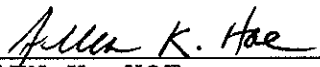
DOCKET NO. A83-554 - FARMS OF KAPUA, LTD.

Done at Honolulu, Hawaii, this 26th day of June 1989,
per motion on June 8, 1989.

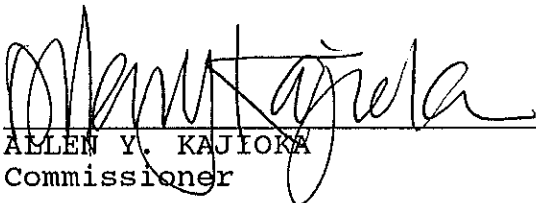
LAND USE COMMISSION
STATE OF HAWAII

By 
RENTON L. K. NIP
Chairman and Commissioner


By 
LAWRENCE F. CHUN
Vice Chairman and Commissioner

By 
ALLEN K. HOE
Commissioner

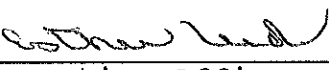
By 
SHARON R. HIMENO
Commissioner

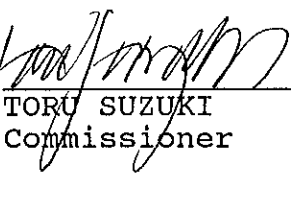
By 
ALLEN Y. KAJIORA
Commissioner

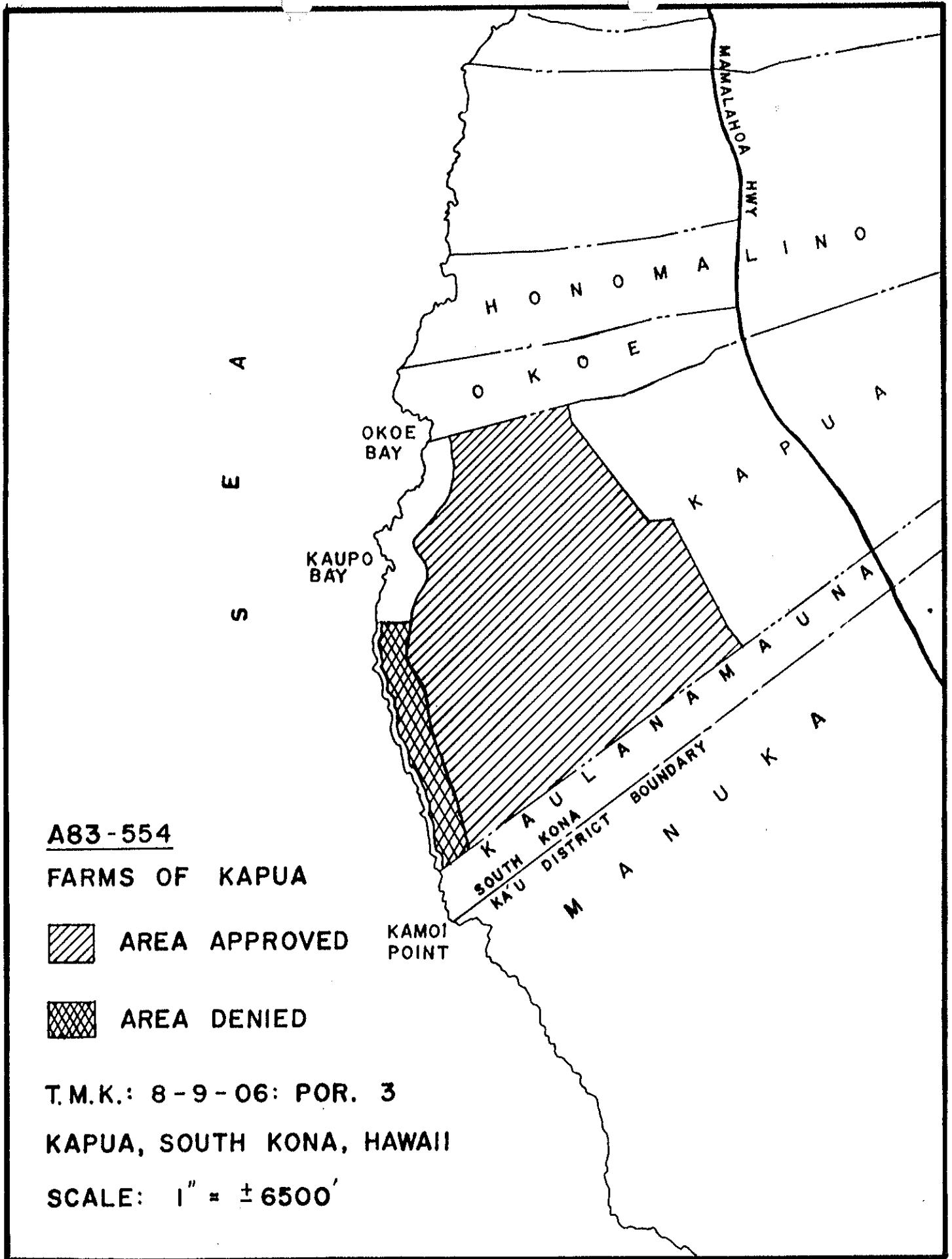
Filed and effective on
June 26, 1989

By 
FREDERICK P. WHITTEMORE
Commissioner

Certified by:


Executive Officer

By 
TORU SUZUKI
Commissioner



A83-554

FARMS OF KAPUA



AREA APPROVED

KAMOI
POINT



AREA DENIED

T.M.K.: 8-9-06: POR. 3

KAPUA, SOUTH KONA, HAWAII

SCALE: 1" = ± 6500'

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A83-554
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for Approximately 6,102 Acres at)
Kapua, South Kona, Hawaii, Tax Map)
Key: 8-9-06: Portion of Parcel 3)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order on Remand Hearing for Further Proceedings With Respect to Archaeology and the Implementation and Impact of 1983 Senate Resolution Number 65 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

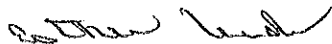
HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

CERT. DUANE KANUHA, Planning Director
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CERT. JAN N. SULLIVAN, ESQ., Attorney for Petitioner
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1188 Bishop Street
Honolulu, Hawaii 96813

CERT. PAUL N. LUCAS, ESQ, Attorney for Intervenor
Native Hawaiian Legal Corporation
1270 Queen Emma Street
Suite 1004
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 26th day of June 1989.



ESTHER UEDA
Executive Officer

89-0:3

STAFF: BE AWARE THAT THE STATE LUC D&O RECLASSIFYING THIS PROPERTY FROM CONSERVATION TO AG HAS THIS CLAUSE:

"Petitioner may only subdivide the Subject Property for the expressed [sic] purpose of implementing the agricultural and aquacultural plan as represented to the State Land Use Commission; and there shall be no homes constructed except as directly related to the operation and maintenance of the agricultural and aquacultural plan as recommended." P. 27.

CURRENTLY, THE AREA RECLASSIFIED IS ALL IN THE "OPEN" ZONING DISTRICT, HENCE HOMES CANNOT BE BUILT ANYWAY, BUT EVEN IF THERE IS A REZONING, THIS RESTRICTION IS IN EFFECT. **CJY 9/19/07**