

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
THE OFFICE OF STATE PLANNING,)
STATE OF HAWAII)
To Amend the Agricultural Land)
Use District Boundary into the)
Conservation Land Use)
District for Approximately)
3,818.493 Acres at Honomalino,)
Olelomoana, Kaohe, and Kukuiopae,)
South Kona, Island of Hawaii,)
State of Hawaii, Tax Map Key Nos.)
8-7-01:8 and 12, 8-7-12:5, and)
8-9-01:2)

DOCKET NO. BR93-695
HEARING OFFICER'S
PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW, AND DECISION AND
ORDER

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Hearing Officer

7221

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HEARING OFFICER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

The Office of State Planning, State of Hawaii ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on October 13, 1993, and a First Amended Petition on January 27, 1994, pursuant to Sections 205-4 and 205-18, Hawaii Revised Statutes ("HRS"), and Chapter 15-15, Hawaii Administrative Rules ("HAR"), to amend the State land use district boundary by reclassifying approximately 3,818.493 acres of land situated at Honomalino, Olelomoana, Kaohe, and Kukuiopae, South Kona, Island of Hawaii, State of Hawaii, identified by Tax Map Key Nos. 8-7-01:8 and 12, 8-7-12:5, and 8-9-01:2 ("Property"), from the Agricultural Land Use District to the Conservation Land Use District.

The duly appointed Hearing Officer of the Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of the parties presented during the hearing, the stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order between Petitioner and the County of Hawaii Planning Department ("Planning Department"), hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On October 13, 1993, Petitioner filed a Petition for Land Use District Boundary Amendment ("Petition"). On January 27, 1994, Petitioner filed a First Amended Petition.

2. On December 20, 1993, the Planning Department filed its Statement of Position in Support of the Petition.

3. A prehearing conference on the Petition was held on February 3, 1994, in Honolulu, Hawaii, at which time Petitioner presented its list of exhibits and list of witnesses. The Planning Department was not present at this conference.

4. The Commission's presiding hearing officer, Vice Chairperson and Commissioner, Karen S. Ahn, held a hearing on the Petition on March 15, 1994, pursuant to a public notice published in the Hawaii-Tribune Herald, the Honolulu Advertiser, and West Hawaii Today on January 14, 1994.

(TR 3/15/94, p. 41, lns. 19-21.)

5. The Planning Department was duly notified of the proceedings but was not present at the hearing on the Petition. (TR 3/15/94, pp. 6-7.)

6. The Commission's hearing officer entered into evidence, without objection, the following:

- a. Opposition letter from Mr. Lunakanawai Hauanio dated January 25, 1994;
- b. Support letter from Ms. Shanti Devi dated February 13, 1994;
- c. Memorandums from Mr. Keith Ahue, Department of Land and Natural Resources (DLNR) dated March 1, 1994 and March 10, 1994;
- d. Support letter from Mr. Hugh R. Montgomery, Na Ala Hele dated March 4, 1994; and
- e. Support letter from Mr. George A. Schattauer dated March 14, 1994.

(TR 3/15/94, pp. 41-42.)

7. Mr. Lunakanawai Hauanio testified as a public witness. (TR 3/15/94, pp. 44-49.)

8. Mr. Lunakanawai Hauanio orally requested to intervene in the proceedings. The request was denied by the hearing officer, Karen S. Ahn, and by a written order filed on March 29, 1994. (TR 3/15/94, pp. 47-48.)

DESCRIPTION OF THE PROPERTY

9. The Property consists of approximately 3,318.493 acres located on the western slopes of Mauna Loa and involve four parcels, all of which are located within the South Kona Judicial District. The parcel identified as Honomalino, TMK No.: 8-9-01:2, is located within the Honomalino and Hoopuloa

ahupuaas, southeast of Papa Homesteads, approximately 20 miles south of Captain Cook, and five miles east of Milolii.

(Petitioner's Exhibit No. 5, p. 5; Petitioner's Exhibit No. 8, p. 1; Petitioner's Exhibit Nos. 3, 4a-4c.)

10. The parcel identified as Olelomoana, TMK No.: 8-7-12:5, is located within the Olelomoana 2 and Opihihale 1 ahupuaas, approximately 15 miles southeast of Captain Cook, and approximately five miles east of Kalaepaakai Point.

(Petitioner's Exhibit No. 5, p. 5; Petitioner's Exhibit No. 8, p. 2.)

11. The parcel identified as Kaohe, TMK No.: 8-7-01:8, is located within the Kahoe 3 ahupuaa, approximately six miles east of the Hawaii Belt Road, and approximately 14 miles southeast of Captain Cook. (Petitioner's Exhibit No. 5, p. 5; Petitioner's Exhibit No. 8, p. 2.)

12. The parcel identified as Kukuiopae, TMK No.: 8-7-1:12, is located within the Kukuiopae ahupuaa, approximately 3/8 of a mile south of Kaohe, six miles east of the Hawaii Belt Road, and approximately 14 miles southeast of Captain Cook. (Petitioner's Exhibit No. 5, p. 6; Petitioner's Exhibit No. 8, p. 2.)

13. The State of Hawaii is the owner of the Property. The Land Management Division of DLNR is authorized to manage, administer and control State land, including the Property described herein. (Petitioner's Exhibit No. 5, p. 3;

Petitioner's Exhibit No. 3; Petitioner's Exhibit B, p. 7;
Petitioner's Exhibit No. 8, p. 4.)

14. The Honomalino parcel is presently vacant. The Honomalino parcel encompasses two privately-owned landlocked parcels (TMK No.: 8-9-01: 13 and 14) that are excluded from the Property. Petitioner has represented that if there is an existing access to these parcels, access would be allowed to continue under the proposed reclassification. Petitioner has represented that if there is no existing access, the owners of the parcels would need approval from the Board of Land and Natural Resources to construct an access under the proposed reclassification. Under a general lease agreement, Dillingham Partners uses 26.04 acres to access their parcel from the Belt Highway through Honomalino. (TR 3/15/94; pp. 50-51; Petitioner's Exhibit No. 5, p. 4; Petitioner's Exhibit B, p. 6; Petitioner's Exhibit No. 8, p. 4.)

15. The DLNR Land Inventory for 1993 indicates that the Olelomoana parcel is being used for a State highway/road. (Petitioner's Exhibit No. 5, p. 4; Petitioner's Exhibit B, p. 6; Petitioner's Exhibit No. 6; Petitioner's Exhibit No. 8, p. 5.)

16. The Kaohe and Kukuiopae parcels are both vacant and have been established as State Forest Reserves by Governor's Proclamation, Document Number 00044. (Petitioner's Exhibit No. 5, p. 4; Petitioner's Exhibit B, p. 6; Petitioner's Exhibit No. 8, p. 5.)

17. The Property includes areas with slopes over 20 percent. Approximately 18.3 percent of Honomalino, 12.1 percent of Olelomoana, and 10 percent of Kukuiopae have slopes over 20 percent. Approximately 85 percent of Kaohe has slopes 10 to 20 percent. The Property is characterized by a series of narrow drainage areas with underdeveloped and poorly defined watercourses. (Petitioner's Exhibit No. 5, pp. 38, 48-49; Petitioner's Exhibit No. 8, pp. 2, 16.)

18. There is a northern and southern high rainfall pocket between 2,000 and 3,000 feet where rainfall averages approximately 78 inches a year. Honomalino, situated between the 1,600 and 3,600-foot elevation, is located within this high rainfall pocket. The remaining Property is located approximately between the 5,000 and 6,000-foot elevation and receive less rainfall. The unique climatic conditions of the Kona Coast are caused by the absence of tradewinds which are effectively blocked by the mountain masses of Mauna Kea, Mauna Loa, and Hualalai. In this void of tradewinds, a warm, localized, daytime land-sea breeze pattern develops, resulting in an up-slope air flow and the transportation of rainfall within a narrow belt between 1,000 to 4,000 feet in elevation. On Mauna Loa, the relationship between elevation and cross slope are important in facilitating the spatial integration of the fog contribution for extensive mountain watershed areas. (Petitioner's Exhibit No. 5, pp. 11 to 13; Petitioner's Exhibit No. 8, pp. 2-3.)

19. Average temperature for the coastal areas of the South Kona District ranges between 75°F to 85°F for the coastal area and 50°F to 70°F for the upper elevations. (Petitioner's Exhibit No. 5, p. 13; Petitioner's Exhibit No. 8, p. 3.)

20. The Soil Survey of the Island of Hawaii, State of Hawaii, prepared by the U.S. Department of Agriculture, Soil Conservation Service ("SCS"), classifies the soils within the Property as follows:

a. Kahaluu (rKAD), 6 to 20 percent slopes, is characterized by a surface layer of very dark brown muck approximately 5 inches thick. It is underlain by Pahoehoe lava bedrock. The soil is rapidly permeable. The bedrock is very slowly permeable. There is little or no erosion hazard. Most of this soil type is found in native woodlands. (Petitioner's Exhibit No. 5, p. 19.)

b. Kei (rKGD), 6 to 20 percent slopes, is characterized by a surface layer of very dark brown muck approximately 10 inches thick and underlain by Pahoehoe lava bedrock. The lava is very slowly permeable and the soil above is rapidly permeable. Runoff is medium and the erosion hazard is slight. This soil is used for pasture. (Petitioner's Exhibit No. 5, p. 18.)

c. Kekake (rKHD), 6 to 20 percent slopes, is characterized by a black surface layer of muck approximately 4 inches thick underlain by Pahoehoe lava bedrock. The soil above the lava is rapidly permeable and the lava is very slowly

permeable. Runoff is medium and erosion hazard is slight. This soil is used mainly for watershed and wildlife.

(Petitioner's Exhibit No. 5, p. 19.)

d. Kiloa (rKXD), 6 to 20 percent slopes, is characterized by a surface layer of very dark brown and extremely stony muck approximately 10 inches thick and underlain by fragmental Aa lava. Permeability is rapid, runoff is very slow, and the erosion hazard is slight. This soil is used for woodland and pasture. (Petitioner's Exhibit No. 5, p. 18.)

e. Kona (rKYD), 6 to 20 percent slopes, is characterized by a surface layer of dark muck approximately 5 inches thick. It is underlain by Pahoehoe lava bedrock. Permeability is rapid in the soil and water moves rapidly through the cracks in the lava. Runoff is medium and the erosion hazard is slight. This soil is used mostly for pasture and watershed. (Petitioner's Exhibit No. 5, pp. 18 and 19.)

f. Puna (rPXE), 3 to 25 percent slopes, is characterized by a layer of very dark brown and extremely stony muck approximately 5 inches thick and underlain by fragmental Aa lava. Permeability is rapid, runoff is very slow, and the erosion hazard is slight. This soil is used for woodland pasture, and orchards. (Petitioner's Exhibit No. 5, p. 18.)

g. Hanipoe (HCD), 12 to 20 percent slopes, is characterized by well-drained silt loams formed in volcanic ash, 20 to 30 inches deep over fragmented lava. Runoff is slow

and the erosion hazard is slight. This soil is used for pasture, woodland, and wildlife habitat. (Petitioner's Exhibit No. 5, p. 20.)

h. Mawae (rMWD), 6 to 20 percent slopes, is characterized by a black surface layer and extremely stony muck approximately 5 inches thick and underlain by fragmental Aa lava. Permeability is rapid, runoff is slow, and the erosion hazard is slight. Most of this soil is in native forest and is used for watershed. (Petitioner's Exhibit No. 5, p. 20.)

i. Puukala (PSC), 6 to 20 percent slopes, is characterized by a surface layer of very dark brown and extremely stony silt loam approximately 6 inches thick. The subsoil is very dark brown and dark reddish-brown stony silt loam approximately 12 inches thick. The subsoil dehydrates irreversibly into fine sand aggregates. Permeability is rapid, runoff is slow, and the erosion hazard is slight. This soil is used for woodland and pasture. (Petitioner's Exhibit No. 5, p. 20.)

j. Lalaau (rLLD), 6 to 20 percent slopes, is characterized by a surface layer of very dark brown and extremely stony muck approximately 3 inches thick and underlain by fragmented lava. Permeability is rapid, runoff is slow, and the erosion hazard is slight. This type of soil is used mainly for woodland, watershed, and wildlife habitat. (Petitioner's Exhibit No. 5, p. 19.)

k. Aa lava (rLV) is rough and broken, characterized by a mass of clinkery, hard, glassy, sharp pieces piled in tumbled heaps. In areas of high rainfall, it contributes substantially to the underground water supply and is used as watershed. (Petitioner's Exhibit No. 5, p. 19.)

l. Rock land (rRO) is a miscellaneous land type that consists of Pahoehoe lava bedrock covered in places by a thin layer of soil material, 6 to 8 inches thick. The hazard of water erosion is slight. Rock land is used for pasture, wildlife habitat, and watershed. (Petitioner's Exhibit No. 5, p. 20.)

21. The University of Hawaii Land Study Bureau's ("LSB") Detailed Land Classification-Island of Hawaii overall suitability (master rating) for the Property ranges from "C" to "E" or fair to very poorly suited for agricultural productivity. (Petitioner's Exhibit No. 5, pp. 24-28, 48; Petitioner's Exhibit B, p. 6; Petitioner's Exhibit No. 8, p. 4.)

22. The Agricultural Lands of Importance to the State of Hawaii ("ALISH") system has identified land within the Property as Unclassified and Other Important Agricultural Lands. (Petitioner's Exhibit No. 5, p. 29; Petitioner's Exhibit No. 8, p. 4; Petitioner's Exhibit B, p. 6.)

23. The Federal Emergency Management Agency's Flood Insurance Rate Maps indicate that the Property is within Zone X, which represents areas determined to be outside the 500-year floodplain. (Petitioner's Exhibit No. 5, p. 38.)

24. The U.S. Geological Survey has identified "zones of relative risk" associated with volcanic activity on the Island. These zones consider direct elements of volcanic activity (lava flow inundation, rock fragments, and gases) and indirect hazards (subsidence, surface rupture, earthquakes, and tsunamis). There are six zones ranging from "A" to "F" with "F" being the zone of highest risk. The Property is located in the "E" zone indicating relatively high degree of risk from volcanic activity. (Petitioner's Exhibit No. 5, pp. 38 and 39.)

25. Although the entire island is susceptible to earthquakes originating in fault zones under and adjacent to it, the most seismically active area on the the Big Island is the southern half of the island. Seismicity records from 1962 to 1985 for the Island of Hawaii show that the Property may experience earthquakes between the magnitude of 4.0 and 6.9 on the Richter Scale. (Petitioner's Exhibit No. 5, p. 39.)

26. The Property is located in Lava Flow Hazard Zone 2. Approximately 20 percent of this area has been covered by lava in historical time, while 5 percent of the area has been covered since 1950. (Petitioner's Exhibit No. 5, p. 39.)

PROPOSAL FOR RECLASSIFICATION

27. The Property has been identified in the State Land Use District Five-Year Boundary Review Report by Petitioner as a Priority #1 recommendation for reclassification from the Agricultural to Conservation District because it contains large stands of native ohia and Acacia-koa forests,

which would enhance the existing native bird habitat and watershed resources of the South Kona Forest Reserve.

(Petitioner's Exhibit No. 8, p. 1; Petitioner's Exhibit No. 5, p. 2.)

28. The Property identified as Olelomoana, Kaohe, and Kukuiopae are within the Kona Watershed, one of two areas identified by Petitioner as an Area of Critical Concern in the State Land Use District Five-Year Boundary Review Report, Hawaii County, 1992. (Petitioner's Exhibit No. 5, p. 41.)

29. The Alala Recovery Plan identifies the Property as essential habitat for the endangered Alala. (Petitioner's Exhibit No. 8, p. 8; Petitioner's Exhibit No. 5, p. 2.)

30. The owner (State of Hawaii) proposes to maintain the relatively intact native forest within the Property for management as watershed, native bird habitat, public hunting areas for game mammals and birds and other forest recreation opportunities, and commercial forestry. (Petitioner's Exhibit No. 5, p. 1; Petitioner's Exhibit B, p. 7.)

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED RECLASSIFICATION

31. Pursuant to §15-15-50(c)(8), HAR, Petitioner is a State agency and is not required to demonstrate financial capability. (Petitioner's Exhibit No. B, p. 8.)

STATE AND COUNTY PLANS AND PROGRAMS

32. The Property is located within the State Land Use Agricultural District, as reflected on the Commission's

Official Maps, H-10 (Kauluoa Point), H-11 (Milolii), H-20 (Puu Pohakuloa), and H-21 (Papa) and, with the exception of the Honomalino parcel, adjoins the State Land Use Conservation District. (Petitioner's Exhibit No. 5, pp. 4, 42, TR 3/15/94, p. 42, lns. 20-23.)

33. The Property is designated Orchards and Extensive Agriculture by the Hawaii County General Plan. (Petitioner's Exhibit No. 5, pp. 4, 49, 57; Petitioner's Exhibit B, p. 9.)

34. The Property is zoned Unplanned. (Petitioner's Exhibit No. 5, pp. 4, 49, 58; Petitioner's Exhibit No. 8, p. 7.)

35. The Property is outside the Special Management Area delineated in the County of Hawaii maps drawn pursuant to §205A-23. (Petitioner's Exhibit No. 8, p. 7.)

NEED FOR THE PROPOSED RECLASSIFICATION

36. Act 82, Session Laws of Hawaii ("SLH") 1987, states that the Legislature finds that Hawaii has several rare species of plants, animals, and fish that are found nowhere else in the world and sizable areas of high quality native forests which are not in the Conservation District. (Petitioner's Exhibit No. 8, p. 8; Petitioner's Exhibit No. 5, p. 1.)

37. Act 82, SLH 1987, requires that high quality native forests be placed within the Conservation District and calls for reclassifying high quality native forests and the habitat of rare native species of flora and fauna into the

Conservation District. (Petitioner's Exhibit No. 8, p. 8; Petitioner's Exhibit No. 5, p. 1.)

38. Petitioner has represented that maintaining native forest ecosystems is essential in contributing to the survival of endangered species and for generating groundwater resources upon which development is dependent. (Petitioner's Exhibit No. 8, p. 8; Petitioner's Exhibit No. 5, p. 40.)

39. Only 46 species of birds native to Hawaii remain from the 70 species that were present when Captain Cook arrived in the islands in 1778. Of the 46 remaining, 30 species are now threatened and endangered with extinction. Seven of these endangered species are found on the Big Island. (Petitioner's Exhibit No. 5, p. 40; Petitioner's Exhibit No. 8, p. 7.)

40. The Property provides essential habitat to maintain five of these endangered species: the Hawaii Akepa, Hawaii Creeper, Hawaiian Crow, the Akiapolaau, and the Hawaiian Hawk. (Petitioner's Exhibit No. 5, p. 40, 59; TR 3/15/94, p. 52, lns. 8-19; Petitioner's Exhibit No. 8, p. 7.)

41. The two species of the Hawaiian Honeycreeper (Hawaii Akepa and Hawaii Creeper) belong to a family of birds which have been determined by the U.S. Fish and Wildlife Service ("USFWS") to be endangered within their native habitat range. These species are entirely dependent upon the limited remaining native Hawaiian forest ecosystems for food, shelter, and nesting sites. Species that are dependent upon a particular habitat are unable to adapt to portions of the

forests where there have been major alterations of their habitat and introduction of exotic plants. (Petitioner's Exhibit No. 5, p. 40; Petitioner's Exhibit No. 8, pp. 7-8.)

42. The Hawaiian Honeycreeper now occupies only between 5 percent and 15 percent of their original range. Petitioner has represented that destruction of the limited remaining native forest would cause further reduction and/or elimination of these endangered birds. Petitioner has represented that restoration, maintenance, and protection of their habitat is essential for their survival. (Petitioner's Exhibit No. 5, p. 40; Petitioner's Exhibit No. 8, pp. 7-8.)

SOCIO-ECONOMIC IMPACTS

43. The reclassification of the Property to the Conservation District will not have any direct or indirect impact on employment. (Petitioner's Exhibit No. 8, p. 13.)

44. The reclassification of the Property to the Conservation District will not have any impact on State or County revenues. (Petitioner's Exhibit No. 8, p. 13.)

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

45. The Soil Survey of the Island of Hawaii, State of Hawaii, prepared by the U.S. Department of Agriculture, SCS (1973), identifies the soils on the Property as having capability class VI (soils that have severe limitations that make it generally unsuitable for cultivation), capability class

VII (soils that have very severe limitations that make them unsuitable for cultivation), and capability class VIII (soils that have severe limitations that preclude their use for commercial plants and restrict their use to recreation, wildlife, or water supply). (Petitioner's Exhibit No. 8, p. 14; Petitioner's Exhibit No. 5, pp. 18-20.)

46. The LSB classifies the soils on the Property as "C," "D," and "E" which are not highly productive for cultivated agriculture. Most of the soils on the Property are rated "D" and "E." Only a very small area within the Honomalino parcel is rated "C." (Petitioner's Exhibit No. 8, p. 16; Petitioner's Exhibit No. 5, pp. 24-28, 48; Petitioner's Exhibit B, p. 6.)

47. The ALISH system classifies the soils on the Property as Other Important Agricultural Lands and Unclassified. (Petitioner's Exhibit No. 5, p. 29; Petitioner's Exhibit No. 8, p. 4; Petitioner's Exhibit B, p. 6.)

48. The Property is not presently being cultivated and the parcels are presently vacant. The reclassification of the Property to the Conservation District will remove 3.1 percent the lands unsuitable for cultivation in the Agricultural District in the South Kona District and is therefore not anticipated to have a major effect on agricultural resources. (Petitioner's Exhibit No. 8, p. 9; Petitioner's Exhibit No. 5, p. 62.)

Flora

49. The Honomalino parcel is within the mixed mesic forest zone which occurs between 2,250 and 3,750 feet. This is the most species rich of the vegetation zones. Mixed mesic forests contain the majority of endemic species. Two of the most common trees found within this forest type are the Acacia-koa and ohia. (Petitioner's Exhibit No. 8, p. 9; Petitioner's Exhibit No. 5, p. 29.)

50. The remaining parcels, Olelomoana, Kaohe, and Kukuiopae, located between 5,040 and 5,920 feet, are within the higher elevations of the rain forest zone above the mixed mesic zone. (Petitioner's Exhibit No. 8, p. 9; Petitioner's Exhibit No. 5, p. 33.)

51. USFWS vegetation maps, prepared by James Jacobi, identifies the forest types found on the Property. The coding used by the USFWS follows each area description: (Petitioner's Exhibit No. 5, p. 33.)

Honomalino

a. Closed canopy overstory of ohia, 30 to 75 feet tall, dominant with other native trees, 15 to 30 feet tall, within a wet understory of tree ferns dominant, and native and non-native shrubs codominant [c3Me, 2nt (W:tf, ns-xs)]. (Petitioner's Exhibit No. 5, p. 33.)

b. Scattered ohia trees, 30 to 75 feet tall, codominant with other native trees, 15 to 30 feet tall, within

a moist understory of non-native grasses [s3Me,2nt (M:xg)].
(Petitioner's Exhibit No. 5, p. 33.)

c. Open canopy of ohia, 30 to 75 feet tall, dominant with Acacia-koa and other native trees, 15 to 30 feet tall, within a moist understory of non-native grasses dominant, with native and non-native shrubs codominant [o3Me, Ac-2nt (M:xg)].
(Petitioner's Exhibit No. 5, p. 33.)

d. Scattered ohia, 15 to 30 feet tall, codominant with other native trees, within a dry understory of native shrubs and bare ground [s2Me-nt (D:ns-xx)]. (Petitioner's Exhibit No. 5, p. 33.)

e. Closed canopy of ohia, 30 to 75 feet tall, dominant with other native trees, 15 to 30 feet tall, within a wet understory of tree ferns dominant, and native and non-native shrubs codominant [c3Me, 2nt (W:tf, ns-xs)].
(Petitioner's Exhibit No. 5, p. 33.)

f. Closed canopy of ohia, 30 to 75 feet tall, codominant with a mix of other native trees, 15 to 30 and 30 to 75 feet tall, in a mesic understory of non-native shrubs dominant and native shrubs [c3Me-2/3nt (M:xs, ns)].
(Petitioner's Exhibit No. 5, p. 33.)

g. Open and closed canopies of non-native trees, 30 to 75 feet tall, dominant with native trees subdominant, within a mesic understory of non-native shrubs [o/c,3xt,nt (M:xs) msc]. (Petitioner's Exhibit No. 5, p. 33.)

h. Closed canopy of ohia, 30 to 75 feet tall, codominant with other native trees, 15 to 75 feet tall, within a mesic understory of native and non-native shrubs codominant [c3Me, 2/3nt (M:ns-xs)]. (Petitioner's Exhibit No. 5, p. 33.)

Olelomoana

a. Closed canopy of ohia, 30 to 75 feet tall, dominant with Acacia-koa, 15 to 30 feet tall, codominant with other native trees in a mesic understory of native shrubs, codominant with non-native grasses [c3Me, Ac-2nt (M:ns-xg)]. (Petitioner's Exhibit No. 5, p. 34.)

b. Open canopy of ohia trees, 15 to 30 feet tall, dominant with other native trees subdominant, within a dry understory of native shrubs [o2Me, nt (D:ns)]. (Petitioner's Exhibit No. 5, p. 34.)

Kaohē

a. Closed canopy of ohia trees, 30 to 75 feet tall, dominant with Acacia-koa codominant, with other native trees, 15 to 30 feet tall, subdominant within a mesic understory of native shrubs codominant with non-native grasses [c3Me, Ac-2nt (M:ns-xg)]. (Petitioner's Exhibit No. 5, p. 34.)

b. Open canopy of ohia trees, 30 to 75 feet tall, dominant with Acacia-koa codominant, with other native trees dominant, within a mesic understory with non-native grasses dominant and non-native shrubs subdominant [o3Me, Ac-2nt (M:xg, ns-xs)]. (Petitioner's Exhibit No. 5, p. 34.)

c. Dry bare ground (lava flows) [D:xx].
(Petitioner's Exhibit No. 5, p. 34.)

d. Open canopy of mamane, 15 to 30 feet tall,
codominant with other native trees, within a dry understory of
native shrubs codominant with non-native grasses [o2So-nt
(D:ns-xg)]. (Petitioner's Exhibit No. 5, p. 34.)

Kukuiope

a. Closed canopy of ohia dominant, with Acacia-koa
codominant, with other native trees, 15 to 30 feet tall,
subdominant within a mesic understory of native shrubs
codominant with non-native grasses [c3Me, Ac-2nt (M:ns-xg)].
(Petitioner's Exhibit No. 5, p. 34.)

b. Closed canopy of ohia, 30 to 75 feet tall,
dominant with Acacia-koa codominant, with other native trees,
15 to 30 feet tall, subdominant within a mesic understory of
native shrubs codominant with non-native grasses [c3Me, Ac-2nt
(M:ns-xg)]. (Petitioner's Exhibit No. 5, p. 34.)

c. Scattered Acacia-koa and ohia, 30 to 75 feet
tall, codominant with other native trees, 15 to 30 feet tall,
within a mesic understory of non-native grasses [s3Ac-Me-2nt
(M:xg)]. (Petitioner's Exhibit No. 5, p. 34.)

d. Closed canopy of ohia, 30 to 75 feet tall,
dominant with Acacia-koa, 15 to 30 feet tall, within a mesic
understory of native and non-native shrubs codominant [c3Me,
Ac-2nt (M: ns-xs)]. (Petitioner's Exhibit No. 5, p. 34.)

52. The Property contains four plant taxa proposed by the USFWS for Candidate 1 endangered species status listing. They are: Flueggia neowawraea, Clermontia lindseyana, Cyanea stictophylla, and Diella erecta. (Petitioner's Exhibit No. 8, p. 10; Petitioner's Exhibit No. 5, p. 2.)

Fauna

53. The Property has been identified as essential forest bird habitat for the endangered Akiapolaau (Hemignathus munroi), Hawaii Creeper (Oreomystis mana), Hawaii Akepa (Loxops coccineus), Hawaiian Hawk (Buteo solitarius), and the Hawaiian Crow (Corvus hawaiiensis). (Petitioner's Exhibit No. 8, p. 10; Petitioner's Exhibit No. 5, pp. 2, 46, 59.)

Archaeological/Historical Resources

54. The reclassification of the Property will not negatively impact archaeological and/or historical resources which might be on the Property. The proposed reclassification of the Property to the Conservation District will protect undiscovered archaeological and/or historical resources from being lost until such time surveys may be conducted. (Petitioner's Exhibit No. 8, p. 12.)

Groundwater Resources

55. The Property is in the southwest Mauna Loa aquifer sector. This sector has two systems, the Kaapuna and the Manuka aquifer systems, each having a sustainable yield of 50 and 42 mgd, respectively. The Property is located over an

area where the groundwater is basal water floating on saltwater. (Petitioner's Exhibit No. 8, p. 11; Petitioner's Exhibit No. 5, p. 17.)

56. Three of the parcels--Olelomoana, Kahoe, and Kukuiopae--are included in the Kona Watershed area identified by the University of Hawaii Water Resources Research Center ("UHWRRRC"). The proposed reclassification of the Property from the Agricultural District to the Conservation District will protect groundwater resources. (Petitioner's Exhibit No. 5, p. 47; Petitioner's Exhibit No. 8, pp. 11, 14.)

Recreational, Scenic, Cultural Resources

57. The reclassification of the Property will preserve plant and avian resources which are important components of Hawaiian culture, and provide opportunities for visitors and residents to enjoy passive recreation activities while experiencing Hawaii's mauka scenic natural resources through the wilderness experience. (Petitioner's Exhibit No. 8, p. 11.)

Coastal/Aquatic Resources

58. The reclassification of the Property will preserve the vegetative undercover provided by the relatively intact forest and understory and lessen the hazards from flooding and soil erosion to coastal areas. (Petitioner's Exhibit No. 5, p. 60; Petitioner's Exhibit No. 8, p. 12.)

ENVIRONMENTAL QUALITY

Noise

59. The reclassification of the Property to the Conservation District will preserve the low noise levels associated with the rural, agricultural, and wilderness nature of the Property. (Petitioner's Exhibit No. 8, p. 13.)

Air Quality

60. The reclassification of the Property to the Conservation District will not adversely affect air quality inasmuch as no development of the Property is proposed. (Petitioner's Exhibit No. 8, p. 13.)

Water Quality

61. The reclassification of the Property to the Conservation District will preserve forested areas, lessen hazards from flooding and soil erosion, protect watershed areas, and result in the improved quality of Hawaii's water resources. (Petitioner's Exhibit No. 8, p. 12.)

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

62. The availability or adequacy of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, roads, and police and fire protection will not be affected or unreasonably burdened by the proposed reclassification of the Property. Water, sewage, roads, and drainage facilities neither exist nor will be needed for the proposed reclassification of the Property to the Conservation

District. (Petitioner's Exhibit No. 8, p. 13; Petitioner's Exhibit No. 5, p. 62.)

COMMITMENT OF STATE FUNDS AND RESOURCES

63. The public agency which may be most affected is the DLNR since additional effort may be required to administer and enforce regulations in the newly added Conservation District lands. (Petitioner's Exhibit No. 8, p. 13; Petitioner's Exhibit No. 5, p. 62.)

CONFORMANCE TO THE CONSERVATION DISTRICT STANDARDS

64. Three of the parcels comprising the Property, Olelomoana, Kaohe, and Kukuiope, are included in the Kona Watershed area identified by the UHWRC. (Petitioner's Exhibit No. 8, p. 14; Petitioner's Exhibit No. 5, pp. 41, 47.)

65. The Property contains large stands of native ohia, Acacia-koa, and mamane within a mixed mesic forest zone on Mauna Loa. (Petitioner's Exhibit No. 8, p. 15; Petitioner's Exhibit No. 5, pp. 2, 41-42.)

66. The Property provides habitat for a high density of avifauna including five endangered species: the Akiapolaau, the Hawaii Akepa, the Hawaii Creeper, the Hawaiian Crow, and the Hawaiian Hawk. (Petitioner's Exhibit No. 8, p. 15; Petitioner's Exhibit No. 5, pp. 1-2, 46, 59.)

67. The Soil Survey of the Island of Hawaii, State of Hawaii, prepared by the U.S. Department of Agriculture, SCS (1973), classifies the soils on the Property into three major groups: volcanic ash soils, organic soils, and young

unweathered lava, and identifies them as having capability class VI (soils which have severe limitations that make it generally unsuitable for cultivation), capability class VII (soils which have very severe limitations that make them unsuitable for cultivation), and capability class VIII (soils which have severe limitations that preclude their use for commercial plants and restrict their use to recreation, wildlife, or water supply). (Petitioner's Exhibit No. 8, p. 14; Petitioner's Exhibit No. 5, pp. 18-20.)

68. The LSB classifies the soils on the Property as "C," "D," and "E" or soils which are not highly productive for cultivated agriculture. Most of the soils on the Property are rated "D" and "E." Only a very small area within the Honomalino parcel is rated "C." (Petitioner's Exhibit No. 8, p. 16; Petitioner's Exhibit No. 5, pp. 24-28, 48; Petitioner's Exhibit B, p. 6.)

69. Approximately 18.3 percent of Honomalino, 12.1 percent of Olelomoana, and 10 percent of Kukuiopae have slopes over 20 percent. Eighty-five percent of Kaohe has slopes 10 to 20 percent. (Petitioner's Exhibit No. 8, pp. 2, 16; Petitioner's Exhibit No. 5, pp. 38, 48-49.)

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

70. The proposed reclassification of the Property is generally consistent with the objectives, policies, and

priorities of the Hawaii State Plan and Functional Plans as follows: (Petitioner's Exhibit No. 8, p. 17.)

a. In conformance with §226-4(2), HRS, the reclassification of the Property will maintain the stability of the natural ecosystems, native forests, native forest birds, and watershed areas and provide opportunities to enhance the mental and physical well-being of the people through passive and active recreational activities. (Petitioner's Exhibit No. 8, p. 17; Petitioner's Exhibit No. 5, p. 42.)

b. In conformance with §226-11(a)(2) and (b)(6), HRS, the reclassification of the Property will protect relatively intact forests of native Acacia-koa and koa-ohia which provide forest habitat for at least 10 species of native forest birds including essential habitat for five endangered species. (Petitioner's Exhibit No. 8, p. 17; Petitioner's Exhibit No. 5, p. 42.)

c. In conformance with §§226-12(b)(3) and 226-104(b)(13), HRS, the reclassification of the Property will protect the native forests on the Property and enhance Hawaii's scenic assets and natural beauty. (Petitioner's Exhibit No. 8, p. 17; Petitioner's Exhibit No. 5, p. 42.)

d. In conformance with §226-13(b)(2) and (b)(3), HRS, the reclassification of the Property will promote the proper management of watershed areas and result in the improved quality of Hawaii's groundwater resources. (Petitioner's Exhibit No. 8, p. 17; Petitioner's Exhibit No. 5, p. 46.)

e. In conformance with §226-104(b)(10), HRS, the reclassification of the Property will protect critical environmental areas including watershed and recharge areas, wildlife habitats, areas with endangered species of wildlife, recreational resources, open space and natural areas, areas particularly sensitive to reduction in water quality, and scenic resources. (Petitioner's Exhibit No. 5, p. 46.)

71. The reclassification of the Property is in conformance with the objectives of the State Conservation Lands Functional Plan, which outlines specific strategies and implementing mechanisms to carry out the long-range objectives of the State, in the following areas: watershed, areas with endangered species, open space, natural areas, water quality sensitive areas, and scenic resources. (Petitioner's Exhibit No. 8, p. 18; Petitioner's Exhibit No. 5, p. 47.)

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

72. The proposed reclassification of the Property to the Conservation District generally conforms to the following Coastal Zone Management objectives and policies:

a. In conformance with §205A-2(b)(1), HRS, the reclassification of the Property will provide opportunities for the public to enjoy inland and mauka wilderness recreational activities such as hiking, hunting for game birds and mammals, and bird watching. (Petitioner's Exhibit No. 5, p. 58.)

b. In conformance with §205A-2(b)(3), HRS, the reclassification of the Property will protect and preserve

native forests which contribute to and protect the quality of scenic and open space resources. (Petitioner's Exhibit No. 5, p. 59.)

c. In conformance with §205A-2(b)(4), HRS, the reclassification of the Property will protect fragile and rare natural resources and maintain the stability and survival of both the native forest and birds, which are linked by the co-dependence of each for their reproduction and food. (Petitioner's Exhibit No. 5, pp. 59 and 60.)

d. In conformance with §205A-2(b)(6), HRS, the reclassification of the Property will protect watershed areas on the western slopes of Mauna Loa and preserve vegetation, which maintains the soil and serves to reduce damage from flooding and erosion to properties along the coast. (Petitioner's Exhibit No. 5, p. 60.)

e. In conformance with §205A-2(b)(7), HRS, the reclassification of the Property will protect it from development and uses not compatible with the area's forest bird habitat, watershed, and recreational resource values. (Petitioner's Exhibit No. 5, p. 60.)

CONFORMANCE WITH HAWAII COUNTY GENERAL PLAN GOALS, OBJECTIVES AND POLICIES

73. The County of Hawaii General Plan states that the County shall encourage appropriate State agencies to review and designate forest and watershed areas into the Conservation District during the State Land Use District Comprehensive

Boundary Review. (Petitioner's Exhibit No. 8, p. 19; Petitioner's Exhibit No. 5., p. 49.)

74. The Property contains attributes consistent with the Hawaii County General Plan goals, policies, and standards for environmental quality, natural beauty, natural resources, land use, and open space. (Petitioner's Exhibit No. 8, p. 19; Petitioner's Exhibit No. 5, pp. 49, 56-57.)

RULING ON PROPOSED FINDINGS OF FACT

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

Any conclusion of law herein improperly designated as a finding of fact 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

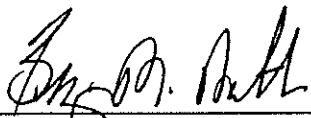
Pursuant to chapter 205, HRS, and the Hawaii Land Use Commission Rules under chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under §205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property consisting of approximately 3,818.493 acres of land at Honomalino, Olelomoana, Kaohē, and Kukuiope, South Kona, Island of Hawaii, State of Hawaii, identified as Tax Map Key

Nos.: 8-7-01:8 and 12, 8-7-12:5, and 8-9-01: 2, from the Agricultural Land Use District to the Conservation Land Use District, is reasonable, conforms to the standards for establishing the conservation district boundaries, is non-violative of §205-2, HRS, and is consistent with the Hawaii State Plan as set forth in chapter 226, HRS.

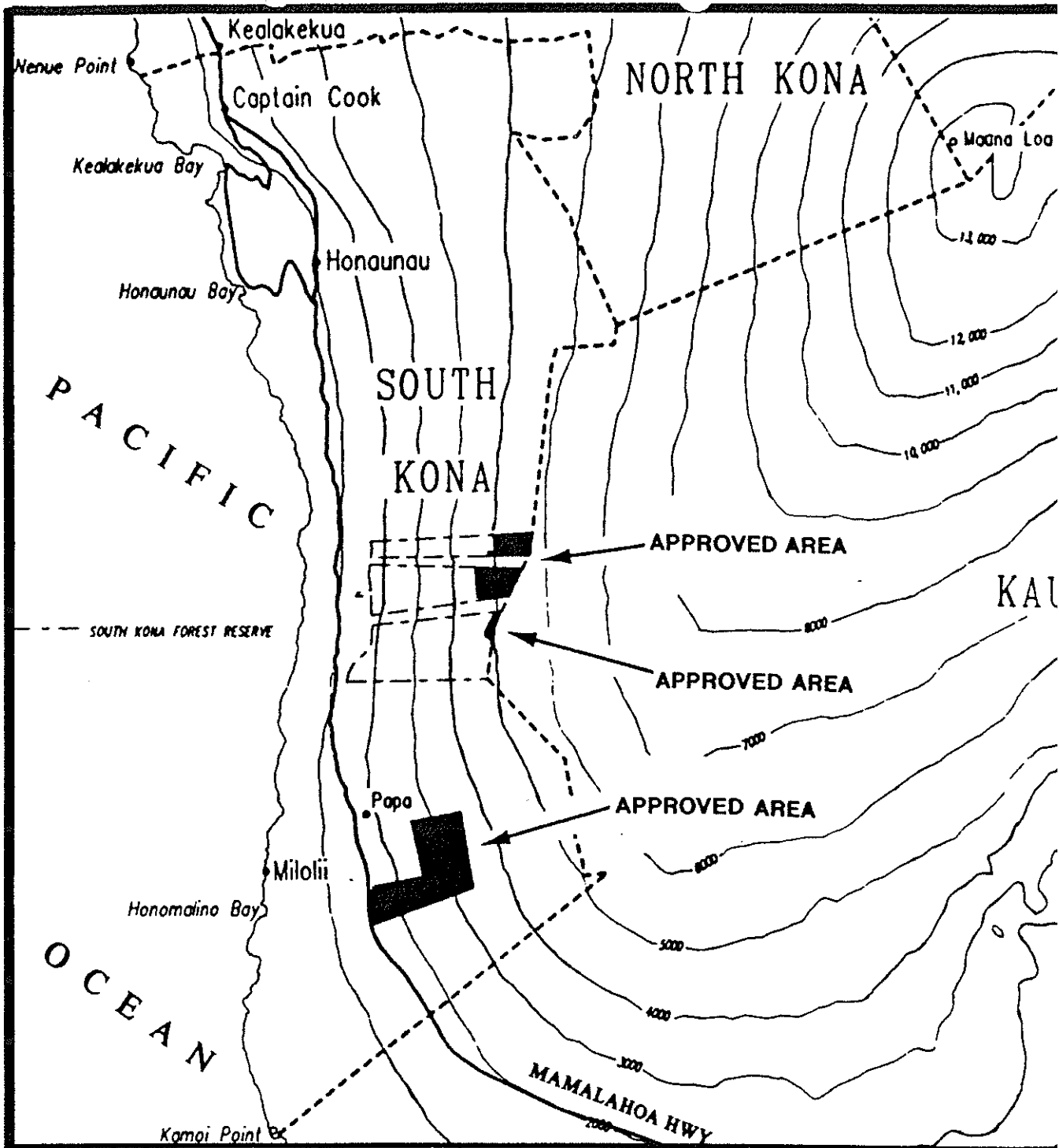
PROPOSED ORDER

IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. BR93-695 filed by Petitioner Office of State Planning, consisting of approximately 3,318.493 acres of land located at Honomalino, Olelomoana, Kaohe, and Kukuiopae, South Kona, Island of Hawaii, State of Hawaii, identified as Tax Map Key Nos.: 8-7-01:8 and 12, 8-7-12:5, and 8-9-01:2, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, are hereby reclassified from the State Land Use Agricultural District to the State Land Use Conservation District, and that the State Land Use District Boundaries are amended accordingly.

Dated: Honolulu, Hawaii this 2nd day of June 1994.



BENJAMIN M. MATSUBARA
Hearing Officer



LOCATION MAP

BR93-695 / OFFICE OF STATE PLANNING,
STATE OF HAWAII

T.M.K. : 8-7-01: 8, 12, 8-7-12: 5, & 8-9-01: 2

HONOMALINO, OLELOMOANA, KAOHE, KUKUIOPAE,

SOUTH KONA, HAWAII



APPROX. SCALE IN MILES

