

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. BR94-704
OFFICE OF STATE PLANNING)	
STATE OF HAWAII)	HEARING OFFICER'S
)	PROPOSED FINDINGS OF
)	FACT, CONCLUSIONS OF
To amend the Land Use District)	LAW, AND DECISION
Boundary of Certain Lands situated)	AND ORDER
at Hakalau, within the ahupuaas of)	
Makahaloa, Papaikou and Paukaa,)	
South Hilo, Island of Hawaii, State)	
of Hawaii, Identified by Tax Map)	
Key Numbers of the Third Division:)	
2-9-05: por. 3, consisting of)	
approximately 195 acres from)	
from the Agricultural District)	
to the Conservation District)	
_____)	

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

BENJAMIN M. MATSUBARA
Kendall Bldg., 8th Floor
888 Mililani Street
Honolulu, Hawaii 96813

Hearing Officer

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OF THE STATE OF HAWAII

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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 June 1, 1994, and a First Amended Petition on July 15, 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 195± acres of land situated at Makahanaloa, Papaikou, and Paukaa, South Hilo, Island of Hawaii, State of Hawaii, specifically identified as Tax Map Key Number 2-9-05: por. 3 ("Property" or "Petition Area"), from the State Land Use Agricultural District to the State Land Use Conservation 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 Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the Petitioner, and the County of Hawaii Planning Department ("Planning Department"), hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On June 1, 1994, Petitioner filed a Petition for Land Use District Boundary Amendment ("Petition").
2. On July 15, 1994, Petitioner filed a First Amended Petition.
3. On June 1, 1994, Petitioner filed a Motion to Waive Requirements for Metes and Bounds Description ("Motion").
4. On August 3, 1994, the Planning Department filed its "Statement of Position in Support of the Petition.
5. The Commission's duly appointed hearings officer, Benjamin M. Matsubara, Esq. ("Hearing Officer") held a hearing on the Petition on October 28, 1994, at the State Office Building, Conference Room B & C, 75 Aupuni Street, Hilo, Hawaii, pursuant to a public notice published in the Hawaii-Tribune Herald, the Honolulu Advertiser, and West Hawaii Today on September 12, 1994.
6. On October 28, 1994, the Hearing Officer heard testimony from the parties on Petitioner's Motion. The Hearing Officer granted Petitioner's Motion.

7. On October 28, 1994, the Hearing Officer entered into evidence, a letter from the United States Department of the Interior Fish and Wildlife Service in support of the Petition.

8. On November 5, 1994 an Order granting Petitioner's Motion to Waive Requirements for Metes and Bounds Description was issued.

DESCRIPTION OF THE PROPERTY

9. The Property consists of approximately 195 acres located on the eastern or windward slopes of Mauna Kea between the 6,000- and 6,600-foot level and involves a portion of a parcel which is located within the South Hilo Judicial District.

10. The Property identified as Pua Akala, TMK 2-9-05:03 (por.), is located within the ahupuaa of Makahanaloa, Papaikou and Paukaa, east of Humuula and west of the Hakalau Forest National Wildlife Refuge ("NWR").

11. W. H. Shipman, Ltd., is the owner of the Property, which is currently leased to William Andrade of Pua Akala Ranch for cattle ranching and related activities. In a letter dated October 20, 1993 signed by W.H. Shipman, Ltd. and William Andrade, W.H. Shipman, Ltd., authorized the filing of the Petition.

12. The Property is gently sloping throughout, rising from the 6,160-foot level at its eastern boundary to 6,440 feet at its western boundary. The Property is characterized by lava flows that lack perennial streams and deep gulches because of the very porous soil and the location of the Property at

approximately 6,160 feet. Streambeds on the Property appear as narrow shallow gulches.

13. The area is characterized by clear mornings and rainy afternoons and nights. Rainfall measurements taken on the Property over a 40-year period (1919 -1976) at an elevation of approximately 6,300 feet, show that the annual median rainfall is 90.1 inches per year which is relatively high for this elevation. The Property is located between the 100" and 75" isohyete.

14. The average temperature for the Property is 69°F and ranges from the low 40's to the high 80's.

15. The Soil Survey of the Island of Hawaii, State of Hawaii, prepared by the U.S. Department of Agriculture, Soil Conservation Service, classifies the soil within the Property as follows:

a. Piihonua (POD), 6 to 20 percent slopes, is characterized by a surface layer of very dark brown silty clay loam about 6 inches thick with stones covering 3 to 15 percent of the surface. The subsoil is dark-brown to dark-red silty clay loam about 44 inches thick. At a depth of 17 to 25 inches, there is a weakly cemented layer of volcanic ash. Permeability is rapid, runoff is slow, and the erosion hazard is slight. This soil is used for pasture and woodland.

b. Puu Oo (PUC), 6 to 12 percent slopes, is characterized by a surface layer of dark reddish-brown and very dark gray silt loam about 6 inches thick. The subsoil is very dark brown to dark reddish-brown silty clay loam about 21 inches thick. It is underlain by dark yellowish-brown and dark-brown

sandy clay loam. Permeability is moderately rapid, runoff is slow, and the erosion hazard is slight. This soil is used for pasture.

16. The Soil Survey of the Island of Hawaii, State of Hawaii, prepared by the U.S. Department of Agriculture, Soil Conservation Service (1973), identifies the soils on the Property as having capability class rankings of III (soils that have severe limitations that reduce the choice of plants, require special conservation practices, or both) and IV (soils that have very severe limitations because of the risk of erosion unless close-growing plant cover is maintained).

17. The University of Hawaii Land Study Bureau's Detailed Land Classification-Island of Hawaii, overall suitability (master rating) for the Property is "C" (fair) and not highly productive for cultivated agriculture.

18. The Agricultural Lands of Importance to the State of Hawaii ("ALISH") system has identified all of the land within the Property as Other Important Agricultural Land.

19. The Federal Emergency Management Agency's Flood Insurance Rate Maps indicate that the Property is within Zone X, which represents an area determined to be outside the 500-year floodplain.

20. The U.S. Geological Survey ("USGS") 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 "B" zone indicating a low degree of risk from volcanic activity.

21. Although the entire island is susceptible to earthquakes originating in fault zones under and adjacent to it, the most seismically active area on 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 to 4.4. The biggest earthquake measured in the South Hilo District occurred in 1973 approximately 15 miles northeast of the Property at Honomu, and registered 6.2 on the Richter scale.

22. The Property is located in lava flow hazard zone 8. Only a small percentage of lands in this zone has been covered in the last 10,000 years because Mauna Kea has not erupted for 2,000 years or more. Mauna Kea may only be dormant and not extinct.

PROPOSAL FOR RECLASSIFICATION

23. The Property has been identified in the State Land Use District Boundary Review as a Priority #1 recommendation for reclassification from the Agricultural to the Conservation District because it contains large stands of ohia and koa-ohia forests with a native shrub understory, which would enhance the existing native bird habitat and watershed resources of South Hilo.

24. The owner (W. H. Shipman, Ltd.) proposes to maintain the relatively intact native forest within the Property to stimulate public interest in the fragility of our natural

resources and provide opportunities to educate the public on the importance of protecting endangered plants and animals and watershed resources for future generations. Existing land management practices which include gorse removal are proposed to be continued to allow for forest regeneration.

25. By letter dated April 20, 1993 the Department of Land and Natural Resources confirmed that existing cattle ranching and related activities would be allowed to continue as non-conforming uses, while new or expanded uses would require approval of a Conservation District Use Permit.

26. Reclassification of the Property to the Conservation District is sought to provide areas necessary for preserving natural ecosystems of native plants and forest birds; the protection of watersheds, water sources, a Hawaiian montane rain forest, and an existing wildlife habitat for several species of endangered forest birds; and the protection and enhancement of the scenic, aesthetic, open space and wilderness features of the area.

27. The Petition Area is bounded on the north and east by the Hakalau Forest NWR and would provide a buffer for the forest bird habitat within the refuge. The Petition Area is bounded on the south by Hawaiian Home lands and to the west by lands owned by W.H. Shipman.

28. The Hawaii Forest Bird Recovery Plan identifies portions of the Property as essential habitat for the Akiapolaau, Hawaii Akepa, Ou, and the Hawaii Creeper.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED RECLASSIFICATION

29. Pursuant to Section 15-15-50(c)(8), HAR, Petitioner is a State agency and is not required to demonstrate financial capability.

STATE AND COUNTY PLANS AND PROGRAMS

30. The Property is located within the State Land Use Agricultural District, as reflected on the State Land Use District Boundary map, USGS Quad H-53 (Pua Akala).

31. The General Plan designation for the Property is Extensive Agricultural.

32. County Zoning for the Property is A-40.

33. The Property is outside the Special Management Area delineated in the County of Hawaii maps drawn pursuant to §205A-23, HRS.

NEED FOR THE PROPOSED RECLASSIFICATION

34. 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.

35. Act 82, SLH 1987, also 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.

36. Petitioner has represented that maintaining native forest ecosystems is essential in contributing to the survival of endangered species.

37. 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.

38. The Property provides essential habitat to maintain five of these endangered species, the Ou, Akiapolaau, Hawaiian Hawk, Hawaii Creeper, and the Hawaii Akepa.

39. Four of these endangered species (the Hawaii Akepa, Hawaii Creeper, Akiapolaau, and Ou) 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. Portions of the Petition Area have been identified by the USFWS as essential habitat for forest birds.

40. The Property has four forested areas which provide forest bird habitat that must be protected from further degradation, enhanced and maintained in order to keep these species from further diminishing in numbers.

SOCIO-ECONOMIC IMPACTS

41. 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 Petition Area from the Agricultural District to the Conservation District.

42. The public agency which may be impacted is the Department of Land and Natural Resources since additional effort may be required to administer the newly added Conservation District lands.

43. The reclassification of the Property to the Conservation District will not provide employment opportunities since no development of the Property is proposed.

44. The reclassification of the Property to the Conservation District will not have any impact on State or County revenues.

45. The Property is undeveloped and will remain so due to the slope, topography, lack of municipal services, public utilities and services and distance from the urban center of Hilo. Petitioner has represented that existing agricultural uses will not be impacted since they will be allowed to continue as non-conforming uses.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

46. Petitioner has represented that reclassification of the Property to the Conservation District will remove .3 percent

of the lands from the Agricultural District in South Hilo and is not anticipated to have a major impact on agricultural resources in the area.

Flora

47. The Property is within the middle forest zone of a mesic and wet koa-ohia forest. This area contains some of the finest stands of koa-ohia and ohia forests remaining in Hawaii and the world.

48. U.S. Fish and Wildlife vegetation maps, prepared by James Jacobi, identify the forest types on the Property. The coding used by the USFWS follows each type description:

a. The first type (approximately 47± acres) consists of a closed canopy of codominant stands of Acacia-koa and ohia trees, 30 to 75 feet tall, dominant over native trees 15 to 30 feet tall. The understory is mesic habitat of native shrubs codominant with non-native grasses.

b. The second type (approximately 108± acres) consists of open canopy stands of Acacia-koa and ohia trees, 30 to 75 feet in height, dominant over other native trees 15 to 30 feet within a moist understory consisting predominantly of non-native grasses and native shrubs.

c. The third type (approximately 12 acres) consists of scattered stands of codominant Acacia-koa and ohia trees, 30 to 75 feet in height, and other native trees 15 to 30 feet in height within a moist understory of non-native grasses.

d. The fourth type (approximately 27± acres) consists of very scattered stands of Acacia-koa trees, 30 to 75 feet in

height, codominant with other native trees 15 to 30 feet in height within a dry understory of non-native grasses.

e. The fifth type (approximately one acre) consists of a closed canopy of non-native trees, 30 to 75 feet tall, within the open canopy area of Acacia-koa and ohia trees. Understory is mesic species habitat consisting of native shrubs and non-native grasses.

Fauna

49. The Property has been identified as containing essential forest bird habitat for the Hawaii Creeper (Oreomytis mana), Hawaii Akepa (Loxops coccineus), Akiapolaau (Hemignathus munroi), Ou (Psittirostra psittacea), and the Io (Buteo solitarius) which are found throughout the region.

50. The forested areas of the Property provide habitat for a high density of avifauna, such as the Omao, Hawaii Elepaio, Common Amakihi, Iiwi, and the Apapane.

51. The proposed reclassification would protect several types of habitat for at least 10 species of native forest birds including essential habitat for five endangered species.

52. The endangered Hawaiian hoary bat (Lasiurus cinereus semotus) has also been sighted on the Petition Area.

53. Introduced mammals that are frequently found within the Petition Area include several species of rodents, feral cats and dogs, mongoose, feral pigs and feral cattle.

Archaeological/Historical Resources

54. The reclassification will not negatively impact any archaeological and/or historical resources which might be on the

Property. The proposed amendment to the Conservation District will protect archaeological and/or historical resources from being lost until such time that surveys may be conducted.

Groundwater Resources

55. The Property is in the Onomea Aquifer System which is in the southernmost part of the East Mauna Kea Hydrologic Sector. The Onomea Aquifer System includes diked, basal and perched aquifers and has a sustainable yield of 38 mgd. The existing uses on the Property do not use the County water system but depend entirely on catchment tanks for rainfall.

Recreational, Scenic, Cultural Resources

56. Recreational opportunities, which include bird watching and hiking, may be experienced on the Property. Reclassification to the Conservation District will protect native plant and animal species existing in a scenic wilderness habitat and provide a buffer for the forest bird habitat within the adjacent Hakalau Forest NWR.

Coastal/Aquatic Resources

57. Reclassification of the Property will preserve the relatively intact forest and understory and lessen the potential hazards from flooding and soil erosion to coastal areas.

ENVIRONMENTAL QUALITY

Noise

58. Reclassification of the Property to the Conservation District will not adversely impact existing noise levels in the vicinity.

Air Quality

59. Reclassification of the Property to the Conservation District will not adversely affect air quality.

Water Quality

60. Reclassification of the Property to the Conservation District will preserve forested areas, lessen hazards from flooding and soil erosion, and maintain and protect the water quality of this valuable watershed area.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

61. 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.

COMMITMENT OF STATE FUNDS AND RESOURCES

62. The public agency which may be affected is the Department of Land and Natural Resources since additional effort may be required to administer and enforce regulations in the newly added Conservation District lands.

CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

63. The Property contains a Hawaii montane forest with groundwater and watershed resources.

64. The sparseness of vegetation, the composition of cinder cones, the red-brown colors of the volcanic soils and during the winter months, snow on top of Mauna Kea provide a scenic backdrop to the area. The proposed reclassification will enhance the scenic value of these resources.

65. The Property is within the mixed mesic forest areas of South Hilo. These areas are the most species rich of all the forest zones, harboring natural systems of forest birds and endemic plants. The vegetation on the Property consists of mesic koa-ohia forest composed of tall stands of Acacia-koa trees, ohia trees, and an understory consisting of alapaio fern, tree fern, sweet vernal, and white clover.

66. The Property contains large stands of ohia and in some areas, both ohia and koa trees and open grassland within the middle forest zone of a mesic and wet koa-ohia forest on the slopes of Mauna Kea.

67. The Property additionally has been identified as a forest bird habitat for five endangered species, the Hawaii Akepa, the Hawaii Creeper, Akiapolaau, Ou, and the Io.

68. The Soil Survey of the Island of Hawaii, State of Hawaii, prepared by the U.S. Department of Agriculture, Soil Conservation Service (1973), has identified two soil types on the Property--Piihonua extremely stony silty clay loam and Puu Oo silt loam. Soils on the Property range from capability class III to IV and are generally unsuitable for cultivation. These soils are used for pasture, woodland, and forestland.

69. The Land Study Bureau classifies the soils on the Property as "C" which is not highly productive for cultivated agriculture.

70. Approximately 70 percent of the Property has slopes of 10-20 percent.

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

71. 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:

a. Reclassification would serve to maintain the stability of the natural ecosystems, native forests, native forest birds, and watershed.

b. Reclassification will protect relatively intact forests with some of the finest stands of koa-ohia remaining in Hawaii and the world, which provide several types of forested habitat for at least 10 species of native forest birds including essential habitat for five endangered species. Conservation District reclassification for the Property will preserve these unique and fragile resources.

c. The Property is located between a forest bird habitat on the east and an area of natural beauty comprising the cinder cones and the red-brown colors of the volcanic soils of Mauna Kea. The Property contains stands of koa and koa-ohia forests with native shrub understory. This forest type is found only where cattle grazing has been restricted. Reclassification to the Conservation District will protect these areas and serve to enhance Hawaii's scenic assets and natural beauty.

d. Reclassification of the Property will preserve watershed areas and result in the protection of Hawaii's water resources.

e. Reclassification of the Property to the Conservation District will preserve existing surface and groundwater supplies in the area. Preservation of mauka forested areas and ground cover further protect groundwater supplies for residents at lower elevations.

72. Reclassification of the Property to the Conservation District conforms to the Priority Guidelines for Regional Growth Distribution and Land Resource Utilization in that it will serve to protect and enhance South Hilo's montane mesic forest habitats, open space, and scenic resources from the encroachment of development.

73. Areas of statewide concern which the Conservation Lands Functional Plan defines and attempts to address are: watersheds; terrestrial habitat; ocean habitat; areas with endangered species; natural streams; shoreline; open space; natural areas; air and water quality sensitive areas; and scenic, historic, and cultural sites. The Property contains essential habitat for five endangered species, the Hawaii Akepa, Hawaii Creeper, Akiapolaau, Ou, and the Io, and provides habitat for other native forest birds such as the Omao, Hawaii Elepaio, Common Amakihi, Iiwi, and the Apapane. The Property not only provides important refuge for native wildlife, but it's also an area suitable for watershed. Reclassification to the Conservation District will protect these resources.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

74. The proposed reclassification of the Property generally conforms to the Coastal Zone Management objectives and policies in that:

a. It will protect natural and historic resources including essential habitat for five endangered native birds and native trees such as koa and koa-ohia.

b. It will protect and preserve forests which contribute to and protect the quality of coastal and open space resources. The forest and understory provide groundcover essential for mitigating pollution and damage from erosion and flooding to properties at lower elevations.

c. It will protect fragile and rare natural resources and serve to maintain the stability and survival of both the forest and the birds.

d. It does not require the provision of facilities.

e. It will protect watershed areas on the eastern or windward slopes of Mauna Kea and preserve vegetation which maintains the soil and serves to reduce flooding and erosion to properties along the coast.

f. It will protect the Property from development and uses not compatible with the area's forest bird habitat, watershed, and recreational resource values.

g. It will maintain vegetative cover important in the process of mitigating the impact of flood and erosion drainage to beaches, shorelines, and other land areas below the Property.

CONFORMANCE WITH HAWAII COUNTY GENERAL PLAN GOALS, OBJECTIVES,
AND POLICIES

75. The County of Hawaii General Plan states that the County shall encourage appropriate State agencies to review and designate forest and watershed areas onto the Conservation District during the State land use district comprehensive boundary review.

76. The Property contains attributes consistent with the Hawaii County General Plan goals, policies and standards for environmental quality, natural beauty, natural resources and shoreline, land use, and open space.

a. The proposed reclassification of the Property contains attributes consistent with the Hawaii County General Plan to maintain and, if feasible, improve the existing environmental quality of the island.

b. The proposed reclassification of the Property from the Agricultural District to the Conservation District conforms with the Hawaii County General Plan goal for natural beauty: to protect, preserve, and enhance the quality of are as endowed with natural beauty.

c. The Property has an open forested area of trees ranging 30 to 75 feet in height and composed of tall stands of Acacia-koa and ohia trees. It is increasingly becoming more rare to find tall stands of koa and ohia and portions of the Property have some of the finest stands of ohia forests remaining in Hawaii. Natural or native vegetation such as these forests which

make a particular area attractive are also areas essential to the long-term stability of endangered forest bird populations.

77. The Property together with the Hakalau Forest NWR would increase and protect areas of habitat necessary for the protection of watersheds and the protection and propagation of endangered forest birds.

78. The County General Plan designation most consistent with the proposed reclassification is Conservation. The General Plan Conservation designation is intended to preserve open space values, plus the following as described in the General Plan: "Forest and water reserves; natural and scientific preserves; open; land within the State Land Use Conservation District."

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 finding 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 195 acres of land in the Agricultural Land Use District situated at South Hilo within the Ahupuaa of Makahanaloa, Papaikou, and Paukaa, South Hilo, Island of Hawaii, State of Hawaii, identified as Tax Map Key Number of the Third Division 2-9-05:03 (por.) into the Conservation Land Use District, is reasonable, conforms to the standards for establishing the conservation district boundaries, is nonviolative 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. BR94-704/Office of State Planning, consisting of approximately 195 acres of land located within the land divisions of Makahanaloa, Papaikou, and Paukaa, South Hilo, Island of Hawaii, State of Hawaii, identified as Tax Map Key Number of the Third Division 2-9-05:03 (por.), and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Agricultural District into the State Land Use Conservation District and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. Petitioner and/or landowner shall maintain the Property in substantial compliance with the representations made to the Commission.
2. Petitioner and/or landowner shall give notice to the Commission of any intent to sell, lease, assign, place in trust,

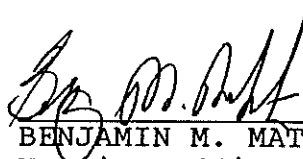
or otherwise voluntarily alter the ownership interests in the Property.

3. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

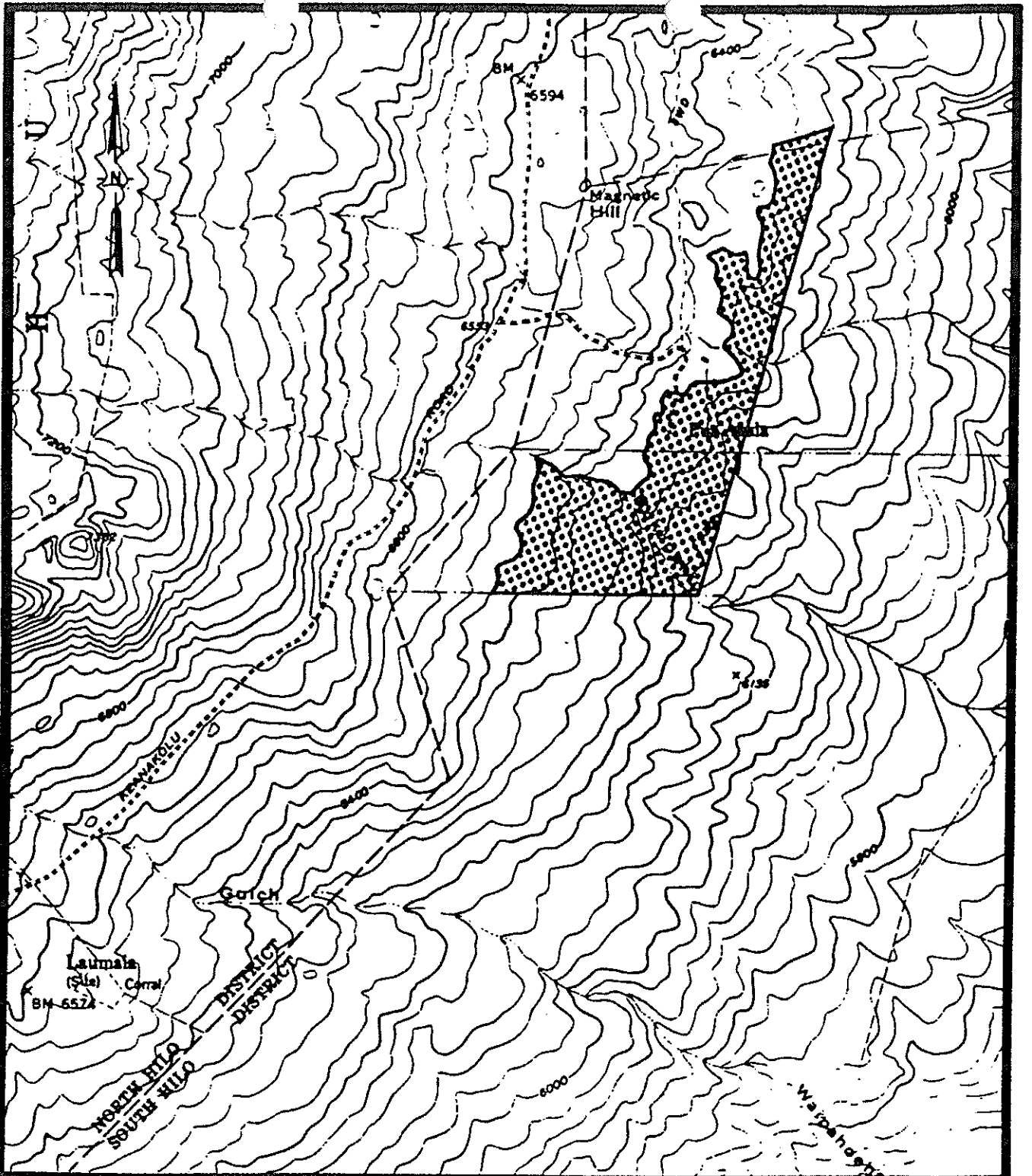
4. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

5. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules.

Dated: Honolulu, Hawaii this 22nd day of February 1995.



BENJAMIN M. MATSUBARA
Hearing Officer



LOCATION MAP

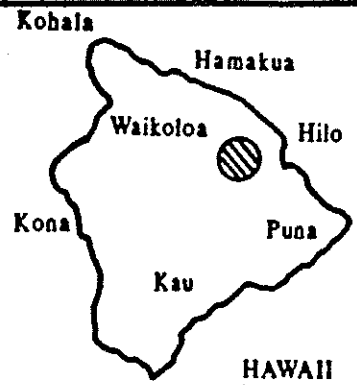
DOCKET NO. BR94-704 / OFFICE OF STATE PLANNING,
STATE OF HAWAII

TAX MAP KEY: 2-9-05: por. 3

MAKAHANALOA, PAPAICOU, PAUKAA,
SOUTH HILO, HAWAII

SCALE: 1"=2,000 ft±

 APPROVED AREA



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. BR94-704
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OFFICE OF STATE PLANNING) CERTIFICATE OF SERVICE
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CERTIFICATE OF SERVICE

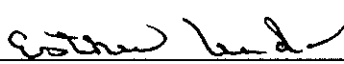
I hereby certify that a copy of the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

GREGORY G.Y. PAI, PH.D., Director
Office of State Planning
P. O. Box 3540
Honolulu, Hawaii 96811-3540
Attention: Ms. Judith Henry

CERT. RICK J. EICHOR, ESQ., Attorney for Petitioner
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 22nd day of February 1995.



ESTHER UEDA
Executive Officer