

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
OFFICE OF STATE PLANNING,)
STATE OF HAWAII)
To Amend the Land Use District)
Boundary of Certain Lands Situated)
at North Hilo District, Island of)
Hawaii, State of Hawaii, Identified)
by Tax Map Key Numbers of the 3rd)
Division: 3-5-01:17, 18, 20, 31;)
3-5-04:14, 35, 37, 49, 50; 3-5-05:)
por. 05, 09, 10, 11; 3-6-01:10, 11;)
3-6-03:01, 26; 3-6-06:05, 07, and)
18 consisting of approximately)
171.61 acres, more or less, from)
the Agricultural and Urban)
Districts to the Conservation)
District)

DOCKET NO. BR94-707
PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW, AND DECISION AND
ORDER

This is to certify that this is a true and correct copy of the Decision and Order on file in the office of the State Land Use Commission, Honolulu Hawaii.

NOV 06 1995 by *[Signature]*
Date Executive Officer

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

NOV 6 8 48 AM '95
LAND USE COMMISSION
STATE OF HAWAII

NOV 6 8 57 AM '95
DIRECTOR'S OFFICE

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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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 July 22, 1994, and a First Amended Petition on November 21, 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 171.61 acres, more or less, in the State Land Use Agricultural and Urban Districts situated at North Hilo District, County of Hawaii, State of Hawaii, identified as Tax Map Key Numbers of the Third Division: 3-5-01:17, 18, 20, 31; 3-5-04:14, 35, 37, 49, 50;

3-5-05: por. 05, 09, 10, 11; 3-6-01:10, 11; 3-6-03:01, 26;
3-6-06:05, 07, and 18 ("Property" or "Petition Area"), into the
State Land Use Conservation District.

On July 28, 1994, the Land Use Commission of the State
of Hawaii ("Commission") appointed Benjamin M. Matsubara, Esq. as
the Commission's Hearing Officer ("Hearing Officer").

The Commission having reviewed and examined the Hearing
Officer's Proposed Findings of Fact, Conclusions of Law, and
Decision and Order, and having heard and examined the testimony,
evidence and argument of the parties presented during the
hearings, and having reviewed the Petitioner's Proposed Findings
of Fact, Conclusions of Law, and Decision and Order; the
Stipulation Concerning Petitioner's Proposed Findings of Fact,
Conclusions of Law, and Decision and Order with the County of
Hawaii Planning Department; Petitioner's First Amended Proposed
Findings of Fact, Conclusions of Law, and Decision and Order;
Intervenor Thomas C. Young and Maile M. Young's (cumulatively
"Young") Proposed Findings of Fact, Conclusions of Law, and
Decision and Order; County of Hawaii's ("County") Proposed
Findings of Fact, Conclusions of Law, and Decision and Order;
Intervenor Young's Memorandum in Opposition to Petitioner's
Proposed Findings of Fact, Conclusions of Law, and Decision and
Order; Office of State Planning's Response to the County of
Hawaii's Proposed Findings of Fact, Conclusions of Law, and
Decision and Order; Office of State Planning's Response to Thomas
Young's Proposed Findings of Fact, Conclusions of Law, and
Decision and Order; Office of State Planning's Response to the

Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; hereby makes the following findings of fact and conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On July 22, 1994, Petitioner filed a Petition for Land Use District Boundary Amendment and on November 21, 1994, Petitioner filed a First Amended Petition (cumulatively "Petition").

2. On July 22, 1994, Petitioner filed a Motion to Waive Requirement for Letter of Authorization from the Landowner and the Affidavit of Mary Lou Kobayashi ("Landowner Motion").

3. On November 21, 1994, Petitioner filed a Motion to Waive Requirement for Metes and Bounds Description and the Affidavit of Mary Lou Kobayashi ("Metes and Bounds Motion").

4. At the Commission hearing on September 22, 1994, in Kailua-Kona, Hawaii, Petitioner withdrew its Motion to Waive Requirement for Letter of Authorization from the Landowner.

5. On October 5, 1994, an Order Granting Motion to Withdraw Motion for a Waiver of Requirement for Letter of Authorization from the Landowner was issued.

6. On January 4, 1995, Hawaii Electric Light Co. Inc., ("HELCO") filed a Petition for Intervention, Memorandum in Support of Petition for Intervention, and the Affidavit of Mark Gushiken. On January 19, 1995, HELCO filed a First Amended Petition for Intervention, and a Memorandum in Support of the

First Amended Petition for Intervention (cumulatively "HELCO Intervention").

7. On January 5, 1995, Laupahoehoe Ventures I, Ralph Duane Black and Grace Marlene Castillo-Black (cumulatively "Black") filed a Petition for Intervention ("Black Intervention").

8. On January 5, 1995, Thomas C. Young and Maile M. Young filed a Petition for Intervention ("Young Intervention").

9. A prehearing conference on the Petition was held on January 24, 1995, in Conference Room 238 of the Old Federal Building, 335 Merchant Street in Honolulu, Hawaii, and at which time the parties submitted exhibits, exhibit lists, and witness lists.

10. On January 26, 1995, Petitioner filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order and a Stipulation Concerning Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order signed by the County of Hawaii Planning Department.

11. On February 8, 1995, a hearing was held before the Hearing Officer, in Conference Rooms B & C of the State Office Building, 75 Aupuni Street, Hilo, Hawaii, pursuant to a public notice published in the Hawaii Tribune Herald, West Hawaii Today, and the Honolulu Advertiser on December 21, 1994.

12. At the February 8, 1995 hearing, the Black, HELCO, and Young Petitions for Intervention were granted. Subsequent to the granting of the Petitions for Intervention, at the February 8, 1995 hearing, a Motion to Withdraw Petition for

Intervention for Laupahoehoe Ventures I, Ralph Duane Black and Grace Marlene Castillo-Black was granted.

13. At the February 8, 1995 hearing, the Hearing Officer having considered the arguments of the parties on Petitioner's Metes and Bounds Motion, granted the Metes and Bounds Motion.

14. At the February 8, 1995 hearing, the following individuals provided written and/or oral public witness testimony: David Sheehan; Michael Barton; Thomas Crabb; and Paul Bryant.

15. At the February 8, 1995 hearing, the Hearing Officer denied an oral request for a continuance by Intervenor Thomas Young however, the hearing was left open until May 22, 1995 to allow Intervenor Young to submit written testimony and other exhibits.

16. On February 23, 1995, Orders granting the Petition for Intervention for Laupahoehoe Ventures I, Ralph Duane Black and Grace Marlene Castillo-Black; the Petition for Intervention for Hawaii Electric Light Company, Inc.; and the Petition for Intervention for Thomas C. Young and Maile M. Young were issued.

17. On February 23, 1995, the Order granting the Motion to Withdraw Petition for Intervention for Laupahoehoe Ventures I, Ralph Duane Black and Grace Marlene Castillo-Black was issued.

18. On February 23, 1995, the Order granting Petitioner's Motion to Waive Requirement for Metes and Bounds Description was issued.

19. On May 5, 1995 Intervenor Young filed a Motion to Reopen the Hearing and Affidavit of Thomas C. Young (cumulatively "Motion to Reopen").

20. On May 9, 1995 Petitioner filed a Memorandum in Opposition to Intervenors' Motion to Re-Open Hearing and Affidavit of Rick J. Eichor.

21. On May 9, 1995 the County of Hawaii filed a Motion to Amend Pleadings requesting the withdrawal of its stipulation to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order and Affidavit of Virginia Goldstein (cumulatively "Motion to Amend Pleadings").

22. On May 22, 1995 Petitioner filed a Supplemental Memorandum in Opposition to Intervenors' Motion to Re-Open Hearing, Affidavit of Mary Lou Kobayashi, Affidavit of Wayne F. Ching, and the Affidavit of Kenneth M. Kaneshiro.

23. On February 8, 1995, County of Hawaii Council Member Takashi Domingo requested that the Commission defer its decision-making until the next scheduled Hilo hearing to allow further input from surrounding landowners, communities and individuals using the streams. On June 5, 1995 Representative Dwight Takamine filed a letter in support of Intervenor Young's Motion to Reopen the Hearing.

24. At the Commission hearing on June 8, 1995, in Honolulu, Hawaii, the Hearing Officer granted Intervenor Young's Motion to Reopen Hearing.

25. At the Commission hearing on June 8, 1995, in Honolulu, Hawaii, the Hearing Officer denied the County of Hawaii Planning Department's Motion to Amend Pleadings.

26. On June 28, 1995 an Order granting Intervenors' Motion to Reopen Hearing was issued.

27. On June 28, 1995 an Order denying the County of Hawaii Planning Department's Motion to Amend Pleadings was issued.

28. A second prehearing conference on the Petition was held on July 14, 1995, in the Conference Room of the Department of Business, Economic Development & Tourism on the 11th Floor of the Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii, and at which time the parties submitted exhibits, exhibit lists, and witness lists.

29. On July 18, 1995, the County submitted a Request for Subpoena.

30. On July 19, 1995, the Hearing Officer issued a subpoena for the appearance of Mr. Michael Tulang of the U.S. Department of Agriculture, Natural Resources Conservation Service, at the July 21, 1995 Commission hearing in Laupahoehoe, Hawaii.

31. On July 21, 1995, a reopened hearing was held before the Hearing Officer in the Humanities Room of the Laupahoehoe Library, Laupahoehoe, Hawaii.

32. At the July 21, 1995 hearing the following individuals provided written and/or oral public witness testimony: Nelson Ho representing the Sierra Club Hawaii Chapter,

Art McCornack, Patricia Tummons, Carol Wilcox, Laura Figueira, Bob Akamine, Jesse Wolf Dawn, Colleen Kiernan, Mayor Stephen Yamashiro, Lucille Chung, Paul Bryant, Lisa Barton, Kamaka Draeger, Debra Salboro, Colleen Zirolu, Adam Morrow, Thomas Crabb representing the Hamakua District Soil Conservation Board and William Choy Hee, Ronald Englund, Dieter Muller-Dombois, Dan Polhemus, Bonnie Goodell, Nancy Gatewood, David Caccia, Robert Kinzie, Don Hemmes, Ed Johnston, Lola Mench, Martha Black, Lorin Gill, Edith Worsencroft, Andrew Charles Yanoviak, Edward Clark, Sally Wang, Charles Chong, Palikapu Dedman representing Pele Defense Fund, Donna Fay Kiyosaki, P.E. representing the County of Hawaii Public Works Department, and Patricia G. Englehard, County Clerk transmitting Resolution No. 98-95 adopted by the Council of the County of Hawaii.

33. The County of Hawaii was initially in support of the Petition, but subsequently indicated their opposition to the Petition. Intervenor Young was opposed to the Petition and Intervenor HELCO was partially opposed to the Petition.

34. The Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order recommending approval of the petition was issued on September 12, 1995.

DESCRIPTION OF THE PROPERTY

35. The Petition Area consists of approximately 171.61 acres, more or less, situated in the North Hilo District between Laupahoehoe and Papaaloe on the Island of Hawaii.

36. The Petition Area consists of three streams and their associated gulches; Manowaiopae Stream and its gulch

("Petition Area 1"), Kuwaikahi Stream and its gulch ("Petition Area 2"), and Kihalani Stream and its gulch ("Petition Area 3").

37. The Petition Area is owned by the State of Hawaii, except for parcels 3-6-03: 26 and 3-5-04: 50 totalling 1.87 acres, which are owned by the County of Hawaii. The State Department of Land and Natural Resources which manages, administers and exercises control over public lands, authorized the filing of the Petition for the lands within the Petition Area owned by the State of Hawaii. The County of Hawaii Department of Water Supply authorized the filing of the Petition for parcels 3-6-03: 26 and 3-5-04: 50 owned by the County of Hawaii.

38. Petition Area 1 is owned by the State except for parcels 3-6-03:26 and 3-5-04:50 which are owned by the County of Hawaii, and consists of approximately 86.95 acres.

39. The makai boundary of Petition Area 1 is Mamalahoa Highway. Petition Area 1's boundaries then follow the TMK boundaries which correspond to the gulch, extending from ridge to ridge. Petition Area 1's mauka boundary is the existing Conservation District at approximately the 2200-foot contour.

40. Homestead Road crosses Petition Area 1 at parcel 3-5-01:20; and then again between parcels 3-6-06:5 and 7; Government Road crosses Petition Area 1 between parcels 3-5-05:9 and 10. These roads are owned by the County and are not part of the Petition Area.

41. Petition Area 2 is owned entirely by the State and consists of approximately 48.75 acres.

42. The makai boundary of Petition Area 2 is the Conservation District Boundary consisting of a portion of TMK 3-5-05:05, located mauka of the Government Main Road. Petition Area 2's boundaries then follow the TMK boundaries which correspond to the gulch, extending from ridge to ridge. Petition Area 2's mauka boundary is the existing Conservation District at approximately the 2,200-foot contour.

43. Homestead Road crosses over Petition Area 2 between parcels 3-5-01:17 and 18; and an unnamed road crosses Petition Area 2 at 3-5-04:35. These roads are owned by the County and are not part of the Petition Area.

44. Petition Area 3 is entirely owned by the State and consists of approximately 35.91 acres.

45. The makai boundary of Petition Area 3 includes TMK 3-5-04:14 which is adjacent to Ochiro Road. Petition Area 3's boundaries then follow the TMK boundaries which correspond to the gulch, extending from ridge to ridge. Petition Area 3's mauka boundary includes TMK 3-5-01:31.

46. The Petition Area generally has a slope in excess of thirty percent from the ridgeline to the streambed. Petition Area 1 and Petition Area 2 each drop approximately 2,000 feet in elevation for an average slope of ten percent over their three mile course to the sea. Petition Area 3 drops approximately 600 feet in elevation for an average slope of five percent over two miles.

47. The median annual rainfall in the region of the Petition Area is approximately 150 inches per year.

48. Temperatures in the region of the Petition Area ranges from the low 50's to the high 80's. The annual mean temperature is approximately 68°F.

49. The U.S. Department of Agriculture Soil Conservation Service's Soil Survey of the Island of Hawaii, State of Hawaii classifies the soils within the Petition Area as follows:

a. Rough broken land (RB), capability subclass VIIe, which is generally restricted to pasture, woodland or wildlife, and have limitations, such as high erosion potential, that make them unsuitable for cultivation. This soil type comprises the majority of the Petition Area.

b. Kaiwiki silty clay loam, 10 to 20 percent slopes (KaD), capability subclass IVe, primarily used for sugarcane, and have limitations, such as high erosion potential, that reduce the choice of plants or require careful management. This soil type is found primarily along the upper 50 reaches of Petition Area 2.

50. The State Agricultural Lands of Importance to the State of Hawaii ("ALISH") system classifies lands into "Prime," "Unique," and "Other Important Agricultural Land." The remaining lands are Unclassified. According to the ALISH system most of the Petition Area is Unclassified. Portions of Petition Area 2 near its upper reaches are rated Prime, however, the Department of Agriculture has represented that this may be due to a mapping error. The majority of the lands adjacent to the Petition Area are rated "Prime" under the ALISH classification system.

51. Although streams are generally considered floodways, the Flood Insurance Rate Maps show the Petition Area as Zone X, areas outside of the 500-year flood plain. The Petition Area is located in Lava Flow Hazard Zone 8. Hazards in the Petition Area, including rupture and subsidence are rated low, however, landslides along steep slopes are known to occur.

52. According to the Hawaii Stream Assessment database, the Manowaiopae, Kuwaikahi, and Kihalani Streams are considered continuous and perennial.

Existing Uses

53. The Petition Area is primarily in a natural state and is used for a variety of recreational activities including swimming, hunting, fishing, hiking, and scenic viewing.

54. The streams within the Petition Area are used for agricultural irrigation and domestic, water purposes by several properties in the vicinity of the Petition Area.

55. Water is diverted from the Petition Area for agricultural and domestic use. Areas adjacent and/or in close proximity to the Petition Areas are used for various agricultural activities including sugarcane in the upper reaches adjacent to the Petition Area, and small plots of taro, watercress, orchards, and livestock.

56. Water is diverted from Manowaiopae Stream at TMK 3-6-06:18. Water is used for agriculture according to the Declaration of Water Use on file with the CWRM. The declarant is Young Farm.

57. Water is diverted at TMK 3-5-01:17, Kuwaikahi Stream, is used for watering livestock and domestic purposes on TMK 3-5-01: 16, according to the Declaration of Water Use, on file with the CWRM. The declarant is Thurston Yoshino.

58. According to the CWRM, there are no recorded stream diversions for Kihalani Stream.

59. The U.S. Geological Survey ("USGS") maintains a stream gaging station 717820, near the 900-foot contour on Manowaiopae Stream. Based on six years of continuous gaging, the average flow of Manowaiopae Stream is 5.4 mgd, while the median flow is 2.1 mgd.

60. The USGS does not keep flow records for Kuwaikahi and Kihalani Streams.

61. TMK maps 3-6-03:01; 3-5-04:14, 35, 37; 3-6-06:07, and 18 show an abandoned ditch as crossing over the Petition Area. No property interest holders can be identified at the Tax Office, Bureau of Conveyances, Land Management, and the Commission on Water Resource Management ("CWRM").

62. TMK 3-5-04:50, in Petition Area 1, Executive Order No. 679, transfers control of the parcel to the County for a waterhead, pipeline, and tank site for the Laupahoehoe water system. According to current tax map information, TMK 3-5-04: 50 is owned by the County of Hawaii.

63. TMK 3-5-05:11, in Petition Area 1, Executive Order No. 296, states that the County may operate the Laupahoehoe Baseyard on the State-owned parcel. The baseyard is currently an abandoned garage structure. The fuel tank was removed in 1992.

64. TMK 3-6-03:01, Petition Area 1, has a perpetual electrical line easement granted to Hawaii Electric Light Company, Inc.

65. An existing unnamed road not identified on TMK map 3-5-01 crosses over Petition Area 1 and Petition Area 2 on TMK 3-5-01:20 and 18 and is used to access private parcels adjacent to the Petition Area, specifically TMK 3-5-01: 21. This roadway is included as part of the Petition Area.

66. Legal existing uses would be allowed to continue if the Petition Area is reclassified to the Conservation District pursuant to Section 183C-5, HRS, and Chapter 13-5, HAR. New uses or expansion of legally existing land uses, depending on the designated Conservation District subzone, may require a Conservation District Use Application permit and may be subject to the requirements of Chapter 343, HRS.

PROPOSAL FOR RECLASSIFICATION

67. The Petition is based on a recommendation made by the Petitioner as part of the State Land Use District Boundary Review, Hawaii. The report recommends that a number of streams, including portions of the Petition Area be reclassified to the Conservation District for protection of outstanding aquatic resources. The Petition Area is a Priority One recommendation.

68. The Petitioner does not intend to use/develop the Petition Area.

PETITIONER'S FINANCIAL CAPABILITY TO
UNDERTAKE THE PROPOSED DEVELOPMENT

69. Pursuant to §15-15-50(c)(8), HAR, Petitioner is a State agency and is not required to demonstrate financial capability. Moreover, Petitioner is not proposing to develop the Property.

STATE AND COUNTY PLANS AND PROGRAMS

70. The Petition Area is located within the State Land Use Agricultural and Urban Districts as reflected on State Land Use District Boundary maps, USGS Quads H-51 (Kukaiiau); H-52 (Keanakolu); and H-59 (Papaaloa).

71. The portions of the Petition Area which are in the State Land Use Agricultural District are designated Extensive Agriculture in the County of Hawaii General Plan Land Use Pattern Allocation Guide ("LUPAG") map and zoned A-20A. The portions of the Petition Area that are in the State Land Use Urban District are zoned Open.

72. The Petition Area is not within a Special Management Area, pursuant to Section 205A-23, HRS.

73. The Board of Land and Natural Resources ("BLNR") is responsible for designating the appropriate Conservation District subzone for the Petition Area should the area be reclassified to the Conservation District.

74. The DLNR's Commission on Water Resources Management administers the State Water Code which protects and manages surface and groundwater resources. Stream diversions require

approval from the Commission on Water Resources Management regardless of the State Land Use District classification.

NEED FOR THE PROPOSED RECLASSIFICATION

75. The purpose of the Five-Year Boundary Review is to conduct a comprehensive, statewide evaluation of State Land Use Districts. Based on this evaluation, certain areas currently outside the Conservation District but containing conservation resources as defined in §205-2(e), HRS, have been recommended for reclassification to the Conservation District.

76. The Hawaii Stream Assessment which evaluated and rated streams according to their value as aquatic, riparian, recreation and cultural resources does not list Manowaiopae, Kuwaikahi, and Kihalani Streams as candidate streams for protection. The Hawaii Stream Assessment does however, identify Manowaiopae and Kuwaikahi Streams as well as several other streams in the vicinity of the Petition Area as Aquatic Resources of Outstanding Value. Kihalani Stream was not listed nor ranked for purposes of aquatic resources value.

77. The Petition Area has been identified by the Hawaii Stream Assessment as containing Moderate to Substantial recreational resources.

78. As landowners of the Petition Area, the State currently exercises control over uses of the Property. The reclassification to the Conservation District would result in additional controls on any proposed development of the area.

79. Testimony presented at the hearing indicated that the streams are in very good condition at this time, and there

have been no problems under the current Agricultural designation of the Property. Testimony presented also suggests that reclassification of the Property at this time may be premature and that prior to any reclassification of the Property, a resource management plan should be developed.

SOCIO-ECONOMIC IMPACTS

80. The Petition Area is currently undeveloped. No development of the Property is proposed.

81. The Hawaii County Council passed Resolution No. 98-95 on May 3, 1995 which stated that this petition, if approved will have a detrimental effect on the development of diversified agriculture in the region at a time when the development of alternate agriculture uses of the land is being promoted by the State of Hawaii and the County of Hawaii to mitigate the economic effect on the Hamakua community caused by the closing of its two sugar plantations. The Council requested the OSP and LUC consider the alternative action of working with the Hamakua Soil and Water Conservation District, the County Administration and adjoining landowners to establish a locally developed resource management plan meeting the resource protection objectives of the OSP.

82. According to the County's Economic Development Specialist, the reclassification of the Petition Area would impact the economic viability of adjacent agricultural activities due to the expenditures that may be required as a result of the extended permitting process.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

83. The Land Study Bureau and the Soil Conservation Service have rated the soils on the Petition Area as poorly suited for agricultural uses, however, the adjacent Agricultural lands have outstanding soils which are conducive to a higher Agricultural potential. Agricultural activities are currently being conducted on lands in the vicinity of the Petition Area. Some of these agricultural activities utilize water diverted from the streams located within the Petition Area. The proposed reclassification may have adverse impacts upon these agricultural activities.

Flora and Fauna

84. Based on the Hawaii Stream Assessment database, no endangered plant or animal species are suspected to occur in the Petition Area.

85. Portions of Manowaiopae Stream and Kihalani Stream have been identified by the U.S. Fish and Wildlife as containing an array of forested, broad-leafed evergreens and herbaceous shrubs consistent with palustrine wetlands.

86. The Petition Area contains native and indigenous fish and shrimp, including 'o'opu alamo'o (*Lentipes concolor*) and 'o'opu nopili (*Sicyopterus stimpsoni*), both native freshwater gobies, and 'opae kala'ole (*Atyoida bisulcata*), a common native shrimp. *Lentipes* has been identified as a candidate endangered species of fish by the U. S. Fish and Wildlife Service.

87. The Division of Aquatic Resources, Department of Land and Natural Resources conducted field surveys of Manowaiopae, Kuwaikahi, and Kihalani Streams and found species characteristic of pristine streams and concluded that these Streams have outstanding aquatic value.

88. A damsel fly, considered rare on the Big Island, was observed by the Division of Aquatic Resources during a field survey in the Kihalani Stream.

Archaeological/Historical Resources

89. No archaeological surveys have been conducted in the Petition Area.

Water Resources

90. The Petition Area is located within the Hakalau aquifer system. The sustainable yield is estimated at 150 mgd. Only a small portion (24 mgd or sixteen percent) of the sustainable yield of the North Hilo District is withdrawn for use.

Recreational, Scenic, Cultural Resources

91. Recreational activities in the Petition Area include swimming, hunting, fishing, hiking, and scenic viewing.

92. The Petition Area has been identified in the Hawaii County General Plan as an example of natural beauty.

ENVIRONMENTAL QUALITY

Noise and Air

93. Air quality in the vicinity of the Petition Area is rated as good.

94. The Department of Health does not measure the noise levels in the Petition Area. The primary source of noise is traffic in areas adjacent to the highway and residential tracts.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

95. 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.

COMMITMENT OF STATE FUNDS AND RESOURCES

96. No significant long-term commitment of State funds or resources is involved.

CONFORMANCE WITH AGRICULTURAL DISTRICT STANDARDS

97. The proposed reclassification is consistent with §205-2(d), HRS, Agricultural Districts which states in part that the Agricultural District shall include activities or uses as characterized by:

"...bona fide agricultural services and uses which support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory...may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics."

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

98. The proposed reclassification is inconsistent with the following objectives and policies of Chapter 226, HRS, Hawaii State Plan:

§226-6, HRS: Objectives and Policies for the Economy - In
General

§226-6(a)(2), HRS: A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

§226-6(b)(10), HRS: Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems.

§226-7, HRS: Objectives and Policies for the Economy -
Agriculture

§226-7(a)(2), HRS: Growth and development of diversified agriculture throughout the State.

§226-7(b)(2), HRS: Encourage agriculture by making best use of natural resources.

§226-7(b)(15), HRS: Institute and support programs and activities to assist the entry of displaced agricultural workers into alternative agricultural or other employment.

99. The proposed reclassification of the Petition Area is inconsistent with the following priority guidelines of the Hawaii State Plan:

§226-103(a)(5), HRS: Streamline the building and development permit and review process, and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business, where public health, safety and welfare would not be adversely affected.

§226-103(d)(3), HRS: Encourage public and private investment to increase water supply and to improve transmission, storage, and irrigation facilities in support of diversified agriculture and aquaculture.

CONFORMITY TO COUNTY PLANS

100. The current classification is generally consistent with the County of Hawaii General Plan Land Use Pattern Allocation Guide (LUPAG) map designations for the area.

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 Petition Area consisting of approximately 171.61 acres, more or less, of land in the State Land Use Agricultural and Urban Districts situated at North Hilo District, County of Hawaii, State of Hawaii,

identified as Tax Map Key Numbers of the Third Division:
3-5-01:17, 18, 20, 31; 3-5-04:14, 35, 37, 49, 50; 3-5-05: por.
05, 09, 10, 11; 3-6-01:10, 11; 3-6-03:01, 26; 3-6-06:05, 07, and
18 into the State Land Use Conservation District, is not
reasonable, and is inconsistent with the Hawaii State Plan as set
forth in Chapter 226, HRS.

PROPOSED ORDER

IT IS HEREBY ORDERED that the Petition Area, being the
subject of this Docket No. BR94-707/Office of State Planning,
State of Hawaii, consisting of approximately 171.61 acres, more
or less, of land in the State Land Use Agricultural and Urban
Districts situated at North Hilo District, County of Hawaii,
State of Hawaii, identified as Tax Map Key Numbers of the Third
Division: 3-5-01:17, 18, 20, 31; 3-5-04:14, 35, 37, 49, 50;
3-5-05: por. 05, 09, 10, 11; 3-6-01:10, 11; 3-6-03:01, 26;
3-6-06:05, 07, and 18, is hereby DENIED reclassification, and the
Petition Area shall remain in the State Land Use Agricultural and
Urban Districts.

Done at Honolulu, Hawaii, this 6th day of November 1995,
per motions on October 10, 1995 and November 2, 1995.

LAND USE COMMISSION
STATE OF HAWAII

By Allen K. Hoe
ALLEN K. HOE
Chairperson and Commissioner

By Trudy K. Senda
TRUDY K. SENDA
Vice Chairperson and Commissioner

By Rupert K. Chun
RUPERT K. CHUN
Commissioner

By (opposed)
M. CASEY JARMAN
Commissioner

By Lloyd F. Kawakami
LLOYD F. KAWAKAMI
Commissioner

By Merle A. K. Kelai
MERLE A. K. KELAI
Commissioner

By Eusebio Lapenie, Jr.
EUSEBIO LAPENIE, JR.
Commissioner

By Joann N. Mattson
JOANN N. MATTSO
Commissioner

By (absent)
ELTON WADA
Commissioner

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Certified by:
Esther Lund
Executive Officer