



LAND USE COMMISSION  
STATE OF HAWAII

2022 MAR 15 P 2:17

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition for a  
Declaratory Order

KENNETH S. CHURCH and JOAN E.  
HILDAL, for a Declaratory Order Requesting  
a Review of a Boundary Interpretation, 1974  
State Land Use District Boundary Map H-65;  
and, Reimbursement for Filing Fees for DBA  
Petition A18-805 for TMK nos. (3) 2-9-003:  
029 and 060, DR21-72, and Waiving of Court  
Reporter Fees


DOCKET NO. DR 21-72

ORDER DENYING  
PETITION FOR  
DECLARATORY ORDER AND  
REIMBURSEMENT AND WAIVER  
OF FEES

ORDER DENYING PETITION FOR DECLARATORY ORDER, AND REIMBURSEMENT  
AND WAIVER OF FEES

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT  
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE  
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

Date March 15, 2022

  
BY \_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



LAND USE COMMISSION  
STATE OF HAWAII

2022 MAR 15 P 2:17

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition for a  
Declaratory Order

KENNETH S. CHURCH and JOAN E.  
HILDAL, for a Declaratory Order Requesting  
a Review of a Boundary Interpretation, 1974  
State Land Use District Boundary Map H-65;  
and, Reimbursement for Filing Fees for DBA  
Petition A18-805 for TMK nos. (3) 2-9-003:  
029 and 060, DR21-72, and Waiving of Court  
Reporter Fees

DOCKET NO. DR 21-72

CERTIFICATE OF SERVICE

ORDER DENYING PETITION FOR DECLARATORY ORDER, AND REIMBURSEMENT  
AND WAIVER OF FEES  
AND  
CERTIFICATE OF SERVICE



LAND USE COMMISSION  
STATE OF HAWAII

2022 MAR 15 P 2:17

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition for a  
Declaratory Order

KENNETH S. CHURCH and JOAN E.  
HILDAL, for a Declaratory Order Requesting  
a Review of a Boundary Interpretation, 1974  
State Land Use District Boundary Map H-65;  
and, Reimbursement for Filing Fees for DBA  
Petition A18-805 for TMK nos. (3) 2-9-003:  
029 and 060, DR21-72, and Waiving of Court  
Reporter Fees

DOCKET NO. DR 21-72

ORDER DENYING PETITION FOR  
DECLARATORY ORDER, AND  
REIMBURSEMENT AND WAIVER  
OF FEES

ORDER DENYING PETITION FOR DECLARATORY ORDER, AND REIMBURSEMENT  
AND WAIVER OF FEES

On June 17, 2021, Kenneth S. Church and Joan E. Hildal (“Petitioners”), filed a Petition For Declaratory Order (“Petition”), pursuant to Hawai‘i Revised Statutes (“HRS”) §91-8, and Hawai‘i Administrative Rules (“HAR”), §15-15-98 *et seq.*; Memorandum, Verification, Exhibit List, and Exhibits 1 – 19.

Petitioners requested a declaratory order from the State of Hawai‘i Land Use Commission (“Commission”) seeking clarification and correction to a Commission Boundary Interpretation and reimbursement and waiver of fees. Specifically, Petitioners seek a ruling that:

- (1) Addresses uncertainty regarding the State Land Use District boundaries affecting Petitioners’ properties by amending the official Commission quadrangle Map H-65

Papaikou<sup>1</sup> to reflect the ridge top as the boundary between State Conservation and State Agricultural Districts and issue a new Commission Boundary Interpretation based on that change; and,

- (2) Reimbursement for filing fees for a petition for district boundary amendment and petition for declaratory order; and, waiver of court reporter fees for the petition for declaratory order.

This Commission, having heard and examined: the testimony and evidence presented by Petitioners, the State Office of Planning and Sustainable Development (“OP”), and the filings submitted via regular or electronic mail; at its meeting on September 8, 2021, held via Zoom by interactive conference technology in Honolulu, Hawai‘i, hereby makes the following findings of fact and conclusions of law:

### FINDINGS OF FACT

#### Procedural Matters

1. On June 17, 2021, Petitioners filed a Petition for a Declaratory Order, Memorandum, Verification, Exhibit List, and Exhibits 1 – 19.
2. On September 1, 2021, the Commission mailed an agenda and hearing notice for a meeting on September 8-9, 2019 to the Petitioner; and, the Statewide, email, and Hawai‘i County and Maui County mailing lists.

---

<sup>1</sup> Reference is to the United States Geological Survey quadrangle map series at 1:24,000 scale for the island of Hawai‘i; H-65 Papaikou.

3. On September 1, 2021, OP filed a Position Statement and Exhibits 1-4.
4. On September 1, 2021, Hawai'i County filed a statement of no position via email.
5. On September 7, 2021, Petitioners filed Opening Remarks, and Statement for the Record on Report and Maps.
6. On September 8, 2021, the Commission met in Honolulu, Hawai'i, via Zoom interactive conference technology, to consider the Petition pursuant to HAR §15-15-100. Kenneth Church and Joan Hildal appeared on behalf of Petitioners. Commissioners were present at each site in Hilo, Kahului, Līhu'e, and Honolulu, Hawai'i, to consider the Petition pursuant to HAR §15-15-100.
7. Alison Kato, Esq., Rodney Funakoshi, Lorene Maki, Aaron Setogawa, and Mary Alice Evans appeared on behalf of OP.
8. There was no public testimony received by regular or email, or via Zoom on the matter.
9. In their pleadings, Petitioners did not request a hearing on the Petition as provided for in HAR §15-15-103. Petitioners provided discussion of their position, followed by comments by Alison Kato, Esq. on behalf of OP. Thereafter, a motion was made and seconded pursuant to HAR §15-15-100(a)(1)(C) to deny the Church/Hildal Petition. Following a discussion by the Commission, the Motion was amended to include denial of the request to clarify and correct an LUC boundary interpretation as well as seeking reimbursement for filing fees and waiver of court reporter fees; a vote was then taken on the Motion. There being a vote tally of 8 ayes and 0 nays, the motion carried.



Description of the Property

10. The Property is situated in South Hilo, County of Hawai'i, and is identified as Tax Map Key Nos. (3) 2-9-003:029, and 060 and consists of approximately 3.368 acres of land.
11. The Property is situated completely within the State Land Use Conservation District according to the Commission's official State Land Use District Boundary quadrangle Map H-65 Papaikou dated 1974.
12. The previous owner, McCully, requested and received a Boundary Interpretation in 1992 (No. 92-48) showing the entire area of the Property to be within the State Conservation District.
13. Petitioners purchased the property from McCully, in 2014.
14. The Property is owned in fee by the Petitioners.
15. When the Petitioners purchased the Property it was undeveloped land.
16. Petitioners acknowledge that when the Property was purchased in 2014 they conducted research and knew it was classified within the State Conservation District.
17. Petitioners relied on the Property being within the State Conservation District and sought and received permits from the State Department of Land and Natural Resources ("DLNR") for a single-family residence, accessory structure, with portions of the Property to be under cultivation or grassed.
18. In July 2015, Petitioners requested and were sent a copy of the 1992 McCully boundary interpretation (No. 92-48) to assist in their preparation of a petition for district boundary amendment.<sup>2</sup>

---

<sup>2</sup> The petition for district boundary amendment A18-805 is currently deemed incomplete and awaiting additional required information before processing.

19. On October 7, 2016, Petitioners requested a formal boundary interpretation and submitted a copy of their County of Hawai‘i subdivision map which included metes and bounds description of their parcels for the purpose of the County subdivision process.
20. On October 17, 2016, the Commission responded to the request asking for additional information to explain the discrepancy in metes and bounds description between the McCully parcel boundaries as identified in the officially recognized McCully boundary interpretation (No. 92-48) and Petitioners’ subdivision parcel boundaries. Petitioners were given until December 30, 2016 to provide the requested information. No response was received by that date.
21. On May 22, 2020, Petitioners requested a new boundary interpretation asking the Commission as a whole to address a perceived uncertainty in the district boundaries pursuant to HAR §15-15-22(f). Petitioners provided additional information but the same survey map without addressing the issue of the discrepancy in metes and bounds survey lines between the official boundary interpretation (No. 92-48) and Petitioners’ subdivision survey map. Petitioners were informed by email dated June 25, 2020 that they needed to follow the process for boundary interpretations and their current filing was improper.
22. On June 17, 2021, Petitioners filed a Petition for a Declaratory Order pursuant to HAR §15-15-22(f). As argued by Petitioners at the Commission meeting, “[t]he current petition is to issue a declaratory order that [Petitioners’ property] was never zoned in conservation in the first place” and should be zoned agriculture.

Petitioners' Arguments with respect to Uncertainty of District Boundaries

23. Based on the Petition, Petitioners' arguments, and responses to questions by the Commissioners, Petitioners seek a declaratory order based on an assertion that the Commission erred in setting the boundaries in 1969 and therefore requires the district boundaries on LUC Official Map No. H-65 Papaikou be changed to reflect a top of ridge orientation and a new Boundary Interpretation map for the affected properties be issued.
24. Petitioners argued that in 1969, the State conducted the first five-year review of State land use districts. During which time, consultants hired by the State drafted a report<sup>3</sup> making recommendations for changes to regulations and maps to the Commission for their consideration and approval.
25. Petitioners' position stated that the Report provides the following:
  - At a meeting on July 18, 1969 in the County of Hawai'i, the Commission considered and approved a coastal boundary line from the Report between the Conservation and Agricultural Districts using the ridge top as a boundary line for the windward side of the island to include the pali land of the Hamakua Coast and ending in Hilo.
  - The island-wide maps from the Report and those presented at Commission meetings were of such a large scale that State land use district boundary lines could not be interpreted to the proposed recommendations in the Report as it related to the Hamakua Coast.

---

<sup>3</sup> State of Hawai'i Land Use Districts and Regulations Review (August 15, 1969), Eckbo, Dean, Austin, & Williams ("Report")



- The Report, in its Appendix D, provides a reference to each of the 73 quadrangle maps shown on the island-wide map for Hawai`i island. These quadrangle maps are at a larger scale than the island-wide map but could not be interpreted to the definition proposed in the Report; and, that the Report does not indicate whether these maps were available at the community meetings.
  - At the July 18, 1969 Commission meeting to consider the Report's recommendations, the Commission only "partially approved" the Report's proposed boundary in the area of the Hamakua Coast, indicating that areas in agricultural use were excluded.]
  - The State land use district boundary in the area of the Property shown in the Report (page 41) and the H-65 Papaikou quadrangle show the line to not go along the "top of ridge" but rather it bisects an agricultural use field along the mauka boundary of a railroad crossing the field area.
26. Petitioners stated that in 1974 the Commission adopted Official Map H-65 Papaikou quadrangle showing the area including the Property to lie entirely within the State Conservation District.
27. Petitioners stated that previous owner, McCully, requested and received, in 1992, a boundary interpretation (No. 92-48) pursuant to HAR §15-15-22, showing the entire area of the Property to lie within the State Conservation District. Further, that the 1974 Official Map was used for the boundary interpretation.

28. Petitioners argue that a 1999 Commission declaratory order DR99-21<sup>4</sup> to correct a boundary interpretation for a property along the Hamakua Coast was granted by the Commission affirming the top of the coastal ridge as the boundary between Conservation and Agricultural Districts at that location; and correcting the 1974 Official Map H-59 Papaaloa quadrangle. Petitioners' property is approximately five miles north of this location.
29. Petitioners state that previous owner, McCully, petitioned to amend the land use district boundaries in 2005 (LUC Docket A05-757) which was denied and again in 2009 (LUC Docket A09-783) which was withdrawn.
30. During the 2009 petition, the State Office of Planning ("OP") submitted written testimony referring to the Report and OP Exhibit 10 representing a magnified version of three plates of the H-65 Papaikou quadrangle map considered and then approved by the Commission on July 18, 1969. The lines on each of the three plates "clearly show the District line to follow the mauka boundary of the former railroad which crossed the field area of the Property and not the top of the coastal ridge.
31. Petitioners assert that OP incorrectly assumed that map shown on Panel C in its Exhibit 10 was approved by the Commission at its July 18, 1969 meeting; the Panel C map did not reflect the "Approved" criteria of excluding agricultural lands in production and the top of the coastal ridge; and, the map is in conflict with what was approved at the meeting.
32. Petitioners assert that in May 2021 they accessed a copy of the Report and determined that the Property was never correctly rezoned into the State Conservation District.

---

<sup>4</sup> DR99-21 Stengle corrected a boundary interpretation along the Hamakua Coast to follow the top of the coastal ridge.

33. Petitioners argue that “the incorrect zoning and/or interpretation of the zoning and/or the error on the Official Map H-65 of the Property is not an error of the Petitioner(s) but is an error of the LUC. This meets the “[f]or good cause” requirement of §15-15-34(b), HAR.”

Petitioners’ Arguments with respect to Reimbursement and Waiver of Fees

34. Based on the Petition, Petitioners’ arguments, and responses to questions by the Commissioners, Petitioners seek a reimbursement of the filing fees for the current petition for declaratory order being processed by the Commission; and waiver of court reporter fees.
35. Petitioners argue that HAR § 15-15-34(b) provides that the Commission may for good cause waive or suspend any rule except those relating to jurisdictional matters.]
36. Petitioners argue that HAR §15-15-45.1, regarding the Commission’s fee schedule for filings and reimbursement of hearing expenses, is not jurisdictional, and, therefore the Commission has discretion to waive or suspend such fees.
37. Petitioners argue that HAR §15-15-45.2, regarding the Commission’s rule that fees are non-refundable, is not jurisdictional, and, therefore the Commission has discretion to waive such fees.

Commission with respect to the official District Boundaries

38. The Commission conducted a periodic review of State land use district boundaries pursuant to HRS 205 in 1969. The Commission hired Eckbo, Dean, Austin & Williams to conduct the review and provide a report with recommendations for their consideration.

39. The authors of the Report stated that "...Our job as technicians, however, was not to make the final decisions, but to present recommendations, alternatives and the consequences of decision on these alternatives..."
40. The Report provided that in considering recommendations revising the Conservation District boundaries, "The final boundaries are the Land Use Commission's judgement as a result of considerable input of information from studies, site inspections, information received at the public hearings, talks with landowners and the Commissioners' own personal knowledge and experience."
41. The Report provided the following recommendations to the Commission regarding amending lands along the coast within the Hilo District:
- "From Hilo to Kapoho the shore is rocky with only occasional beaches such as at Haena. It is the unique product of recent lava flows running directly to the sea. The Conservation District should include the shoreline and it is recommended that it be extended from the high water mark to a line which is approximately 300' mauka of that line. Commission Action: Approved."
42. The Report provides a description of the South Hilo Judicial District which "...includes the Urban District of Hakalau, Honomu, Pepekeo, Papaikou, Wainaku and the greater Hilo area including Puueo, Waiakea-Keaukaha, Amauulu Camp and Waiakea Homesteads."
43. The Property covered in the declaratory order is within the South Hilo District on the island of Hawai'i.



44. On July 18, 1969, the Commission held a hearing in Kona, Hawai'i to consider and adopt maps pursuant to the 1969 district boundary review. The minutes of this hearing state:

“...move that the district boundary maps for the County of Hawaii shown on the maps now before this Commission and dated July 18, 1969, be adopted with the rezoning of lands as shown by the revised district (inaudible) maps to be effective concurrently with and subject to the rules and regulations of this Commission, adopted July 8, 1969.”

45. Petitioners provided a series of maps for H-65 Papaikou used by the Commission during the 1969 land use district boundary review showing proposed boundaries, proposed amendments, and final boundaries as adopted at the July 18, 1969, hearings. Each of these maps consistently shows the area containing the subject Property to be proposed for inclusion in the State Conservation District with the boundary along the mauka edge of the railroad right-of-way.

46. As of July 18, 1969, approval of the revised district maps included Map H-65 Papaikou which showed the State Conservation District boundary at the location of the Property to be along the mauka edge of the railroad right of way.

47. As part of the periodic boundary review in 1974, the Commission approved official boundary maps with statewide coverage, which included H-65 Papaikou. At that time, the Property in question was completely within the State Conservation District.

48. The district boundaries on the Commission's official map H-65 Papaikou, dated 1974 are the same as those district boundaries approved for map H-65 Papaikou, dated July 18, 1969, with respect to the Property.



49. HAR §§15-15-17(b) and 15-15-111, provide that the boundaries of land use districts are shown on the official land use district maps, entitled “Land Use District Boundaries, dated December 20, 1974,” as amended, maintained and under the custody of the commission and located in the commission office.
50. State land use district boundaries existing as of June 2, 1975 continue in full force and effect, subject to any amendments as provided in HRS 205, or as ordered by a court of competent jurisdiction based on any litigation filed as of July 1, 1975, or within thirty days of any final decision and order made as part of the commission’s 1974 periodic boundary review, whichever occurs later. No litigation was filed to contest the boundaries of the subject Property during or after the 1974 periodic boundary review.
51. Petitioners did not request a hearing pursuant to HAR §15-15-103, and a hearing is not necessary before the Commission issues a declaratory order in this matter.
52. Petitioners indicated that if their declaratory order is denied they may consider further “legal avenues.” Petitioners ask to reopen a matter previously settled and relied on by them and other landowners; and the Commission inquired whether granting the declaratory ruling might lead to litigation by other property owners whose property “would suddenly be considered to either be now an agricultural district or possibly have been previously restricted from uses by being determined to be in the conservation district[.]”
53. The Commission finds that the issuance of a declaratory order in this matter may affect the interest of the State, or the Commission in a litigation that is pending or may reasonably be expected to arise.

54. The Petitioners relied on their own interpretations of information that had previously been the basis for Commission decisions. They did not provide the Commission with any new information.
55. The OP testified that since the 1969 periodic boundary review was not clear with respect to the Property being located along the mauka boundary of the railroad right-of-way on Map H-65 Papaikou, the Commission has discretion to make the decision. Whether the 1969 map is clear, does not end the Commission's inquiry as the Property boundary was subsequently confirmed in the Commission's adoption of Official Map H-65 Papaikou during the 1974 periodic boundary review. Then in 1992, a boundary interpretation (No. 92-48) was done for the Petitioners' predecessor in interest. At that time, the Commission determined that the entire area of the Property is located within the State Conservation District. The Commission finds that the Petitioners have not shown by a preponderance of the evidence that the location of the State Conservation District boundary was done in error or is somehow invalid.
56. The Commission finds that neither of these interpretations rise to the standard required – the preponderance of the evidence - for changing the district boundaries on LUC Official Map No. H-65 Papaikou to reflect a top of ridge orientation and issuance of a new Boundary Interpretation map for the affected properties.

Commission with respect to Reimbursement or Waiver of Fees

57. The Commission has the authority and discretion under to promulgate rules governing declaratory orders, fee structures, and the waiver of any of its rules.

58. The Commission has the authority and discretion to waive its rules when “(1) good cause exists for such waiver; and (2) strict enforcement of such procedural rule would impose a manifest injustice upon a party or person who substantially complied with the commission’s rules in good faith. No rule relating to jurisdictional matters shall be waived or suspended by the commission.”
59. At the start of the September 8, 2021, meeting Petitioners agreed to reimburse the Commission for the “hearing expenses” but at the same time, they request that their filing fee and court reporter fee be refunded.
60. Petitioners have not shown good cause for granting the relief requested with respect to reimbursement of the fee, or waiver of the court reporter fee.

#### RULING ON PROPOSED FINDINGS OF FACT

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

#### CONCLUSIONS OF LAW

##### Jurisdiction

1. HRS §91-8 allows any interested person to petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of an agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their

submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

2. Petitioners are interested persons pursuant to HRS §91-8 and HAR §15-15-98(a), and thus have standing to bring this Petition before the Commission.
3. The Commission has jurisdiction to issue this declaratory order. HRS §91-8, as implemented by the Commission's administrative rules, [HAR §§15-15-98 through 15-15-104.1] authorize the Commission to issue a declaratory order "as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation." The Commission's statutes and rules, the applicability of which are put at issue in this Petition, are those sections of HRS Chapter 205 that govern the authority to reclassify land, including during periodic boundary reviews, and to interpret those same boundaries.
4. HAR §15-15-98(c) allows the Commission to issue a declaratory order "...without notice of hearing" to terminate a controversy or to remove uncertainty. The Commission concludes that based on the facts presented at the meeting, the testimony of public witnesses, the pleadings filed, together with the exhibits, the opportunity of Petitioners to present their views, and the fact that Petitioners did not request a hearing pursuant to HAR §15-15-103, a hearing is not necessary before issuing a declaratory order in this matter.
5. HRS §205-1(c) authorizes the Commission to "adopt rules guiding its conduct[.]"
6. As defined in HAR §15-15-03,  
"Proceeding" means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:

- (1) Petitions for district boundary amendment;
  - (2) Petitions for special permit;
  - (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
  - (4) Petitions for declaratory orders under section 91-8, HRS;
  - (5) An investigation or review instituted or requested to be initiated by the commission; and
  - (6) All other matters in the administration of chapter 205, HRS.
7. HRS §91-10(5) provides “Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. **The degree or quantum of proof shall be a preponderance of the evidence.**” (Emphasis added.)
8. HAR §15-15-100(a)(1)(C) provides that the Commission can deny the petition where “the issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably expected to arise...”
9. Regarding the applicability of a declaratory order, HAR §15-15-104 states that “[a]n order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued by the commission.”



Jurisdiction to Redistrict Land and Interpret District Boundaries

10. HRS §205-2(a) provides the Commission with the authority to place lands within one of the four major land use districts: Urban, Rural, Agricultural, and Conservation.
  11. Regarding the retention of district boundaries, HRS §205-3 states that “Land use district boundaries existing as of June 2, 1975, shall continue in full force and effect subject to amendment as provided in this chapter or order of a court of competent jurisdiction based upon any litigation filed prior to July 1, 1975, or filed within thirty days after service of a certified copy of any final decision and order made as part of the commission's 1974 periodic boundary review, whichever occurs later.
  12. HAR §15-15-22 regarding the interpretation of district boundaries states that:
    - (a) Except as otherwise provided in this chapter:
      - (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;
- \*\*\*\*
- (b) All requests for boundary interpretations shall be in writing and include the tax map key identification of the property and a print of a map of the property. All requests for boundary interpretations involving shoreline properties shall be accompanied by a survey map showing the locations of the shoreline as provided in section 205A-42, HRS. Any erosion or accretion through natural processes shall be reflected on the map. Further, any shoreline structure, piers, and areas of man-made fill which were constructed or completed since the date of adoption of the state land use district boundaries existing as of the date of the request for boundary interpretation shall be reflected on the map.
  - (c) The executive officer may request the following information:

(1) Additional copies of the print, including reproducible master map of the print or an electronic copy in a recognized format of the executive officer's designation; and

(2) Additional information such as, but not limited to, tax map key maps, topographic maps, aerial photographs, certified shoreline surveys, and subdivision maps relating to the boundary interpretation.

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

(d) The executive officer may use all applicable commission records in determining district boundaries.

(e) The following shall apply whenever uncertainty exists with respect to the boundaries of the various districts:

(1) Whenever a district line falls within or abuts a street, alley, canal, navigable or non-navigable stream or river, it may be deemed to be in the midpoint of the foregoing. If the actual location of the street, alley, canal, navigable or non-navigable stream or river varies slightly from the location as shown on the district map, then the actual location shall be controlling;

(2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling; and

(3) Unless otherwise indicated, the district lines shall be determined by the use of the scale contained on the map.

(f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines.

13. Regarding land use district boundaries, HAR §15-15-111 states that:

(a) The boundaries of land use districts are shown on the land use district maps, entitled “Land Use District Boundaries, dated December 20, 1974,” as amended, maintained and under the custody of the commission.

(b) The official maps entitled “Land Use District Boundaries, dated December 20, 1974,” as amended, are located in the commission office.

#### Jurisdiction to Waive Rules, Establish Fees and Request Reimbursement

14. HAR §15-15-34(b) states that, “[u]nless contrary to statute, the commission may waive or suspend any rule when the commission determines that: (1) good cause exists for such waiver; and (2) strict enforcement of such procedural rule would impose a manifest injustice upon a party or person who substantially complied with the commission’s rules in good faith. No rule relating to jurisdictional matters shall be waived or suspended by the commission.”

15. HRS §205-4.1 authorizes the Commission to “...establish reasonable fees for the filing of boundary amendment petitions and petitions for intervention to cover the cost of processing thereof and for the reproduction of maps and documents. The commission also may assess a reasonable fee or require reimbursements to be made for court reporter expenses,..”

16. The Petitioner is responsible for fees pursuant to HRS §15-15-45.1. This administrative rule provides that: “(a) Unless otherwise provided herein, ... a motion for declaratory order, ...by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier’s check, for \$1,000,...

(b) A petition for an amendment to a district filed by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier’s check for \$5,000, ...

\*\*\*\*

(e) The petitioner, movant, or applicant for any petition, motion, or application shall, unless otherwise ordered by the commission, reimburse the commission for or pay at the direction of the commission any expenses related to the publication of any required hearing notice, expenses of court reporter services, expenses of the hearing room, expenses for audio/visual services and equipment, and any other hearing-related expenses.

(f) After notice and opportunity to be heard, the commission may also assess any party to any proceeding before the commission a reasonable fee or require reimbursements for hearing expenses as determined by the commission, including without limitation, expenses of court reporter, hearing room, and expenses for audio/visual services and equipment.”

17. HAR §15-15-45.1 states that, “[t]he fees set forth in this chapter shall not be refundable.”

18. With regard to petitions for declaratory orders, HAR §15-15-104.1 provides that “[t]he Petitioner shall be responsible for fees pursuant to section 15-15-45.1 herein.”



ORDER DENYING PETITION FOR DECLARATORY ORDER, AND REIMBURSEMENT  
AND WAIVER OF FEES

At the Commission's meeting on the Petition on September 8, 2021, a motion was made and seconded to deny the Petition. Following discussion by the Commission, a vote was taken on this motion. There being a vote tally of 8 ayes, 0 nays, and 1 excused<sup>5</sup>, the motion carried.

Having duly considered the Petition and the written and oral arguments presented by Petitioners, the pleadings filed by OP and the County of Hawai'i, and a motion having been made at a meeting conducted on September 8, 2021, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, this Commission ORDERS that the Petition be DENIED and RULES as follows:

The Petitioners have not shown a preponderance of the evidence for changing the district boundaries on LUC Official Map No. H-65 Papaikou to reflect a top of ridge orientation and issuance of a new Boundary Interpretation map for the affected properties. The Commission finds that such relief is not supported by the recommendations or actions documented in the State of Hawai'i Land Use Districts and Regulations Review (August 15, 1969), in the official district boundary maps approved on July 18, 1969, or in the official district boundary maps dated December 20, 1974; and is therefore a matter more appropriately addressed through the district boundary amendment process, pursuant to HRS Chapter 205.

The Petitioners have not shown good cause for granting a reimbursement of their filing fee or waiver of the court reporter fee.

---

<sup>5</sup> The Commission normally is comprised of nine members, however, an at-large position is currently vacant.



ADOPTION OF DECLARATORY ORDER

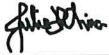
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, O'ahu, Hawai'i, this 15th, day of March, 2022, per motion on September 8, 2021.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I



\_\_\_\_\_  
Deputy Attorney General

By Jonathan Scheuer  
\_\_\_\_\_  
JONATHAN SCHEUER  
Chairperson and Commissioner

Filed and effective on:

March 15th, 2022

Certified by:



\_\_\_\_\_  
DANIEL ORODENKER  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition for a  
Declaratory Order

KENNETH S. CHURCH and JOAN E.  
HILDAL, for a Declaratory Order Requesting  
a Review of a Boundary Interpretation, 1974  
State Land Use District Boundary Map H-65;  
and, Reimbursement for Filing Fees for DBA  
Petition A18-805 for TMK nos. (3) 2-9-003:  
029 and 060, DR21-72, and Waiving of Court  
Reporter Fees

DOCKET NO. DR 21-72

ORDER DENYING PETITION FOR  
DECLARATORY ORDER, AND  
REIMBURSEMENT AND WAIVER  
OF FEES

CERTIFICATE OF SERVICE

I hereby certify that an ORDER DENYING PETITION FOR DECLARATORY ORDER, AND  
REIMBURSEMENT AND WAIVER OF FEES was served upon the following by either hand  
delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

CERT.           KENNETH S. CHURCH  
MAIL:           JOAN EVELYN HILDAL  
                  P.O. BOX 100014  
                  Hakalau, HI 96710

Dated: Honolulu, Hawai'i, 3/15/2022

DANIEL E. ORODENKER  
Executive Officer