

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
OFFICE OF STATE PLANNING,)
STATE OF HAWAI'I)
To Amend the Land Use District)
Boundary of Certain Lands Situated)
at Hanamaulu Coastline, Hanamaulu)
Ahupuaa, Lihue, Island of Kauai,)
State of Hawai'i, Identified by Tax)
Map Key Number of the Fourth)
Division: 3-7-03: por. 1 Consisting)
of Approximately 29 acres, from the)
State Land Use Urban District to)
the State Land Use Conservation)
District)

DOCKET NO. BR94-714
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

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LAND USE COMMISSION
STATE OF HAWAII

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
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The Office of State Planning, State of Hawai'i ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on December 12, 1994, pursuant to sections 205-4 and 205-18, Hawai'i Revised Statutes ("HRS"), and chapter 15-15, Hawai'i Administrative Rules ("HAR"), to amend the State land use district boundary by reclassifying approximately 29 acres of land in the State Land Use Urban District situated along the Hanamaulu coastline, Lihue, Kauai, Hawai'i, identified as Tax Map Key Number of the Fourth Division: 3-7-03: por. 1 ("Petition Area"), into the State Land Use Conservation District.

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence and argument of counsel presented during the hearings; and the

Stipulated Proposed Findings of Fact, Conclusions of Law, and Decision and Order between Petitioner and the County of Kauai Planning Department, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On December 12, 1994, Petitioner filed a Petition for Land Use District Boundary Amendment ("Petition").

2. On December 12, 1994, Petitioner filed a Motion to Waive Requirement for Metes and Bounds Description ("Motion"). On February 23, 1995, and by a written Order dated March 14, 1995, the Commission granted the Motion subject to one condition.

3. No petitions for intervention were filed with the Commission.

4. A prehearing conference on the Petition was held on March 21, 1995, at which time the parties submitted available exhibits, exhibit lists, and witness lists.

5. On April 6, 1995, a hearing was held before the Commission pursuant to a public notice published in the Honolulu Advertiser and The Garden Island on February 9, 1995.

6. There was no public witness testimony at the April 6, 1995, hearing.

DESCRIPTION OF THE PETITION AREA

General Characteristics

7. The Petition Area is located on the east coast of Kauai near Hanamaulu. It encompasses 29 acres, more or less, and is approximately 300 to 400 feet in width along the northern rim

of Hanamaulu Bay and extending roughly one-half mile north along the coast.

8. The Petition Area is owned by the Lihue Plantation Company, Ltd. ("LPCO"). By letter dated December 5, 1994, LPCO gave Petitioner the authorization to file the Petition.

9. The Petition Area is bounded by the State Land Use Conservation District on the south and north, the State Land Use Urban District to the west, and the shoreline on the east. The Petition Area extends inland up to the makai edge of the cane haul road.

10. The makai portion of the Petition Area contains general slopes in excess of 20 percent, with some makai areas in the midsection of the Petition Area having slopes in the 40 percent range. The mauka portions of the Petition Area have slopes less than 20 percent.

11. The average annual rainfall at Hanamaulu is 105.4 inches, with January typically being the rainiest month and June through August being the driest months.

12. Temperatures at Hanamaulu range from an annual average high of 77.9 degrees F to a low of 65.5 degrees F. The relative humidity at nearby Lihue Airport averages 67 percent in mid-afternoon and 83 percent in the morning. Although the trades prevail throughout the year, they are less frequent during the winter months of October through April.

13. The *Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii*, prepared by the US Department of Agriculture Soil Conservation Service (1972),

indicates that the Petition Area primarily consists of the following soil types:

- a. Koloa stony silty clay, 15 to 25 percent slopes (KvD)
- b. Lihue silty clay, 0 to 8 percent slopes (LhB).
- c. Beaches (BS)
- d. Rock outcrop (rRO)
- e. Rough broken land (rRR)

14. The soils in the Petition Area have an agricultural productivity rating of "E" (very poor) as determined by the University of Hawai'i Land Study Bureau's *Detailed Land Classification - Island of Kauai*.

15. The State Agricultural Lands of Importance to the State of Hawai'i system does not classify the lands in the Petition Area.

16. Approximately half of the Petition Area, primarily in the more exposed areas of the shoreline, is designated as Zone VE in the Flood Insurance Rate Map. Zone VE indicates 100-year coastal flood hazard areas with velocity hazard (wave action). The base flood elevations are in the 10 to 12-foot range. The remainder of the Petition Area is in Zone X, which are areas determined to be outside the 500-year floodplain.

Existing Uses

17. There are no known active existing uses or structures in the Petition Area.

18. The State Department of Transportation holds a perpetual drainage easement through TMK 3-7-03:1.

PROPOSAL FOR RECLASSIFICATION

19. The Petition is based on a recommendation made by Petitioner as part of the State Land Use District Boundary Review. The report recommends that the Petition Area be reclassified to the State Land Use Conservation District for protection of scenic resources.

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

21. The Petition Area's boundary differs slightly from the boundary shown in the Boundary Review report. The current boundary was settled upon after discussions between Petitioner and the landowner. It was agreed that the mauka boundary of the Petition Area would be the makai edge of the cane haul road. This would provide a clearer mauka boundary of the Petition Area while keeping the cane haul road out of the State Land Use Conservation District.

22. No new uses are being proposed for the Petition Area. Existing uses would be allowed to continue in the State Land Use Conservation District pursuant to section 183C-5, HRS, and chapter 13-5, HAR.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

23. Pursuant to §15-15-50(c)(8), HAR, Petitioner is a State agency and is not required to demonstrate financial capability. Moreover, no development of the Petition Area is being proposed.

STATE AND COUNTY PLANS AND PROGRAMS

24. The Property is located within the State Land Use Urban District as reflected on the Commission's official map, K-10 (Kapaa).

25. Petitioner published the *State Land Use District Boundary Review, Kauai*, in 1992. The reclassification of the Petition Area to the State Land Use Conservation District is supported by this report.

26. The Kauai General Plan designates the Petition Area as Open.

27. The Petitioner Area is designated as Open ST-R (special treatment, scenic ecological) by the County of Kauai.

28. The Petition Area falls within the Special Management Area as delineated by the County of Kauai.

NEED FOR THE PROPOSED RECLASSIFICATION

29. Reclassification of the Petition Area to the State Land Use Conservation District is recommended to protect the Petition Area's scenic coastal resources and because it contains steep slopes.

30. The concern for protection of scenic resources has a statutory basis. Section 205-2(e), HRS, states that State Land

Use Conservation Districts shall include areas necessary for "...preserving scenic and historic areas...open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources...."

31. Reclassification of the Petition Area would create a continuous coastal State Land Use Conservation District from Ahukini Landing to the northern end of Wailua Golf Course, thereby preserving this entire 4.6-mile stretch of coastline.

ECONOMIC IMPACTS

32. Reclassification of the Petition Area would have little, if any, negative economic impact since there is no active economic use of the Petition Area at present. In addition, the Petition Area is unsuitable for future urban development.

SOCIAL IMPACTS

33. The proposed reclassification will help to preserve the Petition Area's scenic resources which are appreciated by picnickers, campers, and others who frequent nearby Hanamaulu Beach Park.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

34. There are no agricultural activities taking place in the Petition Area. The soils in the Petition Area are unsuitable for cultivation.

35. The Petition Area is adjacent to sugarcane fields managed by LPCO. Because no sugarcane land is included in the

Petition Area, the proposed reclassification will not adversely affect agricultural operations.

Flora and Fauna

36. No rare or endangered plant or animal species are believed to be present in the Petition Area.

37. The proposed reclassification will help preserve the habitat for flora and fauna in the Petition Area.

Archaeological/Historical/Cultural Resources

38. The State Historic Preservation Division ("SHPD") has not conducted archaeological inventory surveys in the Petition Area, therefore, significant historic sites may be present. Human burials are likely in the sandy beach areas, but because the Petition recommends reclassification to the State Land Use Conservation District, the Petition will have no effect on any such sites.

Groundwater Resources

39. The Petition Area is part of the Hanamaulu Aquifer System. The estimated sustainable yield of this system is 40 mgd, though this figure is not considered to be reliable. In 1991, 3.28 mgd were withdrawn from the Hanamaulu system for municipal and irrigation purposes.

40. Also present in the Hanamaulu system are basal and high-level dike aquifers. Basal water occurs in the Napali lava flows, while high-level aquifers occur in the west wall of the Lihue Depression and in Haupu Ridge.

Recreational Facilities

41. The Petition Area does not contain any recorded recreational resources. The flatter portions of the Petition Area may be suitable for hiking or pole fishing. However, because these are private lands, access would require landowner permission.

42. The nearest recreational site is Hanamaulu Beach Park which is rated as having high regional significance by the Department of Land and Natural Resources. Pole fishing, canoeing, picnicking, and camping are popular activities at the park.

Scenic Resources

43. One of the distinguishing features of the Petition Area is its topography. The area contains low sea cliffs, rising sharply from the water's edge.

44. The Petition Area is a scenic coastal resource on the east side of Kauai. The Petition Area extends along the northern rim of Hanamaulu Bay.

ENVIRONMENTAL QUALITY

Air and Noise

45. Air quality in the Lihue area is good, with pollution levels below State standards. Typically, the particulate counts in Lihue range between 20 and 40 ug/m³ and can be attributed primarily to automobiles and activity at Lihue Airport. The particulate counts do peak at levels much higher than this, usually during periods of sugarcane harvesting and/or

adverse weather conditions. At less than 5 ug/m³, Sulfur dioxide concentrations in Lihue are too low to be recorded.

46. The major sources of noise in the Petition Area are wind, surf, cane haul trucks, traffic on Kuhio Highway, and aircraft. The most significant of these is aircraft noise from Lihue Airport which exposes the Petition Area to noise levels of between 60 and 70 Ldn.

Water Quality

47. The proposed reclassification will benefit the Petition Area's hydrological conditions. By retaining the existing vegetation, runoff and erosion patterns will not be altered.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

48. The availability or adequacy of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, roads, and police and fire protection is not a concern since the Petition Area is undeveloped and would remain so in the State Land Use Conservation District.

COMMITMENT OF STATE FUNDS AND RESOURCES

49. No long-term commitment of State funds or resources is involved. This action will not require any operational expenses. The only public agency which may be impacted is the Department of Land and Natural Resources since additional effort may be required to administer and enforce regulations in the newly added State Land Use Conservation District lands.

CONFORMANCE TO STATE LAND USE CONSERVATION DISTRICT STANDARDS

50. The Petition Area is contiguous to the existing State Land Use Conservation District on its north and south sides.

51. Section 205-2(e), HRS, states that State Land Use Conservation Districts shall include areas necessary for:

"...preserving scenic and historic areas...open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources..."

The Petition Area is a scenic, open space area.

Reclassification of the Petition Area to the State Land Use Conservation District would be in conformance with §205-2(e), HRS.

52. The proposed reclassification is in conformance with the following standards of the State Land Use Conservation District set forth in §15-15-20, HAR:

§15-15-20 (2): It shall include lands susceptible to floods, and soil erosion...

§15-15-20 (4): It shall include lands necessary for the conservation, preservation, and enhancement of scenic, cultural, historic or archaeological sites...

§15-15-20 (7): It shall include lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use...

§15-15-20 (8): It shall include lands with a general slope of twenty percent or more which provide for open space amenities or scenic values...

Comment: The Petition Area is in a 100-year flood zone and contains soils that are susceptible to erosion. Its

topography (slopes exceeding 20 percent in makai areas) and location along a low seacliff make it unsuitable for urban uses.

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

53. The proposed reclassification is in conformance with the following objectives and policies of chapter 226, HRS, the Hawai'i State Plan:

§226-11, HRS: Objectives and policies for the physical environment--land based, shoreline, and marine resources.

§226-11(a)(1), HRS: Prudent use of Hawai'i's land-based, shoreline, and marine resources.

In support of this objective, the proposed reclassification is consistent with the following Hawai'i State Plan policy:

§226-11(b)(1), HRS: Exercise an overall conservation ethic in the use of Hawai'i's natural resources.

Comment: The proposed reclassification will protect the Petition Area's shoreline resources.

§226-12, HRS: Objectives and policies for the physical environment--scenic, natural beauty, and historic resources.

§226-12(a), HRS: Planning for the State's physical environment shall be directed towards achievement of the objective of enhancement of Hawai'i's scenic assets, natural beauty, and multi-cultural/historical resources.

In support of this objective, the proposed reclassification is consistent with the following Hawai'i State Plan policy:

§226-12(b)(3), HRS: Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.

Comment: The proposed reclassification will promote the preservation of this important scenic coastal area.

§226-13, HRS: Objectives and policies for the physical environment--land, air, and water quality.

§226-13(a)(1), HRS: Maintenance and pursuit of improved quality in Hawai'i's land, air, and water resources.

In support of this objective, the proposed reclassification is consistent with the following Hawai'i State Plan policies:

§226-13(b)(2), HRS: Promote the proper management of Hawai'i's land and water resources.

§226-13(b)(5), HRS: Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.

Comment: Reclassification of the Petition Area will minimize the threat of erosion and flooding since the existing ground cover will remain. Due to the physical characteristics of the Petition Area, placing the Hanamaulu coastline into the State Land Use Conservation District will promote the proper management of the Petition Area.

54. The proposed reclassification of the Petition Area is in conformance with the following priority guidelines set forth in chapter 226, HRS:

§226-104(b)(1), HRS: Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.

§226-104(b)(9), HRS: Direct future urban development away from critical environmental areas or impose

mitigating measures so that negative impacts on the environment would be minimized.

§226-104(b)(10), HRS: Identify critical environmental areas in Hawai'i to include but not be limited to the following: ...scenic and recreational shoreline resources; open space and natural areas; historic and cultural sites;... and scenic resources.

§226-104(b)(12), HRS: Utilize Hawai'i's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.

§226-104(b)(13), HRS: Protect and enhance Hawai'i's shoreline, open spaces, and scenic resources.

Comment: The Petition Area is a critical environmental area because it is a scenic shoreline resource. The proposed reclassification directs growth away from this critical environmental area and seeks to protect its resources for future generations.

55. The proposed reclassification is in general conformance with the objectives and policies of the Conservation Lands State Functional Plan.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

56. The proposed reclassification of the Petition Area is in general conformance with the objectives and policies of the Coastal Zone Management Program, §205A-2, HRS.

CONFORMANCE TO COUNTY PLANS

57. The Kauai County General Plan designates the Petition Area as Open. The intent of the Open designation, relevant to this Petition, is to preserve, maintain or improve the natural characteristics of land that are of significant value

to the public as a scenic resource. The proposed reclassification would be in conformance with the General Plan designation.

58. The County of Kauai has designated the Petition Area as Open ST-R (special treatment, scenic ecological). The proposed reclassification is therefore in conformance to the County zoning.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or the other parties not already ruled upon by the Commission by adoption 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 Hawai'i Land Use Commission Rules under chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 29 acres of land situated along the Hanamaulu coastline, Lihue, Kauai, Hawai'i, identified as Tax Map Key Number of the Fourth Division: 3-7-03: por. 1, from the State Land Use Urban District to the State Land Use Conservation

District, is reasonable, conforms to the standards for establishing the conservation district boundaries, is nonviolative of section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to sections 205-17 and 205A-2, HRS.

ORDER

IT IS HEREBY ORDERED that the Petition Area, being the subject of this Docket No. BR94-714 by Petitioner Office of State Planning, State of Hawai'i, consisting of approximately 29 acres of land situated along the Hanamaulu coastline, Lihue, Kauai, Hawai'i, identified as Tax Map Key Number of the Fourth Division: 3-7-03: por. 1, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Urban District to the State Land Use Conservation District, and that the State Land Use District Boundaries are amended accordingly.

DOCKET NO. BR94-714 - OFFICE OF STATE PLANNING

Done at Honolulu, Hawaii, this 20th day of July, 1995,
per motion on July 11, 1995.

LAND USE COMMISSION
STATE OF HAWAII

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

By *Eusebio Larenia, Jr.*
EUSEBIO LARENIA, JR.
Vice Chairperson and Commissioner

By *Rupert K. Chun*
RUPERT K. CHUN
Commissioner

By (absent)
M. CASEY JARMAN
Commissioner

By (absent)
LLOYD F. KAWAKAMI
Commissioner

By *Joann N. Mattson*
JOANN N. MATTSON
Commissioner

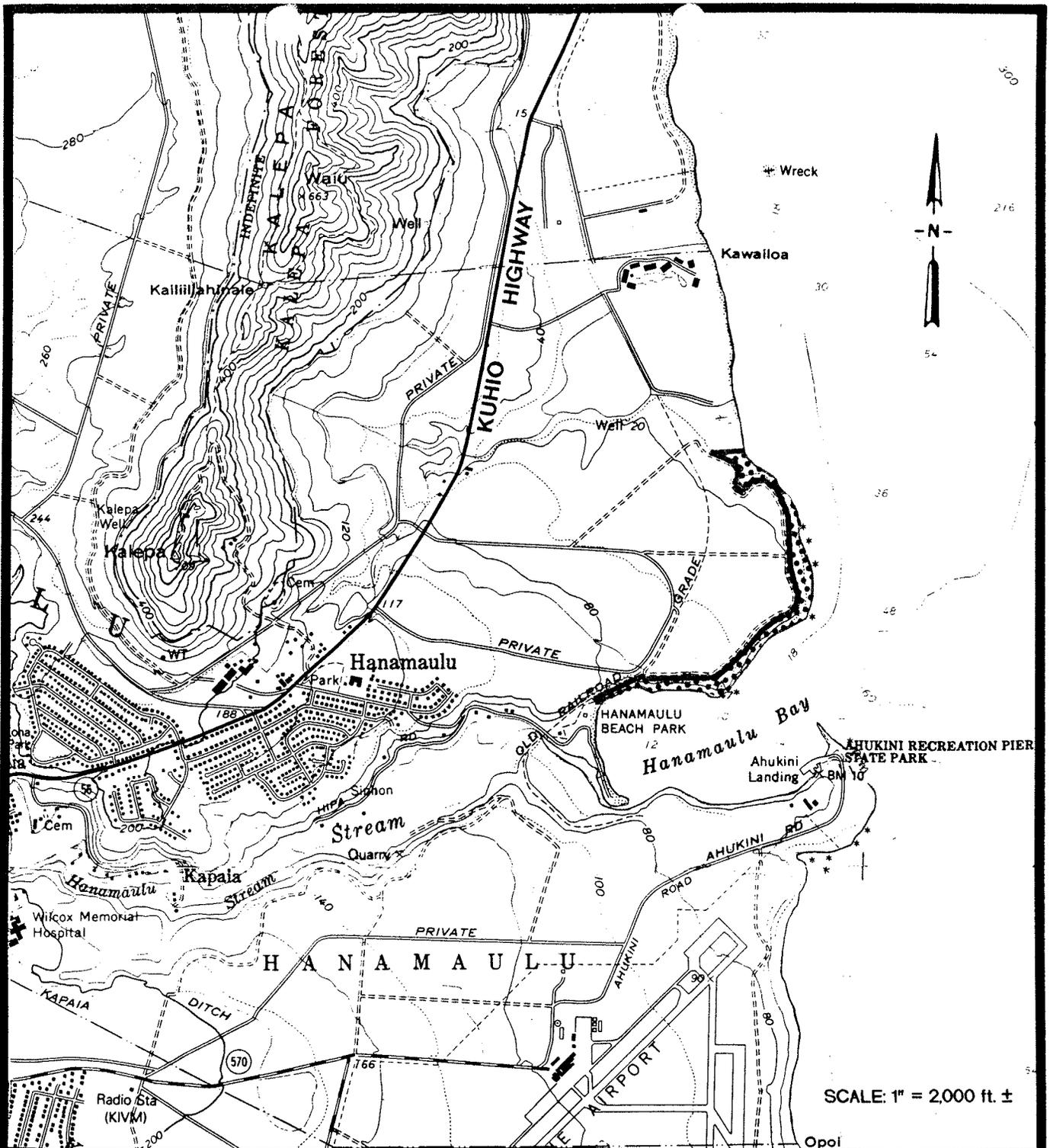
Filed and effective on
July 20, 1995

Certified by:

Ethel [Signature]
Executive Officer

By *Trudy K. Senda*
TRUDY K. SENDA
Commissioner

By *Elton Wada*
ELTON WADA
Commissioner



DOCKET NO. BR94-714 / OFFICE OF STATE

PLANNING, STATE OF HAWAII

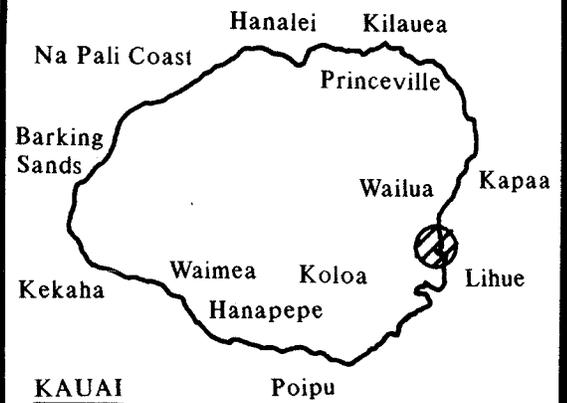
LOCATION MAP

TAX MAP KEY: 3-7-03: por. 1

HANAMAULU, LIHUE, KAUAI



APPROVED AREA



KAUAI

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District)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the 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:

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DATED: Honolulu, Hawaii, this 20th day of July 1995.



ESTHER UEDA
Executive Officer