

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

In the Matter of the Petition of)	DOCKET NO. BR94-709
)	
OFFICE OF STATE PLANNING,)	HEARING OFFICER'S
STATE OF HAWAI'I)	PROPOSED FINDINGS OF
)	FACT, CONCLUSIONS OF
To Amend the Agricultural Land Use)	LAW, AND DECISION AND
District Boundary into the)	ORDER
Conservation Land Use District for)	
Approximately 273 Acres of Land)	
Situated at Kaapahu, Hana, Maui,)	
State of Hawai'i, TMK: 1-6-10: por.)	
1 and por. 6)	
)	

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

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The Office of State Planning, State of Hawai'i ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on November 7, 1994, and a First Amended Petition on December 1, 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 273 acres, in the Agricultural District situated at Kaapahu, Hana, County of Maui, State of Hawai'i, identified as Tax Map Key Numbers of the Second Division: 1-6-10: por. 1 and por. 6 ("Property" or "Petition Area"), into the Conservation District.

The duly-appointed Hearing Officer of the Land Use Commission of the State of Hawai'i, having heard and examined the testimony, evidence and argument of counsel presented during the hearings, Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and the Stipulation concerning

Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the Petitioner and the Maui County Planning Department ("Planning Department"), hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On November 7, 1994, Petitioner filed a Petition for Land Use District Boundary Amendment.
2. On November 7, 1994, Petitioner filed a Motion to Waive Requirement for Metes and Bounds Description and a Motion to Waive Letter of Authorization from the Landowner.
3. On December 1, 1994, the Petitioner withdrew their Motion to Waive Letter of Authorization from the Landowner.
4. On December 31, 1994, Petitioner filed a First Amended Petition for Land Use District Boundary Amendment (cumulatively "Petition").
5. No petitions for intervention were received by the Commission by the February 27, 1995 deadline.
6. On March 8, 1995, at its meeting in Lanai City, Lanai, the Commission granted Petitioner's Motion to Waive Requirement for Metes and Bounds Description.
7. On March 17, 1995, the Commission issued its Order Granting Office of State Planning's Motion to Waive Requirement for Metes and Bounds Description.
8. On March 17, 1995, a prehearing conference on the Petition was held at Honolulu, Hawai'i. At the prehearing

conference, the parties exchanged exhibits, exhibit lists, and witness lists.

9. On March 31, 1995 a hearing was held before the duly-appointed hearing officer pursuant to a public notice published in the Maui News and the Honolulu Advertiser on February 10, 1995.

10. At the March 31, 1995 hearing, the following individuals testified as public witnesses Patricia Rife; Celeste King; Jim Meekhof; David Dodds; Sol Kaho'ohalahala; and Sally Raisbeck.

11. No petitions for intervention were filed.

DESCRIPTION OF THE PROPERTY

General Characteristics

12. The Property consists of approximately 273 acres, situated at Kaapahu, Hana, on the Island of Maui.

13. The Property is owned by the Kaapahu Holding Co., a Hawaii Limited Partnership. By letter dated October 14, 1994, Kaapahu Holding Co. authorized the filing of Petition.

14. The Property includes Alelele Stream and its gulch. Beginning at the existing Haleakala National Park boundary at approximately the 4000 foot contour, the Property extends south (makai) for the length of Alelele Stream where it meets the existing Hana Highway bridge. Along this segment of the stream, the Property includes the entire stream valley from ridge to ridge, except for a small portion near Hana Highway. The exception to the ridge to ridge delineation is found along the eastern side of Alelele Stream at its lower reaches. In this

area, the Property boundaries encompass the stream and an adjoining 20-foot corridor along the eastern bank of the stream. This 20-foot streambank corridor extends approximately 450 feet mauka from Hana Highway. At the mauka limits of the 20-foot corridor, the Property boundary extends east, to the 300-foot contour along the ridge line.

15. The Property is contiguous to the Conservation District to the north and south (mauka and makai) and is bounded by the Agricultural District to the east and west.

16. The gulch of Alelele Stream is generally between 70-100 percent slope.

17. The average rainfall in the region of the Property ranges from 75-135 inches per year.

18. The average temperature in the region of the Property ranges from the low 50's to the high 80's.

19. The U.S. Department of Agriculture Soil Conservation Service's *Soil Survey of the Island of Maui, State of Hawaii* classifies the soils within the Property as follows:

- a. Hydrandepts-Tropaquods association (rHT).
- b. Rough Mountainous Land (rRT).
- c. Makaalae silty clay (MID).
- d. Makaalae Clay (MWE).

20. The University of Hawai'i Land Study Bureau's *Detailed Land Classification* identified most lands in the Property as "D", poorly suited for agricultural production, in its upper reaches, and "E", very poorly suited for agricultural production, in the lower stream region.

21. The State Agricultural Lands of Importance to the State of Hawai'i (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 Property is Unclassified, with 2 small portions identified as "Other Important Agricultural Land."

22. Alelele Stream is considered continuous and perennial.

23. Although streams are generally considered floodways, the Flood Insurance Rate Maps show the Property as Zone C, an area of minimal flooding.

24. The Property is located within the Kipahulu aquifer system. There are no wells located on the Property.

25. Portions of Alelele Stream have been identified by the U.S. Fish and Wildlife Service as containing forested, broad-leaved evergreens and herbaceous shrubs consistent with palustrine wetlands.

26. Flora above the 2000-foot elevation of the Property can be characterized as native forest with koa, ohia, and ferns. The flora below the 2000-foot contour consists primarily of non-native vegetation such as kukui, guava, plum, mango, and bamboo.

27. According to an aquatic survey conducted by the Department of Land and Natural Resources, the Property contains native and indigenous fish and shrimp, including 'o'opu alamo'o (*Lentipes concolor*) and 'o'opu nopili (*Sicyopterus stimpsoni*) both native freshwater gobies, 'opae kala'ole (*Atyoida bisulcata*)

a common native shrimp, and hihiwai (*Neritina granosa*) a native snail. *Lentipes* is a candidate endangered species of fish.

28. The *Hawaii Stream Assessment* (State of Hawai'i, Commission on Water Resources Management and National Park Service) ranked Alelele Stream as having "outstanding" aquatic resources. Rankings were based on the presence and abundance of indicator species, evidence of their spawning, and on unaltered stream conditions.

29. The *Hawaii Stream Assessment* ranked Alelele Stream as having "outstanding" recreational resources. Evaluation criteria included camping, hiking, fishing, swimming, hunting, and scenic viewing.

30. Alelele Stream is ranked "substantial" by the *Hawaii Stream Assessment* for its cultural resources.

31. Native species of birds which were observed on the Property include the Amakihi (*Hemignathus virens*), Iiwi (*Vestiaria coccinea*), and Apapane (*Himatione sanguinea*). Other rare species of native birds have been observed in lands adjacent to the Property.

Existing Uses

32. The Property is primarily in a natural state. The upper elevations of the Petition Area are being used for a koa salvage operation.

33. There is a historic trail noted on the tax map which extends through the Petition Area at the lower elevations.

34. There is one easement on the Property which belongs to GTE Hawaiian Tel, for maintenance of transmission lines on the Property.

35. Pig hunting also occurs within the Property. Additionally, the landowner allows local residents to camp and swim within the Property.

36. Existing uses would be allowed to continue in the Conservation District pursuant to section 183C-5, HRS, and chapter 13-5, HAR.

PROPOSAL FOR RECLASSIFICATION

37. The Petition is based on a recommendation made by the Petitioner as part of the *State Land Use District Boundary Review, Maui*. The report recommends that the Property be reclassified to the Conservation District for protection of outstanding aquatic resources. It is a Priority One recommendation.

38. 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 of the Conservation District but containing conservation resources as defined in §205-2(e), HRS, have been recommended for reclassification to the Conservation District.

39. No new uses are proposed by the Petitioner for the Property.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

40. 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 Property is being proposed by the Petitioner.

STATE AND COUNTY PLANS AND PROGRAMS

41. The Property is located in the State Land Use Agricultural District as shown on the Land Use District Boundary Maps M-15 (Kaupo) and M-17 Kipahulu.

42. The Petitioner prepared the *State Land Use District Boundary Review, Maui* in 1992. The reclassification of the Property to the Conservation District is supported by this report.

43. The Hana Community Plan Land Use Map shows the Property as being in the Agricultural District.

44. The Property is not zoned by the County of Maui.

45. A small portion of the Petition Area is located within the Special Management Area. The Special Management Area boundary established pursuant to §205A-23, HRS, extends approximately 300 feet inland.

NEED FOR THE PROPOSED RECLASSIFICATION

46. The Property has been identified as containing outstanding aquatic values. Reclassification of the Property from the Agricultural District to the Conservation District is necessary to protect the native fish, shrimp, wetlands, and bird habitat from development.

47. The Property has been identified as having outstanding recreational values.

48. The Property has been identified as containing substantial cultural resources. A known historic site (50-16-1129) is located adjacent to the lower portion of the Petition Area on the east side of Alelele Stream. The site is known as the Alelele Terraces. A series of irrigated taro terraces and an 'auwai were first identified at the site in 1963. In 1973, seven (7) terraces were located and mapped. The site has been assessed as being an excellent example of a wetland agricultural system, with good research and interpretative potential. It is likely that additional terraces occur upstream from this complex.

ECONOMIC IMPACTS

49. The Property is currently undeveloped. Due to its physical characteristics such as steep slopes and erodible soils, it is not highly suitable for development.

50. The proposed reclassification will mitigate hazards associated with development on steep slopes and flooding in small drainage basins.

51. No existing economic activities would be displaced as a result of the proposed reclassification. Because the Petition requests reclassification to the Conservation District, the reclassification will not result in an increase in employment opportunities or economic development.

52. No significant long term commitment of State funds or resources is involved. 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 by the proposed reclassification. The Department of Land and Natural Resources (DLNR) is the administration and enforcement agency for current and newly added Conservation District lands. With the addition of lands to the Conservation District, additional responsibilities for DLNR include designating and adopting a subzone, monitoring, issuing permits, and enforcement.

53. 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. Exhibit 1 describes the Property's resources and demonstrates the manner in which the Property meets the criteria found under chapter 13-5, HAR, pertaining to the Conservation District. The BLNR will determine the appropriate subzone based upon Exhibit 1, other available information, and BLNR staff analysis.

SOCIAL IMPACTS

54. The Petition will benefit society by preserving a relatively intact native forest and bird habitat, riparian habitat, and the aquatic biota of Alelele Stream, as well as recreational and archaeological/cultural resources.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

55. The Land Study Bureau and the Soil Conservation Service have rated the soils on the Property as poorly suited for

agricultural uses. Therefore, the proposed reclassification will not have any adverse impacts upon the Property's agricultural resources.

Flora and Fauna

56. The Petitioner reviewed the DLNR Division of Forestry and Wildlife's "Endangered and Threatened Animals and Plants of Hawaii" (1992) to determine the presence of rare or endangered plants and animals. Based on this review, no endangered plant or animal species are suspected to occur on the Property.

57. Several native species of fish and shrimp inhabit Alelele Stream including 'o'opu alamo'o (*Lentipes concolor*) a candidate endangered species of fish.

58. Palustrine wetlands and native forests will benefit from the increased protection offered by the Conservation District. Many of the threats to their habitats, including grading and urban development will be greatly diminished in the Conservation District.

Archaeological/Historical Resources

59. A known historic site (50-16-1129) is located adjacent to the lower portion of the Property on the east side of the stream. The site, known as the Alelele Terraces, consists of terraces and 'auwai. The proposed reclassification will serve to protect any other, undiscovered, historic sites.

Recreational Resources

60. Recreational activities includes camping, swimming, hunting, fishing, hiking, and scenic viewing. The proposed

reclassification would be compatible with these types of recreational activities.

61. The proposed reclassification will protect and preserve the scenic and open space resources of the Property by extending the Conservation District from the forest reserves to the ocean along the stream corridor.

ENVIRONMENTAL QUALITY

Noise and Air

62. Remote from any significant source of emission, the quality of air on the Property is considered excellent.

63. The Department of Health does not measure the noise levels on the Property. Background noise is attributed to natural conditions, such as wind, rain, the stream, and birds.

Water Quality

64. The proposed reclassification will have a positive effect on the Property's hydrological conditions because urban development, which often accelerates runoff and erosion, will be restricted. This will also help protect the quality of coastal waters by the control of nonpoint sources of pollution often associated with development in the upland areas.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

65. 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 by the proposed reclassification.

COMMITMENT OF STATE FUNDS AND RESOURCES

66. No significant long term commitment of State funds or resources is involved and no new uses are proposed by the Petitioner. The Department of Land and Natural Resources is the administration and enforcement agency for current and newly added Conservation District lands. With the addition of lands to the Conservation District, additional responsibilities for DLNR may include designating and adopting a subzone, monitoring, issuing permits, and enforcement.

67. 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. Exhibit 1 describes the Petition Areas' resources and explains how the proposed reclassification meets the criteria for the Conservation District contained in chapter 13-5, HAR, pertaining to the Conservation District. The BLNR will determine the appropriate subzone based upon Exhibit 1, other available information, and BLNR staff analysis.

CONFORMANCE TO CONSERVATION DISTRICT STANDARDS

68. The Property, if reclassified, will be an extension of the existing Conservation District.

69. The proposed reclassification is consistent with §205-2(e), HRS, Conservation Districts, which states in part that the Conservation District shall include lands necessary for:

- ...protecting watersheds and water sources;
- preserving scenic and historic areas; providing
- park lands, wilderness, and beach reserves;
- conserving indigenous or endemic plants, fish,
- and wildlife, including those which are

threatened or endangered; preventing floods and soil erosion, forestry; 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; areas of value for recreational purposes...

The Petition Area encompasses a portion of Alelele Stream and its adjoining contributing watershed area. Alelele Stream was ranked outstanding for its aquatic resources and recreational resources, and is the habitat for native fish, shrimp, birds, and wetlands. The Property contains erodible soils and steep slopes and is generally unsuitable for development. The proposed reclassification will include these resources in the Conservation District.

70. The proposed reclassification is consistent with the following standards of the Conservation District set forth in §15-15-20, HAR:

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

§15-15-20 (5): It shall include lands necessary for providing and preserving parklands, wilderness and beach reserves, and for conserving natural ecosystems of endemic plants, fish, and wildlife...

§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...

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

71. The proposed reclassification is consistent with the following objectives and policies of Chapter 226, HRS, 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.

§226-11(a)(2), HRS: Effective protection of Hawai'i's unique and fragile environmental resources.

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

§226-11(b)(2), HRS: Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.

§226-11(b)(6), HRS: Encourage the protection of rare or endangered plant and animal species and habitats native to Hawai'i.

§226-11(b)(9), HRS: Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes.

§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.

§226-12(b)(1), HRS: Promote the preservation and restoration of significant natural and historic resources.

§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.

§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.

§226-13(a)(2), HRS: Greater public awareness and appreciation of Hawai'i's environmental resources.

§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.

§226-13(b)(8), HRS: Foster recognition of the importance and value of the land, air, and water resources to Hawai'i's people, their cultures, and visitors.

§226-23, HRS: Objectives and Policies for Socio-Cultural Advancement - Leisure

§226-23(a), HRS: Planning for the State's socio-cultural advancement with regard to leisure shall be directed towards the achievement of the objective of the adequate provision of resources to accommodate diverse cultural, artistic, and recreational needs for present and future generations.

§226-23(b)(6), HRS: Assure the availability of sufficient resources to provide for future cultural, artistic, and recreational needs.

72. The proposed reclassification of the Property is consistent with the following priority guidelines for regional growth distribution and land resources utilization of the Hawai'i State Plan:

§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: watershed and recharge areas; wildlife habitats (on land and in the ocean); areas with endangered species of plants and wildlife; natural

streams and water bodies; scenic and recreational shoreline resources; open space and natural areas; historic and cultural sites; areas particularly sensitive to reduction in water and air quality; 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.

Functional Plans

73. The proposed reclassification of the Property is in general conformance with the objectives and policies of the State Conservation Lands Functional Plan. Specifically, the proposed reclassification would relate to Objective IIB of the conservation Lands Functional Plan - Protection of fragile or rare natural resources, and policies that protect and preserve rare and endangered habitats, native ecosystems, and native aquatic ecosystems, and the development of coordinated approaches to wetlands protection, acquisition, and management.

74. The proposed reclassification of the Property is in general conformance with the objectives and policies of the State Recreation Functional Plan. Specifically, the proposed reclassification would relate to Objective VI-C of the Recreation Functional Plan - Assure the protection of the most valuable wetlands in the State, and policies that also promote the development of coordinated approaches to wetlands protection, acquisition, and management.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

75. The proposed reclassification of the Property will have a beneficial effect upon coastal resources by retaining the Property in its natural state.

76. The Petition is in conformance with the following objectives and policies of the Coastal Zone Management Program as follows:

§205A-2(b)(2), HRS: Historic resources:

- (A) Protect, preserve, and where desirable, restore those natural and man-made historic and prehistoric resources in the coastal zone management area that are significant in Hawai'ian and American history and culture.

Policies

- (A) Identify and analyze significant archaeological resources;
- (C) Support state goals for protection, restoration interpretation, and display of historic resources.

Reclassification will protect the historic site located adjacent to the lower portion of the Property and will serve to protect other, undiscovered historic sites.

New or expanded uses will require a Conservation District Use Permit. The review process for this permit will mean greater scrutiny of new or expanded uses including their impacts on any historic and prehistoric resources which may be in the Petition Area.

§205A-2(b)(3), HRS: Scenic and open space resources:

- (A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

- (A) Identify valued scenic resources in the coastal zone management area;
- (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources.

The Property includes the entire stream valley from ridge to ridge beginning from the Hana Highway bridge to the Haleakala National Park near the 4000-foot contour. The Petition Area contains native forests which contribute to and protect the quality of coastal and open space resources by enhancing the wilderness experience with scenic forested views. The forest cover further enhances the area's scenic and open space values by providing habitat to birds, fish in the stream, and the riparian ecosystems. The forests and understory provide ground cover essential for mitigating stream and coastal water pollution associated with grubbing and grading and development in the upland areas. Reclassification to the Conservation District will preserve and maintain these resources.

§205A-2(b)(4), HRS: Coastal ecosystems:

- (A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

Policies:

- (B) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
- (C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs;
- (D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.

Protecting the native forest and understory which comprise the Alelele Stream and watershed will serve to improve the quality of the stream and coastal waters by reducing soil erosion. It will also protect nearshore and stream associated fish habitat necessary for the o'opu life cycle.

§205A-2(b)(6), HRS: Coastal hazards: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

Policy:

- (B) Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard.

The proposed reclassification will protect the watershed area subject to storm wave, tsunami, flood, erosion, and subsidence hazard, and reduce erosion hazards in the low lying areas.

§205A-2(b)(7), HRS: Managing development:

- (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

Policy:

- (A) Effectively utilize and implement existing law to the maximum extent possible in managing present and future coastal zone development.

The proposed reclassification will protect the Petition Area from uses incompatible the steep slopes, fish, bird, and forest habitat.

§205A-2(b)(8), HRS: Public participation:

- (A) Stimulate public awareness, education, and anticipation in coastal management.

The Petition Area is privately owned by the Kaapahu Holding Co., a Hawaii Limited Partnership. The proposed reclassification to the Conservation District may demonstrate to the public a private landowner's commitment to safeguard our natural resources.

Distribution and notification to petition the Land Use

Commission for a boundary amendment to the Conservation District may stimulate public interest in the fragility of these resources and provide opportunities to educate the public on the importance of protecting Hawai'i's diminishing native forests, fish and bird populations.

§205A-2(b)(9), HRS: Beach protection:

(A) Protect beaches for public use and recreation.

Policy:

(A) Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion.

The proposed reclassification will not require the location and/or construction of new structures. It may, however, protect the beach by mitigating soil erosion hazards in the Alelele Stream watershed located upland from the beach.

77. A small portion of the Petition Area is located within the Special Management Area. The Special Management Area boundary established pursuant to §205A-23, HRS, extends approximately 300 feet inland.

CONFORMITY TO COUNTY PLANS

78. The Maui County General Plan is a policy document that sets forth broad objectives and policies to guide long range development of the county.

79. The proposed reclassification conforms to the following General Plan objectives and policies for Land Use:

Objective 1: To preserve for present and future generations existing geographic, cultural and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County.

Policy (c): Identify and preserve significant historic and cultural sites.

Objective 2: To use the land within the County for the social and economic betterment of the County's residents.

Policy (a): Mitigate environmental conflicts and enhance scenic amenities, without having a negative impact on natural resources.

80. The proposed reclassification conforms to the following General Plan objectives and policies for the Environment:

Objective 3: To preserve and protect our unique and fragile environmental resources.

Policy (a): Preserve for present and future generations the opportunity to experience the natural beauty of our islands.

Policy (b): Preserve scenic vistas and natural features.

Policy (d): Support programs to protect rare and endangered species and programs which will enhance their habitat.

Objective 4: To use the County's land-based physical and ocean-related coastal resources in a manner consistent with sound environmental planning practice.

Policy (b): Evaluate all land-based development relative to its impact on the County's land and ocean ecological resources.

81. The proposed reclassification conforms to the following General Plan objective and policy for Recreation and Open Space:

Objective 5: To provide high quality recreational facilities to meet the present and future needs of our residents of all ages and physical ability.

Policy (c): Maintain the natural beauty of recreational areas.

Community Plan

82. Community Plans contain recommendations and standards which guide the sequencing, patterns and characteristics of future development in the region.

83. The Petition Area is located in the Hana Community Plan area and is designated Agriculture. The proposed reclassification establishes a more restrictive classification than the current Agricultural designation.

84. The subject reclassification is consistent with the Hana Community Plan's goals for the Environment.

85. There is no County zoning category which is similar to the State Conservation reclassification. The closest County zoning category is "Open." The County does not zone Conservation District land because the Conservation District is under the jurisdiction of the Department of Land and Natural Resources.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the 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

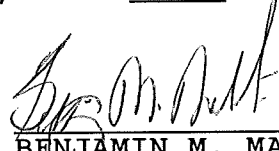
Pursuant to chapter 205, HRS, and the Hawai'i Land Use Commission Rules under chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Property consisting of approximately 273 acres of land in the Agricultural District situated at Kaapahu, Hana, County of Maui, State of Hawai'i, identified as Tax Map Key Numbers of the Second Division: 1-6-10: por. 1 and por. 6 into the Conservation District is reasonable, nonviolative of section 205-2, HRS, and is consistent with the Hawai'i State Plan set forth in chapter 226, HRS and is consistent with the Coastal Zone Management Program set forth in chapter 205A, HRS.

PROPOSED DECISION AND ORDER

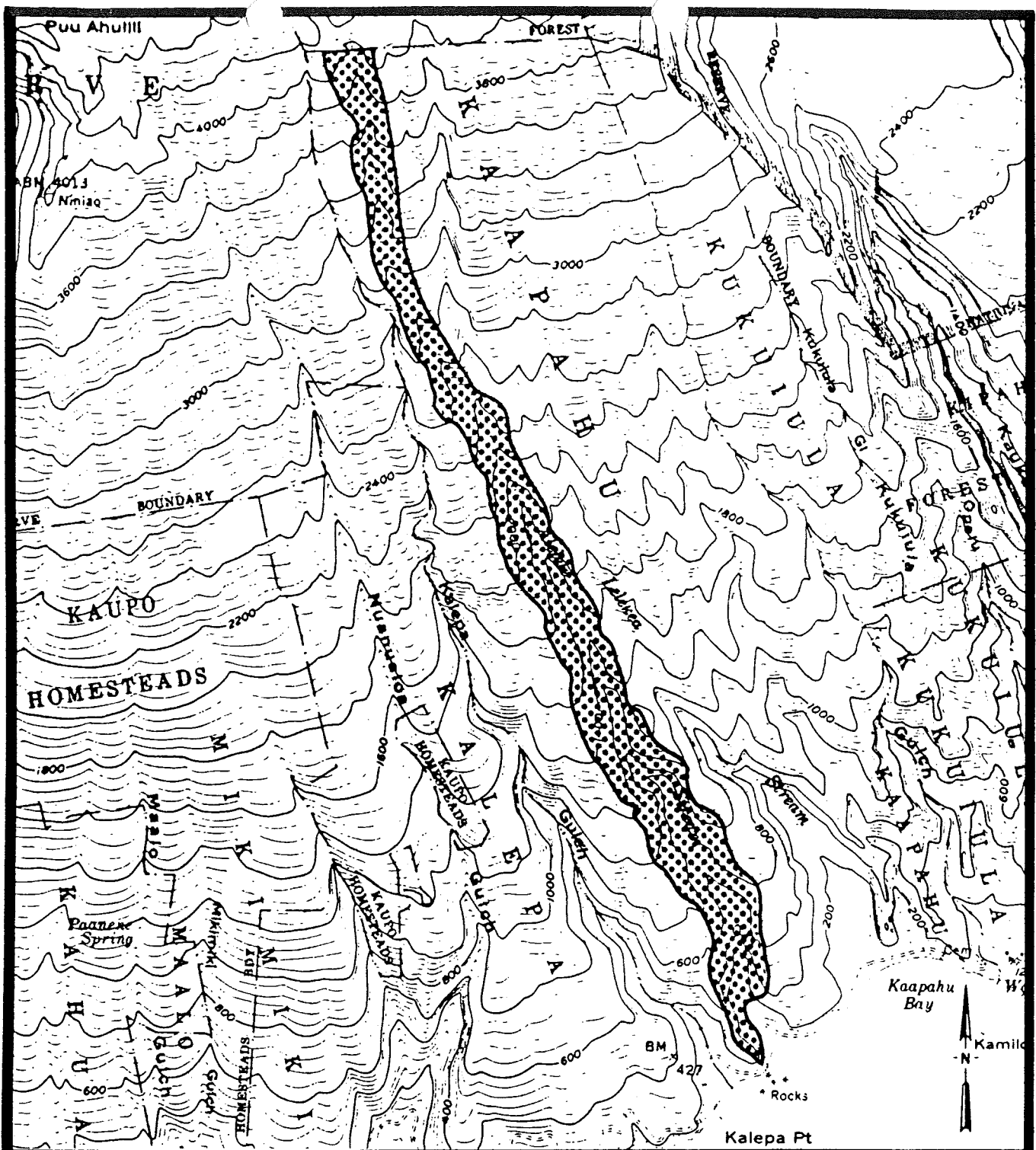
IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. BR94-709 by Petitioner Office of State Planning, State of Hawai'i, consisting of approximately 273 acres of land in the Agricultural District situated at Kaapahu, Hana, County of Maui, State of Hawai'i, identified as Tax Map Key Numbers of the Second Division: 1-6-10: por. 1 and por. 6 and approximately shown on Exhibit "A" attached hereto and

incorporated by reference herein, is hereby reclassified into the State Land Use Conservation District, and that the State Land Use District Boundaries are amended accordingly.

Dated: Honolulu, Hawai'i, this 24th day of May 1995.



BENJAMIN M. MATSUBARA
Hearing Officer



LOCATION MAP

DOCKET NO. BR94-709 /

OFFICE OF STATE PLANNING, STATE OF HAWAII

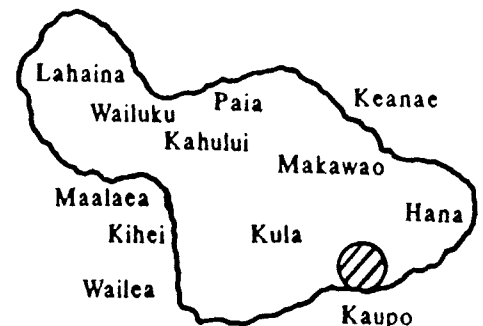
TAX MAP KEY: 1-6-10: por. 1 and por. 6

KAAPAHU, HANA, MAUI

SCALE: 1" = 2,000 ft.±



APPROVED AREA



MAUI

Figure 1 consists of seven diagrams labeled (a) through (g), illustrating the stages of a two-stage sampling process. The diagrams are arranged in two rows. The top row contains diagrams (a), (b), (c), (d), and (e). The bottom row contains diagrams (f) and (g). Diagram (a) shows a large circle representing the population of size N . Diagram (b) shows a smaller circle representing the sample of size n selected from the population. Diagram (c) shows a small circle representing the subsample of size m selected from the sample of size n . Diagram (d) shows the sample of size n with the subsample of size m highlighted. Diagram (e) shows the sample of size n with the subsample of size m highlighted. Diagram (f) shows the sample of size n with the subsample of size m highlighted. Diagram (g) shows the sample of size n with the subsample of size m highlighted.

In the Matter of the Petition of

OFFICE OF STATE PLANNING,
STATE OF HAWAI'I

To Amend the Agricultural Land Use
District Boundary into the
Conservation Land Use District for
Approximately 273 Acres of Land
Situated at Kaapahu, Hana, Maui,
State of Hawai'i, TMK: 1-6-10: por.
1 and por. 6

CERTIFICATE OF SERVICE

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


GREGORY G.Y. PAI, PH.D., Director
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CERT. RICK J. EICHOR, ESQ., Attorney for Petitioner
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CERT. JEFFREY SCHMIDT, ESQ.
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 24th day of May 1995.


ESTHER UEDA
Executive Officer