

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 Donkey Beach, Homaikawaa and)
Kamalomaloo Ahupuaas, Kawaihau,)
Island of Kauai, State of Hawai'i,)
Identified by Tax Map Key Number of)
the Fourth Division: 4-7-4: por. 6)
Consisting of Approximately 38)
acres, from the Agricultural)
District to the Conservation)
District)

DOCKET NO. BR94-715
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

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LAND USE COMMISSION
HONOLULU, HAWAII

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

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 38 acres of land in the Agricultural District situated at Donkey Beach, Kawaihau, Kauai, Hawai'i, identified as Tax Map Key Number of the Fourth Division: 4-7-4: por. 6 ("Property" or "Petition Area"), into the 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;

Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and the subsequent stipulation with 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.

3. On February 23, 1995, at its meeting in Lahaina, Maui, the Land Use Commission granted Petitioner's Motion to Waive Requirement for Metes and Bounds Description.

4. On March 14, 1995, the Land Use Commission issued an Order Granting Office of State Planning's Motion to Waive Requirement for Metes and Bounds Description.

5. On March 21, 1995, a prehearing conference on the Petition was held at Room 238, Old Federal Building in Honolulu with representatives of the Petitioner, County of Kauai Planning Department ("County"), and the landowner, AMFAC/JMB Hawaii, Inc., parent company of Lihue Plantation Company, Ltd., present. At the prehearing conference, the parties submitted and exchanged available exhibits, exhibit lists, and witness lists.

6. 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.

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

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

DESCRIPTION OF THE PROPERTY

General Characteristics

9. The Property is located on the northeast coast of Kauai approximately three miles north of Kapaa. It encompasses approximately 38 acres, and is shaped as a narrow strip between Ahihi Point and Paliku Point. This area is commonly referred to as Donkey Beach.

10. The Property is owned by the Lihue Plantation Company, Ltd. Lihue Plantation Company, Ltd. authorized the filing of the Petition.

11. The Property is bounded by the makai edge of a cane haul road to the west, the existing Conservation District to the south, the sea and the coastal Conservation District to the east, and the Agricultural District to the northwest.

12. The portion of the Property closest to the shoreline is fairly flat. From the end of the sandy area within the Property to the makai edge of the cane haul road, slopes gradually increase to between 7 and 10 percent.

13. The Petition Area has a mild climate year-round which is attributable to cool tradewinds from the northeast. Although the tradewinds prevail throughout the year, they are less frequent during the winter months of October through April.

14. The Petition Area is situated on the windward side of the island and has a mean annual rainfall under 1,500 millimeters (mm). The wettest month of the year is January which on average receives between 150 mm and 200 mm of precipitation in the Petition Area. June is the driest month with average rainfall totaling less than 50 mm.

15. Islandwide, the average temperature is 75 degrees fahrenheit in the lowlands, decreasing 4 degrees fahrenheit for every 1,000 feet increase in elevation. January and August are the coldest and warmest months, respectively. Humidity is typically in the 60 to 80 percent range.

16. The Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawai'i, prepared by the U.S. 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, 8 to 15 percent slopes (LhC)
- c. Lihue silty clay, 15 to 25 percent slopes (LhD)
- d. Beaches (BS)
- e. Rough broken land (rRR)
- f. Mokuleia fine sandy loam (Mr)

17. The soils in the Petition Area have agricultural productivity ratings of primarily "D" (poor productivity) as determined by the University of Hawai'i Land Study Bureau's (LSB) Detailed Land Classification - Island of Kauai (1972). There is

an area of "C" (fair productivity) rated lands in the northern portion of the Petition Area.

18. According to the State Agricultural Lands of Importance to the State of Hawai'i (ALISH) system, approximately 60 percent of the land in the Petition Area is classified as "Other Important Agricultural Land." The remainder of the Property is unclassified in the ALISH system.

19. The Flood Insurance Rate Map designates the makai portions of the Property as Zone VE, which indicates 100-year coastal flood hazard areas with velocity hazard (wave action). The portions of the Property situated further inland are in Zone X, which are areas determined to be outside the 500-year flood plain.

Existing Uses

20. The primary uses for the Petition Area are recreational in nature. Swimming, surfing, bodysurfing, and fishing are among the various activities which take place at this site.

PROPOSAL FOR RECLASSIFICATION

21. The Petition is based on a recommendation made by Petitioner as part of the State Land Use District Boundary Review, Kauai. The report recommends that the Property be reclassified to the Conservation District for protection of scenic and recreational resources. It is a Priority 1 recommendation.

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

23. No new uses are being proposed by the Petitioner for the Property.

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

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

25. Pursuant to §15-15-50(c)(8), HAR, as an agency of the State of Hawai'i, Petitioner is not required to demonstrate financial capability. Moreover, no development of the Property is being proposed.

STATE AND COUNTY PLANS AND PROGRAMS

26. The Property is located within the State Land Use Agricultural District as depicted on Land Use District Boundaries Maps K-9 (Anahola) and K-10 (Kapaa).

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

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

29. The County of Kauai has zoned the Property as Open in the Wailua-Kapaa planning area.

30. The Property falls within the Special Management Area. The proposed reclassification is in general conformance with the objectives and policies of Special Management Areas set forth in §205A-2, HRS.

NEED FOR THE PROPOSED RECLASSIFICATION

31. The proposed reclassification will preserve the Property's openness and scenic and recreational resources.

32. Reclassification would be compatible with the County of Kauai's zoning designation. The County has zoned this area as Open, which is similar in intent to the State Conservation District.

33. The proposed reclassification would extend the coastal Conservation District northward from Paliku Point to Ahihi Point, creating a continuous band of Conservation District land along this coastal area.

ECONOMIC IMPACTS

34. The visitor industry is the State's leading industry and relies on Hawai'i's scenic beauty and natural resources. The proposed reclassification would benefit Hawai'i's economy by helping to preserve these features.

35. No economic activities are present in the Petition Area so no economic activities will be displaced as a result of the proposed reclassification.

36. No development of the Property is being proposed by the Petitioner. Therefore, no significant long-term commitment of State funds or resources is involved. This action will not require any operational expenses.

SOCIAL IMPACTS

37. The Petition will benefit society by preserving the scenic and recreational resources of the Petition Area.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

38. There are no agricultural uses taking place in the Petition Area. Much of the soils in the Petition Area are unsuitable for cultivation.

Flora and Fauna

39. No rare or endangered plant or animal species are believed to be present in the Petition Area. Ironwood trees and other common coastal vegetation are found in the Property. Although no faunal study has been conducted in the Petition Area, it is expected that the area contains common feral mammals.

40. Flora and fauna populations will benefit from the increased protection afforded by the proposed Conservation District classification.

Archaeological/Historical/Cultural Resources

41. The Petition Area contains a State historic site identified as Kawelomamaia heiau, Site 112, located south of Ahihi Point. According to the State Historic Preservation Division, this site is significant because 1) it has yielded, or is likely to yield, information important for research on prehistory or history; and 2) it has an important traditional cultural value to an ethnic group of the State.

42. In addition, the State Historic Preservation Division has identified a burial site which was inadvertently

discovered. The site is located just north of Paliku Point in the southern portion of the Petition Area.

Groundwater Resources

43. The Petition Area is part of the Anahola Aquifer System. The estimated sustainable yield of this system is 36 mgd, though this figure is not considered to be reliable. In 1991, 6.96 mgd were withdrawn from the Anahola system, most of it for irrigation purposes.

44. The proposed reclassification will benefit the Property's groundwater resources by reducing the threat of contamination from residential or other urban uses.

Recreational Facilities

45. Donkey Beach is rated as having high regional significance by the Department of Land and Natural Resources. Although surfers, bodysurfers, and swimmers use Donkey Beach, the surf can be hazardous during the spring and winter months. During high surf conditions, strong rip currents, undertows, backwashes, and longshore currents prevent all but the experts from swimming or surfing. The summer months are calmer, making inshore swimming, diving, and snorkeling relatively safe.

46. Other activities at Donkey Beach include beachcombing and ulua fishing.

47. By redesignating Donkey Beach to the Conservation District, these recreational opportunities can be protected from activities which could cause irreparable harm.

Scenic Resources

48. The Property encompasses Donkey Beach, a large white sand beach that is popular with surfers, bodyboarders, and others who enjoy its seclusion.

ENVIRONMENTAL QUALITY

Air and Noise

49. No air quality data are available for the Petition Area. As in other windward coastal areas, however, air quality is enhanced by the prevailing tradewinds which clear particulates from the air.

50. Sugarcane harvesting by Lihue Plantation Company, Ltd. was once a major source of air pollution in this area. Since harvesting has ceased in the immediate vicinity of the Petition Area, air pollution is attributable to mostly natural sources, including sea spray, dust, and plant materials.

51. The primary sources of noise in the Petition Area are the surf and trucks along the cane haul road west of the Petition Area.

Water Quality

52. The proposed reclassification will benefit the Property's hydrological conditions. The potential for accelerated runoff and erosion resulting from urban development will be greatly lessened in the Conservation District.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

53. The Petition does not propose any new uses for the Property.

54. 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 Petition.

COMMITMENT OF STATE FUNDS AND RESOURCES

55. 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 Conservation District lands.

CONFORMANCE TO CONSERVATION DISTRICT STANDARDS

56. Portions of the Property are contiguous to the existing Conservation District.

57. §205-2(e), HRS, states that Conservation Districts shall include areas necessary for:

"preserving scenic and historic areas; providing park lands, wilderness, and beach reserves;... preventing floods and soil erosion;... 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 is notable for its openness and recreational activities and should therefore be included in the Conservation District.

58. The proposed reclassification is in conformance with the following standards of the 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 and sites of unique physiographic or ecologic significance...

§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...

The Petition Area includes lands that are in the 100-year flood area. Its soils and scenic/recreational resources make this area not normally adaptable to urban, rural, or agricultural use.

59. The proposed reclassification is in general conformance with the following Land Use Commission decision making criteria set forth in §205-17, HRS:

§205-17(1), HRS: The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawai'i State Plan and relates to the applicable priority guidelines of the Hawai'i State Plan and the adopted functional plans.

§205-17(2), HRS: The extent to which the proposed reclassification conforms to the applicable district standards.

§205-17(3), HRS: The impact of the proposed reclassification on the following areas of state concern:

- (A) Preservation or maintenance of important natural systems or habitats;
- (B) Maintenance of valued cultural, historical, or natural resources;
- (C) Maintenance of other natural resources relevant to Hawai'i's economy, including, but not limited to, agricultural resources;
- (D) Commitment of state funds and resources;
- (E) Provision for employment opportunities and economic development;

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

60. The proposed reclassification is in conformance 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.

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

§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.

Conservation District status for the Petition Area would be consistent with the above objective and policies because it serves to protect the Property's natural and recreational 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 policies:

§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.

§226-12(b)(4), HRS: Protect those special areas, structures, and elements that are an integral and functional part of Hawai'i's ethnic and cultural heritage.

The intent of the proposed reclassification is consistent with the above objective and policies; that is, it seeks to preserve the Petition Area's natural, cultural, and historical resources. It also will preserve the views and vistas of this undeveloped coastal region.

§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.

In support of these objectives, 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.

§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.

The proposed reclassification will help maintain the Petition Area's land, air, and water quality. By restricting the types of structures that can be built, reclassification will also reduce the threat to life and property from flooding and tsunamis.

§226-23, HRS: Objective 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.

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

§226-23(b)(4), HRS: Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.

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

The Petition Area includes a number of natural resources worth preserving. These include scenic and open space resources as well as recreational resources.

61. The proposed reclassification 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.

The proposed reclassification will direct urban growth away from this critical environmental area. The Property meets the criteria for a critical environmental area as described in §226-104(b)(10), HRS, because of its scenic and recreational shoreline resources, open space, and historic sites.

62. The proposed reclassification is consistent with the following objective and policy of the Tourism State Functional Plan:

Objective III.A. Enhancement of respect and regard for the fragile resources which comprise Hawai'i's natural and cultural environment. Increased preservation and maintenance efforts.

Policy III.A.1.a. Assist in preserving and maintaining recreational resources.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

63. The proposed reclassification meets the following objectives and policies of the Coastal Zone Management Program, §205A-2, HRS:

§205A-2(b)(1), HRS: Recreational resources;

Objective:

§205A-2(b)(1)(A), HRS: Provide coastal recreational opportunities accessible to the public.

Policies:

§205A-2(c)(1)(A), HRS: Improve coordination and funding of recreational planning and management; and

§205A-2(c)(1)(B), HRS: Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

(ii) Requiring replacement of coastal resources having a significant recreational value, including but not limited to surfing sites and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;

(iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Ensuring public recreational use of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;

(vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;

(vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and

(viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of section 46-6.

The Petition Area's recreational resources, including swimming, diving, and fishing, will benefit from the proposed reclassification which will restrict the types of uses allowed.

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

Objective:

§205A-2(b)(2)(A), HRS: Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawai'ian and American history and culture.

Policies:

§205A-2(c)(2)(A), HRS: Identify and analyze significant archaeological resources;

§205A-2(c)(2)(B), HRS: Maximize information retention through preservation of remains and artifacts or salvage operation; and

§205A-2(c)(2)(C), HRS: Support state goals for protection, restoration, interpretation, and display of historic resources.

The Petition Area contains a State historic site identified as Kawelomamaia heiau and a burial site near Paliku Point. Reclassification will minimize the disturbance to these historical resources.

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

Objective:

§205A-2(b)(3)(A), HRS: Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

§205A-2(c)(3)(A), HRS: Identify valued scenic resources in the coastal zone management area;

§205A-2(c)(3)(B), HRS: Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

§205A-2(c)(3)(C), HRS: Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

§205A-2(c)(3)(D), HRS: Encourage those developments which are not coastal dependent to locate in inland areas.

The proposed reclassification will divert development away from the scenic and open space resources of Donkey Beach.

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

Objective:

§205A-2(b)(4)(A), HRS: Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems;

Policies:

§205A-2(c)(4)(A), HRS: Improve the technical basis for natural resource management;

§205A-2(c)(4)(B), HRS: Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;

§205A-2(c)(4)(C), HRS: 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; and

§205A-2(c)(4)(D), HRS: 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.

The proposed reclassification will restrict the types of uses which can be developed in the Petition Area. This will help to prevent an increase in runoff and contamination which could negatively impact the coastal ecosystem.

§205A-2(b)(5), HRS: Economic uses;

Objective:

§205A-2(b)(5)(A), HRS: Provide public or private facilities and improvements important to the State's economy in suitable locations.

Policies:

§205A-2(c)(5)(A), HRS: Concentrate coastal dependent development in appropriate areas;

§205A-2(c)(5)(B), HRS: Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

§205A-2(c)(5)(C), HRS: Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:

- (i) Use of presently designated locations is not feasible;
- (ii) Adverse environmental effects are minimized; and
- (iii) The development is important to the State's economy.

The proposed reclassification will have the effect of directing coastal dependent development away from the scenic and recreational resources of Donkey Beach.

§205A-2(b)(6), HRS: Coastal hazards;

Objective:

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

Policies:

§205A-2(c)(6)(A), HRS: Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;

§205A-2(c)(6)(B), HRS: Control development in areas subject to storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;

§205A-2(c)(6)(C), HRS: Ensure that developments comply with requirements of the Federal Flood Insurance Program;

§205A-2(c)(6)(D), HRS: Prevent coastal flooding from inland projects; and

§205A-2(c)(6)(E), HRS: Develop a coastal point and nonpoint source pollution control program.

Portions of the Petition Area are subject to 100-year flooding. The proposed reclassification will help to minimize the threat of flooding to life and property.

64. The Property falls within the Special Management Area as delineated by the County of Kauai. The objectives and policies of §205A-2, HRS, also apply to Special Management Areas.

CONFORMANCE TO COUNTY PLANS

65. The proposed reclassification is supportive of the following County of Kauai General Plan goals:

- To promote and protect the health, safety and welfare of all residents and visitors.
- To provide for a maximum variety of outdoor recreational activities.

- To recognize those aspects of the island and its people which are historically and culturally significant, and to maintain and enhance such aspects as a continuing expression of the island's physical and social structure.

- To guide and control development to take full advantage of the island's form, beauty and climate and preserve the opportunity for an improved quality of life.

66. The Kauai 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.

67. The Petition Area is in the Kapaa-Wailua planning area. The County of Kauai has zoned the Petition Area as Open.

68. The County Open district is similar in intent to the State Conservation District. The Open District as stated in the County of Kauai Comprehensive Zoning Ordinance was established to preserve, maintain or improve the essential characteristics of land and water areas that are of significant value to the public, important to the structure of urban areas, necessary to buffer undesirable environmental factors, maintain the essential functions of ecological systems, and define and regulate development within areas which may be potentially hazardous.

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 38 acres of land in the Agricultural District situated at Donkey Beach, Kawaihau, Kauai, Hawai'i, identified as Tax Map Key Number of the Fourth Division: 4-7-4: por. 6 into the Conservation District is reasonable, nonviolative of section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS, and the Coastal Zone Management Program as set forth in chapter 205A, HRS.

ORDER

IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. BR94-715 by Petitioner Office of State Planning, State of Hawai'i, consisting of approximately 38 acres of land in the Agricultural District situated at Donkey Beach, Kawaihau, Kauai, Hawai'i, identified as Tax Map Key Number of the Fourth Division: 4-7-4: 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.

DOCKET NO. BR94-715 - 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 Lapenia, Jr.
EUSEBIO LAPENIA, 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:

Arthur Lee
Executive Officer

By Trudy K. Senda
TRUDY K. SENDA
Commissioner

By Elton Wada
ELTON WADA
Commissioner

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

In the Matter of the Petition of)	DOCKET NO. BR94-715
)	
OFFICE OF STATE PLANNING,)	CERTIFICATE OF SERVICE
STATE OF HAWAI'I)	
)	
To Amend the Land Use District)	
Boundary of Certain Lands Situated)	
at Donkey Beach, Homaikawaa and)	
Kamalomaloo Ahupuaas, Kawaihau,)	
Island of Kauai, State of Hawai'i,)	
Identified by Tax Map Key Number of)	
the Fourth Division: 4-7-4: por. 6)	
Consisting of Approximately 38)	
acres, from the Agricultural)	
District to the Conservation)	
District)	
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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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CERT. HARTWELL H.K. BLAKE, ESQ.
County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street, #202
Lihue, Hawaii 96766

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



ESTHER UEDA
Executive Officer