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

In the Matter of the Petition of)	Docket No. A99-729
)	
HAWAIIAN ISLANDS LAND TRUST to)	MOTION FOR ORDER
Amend the Conditions of the Decision and)	AMENDING THE FINDINGS OF
Order for approximately 885.40 acres at)	FACT, CONCLUSIONS OF LAW,
Kukuau, South Hilo, Hawaii, Tax Map Key)	AND DECISION AND ORDER
No. (3) 2-4-008-033 (por.))	DATED NOVEMBER 15, 2001;
)	CERTIFICATE OF SERVICE
_____)	

MOTION FOR ORDER AMENDING THE FINDINGS OF FACT, CONCLUSIONS OF LAW,
 AND DECISION AND ORDER DATED FEBRUARY 10, 1995

Comes now, Petitioner HAWAIIAN ISLANDS LAND TRUST (“HILT”), by and through its in house attorney, Shaelene K. Kamakaala, respectfully moves the Land Use Commission of the State of Hawai‘i (“Commission”) pursuant to §15-15-70 and §15-15-94 of the Commission’s Rules for an Order: 1) recognizing HILT’s standing to seek and obtain the relief requested herein; 2) amending the Findings of Fact, Conclusions of Law, and Decision and Order dated November 15, 2001 (the “D&O”) to release the subject property of approximately 885.40 acres of land, located at Kukuau, South Hilo, County of Hawai‘i, identified by Tax Map Key No. (3) 2-4-008-033 (por.) (the “Petition Area”) from the conditions of the D&O; and 3) issue a new Findings of Fact, Conclusions of Law, and Decision and Order for the Petition Area for the purpose of establishing appropriate findings of fact, conclusions of law and conditions that are

specifically applicable to Petitioner’s proposed native forest management plans and project (“Kukuau Forest Management Project”).

In support of this Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated November 15, 2001 (“Motion”), Petitioner alleges as follows:

I. BACKGROUND

The background of this docket, is hereby incorporated by reference herein as if fully set forth herein.

On November 15, 2001, the Commission approved a petition from the former landowner, The Newton Family Limited Partnership, to reclassify the State Land Use District Boundary of the Petition Area consisting of approximately 885.40 acres of land from the Conservation Land Use District into the Agricultural Land Use District for the development of an agricultural subdivision.

The proposed development of the Petition Area as an eight-lot subdivision was premised on amendments to the Hawai‘i County General Plan and to the Hawai‘i County Zoning Map. The required General Plan amendment from Conservation to Extensive Agriculture, was adopted by the County Council in January 2005.

The required Change of Zone from no County zoning to County Agricultural- 80 acres (A-80a) was approved with an effective date of February 24, 2006.

Condition Nos. 1 through 18 of the D&O relate to the actual subdivision of the Petition Area, and were intended to be satisfied during the subdivision process. In a March 19, 2018 letter from the County of Hawai‘i Planning Department to Belt Collins Hawaii LLC, representing the former landowner The Newton Family Limited Partnership, the Planning Department noted that final subdivision approval has not been granted to date because of water system issues, and

provided notice that due to The Newton Family Limited Partnership's inability to comply with the concurrency standards of the Zoning Code and conditions of Ordinance No. 06 27, the Planning Department Director would shortly initiate rezoning from Agricultural- 80 acres (A-80a) to Agricultural- 800 acres (A-800a) which would allow for some agriculture and construction of a farm dwelling with water catchment, but not allow subdivision.

On February 27, 2019, The Newton Family Limited Partnership transferred all of its right, title, and ownership in Tax Map Key No. (3) 2-4-008-033, including the Petition Area to HILT under a Limited Warranty Deed, recorded in the Bureau as regular Document No. 10663066. On April 25, 2019, The Newton Family Limited Partnership provided a letter to the Commission notifying the Commission of its transfer of the Petition Area to HILT.

At the May 7, 2019 Commission meeting, HILT provided a status update and requested a year to plan for management of the Petition Area before deciding whether to request that the State Land Use District Boundary of the Petition Area remain in the Agricultural Land Use District with amendments to D&O conditions, or that the State Land Use District Boundary of the Petition Area be reclassified to the Conservation Land Use District.

At the June 25, 2020 Commission meeting, HILT provided a status update presentation sharing that HILT's goal for the entirety of Tax Map Key No. (3) 2-4-008-033, comprising the Petition Area and the upland remainder of the property, is a community-stewarded native forest. HILT noted that it did not intend to subdivide the Petition Area or pursue the eight-lot subdivision planned by former landowner The Newton Family Limited Partnership, but that the existing Agricultural Land Use District of the Petition Area is needed to actively manage and restore the native forest.

II. CONFORMANCE WITH STATE LAND USE STANDARDS

Petitioner is not seeking reclassification of State Land Use District Boundaries, and is seeking an amendment to the D&O and will discuss applicable requirements set forth by §15-15-50(c) Hawai'i Administrative Rules ("HAR") to support this motion.

A. PETITIONER AND REPRESENTATIVE

Petitioner Hawaiian Islands Land Trust (HILT) is a Hawaii nonprofit corporation. HILT is Hawai'i's islands-wide land trust that is both a Hawai'i 501(c)3 nonprofit, and a nationally accredited land trust. HILT has protected over 21,500 acres across Hawaii through fee simple ownership and stewardship, and conservation easements restricting land use on privately-owned lands. HILT's mission is to protect and steward the lands that sustain Hawaii, and to perpetuate Hawaiian values by connecting people with aina. HILT protects lands that are integral to Hawaii's well-being and character, upholding our kuleana to these lands, and the communities they are in, through thoughtful stewardship that deepens community connection to, and builds reciprocal relationships with, aina. HILT's Chief Executive Officer is Laura H.E. Kaakua, and HILT's in house General Counsel and Director of Aina Protection is Shaelene K. Kamakaala. Correspondence and communications in connection with this Motion are to be addressed to Shaelene K. Kamakaala and Laura H.E. Kaakua, at 126 Queen Street, Suite 306, Honolulu, HI 96813.

B. DESCRIPTION OF THE SUBJECT PROPERTY

1. The Petition Area is located in the Upper Kukuau area, South Hilo, Hawai'i, and is designated as Tax Map Key No: 2-4-008-033 (por). The Petition Area is approximately 885.40 acres and consists of the makai (oceanside) portion of an approximately 1,645.823-acre parcel ("Property") of unimproved land. The remaining approximately 760.423 mauka (mountainside) acres of the Property is proposed to remain in

the Conservation District ("Remainder Area").

2. The Property, including the Petition Area, is owned by Petitioner in fee simple. There are no ceded lands in the Petition Area.

3. The annual rainfall averages approximately 230 inches.

4. The U.S. Natural Resources Conservation Service identifies the soils on the Petition Area as Keei Series (rKGD), extremely rocky muck. This soil consists of well-drained, thin organic material very dark brown muck up to about 10 inches thick overlying pahoehoe lava bedrock. Permeability is slow, but water moves rapidly through cracks. Runoff is medium and its erosion hazard is slight. This soil is used mostly for pasture. Its Capability Classification is Vlls, non-irrigated, which indicates that the soil, when not irrigated, has very severe limitations that make it unsuitable for cultivation and restrict its use largely to pasture or range, woodland or wildlife. The heavy rainfall on the Property supports a native koa and ohia forest with ever increasing invasive species.

5. According to the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii Map, the Petition Area is unclassified. The Land Study Bureau's overall suitability rating for agricultural purposes classifies the Petition Area as "D" or "Poor," with the exception of a small portion of land at the northeast corner of the Petition Area classified as "E" or "Very Poor."

6. Although the Petition Area is still shown within the Hilo Forest Reserve on some United States Geological Survey maps, it is no longer in the current State forest reserve jurisdiction. The Petition Area was included in the Hilo Forest Reserve under a voluntary 30-year surrender agreement with the State of Hawai'i,

formalized in 1948. The Petition Area was subsequently withdrawn from the forest reserve by the State of Hawaii.

7. The Petition Area has changed over the years from native forest to sugarcane production to forestry and grazing.

8. The Petition Area is primarily in forest and heavy shrub vegetation. A modest amount of grazing may occur within the Petition Area by cattle from adjacent lands though Petitioner has not provided permission for any adjacent owners to pasture their cattle on the Property.

9. The Flood Insurance Rate Map prepared by the Federal Emergency Management Agency designates the Petition Area as Zone X, an area determined to be outside the 500-year flood plain.

10. A 150-foot-wide easement designated for electrical transmission line purposes runs partially along the northern boundary of the Petition Area. This easement serves the Hawaii Electric Light Company, Inc. site, which is located on the makai boundary of the Petition Area.

11. A 40-foot-wide unimproved access easement runs along the Petition Area's entire northern boundary. This easement can be accessed from Wilder Road and services the Petition Area and adjacent mauka subdivisions.

12. Puna Sugar Company, Ltd., formerly known as "Ola'a Sugar Company," is the current holder of a right-of-way for one or more flumes granted by Akana Amelia Richardson in favor of Ola 'a Sugar Company by instrument dated November 5, 1900, recorded in the Bureau of Conveyances of the State of Hawai'i in Liber 212, Page 747, as modified by Quitclaim Deed dated March 31, 1938. The

abandoned flume and the dirt road which parallels the route of the flume, commonly referred to as the "Ola'a Flume Road," are located within the Petition Area. The Ola'a Flume Road connects Kaumana Drive and Stainback Highway, and delineates the approximate alignment of the future county secondary arterial. The mauka boundary of the Petition Area also coincides with this route.

C. PRESENT USE OF THE SUBJECT PROPERTY AND CONFORMITY TO AGRICULTURAL DISTRICT STANDARDS

The Property is currently vacant and undeveloped. The Property is native forest with an overstory of primarily ohia and koa and an understory of primarily uluhe fern. Invasive species, primarily strawberry guava and Koster's curse (*Clidemia herta*) are overtaking sections of the native forest in both the Petition Area and the Remainder Area. The Kukuau Forest Management Project is consistent with the standards for agricultural districts pursuant to Hawaii Revised Statute § 205-2(d). The Kukuau Forest Management Project includes forestry and forage activities and uses; and bonafide agricultural services and uses that support and are accessory to these activities, including but not limited to an open area recreational facility.

D. DESCRIPTION OF THE USE OR DEVELOPMENT BEING PROPOSED

Petitioner received the Property as a donation and now needs to determine whether it can steward the Property pursuant to its nonprofit mission to protect and steward the lands that sustain Hawaii, and to perpetuate Hawaiian values by connecting people with aina. The Property is not a pristine native forest that can thrive in perpetuity by simply being under HILT ownership. Invasive species expand their territory annually within the Property, and Petitioner realizes that if Petitioner does not actively manage the native forest, the native forest on the Property will be completely overtaken by invasive species in due time. Petitioner also acknowledges that the

Property is sandwiched between privately-owned residential properties on its makai (oceanside) boundaries, and State Forest Reserve on its mauka (mountainside) boundaries. Therefore, the Property acts as a buffer for the State Forest Reserve. A healthy native forest on the Property will keep the State Forest Reserve in healthy native forest. In comparison, allowing the invasive plants to take over the native forest on the Property will eventually result in invasive species spreading into the State Forest Reserve.

Petitioner endeavors to actively manage and restore the native koa and ohia forest on the entirety of the Property, starting with the Petition Area, and to engage, educate, and connect the Hilo community with the aina of Kukuau. Active native forest management requires constant invasive species monitoring, invasive species removal, fencing for ungulate control, gathering seeds of native plants on the Property, growing native plants from seeds and cuttings typically in a greenhouse, planting native species, regularly monitoring and documenting native species use of the native forest habitat such as Hawaiian Hawk, Hawaiian Hoary Bat, and other native bird and insect species, managing for pests, and dynamically adjusting stewardship practices in response to native species observations, changing weather patterns, and changing threats. Petitioner's mission includes connecting Hawaii's communities with aina (the land that feeds us), so Petitioner's forest management activities as part of the Kukuau Forest Management Project would also include community outreach, hosting community volunteer workdays and educational forest walks, hosting learning field trips for local schools, inviting Hawaiian cultural practitioners such as hula halau to spend time, learn from, and care for the Kukuau Forest. All of these activities have an end goal of inspiring community stewardship of Kukuau Forest, and extending that practice of malama aina (caring for the lands that care for us) to other lands as well.

The many forest stewardship and community engagement activities that comprise the Kukuau Forest Management Project are only possible if Petitioner is able to hire and retain knowledgeable staff from Hilo, and to contract with foresters and other conservation professionals who specialize in the large scale capital improvements needed such as fencing to keep out ungulates and invasive species, building of a native plant greenhouse, and building of a covered gathering space for volunteers and students to get out of the elements. The initial start up and annual costs are high to hire and retain staff, complete the needed capital improvement projects, maintain the capital improvements over time, and annually pay for typical land stewardship expenses such as property taxes and liability insurance. As a nonprofit land trust that understands the need for active forest management on the Property, Petitioner cannot responsibly retain the Property without a reliable annual income source to support stewardship. Petitioner intends to partner with a forestry company employing certified foresters to selectively harvest koa trees to fund the Kukuau Forest Management Project. In consultation with the forest management company Forest Solutions, Inc., selective removal of koa trees will fund such significant native forest restoration that the number of koa trees on the Property over a 30 year period is projected to regenerate approximately 1.5x as many koa trees as were originally there. The ability to actively manage the forest on the Property, including selective koa harvest, is the critical factor in Petitioner's ability to retain the Property for community environmental, cultural and educational benefit.

III. RELIEF REQUESTED

Petitioner seeks an Order: 1) recognizing HILT's standing to seek and obtain the relief requested herein; 2) amending the 2001 D&O to release the Petition Area from the conditions of the 2001 D&O; and 3) issue a new Findings of Fact, Conclusions of Law, and Decision and

Order for the Property for the purpose of establishing appropriate findings of fact, conclusions of law and conditions that are specifically applicable to Petitioner's Kukuau Forest Management Project.

A. STANDING

Petitioner is the owner of the fee simple interest in the Property, including the Petition Area. Based on the foregoing, Petitioner requests that the Commission recognize Petitioner as having the requisite standing to seek and obtain the relief requested herein.

B. REQUESTED MODIFICATION OR DELETION OF CONDITIONS

Petitioner requests that the Petition Area be released from conditions in the 2001 D&O and that a new findings of fact, conclusions of law and decision and order be issued with respect to the Petition Area. The intent of this request is to establish a set of conditions that will apply specifically to the Petition Area, where the drafting of these conditions will start with the existing conditions in the 2001 D&O and thereafter modify or delete certain conditions to reflect the changed project description specific to the Petition Area. The conditions will be drafted considering that the landowner has changed, and therefore the plans for the Petition Area have changed from an eight-lot subdivision with eight residences to a community-stewarded native forest.

The following discussion relating to those conditions, that would be included in the amended or new findings of fact, conclusions of law and decision and order and would apply only to the Petition Area, will first quote all of the conditions in the 2001 Decision and Order, and each condition will be followed by the request for modification or deletion, if any, together with the support for the request.

D&O Condition 1:

“The proposed subdivision will be restricted to a maximum of 8 lots, with a minimum lot size of 80 acres. Each deed conveying title to a subdivided lot will include a 20-year restriction commencing upon final subdivision approval against further subdivision, and a general prohibition against large-scale commercial agriculture operations, animal hospitals, campgrounds and other similar open area recreational activities, mausoleums, group living facilities, golf courses, golf driving ranges, golf maintenance facilities, and golf clubhouse, adult care homes, community buildings, day care centers, hospitals, stadiums and sports arenas and schools.”

Request for Modification or Deletion:

HILT requests the condition be modified with exact or similar language to read in full, “The Petition Area will be not be subdivided.”

HILT does not seek to pursue the eight-lot subdivision or any subdivision. HILT’s native reforestation plans of its Kukuau Forest Management Project include connecting people with the land, potentially through culturally appropriate camping and recreational opportunities, selective harvest of koa trees to reinvest proceeds back into land management, active forest management, a greenhouse with equipment storage, and one structure which would provide shelter for community volunteers, Hawaiian cultural practitioners, and school children on educational field trips or utilizing the Petition Area as a place of study and research. Condition 1 currently prohibits “large-scale commercial agriculture operations”, which could be interpreted to include forestry, “campgrounds and other similar open area recreational activities,” “community buildings,” and “schools”. As subdivision will not be allowed, HILT does not see the need to have a general prohibition against enumerated uses.

D&O Condition 2:

“Endangered birds and bats, including the Hawaiian Hawk and the Hawaiian Bat, have been observed in the Petition Area. Petitioner and its successors shall implement mitigation measures to avoid any negative effects to existing rare, endangered or threatened species. Such mitigation measures will include leaving any large stands of native forest trees and clusters of native vegetation intact, and focusing residential sites to areas that were previously cleared and incorporating the use of native plants in landscaping plans. Petitioner and its successors shall not develop the Petition Area into

a project which would change the overall character of the area or generate major increases in resident population. Petitioner and its successors shall preserve the existing lowland native forest, and protect the Hawaiian Hawk and the Hawaiian Bat. Any such protection or mitigation measures that are initiated shall be first approved by the U.S. Fish and Wildlife Service, and the State Department of Land and Natural Resources.”

Request for Modification or Deletion:

HILT requests the condition be modified to read in full: “Endangered birds and bats, including the Hawaiian Hawk and the Hawaiian Bat, have been observed in the Petition Area. Petitioner and its successors shall implement mitigation measures to avoid any negative effects to existing rare, endangered or threatened species.”

A core purpose of HILT’s Kukuau Forest Management Project is to improve the native forest so that degraded sections with invasive species return to native habitat for native species such as the Hawaiian Hawk and the Hawaiian Bat, and so that intact native forest sections remain high quality native habitat. HILT does not intend to do residential development or “landscaping” which is typically associated with development, but does want the ability to actively manage the forest.

D&O Condition 3:

“Prior to clearing and grubbing the alignment for the subdivision roadway and utilities, Petitioner will stake the centerline for the proposed access road, conduct a 500-meter wide survey of the proposed roadway alignment to assure that there are no Hawaiian Hawk and/or Hawaiian Bat nests in the area. The U.S. Fish and Wildlife Service (“USFWS”) and the State Department of Land and Natural Resources will be provided with a copy of the results of such survey and consulted as to the need for any mitigating or conservation measures.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan a subdivision development, and therefore does not plan for the same subdivision roadway and utilities.

D&O Condition 4:

“Petitioner, developers, and/or landowners shall minimize the use of night lights and shield all exterior lighting and light sources to mitigate the downing of Pelagic seabirds that may fly over the Property to return to their nesting colonies on the upper slopes of Mauna Kea.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion to Condition 4.

D&O Condition 5:

“There are kipuka in the Petition Area which harbor native forest. Petitioner and its successors shall implement conservation measures such as leaving large stands of native forest trees and clusters of native vegetation within the Petition Area intact, containing residential sites to areas previously cleared, maintaining the Remainder Area (area above the Ola'a Flume Road) in Conservation, utilizing a grading plan that will leave undisturbed the stands of forest in the makai parcel that extend into the Petition Area to as low as the 1,600-foot level as a buffer for the Remainder Area. The grading plan shall be approved by the State Department of Land and Natural Resources, the US Fish and Wildlife Service, and any other appropriate governmental agencies.”

Request for Modification or Deletion:

HILT requests the following modification to Condition 5: “The Petition Area includes significant native forest. Petitioner and its successors shall develop and implement a forest management plan within 2 years from the date of this Decision and Order, and will provide the forest management plan to this Commission, and will provide reports to this Commission every 5 years on native forest restoration progress per plan benchmark projections. Forestry is an allowable use in the Petition Area.”

D&O Condition 6:

“Best management practices will be used during construction to control erosion and prevent runoff from damaging native forest resources.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion to Condition 5. If HILT constructs a greenhouse or shelter for volunteers and students visiting the property, HILT will use

best management practices in the construction of those structures to control erosion and prevent runoff.

D&O Condition 7:

“Petitioner and its successors shall complete, prior to any land alteration, an archaeological inventory survey of the acreage that would be disturbed by any specific development, including roadway, driveway, house site and agricultural site. The survey results will be provided to the DLNR State Historic Preservation Division (SHPD) and the Office of Hawaiian Affairs (OHA) for review and comment. Subsequent work shall proceed upon clearance from the SHPD. This condition shall be included in all sales documents pertaining to the lots in the proposed subdivision and in each deed conveying title to a subdivided lot.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 8:

“To the extent that any archaeological sites are located on the Petition Area, Petitioner and its successors shall work with SHPD in developing a data recovery/ mitigation/ preservation plan. This plan will include input from the local native Hawaiian community and relevant Hawaiian groups, including the OHA. The plan shall be approved by SHPD, and a certified copy thereof filed with the Commission, prior to any land alteration affecting such sites. This condition shall be included in all sales documents pertaining to the lots in the proposed subdivision and in each deed conveying title to a subdivided lot.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 9:

“Petitioner and its successors shall immediately stop work and contact SHPD should any previously unidentified archaeological resources such as artifacts, human burials, rock alignments, pavings or walls be encountered during the development of the proposed subdivision. This condition shall be included in all sales documents pertaining to the lots in the proposed subdivision and in each deed conveying title to a subdivided lot.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 10:

“In connection with the subdivision of the Petition Area, Petitioner shall, if necessary, dedicate to the County of Hawai'i an 80-foot right-of-way located near the Ola'a flume system to accommodate the County's planned secondary arterial.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 11:

“Petitioner and its successors shall fund and construct adequate individual wastewater transmission and disposal facilities, as determined by the County of Hawai'i Department of Public Works (DPW) and the State Department of Health (DOH).”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 12:

“Petitioner and its successors prior to any construction activities, including grading or grubbing, shall consult with the Department of the Army (DA) to determine if a DA permit will be required and to ensure compliance of development plans with the Federal Emergency Management Agency.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 13:

“Petitioner and its successors shall provide written notification to all prospective buyers of proposed lots within the proposed subdivision of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District land.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 14:

“Petitioner and its successors shall notify all prospective buyers of the proposed lots within proposed subdivision that the Hawai’i Right-to-Farm Act, Chapter 165, Hawai’i Revised Statutes, limits the circumstances under which pre- existing farm activities may be deemed a nuisance.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 15:

“Petitioner and its successors shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of federal, state, and county agencies.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 16:

“Petitioner and its successors shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by appropriate state and county agencies.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 17:

“Petitioner and its successors shall maintain the Remainder Area in Conservation and subject all development thereof to the approval of the State DLNR.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest. HILT wishes to actively manage the native forest on the entirety of the Property, as there are invasive species present in both the Petition Area and the Remainder Area. The Agricultural District provides greater flexibility for active management of native forest. HILT will work with the State DLNR to subject any forest management activities to the approval of the State DLNR. HILT intends to seek DLNR’s assistance and partnership to complete a Forest Stewardship Plan to fulfill Condition 5, and intends that such Forest Stewardship Plan would be the management plan for the entire Property.

D&O Condition 18:

“Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 19:

“Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest.

D&O Condition 20:

“Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawai'i Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest. Per the requested language in Condition 5, HILT would be required to provide to this Commission the forest management plan within 2 years, and provide reports to this Commission on the progress of the native forest restoration every 5 years.

D&O Condition 21:

“The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion of this condition.

D&O Condition 22:

“Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed by the Land Use

Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion of this condition, and defers to this Commission as to appropriate language.

D&O Condition 23:

“Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawai'i Administrative Rules. All such conditions shall run with the land.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion of this condition.

IV. CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that the Commission grant this motion pursuant to HAR §15-15-70(j).

DATED: Honolulu, Hawaii, September 17, 2020.



SHAELENE K. KAMAKAALA
Attorney for Petitioner
HAWAIIAN ISLANDS LAND TRUST

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Kukuau, South Hilo, Hawaii, Tax Map Key)	
No. (3) 2-4-008-033 (por.))	
_____)	

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct file-marked copy of the foregoing document was duly served upon the following parties VIA ELECTRONIC MAIL and CERTIFIED MAIL at their last known address:

DAWN TAKEUCHI-APUNA, ESQ. Deputy Attorney General Department of the Attorney General 425 Queen Street Honolulu, HI 96813	CERTIFIED MAIL <i>Dawn.T.Apuna@hawaii.gov</i>
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MARY ALICE EVANS, Director Office of Planning, State of Hawai'i 235 South Beretania Street Room 600, Leiopapa A. Kamehameha Bldg. Honolulu, HI 96813	CERTIFIED MAIL <i>MaryAlice.Evans@hawaii.gov</i>
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JOHN MUKAI, ESQ. DIANA MELLON-LACEY, ESQ. Deputy Corporation Counsels Office of the Corporation Counsel Hilo Lagoon Centre 101 Aupuni Street, Unit 325 Hilo, HI 96720	CERTIFIED MAIL <i>John.Mukai@hawaiicounty.gov</i> <i>Diana.M.Mellon-Lacey@hawaii</i> <i>county.gov</i>
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APRIL SURPRENANT Acting Deputy Director County of Hawai'i Planning Department Aupuni Center 101 Pauahi Street, Suite 3	CERTIFIED MAIL <i>April.Suprenant@hawaiicounty.gov</i>
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Hilo, HI 96720

DATED: Honolulu, Hawai'i, September 17, 2020.

Of Counsel:



SHAELENE K. KAMAKAALA
General Counsel for Petitioner
HAWAIIAN ISLANDS LAND TRUST