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TRANSMITTAL

DATE: October 16, 2020
TO: State Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804



FROM:  Liza Osorio, Legal Technician I to
Diana Mellon-Lacey, Deputy Corporation Counsel

RE: Docket No. A99-729 – Hawaiian Islands Land Trust – Amend Conditions of the
Decision and Order

<i>COPIES/ITEMS</i>	<i>DATE</i>	<i>DESCRIPTION</i>
Original and (1) copy	10-16-20	COUNTY OF HAWAI'I PLANNING DEPARTMENT'S RESPONSE TO HAWAIIAN ISLANDS LAND TRUST'S MOTION FOR ORDER AMENDING THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED NOVEMBER 15, 2001; EXHIBIT "A"; CERTIFICATE OF SERVICE

TRANSMITTED FOR:

- | | |
|--|---|
| <input type="checkbox"/> Your information and files | <input type="checkbox"/> Your approval |
| <input type="checkbox"/> Your signature and return | <input type="checkbox"/> Your review and comments |
| <input type="checkbox"/> Your signature and forwarding
as noted below | <input type="checkbox"/> See remarks below |
| <input type="checkbox"/> Per your request | <input checked="" type="checkbox"/> Filing with the LUC |

REMARKS: Enclosed for filing is an original and one copy of the above referenced document. Should you have any questions with regard to the enclosed please do not hesitate to contact our office. Thank you.

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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
HAWAIIAN ISLANDS LAND TRUST to
Amend the Conditions of the Decision and
Order for approximately 885.40 acres at
Kukuau, South Hilo, Tax Map Key No. (3) 2-
4-008:033 (por.)

Docket No. A99-729

COUNTY OF HAWAII PLANNING
DEPARTMENT'S RESPONSE TO
HAWAIIAN ISLANDS LAND TRUST'S
MOTION FOR ORDER AMENDING THE
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER
DATED NOVEMBER 15, 2001; EXHIBIT
"A"; CERTIFICATE OF SERVICE

**COUNTY OF HAWAII PLANNING DEPARTMENT'S RESPONSE TO HAWAIIAN
ISLANDS LAND TRUST'S MOTION FOR ORDER AMENDING THE FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
DATED NOVEMBER 15, 2001**

COMES NOW the County of Hawai'i Planning Department (COH) by and through its
counsel, DIANA M. MELLON-LACEY, and hereby submits its response to HAWAIIAN
ISLANDS LAND TRUST'S MOTION FOR ORDER AMENDING THE FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED NOVEMBER 15,
2001. As stated by Hawaiian Islands Land Trust (HILT) in its motion, the subject property was
reclassified by an action undertaken on the part of the former owner, The Newton Family

Limited Partnership. The property, consisting of approximately 885.40 acres was reclassified from Conservation Land Use District into Agricultural Land Use District, with the intent to develop an agricultural subdivision. The proposed subdivision encountered problems, notably due to zoning and water system issues, and in April 2019, the Newton Family Limited Partnership notified the Commission that it had transferred ownership of the land to HILT.

HILT has informed the Commission of its intent to abandon the former plan for subdivision of the property, and to maintain the land as a community-stewarded native forest. HILT asserts that the Agricultural Land Use District of the Petition Area is the appropriate designation for the activities in which it will be engaged in managing and restoring the native forest. The County of Hawai'i supports the plan espoused by HILT for this property, and concurs that the Agricultural Designation of the Petition area is appropriate for the activities HILT intends to undertake in maintaining the forest reserve. HILT has stated that it will maintain the remaining 760.423 acres in the Conservation Area. HILT plans to manage and restore the native koa and ohia forest on the entire property. To finance this effort, HILT proposes to collaborate with Forest Solutions, Inc. to harvest koa trees, using the proceeds to fund its forest management efforts.

The County of Hawai'i concurs with the relief requested by HILT, with some minor modifications. Regarding **Decision and Order (D&O) Condition 1**, COH concurs with the requested revision that eliminates reference to future subdivisions. The County notes, however, that whatever uses HILT seeks to engage in as part of its program, those uses must conform to the permissible uses enumerated in §205-2(d) Hawai'i Revised Statutes (HRS), or seek a special use permit.

COH concurs with the elimination of the section discussing residential sites and

landscaping in **D&O Condition 2**, but recommends leaving more of the existing language for this condition, given HILT's overt statements regarding logging. COH recommends the ensuing language regarding **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 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.

COH concurs with the deletion of **D&O Conditions 3** in its entirety and agrees with the modified language proposed by HILT regarding **D&O Condition 5**. Based on the prior field survey conducted in the Petition Area, which did not find any archaeological or cultural sites or features, the COH concurs with the deletion of **D&O Condition 7**. COH proposes that **D&O Conditions 8 and 9** be retained, with the following amendments. The last sentence of both Conditions 8 and 9 which reads: **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** should be deleted. COH further proposes that the word **archaeological sites** in

Condition 8 and **archaeological resources** in Condition 9 be replaced with the words **historic and cultural resources**.

COH objects to HILT's proposed deletion of **D&O Condition 10**. The 80-foot right-of-way is on the City of Hilo Zone Map (see Exhibit A), which is part of the zoning code. Absent amendment of the zoning code to delete this future roadway, shown as #36 in Exhibit A, HILT will be required to reserve and dedicate the 80-foot right-of-way. COH recommends deletion of the opening prepositional phrase in Condition 10 that states: **In connection with the subdivision of the Petition Area**, since HILT will not be subdividing.

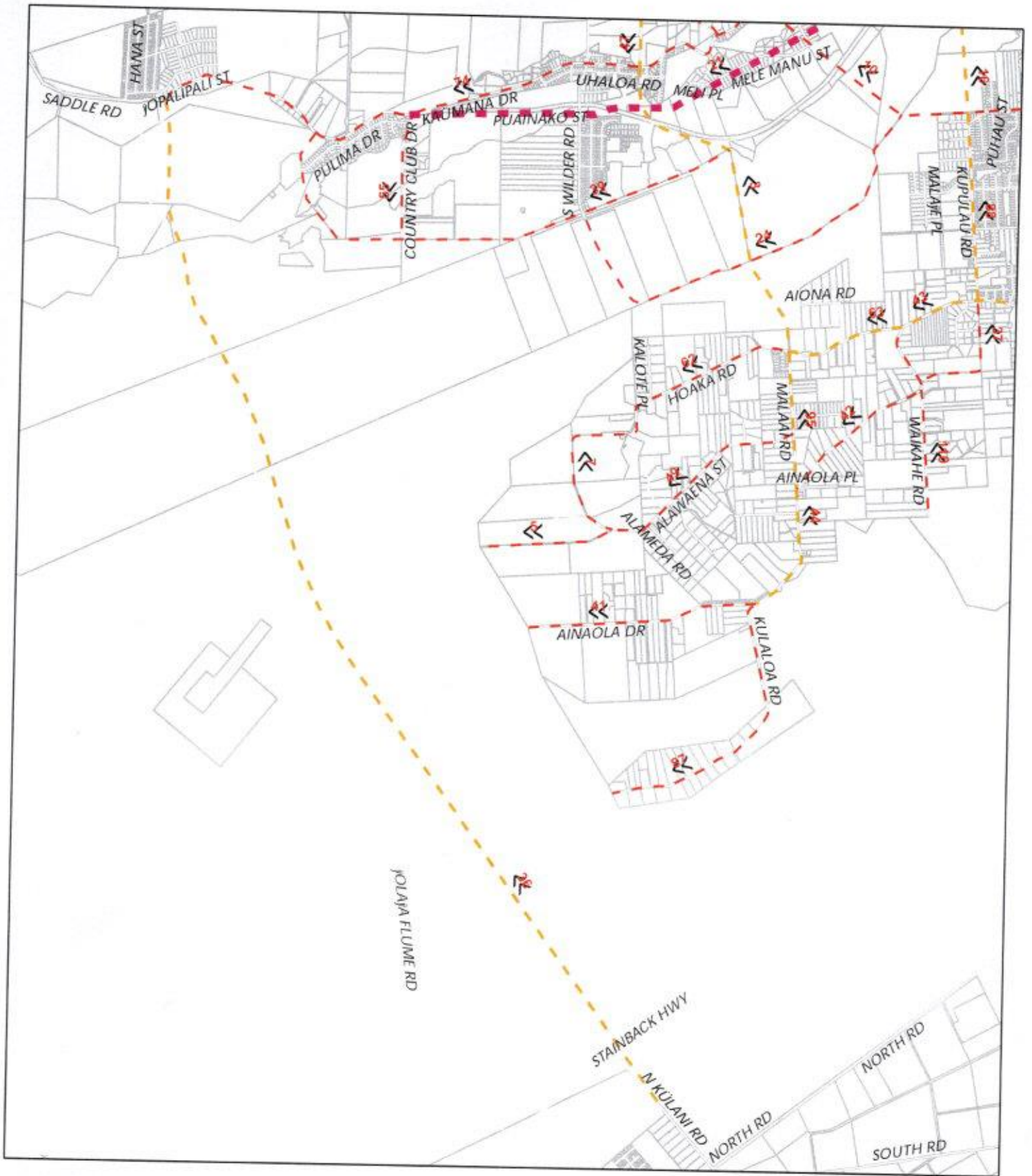
COH requests the addition of a new condition requiring HILT to rezone the property with COH to preclude subdivision. Because the property is currently zoned A-80 acres, 11 lots could potentially be created, although the current D&O restricts that to a maximum of 8 lots. COH requests that the condition be added to change the zoning of the property to A-800 acres within the first year of the adoption of HILT's proposed motion. With the addition of this new condition, **D&O Conditions 11-17** can be deleted, as the requirements regarding wastewater systems, drainage improvements, and compliance with COH flood code can be addressed by instilling conditions addressing these concerns in the rezone ordinance. **D&O Conditions 18 through 23** should be retained, at least for an initial period until the property has been rezoned.

In conclusion, COH supports the plan for the subject property as presented by HILT, and supports HILT's proposed amendments to the Conditions as stated in the Decision and Order of November 15, 2001, with the additions and modifications recommended by COH.

DATED: Hilo, Hawai'i, October 16, 2020.

COUNTY OF HAWAII PLANNING
DEPARTMENT

By 
DIANA M. MELLON-LACEY
Deputy Corporation Counsel



**#36 Proposed 80' R/W Exten. -
Kaūmana City to Puna Boundary**

Suggest to leave this alignment improvement.

EXHIBIT A

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of
HAWAIIAN ISLANDS LAND TRUST to
Amend the Conditions of the Decision and
Order for approximately 885.40 acres at
Kukuau, South Hilo, Tax Map Key No. (3) 2-4-
008: por. 033

Docket No. A99-729

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by mailing the same, postage prepaid, on October 16, 2020:

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Dated: Hilo, Hawai'i, October 16, 2020.

COUNTY OF HAWAI'I

By 
DIANA MELLON-LACEY
Deputy Corporation Counsel
Its attorney