



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

In the Matter of the Petition of

DOCKET NO. A18-805

Kenneth Stanley Church

PETITIONER AMMENDED MOTION

And

THAT THE LAND USE COMMISSION

Joan Evelyn Hildal

(the APPROVING AGENCY)

ACCORDING TO HAR 15-15-22 (f)

To review the State Land Use District

issue a boundary determination for

border location separating the State

Approximately 3.4 Acres Of Land

Conservation District from the State

At Wailea, Island Of Hawaii, Tax

Agricultural District in the area of

Map Keys (3) 2-9-003; 029, 060

Approximately 3.4 Acres of Land which is

identified by the County of Hawai'i as Tax

Map Keys (3) 2-9-003; 029, 060 at Wailea,

Island of Hawai'i (the "Property")

PETITIONERS' AMENDED MOTION FOR A BOUNDARY DETERMINATION

THAT THE LAND USE COMMISSION

ACCORDING TO HAR 15-15-22 (f)

issue a boundary determination for Approximately 3.4 Acres of Land

At Wailea, Island of Hawai'i, Tax Map Keys (3) 2-9-003; 029, 060

This Amended Motion (the "Motion") is intended to be part of Petition A18-805 (the "Petition").

Comes now, Kenneth Stanley Church and Joan Evelyn Hildal, husband and wife (the Petitioner(s)), joint and equal owners of the Property respectfully move the Land Use Commission of the State of Hawaii (the LUC) for a Motion that the LUC:

Determine the State Land use District border location separating the State Conservation District from the State Agricultural District, in the area of the Property, to be the top of the coastal cliff which is variably referred to herein as the coastal cliff, the pali and the bluff. The Property is comprised of approximately 3.4 acres of Prime agricultural (AG) land and is identified by the County of Hawaii as Tax Map Keys: (3) 2-9-003; 029; 060 at Wailea, Island Of Hawaii, *ref., Petition exhibit 10 (2015), County signed subdivision map.*

This Motion is brought pursuant to HAR s/s 15-15-22,,,,,,,,,,,,,

§15-15-22 Interpretation of district boundaries.

(a) Except as otherwise provided in this chapter: (b) (c) (d)..... (e)

(f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines.

Note: The Motion references several **exhibits** to Petition A18-805 and **The Guide to the Petition's** text as all of these documents are already *Official LUC records*.

Particularly the Petitioner(s) original Motion for a Boundary Determination by the LUC, which was filed with the LUC on 02/09/21, has been amended herein in order to reflect new evidence that the Petitioner(s) have found that is believed to be relevant. The new exhibits are the LUC's DR99-21 and the State Office of Planning's written testimony to LUC petition A09 783 and LUC petition A09783 First Amended Lis of Exhibits (which has a number of maps for reference) which 3 added exhibits are now submitted with the Motion. A reference is also made to the County of Hawaii's written testimony to another LUC petition A18-806 for another shoreline property that lays several miles to the south of the Property (*ref., Barry family trust*) but is not exhibited here.

When a reference is made herein to the *1969 Eckbo, Dem1, Austin and Willimns' State Land Use Districts and Regulations Review* it will be referred to as the "Report".

(The Petitioner(s) have provided both the State and County Offices of Planning with the required copies of this Motion also.)

Abstract

At Statehood the Property lay entirely within the State's Agricultural District. Subsequently a study and report was commissioned by the State (the "Report") in order to guide the State's regulators and administrative bodies for **the first** State Land Use District Boundary Review which Report appears to have been published in 1969. The Report is titled "*State of Hawaii Land Use Districts and Regulations Review*"..... and it..... **documented the Commission's process** to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review, ref., DR99-21, APPLICABLE LEGAL AUTHORITIES, #1 .

1. The "*State of Hawaii Land Use Districts and Regulations Review*" **documented the Commission's process** to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized four major conditions and provided recommendations based on these conditions for the Conservation District boundaries. Of relevance here is Condition No. 3, which states:

In cases where the shoreline is bounded by steep cliffs or a pali, the top of the ridge was used (p. 86).

2. The report further documented the Commission's actions with respect to the establishment of the Conservation District boundaries at the shoreline of the island of Hawai'i by stating:

*The steep pali coast of east Kohala is presently within the Conservation District. This district should be extended to include the sandy beach at Waipio Valley and then to include the pali lands of the **Hamakua Coast**, using the ridge top as a boundary line (p. 36).*

The Property lays on the **Hamakua Coast** . Beginning around 1850 the Property was sugarcane production land through 1992. The Property has always been zoned A20-A in the County's functional plan.

Following the State's 1969 Boundary Review SLUD Maps were adopted by the LUC in the 1970's in order to reflect the 1969 Boundary Reviews resulting zoning. Undefined SLUD boundary lines were **drawn** on quadrangle maps in order to reflect the findings and

recommendations of the Report. The Property is located in the **Papaikou** quadrangle, *ref., Petition exhibit 102, Quadrangle map*. The line shown on the **Papaikou** Quadrangle SLUD Map shows the Property to lie entirely in the Conservation District.

Another very similar property, which property lay in the **Papaaloa Quadrangle**, was also shown to lie substantially in the Conservation District on the SLUD Map. The Executive Director of the LUC first **Interpreted** that that property lay partially in the Conservation District. That **Interpretation** was based on the SLUD Map for the **Papaaloa Quadrangle** and which SLUD Map showed a line bisecting the agricultural use area of that property into both the Agricultural and Conservation District. By DR99-21 the LUC ruled.....

*"that the Boundary Interpretation No. 98-36 dated October 29, 1998, and Boundary Interpretation No. 98-50 dated January 12, 1999, **are clarified and corrected** to reflect that the Property mauka of the top of the ridge or pali, approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated within the State Land Use Agricultural District."*

Effectively the SLUD Line's position on the **Papaaloa Quadrangle** map was inconsistent with the Report, the "State of Hawaii Land Use Districts and Regulations Review"..... which.....

documented the Commission's process to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review, *ref., DR99-21, APPLICABLE LEGAL AUTHORITIES, #1 .*

The APPLICABLE LEGAL AUTHORITIES section of DR99-21 stated in its paragraphs numbered 1 and 2.....

*1. The "State of Hawaii Land Use Districts and Regulations Review" documented the Commission's process to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized **four major conditions**(the "Four Conditions")..... and provided recommendations based on these conditions for the Conservation District boundaries. Of relevance here is Condition No. 3, which states:
In cases where the shoreline is bounded by steep cliffs or a pali, **the top of the ridge was used** (p. 86).*

2. The report further documented the Commission's actions with respect to the establishment of the Conservation District boundaries at the shoreline of the island of Hawai'i by stating:

*The steep pali coast of east Kohala is presently within the Conservation District. This district should be extended to include the sandy beach at Waipio Valley **and then to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line** (p. 36).*

Further regarding the Four Conditions, Condition #4 was followed by the text.....

*"In addition, **the Conservation District boundary excluded those coastal areas that were in agricultural use at the time.**", ref., State OP written testimony to LUC petition A09 793, its page numbered 3 which is an attachment to the Motion.*

The Property lies on the **Hamakua Coast**. The District line on the SLUD Map for the Property, which lies in the **Papaikou quadrangle**, is shown to be **inland** substantially from the **ridge top** and divided the Agricultural field, that had existed from the 1850(s) through 1992 into two areas. One area appeared makai of the SLUD Map line and the other field area appeared mauka of the SLUD Map line. Effectively the SLUD Map line did not **exclude those coastal areas that were in agricultural use at the time** in the area of the Property.

This Motion ***requests*** (ref., HAR 15-15-22(f)).....

that the Boundary Interpretation..... No. 92-48 dated December 16, 1992 for an area which includes the Property be....., clarified and corrected to reflect that the Property mauka of the top of the ridge or pali,..... shown on Petition exhibit 10, which exhibit 10 is intended to be..... incorporated by reference herein, is designated within the State Land Use Agricultural District.

This Motion points to DR99-21, various other LUC Official Records and various evidentiary documents, in order to support this Motion that the SLUD Map line in the area of the Property is similarly inconsistent with the "*State of Hawaii Land Use Districts and Regulations Review*"..... which..... **documented the Commission's process** to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review and requests that the LUC Determine that the Property lies in the State's Agricultural District.

BACKGROUND

In 1992 James and Francine McCully, (the "McCully(s)") purchased land described as TMK No.: (3)2-9-03:013, at Wailea, Island of Hawaii, which lay along an area known as ***the Hamakua Coast*** on the windward side of the Island of Hawaii. ***The Hamakua Coast*** is an area comprised of ***Prime Agricultural land*** where sugar cane was produced ***using intensive agricultural practices*** during a period dating from the 1850's through 1992 because ***the soil and the climate*** were particularly suitable for ***the intense production of agricultural ("AG") crops***. In 1992 TMK No.: (3)2-9-03: 013 appears to have comprised 13.6 acres more or less.

(note: throughout the Motion highlighted text, like what is shown above, may reflect language that generally mirrors text found in other exhibits, HRS 205 and HAR 15-15)

The Property is presently the makai portion of the land purchased by the McCully(s). The field area (the "Field") had been in continuous sugar cane production since the mid-1800(s). The last sugar cane crop had just been harvested in the Field when the McCully(s) purchased it in 1992 and it lay barren with open soil areas and remaining scattered cane debris.

The Field lay between the present day Coastal Highway, mauka, and the Pacific Ocean, makai, *ref., Petition exhibit 22, field map F31B*. The Property comprises about 3.4 acres of that 13.6 acres. The agricultural ("AG") use of the 13.6 acre Field extended right up to the Field's makai boundary where a ***narrow band of trees*** lined the top of the ***coastal bluff (cliff)*** which ***bluff*** led down to the Pacific Ocean below and which area was State owned land. The bluff averages around 100 ft. in height, it is steep. No beach area exists. Rather the Pacific Ocean's waves overwash various patches of intermittent boulder fields at the base of the cliff, *ref., Petition exhibit 99 photo(s) and Petition exhibit 70 which is a historical photo looking north along the shoreline at the Property*.

A former railroad ("RR") crossed TMK No.: (3)2-9-03: 013 north-south. The RR separated the area of the Field into 2 areas of AG use. 7.5 acres lay mauka of the former RR and 3.2 acres lay makai more or less, *ref., Petition exhibit 22, field map F31B*. After the closing of the RR around 1948 the RR area was purchased by the cane agribusiness and was used as a field road. The 3 RR lot areas comprised 2 acres more or less, *ref., Petition exhibit 51, County letter*. The acreages of land quoted above vary depending whether the reference is to a legal lot of record size vs. referenced field map area sizes. This is likely because the RR lots were 60 ft. wide but the field area bordered into the RR lots as a narrower portion was used by the RR.

In the late 1970's the State adopted its ALISH mapping system and LSB classification system. The Field area is classified as Prime AG land, class C defining that it has the **capacity** for the ***intense production of agricultural crops***.

The Field originally comprised several legal lots of record between the **old Coastal Highway** at Wailea, mauka, and the Pacific Ocean, makai, *ref., Petition exhibit 22, field map F31B*. First a RR divided the field and later the **new Coastal Highway** divided it again. Resultingly, what the Petitioner(s) believe, were 4 legal lots of record, that were treated by the cane farming operation as a single field F31B comprising 29.65 acres, *ref., Petition exhibit 22, field map F31B and Petition exhibit 107, a 1905 field map*.

During the due diligence period, immediately before purchasing TMK No.: (3)2-9-03: 013 in 1992, the McCully(s) discovered that TMK No.: (3)2-9-03: 013 was comprised of 10 legal lots of record that resulted from the 1917 RR right of way and later the new Coastal Highway crossing the former cane field. The McCully(s) applied that the County of Hawaii assign TMK numbers to 7 of the legal lots of record in their purchase area of TMK lot 013. The former RR lots were deemed to be unbuildable lots by the County in the 1990's. The RR lots were assigned to be part of each of the 3 makai ocean-side lots, *ref., Petition exhibit 51, County letter*. Over time the McCully(s) sold all 7 of the buildable lots in the subdivision. There were three ocean-side lots. The ocean-side lots were purchased by the Petitioner(s) in 2014.

Only one entrance exists from the coastal highway which serves the subdivision's present lots. The cane agribusiness had restricted access to the Field for many years as they used this particular Field area for developing new, improved, cane because topographical characteristics of the Field area provided a natural barrier that restricted casual public access, *ref., Petitioner(s) interview with John Cross, the former field manager to 1992.* The McCully(s) installed security gating blocking public access to all of the lots with the exception of a commercial greenhouse operation which lays at the only access point to the present day new Coastal Highway. Today 3 residences exist in the subdivision and a fourth is under contract for construction.

After purchasing the property in 1992 the McCully(s) subsequently built a ***farm dwelling*** and a large commercial orchid greenhouse on the lot which was the access point to/from the new Coastal Highway. That greenhouse operation continues to employ several people today. Regular commercial traffic visits the greenhouse operation daily. The southern most makai Oceanside lot became **what is presently described** by the County as TMK No.: (3)2-9-03: 013. The remaining two makai lots became TMK No.: (3)2-9-03: 029 and 060, *ref., Petition exhibit 51, County letter..* TMK No(s); (3)2-9-03: 029 and 060 comprise the present day area of the Property.

In 1992 the McCully(s) applied to the LUC for a Boundary Interpretation for the 7 TMK lot subdivision. In a letter to James McCully, dated December 16, 1992, the Land Use Commission's Executive Officer issued **Boundary Interpretation 92-48** for the 7 TMK lots in the subdivision, *ref., Petition exhibit 18.* Effectively the 3 makai ocean-side TMK lot ***parcels***, which 3 TMK lot ***parcels*** included the RR right of way lots, which crossed them north-south, were ***interpreted*** to lay entirely in the State's Conservation District. The 4 mauka lots were ***interpreted*** to lay in the State's Agricultural District.

In 2014 the Petitioner(s) purchase the 3 makai ocean-side TMK lot ***parcels***. The 3 lots were open and had been maintained in field grasses since 1992 with very modest AG plantings variably thereon. After purchasing the 3 TMK parcels the Petitioner(s) met with

the LUC's administrative staff in Honolulu to inquire the basis for the LUC's Boundary Interpretation 92-48. Staff stated that Boundary Interpretation 92-48 was because the Official State Land Use District Map (the "SLUD Map") had a line on it indicating the division between the Conservation and Agricultural SLUDistricts. The lots that the Petitioner(s) had just purchased lay makai of the apparent district line on the SLUD Map.

To be clear the Petitioner(s) were aware of the apparent Conservation District zoning when they purchased the land but they were also aware that a historic cane agribusiness had continued to use the land for AG following its apparent Conservation District zoning. The Petitioner(s) had met with the former cane field manager who stated that the DLNR did not interfere in any way with their use of the land for cane production at any time. The Petitioner(s) had also read HAR 13-5 and reasoned that their use of the land for AG would not also be unreasonably resisted by the DLNR. The Petition and the Motion evidences that the DLNR appeared to strongly resist the Petitioner(s) use of the land for AG and uses incidental and accessory to the AG use.

At Statehood the top edge of the coastal cliff, which appeared generally as a ***narrow band of trees*** that lined the *top of the coastal cliff*, marked the Property's makai boundary (the "Boundary"). It was described in official records to be the dividing line between the State's Conservation and AG Districts at Statehood. This is confirmed in testimony to the LUC during the McCully(s) Petition A05 757 and in the Report.

In 1969 the State conducted its first boundary review based on the Report. Resultingly the LUC adopted the SLUD Map around 1974 which was based on the State and County's recommendations to the LUC. The Petitioner(s) note that the LUC relied heavily on the research that was conducted by the State and County Office(s) of Planning's and their resulting recommendations to the LUC following the 1969 first Boundary Review. The following is a copy of relevant text which is shown on the State OP website...

"LAND USE DIVISION

To "preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare." See L. 1961, c 187, § 1.

*The Office of Planning is required to appear before the State Land Use Commission to represent the state's interests in matters related to District Boundary Amendments, Special Permits, and Important Agricultural Lands (IAL). **The Commission relies heavily on the position of the parties in matters before it, including that of the county and the Office of Planning.***"

Following the recommendations of the State OP the LUC adopted the SLUD Map which showed an undefined line on it that appeared to indicate that the Boundary, in the area of the Field, had moved inland to the mauka boundary of the former RR. Effectively the SLUD Map showed the AG use area of the 13.6 acre Field to be bisected with 4.6 acres of land, that was in ***intense production of agricultural crops***, appearing to lay in the Conservation District and 9 acres that was also in ***intense production of agricultural crops*** to lie in the State AG District.

The above described line on the SLUD Map, which divided the field into two SLUDistricts, appears to be in a location which is in conflict with the guidelines that were used in support of the State Office Of Planning (State "OP") for the first, 1969 State Boundary Review which resulted in the 1974 SLUD Map. The State OP relied on recommendations made in the *1969 Eckbo, Dem1, Austin and Willimns' State Land Use Districts and Regulations Review* (the "Report") when the State OP completed its first Boundary Review in 1969 and subsequent recommendations to the LUC for adoption of the SLUD Map.

The stated intention of the Commission following the 1969 boundary review and the Report was to extend the Conservation District *"to include the pali lands of the Hamakua Coast, using the **ridge top** as a boundary line"*. This is further described in the attached State OP written testimony to the McCully(s) petition A09 783 on its page bearing the page #3.

The Property is located in an area that is described as the ***Hamakua Coast***. While the above quote indicated the State's intention, it was not reflected correctly on the SLUD Map in the area of the Property. This was understandable since the map scale of 1 inch - 2,000 feet reveals only limited details of the land's characteristics or the location of the

"ridge top" and the regulators, at that time, were dealing with an enormous task for the first time.

Particularly, as it relates to the Property, the Report describes on its page 86....

*"Recognition that the shoreline is a zone rather than a line has been the basis for recommending that the designation of the Conservation District be inland from the 'line wave of action' at varying distances related to topography and other use factors."
(F.ckbo et al, 1969, pg.86)*

"Four major conditions were used in preparing the new Conservation District boundaries in shoreline areas:"

Condition #1

*"Where a plantation road, farm road, access way or public road exists **at the edge of the agricultural use** within reasonable proximity to the shoreline, it was used as the boundary between the Agriculture and Conservation Districts."*

This does not apply to the Property. The former RR lots went through the middle of the field and were not **at the edge of the agricultural use**

Condition #2

*"Where a vegetation line such as a windbreak or **row of trees** more clearly marks the edge of the agricultural practice, **this was used.**"*

This does apply to the Property but **was not used**. The agricultural practice extended all of the way to a narrow **row of trees** at the top of the coastal bluff.

Condition #3

*"In cases where the shoreline is bounded by steep cliffs or a pali, the **top of the ridge was used.**"*

This does apply to the Property but **was not used**. The existing agricultural practice extended all of the way to the **top of the ridge**.

Condition #4

"Where no readily identifiable physical boundary such as any of the above could be determined, a line 300 feet inland of the line of wave action was used." (Eckbo et al, 1969, pg. 86)"

"In addition, the Conservation District boundary excluded those coastal areas that were in agricultural use at the time."

Condition #4 appears to have been what was generally intended to be applied but no existing site specific land use investigation occurred nor was it applied. The Property was **in agricultural use at the time**. Clearly if a *specific site inspection* of the Property had occurred the SLUD Map would have shown the Property to lay mauka of the SLU Conservation District line as the Property's use for AG would have been obvious to the **inspector** and the Report required that it be zoned AG.

There exist further hard evidence that no **site inspection** of the Field ever occurred when the SLUD Map was adopted, *ref., exhibit 2, McCully(s) 2005 Petition A05 757 hearing transcript, **testimony of Laura Thielen, the director of the State Office of Planning**, beginning on its page 120, lines 6-10.....*

"But until that happens the reality is we're dealing with many areas of classification where there was not an independent analysis saying that this land belongs in this classification because of the attributes of this physical property."

Had..... *an independent analysis saying that this land belongs in this classification because of the attributes of this physical property.....* ever occurred, in the case of the Property, **the Conservation District boundary**..... line on the SLUD Map would have..... **excluded**..... the Field's makai lots because those lots were..... **in agricultural use at the time**. Effectively the more labor intensive, time consuming and expensive task of doing..... *an independent analysis saying that this land belongs in this classification because of the attributes of this physical property.....* would have resulted that the OP's recommended line on the SLUD Map in the area of the Field would have remained at the top of the coastal cliff as it was at Statehood. Again for reference the following is a copy from the State OP website...

"LAND USE DIVISION

To "preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare." See L. 1961, c 187, § 1.

*The Office of Planning is required to appear before the State Land Use Commission to represent the state's interests in matters related to District Boundary Amendments, Special Permits, and Important Agricultural Lands (IAL). **The Commission relies heavily on the position of the parties in matters before it, including that of the county and the Office of Planning.***"

Rather shortcuts and errors occurred in the preparation of the OP's recommendations to the LUC regarding its proposed rezoning recommendations and HRS 205-2 and HAR 15-15-22 provided remedies to correct such errors so it was likely less of a concern to the Administrators at that time. This Motion is a **request**, according to HAR 15-15-22(f), that the LUCCommissioners correct the error just like it did in LUC DR99-21. We don't know why the line was moved inland which bisected the AG use area into 2 separate areas. There is no official record that the matter was ever considered, the evidence is that it was not. Without a doubt the line on the SLUD Map did not **exclude those coastal areas that were in agricultural use at the time** in the area of the Property and also variably along the Hamakua Coast. The SLUD Map's line is just an undefined line on a map that is subject to further **Interpretation** as to where the legal boundary, according to the law, actually is located.

Further evidence is that the County's General Plan, at that time, did show the general area of the Field to also be bisected by both its "Open" and "AG" districts. The County's representative, Norman Hayashi, to the McCully(s) petition A05 757 testified considerably what the County planners thinking at the time was. Particular relevance was made by Mr. Hayashi it its General Plan District line which is exhibited in *Petition exhibit 3, Norman Hayashi, County Representative, testimony to the LUC petition hearing A05 757, page 86, lines 11-18.....*

*"I just want to make the clarification regarding the Petitioner's exhibit, Exhibit 12. Although these are maps that were drawn on our, the county's GIS system they should be used for planning purposes only. **It's not site specific as to the boundary, location of the boundaries.**"*

These maps were originally drawn and the database came from the State Office of Planning."

The County's thinking at the time was recently described Feb., 2021 more broadly in its written testimony to LUC petition A18-806, Barry Family Trust. The County described that at Statehood shoreline land was not zoned for any particular form of protection. The County desired an added level of control for the development of shoreline land. Therefore the County described, in its General Plan, that shoreline lands be "Open". This was meant to add an added level of review to the development of shoreline land.

The County's written testimony went on to describe that the subsequent adoption of the SMA laws and rules provided that protection and therefore further protection by the State was no longer warranted in all cases and resulting the County indicated its support for the Barry's petition to rezone their land Agricultural rather than Conservation. Like the Barry's land and the land considered in DR99-21 the Property was also shown on the SLUD Map to be Conservation by the time the SMA laws and rules were adopted. It is further noteworthy, in this regard, that the State and County's Offices of Planning did support that all 3 lands described above be rezoned back to AG.

It is also noteworthy that today the Property is fully developed AG use land. It has a residence, a large AG use Storage and Processing structure. An orchard and field crops. All structures and uses were approved by the DLNR and the County, however the general use of the Property for AG has never been formally Allowed by the DLNR and uncertainty remains.

The APPLICABLE LEGAL AUTHORITIES section of DR99-21 stated in its paragraphs numbered 1 and 2.....

1. The "State of Hawaii Land Use Districts and Regulations Review" documented the Commission's process to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized four major conditions and provided recommendations based on these conditions for the Conservation District boundaries. Of relevance here is Condition No. 3, which states:

*In cases where the shoreline is bounded by steep cliffs or a pali, **the top of the ridge was used** (p. 86).*

2. *The report further documented the Commission's actions with respect to the establishment of the Conservation District boundaries at the shoreline of the island of Hawai'i by stating:*

*The steep pali coast of east Kohala is presently within the Conservation District. This district should be extended to include the sandy beach at Waipio Valley **and then to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line** (p. 36).*

While DR99-21 only ordered that the SLUD Map for the ***Papaaloa quadrangle*** be changed it is argued by the Petitioner(s) that it should also be applied to the SLUD Map in the area of the Property. The Property also comprises **the pali lands of the Hamakua Coast**, and therefore **using the ridge top as a boundary line** is appropriate also.

Particularly no Petition for a boundary amendment was necessary for Declaratory Order DR99-21. Rather the line on the SLUD Map was not the final authority but rather the Commission Determined, according to HAR 15-15-22(f), that the correct SLUD boundary's location was its former location at Statehood which was the top of the cliff.

Similar to the Petitioner(s) property that property was also.....

- coastal, and
- had a historic use for cane production, and
- had an ALISH and LSB class of "C", and
- was initially zoned AG by the State at Statehood, and
- had always been zoned AG by the County in its Functional Plan,
- first *Interpreted* by the LUC to lay in both the State's AG and Conservation Districts as a result of the SLUD Map.

Leading up to DR99-21 the LUC's Executive Officer first issued 2 *Boundary Interpretations* based on the line on the SLUD Map which line appeared substantially

inland of the ***top of the ridge***. The property owner applied that the Commission consider the *site specific* characteristics of the land, its history of AG production and the Report. The Commission issued DR 99-21 that the SLUD Map be amended to reflect the ***top of the ridge*** be the SLUDistrict line, which was its location at Statehood. In that petition the LUC agreed with the land owner that the ***top of the ridge was*** the correct location of the SLUD boundary citing the 1969 Report **and** HAR 15-15-22 (f) as the supporting Rule.

Resultingly the LUC issued Declaratory Order DR99-21 that the SLUD line on the SLUD Map be moved makai to the ***top of the ridge*** and the LUC *Determined* that the property lay in the AG District. No formal Petition for a District Boundary Amendment from Conservation to AG was required. Simply an error in the map was identified and rectified.

The Petitioner(s) also cite HAR 15-15-22(f) in support of the Motion and the Property's.....

- *site specific* characteristics, and
- its initial zoning in the SLUD AG District at Statehood, and
- the County's AG zoning, and
- the Property's ALISH and LSB rating as Prime and Class "C", and
- the Property's history of *intense production of AG crops*.

The evidence is that the District Line, which appears on the SLUD Map as an undefined line, cannot be strongly applied to District Boundary Interpretations. Rather all of HAR 15-15 and HRS 205-2 have to be applied and further consideration to the Report's Four Conditions be examined and applied when making Boundary Interpretations by the LUC's Executive Officer and if applied for according to HAR 15-15-22(f) by the Commissioners.

Further regarding Official Maps and lines on maps.....

(Particularly the Petitioner(s) state that the evidence is clear that random lines drawn across official maps cannot be the final authority that is relied up to *Interpret* a SLUD boundary. This is a central theme that is developed in the Motion and is argued by the Petitioner(s) to be considered by the LUC to be particularly relevant to this Motion).....

HAR 15-15 makes it very clear that the Official Map is not the final authority or the instruction 'Except as otherwise provided in this chapter' would not be found at the beginning of HAR 15-15-22's Rule or throughout the District Boundary subchapter of HAR 15-15 which begins at HAR 15-15-17 (which is not prefixed with the instruction 'Except as otherwise provided in this chapter').

The LUC's web site has a maps section which clarifies that the LUC's Official SLUD Boundaries Map is not the final authority. That maps section of the LUC's web site is prefaced with the following.....

"A variety of maps generated by our State Geographic Information System (GIS) showing State Land Use District boundaries for individual islands, selected district boundary amendments by docket, selected State Special Permits by docket, and Important Agricultural Lands (IAL) declaratory rulings by docket.

These maps were produced by the Land Use Commission (LUC) for informational purposes only. These maps and all the information contained within shall not be used for Interpretation. The authoritative boundary lines between State Land Use District Boundaries are found on the official U.S.G.S. quadrangle maps currently filed at the LUC and may be further defined by officially-recognized LUC Boundary Interpretations supported by metes and bounds descriptions."

- The SLUD Map shows an undefined boundary line which **appears** to show the Property lies in the State's Conservation District.
- The County planners thinking at the time is exhibited in *Petition exhibit 3, Norman Hayashi, County Representative, testimony to the LUC petition hearing A05 757, page 86, lines 11-18.....*

*"I just want to make the clarification regarding the Petitioner's exhibit, Exhibit 12. Although these are maps that were drawn on our, the county's GIS system they should be used for planning purposes only. **It's not site specific as to the boundary, location of the boundaries.**"*

These maps were originally drawn and the database came from the State Office of Planning."

Significant to this Motion, until 1992, it was un**determined** (not yet "Interpreted") by the Executive Officer of the LUC) whether the Property lay in the State AG District or the

State Conservation District. While the SLUD Map did exist since at least 1974, HAR 15-15's Subchapter 2 required that an *Interpretation* by the Executive Officer of the Commission or, if *'uncertainty remained'*, a *Boundary Determination* by the LUC's Commissioners first apply all of the LUC's Chapter 15's Rules, HRS 205-2 and the Report and relevant written and verbal testimony to the LUC (which *are Commission records*) and not just HAR 15-15-22 (a) (1) which refers to the district line on the SLUD Map.

In 2014 the Petitioner(s) purchased TMK No.: (3)2-9-03: 013 and TMK No.(s): (3)2-9-03: 029 and 060 from the McCully(s), a total area of 4.6 acres. Subsequently the Petitioner(s) applied to both the Department of Land and Natural Resources ("DLNR") and the County to combine and resubdivide the 3 TMK lot **parcels**, which each comprised 2 legal lots of record, into 3 legal lots of record. Effectively the former RR lots were eliminated. Subsequently the Petitioner(s) sold TMK No.: (3)2-9-03: 013 to an unrelated party as it was surplus to their needs.

Subsequently the Petitioner(s) have developed TMK No.: (3)2-9-03: 029 and 060, 3.4 acres) as an AG use property with a residence, a 720 sq. ft. AG use storage and processing structure, orchard species and field crops. The Petitioner(s) encountered enormous difficulty in securing permits and approvals from the DLNR for their AG uses and uses *Incidental and Accessory* to AG. Uncertainty remains whether the Petitioner(s) AG use has been **Allowed** by the DLNR. While HRS 183C and HAR 13-5 appear to allow that the Petitioner(s) may resume AG use on the Property the DLNR has strongly delayed and resisted such use. This is described in considerable detail in Chapters 1, 3 and 6 of the Petitioner(s) Guide to the Petition which is on file with the LUC.

In the time-line forward from Hawai'i Statehood, the adoption and/or forming of the State's Constitution, its HRStatutes, its HARules, its Agencies, its Commissions, the Department of Land and Natural Resources (DLNR), State and County Planning Offices, Land use Districts (including Official Maps, characterization of soils etc.) and State and County Plans (both Functional and General), the importance of agriculture (AG) and its preservation and promotion throughout the **State's political subdivisions** has always

been emphasized to receive a very high priority by the State and County's administrative bodies.

Hawai'i State's Constitution's *section 11.3 Agricultural lands*.....

*“The **State** shall conserve and protect agricultural lands, **promote** diversified agriculture, increase agricultural self-sufficiency and assure the availability of Agriculturally suitable lands.”*

and *ref., Article XI, Section 1, Constitution of the State of Hawaii*.....

*“For the benefit of present and future generations, the **State and its political subdivisions** shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.”*

HRS 205-2 resulted to effectuate the purposes of the State's Constitution

***HRS §205-2 Districting and classification of lands.** (a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group **contiguous***

The Property is **contiguous** to other AG land mauka and one other legal lot of record to the south. The present day configuration of the Property is 3.4 acres.

The Field area that lay makai of the Coastal Highway extended all of the way makai of the Coastal Highway to the top of a steep coastal cliff/pali property comprising a narrow band of trees along the official makai Property boundary. The State owned the area of land extending from the top of the coastal pali (the "Bluff") down to the high wash of the waves some 100 ft. below (the "Bluff Property"). At Statehood the entire area of the Property lay in the State Agricultural District. The Bluff Property was owned by the State and is located in the Conservation District.

In a period beginning in the 1960(s) the State conducted its first Boundary Review and resulting Official State Land Use District Boundary Map (the "SLUD Map"). In 2014 the Petitioner(s) purchased the 4.6 acres (comprised of 6 legal lots of record) from the McCully(s). The Petitioner(s) combined and resubdivided the 6 lots into 3 lots by eliminating the former railroad right of way lots. The Petitioner(s) subsequently sold a

single 1.232 acre lot, TMK (3) 2-9-003: 013 (the "South Lot") to an unrelated party.

Continuing with HRS 205-2.....

... land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

(1)urban districts;

(2).....rural districts.....;

(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation;

This is a mandatory stipulation, the Property does have a **high capacity for intensive cultivation** The Property is classified in the ALISH classification system as **Prime**.

Particularly the word **capacity** refers to a characteristic of land and not a past, present or future use. AG **capacity** of land is irrelevant to whether the actual use, at any particular time is paused. Also the term **greatest possible protection** when zoning land AG implies that the AG zoning of such land is of **greater priority** than Conservation zoning.

and,,,,,,,,,,,,,

(4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

"shall give consideration" does not imply a *mandatory* requirement that anything more than consideration be given.

The Motion evidences that it appears that when the State and County conducted the 1969 Boundary Review and developed the first SLUD map, and the LUC adopted it, certain mandatory requirements of HRS-2 were relied upon but other mandatory requirements were not always applied. Also the four Conditions in the Report, which were described

earlier, also were not applied.

The Petitioner(s) have found that the historical record of land use studies and resulting State laws sought to protect agricultural ("AG") land for AG and not for other purposes. HRS 205 specified that even the Conservation District was to be subordinated to AG if the land had a "high capacity for intensive cultivation" unless there existed a very compelling State or County need.

HRS 205-2(3) is subsequently reflected in the LUC's HAR 15-15-19.....

*"Standards for determining "A" agricultural district boundaries. **Except as otherwise provided in this chapter**, in determining the boundaries for the "A" agricultural district, the following standards shall apply:*

*(1) It **shall** include lands with a high **capacity** for agricultural production;"*

In 1977 the Land Use Commission ("LUC") adopted the Agricultural Lands of Importance to the State of Hawaii (the "ALISH Map") of land. The Property is shown on the ALISH map and the LSB maps to be Prime AG land Class C.

While the various Hawaii Statutes and Rules do allow administrators to rezone land, a high bar was set in the Statutes and Rules before SLUD amendments were to be made but always the "greatest possible protection", in zoning considerations, was to favor AG. In effect **AG zoning was given a higher priority than Conservation zoning**, *ref.*, HRS 205-2 (3) quoted earlier. This was further the case in the described DR99-21.

The McCully(s) petitioned the LUC, first A05 757 and again A09 783 to rezone the 3 Oceanside, makai lots from the State's Conservation District to the State's AG District. Petition A05 757 was supported by both the State and County Offices of Planning but it was narrowly denied by the LUC. Petition A09 783 was withdrawn by the McCully(s) before being heard by the LUC Commissioner(s). The McCully's petition(s) did not point to the Report and a belief that the petitioned land appeared incorrectly on the makai side of the SLUD line on its ***Papaikou Quadrangle*** Map.

In summary rezoning of the Property, if , in fact, it actually legally occurred following the first Boundary Review in 1969, it conflicts with the laws, rules and the above referenced Report.

The Petitioners are aware that Conservation Districting of land does not preclude Prime AG land use for AG. The DLNR's Rules, HAR 13-5, lists AG as an **allowable** use. An added layer of seeking permission for **allowed** use or conditional permitting is provided for in the DLNR's laws and rules. Nonconforming AG use of land is also provided for HAR 13-5-7 however HAR 13-5-6 (d) requires an approval *is first obtained from the department.....*

(d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

Seeking to be **allowed** nonconforming AG use of historic AG use land was never intended by the lawmakers to require years of submitted applications, additional filing fees, costly studies and continuing delays and uncertainty which has been the case regarding the Petitioner(s) uses of the Property for AG yet that is exactly what has happened. The Guide to the Petition's chapters 1 and 3 and 6 clearly evidence that viable AG use of the Petitioner(s) Property is not possible in the Conservation District.

Chapters 1 and 3 and 6 of the Guide to the Petition describe and refer to referenced evidence that, in the case of the Petitioned Property, its use for AG, whether **allowed** or **allowable** was strongly resisted by the DLNR despite the facts that

1. it had been in the intense production of AG since a period beginning the mid-1850(s),
2. the DLNR was aware that the Property also qualified for the resumption of AG use as a nonconforming use,

3. it had a high capacity for intensive cultivation,
4. the DLNR had allowed other historically AG used lands to be resumed in AG production without formal permit requirements,
5. it did not lie contiguous to the high wash of the waves,
6. there existed a substantial State owned ocean-side bluff property that lay between the Property and the Pacific Ocean,
7. the Property is and was first zoned AG by both the State and the County,
8. subsequent to the first Boundary Review, late in the 1960(s), the Property appeared on the SLUD Map to have been rezoned into the Conservation District,
9. AG production appeared to have been provided in the Conservation District rules to be **allowed** to continue without any formal permit from the DLNR being required,
10. the DLNR's rules provide a very large administrative difference in form of application, fees, EA's etc. between land uses that are ***allowed*** vs. ***allowable***, in fact Commercial use of AG land even requires the highest order of EA which includes public hearings,
11. an ***allowed*** use is one that only requires that an ***approval*** is obtained..... "HAR 13-5-6 (d) No land use(s) shall be conducted in the conservation district unless a permit or ***approval*** is first obtained from the department or board",
12. former land uses, before Conservation zoning, were intended to be ***allowed*** to continue without a formal conditional DLNR permit being required according to HAR 13-5-7's nonconforming use rule, however an ***approval*** must *first be obtained from the department*,

13. the Property continued in the production of sugar cane crops continuously from the 1850(s) through 1992 without any formal **approval** from the DLNR that such use was **allowed**,
14. in 2014 the Petitioner(s) purchased the Property and began to develop/resume its AG use using the DLNR's more formal permitting process,
15. the Petitioner(s) submitted various applications and requested **approvals** and **determinations** to the DLNR for AG uses and uses incidental and/or accessory to the AG use of the Property for a period measured in years without a final resolve to the application,
16. the Guide to the Petition Chapter 1, pages 7-9 evidence that the DLNR's OCCL was very well aware that the Petitioner(s) nonconforming AG use of the Property should have been **allowed** yet it took over 2 years, fees, hundreds of pages of submitted application text and in the end, the evidence is, that the only **applied** for nonconforming AG use that was ever formally **allowed** by the DLNR was *resumption of the growing of sugar cane* which was never **applied** for by the Petitioner(s), *ref., Petition exhibits 40, 52, 53, 54, 55, 72, 73, 74, 75, 76 and 77,*
17. after suffering numerous delays, costs, indeterminate results, over a period measured in years, hundreds of pages of submitted **application** text, repeated studies, the Petitioner(s) have come to the conclusion that the Property's use for AG and uses incident and/or accessory to AG has been severely restricted resulting from the Conservation Districting to the point that **viable** AG use of the Property is not legally possible so long as the Property is held to lie in the Conservation District and uncertainty remains,
18. through this Motion the Petitioner(s) seek that the Property's zoning status be the AG District in order to harmonize its use and its zoning and to secure the Petitioner(s)

investments in the Property and eliminate any confusion that may exist and to bring the Property's zoning into alignment with the Report,

19. the Property has always been zoned A20-a by the County,

The Petitioner(s) seek to.....

- harmonize the Property's AG use with (1) its County zoning, (2) with its characteristics and resources, (3) with its State District zoning, and in conformance to the Report,
- legally and clearly establish and secure the Property's use and uses incidental and/or accessory to the AG use to be consistent with both State and County zoning and the Report,
- secure the Petitioner(s) investments in AG and eliminate continuing confusion regarding its State zoning status,
- eliminate uncertainty for the Petitioner(s) and confusion for everyone.

New information is presented throughout this Motion that warrants further consideration for the Boundary Interpretation of the Property's zoning by the commission, upon written application or upon its own motion, shall determine the location of those district lines according to all of HAR 15-15 and HRS 205-2. The Petitioner(s) did file a *written application* with the LUC in **June of 2020** that the *commission determine the location of those district lines* however that request has not been scheduled to be heard. Therefore the Petitioner(s) have filed this Motion for the LUC's consideration.

HAR 15-15-22 first states.....

§15-15-22 Interpretation of district boundaries.
 (a) **Except as otherwise provided in this chapter:**

The above rule points to all of HAR 15-15 which in turn points back to HRS 205-2...

§205-2 Districting and classification of lands. (a) *There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable*

for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

(1) urban districts (2) rural districts.....

(3) In the establishment of the boundaries of agricultural districts the **greatest possible protection shall be given to those lands with a high capacity for intensive cultivation**; and;

(4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

HRS 205-2 (3) makes it clear that when the LUC establishes the boundaries of agricultural districts the **greatest possible protection shall be given to those lands with a high capacity for intensive cultivation**. No other Districting of land priority was to be given a higher priority, **not even Conservation**.

Capacity is a quality of the resources of the land and not a past, present or future use.

The evidence is that the Property was first zoned AG following Statehood. It was only after the 1969 Boundary Review that the SLUD Map appeared to show the Property to lie in the Conservation District.

In 1977 the LUC adopted the ALISH map which showed the Property to be **Prime** AG land.

Comes now the Petitioner(s) with additional information that appears not to have been considered by the Executive Officer of the LUC in 1992 when he issued Boundary Interpretation #92-48 and the more recent Declaratory Order DR99-21 and the Barry petition that the Petitioner(s) have pointed to herein.

- *Petition exhibit 22, field map F31-B and Petition exhibit 107, a 1905 field map* both show the area of the Property to be in AG use. It is a fact that the Property was used intensively for AG production through to 1992 and *Petition exhibit 23, letter from John Cross, the former field manager, which describes the AG use of the Property.*
- *Petition exhibit 85, ALISH map* shows the AG resources of the Property to be **Prime** and *Petition exhibit 83, ALISH definition of Prime*

"Land which has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods."

- Petition exhibit 10, a County stamped 2015 survey map of the Property,
- Petition exhibit 9, a meets and bounds description of the Property,
- As discussed earlier herein the Property was part of a large field area. The field was located contiguously mauka of a State owned ocean-side bluff property. Subsequent to the State's first Boundary Review in 1969 the Property appeared on the State's SLUD map to lie in the State's Conservation District. The former RR lots were combined with their respective Oceanside lots in 2014 by the Petitioner(s).
- Following the purchase of the field area that lay makai of the Coastal Highway in 1992, the McCully(s) filled in the former RR with top soil that was harvested from the 4 contiguous lots to the Coastal Highway. Today this additional area also comprises Prime AG land and is part of the Property. Effectively **the Prime AG area of the Property has increased since the 1992 Boundary Interpretation due to the filling in of the former RR land.**
- The State's OP submitted written testimony to the LUC as part of McCully petition A09 783 which, in part, described its reasoning that was applied when the 1969 Boundary Amendment review occurred. The State's OP written testimony was quoted earlier in this Motion and is quoted ***in part*** below again. This Motion describes, with evidence and facts that the State's OP written testimony particularly as it related to the Report **was substantially in error** as applied to the development of the SLUD Map in the

area of the Property. Also verbal testimony to petition A05 757 is quoted earlier herein under the name **Thielen**. Of some relevance the County Offices of Planning testimony is also found in *Petition exhibit 2a, by Norman Hayashi*,

- the cited testimony by Thielen,
- LUC Docket No. DR99-21 Declaratory Order.

In summary rezoning of the Property, **if in fact**, it actually legally occurred following the first Boundary Review in 1969, conflicted with the laws, rules and the above referenced Report. It is a matter of evidence that the Property was in **intense AG production** and the County's zoning, which continues to this day, is A20a. The evidence is that the Property was never inspected and the apparent rezoning does not appear to comply with HRS 205-2, HAR 15-15 nor the Report. It is not consistent with the characteristics of the Property, its historic use for AG and not the State's laws and the LUC's Rules. It is also noted that the LUC relied heavily on the State's representation to the LUC that the Report's analysis described in its **conditions 1-4** for the 1969 Boundary Review was correctly applied.

DATED; Hialeah, Hawaii, March 12, 2021

Kenneth Stanley Church _____

and

Joan Evelyn Hildal _____

The following exhibits, that may be required exhibits to a Boundary Interpretation according to HAR 15-15-22 which are relevant to this Motion, are attached to Petition A18 805 and are already official LUC records and are therefore not required to be attached to this motion according to HAR 15-15-22 (d).....

(d) The executive officer may use all applicable commission records in determining district boundaries..

Additional copies of the print, including a reproducible master map of the print or an electronic copy in a recognized format of the executive officer's designation; and

See Petition exhibit 10, a current County signed subdivision map and exhibit 9, a meets and bounds description of the Property. Electronic copies and hard copies have already been supplied to the LUC and the State and County OP.

Additional information such as, but not limited to, tax map key maps, topographic maps, aerial photographs, certified shoreline surveys, and subdivision maps relating to the boundary interpretation.

The executive officer may employ, or require that the party requesting the boundary interpretation employ, at its sole expense, a registered professional land surveyor to prepare a map for interpretation.

See.....

exhibit 85, ALISH map

exhibit 91, topographical map

exhibit 98, TMK map

re: certified shoreline surveys, the Property is not a shoreline property, there exists a State owned, Oceanside bluff property that lies contiguously makai of the Property.

The Petitioner(s) are aware that exhibit 10's Property map does not mirror the former McCully map, ref., Petition exhibit 18, 1992 Boundary Interpretation map which has been raised previously by the LUC's administration staff. The Petitioner(s) met with another surveyor and requested a new survey. That surveyor said a new survey was unnecessarily and his may would not mirror either the former McCully survey nor the Petitioner(s) survey either. The surveyor advised that each map is a stand alone document and is not required to mirror previous surveys.

List of Books, appendix(s) and Exhibits **Book#**

LUC petition	1
Appendix(s) 1,2,3,4,7,8	2
Appendix 6	2
Exhibit 1 McCully(s) 2005 EA and FONSI	3
Exhibit 2 McCully(s) petition A05 757 transcript Aug. 11, 2005	3
Exhibit 2a McCully(s) petition A05 757 transcript Aug. 12, 2005	3
Exhibit 3 McCully(s) petition A05 757 transcript May 4, 2006	4
Exhibit 4 Petitioner(s) letter to OCCL Sept. 12, 2014	4
Exhibit 5 McCully(s) LUC petition A09 783	4
Exhibit 5a McCully(s) LUC petition A09 783 exhibits	4
Exhibit 6 Petitioner(s) letter to OCCL, Nov. 25, 2014	5
Exhibit 7 Petitioner(s) EA/FONSI for a residence	5
Exhibit 8 Ka Ehu Kai Community Association agreement	6
Exhibit 8a Second amendment to Declaration of Restrictive Covenants	6
Exhibit 8b Declaration of Restrictive Covenants	6
Exhibit 9 Meets and bounds description of South, Middle and North Lots	6
Exhibit 10 County signed subdivision map	6
Exhibit 11 SPA HA 16-4 permit approval	6
Exhibit 12 CDUP HA 3767 Residence approval	6
Exhibit 13 County property tax inspection report	6
Exhibit 14 McCully(s) LUC petition A05 757 transcript Jan. 20, 2015	6

Exhibit 15	CDUP HA 3735 combine and re-subdivide permit	6
Exhibit 16	McCully(s) LUC petition A05 757 transcript Sept. 29, 2005	6
Exhibit 17	LUC Boundary Interpretation 07-19	6
Exhibit 18	LUC letter to McCully(s)	6
Exhibit 19	map showing Conservation District boundary near the Property	6
Exhibit 20	aerial photo, contour map of the Property	6
Exhibit 21	compilation of McCully petition A05 757 minutes	6
Exhibit 22	undated field map F31B found in County files and at sugar cane museum	8
Exhibit 23	Letter from John Cross, former F31B field manager	8
Exhibit 24	Dr. Kwong's long term shoreline erosion analysis for the Property	8
Exhibit 25	aerial photo of the subdivision including the Property	8
Exhibit 26	2014 deed to the Property when first purchased by the Petitioner(s)	8
Exhibit 27	McCully(s) LUC petition A05 757 appeal transcript	8
Exhibit 28	BLNR meeting minutes March 28, 2008, McCully(s) residence, middle lot	8
Exhibit 29	Reed Travel Features tourist article, historic agricultural Hamakua drive	8
Exhibit 30	McCully(s) response to State Office of Planning re: A09 783	8
Exhibit 31	McCully(s) LUC petition A09 783 supplement	8
Exhibit 32	2014 updated botanical study for the Property	8
Exhibit 33	County letter, SMA Permit, structure accessory for the Property	8
Exhibit 34	County letter, SMA determination for a residence on the Property	8
Exhibit 35	OCCL Staff submission to BLNR for Petitioner(s) accessory structure	8

Exhibit 36	Summary of LUC petition A05 757 minutes, January 20 th , 2006	8
Exhibit 37	DLNR Historic preservation review letter, 2004	8
Exhibit 38	CDUA HA 3767 Petitioner(s) residence on North Lot	7
Exhibit 39	LUC letter to McCully(s) May 2010	8
Exhibit 40	Sept. 2015 <u>First formal</u> Request Determination, nonconforming ag.	9
Exhibit 41	OCCL staff recommendation to BLNR, Petitioner(s) residence, North Lot	9
Exhibit 42	BLNR meeting minutes August 28, 2015, approved accessory structure	9
Exhibit 43	2015 OCCL letter to Petitioner(s) rejecting accessory structure application	9
Exhibit 44	BLNR minutes meeting, May, 2014, enforcement unauthorized structures	9
Exhibit 45	2014 map of North, Middle and South Lots after purchase by Petitioner(s)	9
No Exhibit 46		
Exhibit 47	McCully(s) petition A05 757, Findings of Fact	9
Exhibit 48	2008 McCully(s) CDUP HA 3445 for a residence on Middle Lot	9
No Exhibit 49		
Exhibit 50	emails	9
Exhibit 51	County letter, 6 legal lots of record, North Lot, Middle Lot, South Lot	9
Exhibit 52	Jan. 2015 OCCL letter instructs - provide <i>“Proof”</i> of historic ag. use	9
Exhibit 53	Oct. 16, 2015 OCCL letter, <i>‘OK to grow sugar cane’</i>	9
Exhibit 54	Oct. 18, 2015 Petitioner(s) letter, request Determination, ag. use <u>again</u>	9
Exhibit 55	Jan. 8, 2016 Petitioner(s) letter continuing to request Determination	9
Exhibit 56	June, 2014 OCCL ltr., <i>“theoretically correct”</i> 3 lots, 5,000 sq.ft. MDA ea.	9

No Exhibit 57

Exhibit 58 OCCL email instructions *“communications to be signed and mailed”* 9

Exhibit 59 Petitioner(s) letter to OCCL, Nov. 2014, re: communications 9

No Exhibit 60

Exhibit 61 Petitioner(s) CDUA for a *“farm dwelling”* 9

Exhibit 62 DLNR ltr. to Petitioner(s), *‘redo your application for a farm dwelling’* 9

Exhibit 63 OCCL ltr. *‘denied’* Petitioner(s) CDUA to combine and re-subdivide 9

Exhibit 64 telephone conversation notes re: communications *“talk to Sam”* 9

Exhibit 65 OCCL ltr. to McCully(s), *‘you don’t own lots buy r.r. lots from State’* 9

Exhibit 66 email OCCL denied possibility of a *‘deed restriction’* 9

Exhibit 67 2 maps proposed 2-step consolidate and re-subdivide 9

Exhibit 68 2015 DLNR ltr. *‘no updated botanical study necessary’* for shelter 9

Exhibit 69 State of Hawaii Auditor’s report to the Governor *‘nonconforming use’* 9

Exhibit 70 Historic picture of r.r. crossing Kolekole bridge, see Property to North 9

Exhibit 71 letter, request Determination *‘invasive species removal on Property’* 9

Exhibit 72 OCCL ltr. re. *invasive species removal* and *OK nonconform ag. use* 9

Exhibit 73 OCCL ltr. re. nonconform ag. use *“you have determined”* 9

Exhibit 74 OCCL ltr. re. nonconform ag. use 9

Exhibit 75 OCCL ltr. re. nonconform ag. use, *‘Provide proof of historical use’* 9

Exhibit 76 OCCL ltr. re. nonconform ag. use *‘OK to grow sugar cane’* 9

Exhibit 77 Petitioner(s) ltr. to OCCL *‘refer Determination to the BLNR’* 9

Exhibit 78	DLNR ltr. ' <i>accept EA and CDUA for residence for processing</i> '	9
No Exhibit 79		
Exhibit 80	2015 BLNR meeting minutes, enforcement	9
Exhibit 81	DLNR ltr. no updated biological report needed for shelter	9
Exhibit 82	DLNR ltr. to County re: commercial ag. use of a property	9
Exhibit 83	ALISH notes	9
No Exhibit 84		
Exhibit 85	ALISH map of the area of the Property	9
Exhibit 86	Important Agricultural Lands	9
Exhibit 87	Soil test report for the Property	9
Exhibit 88	lot sizes	9
Exhibit 89	OCCL Determination re: wood shed	9
Exhibit 90	email, ' <i>farm dwelling</i> ' Dearing family	9
Exhibit 91	contour map of the Property	9
Exhibit 92	2 pictures towards the Property from the coastal highway	9
Exhibit 93	McCully(s) FONSI for a residence on the Middle Lot	1
Exhibit 94	2014 emails	9
Exhibit 95	BLNR meeting minutes May, 2014	9
Exhibit 96	OCCL staff submission to BLNR re: enforcement	9
No Exhibit 97		
Exhibit 98	TMK map of the Property	9

Exhibit 99	Pictures of wave washed boulders at the Property	9
Exhibit 100	Pictures of Property, re; ag. use beginning in 2014 and subsequent	9
Exhibit 101	BLNR meeting minutes, <i>'Sam Lemmo, nonconforming ag. use Statute'</i>	9
Exhibit 102	Quadrangle map for the area of the Property and north	9
Exhibit 103	Petitioner(s) ltr. to OCCL <i>'can I use Property for nonconforming ag use'</i>	9
Exhibit 104	OCCL ltr. SPA for an accessory structure <i>'denied, refunded fees'</i>	9
Exhibit 105	OCCL ltr., <i>'denied that it denied SPA for accessory structure'</i>	9
Exhibit 106	Petitioner(s) ltr. <i>'notice of appeal'</i> re: accessory structure	9
Exhibit 107	historic 1905 pictures of ag. use	9
Exhibit 108	Tourist guide, <i>'enjoy agricultural heritage drive through Hamakua'</i>	9
Exhibit 109	County ltr. to Petitioner(s) <i>'no SMA required, ag. use of Property OK'</i>	9
Exhibit 110	historic map found in the County file showing a stream dam on Property	9
Exhibit 111	letter from the State Attorney General to DLNR	9
Exhibit 112	OCCL staff report to BLNR re: enforcement	9
Exhibit 113	subdivision Design Review Committee approval for residence	9
Exhibit 114	subdivision Design Review Committee approval for accessory structure	9
Exhibit 115	Deed	9
Exhibit 116	Deed	9
Exhibit 117	Deed	9
Exhibit 118	BLNR meeting minutes, Sam Lemmo, changes, Rules, nonconforming use	9