

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter of the Petition of) Docket No. _____
)
Kenneth S. Church and) PETITION FOR A DECLARATORY
Joan E. Hildal) ORDER
)
for review of ;)
Boundary Reclassification,)
Boundary Interpretation,)
the 1974 State Land Use District)
Boundaries Map H-65,)
Reimbursement of Filing Fees for Petition)
A18-805 and this Petition For a)
Declaratory Order,)
Waving of Court Reporter fees for this)
Petition)
_____)

PETITION FOR A DECLARATORY ORDER

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWII:

§15-15-98 Who may petition. (a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation.

Comes now Kenneth S. Church and Joan E. Hildal (the "Petitioner(s)") for a declaratory order clarifying and correcting the LUC, December 16, 1992 Boundary Interpretation No. 92-48 and the re-imbursment of LUC and Court Reporter fees. This Petition is bought pursuant to Sections 15-15-98 through 104 HAR, 15-15-17, 15-15-22 (a) (d) and (f), HAR and 15-15-19 (1) and (3), HAR, 15-15-34(b) HAR, 15-15-45.1 and .2 HAR, LUC DR 99-21 and the Land Use Commissson's record of its first five year boundary review in 1969 titled i"STATE OF HAWAII LAND USE DISTRICTS AND REGULATIONS REVIEW" (the "Report"), which was published on August 15, 1969, and is authored by Eckbo, Dean, Austin & Williams

§15-15-99 Petition for declaratory order; form and contents. The petition shall be submitted consisting of one original, one paper copy, and one electronic copy, and shall conform to the format requirements of sections 15-15-38, 15-15-39, and 15-15-40, and shall contain: one signed original,

one paper copy, and one electronic copy are submitted with this Petition and its memorandum and exhibits.

§15-15-99 (1) The name, address including zip code, and telephone number of each petitioner;

The Petitioner's name, address and telephone number are as follows:

Kenneth S. Church

Joan Evelyn Hildal, husband and wife

P.O. Box 100014,

Hakalau, Hi., 96710

telephone Number: 808 238 2417 (for both Petitioner(s))

and which Property address(s) are 29-3792, 29-3794, Hawai'i Belt Road.

(2) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;

A. The Property

1. The Property is comprised of two Oceanside TMK lots (3) 2-9-003; 029 and 060. (the "Property"),
2. The Property address(s) are 29-3794 and 29-3792, Hawai'i Belt Road,
3. A County approved surveyors map of an area, which includes the Property, is included as Exhibit 6. The makai coastal boundary of the Property's two lots (is shown on the surveyors map as J1, J2) is described on the map with a line, which is titled "TOP OF SEA PALI",
4. The Property has an area of 3.368 acres more or less,
5. The highway access point entrance to the Property is located immediately makai, after the 14.5 mile marker on Hawai'i Belt Road, along the "Hamakua Coast" between Kolekole and Hakalau gulches and a short distance below the historic plantation town of Wailea which town lies above the Hawai'i Belt Road and directly mauka of the Property,

6. The Property was historically planted in sugar cane during the period beginning before 1905 through 1992,
7. The Property is contiguous to State Agriculturally zoned land which is located mauka of the Property and makai of the Hawai'i Belt Road,
8. The Oceanside pali, that lies makai of the Property, is substantially a vertical property of variable width and is owned by the State and is zoned in the State Conservation District,
9. The entire area of the Property appears on the 1974 Land Use District Boundaries Map H-65, Papaikou Quadrangle, to lie in the State Conservation District,
10. At Statehood the Property was zoned in the State Agricultural District,
11. The Property is zoned A-20a in the County's function plan,
12. The Property is zoned Open in the County's General plan,
13. The Property is located in the SMA District,
14. The Property has two structures on it, the Petitioner(s) residence (the "Residence") on one lot and a 720 sq. ft. agricultural storage and processing accessory structure (the "Accessory Structure") on the other lot,
15. The Property's two structures have been fully permitted by the State and County,
16. The Property's two structures are both connected to the County water supply and each has a separate, fully licenced, septic tank and field system,
17. The Petitioner(s) farm tractor and various agricultural use tools and implements are stored in the Accessory Structure,
18. Both the Residence and the Accessory Structure are supplied electircally by a photovoltaic electrical system and are not connected to Hawai'i Electric's electrical grid,
19. The Property has substantial fruiting plant species, a potted plant nursery, a cultivated field area and open grassy areas.

B. Petitioner(s)' Interest in the Property

20. The Petitioner(s) are the sole owners in fee simple of the Property located at Wailea, Island of Hawai'i, State of Hawai'i.

C. Reasons For Submission of Petition

21. During a one year period ending in August of 1969 (the "Review Period") the Land Use Commission (variably the "LUC" or the "Commission") commissioned the firm of Eckbo, Dean, Austin & Williams that a "Review of Land Use Regulations and District Boundaries" be conducted (the Review"), with recommendations to the LUC for consideration and adoption by the LUC during the Review Period,
22. The Review included USGS maps on to which State Land Use District ("SLUD") lines were to be drawn on incrementally "proposed" USGS Quadrangle maps separating Rural, Urban, Agriculture and Conservation Districts for progressive review, during the Review Period in consultation with the LUC, land owners and the communities of Hawai'i over the one year Review Period and subsequent adoption by the LUC as State Land Use District ("SLUD") Maps,
23. The Review is described in a book, titled "STATE OF HAWAII LAND USE DISTRICTS AND REGULATIONS REVIEW" (the "Report"), which was published on August 15, 1969, and is authored by Eckbo, Dean, Austin & Williams, which is an Official LUC document and record of its "Actions", which recommendations and LUC findings and boundary ammendment changes that were "Adopted" were recorded in the Report and also were to be recorded on the incrementally submitted SLUD Maps, particularly the final SLUD Maps were to reflect what was finally "Approved" by the Commission,
24. Following the State's first five year boundary review a certain portion of the coastal area, along which the Property is located, was zoned into the State Conservation District,
25. The Review of District Boundaries was conducted over a one year period ending in August of 1969,
26. The Report not only describes it's recommendations to the LUC but it also records the "Actions" that the LUC took including "Actions" that the LUC took at public meetings in the various counties in the State,
27. The Property was not described in the Report to be rezoned from the State's Agricultural ("Ag.") District into the State's Conservation District following the 1969 Boundary Review however a reference is made to the Island of Hawai'i's USGS Quadrangle Maps in an appendix to the Report,

28. The Property's location is shown located in a 1974 Official State Land Use Districts Map H-65 Papaikou Quadrangle (the "Official Map"),
29. Official Map H-65 is dated 1974,
30. Official Map H-65's scale is one inch equals two thousand feet,
31. When highly magnified Official Map H-65 shows the Property to lie entirely within the State Conservation District,
32. Official Map H-65 is in conflict with what was "Approved" by the LUC at a LUC meeting held in the County of Hawai'i on July 18, 1969,
33. In 1992 the Executive Officer of the LUC issued Boundary Interpretation 92-48 which interpretation showed the entire area of the Property to lie in the State Conservation District,
34. The Petitioner(s) believe that Boundary Interpretation 92-48 is incorrect resulting that "uncertainty remains",
35. The Petitioner(s) believe that the Report records, in print, on its page 36, what is correct and what was "Approved" by the LUC and that the 1969 USGS Papaikou Quadrangle Map H-65, which is referenced in an appendix to the Report, was not subsequently amended to reflect what was "Approved" by the LUC at its meeting in Hawai'i County on July 18, 1969,
36. The Petitioner(s) seek to clarify and correct LUC Boundary Interpretation 92-48 to reflect that the Property lies in the State Agricultural ("Ag.") District and that the Official Map H-65 be amended to reflect that the TOP OF SEA PALI, as shown on Exhibit 6 be the SLUD line separating the State Conservation and Ag. Districts on Map H-65,
37. The Petitioner(s) have found their development and use of the Property has been exceedingly untimely, expensive and difficult to accomplish through DLNR administration,
38. The Petitioner(s) seek to remove uncertainty regarding allowed uses of the Property,
39. The Petitioner(s) seek to clarify for the Petitioner(s), the Petitioner(s) neighbors, the County administrators, realtors and the community at large the correct zoning of the Property,

40. The Petitioner(s) seek the refund of filing fees of \$5,000.00 for Petition A18 805 and \$1,000.00 for this Petition for a Declaratory Order and that Court Reporter fees, for this proceeding, be waved.

(3) A designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or controversy or uncertainty involved;

This Petition is brought pursuant to Sections 15-15-98 through 104, 15-15-17, 15-15-22 (a) (d) and (f), 15-15-34(b), 15-15-45.1 and .2 and 15-15-19 (1) (3) HAR of the Land Use Commission's Rules, the Report and LUC DR 99-21.

Applicable HAR Rule;

§15-15-98 Who may petition. (a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation.

It is a factual situation that;

1. The Petitioner(s) are the owners of the Property.
2. On December 16, 1992 the Executive Officer of the LUC issued Boundary Interpretation No. 92-48 which interpreted that the entire area of the Property was located in the State's Conservation District.
3. The Commission has jurisdiction to issue a declaratory order for this Petition. Section 91-8 Hawaii Revised Statutes ("HRS"), as implemented by subchapter 14 of the Commission's rules, and sections 15-15-98 through 15-15-104 HAR, authorize the Commission to issue declaratory rulings "as to the applicability of any statutory provision or of any rule or order of the agency."
4. The Commission has jurisdiction under 15-15-22(f) HAR to issue a boundary determination if "uncertainty remains" to correct the LUC's Executive Officer's previous boundary interpretation 92-48.
5. The Commission has asserted its jurisdiction under a similar question in the past. LUC DR 99-21 is a very similar jurisdictional example. LUC DR 99-21 respects land that is located in the same coastal area as the Property is located, the Hamakua Coast, and the circumstances of LUC DR 99-21 also corrected "uncertainty" regarding the location of the SLUD Line of land in the area described in LUC DR 99-21. Uncertainty which is described in LUC DR 99-21 resulted from the Report, the LUC's 1974 official SLUD Quadrangle map H-59 Papaaloa Quadrangle, and a boundary interpretation for the properties

described in LUC DR 99-21 which interpretation was in conflict with the Report and Map H-59.

6. Section 15-15-34(b), HAR provides that "[f]or good cause shown the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission."
 - The no refund schedule requirement in Section 15-15-45.2 HAR is not jurisdictional. Therefore, the Commission is authorized to refund fees.
 - The applicability of the Official Map H-65, Papaikou Quadrangle, as applied in 15-15-22(a) (1) HAR , is not jurisdictional. Therefore, the Commission is authorized to no not apply the Official Map H-65, to a boundary interpretation and the LUC is authorized to correct errors on Official Map H-65.
7. The Petitioner(s) believe that the "uncertainty" regarding the correct SLUD zoning of the Property is the result of no fault of the Petitioner(s) but rather an error of the LUC.
8. The Executive Officer of the LUC relied on the Official Map H-65 for the Papaikou quadrangle for Boundary Interpretation 92-48 and the Executive Officer did not consider the Report which is another "Official Commission Record" as is provided for in §15-15-22 (d), HAR, "The executive officer may use all applicable commission records in determining district boundaries."

Applicable HAR Rule;

§15-15-17 Districts; district maps. (a) In order to effectuate the purposes of chapter 205, HRS, all the lands in the State shall be divided and placed into one of the four land use districts: (1) "U" urban district; (2) "A" agricultural district; (3) "C" conservation district; or (4) "R" rural district. (b) The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, maintained and under the custody of the commission. Not all ocean areas and offshore and outlying islands of the State in the conservation district are shown when deemed unnecessary to do so.

It is a factual situation that;

9. At Statehood the Property was located in the State Agricultural District.
10. There exists a Official Map H-65, Papaikou Quadrangle, which shows the Property to be located entirely in the State Conservation District.

11. The LUC held an "Action" meeting in the County of Hawaii on July 18, 1969 to consider a State District Boundary Amendment for an area, which included the Property.
12. The LUC approved a Boundary Amendment at that meeting which is described on page 36 of the Report;
"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 land of the Hamakua Coast, using the ridge top as a boundary line" and "Areas in agricultural use were excluded".
(emphasis added)
13. The Property lays on the Hamakua Coast.
14. The Property lays mauka of the coastal pali ridge top and it was in agricultural production at that time.
15. The area of the Property was not rezoned into the State's Conservation District by the LUC at its July 18, 1969 meeting in the County of Hawai'i.
16. The Official Map H-65 for the Papaikou quadrangle, wherein the Property is located, shows the Property to lie entirely within the State's Conservation District.
17. No further boundary amendment for the area of the Property was approved by the LUC during the period between July of 1969 until the adoption of the Official Map H-65.
18. The Official Map H-65 conflicts with what was "approved" by the LUC at the July 18, 1969 meeting in the County of Hawaii.

Applicable HAR Rule;

§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; (emphasis added)

It is a factual situation that;

19. The Property is shown on the State's ALISH Map to be Prime Class C.
20. The Land Study Bureau ("LSB") rating for the Property is Class C.
21. The ALISH Map and LSB ratings are Official Commission Records.

22. The ALISH definition of Prime is "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."
23. The word "capacity" , which is found in §15-15-19, refers to a characteristic of land and not a land use.

Applicable HAR Rule;

§15-15-19 (3) It may include lands surrounded by or contiguous to agricultural lands or which are not suited to agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

It is a factual situation that;

24. The Property lies Contiguous to agricultural use land that is zoned in the State's Agricultural District mauka.

Applicable HAR Rule;

§15-15-22 Interpretation of district boundaries. (a) Except as otherwise provided in this chapter: (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;
(emphasis added)

It is a factual situation that;

25. Official Map H-65 shows the Property to lie entirely in the State's Conservation District.
26. Official Map H-65 conflicts with the district boundary ammendment that was "Approved" by the LUC at the July 18, 1969 LUC meeting in the County of Hawaii.
27. The Property was never properly rezoned into the States Conservation District.
28. Section 15-15-34(b), HAR provides that "[f]or good cause shown the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission."
- The §15-15-22 HAR; *Interpretation of district boundaries. (a) Except as otherwise provided in this chapter: (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district*

boundary lines; is not jurisdictional. Therefore it is "otherwise provided in this chapter" that the Commission is authorized to not apply the 1974 SLUD Map H-65 to a boundary interpretation and the LUC is authorized to correct errors on Map H-65 if it finds that SLUD Map H-65 is improperly in conflict with the district boundary amendment that was "Approved" by the Commission at its meeting in the County of Hawaii on July 18, 1969. Therefore, the Commission is authorized.

29. The Petition describes that the "[f]or good cause" requirement, that is described in §15-15-22 HAR, exists. The applicability of the existing SLUD Map H-65, as applied in 15-15-22(a) (1) HAR, is not jurisdictional. Therefore, the Commission is authorized to not apply the existing 1974 SLUD Map H-65, as described in §15-15-22 (a) (1) HAR, to a boundary interpretation and the LUC is authorized to correct errors on Map H-65 and it is also authorized to issue a new boundary determination for the Property.

Applicable HAR Rule;

§15-15-22 (d) The executive officer may use all applicable commission records in determining district boundaries.

It is a factual situation that;

30. The July 18, 1969, Report's proposed SLUD line on the USGS Quadrangle Map H-59, in the coastal area of Papaaloa Quadrangle, generally did not show the 'top of the coastal cliff' to be the SLUD line separating the Conservation and Ag. Districts, rather the line generally followed a 200 foot topographical line on the USGS map.
31. The August 15th, 1969, Report's final SLUD line on the USGS Quadrangle Map H-59, in the coastal area of Papaaloa Quadrangle, generally did not reflect what the Commission "Approved" at its meeting in the County of Hawai'i to show the 'top of the coastal cliff' to be the SLUD line separating the Conservation and Ag. Districts, rather the line generally continued to follow a 200 foot topographical line on the USGS map as it did on the Report's proposed July 18, 1969 USGS.

32. The Report's page 36 described that the Commission "Approved" that land that was in agricultural production in 1969 was to remain in the State Agricultural District at its July 18, 1969 meeting in Hawai'i County .
33. An applicable order of the Commission exists that indicates that the the Report's final SLUD Line on USGS Map H-59, Papaaloa Quadrangle was found to be incorrect by the Commission in 1999 and the Commission ordered that Map H-59 reflected the Commission's Declaratory Order DR 99-21.
34. The Report is an "Official Commission Record", the Report recorded, on its page 36, that following the Commission's meeting in the County of Hawai'i on July 18, 1969, that 'the final State Land Use Boundary separating Conservation and Ag. land was to be the 'top of the coastal ridge' in the coastal area of the Hamakua Coast which was different than what was reflected on the Report's proposed USGS Quadrangle Map H-59.
35. LUC DR 99-21 is an "Official Commission Record" that the State Land Use Districts Maps for the Hamakua Coast was found by the Commission to not always be correct.
36. The land petitioned in DR 99-21 was in agricultural production in 1969.
37. The LUC "Approved" that land that was in agricultural production in 1969 was to remain in the State Agricultural District.
38. The July 18, 1969, Report's proposed SLUD Line shown on USGS Quadrangle Map H-65, in the coastal area of Papaaikou Quadrangle, where the Property is located, generally did not show the 'top of the coastal cliff' to be the SLUD line separating the Conservation and Ag. Districts, rather the line generally followed a former railroad right of way's mauka boundary in the area of the Property.
39. The railroad bi-sected an agricultural use field on the oceanside Property leaving 3.369 of agricultural use field acres makai.
40. The SLUD line on the August 15th, 1969, Report's final USGS Quadrangle Map H-65 , in the coastal area of Papaaikou Quadrangle, generally remained unchanged from the Report's July 18, 1969 recommended SLUD Line location and thus does not reflect what the Commission "Approved" at its meeting in the County of Hawai'i on July 18, 1969, to show the 'top of the coastal cliff' to be the SLUD line separating the Conservation and Ag. Districts, rather the line

generally followed a former railroad right of way's mauka boundary in the area of the Property as it also did on the Report's proposed July 18, 1969 USGS Quadrangle Map.

41. The Report is also an "Official Commission *Record*," the Report recorded on its page 36 that 'land in agricultural use' was not to be rezoned into the State's Conservation District'.
42. The Report is an "Official Commission Record", the Report recorded, on its page 36, that following the Commission's meeting in the County of Hawai'i on July 18, 1969, that 'the final State Land Use Boundary separating Conservation and Ag. land was to be the 'top of the coastal ridge' in the coastal area of the Hamakua Coast which was different than what was reflected on the Report's proposed SLUD Line on the USGS Quadrangle Map H-65.
43. The Property lies in the area known as the Hamakua Coast.
44. The Property was in continuous Ag. use during a period beginning before 1905 through 1992.
45. The Property lies mauka of the 'top of the coastal ridge'.

Applicable HAR Rule;

*§15-15-22 (f) describes that it is 'otherwise provided in this chapter' (ref., §15-15-22 Interpretation of district boundaries. (a)).....
§15-15-22 (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.*

It is a factual situation that;

46. 'Uncertainty concerning the correct location of the district line' on SLUD Map H-65 continues to exist.

Applicable HAR Rule;

*§15-15-34 Quasi-judicial proceedings; waiver or suspension of rules.
(b) Unless contrary to statute, the commission may waive or suspend any rule when the commission determines that: (1) good cause exists for such waiver; and (2) strict enforcement of such procedural rule would impose a manifest injustice upon a party or person who has substantially complied with the commission's rules in good faith. No rule relating to jurisdictional matters shall be waived or suspended by the commission.*

It is a factual situation that;

47. Section 15-15-34(b), HAR provides that "[f]or good cause shown the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission."

48. The incorrect zoning and/or interpretation of the zoning and/or the error on the Official Map H-65 of the Property is not an error of the Petitioner(s) but is an error of the LUC. This meets the "[f]or good cause" requirement of Section 15-15-34(b), HAR.

49. The Official Map H-65 is in conflict with the rezoning of land along the Hamakua Coast, including the Property, that was "Approved" by the LUC on July 18, 1969 at a LUC meeting in the County of Hawai'i as is reported on page 36 of the Report.

50. The applicability of the Official Map H-65, as applied in 15-15-22(a) (1) HAR , is not jurisdictional. Therefore, the Commission is authorized to not apply the Official Map H-65 to a boundary interpretation and the LUC is authorized to correct errors on Map H-65.

51. Section 15-15-34(b), HAR provides that "[f]or good cause shown the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission."

The incorrect zoning and/or interpretation of the zoning and/or the error on the Official Map H-65 of the Property is not an error of the Petitioner(s) but is an error of the LUC. This meets the "[f]or good cause" requirement of Section 15-15-34(b), HAR.

The payment of fees schedule requirement in Section 15-15-45.1 HAR is not jurisdictional. Therefore, the Commission is authorized to refund fees.

52. Section 45.1 (e) provides that "The petitioner, movant, or applicant for any petition, motion, or application shall, unless otherwise ordered by the commission, reimburse the commission for or pay at the direction of the commission any expenses related to the publication of any required hearing notice, expenses of court reporter services, expenses of the hearing room,

expenses for audio/visual services and equipment, and any other hearing-related expenses."

The incorrect zoning and/or interpretation of the zoning and/or the error on the Official Map H-65 of the Property is not an error of the Petitioner(s) but is an error of the LUC. This meets the "[f]or good cause" requirement of Section 15-15-34(b), HAR.

The payment of court reporter services schedule requirement in Section 15-15-45.1 HAR is not jurisdictional. Therefore, the Commission is authorized to wave the court reporter fees.

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(4) A statement of the petitioner's interpretation of the statute, rule or order or the petitioner's position or contention with respect thereto;

§15-15-98 HAR states.....

"Who may petition. (a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation."

1. Petitioner's interpretation of §15-15-98 (a) HAR is that they may file this Petition with the LUC. The Petitioner(s) are the fee simple owners of the Property. The Petitioner(s) believe that the Property is incorrectly shown on the Land Use District Boundaries Map H-65 to lie in the State's Conservation District and that the Property has never been properly zoned into the Conservation District.
2. The Petitioner(s) belief is that §15-15-34(b), HAR provides that "(f)or good cause shown the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission."

§15-15-17 HAR states.....

"Districts; district maps. (a) In order to effectuate the purposes of chapter 205, HRS, all the lands in the State shall be divided and placed into one of the four land use districts: (1) "U" urban district; (2) "A" agricultural district; (3) "C" conservation district; or (4) "R" rural district. (b) The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, maintained and under the custody of the commission. Not all ocean areas and offshore and outlying islands of the State in the conservation district are shown when deemed unnecessary to do so."

3. The Petitioner(s) believe is that Land Use District Boundaries Map H-65 is inconsistent with the Boundary Amendment that was "Approved" by the LUC at a meeting in the County of Hawaii, July 18, 1969.

§15-15-22 HAR *Interpretation of district boundaries* states in part.....

(a) Except as otherwise provided in this chapter: (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines; (emphasis added)

4. Petitioner's interpretation of §15-15-22 (a) and (a) (1) HAR is that it is "provided for otherwise" in §15-15 HAR that "a district name or letter

appearing on the land use district map applies throughout the whole area bounded by the district boundary lines." The Petitioner's interpretation of §15-15-22 (a) and (a) (1) HAR is that the "land use district map" is not the final interpretive authority in determining a district line in the area of the Property.

The Petitioner(s) believe that the "land use district map" is inconsistent with what the LUC "Approved" as recorded in the Report's Chapter 5, page 36.....

"C. 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 land of the Hamakua Coast, using the ridge top as a boundary line."

"Commission Action Partially Approved. *" "Areas in agricultural use were excluded."

"From Hilo to Kapoho....." (emphasis added)

5. The Petitioner(s) position is that the Property lies contiguously mauka of the "ridge top" of the "pali land of the Hamakua Coast," . The Property was in "agricultural use" continuously from a period beginning before 1905 through 1992. The Petitioner(s) believe that the Property was never properly zoned into the State's Conservation District.
6. The Petitioner(s) contention is that the Official Map H-65 incorrectly shows the Conservation District boundary line to have been drawn considerably inland of the coastal pali "ridge top".
7. The Petitioner(s) believe that the effect is that the Conservation District appears on the Official Map H-65 to have been overlaid on the agricultural use field and former railroad right of way which crossed the Property, which Property area comprises approximately 3.368 acres. The railroad right of way lots were incorporated into the Property's TMK lots in 2015 by the Petitioner(s). The railroad ceased operations around 1947.

§15-15-22 (d) HAR states.....

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

8. Petitioner's interpretation of §15-15-22 (d) HAR is that this Rule provides that first the Executive Officer and "if uncertainty remains" the Land Use

Commissioners "may use" other "applicable commission records" also when "determining" a district boundary. The Report is an "applicable commission record". The Petitioner(s) believe that the Report makes it clear that the Property was not zoned into the State's Conservation District in 1969.

9. The Petitioner(s) belief is that LUC DR-99-21 is also an "applicable commission record" and shows precedence.
10. The Petitioner(s) believe that the Property was not in the State's Conservation District at Statehood. The Property was shown to have been districted into the State's Conservation District on the "land use district map" H-65, Papaikou Quadrangle, which is dated 1974, following the first Boundary District review in 1969. Evidence is presented in this Petition for a Declaratory Order that "the land use district map," (the Official Map) is in conflict to the LUC's 'Approval' of the District Boundary Amendment in 1969 which is described in the Report's Chapter 5's page 36 to be the "ridge top" of the coastal pali.
11. The Petitioner(s) position is that the County Approved survey map, which bears the County's reference.... Sub-15-001515, dated Nov. 13, 2015, of the Property has a defined line on it which is titled "TOP OF SEA PALI".
12. The Petitioner(s) believe that that line is where the State's Land Use District Boundary line should be correctly placed on its Official Map H-65. The County Approved surveyor map of the Property and a metes and bounds description of that line is included with this Petition.

§15-15-22 (f) HAR states.....

"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." (emphasis added)

13. The Petitioner(s) position is that they filed a "written application", with the LUC's administrative office, that the Commissioners determine the correct location of the State Land Use District line in June of 2020. For reasons unknown to the Petitioner(s) the administrative office of the LUC did not subsequently correspond with the Petitioner(s) regarding the "written application" nor did it advance the matter for consideration by the

Commissioners as is provided for in §15-15-22 (f) HAR for a period exceeding one year.

14. The Petitioner(s) contention is that no differentiation in the form of "written application" is specified in §15-15-22 (f) HAR between an application to the Executive Officer of the Commission nor a "written application" to the Commissioners for a boundary interpretation.
15. The Petitioner(s) contention is that §15-15-22 (f) HAR provides that "the commission" has the authority to "determine the" correct "location of those district lines" in the area of the Property and furthermore the Petitioner(s) believe that the "commission" has the authority to order that Official Map H-65 (Papaikou), be amended to reflect that the Property mauka of the top of the ridge or pali be designated within the State Land Use Agricultural District.
16. The Petitioner(s) contention is that the Property has the qualities that should result that it be zoned in the State's Agricultural District. §15-15-19 HAR Standards "in determining the boundaries for the "A" agricultural district boundaries" states in part.....

"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;*
- (2) It may include lands with significant potential for grazing or for other agricultural uses;*
- (3) It may include lands surrounded by or contiguous to agricultural lands or which are not suited to agricultural and ancillary activities by reason of topography, soils, and other related characteristics; and" (emphasis added)*

17. The Petitioner(s) interpretation of §15-15-22 HAR is that it is a mandatory requirement that the Property be zoned in the State's Agricultural District. The Property is classified in the ALISH classification system as Prime "C" and it also has a LSB rating as C also. The Property lies contiguous to TMK's (3) 2-9-003; 48, 49 which both lie in the State's Agricultural District and are located on the mauka side of the Property.
18. The Petitioner(s) contention is that the word "capacity", which is found in §15-15-19 (2) HAR, is not a reference to a past, present or future land use. The Property has a high "capacity for agricultural production" .

Applicable HAR Rule;

§15-15-34 Quasi-judicial proceedings; waiver or suspension of rules.

(b) Unless contrary to statute, the commission may waive or suspend any rule when the commission determines that: (1) good cause exists for such waiver; and (2) strict enforcement of such procedural rule would impose a manifest injustice upon a party or person who has substantially complied with the commission's rules in good faith. No rule relating to jurisdictional matters shall be waived or suspended by the commission.

19. The no refund and court reporter fees schedule requirements in Section 15-15-45.1 and .2 HAR are not jurisdictional. Therefore, the Commission is authorized to refund fees and wave court reporter costs.
20. The Petitioner(s) belief is that the applicability of the Official Map H-65, as applied in 15-15-22(a) (1) HAR , is not jurisdictional. Therefore, the Commission is authorized to not not apply the Official Map H-65 and the Commission is authorized to correct errors on Map H-65.
21. The Petitioner(s) belief is that "good cause" exists. The error in Boundary Interpretation 92-48 is not an error of the Petitioner(s) but rather an error of the LUC.

(5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. The commission may require the petitioner to file additional data or memoranda;

A memorandum is provided with this Petition.

(6) The names of any other potential parties;

None

(7) The signature of each petitioner; and

Kenneth S. Church

Date

Joan E. Hildal

Date

(8) A statement whether the petition for declaratory ruling relates to any commission docket for district boundary amendment or special permit, and if so~ the docket number and identification of all parties to the docket.

This Petition relates to Petition A18-805 which is a Petition to rezone the Property from the State's Conservation District to the State's Agricultural District. If this Declaratory Order is approved by the LUC the Petitioner(s) plan to apply to withdraw Petition A18-805 and related documents.

The Petitioner(s) for a Declaratory Order are the sole owners of the Property and are also the same, and only Petitioner(s) for Petition A18-805.

Petition A18-805 was supported by an Environmental Assessment and on June 26, 2020 the LUC also made a Finding of No Significant Impact regarding the requested rezoning.

VERIFICATION

KENNETH S. CHURCH and JOAN E. HILDAL, the persons named, being duly sworn on oath, depose and say that they are the owners of Property; that they have read the foregoing Petition and know the contents thereof, and that the same are true to the best of their knowledge, information and belief.

Kenneth S. Church

Joan E. Hildal