

**OFFICE OF PLANNING
AND SUSTAINABLE DEVELOPMENT**
 Leiopapa a Kamehameha, Room 600
 235 South Beretania Street
 Honolulu, Hawaii 96813
 Telephone: (808) 587-2846
 Facsimile: (808) 587-2824



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. DR21-73
)	
HONOIPU HIDEAWAY, LLC)	OFFICE OF PLANNING AND
)	SUSTAINABLE DEVELOPMENT'S
)	STATEMENT OF POSITION ON
For Boundary Interpretation of certain land)	PETITION FOR DECLARATORY
consisting of approximately 17.5470 acres)	ORDER FOR BOUNDARY
situated at 56-102 Old Coast Guard Road,)	INTERPRETATION; EXHIBITS 1, 2, 3
Tax Map Key No. (3) 5-6-001-074, Kapaa-)	AND 4; AND CERTIFICATE OF
Upolu, North Kohala, County of Hawaii,)	SERVICE
State of Hawaii.)	
)	
)	
)	
)	
)	

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S STATEMENT OF
POSITION ON PETITION FOR DECLARATORY ORDER FOR BOUNDARY
INTERPRETATION

The Office of Planning and Sustainable Development (“OPSD”) does not support Honoipu Hideaway, LLC’s (“Petitioner”) request to the Land Use Commission (“LUC”) for a Declaratory Order to determine that the location of the State Land Use District Boundary line was incorrectly situated by Boundary Interpretation No. 01-20 to Mr. Nathan Eggen dated October 27, 2019¹ (“BI Letter”). Petitioner is requesting that the LUC determine that the boundary line between the State Conservation and Agricultural Land Use Districts for Tax Map Key No. (3) 5-6-001: 074, situated at Kapaa-Upolu, North Kohala, County of Hawaii (“Petition

¹ Boundary Interpretation No. 01-20 was dated October 2019, but appears to have been issued October 2020.

Area”), be situated at the mauka edge of the existing paved roadway rather than the LUC determination inland of the paved roadway, pursuant to Hawaii Administrative Rules 15-15-22(f) to clarify Boundary Interpretation No. 01-20 for Tax Map Keys: (3) 5-6-001: 074, 56-102 Old Coast Guard Road, Kapaa-Upolu, North Kohala.

LUC Boundary Interpretation and Errata Letter

According to the BI Letter, the LUC determined that there is approximately 12.228 acres within the Agricultural District, and approximately 5.319 acres within the Conservation District. The BI Letter also indicates that the determination was based on the LUC’s records on file in their office, the survey map and the Shoreline Survey Map, dated October 3, 2019, and the State Land Use District Boundaries Map H-3, Mahukona Quadrangle. See Petitioner’s Exhibit 9.

The LUC subsequently issued an errata letter dated September 15, 2021 (“Errata Letter”), indicating that the BI Letter was in error with regard to the maps and dates of the relevant documents. See OPSD Exhibit 1. The Errata Letter indicates that the State Land Use boundary line delineating the Agricultural and Conservation Land Use Districts was established during the 1969 Boundary Review when the LUC proposed and approved a 300-foot setback from the “line of wave action” or shoreline for the Petition Area and the surrounding area. Thus, as shown on the referenced map, 5.319 acres of land is within the State Conservation Land Use District, and 12.228 acres is within the State Agricultural District. See OPSD Exhibit 2.

1969 USGS Mahukona Quadrangle Map and 1969 LUC Boundary Review Report

The USGS Mahukona Quadrangle map establishing the location of the Conservation District boundary for the Petition Area was adopted by the LUC in 1969 (“1969 LUC Map”). The report from the 1969 LUC Boundary Review, titled the *State of Hawaii Land Use Districts and Regulations Review*, was completed in 1969 by Eckbo, Dean, Austin and Williams (“1969

Report”). The 1969 Report provides background information on the LUC’s adoption of the Conservation District boundaries. In discussing the area in which the Petition Area is located, the 1969 Report states generally that the area is marked by numerous historic artifacts and a variety of conditions that should be included in the Conservation District. Additionally, there were four major conditions used in preparing the new Conservation District boundaries in shoreline areas:

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

Petitioner’s requested interpretation assumes that the LUC’s determination of the boundary for the Petition Area was based on Condition 1. Petitioner has not, however, provided sufficient evidence that Condition 1 was or was intended to be the criterion used, that the physical/historical aspects of the property meet Condition 1, or that the boundary was not drawn inland due to other conditions or features. For example, Petitioner’s assertion that the paved road exists at the edge of agricultural use is supported only by the Agricultural Uses map included in Petitioner’s Exhibit 21, which does not show the Petition Area in enough detail to determine whether this is true or not.

Additionally, the pre-1961 dirt or jeep road did not even run across the Petition Area, but was instead located along a small portion of the north side of the Petition Area running perpendicular to the coast. This is shown in OPSD Exhibit 4, which is a map of the Petition Area showing a comparison of the USGS Topographic Maps dated 1957 overlaid on Petitioner’s

current survey map. See OPSD Exhibit 4. As such, the boundary drawn in the 1969 LUC Map for this property must have been based on something other than the dirt road. The LUC's Errata Letter states that the 1969 Boundary Review map and the current boundary as delineated are based on a 300-foot distance from the shoreline.

Comments on Petitioner's Supplemental Memorandum In Support of Petition for

Declaratory Order For Boundary Interpretation

On Pages 13 to 14 of Petitioner's Supplemental Memorandum, Petitioner includes two USGS Aerial Photos, dated April 21, 1954 and January 18, 1965. It is difficult to determine the location of the Petition Area on these photos because there is no overlay of the parcel on the photos. It is particularly difficult to locate the Petition Area on the small 1954 photo, even with the blue arrow on the photo. We note that the 1965 photo indicates that the presence of the paved roadway and buildings located mauka of the paved roadway were in existence by 1965. Petitioner argues that the paved roadway is a "road exist[ing] at the edge of the agricultural use within reasonable proximity to the shoreline[.]" Petitioner does not, however, provide enough information to determine that the area mauka of the paved roadway was ever farmed or used for agricultural use, which is a base requirement of Condition No. 1 from the 1969 Report. In fact, Petitioner's Supplemental Memorandum provides evidence that there were two buildings located mauka of the paved roadway that were used for crew housing in connection with the Coast Guard station. On Page 15, there is a photo of the buildings labeled "Crew's Housing," and on Page 14, the USGS map shows the location and footprint of the buildings, which are also located on the survey map mauka of the paved roadway. See OPSD Exhibits 2 and 4. Therefore it is not reasonable to conclude that the site would have been utilized for any agricultural use or that the paved roadway exists at the edge of agricultural use.

Department of Land and Natural Resources (“DLNR”) Comments

OPSD also received a comment letter from the DLNR, dated July 29, 2021, indicating that the Office of Conservation and Coastal Lands, Engineering Division, and the Land Division had no comments on Petitioner’s request. See OPSD Exhibit 3.

CONCLUSION

Based on the LUC’s Boundary Interpretation No. 01-20 Errata letter dated September 15, 2021 regarding the establishment of the State Land Use Boundary line and the lack of support to determine a different boundary location, OPSD sees no reason to deviate from the boundary identified in the LUC’s Boundary Interpretation No. 01-20. Accordingly, OPSD does not support the Petitioner’s Petition for Declaratory Order for Boundary Interpretation.

DATED: Honolulu, Hawaii, December 13, 2021.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR

DAVID Y. IGE
Governor



DANIEL E. ORODENKER
Executive Officer

LAND USE COMMISSION

Department of Business, Economic Development & Tourism
State of Hawai'i

September 15, 2021

Calvert G. Chipchase
Cades Schutte L.L.P.
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813

Subject: Errata for State of Hawai'i Land Use District Boundary Interpretation No. 01-20, Tax Map Key: 5-6-001: 074, 56-102 Old Coast Guard Road, Kapaa-Upolu, North Kohala, Hawai'i

Dear Mr. Chipchase,

Our sincerest apologies but we regret to inform you that in re-reviewing Boundary Interpretation No. 01-20, dated October 27, 2021, we were in error both with regard to the maps and dates of the relevant documents and some of the information provided. To be specific, we erroneously stated:

"It is our understanding the SLU Agricultural / Conservation District designation for the subject parcel was established during the original 1964 Boundary Review, effective dated August 23, 1964."

This is incorrect, the subject parcel at that time was in the SLU Agricultural District based on the original 1964 District Boundaries Map H-3, Mahukona Quadrangle effective dated August 23, 1964.

The correct SLU Agricultural / Conservation Districts was established during the 1969 Boundary Review when the commission proposed and approved a 300 feet setback from the "line of wave action" or shoreline for the subject parcel and the surrounding area. In our original analysis we had concluded the conservation district was in part

Mr. Calvert G. Chipchase
September 15, 2021
Page 2

delineated by a trail or roadway. The actual demarcation or reference point was redefined in 1969, rendering the 1964 determination inapplicable.

The SLU Agricultural / Conservation District designation for the subject parcel is depicted on the SLU 1969 District Boundaries Map H-3, Mahukona Quadrangle, effective dated August 04, 1969, and is unchanged for the current SLU 1974 District Boundaries Map H-3, Mahukona Quadrangle, effective dated December 20, 1974.

We enclosed the copy of the survey map entitled, "Shoreline Survey Map of Lot 19-A as Shown on Map 34 of Land Court Application 1120", with the certification of the SLU District Boundaries for your reference.

Please except our apologies for your inconvenience and our erroneous information. We hope our clarification is acceptable and if you have any questions please contact our office at 808.587.3822.

Sincerely,

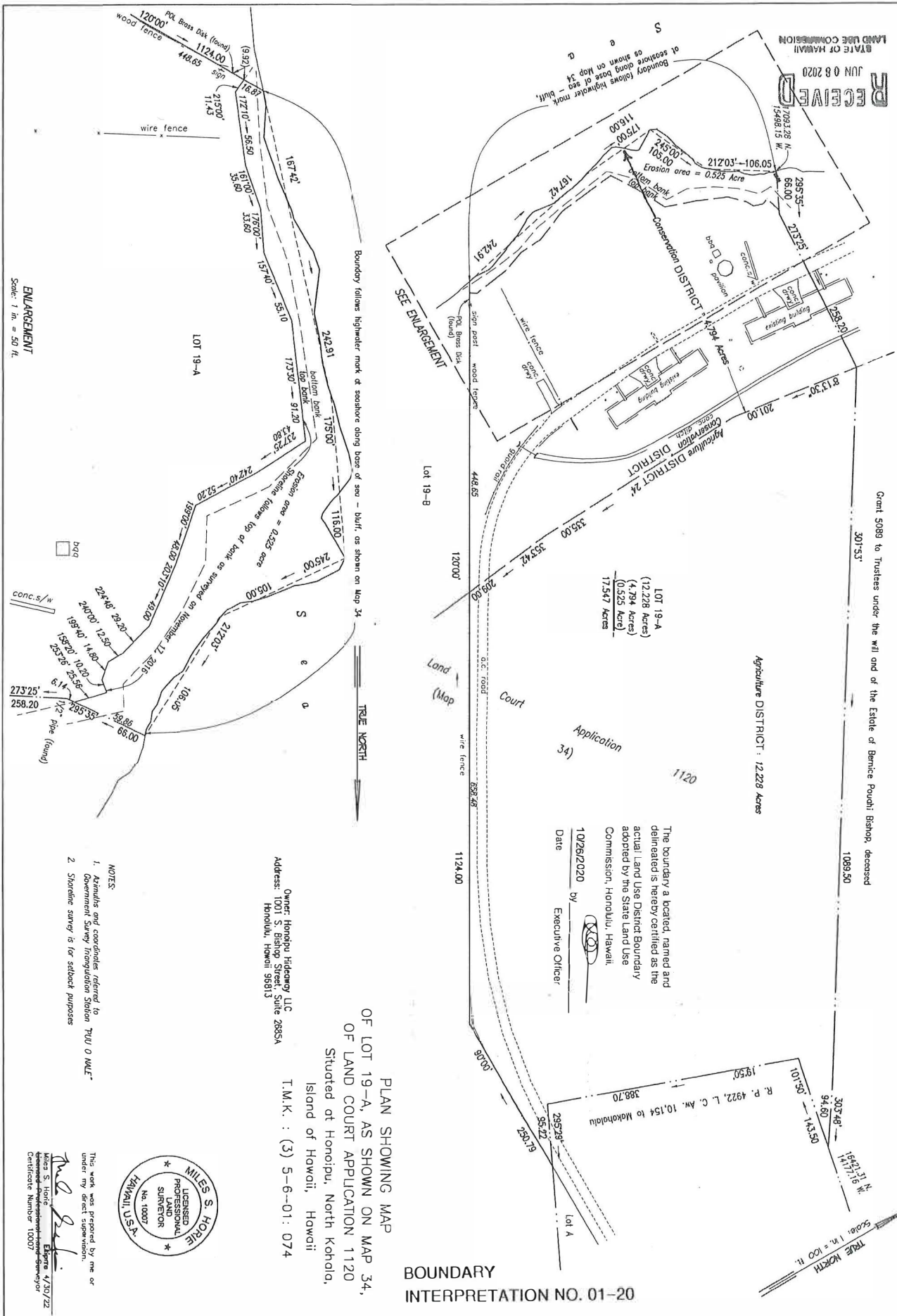


Daniel Orodener
Executive Officer

c: Nathan Eggen, P.O. Box 1599, Kapaau, HI 96755
Samuel J. Lemmo, Administrator, Office of Conservation and Coastal Lands,
(w/enclosure)
Michael Yee, Planning Director, County of Hawaii Planning Department
(w/enclosure)
Bethany Morrison, County of Hawai'i Planning Department
Mary Aken, Tax Map & Records Supervisor, County of Hawai'i Planning
Department (w/enclosure)
Gilbert Bailado, GIS Analyst, County of Planning Department (w/enclosure)

RECEIVED
 JUN 08 2020
 STATE OF HAWAII
 LAND USE COMMISSION

Grant 5089 to Trustees under the will and of the Estate of Bernice Pauahi Bishop, deceased
 301'53"
 1089.30



Application
 (34)

LOT 19-A
 (12,228 Acres)
 (4,784 Acres)
 (0,525 Acres)
 17,547 Acres

Agriculture DISTRICT : 12,228 Acres

The boundary a located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

Date 10/26/2020 by [Signature] Executive Officer

Onur, Honipuu Hideoy, LLC
 Address: 1001 S. Bishop Street, Suite 2855A
 Honolulu, Hawaii 96813

PLAN SHOWING MAP
 OF LOT 19-A, AS SHOWN ON MAP 34,
 OF LAND COURT APPLICATION 1120
 Situated at Honoiupu, North Kohala,
 Island of Hawaii, Hawaii
 T.M.K. : (3) 5-6-01 : 074

BOUNDARY INTERPRETATION NO. 01-20

ENLARGEMENT
 Scale: 1 in. = 50 ft.

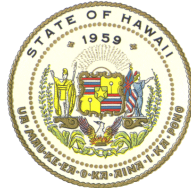
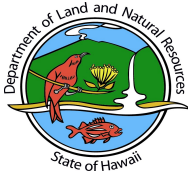


- NOTES
1. Azimuths and coordinates referred to Government Survey Triangulation Station 'PUU O NALE'
 2. Shoreline survey is for setback purposes

This work was prepared by me or under my direct supervision.
 Mica S. Horie, License No. 10007
 Expires 4/30/22
 Certificate Number 10007



DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 29, 2021

State of Hawaii
Department of Business, Economic Development and Tourism
Office of Planning and Sustainable Development
Land Use Division
Attention: Ms. Lorene Maki, Planner
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

via email: lorene.k.maki@hawaii.gov

Dear Ms. Maki:

SUBJECT: Request for Boundary Interpretation Between Conservation and
Agricultural Land Use Districts - Land Use Commission Docket
No. DR21-73 – located at Kapaa-Upolu, North Kohala, Island of Hawaii;
TMK: (3) 5-6-001:074 on behalf of **Honoipu Hideaway, LLC**

Thank you for the opportunity to review and comment on the subject matter. The Land Division of the Department of Land and Natural Resources (DLNR) distributed or made available a copy of your request pertaining to the subject matter to DLNR's Divisions for their review and comments.

At this time, enclosed are comments from the (a) Engineering Division, (b) Office of Conservation & Coastal Lands, and (c) Land Division-Hawaii District on the subject matter. Should you have any questions, please feel free to contact Darlene Nakamura at (808) 587-0417 or email: darlene.k.nakamura@hawaii.gov. Thank you.

Sincerely,

Russell Tsuji

Russell Y. Tsuji
Land Administrator

Enclosures
cc: Central Files

OPSD EXHIBIT 3 DLNR

17A-22-3

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
OFFICE OF CONSERVATION
AND COASTAL LANDS

2021 JUL -8 P 3:52

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 7, 2021

MEMORANDUM

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2021 JUL 15 AM 11:11

RECEIVED
LAND DIVISION

TO:

DLNR Agencies:

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division (DLNR.ENGR@hawaii.gov)
- Div. of Forestry & Wildlife (rubyrosa.t.terrago@hawaii.gov)
- Div. of State Parks
- Commission on Water Resource Management (DLNR.CWRM@hawaii.gov)
- Office of Conservation & Coastal Lands (sharleen.k.kuba@hawaii.gov)
- Land Division – Hawaii District (gordon.c.heit@hawaii.gov)

FROM:

Russell Y. Tsuji, Land Administrator *Russell Tsuji*

SUBJECT:

Petition for a Declaratory Order for a Boundary Interpretation – Land Use Commission Docket No. DR21-73 – Petitioner: **Honoipu Hideaway, LLC** Request for Boundary Interpretation Between Conservation and Agricultural Land Use Districts

LOCATION:

Kapaa-Upolu, North Kohala, Island of Hawaii; TMK: (3) 5-6-001:074

APPLICANT:

State Office of Planning on behalf of Honoipu Hideaway, LLC

Transmitted for your review and comment is information on the above-referenced subject matter. Please submit comments by **July 29, 2021**.

If no response is received by the above date, we will assume your agency has no comments. Should you have any questions about this request, please contact Darlene Nakamura at darlene.k.nakamura@hawaii.gov. Thank you.

- We have no objections.
- We have no comments.
- We have no additional comments.
- Comments are attached.

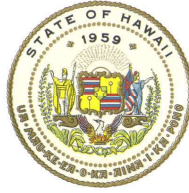
Signed:

Print Name: Trevor Fitzpatrick

Division: OCC

Date: 7/14/2021

Attachments
cc: Central Files



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 7, 2021

MEMORANDUM

FROM:

TO:

DLNR Agencies:

Div. of Aquatic Resources

Div. of Boating & Ocean Recreation

Engineering Division (DLNR.ENGR@hawaii.gov)

Div. of Forestry & Wildlife ([rubyrosa.t.terrago@hawaii.gov](mailto:rbyrosa.t.terrago@hawaii.gov))

Div. of State Parks

Commission on Water Resource Management (DLNR.CWRM@hawaii.gov)

Office of Conservation & Coastal Lands (sharleen.k.kuba@hawaii.gov)

Land Division – Hawaii District (gordon.c.heit@hawaii.gov)

TO:

FROM: Russell Y. Tsuji, Land Administrator *Russell Tsuji*

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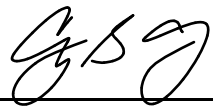
LOCATION: Kapaa-Upolu, North Kohala, Island of Hawaii; TMK: (3) 5-6-001:074

APPLICANT: State Office of Planning on behalf of Honoipu Hideaway, LLC

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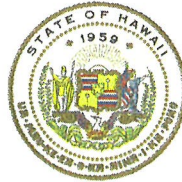
- () We have no objections.
- (✓) We have no comments.
- () We have no additional comments.
- () Comments are attached.

Signed: 
 Print Name: Carty S. Chang, Chief Engineer
 Division: Engineering Division
 Date: Jul 22, 2021

Attachments
cc: Central Files

7/22/21

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 7, 2021

MEMORANDUM

TO: **DLNR Agencies:**
 ___ Div. of Aquatic Resources
 ___ Div. of Boating & Ocean Recreation
 X Engineering Division (DLNR.ENGR@hawaii.gov)
 X Div. of Forestry & Wildlife (rubyrosa.t.terrago@hawaii.gov)
 ___ Div. of State Parks
 X Commission on Water Resource Management (DLNR.CWRM@hawaii.gov)
 X Office of Conservation & Coastal Lands (sharleen.k.kuba@hawaii.gov)
 X Land Division – Hawaii District (gordon.c.heit@hawaii.gov)

FROM: Russell Y. Tsuji, Land Administrator *Russell Tsuji*

SUBJECT: Petition for a Declaratory Order for a Boundary Interpretation – Land Use Commission Docket No. DR21-73 – Petitioner: **Honoipu Hideaway, LLC** Request for Boundary Interpretation Between Conservation and Agricultural Land Use Districts


LOCATION: Kapaa-Upolu, North Kohala, Island of Hawaii; TMK: (3) 5-6-001:074

APPLICANT: State Office of Planning on behalf of Honoipu Hideaway, LLC

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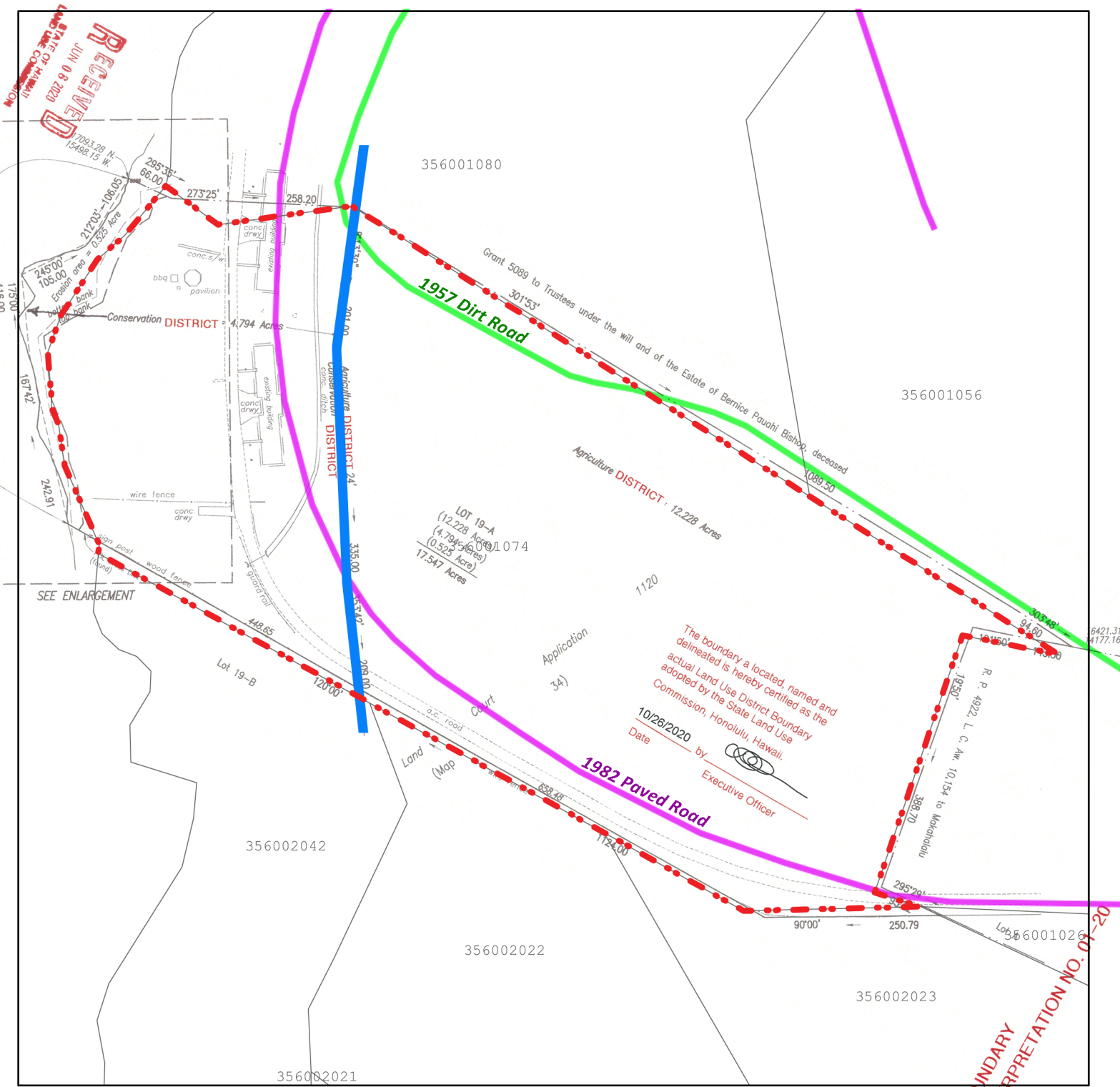
Signed: 

Print Name: GORDON C. HEIT

Division: Land Division

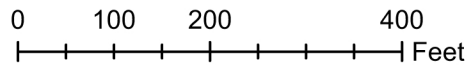
Date: 7/23/21

Attachments
cc: Central Files



Legend

- TMK356001074
- Tax Map Key
- Paved Road USGS Topographic Map, 1982
- Dirt Road USGS Topographic Map, 1957
- Conservation/Agriculture District Boundary
*estimated



OPSD EXHIBIT 4



This map was produced by the Office of Planning (OP) for planning purposes only. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from OP.

Map No: 20210720-01-CC
 Map Date: 7/21/2021
 Service Request: SR2021-023 Honoipu Hideaway Petition
 Sources: Topographic Map, USGS 1957, 1982; LUC Boundary Interpretation

**OFFICE OF PLANNING
AND SUSTAINABLE DEVELOPMENT**

Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawaii 96813
Telephone: (808) 587-2846
Facsimile: (808) 587-2824

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. DR21-73
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For Boundary Interpretation of certain land)	
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Tax Map Key No. (3) 5-6-001-074, Kapaa-)	
Upolu, North Kohala, County of Hawaii,)	
State of Hawaii.)	
)	
)	
)	
)	
)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of the foregoing was served upon the following
by either hand delivery or depositing the same in the U.S. Postal Service by regular mail:

CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN
MOLLY A. OLDS
CADES SCHUTTE
A Limited Liability Law Partnership
Cades Schutte Building, Suite 1200
Honolulu, Hawaii 96813-4212

ELIZABETH A. STRANCE
DIANA MELLON-LACEY, Esq.
Corporation Counsel
Deputy Corporation Counsel

Office of the Corporation Counsel
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, Hawaii 96720

ZENDO KERN
DIRECTOR
JEFF DARROW
DEPUTY DIRECTOR
County of Hawaii Planning Department
Aupuni Center
101 Pauahi Street Suite 3
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, September 13, 2021.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR