BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

HONOIPO HIDEAWAY, LLC

For Boundary Interpretation of certain land consisting of approximately 17.5470 acres situated at 56-102 Old Coast Guard Road, Tax Map Key No. (3) 5-6-001-074, Kapaa-Upolu, North Kohala, County of Hawaii, State of Hawaii.

DOCKET NO. DR21-73

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S STATEMENT OF POSITION ON PETITION FOR DECLARATORY ORDER FOR BOUNDARY INTERPRETATION; EXHIBITS 1, 2, 3 AND 4; AND CERTIFICATE OF SERVICE

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.


The USGS Makuhona 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.


OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans
MARY ALICE EVANS
DIRECTOR
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
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 Oronenker
Executive Officer

c: Nathan Eggen, P.O. Box 1599, Kapaa, 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)
Boundary lines indicated as such are located, named, and delineated is hereby certified as the actual land use district boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

10/26/2020
Date
Executive Officer

Owner: Honoipu Hideaway LLC
Address: 1001 S. Bishop Street, Suite 2685A
Honolulu, Hawaii 96813

NOTES:
1. Azimuths and coordinates referred to T.M.K.: (3) 5-6-01:074

Thi: work was prepared by me or under my direct supervision.

June 2020
"Certificated Professional Land Surveyor"
Certification Number 10007

OPSD EXHIBIT 2
State of Hawaii  
Department of Business, Economic Development and Tourism  
Office of Planning and Sustainable Development  
Land Use Division  
Attention: Ms. Lorene Maki, Planner  
via email: lorene.k.maki@hawaii.gov  
235 South Beretania Street, 6th Floor  
Honolulu, Hawaii  96813

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) 5-6-01:074 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
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  

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
MEMORANDUM

FROM: Carty S. Chang, Chief Engineer
TO: DLNR Agencies:
   Div. of Aquatic Resources
   Div. of Boating & Ocean Recreation
   Engineering Division (DLNR.ENGR@hawaii.gov)
   Div. of Forestry & Wildlife (rubysra.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.helt@hawaii.gov)

TO: Russell Y. Tsuji, Land Administrator
FROM: Russell Tsuji
SUBJECT: Petition for a Declaratory Order for a Boundary Interpretation – Land Use
Commission Docket No. DR21-73 – Petitioner: Honoiupu 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 Honoiupu 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: [Signature]
Print Name: Carty S. Chang, Chief Engineer
Division: Engineering Division
Date: Jul 22, 2021

Attachments
cc: Central Files
MEMORANDUM

TO: DLNR Agencies:

__ Div. of Aquatic Resources
__ Div. of Boating & Ocean Recreation
X Engineering Division (DLNR.ENGREHawaii.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


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: [Signature]

Print Name: Gordon C. Heit
Division: Land Division
Date: 7/23/21

Attachments
cc: Central Files
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
HONOIPU HIDEAWAY, LLC

DOCKET NO. DR21-73
CERTIFICATE OF SERVICE

For Boundary Interpretation of certain land
consisting of approximately 17.5470 acres
situated at 56-102 Old Coast Guard Road,
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


OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAI'I

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR