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Attorneys for Petitioner
HONOIPU HIDEAWAY, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAIʻI

In the Matter of the Petition of HONOIPU 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 Hawaiʻi, State of Hawaiʻi.	DOCKET NO. DR21-73 **THIRD SUPPLEMENTAL EXHIBIT LIST** **EXHIBIT 39** **CERTIFICATE OF SERVICE**

THIRD SUPPLEMENTAL EXHIBIT LIST

Honoipu Hideaway, LLC ("**Petitioner**"), a Hawai'i limited liability company, respectfully submits this third supplemental exhibit list. The third supplemental list adds Exhibit 39, a full copy of the 1969 State of Hawaii Land Use Regulations Review. Exhibit 39 is attached to this exhibit list.

Ex.	Description
1.	Eckbo, Dean, Austin & Williams, State of Hawaii Land Use Regulations Review (1969)
2.	Land Use Commission Rules (1964)
3.	1964 LUC Map Certified
4.	1969 LUC Map Certified
5.	1974 LUC Map Certified
6.	Overlay Property with 300-ft Setback
7.	Overlay Map 300-ft Setback
8.	1982 USGS Map Overlay
9.	1954 Aerial Excerpt
10.	1954 Aerial
11.	1965 Aerial Excerpt
12.	1965 Aerial Original
13.	1982 USGS Certified Map
13A.	1957 USGS Certified Original
13B.	1982 USGS Certified Map
14.	Loran Station Info Book
15.	250 Kohalans Article
16.	1961 USCG Road Picture
17.	1961 USCG House Picture
18.	GIS Aerial Photo
19.	Corrected Boundary Survey
20.	Overlay New Road Current Line

Ex.	Description
21.	Application of Hawaiian Electric Company Inc.
22.	Stengle Declaratory Order
23.	Stengle Amendment
24.	Church Petition
25.	Linge v. Hawaii Government Employees Association AFSCME Local 152 AFL-CIO
26.	Civil Jury Instructions 3.3
27.	Waikiki Marketplace Investment Co. v. Chair of Zoning Board of Appeals of City and County of Honolulu
28.	Denning v. Maui County
29.	Nakamine v. Board of Trustees of Employees Retirement System
30.	Lucas v. South Carolina Coastal Council
31.	Penn Central Transportation Co. v. City of New York
32.	County Zoning Map
33.	Office Memorandum dated March 17, 1959
34.	U.S. Coast Guard Speed Letter dated September 18, 1959
35.	1969 Review Agricultural Uses Map TMK Overlay Excerpt
36.	1969 Review Agricultural Uses Map TMK Overlay
37.	1954 USGS Aerial Excerpt TMK Overlay
38.	1954 USGS Aerial TMK Overlay
39.	Eckbo, Dean, Austin & Williams, State of Hawaii Land Use Regulations Review (1969) (Full Copy)

DATED: Honolulu, Hawai'i, December 22, 2021.

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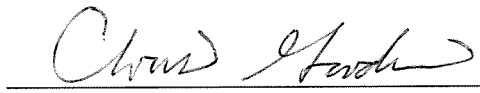

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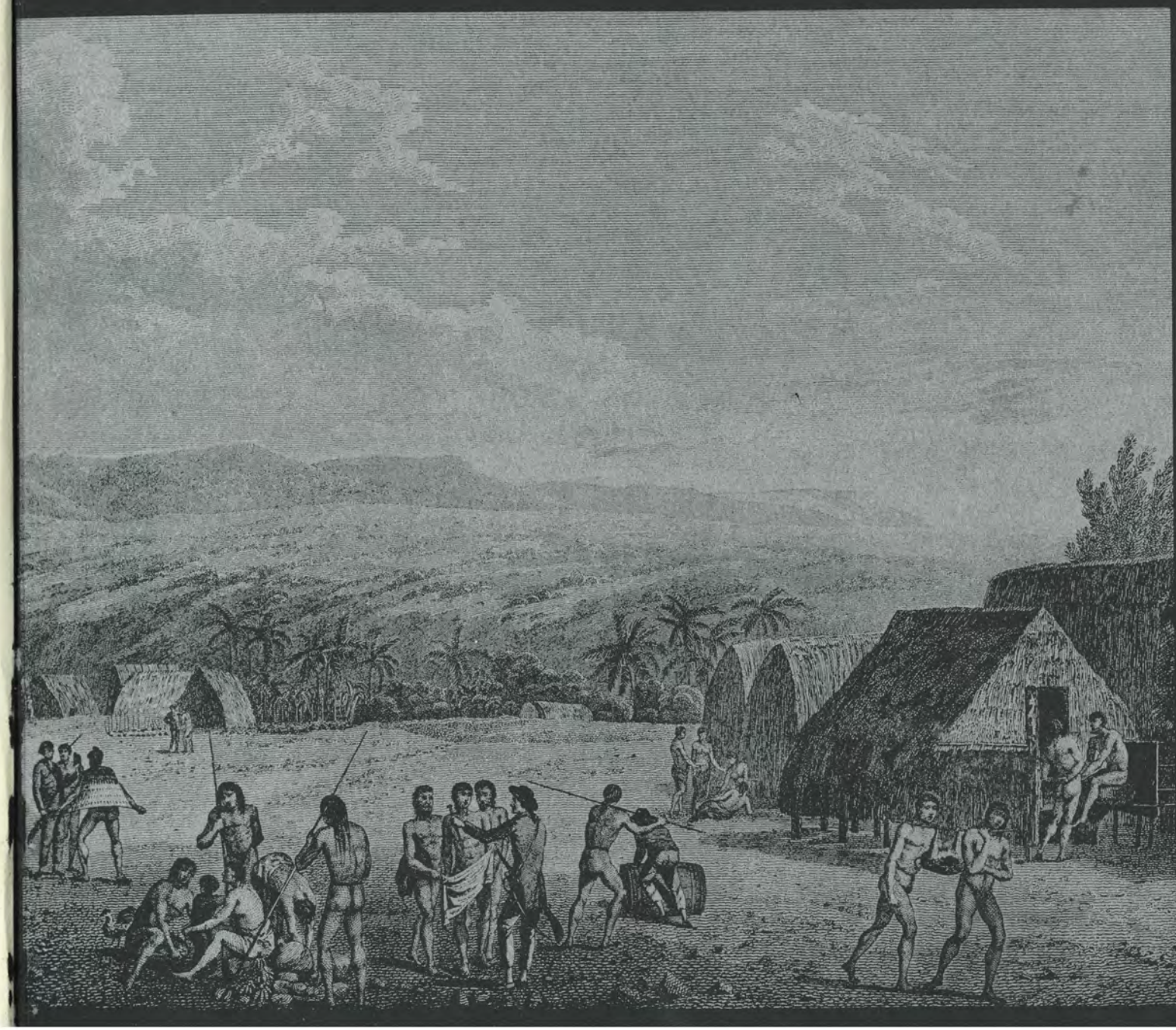
Exhibit 39

STATE OF HAWAII
LAND USE DISTRICTS AND REGULATIONS REVIEW



ECKBO
DEAN
AUSTIN &
WILLIAMS

August 15, 1969

Mr. C. E. S. Burns, Jr., Chairman
Land Use Commission
State of Hawaii
State Capitol Building
Honolulu, Hawaii

Dear Mr. Burns:

We take great pleasure in transmitting this report to the Land Use Commission in the conclusion of our review of the Hawaii Land Use District Boundaries and Regulations. May we take the occasion to thank each member for the friendly and cooperative spirit which made possible the successful completion of this year of work.

A great amount of the satisfaction we feel at this time is due to the fact that many good things have been accomplished during the review program. As a result of our mutual efforts, beneficial alterations have been made by the Commission in the Rules of Practice and Procedure, District Regulations and District Boundaries.

We hope that additional benefits will accrue from this study when, in the future, other recommendations contained herein receive consideration.

We wish to thank each Commissioner for our good fortune in being able to experience the most pleasurable working environment we have ever realized.

Respectfully submitted,

ECKBO, DEAN, AUSTIN & WILLIAMS

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PREFACE

ABOUT THIS REPORT

Eckbo, Dean, Austin & Williams and the firm's consultants have made a study of Hawaii's pioneering Land Use Law, under a one year contract with the State Land Use Commission. Because this is the first comprehensive review of a unique law, and because of widespread interest in it, we have included in our report items of absolute functional necessity as well as items of rather peripheral importance.

One will find herein matters of history, economics, and use planning, taxation, law and personal opinion. They are included to provide a feeling for the total concept of the law. Taken collectively, we hope this information will provide both the citizen of Hawaii and the interested outsider the knowledge he seeks about the law and its implications, from the processes of drawing district boundaries and regulations to the decisions made in the market place and the tax office.

The report is organized in the following way:

Chapter 1 provides a history of state planning, the elements of the Land Use Law, an outline of how the study was made and some of our observations in retrospect.

Chapter 2 summarizes our conclusions. We have tried in this abridgement to set the stage for our recommendations for administrative and legislative action which follow in Chapter 3. We hope the reasons for these recommendations are not obscure after such a short introduction to the subject.

Chapters 4 through 7 are a summary of the recommended changes to the district boundaries in the four counties. Since these were acted upon during the preparation of this report, we are able to provide the Commission's decisions with respect to them. In this way, the text becomes not just a report to the Commission but a record of its actions as well. These four chapters are a functional necessity, but may be unentertaining reading to those not intimately familiar with the Hawaiian landscape.

Chapters 8 through 11 deal with the Agriculture, Conservation, Urban and Rural Districts in detail. They contain some of the "heartwood" of this report because they deal with the main issues and conflicts involved in the four districts, the determination and administration of them.

Chapters 12, 13 and 14 contain background information on land policy, economics and land use planning. However, they also contain analyses, critiques and conclusions resulting from inspection of these subjects.

Chapter 15 is one of the major contributions to this study, and is very special in our opinion. It is a theoretical study of the potentials created by taxation as an aid to planning implementation. It is a review of the Hawaii tax system and an analysis of the Hawaii real property tax as it relates to planning goals. A reading of this chapter is probably essential to a full understanding of the summary contained in Chapter 2 and the recommendations contained in Chapter 3—that is, for everyone but an expert on taxation.

One of our "working papers" has become Chapter 16, because we think people will enjoy reading the analysis of the attitude survey.

Chapter 17 is another "working paper", and in this case a rather dry one. However, we feel it is a necessary addition as a statistical summary of administrative actions related to the Land Use Law. These provide the basis for some important recommendations and part of our opinion that the Law is accomplishing its purpose.

Chapter 18 contains a legal review and analysis.

The Appendix contains the usual items of the Law, the amendments, newly adopted District Regulations, newly adopted Rules of Practice and Procedure and bibliography. But perhaps the most interesting item of the Appendix will be the statistical summary of the attitude questionnaire. It seems to be universally interesting to know where various sectors of the population stand on issues.

ACKNOWLEDGMENTS

We wish to acknowledge with gratitude the assistance of hundreds of people in and out of government who have taken from their valuable time to assist in this study when requested. In particular we wish to thank the Land Use Commission, Department of Land and Natural Resources, Department of Taxation, and their staff members, the County Planning Directors, and the County Planning Commissions for their cooperation and interest. Without their help and advice this program would have been next to impossible.

This project was conducted in the Honolulu Office of Eckbo, Dean, Austin & Williams. Among those who participated were:

Edward A. Williams—Principal in Charge
Don B. Austin
Garrett Eckbo

PROJECT STAFF
Howard B. Altman
C. Christopher Degenhardt
Grant R. Jones

ASSISTANTS
David T. Woolsey
Linda R. Bernstein
Elizabeth M. Moore

This project staff was involved in many aspects of this review including: the identification of issues; review of applicable information, studies and reports; the gathering and analysis of information and opinions from questionnaires and interviews; the analysis of administrative actions of the Land Use Commission; the development of concepts and goals; the analysis of the Land Use District Regulations; the review of the land use boundaries; and proposals for new policies and legislative changes.

In addition to these tasks, specific responsibilities of the project staff included:

Howard B. Altman—Project Administration and Urban Districts

C. Christopher Degenhardt—Agriculture and Rural Districts

Grant R. Jones—Conservation Districts

Our consultants also deserve special recognition for their accomplishments in the study. They are:

Baxter, McDonald and Company, Berkeley, California, which provided management advice and analysis of administrative actions of the Land Use Commission, County Planning Commissions and Department of Land and Natual Resources.

Dr. Leslie E. Carbert, Tax Economist, Palo Alto, California, who provided economic and taxation and dedication law analysis and recommendations.

Padgett, Greeley, Muramoto and Akinaka, Attorneys at Law, Honolulu, who provided legal reviews and consultation.

The Environmental Analysis Group, San Francisco, California, which provided assistance in formulating and analyzing personal interview questions and the mailed questionnaire.

Williams and Mocine, City and Regional Planners, San Francisco, California, which provided analysis of State and County planning and zoning.

CHAPTER 1 / INTRODUCTION

Urban and Agriculture Districts
Mililani Town, Waipio, Oahu

Conservation District
Ke'e Beach, Kauai

I. STATE PLANNING AND THE LAND USE LAW

A. *History*

Hawaii was the first of the fifty states to have a General Plan. It was prepared by the State Planning Office, now the Department of Planning and Economic Development, in response to the State Planning Act of 1957, was submitted to the Governor in January of 1961 and subsequently approved by resolution of the Legislature. The Land Use Law is a result of this first State General Plan, perhaps its major accomplishment.

Some of the actions leading to the passage of the Land Use Law resulted from concerns and discussions predating World War II. In the post-World War II period, there was a growing awareness of the need for government action in controlling land uses because of the very limited size of the islands.

The 1957 Territorial Legislature passed three basic acts related to land use. Act 35 established a research program at the University of Hawaii, later to become known as the Land Study Bureau. This act directed the Bureau to classify all lands of the Territory in order to provide a sound basis for subsequent land use studies. Since agriculture was the primary use, the initial work of the Bureau concentrated on the classifications of agricultural land. These studies were of great value in establishing the original district boundaries and in the review.

Next the Legislature established the Territorial Planning Office and directed it to prepare a General Plan as a guide for physical and economic development. Then in 1957 the Territorial Legislature enacted a comprehensive forest and water reserve zoning law to be administered by the Board of Commissioners of Agriculture and Forestry, now the Department of Land and Natural Resources.

This act, Act 234, directed the defining of boundaries of Forest and Water Reserve Zones, the creation of subzones and the establishing and enforcing of regulations for the use of such zones. This is dealt with in some detail in Chapter 9, "Conservation District Issues." The act also granted the general powers of zoning to County Boards of Supervisors for areas of their counties that were not included in the Forest and Water Reserves.

During the preparation of the State General Plan of 1961 certain land use issues became clear, as follows:

1. Development of land for urban uses, in many cases tended to occur in areas where it was uneconomical for public agencies to provide proper and adequate service facilities, and there was a consequent lag in the provision of such facilities, to the detriment of the general welfare and convenience;
2. Development of land for urban uses, in many cases, occurred on land having a higher capacity for contributing to the basic economy of the State (meaning agriculture) than the uses which were developed thereon;
3. There was adequate land on all the islands of the State, for full development of the urban uses forecast for the next twenty years, without using the lands with high capacity for intensive cultivation;
4. Development of urban areas should be encouraged in an orderly and relatively compact manner in order to provide for economy and efficiency in public services and utilities;
5. Land not required at any given time for urban or intensive agricultural uses should receive special attention regarding land management practices and use.

B. The State General Plan Revision Program.

In 1967, the Department of Planning and Economic Development published the State General Plan Revision Program. The program is reviewed in the chapter, "State and County Interrelations in Planning and Zoning," and will be referred to throughout this report because of its relationship to land use, economic and tax issues.

C. *Provisions of the Land Use Law*

In order to understand the major conclusions and recommendations that follow this chapter, it is desirable that some of the provisions of the Law be briefly described.

Of the four districts provided, Urban Districts are generally defined as lands in urban use with sufficient reserve areas to accommodate foreseeable growth. Agriculture Districts include lands with a high capacity for intensive cultivation. Conservation Districts are comprised primarily of lands in the existing forest and water reserve zones. Rural Districts, the result of the amendment to the Law in 1963, are defined as lands composed primarily of small farms mixed with very low density residential lots with a minimum lot size of one-half acre.

Land uses within Urban Districts are administered solely by the counties.[1] In the agriculture and rural districts land uses are administered jointly by the counties and the State Land Use Commission. In the conservation districts, land uses are administered solely by the State Department of Land and Natural Resources.

D. *Administration*

The administration of land use controls in Hawaii is complex. The Counties of Hawaii, Maui, Kauai and the City and County of Honolulu, the Land Use Commission, the Department of Planning and Economic Development, the Department of Land and Natural Resources and the Department of Taxation are all inextricably involved. In addition, the public, in variety of different roles such as property owner, lessee, developer, community participant, conservationist and responsible citizen, is also involved. Clearly there are innumerable opinions and conflicting interests to be resolved. The problems neither begin nor end with the designation of lines on maps which represent land use district boundaries.

Once established, district boundaries can be changed by the Land Use Commission through a petition and public hearing process. The procedure includes the County Planning Commission recommendation, a public hearing, and action by the Land Use Commission requiring six affirmative votes for approval. In Agriculture and Rural Districts certain uses are permitted without a change in boundary. Unusual and reasonable uses may be permitted through special permits requiring a public hearing and both county and Land Use Commission approval. Our recommendations for boundary changes as a result of this study are presented in Chapters 4 through 7.

The Rules of Practice and Procedure govern proceedings before the Land Use Comssion. The State Land Use District Regulations clarify and amplify provisions of the Land Use Law. These may be amended in the same manner as the district boundaries. Recommendations for changes in these documents have also been made a part of this review and will be found in Chapter 3. Both documents will be found, as amended, in the Appendix.

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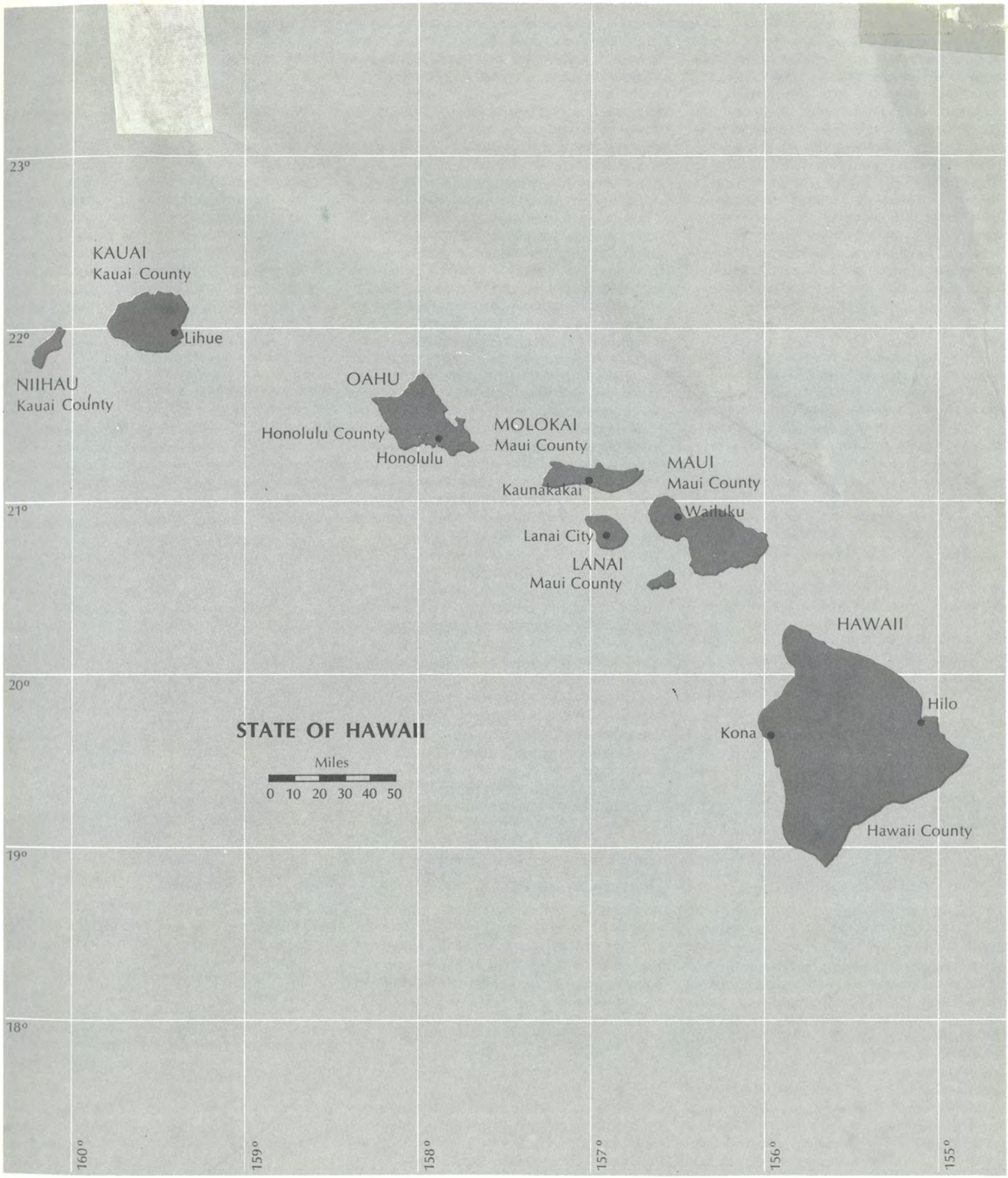
[1] Hawaii has two levels of government in addition to the Federal Government—the State and the counties. (Honolulu is officially a city and county, however.)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[illegible] of the intentions of the Law is that [illegible] its are meant to encourage rather than penalize those who make the best use of their lands. The Land Use Commission informs the Department of Taxation of changes in district boundaries and special permits so that the department can give consideration to the existing and permitted uses of land in making its assessments.

Another important section of the Law provides for the dedication of land for agricultural purposes, whereby a farmer who dedicates his land for a specific agricultural use for ten years may receive a reduction in his assessment on the basis of "agricultural use."

II. SCOPE OF THE STUDY

Other items of primary importance in the review program are listed below. They are dealt with in detail later in this report.

A. Analysis of studies prepared by public and private sectors regarding resources, urbanization, transportation, population, economics and tourism;
B. Analysis of the State General Plan Revision Program and County General Plans, ordinances and regulations;
C. Gathering and analysis of personal opinions about land use and the Land Use Law;
D. Analysis of previous petitions for bundary changes, special permit applications in Agriculture and Rural Districts, and use applications in the Conservation Districts;
E. Analysis of legal opinions and law suits that have been filed in relation to the Land Use Law;
F. Analysis of Regulation No. 4 of the Department of Land and Natural Resources which is used to guide land uses in the Conservation Districts;
G. A review of the effectiveness of the Land Use Law and its administration;
H. A review of the Law together with amendments to it, related legislative resolutions and unsuccessful amendments proposed in the past.

III. METHODS OF WORK

A. *Objectives*

An important part of the program was the review of the regulations and district boundaries. Our goal in reviewing these was to improve and clarify the criteria used in establishing district boundaries and reviewing petitions for boundary changes and special permits. The Land Use Law provides that the Commission establish standards for determining boundaries and regulations prescribing the uses in the districts. It specifically calls for the periodic review of the regulations and of the classification and districting of all lands. For the purpose of improving the ways of carrying out the intent and directives of the Law, the review, by definition, had to be made within the parameters of the Law.

The work was carried out under certain principles considered to be of primary importance to the success of the program. Underlying these principles is a philosophy that the elements of land, air and sea are resources to be managed for the welfare of present and future generations; and that when short term interests of a few are in conflict with long range interests of the majority, the long range interests should prevail.

Many resources are continually renewable if wisely managed. Some resources are permanently lost if depleted or sufficiently damaged. It is therefore desirable to find the inherent factors related to each particular resource that should place restraints or limitations on their use in order to keep them continually viable. Since we are concerned with land use for habitation, our interest is in identifying areas where settlement should and should not take place, and further defining the kinds of development that can take place without destroying the qualities of the natural resources and environment.

B. *Coordination of Interests*

The study was related to the State and County General Plan programs and State and local goals insofar as they were not in conflict with each other, with the Law, or with the principles of resource management outlined above.

Early in the work period we spent considerable time interviewing people throughout the State. Our goal was to discover and formulate a list of primary issues that could serve as a framework for subsequent research, study, discussion and solution. These issues did, in fact, provide the basis for the questions contained in the attitude survey and later discussions with the Land Use Commission. These responses, in turn, led to recommendations for certain changes in the Rules of Practice and Procedure, and the Land Use District Regulations and District Boundaries.

The work was carried out in close cooperation with those concerned with the operations of the Law, specifically including State and County Planning agencies, Department of Land and Natural Resources, Department of Taxation, Land Study Bureau, conservation and civic groups, major landowners, developers, and legislators, to name but a few. For instance, all major landowners and developers were asked for specific information about future development plans so they could be evaluated. Future plans of other landowners and developers [illegible]ed during the public hearings.

Recommendations [illegible] in regulations and boundaries [illegible]d in the field and reviewed wi[illegible] Use Commission and County [illegible]encies in preliminary form before proceeding with the final boundary remapping.

Meetings with each County Planning Commission during the preliminary and final phases of the study in order to keep them abreast of progress and also to get their opinions, and frequent meetings with others concerned with the Land Use Law, including property owners and developers, prepared most parties for productive participation in the public hearings. The proposed new boundaries and regulations were presented during the late spring of 1969 at public hearings in each county. At these hearings the rationale behind the new regulations and boundaries was presented and discussed and arguments in favor of or against were received by the Land Use Commission. After the hearings in a series of action meetings, District Regulations and Rules of Practice and Procedure for another five year period were adopted by the Land Use Commission.

CHAPTER 2 / FINDINGS AND CONCLUSIONS

Urban District
Waikiki, Honolulu, Oahu

Agriculture and Conservation Districts
Wailua, Hana, Maui

I. INTRODUCTION

Undoubtedly this project has presented one of the most important recent opportunities for a land use study because it has dealt with a unique law which other states should seriously consider. Hawaii is the only state with virtually all of the tools, in law and in operation, for protection of irreplaceable land resources. It is through the wisdom of the 1961 State Legislature which passed the Law, and subsequent Legislatures which have side-tracked crippling amendments, that the people of the State can look forward to the future with hope that the great scenic and natural resources of the Islands will not be spoiled. This is certainly not to guarantee such a heavenly state, however.

There are strong economic forces at work for development of the most sought after areas of the Islands. These are influenced by the tax system, stimulated by public expenditures and ultimately controlled by the police power residing in the hands of the State Land Use Commission, the County Planning Commissions, County Councils and the Land Board of the Department of Land and Natural Resources. In the hands of the few people making up these commissions and boards rests enormous power, but along with that power goes unenviable responsibilities, hardships and often thankless public service.

It has been said that the Land Use Law was the result of a coalition between conservation forces and landowners. If this is so, it is our opinion that once the Law was passed, its supporters rapidly forgot it, for we have seen very few of them at Land Use Commission meetings except when their personal interests were at stake.

We would hazard a guess that many State Legislators do not know the basic provisions of the Law, and we cite these opinions only to point out that the members of the Land Use Commission must, on many occasions, feel very alone and without support when they are trying to carry out the conservation and preservation intentions of the Law. We have observed that Landowners, developers, attorneys, architects and planners can be most persuasive. And we can hear, in our imagination, the Commissioners' telephones ringing late at night before important decision days. We have great sympathy for those who have to make these decisions.

Our job as technicians, however, was not to make the final decisions, but to present recommendations, alternatives and the consequences of decisions on these alternatives. When we failed to be convincing in what we thought was right, we had a nagging feeling that we did not fully define the consequences of the paths to be taken.

At the present time, Hawaii is certainly as difficult a place as any to make land use decisions. On one hand, there is the incredibly beautiful landscape and climate (and one of the more desirable social climates). On the other hand, there is a relatively limited supply of land in general, a *very* limited supply of prime agricultural land, a *very* limited supply of beautiful beach land, and all of it under enormous pressure for housing and resort development. The pressures are the result of population growth and shifts, the new ease of air travel, available leisure time, and easy money for travel, vacationing and investment. The State's single resource in the greatest danger of being depleted is its natural beauty.

With an economy that could be decimated by a sudden drop in military expenditures or a blight on the cane sugar market, it is no wonder that the State is trying to build its tourist industry as a hedge. But tourism tends to displace residents, uses up the most attractive beach areas first, and in itself is often viewed as a fickle part of the economy. The clear choice is between development and conservation.

With a burgeoning population and most of it on Oahu, the pressure on precious cane land is apparent and severe. The choice again is clear, but the solution is a difficult one because none of the solutions are satisfactory to everyone. The alternatives are: to let the urban areas expand into the countryside; to keep urban boundaries as they are and force Honolulu people into areas of higher densities; or to limit population — not a happy selection.

If our private and public goals were high enough we would have institutionalized ways of simultaneously urbanizing while protecting the essential natural environment. In other words, man and nature could theoretically live in harmony. But we do not know enough about how to do these things yet, either on the government or private development level (with few notable exceptions); so for the present, until these desires and tools are better developed, the key to the future is restraint. This is the essence of the police power. It is the method Hawaii has installed to protect its land resources and it is working. We see no alternative but to improve the present methods, and in this regard we hope our joint efforts will prove of value.

Our basic ideas for improving statewide zoning and the environment within which it functions might be summed up in the following way.

A. *For Land Use Commission action:*
1. Foster as widespread agreement on objectives as possible and maintain a high level of communication with the public and related agencies.
2. Maintain District Regulations and Rules of Practice and Procedure of the highest order of clarity and equity.
3. Maintain a logical system of Land Use Districts based upon the objectives of the law and the highest principles of land use planning.
4. Develop a spirit of cooperation among the agencies involved in administering the Land Use Law.

B. *For Legislative Action:*
1. Develop a state population policy as a prerequisite to economic and land use planning.
2. Continue to support a high level of economic and land use planning as necessary prerequisites of zoning.
3. Develop well defined and more equitable tax and assessment systems to assist the implementation of state planning and zoning.

The conclusions following in this chapter, the recommendations in the next chapters and the text that appears later in this report will elucidate these and many peripheral issues and concepts.

II. GENERAL SUMMARY

A. *Objectives of the Land Use Law*

In our opinion, the basic objectives of the Land Use Law, as contained in "Section 1., Findings and Declaration of Purpose", Act 187-SLH 1961, are as important and valid today as they were when enacted eight years ago. These objectives are to preserve and protect the limited land resources of the State while encouraging development best suited to the public welfare, and to use real property assessment methods in a complementary way. We believe that the interviews and survey of attitudes support this point of view although,

at the same time, they express some significant criticisms.

However, while we make this statement regarding public support for the original intent of the Law, we do not think that the matter of goals and objectives for land use control is a closed issue. For instance, we have found that people have divided opinions about the purposes of the Law. We note from personal interviews that often people do not really understand Land Use Commission actions and that this is due, in part, to not knowing the Commission's goals. Therefore, we feel that it is important that the Commission develop and circulate a statement of goals in support of the Law. We also think that a reaffirmation of the intent of the Law by the Legislature would help reinforce Commission direction and action, those of other related public agencies, and the private sector as well.

B. *Economic Development and Growth*

An understanding of the economic structure and potential of Hawaii is essential for the development of sound planning policy in general and sound land use policy in particular. Hawaii, through its Department of Planning and Economic Development, has already done imaginative work to provide this understanding. It is important to relate economic goals to other planning goals and to show this relationship in the perspective of competing demands for the use of land as a scarce, and in Hawaii perhaps the most scarce, economic resource.

Historically Hawaii has had a limited economy based on federal government expenditures and agriculture. It is trying very hard, and succeeding in a number of directions, to diversify that base. The tourist industry is receiving main support and emphasis at the present time and is in a stage of phenomenal growth. It provides special opportunities and challenges. One of the opportunities is that it can help in the development of the neighbor islands. One of the challenges is for the State to retain its freedom of action in the face of a tremendous flow of investment capital from the mainland and elsewhere. Because of the concentration of population on Oahu, there is the potential of a conscious state policy to direct tourist facility growth to the neighbor islands. This is being done to the extent that tourist destination area studies and airport, water and highway developments are all being guided to this end. But even greater efforts will be required to save both the quality of life that now exists on Oahu and build the economic and cultural life of the neighbor islands.

Hawaii's population growth is dramatic. Coupled with a growing economy and full employment, it exerts demands for housing, services and new land conversions to urban purposes. The population of the State increased from 499,794 (1950 census) to 632,772 (1960 census), an increase of 26 percent. The 1968 population is estimated at 725,000 by the Department of Planning and Economic Development, an increase of 14 percent over 1960.

TABLE 1 SELECTED ECONOMIC GROWTH INDICATORS

Year	Per Capita Personal Income[a]	Telephones[b]	Value of all Agricultural Products (In thousands of dollars)[c]	Total Value of Construction (In millions of dollars)[d]
1955	$1,837	143,063	$297,944	$174.4 (1958)
1961	2,488	221,599	307,530	267.3
1967	3,337	323,894	374,417	346.8
% increase	81%	126%	26%	99%

[a] U.S. Department of Commerce, Survey of Current Business, August, 1968.
[b] Hawaiian Telephone Company.
[c] Department of Agriculture, Crop and Livestock Reporting Service.
[d] Department of Taxation, *Tax Base for Certain Taxes, Year Ending December 31.*

A number of selected economic indicators illustrate the growth of Hawaii's economy in the years preceding and following the passage of the Land Use Law in 1961, as shown on Table 1.

Employment increases have likewise been most dramatic during this period, having risen from the 1958 total on Oahu of 156,570 to a 1966 total of 220,210, a 41 percent increase. However, statistics alone may be very misleading because of the relatively high proportion of families in which more than one member is employed.

C. *Attitudes*

In the course of our study, many people were interviewed throughout the State, and 1500 questionnaires were sent out to interested parties from whom 570 usable returns were received. For details, refer to Chapter 16, "Attitudes Regarding Land Use and the Land Use Law".

In the interviews there was general agreement that the Law was succeeding, that it had not hurt economic development, that prime agricultural land should be preserved, that preservation of scenic and historic places was beneficial to the economy, that tourism should be encouraged, and that the Law favors large landowners and developers.

Many divided opinions were expressed on ways to improve the Law and the main points of conflict about the Law. There were numerous recommendations, but no significant consensus. Improvement of communication, a public information program and a speeding up of the petition processes were frequently recommended. The latter suggestion the Commission could experiment with; and if it proves feasible, request a change in the Law. Table 2 shows a comparison between the original and present Law and our proposal in processing time.

One significant conclusion from the interviews is that few people actually know the details of the Land Use Law, and as a result there is considerable confusion. No one envied the Commission's job. Nor did respondents who had complaints typically see simple solutions to the problems. Realtors and developers more often felt the pinch of controls than conservationists, who criticized the laxity of current regulations. There was, however, a general desire for clarification, consensus, and disciplined implementation of land use controls. The respondents were uninformed about the Law; they did not sense that the Law was the expression of an explicit set of popular goals and reliable methods; the respondents did not see the administration of the Law following a rigorous legal or ideological skelton of the popular expression.

Perhaps the most clear-cut expression of these anxieties is the widespread belief that the Commission is not free of favoritism. Many respondents indicated

TABLE 2 LAND USE BOUNDARY CHANGE PETITION PROCESSING TIME

	Original Law	Present Law As Amended	Proposed Experiment
Notification of County	0 to 5 days	0 to 5	0 to 5
County Recommendations	0 to 90	0 to 45	0 to 45
Call for Hearing	100 to 210	60 to 120	60 to 90
Decision	45 to 90	45 to 90	30 to 60
Total Time	145 to 395 days	105 to 260	90 to 200

that the Commission was too susceptible to political and economic pressure. On the other hand, the Commission was more likely to be supported or even praised by staunch supporters of conservation goals.

This was one of a number of paradoxes. We believe they resolve themselves if one accepts the proposition that the problem of land us regulation is extremely difficult and complex. The anticipations of a growing population, and the accompanying pressures on land development, along with unresolved questions about the priorities in Hawaii's future, combined to produce a sense of futility. But the rewards of land use regulation can be economically satisfactory and can result in an environment of social and aesthetic quality. So perhaps the futility is born from unsatisfied high hopes. In fact, it is not reasonable to expect that goals will be shared by large sectors. The whole point of land use regulation is to adjust and harmonize conflicts in private objectives. The point of regulatory aparatus and incentive systems is to make the world livable in spite of persistent disagreements.

D. *The Effectiveness of the Law*

It would be interesting to speculate what would have happened in the past years, 1961-1969, if the Land Use Law had not been enacted. Processes the Law has established have undoubtedly had a guiding effect on the location of new urban areas and a restraining effect on wasteful land use practices. Of course, the real question is how effective the Law has been.

One of the factors making it difficult to arrive at a conclusion is the knowledge that the counties are becoming more effective and are exerting more influence on land use than they did eight years ago. In the absence of the Law, they may have exerted more restraint than before the Law, but this is not measurable. There are certain measurements that can be taken into account, however.

With respect to county and Land Use Commission actions, it is possible to draw some comparisons, since the counties are required to make recommendations on the petitions for boundary changes. In the period of September 1, 1964 to September 1, 1968, on a statewide basis, out of 128 applications (9 withdrawn, leaving a net of 119) the counties voted complete approval of 95 petitions while the Land Use Commission voted partial approval of but 78. During the same period the counties voted partial approval of 9 while the Land Use Commission voted partial approval of 16. The totals of complete and partial approval are: the counties 104, the Land Use Commission 94. This indicates that the counties take a more liberal view toward total rezonings than the Land Use Commission, but are more stringent on partial approval, having denied but 12.5 percent to the Land Use Commission's 21 percent.

Growing populations and expanding economies characteristically generate real estate activity in terms of buying, selling, subdividing and building on open unurbanized land on the edges of cities. When there are no restrains this assumes a pattern that has been termed variously as leap-frogging or scatterization. It is a characteristic of fast growing mainland cities. The land ownership pattern of Hawaii, with most lands held in large ownerships, is one restrain that curbs these tendencies toward scatterization. However, the Land Use Law has also had considerable effect by its establishment of district boundaries as will be seen.

It could safely be assumed, for instance, that under the influence of a rapidly growing population, employment and economy, and without controls, there would be considerable scatterization, but this has not been the case. Instead there has been a growth into the open areas provided for in the initial establishment of Urban Districts, and little of the leap-frogging normally seen around mainland cities. The "Analysis of Administrative Actions", Chapter 17, provides county by county statistics to back up this assertion. In total, they indicate that where data were available, of 79 petitions for urban zoning approved by the Land Use Commission, 63 of these or 80 percent were adjacent to already urbanized areas.

It is estimated that there has been a population growth of approximately 153,000 persons on Oahu in the 1961—1968 period. Allowing about 9 acres per 100 persons.[1]

This would require approximately 13,770 acres. It can easily be seen that most of this growth has taken place within the original Urban Districts since only 1,616 acres have been added to them since.

The Land Study Bureau of the University of Hawaii in its reports on Urban Development on Oahu, 1946—1962 and 1962—1963, provides the following information on urganization:

Additions of New Land to the Urbanized Areas of Oahu

1946 to 1963 in Acres

Years	1946-50	1951-55	1956-60	1961-63
Acreage	2,934.5	3,273.6	4,165.4	2,411.4
Average/ Year	587	655	833	602

Note: These are actual conversions from open to urbanized or subdivided land and do not include areas added to Urban Districts by the Land Use Commission that were not actually utilized for urban purposes.

In relation to the above figures, it is interesting to note that during the period 1964—1968 the Land Use Commission approved petitions for additions to the Urban Districts on Oahu totaling 1,616 acres, or an average of 404 acres per year. A full understanding of this must take into account the tremendous pressures and market that exist for "a piece of Hawaii land" Obviously there are restraints at work and the Land Use Law is one of them.

On the basis of these figures alone, it would appear that the Land Use Law has had a significant restraining effect during the 1964—1968 period, after the "permanent" district boundaries were adopted in 1964. There are other factors bearing on this which should be taken into account, although it is difficult to make any measurement of the consequences of each.

- First, the high cost of building because of labor, material and financing costs has had a restraining effect that has supported the maintenance of district boundaries.
- Second, on April 12, 1969, the Land Use Commission approved a petition by Bishop and Austin Estates converting a total of 812 acres from Agriculture to Urban on Oahu (by the same action 728 acres were also converted from Agriculture to Conservation). Assuming, for statistical purposes only, that there are no more additions to the Urban Districts of Oahu, this rezoning will bring the 1964—1969 average up to 485 acres per year.

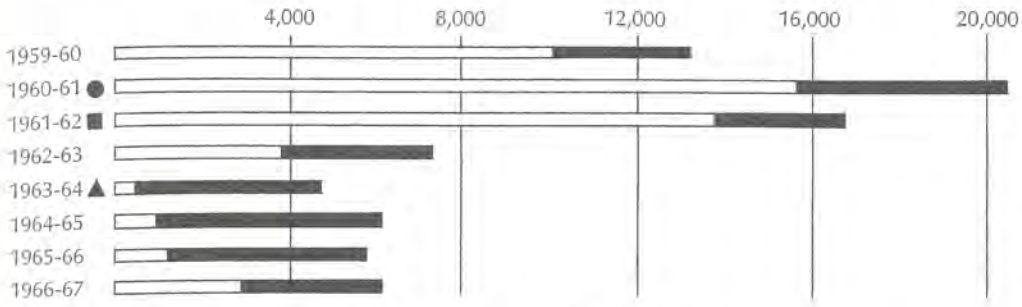
The following graph, which shows the numbers of residential lots in subdivisions of over 25 lots created throughout the State from 1960—1967, indicates perhaps most dramatically one of the highly speculative subdivisions of land principally on the Island of Hawaii where a runaway situation existed. It is interesting to note, however, that though these subdivisions reached a low point in the 1963—1964 period, they have been steadily increasing since, and this trend would bear watching and corrective action.

It is abundantly clear that without the restraints the Law establishes, there would be enormous amounts of land wastefully subdivided, principally on the Island of Hawaii.

One of the purposes of the Law is to protect prime agricultural soils. During the

[1] P. 77, Hawaii Land Use Districts, Harland Bartholomew & Associates, 1963. A standard developed for Oahu in the original land use district study, with which we concur.

RESIDENTIAL LOTS OF SUBDIVISIONS OF 25 LOTS OR MORE CREATED THROUGHOUT THE STATE, 1960-70. Source—Department of Taxation



NOTE: White areas are Hawaii County, black areas are the other Counties combined.
● Land Use law adopted July 11, 1961
■ Temporary boundaries—June 1963
▲ Final Boundaries—August 1964

period of September 1964 to September 1968, of the total number of petitions proposing to change 2,646.8 acres of prime agricultural soils to Urban Districts, only 284.8 acres or 11 percent were approved (136.8 acres on Oahu, 2.1 acres on Hawaii, 71.1 acres on Kauai and 102.8 acres on Maui). During the same period there were requests for conversion of 1,112.3 acres of Conservation District lands to Urban Districts, of which 245.8 acres or 22 percent were approved.

As stated previously, 94 requests have been approved in whole or in part throughout the State. The approved totals are 5,362 acres and the denied totals are 2,424 acres. During proceedings a total of nine petitions were withdrawn, representing 857 acres. Undoubtedly many people have not pursued a desire for boundary change owing to the possibility of failure. The land use restrictions have been a deterrent to development, but it is impossible to say how much.

Though there are many factors of a practical nature that might come into play to foil the wishes and time schedules of some developments, this boundary review study found that those landowners and developers contacted, plus those who made proposals at the public hearings hope to urbanize approximately the following amounts of land. For comparison, the total presently contained in Urban Districts is also shown.

County	Present "U" Districts in acres (1968)	Requested Additions in acres
Kauai	6,861	3,430
Hawaii	24,445	32,700
Maui	17,353	3,050
Honolulu	74,236	12,130
TOTALS	122,895	51,310

In summation it would appear that the Land Use Law and its administration have succeeded in a number of ways anticipated by the Legislature:

1. The Land Use Commission has been more strict than the counties in approving petitions rezonings.
2. "In-filling" of existing Urban Districts has been encouraged and scatterization has been largely brought to an end.
3. Speculative subdivision of new lands far beyond the need for new home sites has been greatly reduced. (The counties also can take a large amount of the credit for this by their introduction of tighter restrictions in Agriculture Districts.)
4. Prime Agriculture and Conservation District lands have been protected from urbanization by Land Use Commission denial of rezoning applications.

E. *Previous Actions of the Land Use Commission*

A detailed statistical analysis was made of all actions of the Land Use Commission in the period of August 1964 to September 1968. An analysis was also made of the actions of the Land Board of the Department of Land and Natural Resources, but they are not summarized here. They are dealt with in Chapter 17, "Analysis of Administrative Actions".

Of the 119 petitions for boundary changes acted upon in the four year period, 94 or 73.4 percent were approved in total or part and involved 5,361 acres. Nearly 50 percent of these received unanimous approval but there were also many close votes. For instance, on Oahu 11 out of the 34 applications voted on would have been reversed if one Commissioner had changed his mind, and six additional would have been reversed if two Commissioners had changed their minds. It is interesting to know that there was no demonstrable connection between a Commissioner's vote and his home island.

Though the interviews and questionnaires indicated the presence of considerable conflict of opinion, in only 3.33 percent of the cases did the Commission overrule both the county and the recommendation of its own staff. However, it overruled its staff in 17 out of 90 cases and the county in 11 out of 90 cases.

The major findings of the analysis, other than the statistical findings, related to the lack of information.

First, it was learned that the Commission does not adequately document the reasons for its decisions, thus making it impossible to determine the factors leading to those decisions. Answers to interviews and questionnaires indicated this also. County Planning Commissions are required to review petitions and present their recommendations to the Land Use Commission. In circumstances of agreement there are few questions, but when the Land Use Commission disagrees with the County Planning Commission or its staff without an explanation, considerable confusion is generated and this leads to lack of public confidence.

Second, a more complete outline of required minimum information is needed for each action. Although information gathering and recording has improved over the years, there is insufficient data recorded and that required is inconsistent. The amount of work required to collect necessary data for this study illustrated this need.

Third, there should be a regular follow-up procedure so that the status of projects is constantly recorded. In order to be able to assess the consequences of the Law, timing and rate of development, sale or lease of property, reassessment data and sales price data are all required as part of the consistent information discussed above.

F. *Agriculture District Issues*

The protection of prime agricultural land as a basic resource is perhaps more on the way to becoming an important question than the protection of the agricultural industry insofar as the Land Use Law is concerned. The Hawaii coffee industry is in trouble, the pineapple industry is in trouble and projections indicate that the sugar cane industry may be headed for trouble.

So long as agriculture is profitable, opinion is fairly firm that agricultural lands should be preserved. But when it becomes no longer profitable, opinions may change and the concept of preserving prime agricultural land may lose support.

Presently, however, sufficient sugar cane and pineapple is being grown at sustained levels to be of significant economic benefit to the State's economy. There is considerable interest and activity, but still a long way to go, in developing a largely self-sustained agricultural industry and market relationship to replace imported products. While not entirely overlooked, the value of the agricultural lands as open space and a scenic, environmental amenity is under-rated in a philosophy more oriented to immediate gain through dynamic growth and development than contemplation on the quality of life.

Although the 1969 Legislature established a one acre minimum lot size for Agriculture Districts at the request of the Land Use Commission, the counties have varying standards that are not adequate to carry out the preservation intentions of the Land Use Law. In order to accommodate small vegetable farmers, a five acre minimum lot size may be desirable, but in many areas even larger, 25 to 100 acre, limitations may be appropriate. The State Agricultural Plan now being prepared by the Department of Planning and Economic Development could help in this as well as other important determinations.

The present Land Use District Regulations permit uses in Agriculture Districts which we consider in conflict with the intent of the Law. These are: public institutions and buildings, country clubs, golf courses, churches and temples. These uses tend to generate urban expansion around them, and the permission to locate them without Commission review should be rescinded. For different reasons we also recommend removing from the list of permitted uses, quarries and other uses not mentioned specifically in the Law. Our reasoning in the latter case is that review of these uses should be necessary not because they are urban generating, but because they can be inimicable to good planning and public nuisances if not carefully located.

The Land Use Commission is subject to considerable criticism because of the fact that it includes considerable areas of land of little or no present agricultural value in the Agriculture Districts. This is perhaps due to a weakness in the Law that does not specifically assign residual or waste lands to either Conservation or Agriculture Districts, but this involves other issues that also need resolution as we shall see.

G. *Conservation District Issues*

We have found that there is considerable confusion about the true purpose and meaning of the Conservation Districts and considerable apprehension and conflict over land use administration of these districts. There is also a significant lack of knowledge on the part of the public about these subjects, which contributes to the confusion and conflict. Even the daily press confuses the Land Use Commission with the Land Board of the Department of Land and Natural Resources, from time to time, by reporting the activities of one as being those of the other. These findings indicate a need for considerable public education in these areas.

A strange situation exists which finds the Department of Land and Natural Resources somewhat in conflict with itself, as well as with private owners and the counties. The department has exclusive land use control over Conservation Districts, represents the largest landowner in the district, has development goals and rights on these State lands and has no long-range general plan for conservation and development of the districts.

An analysis of the Land Use Regulations of the Department of Land and Natural Resources has led to the conclusion that there is need for a complete study of the Conservation District, and a plan for conservation and development of them together with new subzones, new regulations and recommendations for new administrative procedures that will involve the counties.

H. *Urban District Issues*

The single major finding with respect to the determination of Urban District boundaries was a lack of up-to-date data and planning on both State and county levels. Though State planning in Hawaii has reached as high a level of sophistication as any state, and perhaps an even higher level, county planning, particularly in the neighbor islands still has a distance to go. But the main problem was not with levels of sophistication but simply with timing. Where they existed, most general plans were somewhat out of date and therefore of limited value. Where they did not exist, the Land Use Commission and consultants were required to make largely intuitive judgments, albeit with the help of the county planning agencies and other agencies of government. The next boundary review will benefit greatly if all planning agencies of the State prepare for the occasion.

Special mention should be made here of the urgent issue developing west of Honolulu between Pearl City, and Wahiawa. In spite of State policy directed toward Preservation of prime agricultural land, there is considerable pressure building up to urbanize this central area of Oahu. Four of Hawaii's largest landowners are making independent and totally unrelated plans for the development of their lands within this area. It is conceivable that population, economies and resultant political pressures will overturn State policy in this area. If this happens as a result of these pressures alone, it could well dilute the Land Use Law to the point of ineffectiveness which, we believe, would be a tragedy for the future of Oahu and the State of Hawaii.

It would appear that there are two alternatives:

1. The Land Use Commission must "hold the line" against further encroachment into this area, thus preserving the prime agricultural lands and diverting urban growth to other areas, or;
2. Require that rezonings within this area be in accord with a comprehensive long range plan prepared by the State, county and landowners. This plan would establish where public services and facilities related to circulation, drainage, sewage, schools, parks, open space, public safety and amenity will be located as well as where other land uses can occur.

To do less would be to permit piece-by-piece zoning unrelated to a comprehensive plan, resulting in a disasterous situation in our opinion.

There are also urgent needs for general plans for the Kamehameha Coast of Hawaii, the conservation and utilization of the entire coastline of the State, and the Conservation Districts. Though somewhat less urgent, plans are also needed for unplanned areas, a Statewide Land Use, Circulation and Public Facilities Plan and the general up-dating of existing plans previously mentioned.

The critical statewide housing shortage relates to the Land Use Law, but in what way is not presently clear. There is a theory that if the Commission zoned large areas Urban this would bring the price of land down to a point where more houses would be built, but this is unsupported by economic analysis and remains an undocumented and dangerous theory because most of the expansion would take place at the expense of agricultural lands.

Resort development is frequently coupled with a land sales or lease program to generate cash. This situation should be carefully evaluated because it carries with it all the dangers of the large scattered lot sales schemes that preceded the Land Use Law. If the untested market for houses

does not materialize, the State and counties will be left with great areas of largely unbuilt subdivisions and the need for providing the usual maintenance, police, fire and educational services at the usual levels of quality demanded elsewhere without an adequate tax base to pick up the area's fair share of the bill—precisely what the Land Use Law was intended to help avoid.

While many findings have resulted in recommendations, two stand out as most important. Inspection of petitions for boundary changes and past actions of the Commission on very large petitions indicated that there should be a systematic method of zoning in increments. The purpose of establishing such a method would be twofold. First, it would protect the public interest against large rezonings for projects that might fail. Second, it would protect the interests of developers who have to make large advance investments and need some guarantee that they will not suffer because of administrative caprice or change.

It was also concluded that more attention should be given to the marketability and economic feasibility or projects, and that both incremental zoning provisions and special permits should have performance time limits attached.

I. *Rural District Issues*

The danger inherent in the Rural District is its potential for converting mile after mile of open farmland into low density residential use on one-half acre house lots mixed with small farms. Hawaii cannot afford such wasteful use of land. Fortunately Oahu, the most populated island, has no Rural Districts. The State General Plan Revision Program recommends their minimization, and we can see good reason for their elimination largely through rezoning to Agriculture and Urban Districts, thereby stopping low density sprawl and permitting more efficient land use under county guidance and control.

J. *Rules of Practice and Procedure*

The purpose of the Rules is to govern proceedings before the Commission in an orderly way to provide for prompt and fair processing of petitions for boundary changes. We found that the document was basically sound, but needed improvement in a number of technical areas. These are explained along with the recommendations in Chapter 3. In our opinion the most serious shortcoming in the Rules was the lack of a requirement that the Commission employ written majority opinions on all decisions.

K. *District Regulations*

The Regulations are intended to clarify and implement the Land Use Law. Our findings indicated that rather large improvements could be made in both of these functions. We have recommended very extensive changes to make the criteria for establishing district boundaries more clear. Clarification of word and phrase meanings took many hours of preparation and discussion with the Land Use Commission.

The recommendations for implementing the Law included: better standards for economic feasibility reports; time limits on special permits and developments for which boundary changes are made; and, a system of incremental zoning for very large developments. All of these recommendations are explained in more detail in Chapter 3.

L. *District Boundaries*

The review of district boundaries was the most extensive phase of the study. All previous research was directed toward providing information that would be helpful in reviewing the rationale behind existing boundaries, in their substantiation, or to help determine where and how boundaries should be changed. Extensive mapping and field work on existing and proposed boundaries was carried on throughout the study. The assistance of many people intimately knowledgeable with various locales and land uses was also enlisted.

It was found that the original boundaries had been established with extreme care. Our recommendation to more precisely establish the differences between Agriculture and Conservation Districts, as a result of clearer definitions in the Regulations, accounted for recommendations for some of the major changes. The desire to more clearly define the shoreline of the Conservation District at some point inland from the water's edge resulted in other substantial recommendations for boundary changes. Urban and Rural District Boundary changes were recommended on the basis of need for future growth, county recommendations, owner-developer intentions and the other criteria of the Law and Regulations.

Chapters 4 through 7 summarize the specific recommendations for boundary changes for each county. The maps included with these chapters show the boundaries as adopted by the Land Use Commission.

M. *State and County Relations in Planning and Zoning*

1. Communications

One of the goals of the 1967 General Plan Revision Program is, "Harmonize State and County planning". During our study we made great efforts to coordinate our activities with all State and County planning agencies. We found that considerable conflict often exists between the various levels of government. The conflict between the Land Use Commission and the Land Board of the Department of Land and Natural Resources has been touched on briefly. State and county conflicts on plans and goals seem to exist mostly because of lack of understanding of roles and sometimes appear to be more of a feeling than an objective reality.

In our opinion, these conflicts could be eased by a conscious direct and vigorous attack on what we think is the main source — lack of face-to-face and frequent communication. The Land Use Commission is one of the best agencies to lead the way in improving communication because of its contact with all levels of government.

2. The Status of County Planning

The present study has suffered from a lack of up-to-date county planning as the basis for zoning decisions. Following is the status of County General Plans.

Honolulu County — General Plan, 1963. Detailed land use maps have been adopted since then for many areas of Oahu.

Hawaii County — Hilo Area Plan, 1961. Hilo Development Plan, 1968.

Kona District Plan, 1959.

Hamakua — Kohala District Plan, 1962.

Kauai County, General Plan, 1961. A new one in process.

Maui County — Wailuku — Kahului Planning and Development Study, 1962. Lahaina District General Plan, 1968. Maalaea, Kihei, Makua General Plan.

Molokai General Plan, 1967.

Even though general plans are usually formulated for twenty year periods of time, the rapidly increasing rate of development in the State has out distanced these existing plans, resulting in general plan amendments that are little more than putting out local fires. All of the counties at the present time are involved in some sort of general or development plan revisions. However, the conclusions and results, with some exceptions, were not available to be of help in the Land Use Study.

There is, therefore, no present way of easily finding out what the long and short range demands and recommendations for land utilization are.

The obvious implication of this situation is that there should be an acceleration of county planning so that all important areas will have been freshly covered by the next boundary review to begin in 1973. There are consistent complaints that the State Land Use Commission does not adequately recognize county wishes. In all fairness we indeed must ask how the Commission can recognize that which largely does not exist!

3. The Status of State Planning
Where County General Plans are generally old or non-existent, the State General Plan Revision Program is incomplete. A Land Use, Circulation and Public Facilities Plan should be prepared in time for the next boundary review. The individual counties, various state departments, together with the Department of Planning and Economic Development should be looking farther into the future to determine needs and should be making coordinated decisions regarding what is feasible, possible and desirable. Past commitments of the Capital Improvement Program were the principal aids to anticipating future growth patterns. However, where land is so scarce, planning should be more advanced.

As a result of the experience of this first district boundary review, it is recommended that the State and county agencies gear their planning to the next review. The Land Use Commission can assist by giving them advance notice and asking for recommendations before the review is begun.

III. SUMMARY OF THE TAX STUDY[1]

A. *State Goals as a Point of Reference*

The tax statutes of Hawaii clearly indicate a legislative intent to build into the tax system the notion that taxes can be used as tools of planning.

We observe that the effectiveness of tax policy as a tool of planning must be judged against the background of the best and most comprehensive statement of goals currently available. Even though it is partial and incomplete, and even though it has not been formally adopted as official State policy, such a statement of goals is included in the volume entitled *State of Hawaii General Plan Revision Program, Part I, Elements of the State Planning Process,* pages 8 through 16, prepared by the Department of Planning and Economic Development.

This statement of goals represents a set of interpretations of the conclusions of Citizen Advisory Committees. As such, the expression of goals is admittedly only a first step in the process of statewide goal formulation. But it does provide a useful frame of reference for an evaluation of tax legislation. In this list we count 16 statements of primary goals, with a number of secondary goals included within each category. The primary titles of these statewide goals are as follows:

1. ENVIRONMENT OF BEAUTY
2. CONSERVING NATURAL RESOURCES
3. PARKS AND RECREATION
4. GOOD DESIGN
5. IMPROVE PUBLIC WORKS
6. LONG-RANGE PLANNING
7. HARMONIZE STATE AND COUNTY PLANNING
8. LAND USE LAW
9. ECONOMIC DEVELOPMENT
10. EFFICIENT TRANSPORTATION
11. IMPROVED HOUSING
12. HEALTH AND WELL-BEING
13. PUBLIC SAFETY
14. EDUCATION SYSTEMS
15. CULTURAL LIFE
16. EAST-WEST RELATIONS

Each of these titles is, of course, expanded in the goals statement of the General Plan Revision Program. And each of these primary goals has public finance implications, either through the operation of the tax system or through programs of public expenditure. But only a few are of essential significance for the kind of tax policy we are exploring.

Most of the conclusions which flow from the examination of taxation in Hawaii can be embraced by the conservation goal (with incidental reference to the goal of environmental beauty); the long-range planning goal; the goal to harmonize State and county planning; the goal related to the purposes of the Land Use Law; and the goal of economic development (with incidental reference to the goal of improved housing). All of the others are important. But their relevance to tax policy is, at best, somewhat tangential.

As a consequence, we will take some liberties with the planning statement — to reinterpret, reword, and rearrange the goals expressed in the General Plan Revision Program—in order to provide a more convenient set of standards for judging the effectiveness of tax policy. One goal is added—namely, that there is still some virtue to equity and to assuring that public policy does not produce extraordinary private gain. We feel that by these revisions we have not seriously bruised the sensitive skin of the Hawaii goals statement.

1. The Conservation Goal
To create and maintain a program for the conservation of Hawaii's natural resources in all of their aspects, so that the benefits of these resources, in economic, aesthetic, and spiritual terms, might be available to future generations.

2. The Goal of Economic Development
To encourage full employment, increased personal incomes, greater equality of income distribution (a translation of the phrase "reduction in the proportion of families in the low-income category"), and to achieve a balanced level of economic activity. Economic development should also provide low cost housing for those with low incomes, even though such results might not be achieved through normal market processes.

3. The Goals of the Land Use Law
To preserve agriculture as a viable economic activity in Hawaii, to blend State and county planning objectives in urban regions, and otherwise to advance the stated objectives of the present Land Use Law. (One cannot avoid the observation that this set of statements in the General Plan Revision Program needs some alteration if it is to be a meaningful expression of State goals).

4. The Goal of Long-Range Planning
To improve the information system as a tool of long-range planning.

5. The Goal of Harmonizing State and County Planning
Exactly as printed, to "Maintain a comprehensive planning program as an active adjunct to the making of new government decisions, at both State and County levels, consistent with the basic goals for Hawaii."

6. The Goal of Equity in Public Policy (not explicitly shown in the General Plan Revision Program statement of goals)
To assure, to the maximum extent possible, that the exercise of public policy will not produce inordinate opportunities for private speculation and private economic gain.

It seems fair to ask whether the State tax system, especially that portion which appears to have a conscious planning purpose, assists in the pursuit of these goals.

B. *Taxes and State Goals*

1. Does the Tax System Promote the Conservation Goals?
The only major element of the Hawaii tax laws which emphasizes the conservation goal is the agricultural dedication ingredient of the Real Property Tax Law. And the language of this law is so vague and provides for such large opportunities for

[1]This section was prepared by Dr. Leslie E. Carbert, Tax Economist, Palo Alto, California.

administrative caprice that its ultimate effects are clouded in mystery.

We do not argue that the administration of the law *has been or is now* capricious. We argue only that the language of the law *permits* the tax administrator to exercise such large discretion that an analysis of the potential effects of the law requires an analysis of the mental processes of the Director of Taxation—whoever he may be present or future. Furthermore, the law requires the Director of Taxation to perform two frequently competing functions—planning and tax administration. Governors and legislators are elected to make these sensitive decisions. Tax administrators should not be faced with such monumental problems. Nor should they be given such monumental powers.

We must conclude, therefore, that the conservation purpose is ill served by the dedication element of the Real Property Tax Law, and hence by the entire tax structure of the State of Hawaii.

2. Does the Tax System Promote the Goal of Economic Development.

The basic thrust of the Real Property Tax is towards economic development. This is partially offset by some of the effects of the General Excise Tax, so that the net effects remain unclear.

We asked the fundamental question: "to what exten *can* the tax system of Hawaii attract overall economic development?" We have answered this question (in a tentative way, to be sure) by arguing that the resource base and the market potential are so severely defined in the Island economy that tax burdens are likely to exercise little overall economic effect—assuming, of course, that these burdens stay somewhere in the American ballpark. Technological change might be expected to alter the significance of both resources and markets. But again, the tax system is likely to play a simple walk-on role in his historical drama.

Nevertheless, the economic structure of the State does permit the opportunity to use the tax system as a device to shape the *kind* (if not the *amount)* of economic development which will take place, shaping land uses and determining income distribution patterns. Because of the specificity of its application, the Real Property Tax is the obvious candidate to express this opportunity.

But even here the opportunities are, at present, decidedly limited, largely because the property tax already imposes a relatively small burden upon most economic enterprises in Hawaii—at least as compared with those imposed by the majority of states. It seems clear that the property tax burden is heaviest on single-family and relatively old residences, so that the tax system tends to add to Hawaii's already high cost of living.

Of course the first and second goals overlap, particularly in the general economic category of agriculture (i.e., agriculture itself and related industrial activity). To the extent that the conservation of agricultural lands preserves an economic base and supports industrial and tourist activity it might truly be said that conservation promotes a development goal.

While the Real Property Tax Law is development oriented—principally through the graded rate structure,[3] the statutes provide for administrative discretion to determine the speed with which economic inducements will be offered. We find this kind of discretionary power thoroughly admirable, in planning terms, for tax laws should not provide such severe shocks to the economic system that survival is jeopardized. But the law also provides for administrative veto power after the 70 percent level is reached in the building factor. We find this delegation of power quite unsatisfactory, if only because of the uncertainties which it creates. Uncertainty of this magnitude cannot be consistent with sound planning. Nor can it be said to produce the development results which are expected of this portion of the Law.

In terms of development needs other uncertainties exist in the Real Property Tax Law. Some of these uncertainties are generated by the statutory rules for determining assessed values when marketplace rules are consciously abandoned. This is a major fault in the law. And other uncertainties are generated by the separate valuation of land and buildings. Although this is a major fault, it is probably inevitable if the graded rate structure is to be continued. Still other uncertainties relate to special provisions such as the wasteland development law and some exemption provisions which, although not of major significance, are still worthy of note and available for alteration.

3. Does the Tax System Promote the Goals of the Land Use Law?

We do not find the planning laws of the State of Hawaii (including the Land Use Law, the Real Property Tax Law, and local ordinances) to be inconsistent when they adopt a conservation posture on the one hand and a development posture on the other. For it is indeed possible to conserve some kinds of resources in some places while developing other kinds of resources in other places.

We do find one major inconsistency in the relationship between the tax laws and the Land Use Law at the point where the Real Property Tax Law permits agricultural dedications within Urban Districts. We take the "Urban" designation of the Land Use Commission to mean that the area should be developed in an urban style. To be sure, urban open spaces are essential to a sensitive development program. But such open spaces must be of a different character than agricultural open spaces in Agriculture Districts. In effect, dedication of agricultural lands in urban districts defeats the purposes of the Land Use Law, directly by denying opportunities for urban develeopment, and indirectly by forcing additional pressures for development on agricultural lands in Agriculture Districts. In the long run, the latter may be more important than the former.

Many other inconsistencies exist between the Land Use Law (as an example of police power processes) and the tax laws (as examples of the inducement process). For the most part, however, the principal guilt for these inconsistencies must be attributed to the Land Use Law and the character of its administration—both State and local. A tax administrator cannot be expected to reflect the planning guidelines of the land use rules if the rules are vague and indistinct. As the governmental *alter ego* of the market place, he must reflect any market place atmosphere of confusion and speculation. The evidence is not at all clear, but it does seem that private landowners in Hawaii are willing to speculate, with very real dollars, about the potency of the land use rules at either state or county levels.

Thus, the system of taxation must be judged in terms of the way it *reflects* the goals of the Land Use Law as well as the way it *promotes* these goals. In our judgment, the reflection is cloudy and the promotion is weak.

4. Does the Tax System Promote the Goal of Long-Range Planning?

In the General Plan Revision Program the goal of long-range planning emphasizes information needs. Many vacancies in the information structure have severely inhabited the present study effort. Others are of long-run significance. We feel that much greater attention might be paid to information design so that, with relatively minor adjustment, tax information might be made more useful to the planning process. In particular, market value information prepared for the administration of the real property tax and the conveyance tax would be extremely helpful.

5. Does the Tax System Promote the Goal of Harmonizing State and County Planning?

One should not expect too much of a state tax system for the development of a positive program to harmonize state and

[3]The most controversial element of the Hawaii Real Property Tax Law—the so called "Pittsburgh Law". The purpose is to provide gradual increases in tax burdens imposed on land and gradual decreases in tax burdens imposed on buildings in districts other than Agriculture and Conservation.

county planning processes. But one might at least expect the tax system to produce as little discord as possible.

We do see some elements of discord in the present tax laws. For the most part these are to be found in the Real Property Tax Law, if only because we have characterized this law as having significant planning purposes. In effect, the property tax law is an arm of State planning even though it does, of course, have other purposes.

Much of the discord between the property tax and planning activities relates to the virtual impossibility of predicting the effects of the law, at least with the kind of precision which the planning process requires. The tax administrator is obliged to follow the rules of the market place, which rules, in turn, reflect the esteem in which the planning controls are held by dealers in property and by other entrepreneurs. When a tax assessor is required by the law to make large planning decisions, discord is inevitable. And when the effects of the law are uncertain, problems are created for investors and the normal frustrations of State and local planning officials are amplified.

6. Does the Tax System Promote the Goal of Equity in Public Policy?

Perhaps the major conclusion of this portion of the study is that the structure of the law does little to protect the public interest against speculative gains directly related to public policy. The several dedication laws are, perhaps, the worst offenders. At best, the anti-speculation elements of these laws provide "penalties" which permit land owners to borrow money from the public treasury at rates which can only be described as inexpensive (5 percent). If dedication laws of this sort are to be effective, and if their purposes are descriptive of the public good, two conditions must be met: (a) the advantages must be sufficiently attractive to induce widespread adoption; and (b) the commitment of the landowner must be sincere and permanent. We feel that the first of these conditions is met by present dedication language (with a few exceptions). We feel that the second condition is by no means assured by the present laws.

The question of equity also arises in a more direct way through the conscious attempt to concentrate tax burdens on undeveloped (or slightly developed) land in Urban Districts. But we cannot blame the law for this inequity if, in fact, it is truly *conscious*. It has been said that "The concept of the graded tax is one of consciously using property tax rates in an 'inequitable' way to achieve social and economic goals."[4] Perhaps the geography of these effects within Urban Districts needs sharper definition to provide for the retention of some single-family residences (without excessive economic penalty). Certainly other kinds of public policy are called for to provide low-cost housing, the need for which is stimulated, in part, by the character of the Real Property Tax Law.

[4] Tax Foundation of Hawaii, *Estimated Impact of Hawaii's Graded Real Property Tax*, October 1964, p. 1.

Land Use Districts
Waipahu Area, Oahu


Land Use Commission Work Session

I. INTRODUCTION

Our detailed recommendations for boundary changes together with the final actions of the Land Use Commission will be found in Chapters 4 through 7. This chapter deals with recommendations for action stemming out of the review of the planning and taxation elements of the study.

The alternatives facing those who make public decisions with respect to land use and taxation in Hawaii fall within two distinct categories. First, there are the changes and improvements that are required or can be made within the existing framework of law. For instance, the review and up-dating of the district boundaries is required by law. There are also other kinds of changes that can be made administratively by the Land Use Commission and other departments and agencies—changes that are entirely within the scope of the administrative services established, or left open to them by the legislative mandates under which they act.

Second, are those matters that can best, or only, be dealt with through the legislative processes. These are the possible amendments to old laws or entirely new laws to replace old ones. In some cases an "either-or" relationship exists between the alternatives. For instance, where an agency is free to make changes administratively but fails to do so (and maybe for very valid reasons from its own point of view), the door is also open for the same changes to be made by the Legislature. Action on either front could make the other unnecessary.

As a basic policy we favor legislative clarification rather than wide administrative latitude. In our inspection of the Land Use Law we see some potential for future legislation, particularly in our recommendations as a result of the tax assessment study.

II. RECOMMENDATIONS FOR LAND USE COMMISSION ACTION EXCLUSIVE OF BOUNDARY CHANGES

A. *Rules of Practice and Procedure*

1. *Documentation of findings in a written majority opinion*

Seventy-four percent of the people responding to the questionnaire stated that the Land Use Commission should completely explain the reasons for its findings. Twenty percent stated that it should give some justification for its findings. Thus, 94 percent voted in favor of there being a statement of the reasons for the Land Use Commission's findings. We have had it pointed out to us in interviews that County Planning Commissions are concerned when their decisions are over-ruled, because they do not know the reasons. It would be helpful in their reaching future decisions if they knew the reasons. We also noted that an evaluation of the actions of the commission could not be made as part of this review because the documentation of reasons was largely absent. Therefore, this is recommended for addition to the Rules.

2. *Miscellaneous Minor Changes**

Many changes have been recommended by our legal consultants and the Attorney General's office involving additions of phrases or words to make the Rules more clear. These will in no way alter the intent of the original meanings.

3. *Rulemaking**

A substantial series of changes is recommended by the Attorney General's office to remove references to rulemaking in subsection C. The recommendation is to substitute the word "amendment" wherever the word "rulemaking" appears because these are the kinds of actions the Land Use Commission undertakes. In this respect, the section on "Emergency Rulemaking" should be stricken.

4. *Reconsideration of Petitions**

A section regarding Reconsideration of Petitions should be added so that it is clear under what situations a petition may or may not be reconsidered. The reasons for establishing a foreclosure time are to promote finality in decisions and to protect the Commissioners against undue pressures to change their position.

5. *Reapplication**

A section should be added which would clarify when a petitioner may reapply after his petition has been denied if he chooses not to appeal to a circuit court. The rationale behind this would be again to promote finality in decisions, at least until such time has passed when there are likely to be new factors to be considered.

6. *Administrative Procedure Act**

In order to clarify the issue that the Rules of Practice and Procedure are the governing rules pertaining to the Land Use Law, it is recommended that references to the Administrative Procedures Act be removed.

B. *The State Land Use District Regulations*

1. *Urban Districts*

a. *New town and resort proposals**

The original Regulations appear to have been written to reflect conditions existing at the time the initial boundaries were drawn, rather than in anticipation of petitions for boundary changes involving proposals. Thus there are no provisions for judging "new town" or "resort" proposals. In fact, the phrase "proximity to centers of trading and employment facilities" would tend to rule them out if taken too literally. It is recommended that these situations be provided for.

b. *Economic feasibility**

While the original Regulations mentioned economic feasibility, it was noticed that petitioners' reports ranged from very comprehensive to extremely cursory. Because of the history of financial failures of a substantial number of "new towns" and other large developments, it is recommended that the standards for submittal and review both be improved. These should include the market analyses aspects as well as the benefits and costs to the public.

c. *State and County goals and objectives**

While the original Regulations called for considering areas of urban growth on State and county general plans, we think that stated goals and objectives of the State and county are also important considerations to be used as criteria in making boundary changes.

d. *Slope limitation**

One of the most admirable provisions of the original Regulations was in regard to areas of over 20 percent slope being properly placed in Conservation Districts. However, such a hard and fast rule is harmful in certain cases. The issues are public safety and scenic amenity. As slopes increase it becomes more difficult to build on them and slide and erosion possibilities grow. However, these exist at lower slopes and therefore a line at 20 percent is more or less meaningless in this respect. The point is really whether or not public safety is taken into account—whatever the slope.

Development of steep slopes improperly managed can create unsightly scars, and development of some hillside or moun-

*Recommendations adopted by the Land Use Commission at the action meeting held in Kauai County July 8, 1969. Filed in the Lieutenant Governor's office July 25, 1969, effective August 1969.

tainside areas would intrude upon publicly important views. Therefore, we recommend adjustment of the 20 percent slope limitation to take into account the existence of adequate county controls so that where they exist and where open space amenities are not violated the Commission may zone areas to urban. This change could free land for urban purposes with proper safeguards particularly on land hungry Oahu.

2. *Agriculture Districts**
   a. The definition of Agriculture Districts should be refined by deleting some modifying sections that permit inclusion of great areas of no agricultural value and to more accurately reflect the intention of the Law to protect prime agricultural land. A section should be added making it clear that areas can be added to Agriculture Districts if technological development brings them into agricultural use.
   b. *Under permissible uses within the Agriculture District:**

(1) Add a qualifying phrase to relate the permitted public uses to agriculture;

(2) Clarify specification of utility uses to avoid unnecessary special permit procedures;

(3) Restate "open area" types of recreational uses as to involve the county and Land Use Commission more in the review of the location of some of these, such as golf courses, through the special permit process;

(4) Delete all uses not specifically mentioned in the Law.

3. *Conservation Districts**
   a. provide a more clear regulation reflecting the requirements specified in the Laws;
   b. Provide a more clear definition of the shoreline and include all marine waters, fishponds and tide pools within the district.
   c. Include all lands susceptible to tsunami and flooding in Conservation Districts unless they are more appropriately included in contiguous Urban, Rural, or Agriculture Districts.
   d. Provide for the inclusion of archaeologic sites and sites of unique physiography or ecology and lands for preserving natural ecosystems.
4. Require that performance time limits be established by the counties when issuing special permits.*
5. Develop regulations to provide for zoning in increments when petitions are for projects of over 100 acres.*
6. Add a new section requiring that those granted approval of petitions for Urban or Rural Districts make substantial progress in the development of the area within a five year period, and that if such is not done, the Commission may reclassify the area to another District.*

Note: The above three recommendations are proposed to provide a set of tighter controls on development. The time limits on development will help to reduce unused urban zoned land and thereby provide better opportunities for those genuinely intending to develop. The incremental zoning procedures more fully explained in the chapter, "Urban District Issues", will provide performance demands upon those requesting rezonings and at the same time provide investment security. Together these should help development and hinder land speculation.

7. Delete the section of the Regulations dealing with "Dedicated Lands" since these procedures are administered by the Department of Taxation.

C. *In General:*

1. Develop and publicly circulate a statement of goals and objectives based upon and elucidating Section 1, "Findings and Declarations of Purpose" of Act 187-SLH 1961, and also based upon the goal expressed in the State General Plan Revision Program, "Maintain the Land Use Law as an active instrument of State zoning".

2. Develop a statement of policies designed to assist in carrying out the objectives of the Commission. The following are suggestions:

   a. Relate all actions insofar as possible, to State and county goals and general plans.
   b. Seek recommendations of citizen groups and particularly those organized on a broad community basis for the purpose of studying and effectuating rational conservation and community development. (Oahu Development Conference is an example.)
   c. Initiate procedures that will eliminate confusion between the Commission and the other agencies involved in the administration of the Law.
   d. Continually strive to improve and to clarify the district regulations and district boundaries so that inconsistencies and ambiguities are removed when identified rather than waiting for the five year review program. Urge counties to petition for changes when they see improvements that can be made.
   e. Develop a program of public information and exposure to actions around the Land Use Law and accomplishments of the Land Use Commission.
   f. Provide special protection to prime agricultural land and irreplaceable natural resources such as shoreline features.
   g. Take special recognition of the criticism of favoritism, make every effort to deal with all petitioners in accordance with the Law, and endeavor to counteract such opinions by maximum public exposure to the actions of the Commission.
   h. Insist upon timely advance planning from the State and county planning agencies as the basis for State zoning.
   i. Recognize the special needs for development of the neighbor islands.
   j. Follow the State General Plan recommendations to keep the Rural Districts to a minimum.
   k. Cooperate with efforts to provide low-cost housing where it will not lead to sprawl, scatterization, loss of prime agricultural land, or otherwise violate the intentions of the Land Use Law.
   l. Make every effort to time meetings and have all Commissioners present so as to provide for fair and speedy action on petitions.

3. Act administratively to:
   a. Improve relations between the Land Use Commission and other agencies (particularly county planning agencies) by: defining State and county roles; establishing consistent personal communications between staffs; arranging joint meetings on an annual basis between the Commission, County Planning Commissions, the Land Board and the Tax Administrator.
   b. Experiment with a speeded-up petition process requiring 90 to 200 days; and if it is workable, recommend a change in the Law.
   c. Initiate a study by the counties, Department of Planning and Economic Development and the De-

*Recommendations adopted by the Land Use Commission at the action meeting held in Kauai County July 8, 1969. Filed in the Lieutenant Governor's office July 25, 1969, effective August 1969.

partment of Land and Natural Resources to determine responsibility for the technical work needed before flood and tsunami zones can be established. The study should also recommend which agencies should exercise land use controls in these zones.

4. Prepare for next five year review program.
   a. Adopt a consistent format for recording information about all petitions and applications both to facilitate comparison between applications and to assure that all relevant information is collected. (The format developed for this review is a model that could be used.)
   b. Adopt procedures to assure that the status of land holdings and developments which have been the subject of petitions will be reviewed and recorded routinely in the future.
   c. Collect tax assessment and land sales data in significant areas on each side of district boundaries on a consistent yearly basis and in a form of value for continous review and information about the behavior of these factors, as they may relate to boundary changes.
   d. Formally announce to County Planning Commissions three years, two years, and one year ahead of the five year review so that they can prepare for the review by up-dating their general plans and zoning ordinances.

III. THE LAND USE COMMISSION SHOULD URGE THE FOLLOWING ACTIONS BY THE DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT:

A. Develop for the Land Use Commission guidelines and a format of information for petitioners to use in preparing economic feasibility reports to be used by the Department in its analysis when requested by the Commission. These guidelines and the format should relate to the marketability of the project as well as to the balance between the public benefits to be accrued and public costs to be incurred and other economic benefits to the State.

B. Develop comprehensive long-range land use, circulation and public facilities plans for the entire state prior to the next five year review. Encourage the development of county general plans particularly in those areas as yet unplanned as an in-put to the statewide plan.

C. Prepare long range plans for conservation and use of the Conservation Districts establishing appropriate subzones, regulations for land uses within each subzone, recommending responsibilities for administration of each subzone together with guidelines for county participation where appropriate in land use decisions.

D. Develop the following long range master or general plans as a basis for future zoning actions.
   1. Statewide agricultural master plan.
   2. Central Oahu development plan.
   3. Kamehameha Coast of Hawaii development plan.
   4. A plan for conservation and development of the shorelines of the State together with recommendations for the administration of the shoreline conservation and use.

IV. THE LAND USE COMMISSION SHOULD URGE THE FOLLOWING ACTIONS BY THE LAND BOARD OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES:

A. Cooperate with the Department of Planning and Economic Development in preparation of a general plan for the Conservation Districts with a view toward extensive revision of subzones and Regulation No. 4.

B. Develop a system that provides for soliciting and hearing county and Land Use Commission recommendations regarding land uses in Conservation Districts.

C. Establish a policy of holding public hearings on all applications for land uses in the Conservation Districts.

V. THE LAND USE COMMISSION SHOULD URGE THE FOLLOWING ACTIONS BY THE COUNTY PLANNING COMMISSIONS:

A. Up date existing general plans and develop new plans where desirable in time for the next boundary review program to be held in fiscal 1973-74.

B. Raise the minimum lot sizes in Agriculture Districts to not less than five acres to support the intentions of the Land Use Law.

C. Develop appropriate shoreline protection, set-backs and land use controls in Urban, Rural and Agriculture Districts.

D. Develop guidelines and restrictions to control development of sloping sites, providing for both the public safety and protection of the scenic qualities of such sites.

E. Cooperate with the Land Use Commission and other state agencies to determine responsibilities for establishing and managing flood zones and tsunami zones.

F. Initiate petitions for boundary changes and changes in the district regulations when such changes are indicated by completion of general plan studies or other experience.

G. Survey existing land use in the format used by the Oahu Transportation Study to facilitate computer analysis of each island, county and State.

VI. THE LAND USE COMMISSION SHOULD URGE CONSIDERATION BY THE STATE LEGISLATURE OF THE FOLLOWING MATTERS:

A. A study of the consequences of a statewide policy to purposely guide development toward the neighbor islands and thereby slow down the further concentration of development on Oahu.

B. A study of the consequences of the growing foreign control of Hawaii land by penetration of foreign capital investment.

C. Authorization and funding the general plan studies previously mentioned such as:
Conservation Districts Plan, Central Oahu development plan, Kamehameha Coast development plan, statewide shorelines plan, flood and tsunami zones study and new county general plans where needed.

D. A study of the objectives of the Land Use Law with a view toward updating or re-affirming the "Findings and Declaration of Purpose" of Act 187, SLH 1961.

VII. RECOMMENDATIONS RESULTING FROM THE TAX STUDY[1]

A. Introductory Statement

The following recommendations are presented here in outline form with only minor elaboration. For the most part these are recommendations for statutory revision rather than for changes in administrative practice. However, the fact that we give relatively little attention to administrative actions should not be taken as tacit approval of these actions. Nor, of course, should it be represented as automatic criticism. The simple fact is that we have found it impossible to test the adequacy of administrative practices in the time available for the study.

Almost all of the recommendations relate

[1]This section was prepared by Dr. Leslie E. Carbert, Tax Economist, Palo Alto, California.

to the Hawaii Real Property Tax Law, although several are concerned with the interactions between tax laws and the Land Use Law.

It must also be noted that many recommendations are by no means of equal significance. For this reason, the final section of the recommendations is represented as the "urgencies." It is our feeling that the entire structure of the Real Property Tax Law is in need of sweeping revision, if only to accomplish a happier marriage of revenue purposes and planning purposes. Nevertheless, all of the recommendations are based upon the premise that the property tax is considered an available tool to advance the planning process and to promote land use planning goals.

We are also well aware of the fact that the recommendations are not of equal acceptability in political terms. Furthermore, some are clearly unacceptable if considered as isolated proposals. Different concepts of priorities would clearly attach to different arrangements of a tax revision package. To be sure, some of the proposals stand by themselves. But the basic purpose of the following proposals is the presentation of a package which will reflect our analysis and which will advance the planning process.

B. Tax Recommendations for Land Use Planning

1. Real Property Tax Law
   a. The tax base
      (1) The exemption and exclusion structure

NOTE: The basic purpose of these proposals is to broaden the base of the property tax, with minimal effects upon the Hawaii economic condition. In this way, some of the highly specific inducements which are offered for legitimate planning purposes will have a softened effect upon such taxpayers as owners of single-family residences.

(a) Remove the present exclusion of business inventories but preserve the exemption for selected export industries. This recommendation would obviously change the basic character of the Hawaii property tax. For example, it could no longer be called a tax on *real* property.

(b) Remove the exclusion of growing crops from the definition of taxable property, but preserve the opportunities for dedication of both land and growing crops.

(c) Remove the exemption of "fixtures . . . used in manufacturing or producing tangible personal products."

(d) Preserve the exemption of property used in the manufacture of pulp and paper from bagasse fibre, conditional upon annual review by the Department of Planning and Economic Development of the possibility of productive development.

(e) Consider other specific exemptions designed to promote diversified use of Hawaii's resources. Such consideration should include detailed examination of resource potential and market opportunities.

(f) Clarify the language of the home exemption provisions to assure that the exemption applies to *assessed* valuations and not to *market* valuations.

(g) Consider the possibility of an escalation clause in the home exemption provisions, to relate the value of the exemption to the changing value of land. A first approximation of this suggestion might be a linkage between the value of the exemption and the cost of living index, so that the value of the exemption would increase as the cost of living index increased.

(2) the fair market value concept for appraisal purposes

NOTE: The basic purpose of these proposals is to strengthen the hand of the Director of the Department of Taxation in applying market value rules for appraisal purposes. A subsidiary purpose is to provide a sharp delineation between the tax functions of the Director of Taxation and the planning functions of other agencies of State and local government.

(a) Establish a pattern of regular (e.g., five-year independent appraisal checks, appropriately funded, to determine the actual ratio of assessed to market value for scientifically sampled properties.

(b) Require detailed annual reports from all property owners of sales transactions in land or changes in leasing considerations, designed to assist the tax appraisal process and to test the effectiveness of the Land Use Law and county zoning ordinances. With proper assurances of the confidentiality of the data (through use of percentages, etc.), the results should be made available for public scrutiny. The Conveyance Tax Law might serve as a useful instrument for this purpose.

(c) Intensify the meaning of the Land Use Law and county zoning ordinances, partly because these expressions of the police power need clarification and strengthening, and partly because these laws have meaning for the Director of Taxation in the pursuit of his assessment function.

(d) Remove the classification provisions of Section 128-9 (d) from Chapter 128 and place the provisions in Chapter 129. (See below.)

(e) Transfer the authority for classification from the Director of Taxation to the Director of Planning and Economic Development, with statutory instructions that the classification be base upon *Planning* guidelines (i.e., *desirable* land uses) rather than on principles of highest and best use. The statutes should also provide for consultative and cooperative decisions between the Department of Planning and Economic Development and county planning agencies for all properties within rural and urban districts.

(f) Strengthen the appeal provisions of Section 128-30 which give counties the opportunity to test the validity of the market value findings of the Department of Taxation by providing State funds to counties for the specific purposes of this Section.

(g) Revise the language of Section 128-9 (g) to indicate clearly that buildings (as well as land) must be valued according to market value principles. As part of this revision, delete the provisions that repairs and maintenance to buildings shall not increase the assessed valuation of the buildings. If this provision is retained, however, transfer the filing requirements from the Director of Taxation to the Director of the Department of Planning and Economic Development, with responsibility for approval resting in the latter office after consultation with county planning officials.

(3) the Agricultural Dedication Law

NOTE: There are two basic purposes to this set of recommendations. The first is to assure the preservation of agricultural lands, particularly prime agricultural lands. The second is to prevent undue speculation in agricultural lands as a result of the dedication law. We feel that it is extremely important to make it easier to *obtain* dedication approval but much harder to *abandon* the dedication once it is granted. In effect, the law should test the sincerity of the dedicator. Here, especially, we feel that the Real Property Tax Law needs drastic revision. The following recommendations are simply minimum conditions which should be built into any such overhaul.

(a) Revise the law to prohibit agricultural dedications in Urban Districts.

(b) Revise the law to make it clear that a dedication is in the nature of a contract, equally binding on the property owner and the State.

(c) Make the penalty provisions truly prohibitive by increasing the interest rate for failure to observe the dedication from five percent to *at least* 10 percent.

(d) Fortify the protections against speculation by strengthening the capital gains provision of the income tax laws, to provide that capital gains realized within the dedication period be treated as ordinary income. (See below.)

(e) Increase the overall rate of the Conveyance Tax, with a still higher rate imposed upon conveyances of land under dedication. (See below.)

(f) Revise the law to make it clear that the dedication attaches to the land, as a condition of any sales agreement.

(g) Emphasize in the law (even if only as a preamble statement of legislative intent) that dedications *must* conform to land use boundaries and County zoning ordinances.

(h) The law should contain explicit instructions to the Director of Taxation regarding the methods to be used in valuing dedicated land according to its agricultural use. Such rules are bound to be arbitrary, but they should be designed to answer all of the questions raised in the body of the text dealing with agricultural dedications—including (but not limited to) capitalization rates, length of time for the income capitalization period, and whether the income to be capitalized is present agricultural income of potential agricultural income.

(i) Clarify the language which specifies the termination date of the dedication, including the responsibility of the landowner for petitioning for renewal. Clarify the concept of "automatically renewable," in terms of its contractual meaning and in terms of its meaning for the appraisal chore which faces the Director of Taxation as the termination date of the dedication approaches.

(j) Clarify the penalty language to indicate that the penalty rate (here proposed as a minimum of 10 percent) be applied to tax liability which would have been imposed, *under a reconstructed rate structure,* if the land had not been dedicated.

(k) Change the law to assure that a *5 percent* "penalty" is applied in cases where governmental action changes land use designations to "urban" and the dedication is subsequently abandoned. (Note that we do not here propose the imposition of the punative rate of 10 percent.)

(l) Transfer all authority for the approval of dedication applications to the Department of Planning and Economic Development, with a requirement that advice be provided by the Department of Taxation, the Land Study Bureau, and county planning agencies.

(m) Provide greater inducements for dedication of agricultural lands by changing the graded rate structure of Chapter 129 to add a "land tax factor" for dedicated lands, comparable to the building tax factor now in the law. However, this provision should not be adopted unless all other recommendations for the dedication element of the law are adopted—especially those which tighten the protections against speculation. Note that the dedication itself will provide inducements through the tax *base* machinery. It is here suggested that additional, and highly visible, inducements be provided through the tax *rate* machinery. But this recommendation cannot stand alone, without the additional support of sturdier anti-speculation language. If an earlier recommendation is adopted, these provisions would apply equally to land and to growing crops.

(n) Provide, *in the law,* for annual reports of high specificity from the Department of Taxation and the Department of Planning and Economic Development showing, at the very least, market values and assessed values without dedication, taxes due without dedication (at recalculated tax rates), non-compliance, number of dedications for which renewal is sought, and the reasons for all public actions—in short, the life history of the dedication process.

(4) the Urban Dedication Law:

NOTE: The purpose of the present set of recommendations is to imitate, as much as possible, the provisions of the agricultural dedication law (as amended under the above proposals) in terms of application procedure, designation of responsibility, penalty provisions, and the like. They are not repeated here, but they should be assumed to apply. The main difference, of course, is that we propose to retain the full exemption of dedicated lands in urban districts, and do not propose the "assessment-in-use" concept.

(a) Revised the law to provide a much sharper statutory definition of the public purpose:

(i) to define the type of land available for exemption;

(ii) to establish acreage limitations;

(iii) to specify the character of necessary improvements;

(iv) to provide a clear definition of public access; and

(v) to refine the cost-benefit meaning of subsection (b) of the law.

(b) Provide the Director of Taxation with definite (although, of necessity, arbitrary) rules for the valuation of properties to be exempt.

(c) Adopt all other relevant recommendations from the agricultural dedication section (see above), including the transfer of authority for the approval of petitions from the Department of Taxation to the Department of Planning and Economic Development.

(d) In the event that the earlier recommendation to remove agricultural lands in Urban Districts from the agricultural dedication law is not adopted, make it clear in the urban dedication law that large acreages in agricultural use are not to be included in the exemption provisions of Section 128-21.5.

(e) Consider, as an alternative to the exemption, a strangthening of the zoning and setback and open space requirements of local ordinances, with appropriate surveillance by the statewide Land Use Commission.

(5) the Wasteland Development Law.

NOTE: The purpose of these recommendations is to clarify the apparent purposes of the law. Many of the recommendations relating to the agricultural dedication law are applicable here, particularly those dealing with the shift of authority for planning purposes from the Director of Taxation to the Director of the Department of Planning and Economic Development. Here again, the meaning of the law is so vague that the real need is for wholesale revision and expansion.

(a) Revise the law to provide a clear statutory definition of "waste-

land." Any remaining uncertainties which require administrative discretion should be transferred from the Department of Taxation to the Department of Planning and Economic Development.

(b) Provide clear statutory language to require that wasteland dedications conform to State and county land use plans. The test should not only be the three-fold requirements of Section 128-9.35; relating to the *possibility* of development, the need for economic development of the State, and the broadening of the tax base. The test should also include the possibility that conservation of wasteland might serve the broad public interest.

(c) Consider the possibility of refining the relevant sections of the Real Property Tax Law (especially the classification sections) and the Land Use Law to distinguish between prime agricultural land and marginal agricultural land Perhaps, with proper planning protections, the wasteland development law might be extended to selected types of lands of marginal productivity.

(d) Reduce or remove the twenty-five acre minimum as a standard for eligibility, at least in Urban Districts.

b. The tax rate structure

(1) The classification system

NOTE: The basic purpose of these recommendations is to preserve the essential elements of the classification system but to shift the emphasis from taxation to land use planning.

Chapter 129. (See above.)

(a) Transfer Section 128-9 (d) to Chapter 129. (See above.)

(b) Transfer the authority for classifying property from the Director of Taxation to the Director of the Department of Planning and Economic Development, acting with the benefit of advice from the Department of Taxation and county planning agencies.

(c) Abandon the requirement that properties be classified according to highest and best use and substitute clear statutory instructions that classification be fully consistent with land use districts and county zoning laws.

NOTE: In view of the possibility that there might still be some confusion on this important point, further elaboration might be appropriate. We feel that however land is classified for tax rate purposes, the assessor should be required to value according to standards of highest and best use (market value concepts). There would be exceptions, of course, notably in the dedication laws. But basically valuations should be made by the objective standards of the market place. In the pursuit of his assessment functions the Director of Taxation could classify properties in any way that suits his convenience. But these kinds of classifications are purely administrative tools that are useful in processes of mass appraisal. In market value appraisals classification itself should have no effect upon valuations or assessments. Thus, the policy aspect of classification would be transferred to the graded rate structure, where it belongs, and the policy responsibility for classification would be divorced from the valuation process and applied to the development purposes of the "Pittsburgh Law." It would still be possible for a particular parcel of land to be classified for rate purposes as single-family residential because of zoning restrictions and still be *assessed* as hotel or commercial if the assessor finds the market place unresponsive to zoning restrictions. Zoning restrictions would still have to stand on their own two feet (State and local), but at least the tax system would not be assisting at the funeral of such police power actions. The argument is developed at greater length in the text, but the conclusions are important enough to bear this repetition.

(d) Consider the possibility of a further breakdown of the agricultural classification, with a "growing-crop-tax-factor" applied agricultural lands after the manner of the present building tax factor. Obviously, this possibility would be meaningful only if our earlier recommendation is adopted that the present exclusion of growing crops be abandoned. However, additional tests of this idea are clearly in order.

(2) graded rates

NOTE: We do not challenge the basic philosophy of the graded rate structure. As a result, the present recommendations are designed to purify the structure and to make it more amenable to the planning purpose.

(a) Provide a definite schedule for the reduction of the building tax factor to a specified minimum (which may or may not be the 40 percent level of the present statutes). The reduction should have statewide uniformity.

(b) Remove the opportunity for county option after the 70 percent level is reached. Consequently, remove the veto power of the Governor from Section 129-2 (d) (4).

(c) Whatever the ultimate building tax factor, preserve the option of the Governor to delay each reduction for two year periods.

(d) Clarify the language of the reductions by providing increments of ten percentage *points*, rather than reductions of "ten percent."

2. Other Tax Laws

a. Income Tax Law

Consideration should be given to revising the capital gains feature of the Income Tax Law (Chapter 121 to extend the definition of ordinary income to embrace sales or exchanges of property under agricultural dedication for a ten-year period. (See above).

b. Conveyance Tax Law

(1) Consideration should be given to increasing the overall rate imposed by the Conveyance Tax Law (Chapter 128A).

(2) Consideration should be given to classifying the rate of the tax, given the precedent of the real property tax, to provide higher rates for conveyances of property under agricultural or urban dedication laws, liability for which would be withheld until the dedication was abandoned. Such a provision would serve as an additional penalty for non-performance of the dedication provisions.

(3) Consistent with the confidentiality provisions of Section 128A-6 (f), require the Director of Taxation, in consultation with the Director of Planning and Economic Development, to prepare annual reports of sales-assessment ratios, leasehold data, and other information designed to test the effectiveness of the Land Use Law and local zoning ordinances.

3. General Recommendations

Following the earlier conclusion that Hawaii's property tax laws are extremely loose, and in parts almost incomprehensible, a major revision program should be undertaken to accomplish the following goals: 1. to clarify the meaning of the law, and thus to assist both taxpayer interpretation and administrative interpretation; 2. to provide, for each major element of the law, a clear statement of legislative intent; 3. to clarify the relationship between the revenue purposes and the planning purposes of the real property tax; 4. to provide sharp administrative distinctions between the functions of the chief tax administrator and the functions of planning officials; 5. *to reduce greatly the discretionary powers granted to administrative authorities;* 6. to develop a clear set of relationships between the real property tax law, other tax laws, the Land

Use Law, and local planning and zoning actions which have the effect of law; and 7. to clarify the relationships between policies of taxation and policies of public expenditure in a fully consistent public finance framework.

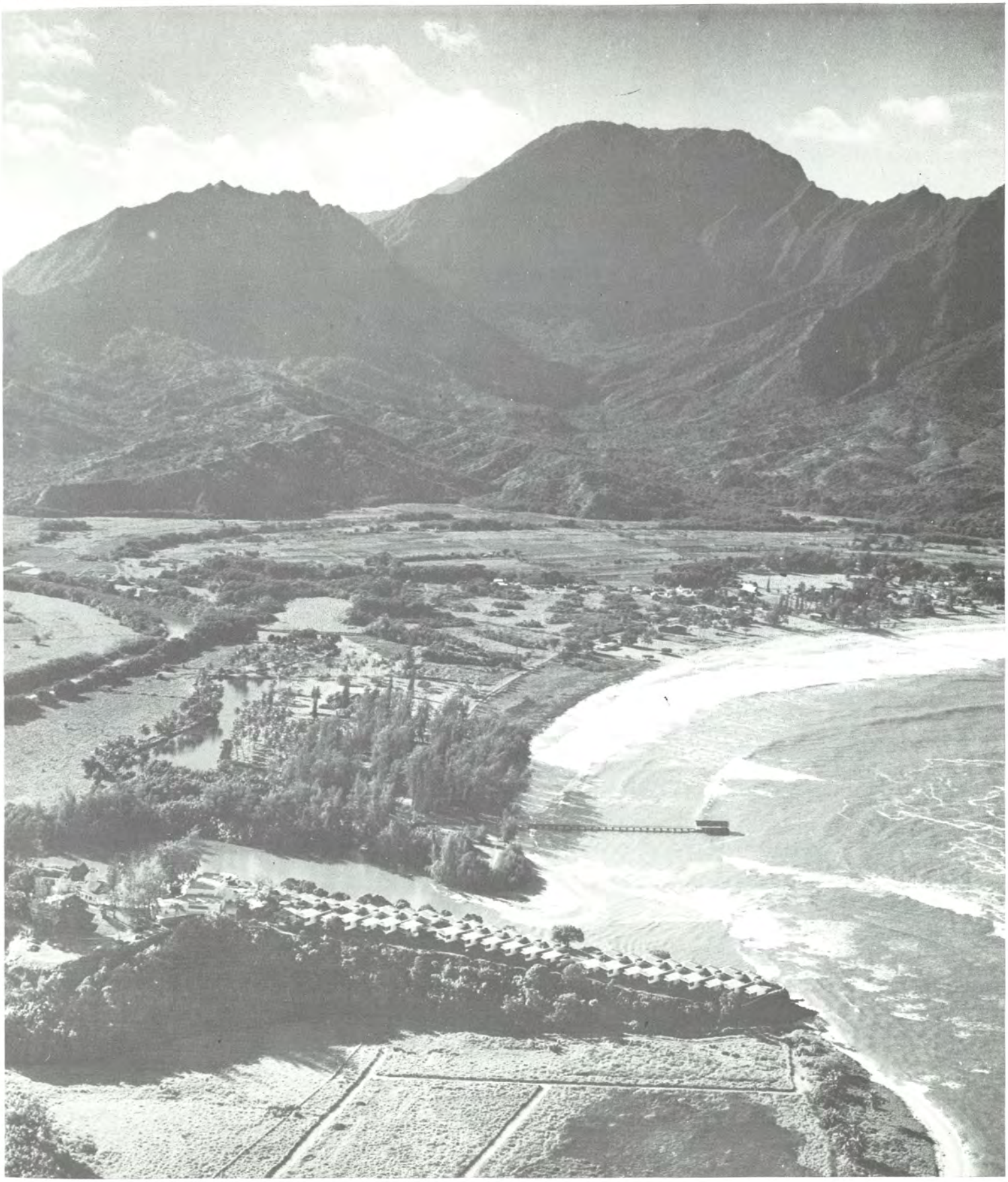
We propose, therefore, that the Legislature of the State of Hawaii conduct, with adequate funding, an overall exploration of public finance policies, placed within a planning context but based upon a recognition that the style of any system of public finance provides one important definition of the style of a community. Such a study should result in a report to the Legislature at least one year before the next scheduled revision of land use boundaries is due. Needless to say, important and urgent changes in the present structure should not be delayed pending the results of the major proposals.

4. The Urgencies

Selecting priorities for immediate action is always difficult, especially since so many tax decisions relate to the even more important decisions which relate to the kind of direct planning action embodies in the Land Use Law. Nevertheless, one or two issues stand out clearly as requiring immediate attention, in part because of the importance of the problem and in part because failure to take early action will lock the system into an uncomfortable mold and make future solution more difficult.

a. Immediate attention should be given to the condition of the agricultural dedication provisions of the real property tax, as suggested in the detailed recommendations. The purpose of such action should be as suggested—to make it easier to obtain such dedications but harder to abandon dedications once they have been granted. In particular, we feel that some sense of urgency should attach to a clarification of the definition of "value in use;" to the removal of dedication opportunities for agricultural lands in urban districts; to the distribution of responsibilities between the Department of Taxation and the several planning agencies; and to the entire penalty structure.
b. Immediate attention should be given to revisions in the urban dedication law. In the absence of such early attention the law might be used for purposes apparently not intended.
c. Immediate attention should be given to the property classification issue, particularly with respect to the recommendations that, for purposes of applying the graded rate system, the classification be based upon land use planning criteria rather than on criteria of highest and best use.
d. Immediate attention should be given to clarifying the condition of the graded rate structure of the real property tax, so that taxpayers (particularly those with investment notions) and tax administrators will have clearer expectations of the future of the building tax factor.
e. Above all, of course, immediate attention should be given to strengthening the effectiveness of the Land Use Law. The recommendations for this purpose are discussed elsewhere in this study. And although the Land Use Law does not have tax effects as its central element, it has a clear potential for producing these effects. It is simply not possible to analyze either law without being conscious of the overlaps and interconnections. Indeed, this observation provides the clearest urgency of all—the need for a comprehensive view of the total Hawaii condition and a solid commitment to the planning process as it effects the entire structure of public and private action.

Urban, Agriculture and Conservation Districts
Hanalei, Kauai



Conservation District
Na Pali Coast, Kauai

I. ISLAND OF KAUAI

A. Agriculture Districts

1. General

The major agricultural pattern of Kauai has not changed since 1964; a broad band from the shoreline to the foothills, and from Wainiha to Barking Sands. The land is broken by numerous valleys such as Waimea, Hanapepe, Kalihiwai and Hanalei.

The major use, of course, is sugar, with numerous other associated activities including grazing, pineapple, taro, rice, seed corn and other diversified agricultural crops.

Changes in the district boundaries have been recommended either to add areas which are presently being used for agricultural purposes (or whic have a proven potential for agricultural purposes), or to eliminate significant areas which do not have either present or potential agricultural uses. Areas recommended for change from the Agriculture District to another district are discussed under the appropriate districts.

2. Recommended Additions

Areas recommended for addition to the existing Agriculture District are in Kilohana Crater area, upper Wailua River, Kealia and Kalihiwai. In all these areas sugar cane is being grown by authorization of a use permit, within the Conservation District, or the areas have that potential. While agricultural uses are generally permitted within the Conservation District, if these uses are intensive and persistent, then agricultural districting is more appropriate.

a. Kilohana

An area bounded by the transmission lines at the edge of Kilohana Crater, the Waiahi Stream and the Waiahi-Iole Ditch to include areas of Lihue Plantation is being used for cane production without encroaching on Kilohana Crater to the point of destroying its natural assets.

Commission Action: Approved.*

b. Upper Wailua River

An area of Lihue Plantation presently in intensive cane production and an area presently swampy, but which, with adequate drainage, has potential for cane production. The boundary is that of the original Forest Reserve.

Commission Action: Approved.*

c. Kealia

A third area of Lihue Plantation supporting cane production. A portion of this area was excluded from the original Forest Reserve boundary. The proposed boundary would return to the original Forest Reserve boundary, plus additional areas bounded by the ridge top, the Anahola Ditch and a straight line connecting the two and an additional area bounded approximately by the 500' contour.

Commission Action: Approved.*

d. Kalihiwai

A triangular shaped area of Kilauea Plantation bounded by an extension of the existing boundary and line which approximates the 400' contour.

Commission Action: Approved.*

B. Conservation Districts

1. River Valleys

Portions of the Hanalei, Kalihiwai, Anahola, Wailua, Hanapepe and Waimea River Valleys were recommended for additions to the Conservation District, and are all of extreme scenic significance to the Island of Kauai. Steep walled and forested in most cases, the floors often subjected to flooding, these valleys provide the potential for a continuity in the recognition of water and land management from the mountains to the sea; the recognition of a basic and fundamental character of the landscape and the natural resources of the island.

Commission Action: Approved.*

2. The Shoreline

The Na Pali Coast, one of the most precipitous and scenic (though rarely seen) in the State is within the existing Conservation District. Adjacent to it is the Kekaha Military Reservation which occupies one of the largest accumulations of beach sands in the State. The area was originally placed in the Conservation District to ensure public use of such land should it ever be vacated. This boundary should be extended to more correctly follow that of the military reservation, along the shore to the Kekaha Urban District, and similarly between Kekaha and Waimea Urban Districts and the sandy shoreline east of Waimea, including the area of the Russian Fort, which is propsed for development as an historic park.

Commission Action: Approved.*

From Pakala Village east, the shoreline becomes increasingly rocky with scattered sandy bays. This too is a scenery characteristic of the island and the recommended boundary should include only those lands of the shore which are not being used for agricultural purposes, plus more dramatic but related features such as the Namilo Fishpond and Lawai Valley which is presently in the Conservation District.

Commission Action: Partially Approved.* The area around Namilo Fishpond and the extension of the Conservation District mauka in the Lawai Valley were not approved.

At Lihue, Menehune Fishpond and the steep land behind it are recommended for inclusion in the Conservation District. North of Lihue the shoreline is a series of sand bluffs and rocky outcrops bounded by ironwood trees which should designate the district boundary. At Wailua the Conservation District should include the total of the Wailua Golf Course and not just a portion as is now the case.

Commission Action: Partially Approved.* The area at Kipu Kai and Huleia Valley was not approved and the proposed shoreline boundary was reduced to exclude the existing ironwood tree in the vicinity of Ninini Point.

North of Kealia small beaches and the rocky shores are backed by bluffs of around 200' elevation. This line should be used to designate the inshore district boundary except just north of Moloaa Bay, where a line at the 200' elevation would include much pasture and some potential cane land. Here a boundary 300' from the line of wave action is recommended.

Commission Action: Partially Approved.* The area at Moloaa Bay was not approved, and the proposed shoreline boundary between Kilauea and Moloaa Bay was reduced.

3. Lands of Steep Topography

The existing Conservation District boundaries were in many instances those of the old Forest Reserve. While it is true that for the most part these boundaries include the major natural resources of conservation value, it is also true that the straight line boundaries often violate the physiographic forms which they were designed to protect. The following recommendations for adjustments in the boundary would resolve this conflict.

a. Kaulaula Valley

Kaulaula Valley is of great scenic significance and has been proposed for development as a State Park. The existing Conservation District should be adjusted to include this area.

Commission Action: Approved.*

b. Makaweli Area

This area includes the upper reaches of Mokihana, Makaweli, Olokele and Hana-

*Approved recommendations adopted at the action meeting held in Kauai County July 8, 1969.

pepe River Valleys. There is some grazing in the area, but the area also abounds a values of conservation significance. Mostly forested and of steeply undulating topography, the foothills of the central mountain area are of considerable scenic significance. Many areas are suffering from natural erosion, but this condition is aggravated by grazing and is in need of corrective attention. In general, the conservation values of the area dominate.

Commission Action: Partially Approved. The areas in agricultural use and which serve as water sources for these areas were excluded.

c. Papapaholahola

The Papapaholahola Spring Reserve is State land which has been proposed for park use.

Commission Action: Approved.*

d. Haupu

The existing Conservation District at Haupu includes a majority of the steep topography and forest land of the mountain range. Additions should be made to include similar lands at Kalapa, Kawelikoa Peak and Hokulei Kai Peak. These additions make a contiguous district which more clearly represents the natural physiography of the area.

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

e. Hunting and Game Preserve

An area of the State land between the North Fork at Wailua River and Kapaa River is of undulating and contorted topography. The area is a public hunting ground and upland game bird preserve. Both the character and the use of the land warrant the inclusion of the area in the Conservation District.

Commission Action: Approved.*

f. Puu Pane

A small addition to the Conservation District is recommended which would bring its boundary in line with that of the Forest Reserve. The land is of steep topography, forested and is not being used for intensive agricultural purposes.

Commission Action: Approved.*

g. Hanalei

Behind Hanalei is the magnificent Namolokama Mountain, the foothills of which come almost to Hanalei. The Conservation District should be extended to include all of this land. At the present time only marginal grazing values exist in the area, erosion is occurring in many instances and corrective attention should be given. The scenic significance of this area, in conjunction with Hanalei Valley, is of such grandeur that the conservation values clearly dominate.

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

h. Wainiha

Wainiha Valley is narrow and steeply walled. The floor of the valley is classified Rural and the Conservation District begins halfway up the side of the valley. The boundary should be extended to include all the steep lands from the ridge top down to the Rural District.

Commission Action: Approved.*

C. *Rural Districts*

In certain areas the Rural District boundaries were difficult to locate in the field due to the similarity of character, use, type and density which existed in adjacent areas. In two cases it is recommended the Rural District be expanded to include such areas.

1. *Wainiha*

The upper part of the valley floor, similar in character to the makai portion, contains some agricultural potential and uses such as a powerhouse, which is ancillary to agricultural practices, intermingled with some employee housing for Alexander and Baldwin. It is recommended that the Rural District be extended along the valley to the Conservation District boundary.

Commission Action: Approved.*

2. *Omao*

The Omao area is presently characterized by a mixture of low density residential uses mixed with farm uses. These conditions prevail from the main road makai to Loka Reservoir. It is recommended that the Rural District be expanded to include a total of this area.

Commission Action: Approved.*

D. *Urban Districts*

1. *General*

The population for the Island of Kauai at the time the district boundaries were drawn in 1963 was estimated to be approximately 28,800 people.[1] Current population to July 1, 1968 has been estimated by the Department of Planning and Economic Development[2] to be 31,200 people for an increase of 3,400 people or 12 percent for the five year interval. This estimated increase is about 15 percent over an interpolation of estimated population as derived from the State of Hawaii General Plan Revision Program[3] for 1978. To determine, according to the best available data, the anticipated growth for the next ten years, this 15 percent factor was added to all population projections indicated on Table 3.

The projection estimated for 1978 totals approximately 36,000 for an increase of 4,800 people or 15 percent over the existing population in 1968.

In 1963 it was estimated that 20,000 people resided in the existing urban areas[4] with the balance of 8,800 living in agricultural or rural locations. If we assume that all of the growth since 1963 has occurred in the urban areas, the 1968 population estimated for these areas totals 22,400 people and the 1978 projection totals 27,200 people for an increase of 4,800 people.

The Urban Districts as adopted in 1964 and as tabulated by the State of Hawaii Revised General Plan in 1965 were estimated to contain 6,748 acres. Since 1964 approximately 170 acres have been added to this district by boundary changes, thereby providing an estimated total of 6,918 acres in 1968. In the Revised State General Plan 3,510 acres or 52 percent of the land in 1965 was considered vacant.

*Approved recommendations adopted at the action meeting held in Kauai County July 8, 1969.

[1]Harland Bartholomew & Associates, *Land Use Districts for the State of Hawaii*, 1963.

[2]Department of Planning & Economic Development, *Provisional Estimates of the Population of Hawaii by County*, July 1, 1969.

[3]Department of Planning & Economic Development, *General Plan Revision Program*, 1967.

[4]Harland Bartholomew & Associates, *Land Use Districts for the State of Hawaii*, 1963.

TABLE 3 KAUAI COUNTY URBAN DISTRICTS

	Estimated Resident Population			Urban Districts (acres)		
Judicial District	1968	1978	% Increase	Existing '68	Vacant '68	Vacant '78
Waimea	6,678	6,839	2%	1,490	540	513
Koloa	7,679	9,247	20%	1,513	747	486
Lihue	7,080	8,238	16%	1,566	749	556
Kawaihau	8,161	9,875	21%	1,743	857	571
Hanalei	1,612	1,818	13%	606	350	316
TOTALS	31,200	36,017	15%	6,918	3,243	2,442

Lacking sufficient data on the amount of vacant land existing in the Urban Districts in 1968, we have used an assumption based on interpolation of the absorbtion of vacant land projected in the Revised State General Plan that provided for the 15 percent increased estimate of population growth. Based on this procedure, the vacant lands within the Urban Districts are estimated to contain 3,243 acres as of 1968, with 3,745 acres considered occupied or developed.

The average population density in the existing Urban Districts for the Island of Kauai is estimated to be approximately six people per acre as determined by dividing the population in the Urban Districts by the acres of developed land. Applying this density to the estimated ten year population increase of 4,800 people, approximately 800 acres of gross urban land is needed to accommodate this growth. By applying an urban land expansion factor to allow for three times the projected growth, approximately 2,400 acres are required to 1978.

However, since the present vacant lands in the Urban Districts contain 3,243 acres, four times the projected growth in the existing Urban Districts for the island presently exists.

At the present time the existing Kauai General Plan produced in 1961 is undergoing revision and updating. However, during the Boundary Review, necessary data concerning the vacant lands within each Urban District were not available. As a result of this, we have dealt with vacant urban land and the need for urban expansion on the basis of the five judicial districts of Waimea, Koloa, Lihue, Kawaihau and Hanalei. Although the present Urban Districts for the island in total are sufficient to accommodate foreseeable growth, the location and distribution of these areas for urban expansion might not provide for specific locational needs as determined in the revised County General Plan.

It is anticipated that the county will institute boundary change proceedings if, as a result of the Revised General Plan, needs for additional Urban District areas are warranted.

We have, however, proposed additions to the Urban Districts to refine and provide for more consistent urban boundaries. We have also proposed expansion on the basis of satisfying needs for two areas in the Kalaheo-Lawai and Kapaa Districts for urban lands available in fee simple ownership which was expressed to us during this study. Additionally we have recommended approval of certain resort area proposals, namely the Princeville Ranch area at Hanalei, Kukii-Ninini Point area at Lihue and Keoniloa Bay area at Poipu. These recommendations are over and above the projected need determined solely on the basis of resident population projections. Following is a general discussion of these proposals and recommendations by Judicial District.

2. *Waimea Judicial District*

Included in the Waimea Judicial District are the Urban Districts of Kekaha, Waimea, Makaweli, Olokele and Hanapepe. No significant changes have been proposed in these areas. Limited expansion is foreseen within the Kekaha and Waimea Urban Districts. In Hanapepe an additional area has been proposed to provide for expansion of the Hanapepe Heights houselot development.

Commission Action: Approved.*

3. *Koloa Judicial District*

The Koloa Judicial District including primarily Kalaheo, Lawai, Koloa and Poipu Urban Districts could experience significant changes within the next ten years, primarily as a result of further development of the Poipu resort area and expansion of the Koloa Urban District. The three major property owners in the area, Grove Farm, Knudsen and McBryde have had development plans for many years for expansion of the triangular area of land between Koloa and Poipu. This area is generally not prime agricultural land and is a logical area for future urban expansion when the need arises. However, little supportive data is available to indicate the need for additional urban lands at the present time. We have recommended an extension of the Urban District of 90 acres along the coast from Poipu to Keoniloa Bay for expanded resort use as an extension of the existing resort area at Poipu and including a proposed 30 acre park at Paa Beach.

Commission Action: Approved.*

The Kalaheo-Lawai area possesses great potential for future residential development based on the proximity to the Koloa-Poipu resort area; the physical characteristics of the area, such as climate, topography and orientation; and the availability of land in fee simple ownership. We have therefore recommended additions to the Urban Districts at Kalaheo and Lawai totaling approximately 320 acres. The areas indicated for urban expansion have generally been phased out, or are phasing out of agricultural use. We have attempted to exclude lands of better agricultural potential and those in existing agricultural use. Some areas of over 20 percent slope have been included to provide for contiguous boundaries. These areas can be administered under county subdivision controls to provide for development in character with the surrounding Urban Districts.

Commission Action: Approved.*

4. *Lihue Judicial District*

Located within the Lihue Judicial District are the Urban Districts of Lihue-Nawiliwili and Hanamaulu. We have recommended approximately 320 acres for expansion of the Lihue Urban District between Nawiliwili and Ninini Point. The proposed development is primarily an extension of the existing resort development including apartment and resort hotels, a park, an expansion of the existing golf course, and provision for support housing in the adjacent area on the Hanamaulu side. Mention has been made of the possible conflict with the airport expansion plans at the Lihue Airport. However, assurance has been given by the State Transportation Department that any expansion of the existing airport, if it occurs, will take into consideration the county and the developer's interest in the proposed development.

Commission Action: Not Approved.

An addition of approximately 70 acres has been proposed for worker housing in the Hanamaulu Urban District for expansion of the existing subdivision.

Commission Action: Approved.*

5. *Kawaihau Judicial District*

The Kawaihau Judicial District includes the Urban Districts of Kapaa, Wailua, Kuamoo (Wailua Homestead area), Kealia, Kawaihau and Anahola. The Kapaa-Wailua area is one of the primary urban concentrations on the Island of Kauai and is projected to include the greatest amount of growth based on current population projections. Although the Kapaa Urban District contains enough vacant urban lands to accommodate this growth in the foreseeable future, a large portion of these lands is in State ownership. We have therefore proposed additions mauka of the existing Urban District or lands in fee simple ownership in locations indicated for urban expansion in the existing County General Plan.

Commission Action: Partially Approved.* in accordance with the county's recommendation.

No expansion is indicated in the Urban Districts of Kuamoo, Kawaihau, Kealia or Anahola at this time. At the Anahola Houselot area, presently in the Rural District, we have proposed that the district designation be changed to Urban because of the intensity of existing residential development. In the Kuamoo District, including a portion of the Wailua Homestead area, land dedication for agricultural uses has in the past been denied on the basis that approval could establish a precedent for committing lands available for urban expansion for a ten year period of time. However, by approving all lands that have been requested

*Approved recommendations adopted at the action meeting held in Kauai County July 8, 1969.

for agricultural dedication in this area, sufficient lands would still be available for future urban expansion.

Commission Action: Approved.*

An area Mauka of the existing Urban District at Wailua Bay in the vicinity of the Birthstone Heiau was approved for Urban Districting. This area had not been reviewed by us prior to Commission action.

6. *Hanalei Judicial District*

Located within the Hanalei Judicial District are the Urban Districts of Kilauea, Kalihiwai, Hanalei and Haena. Only minor adjustment of the existing Urban District has been indicated at Kilauea, with no changes proposed at Haena and Kalihiwai. In the Hanalei area in the location of the Princeville Ranch lands, approximately 950 acres have been recommended for Urban zoning. This area has been indicated for resort, residential, golf course and marina development in private and public planning reports, including State and County General Plans since 1960.

Although the population projection indicated on Table 3 did not foresee the immediate development of the Princeville Ranch, the acquisition of some 995 acres of land by Eagle County Development Corporation, the commitment as indicated by the current land development plans for these lands, and the support of these plans by the Kauai County Council and Planning Commission is clear indication of the desire to commit these lands for urban development at this time.

Commission Action: Approved.*

We do not feel, however, that current plans for the remainder of the Princeville Ranch lands are in sufficient detail to warrant approval of the total concept for development at this time. For this reason we have not recommended that the Princeville Ranch development be considered under the incremental zoning provision as proposed in the revised Land Use District Regulations, but rather that the initial phase be approved and that consideration of the following phases be given in the future when additional information and details are made available.

II. ISLAND OF NIIHAU

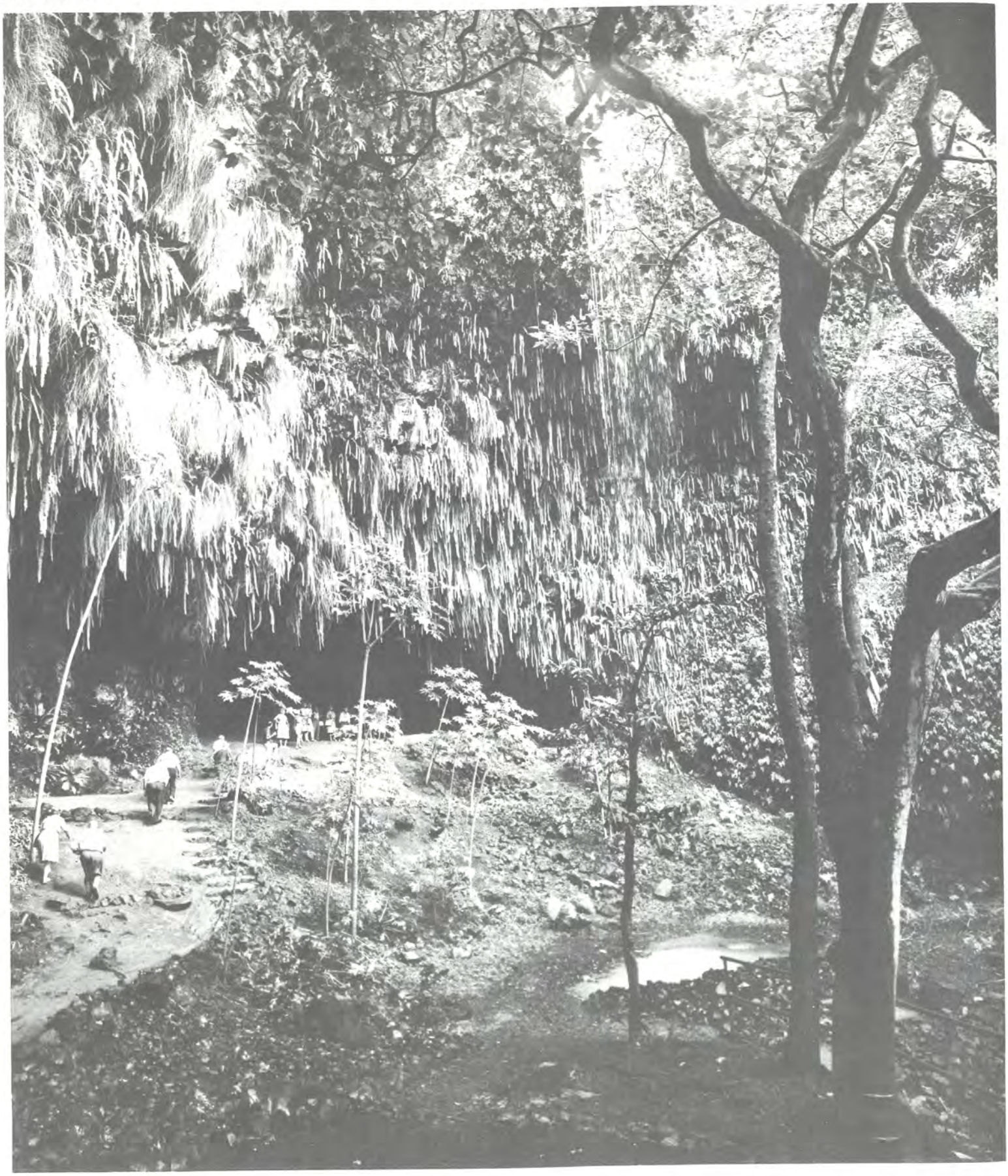
Within the jurisdiction of the County of Kauai lies the small privately owned island of Niihau. It is inhabited by about fifty or sixty Hawaiian families. Legend has it that it is an "earthly paradise", but it isn't. The island is relatively barren and intensive use quite restricted because of a shortage of potable water. Cattle and sheep are grazed there, but production is marginal because of the relatively scrubby, thin forage.

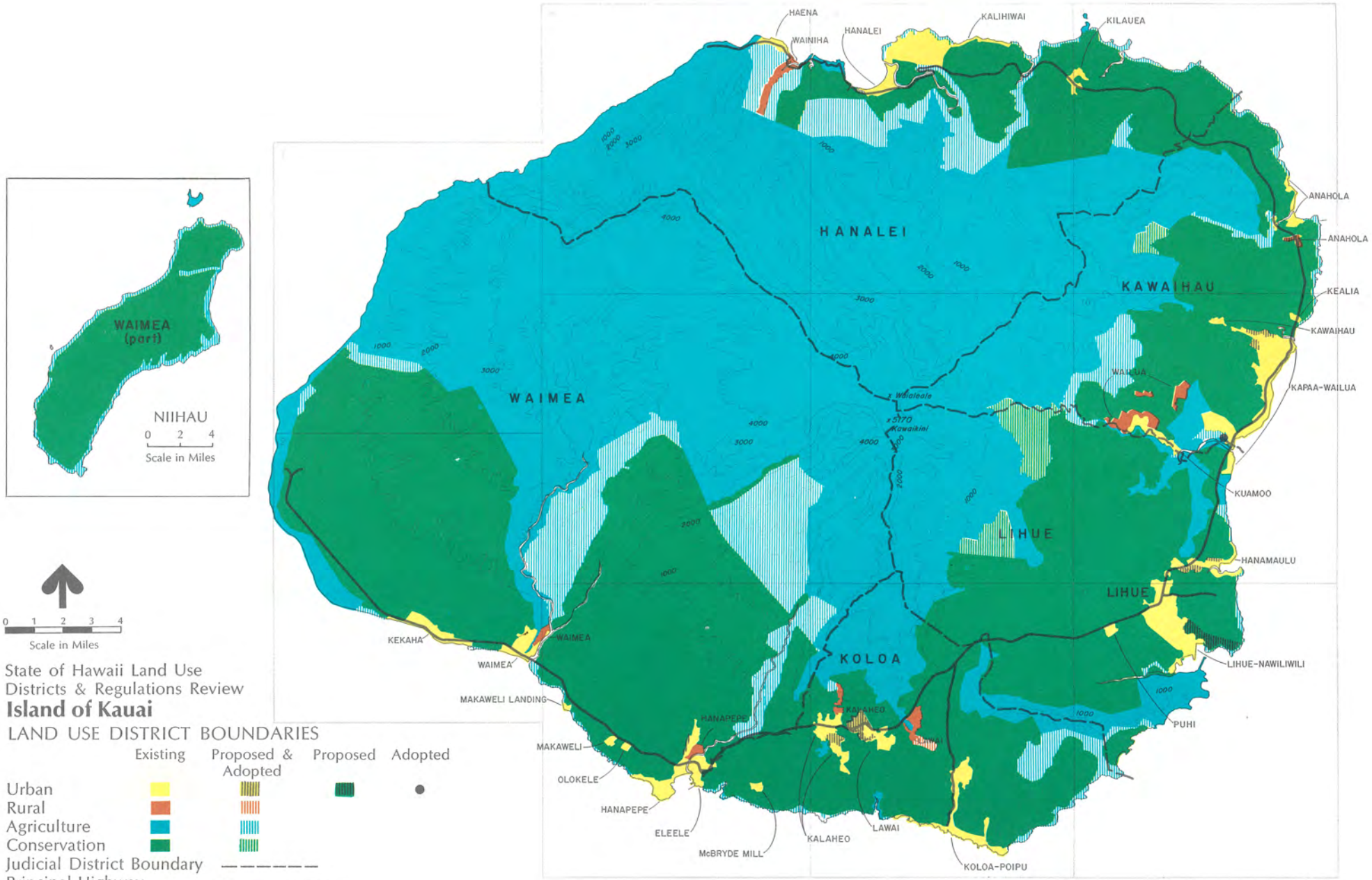
The island was originally and totally zoned Agriculture, there being no urban or rural concentrations. There are two major assets of conservation significance, however. The steep pali coast of the east side is of scenic significance and is of insignificant agricultural value. The west coast is characterized by sand dunes and beaches, some of which are the most magnificent in the State. Because of these values we recommended that the entire shoreline be placed in a Conservation District.

Commission Action: Not Approved.

*Approved recommendations adopted at the action meeting held in Kauai County July 8, 1969.

Conservation District
Fern Grotto, Wailua
State Park, Kauai





State of Hawaii Land Use
Districts & Regulations Review

Island of Kauai

LAND USE DISTRICT BOUNDARIES

	Existing	Proposed & Adopted	Proposed	Adopted
Urban				
Rural				
Agriculture				
Conservation				

Judicial District Boundary
Principal Highway
District Boundary Map Key 12
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969

0 1 2 3 4
Scale in Miles

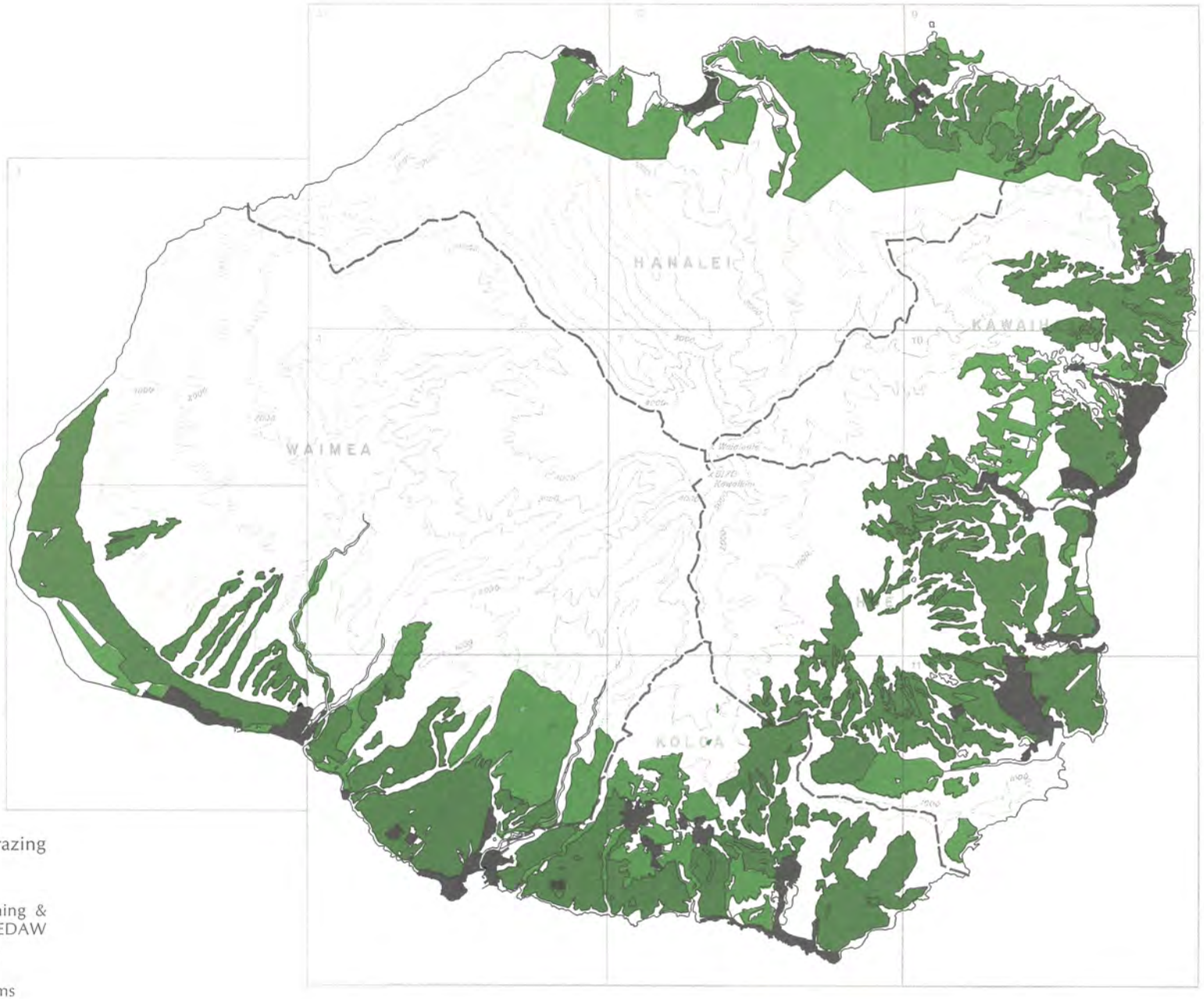
State of Hawaii Land Use
Districts & Regulations Review

Island of Kauai

AGRICULTURAL POTENTIAL

- Soils with high potential for agricultural production ('A' & 'B' rating)
  Source: Land Study Bureau
- 12 District Boundary Map Key
  See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



0 1 2 3 4
Scale in Miles

State of Hawaii Land Use
Districts & Regulations Review

Island of Kauai

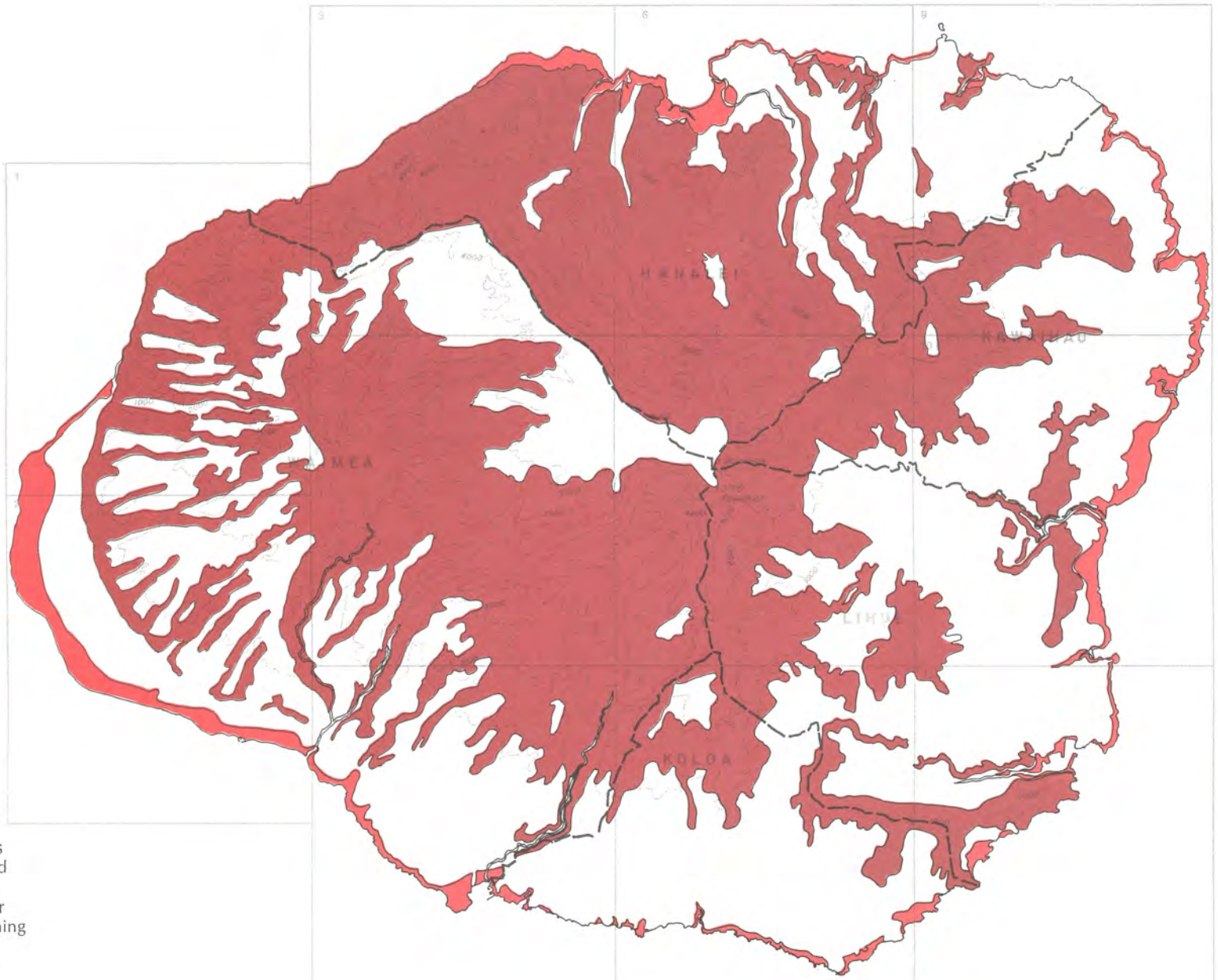
AGRICULTURAL USES

- Lands presently used for grazing
- Cultivated lands
- Urban districts

Source: Department of Planning & Economic Development and EDAW

12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



0 1 2 3 4
Scale in Miles

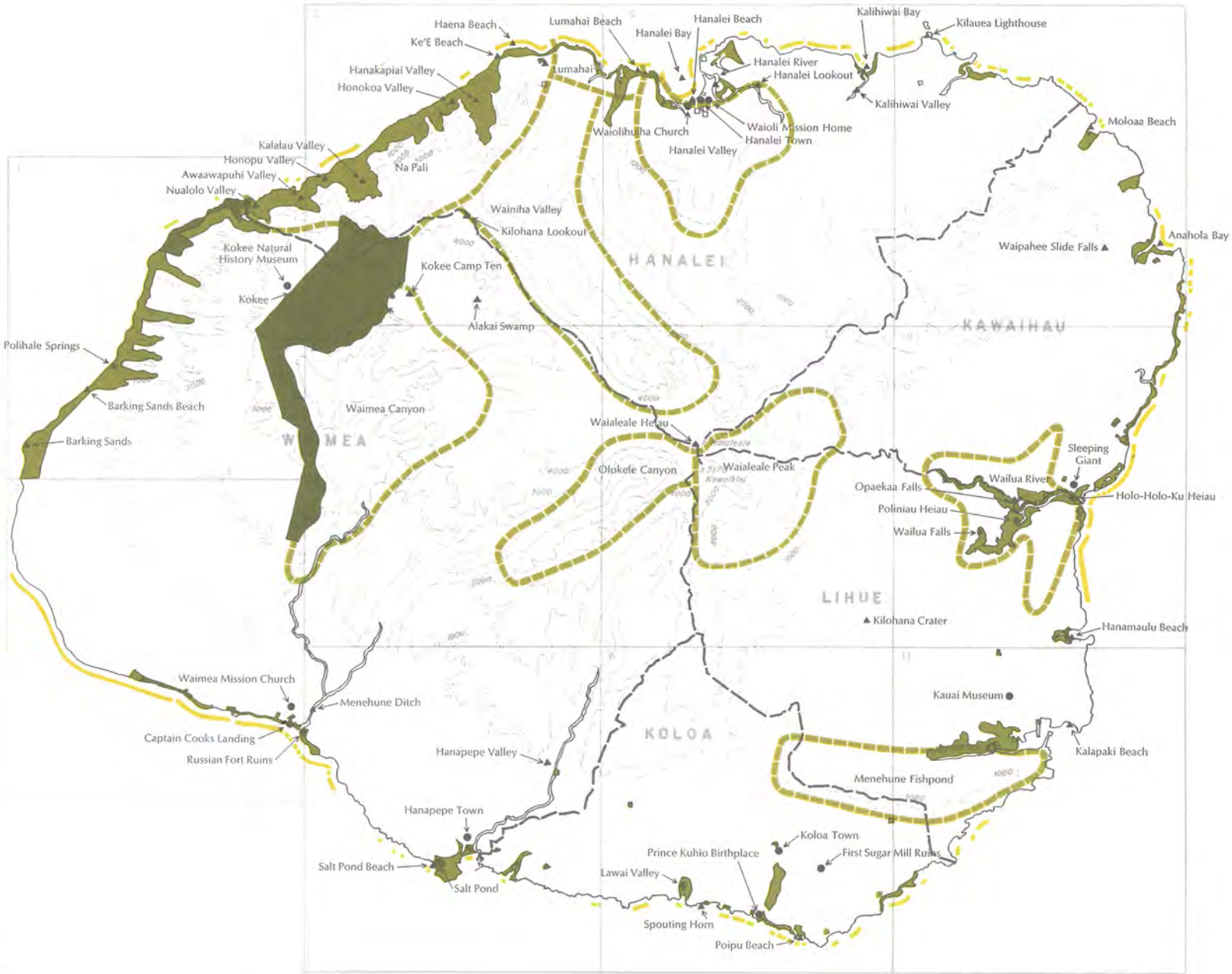
State of Hawaii Land Use
Districts & Regulations Review

Island of Kauai

POTENTIAL HAZARD AREAS

- Tsunami innundation zones
  Source: Division of Land and Water Development
- Land of 20% slope or over
  Source: Department of Planning and Economic Development
- 1/2 District Boundary Map Key
  See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



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Scale in Miles

State of Hawaii Land Use Districts & Regulations Review

Island of Kauai

NATURAL & CULTURAL RESOURCE AREAS

- Existing Parks
- Proposed Parks
- Generalized Scenic Areas
- Sandy Beaches
- ▲ Scenic sites
- ● Historic Sites

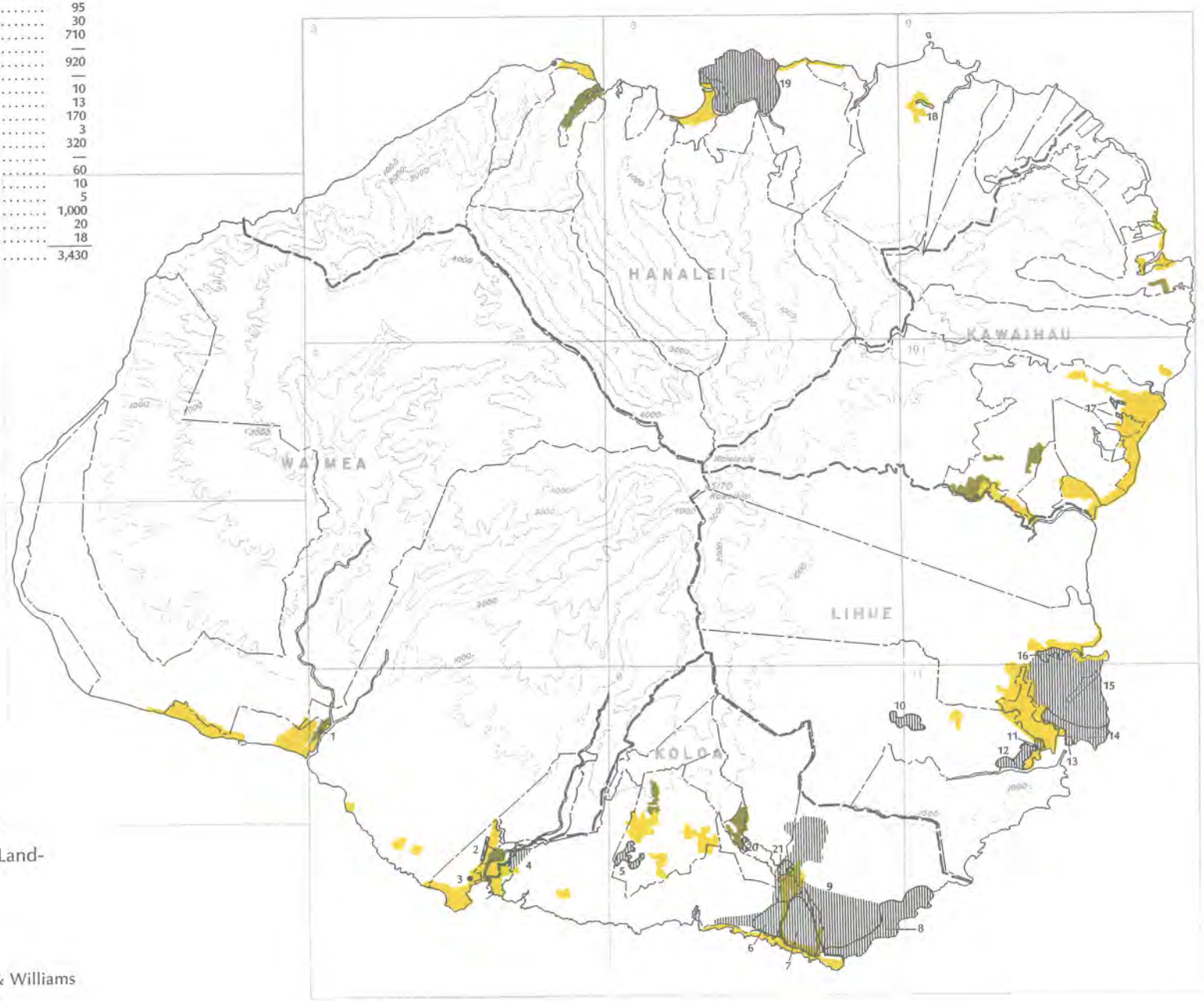
Source: DPED Shoreline Plan, Wenkam Scenic Resource Study, USGS and EDAW

12 District Boundary Map Key See Appendix D

Eckbo, Dean, Austin & Williams
August 1969

KAUAI COUNTY

		ACRES
1.	County Planning Staff—Waimea	5
2.	Department of Land & Natural Resources (proposal)—Waimea	16
3.	County Planning Staff—Waimea	3
4.	McBryde—Koloa	95
5.	McBryde—Koloa	30
6.	McBryde—Koloa	710
7.	Knudsen—Koloa	—
8.	Grove Farm—Koloa	920
9.	Poipu-Koloa Study—Poipu, Koloa	—
10.	Grove Farm—Lihue	10
11.	Grove Farm—Lihue	13
12.	Kanoa Estate—Lihue	170
13.	Inter-Island Resorts—Lihue	3
14.	Amfac—Lihue	320
15.	Lihue Study—Lihue	—
16.	Amfac—Lihue	60
17.	County Planning Staff—Kapaa	10
18.	County Planning Staff—Hanalei	5
19.	Eagle County—Hanalei	1,000
20.	County Planning Staff—Koloa	20
21.	County Planning Staff—Koloa	18
	TOTAL	3,430



0 1 2 3 4

Scale in Miles

State of Hawaii Land Use Districts & Regulations Review

Island of Kauai

PROPOSED DEVELOPMENTS

- Proposed developments by Landowners and developers *
- Existing Urban Districts
- Existing Rural Districts
- Generalized ownership boundaries

Source: Eckbo, Dean, Austin & Williams

12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969

*Prior to public hearing

CHAPTER 5 / RECOMMENDATIONS FOR LAND USE BOUNDARY CHANGES—HAWAII COUNTY

Urban, Conservation and Agriculture Districts
Kailua, North Kona, Hawaii

Urban, Agriculture and Conservation Districts
Hilo, Hawaii

I. AGRICULTURE DISTRICTS

Hawaii, more than any other island, exhibits a variety and range of climate and geology. This variety in turn is reflected in a wide range of agricultural activities. The Hamakua Coast, characterized by high rainfall, is a major sugar cane producing area of the island with grazing at the higher elevations. Kohala or the North Point area is another region where sugar is grown. The soils are deep and more characteristic of those of the older islands. On the leeward side of the Kohala Mountains grazing is the dominant use.

The plateau between Mauna Kea and Mauna Loa, and the Waimea area exhibits varying conditions. The area includes the Parker Ranch and is mainly dry and flat, and primarily used for grazing. The lands west of Waimea and generally from Keamuku to Kona are much drier, often comprised of barren lava, but the area does support some marginal grazing. The Kona area itself is dry with stony soils on steeply sloping land. Agricultural uses are restricted to grazing and orchard production.

The Kau District is characterized by barren lava with occasional pockets of soil. The mixing of grazing, orchard and sugar production reflects these different soil conditions. Finally, in the Hilo area and Puna Coast area, characterized by high rainfall, the lands are mostly rocky lava flows. Sugar is grown in pockets, macadamia nuts and papayas near the coast and some areas are used for grazing.

The existing Agriculture District is extensive in the areas described and includes these agricultural uses. No instances were discovered where the existence of agricultural uses or agricultural potential warranted the addition of areas to the Agriculture District. This is not to say that agricultural uses are not expanding on Hawaii, for they are. Particularly the growing of macadamia nuts and the growing of sugar in the Mountain View-Keaau area. Present programs for expansion all occur within the existing Agriculture District. A number of areas recommended for transfer from the Agriculture District in to the Conservation District are discussed under the Conservation District heading.

II. CONSERVATION DISTRICTS

A. *General*

Hawaii is the most recently formed of all the islands, and the evidence of volcanic activity dominates the landscape. Above the 7,000 foot elevation on the peaks of Mauna Kea and Mauna Loa, the land is generally dry and barren. Also, the recent lava flows, particularly in the dry areas of the island, are barren and unproductive. Seemingly the highest and best use would be as wilderness areas. These areas have been recognized and are for the most part within the existing Conservation District. Certain areas should be added to the Conservation District owing to their scenic qualities, wilderness or wildlife resources, steep topography and general conservation values.

B. *River Valleys*

The numerous valleys running to the east of the Kohala Mountains are already within the Conservation District. The extremely scenic Pololo Valley and the adjacent Kupahau Ridge are presently pockets of agricultural districting which should be included in the Conservation District. The Hamakua Coast has an annual rainfall of between 100 inches and 200 inches per year. The result of such a high rainfall is a landscape frequently disected to steep-walled scenic valleys. The major valleys, Kaawalii, Laupahoehoe, Maula, Waikaumalo, Nanue, Hakalau, Kolekole, Kawainue, Honolii, and Wailuku, are of such significance to the landscape that they should be placed within the Conservation District.

C. *The Shoreline*

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.

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

From Hilo to Kapoho the shore is rocky with only occasional beaches such as at Haena. It is the unique product of recent lava flows running directly into the sea. The Conservation District should include the shoreline and it is recommended that it be extended from the high water mark to a line which is approximately 300' mauka of that line.

Commission Action: Approved.*

From Kapoho to South Point, most of the shoreline is presently within the Conservation District. The District should be extended to make it contiguous, particularly in the South Point area where there are numerous significant archaeologic artifacts combined with a scenic and exciting coastline. North of South Point to Kailua must of the shoreline is in the Conservation District. The District should be expanded to include the rocky and scenic shore between Kauhako Bay and the South Kona Forest Reserve, and at Kealakekua to include the steep topography behind the Bay and the scenic coast north of Kualanui Point.

Commission Action: Approved.*

Adjacent to the existing Conservation District at Lalamilo is the second largest collection of petroglyphs in the State. The district should be expanded to ensure the preservation of these artifacts.

Commission Action: Approved.*

The shoreline from Kawaihae around North Point to Pololo Valley is marked by numerous historic artifacts such as King Kamehameha I's birthplace, and a variety of different conditions such as rocks, steep pali and occasional beaches. The lands should be recognized by inclusion in the Conservation District.

Commission Action: Approved.*

III. RURAL DISTRICTS

No expansion of the Rural Districts is recommended for the island.

IV. URBAN DISTRICTS

A. *General*

The population for the Island of Hawaii at the time the district boundaries were drawn in 1963 was estimated to be approximately 60,700 people.[1] Current population to July 1, 1968 has been estimated by the Department of Planning and Economic Development[2] to be 65,700 people for an increase of 5,000 people or 8 percent for the five year interval. This estimated increase is about 9 percent over an interpolation of estimated population for 1968 as derived from the State of Hawaii General Plan Revision Program.[3] The estimated county total was apportioned by judicial district based on percentages of population distribution provided by the County of Hawaii Department of Economic Development. In estimating the anticipated growth

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**Approved recommendations adopted at the action meeting held in Hawaii County July 18, 1969.*

[1]Harland Bartholomew & Associates, *Land Use Districts for the State of Hawaii*, 1963.

[2]Department of Planning & Economic Development, *Provisional Estimates of the Population of Hawaii by County*, July 1, 1969.

[3]Department of Planning & Economic Development, *General Plan Revision Program*, 1967.

for the next ten years, the 9 percent adjustment factor was added to judicial district and County totals. These projections are indicated on Table 4.

The estimated projection for 1978 totals approximately 73,720 for an increase of 8,020 people of 11 percent over the estimated population in 1968. In 1963 it was estimated that 51,000 people resided in the existing urban areas[4] of approximately 18,000 acres, with the balance of 9,700 living in agricultural or rural locations. If we assume that all of the growth since 1963 has occurred in the urban areas, the 1968 population estimate for these areas totals 56,000 people; and assuming for comparison purposes that the proposed population growth will occur in the existing urban areas, the 1978 projection totals 64,020 people.

The Urban Districts as adopted in 1964 and as tabulated by the State of Hawaii Revised General Plan in 1965 were estimated to contain 18,998 acres. Since 1964 approximately 5,457 acres have been added to this district by boundary changes, thereby providing an estimated total of 24,455 acres in 1968. In the Revised State General Plan 10,254 acres or 42 percent of the land in 1965 was considered vacant. We have included all areas that have been added to the Urban Districts since 1965 as vacant lands as of 1968 with assumptions that they will be totally developed by 1978.

Lacking sufficient data on the amount of vacant land existing in the Urban Districts in 1968, we have used an assumption based on interpolation of the absorbtion of vacant land projected in the Revised State General Plan that provides for the 9 percent population growth adjustment factor. Based on this assumption, the vacant lands within the Urban Districts are estimated to contain 13,872 acres as of 1968, with 10,583 acres considered occupied or developed.

[4]Harland Bartholomew & Associates, *Land Use Districts for the State of Hawaii*, 1963.

It is estimated that average population density in the existing Urban District for Hawaii County is between four and five persons per acre. Applying this average density to the estimated ten year population increase of about 8,000 people, approximately 1,600 to 2,000 acres of gross urban land expansion factor of three times the anticipated growth, between 4,800 to 6,000 acres are required for 1978.

The present vacant lands in the Urban District are estimated to contain 13,872 acres. By applying the higher land absorbtion figure to 6,000 acres, the County would still have roughly 7,800 acres vacant in the existing Urban Districts after providing for three times the anticipated population growth.

B. *South Hilo Judicial District*

The South Hilo Judicial District includes the Urban District of Hakalau, Honomu, Pepeekeo, Papaikou, Wainaku and the greater Hilo area including Puueo, Waiakea-Keaukaha, Amauulu Camp and Waiakea Homesteads.

We have recommended minor adjustments to the Urban District at Pepeekeo to include existing urban uses along the Hawaii Belt Road and expansion of the Wainaku urban area to accommodate the need for plantation worker housing in response to the policy of phasing out existing plantation towns scattered throughout the sugar lands along the Hamakua Coast with the consolidation of housing adjacent to existing urban centers.

Commission Action: Approved.*

The Hilo area has produced more requested for additional urban lands since the district boundaries were adopted than any other urban area in the county. Although it has been documented that enough vacant urban area exists within the present Urban District, the major complaint has been that over one-half of these lands set aside for urban expansion are in public ownership. In endeavoring to satisfy this problem, we have excluded these publicly owned lands from our calculations of lands needed for urban expansion by 1978 based on the estimated population growth for the city of Hilo. With an urban expansion factor of three times this growth, we have concluded that there will be a need for approximately 900 additional acres of urban land.

In determining where this additional land should be allocated, we took into consideration the areas presently zoned for one acre minimum lot size in the adjacent Agriculture Districts and the recently adopted Hilo Development Plan. These two considerations must be viewed as official county policy for determination of future urban growth.

As a result of this we have recommended three areas for urban expansion, two mauka and one makai, along the Komohana Street extension, generally between the Puainako Reservoir on the south and Ponahawai Street on the north. In addition, we have proposed that the urban area in the vicinity of the Waiakea Homesteads be extended to include the entire area between Ainaola Drive on the south and Puainako and Kawailani Streets on the north and Kupulau Road mauka.

This area includes approximately 300 acres of non-conforming subdivisions that are presently being improved and developed. These areas are over and above the 900 acres that have been recommended.

As a result of the public hearing the Land Use Commission has received testimony for and against this proposal. The small farmers in the area have protested that redistricting this area Urban would force them out of business. It is our feeling, however, that this area is inevitable for future use as recommended by the County in the Hilo Development Plan.

Rezoning only those areas that are presently zoned "Ala" (one acre minimum lot size) would produce a scattered, frag-

*Approved recommendations adopted at the action meeting held in Hawaii County July 18, 1969.

TABLE 4 HAWAII COUNTY URBAN DISTRICTS

	Estimated Population			Urban Districts (Acres)		
Judicial District	1968	1978	% Change	Existing 1968	Vacant 1968	Vacant 1978
South Hilo	32,260	37,267	+16%	9,362	3,810	3,302
North Hilo	2,365	2,263	− 4%	354	109	116
Hamakua	4,796	6,104	+27%	675	189	104
North Kohala	2,891	2,931	+ 1%	746	321	315
South Kohala	s,759	3,112	+13%	6,032	4,539	583
North Kona	6,373	8,240	+29%	2,501	1,577	1,057
South Kona	5,256	5,236	+ 4%	592	357	81
Kau	3,416	3,107	− 9%	1,199	726	531
Puna	5,585	5,454	− 2%	2,994	2,244	1,625
TOTAL	65,700	73,719	11%	24,455	13,872	7,714

mented urban pattern and would create an inevitable controversy if other lands in the vicinity are requested for urban use. We have therefore proposed rezoning the entire area at this time with the further recommendation that agricultural dedication be approved when requested by the small farmers in the area if the uses requested do not interfere with the urban use in the adjacent areas.

Commission Action: Not Approved.

We have further recommended that the Panaewa Houselot area makai of the Panaewa Forest Reserve in the vicinity of Lawa and Makalika streets be rezoned Urban. As a result of a recent court decision, the Land Use Commission has been instructed to rezone this area in either the Rural or Urban designation. In view of the potential problem of further development in this area affecting the water quality of the Panaewa Well, we feel that by rezoning this area Urban, the County can impose stringent controls requiring all future development to be sewered, thus alleviating any contamination problems.

Commission Action: Approved.*

Among the minor changes recommended in the Hilo area, we have proposed a revision of the Urban District at the Hilo Airport to include the existing airport lands.

Commission Action: Approved.*

C. *North Hilo Judicial District*

Included in the North Hilo Judicial District are the Urban Districts of Ookala, Laupahoehoe and Papaaloa. Only a minor addition to include urban uses between the existing urban boundary at Papaaloa and the top of the pali in the vicinity of Kaiwilahilahi has been recommended.

Commission Action: Approved.*

D. *Hamakua Judicial District*

The Hamakua Judicial District contains the Kukuihaele, Haina, Honokaa, Paauilo, Kaohe and Kukaiau Urban Districts. No changes have been proposed at Kukuihaele, Haina and Kaohe. At Honokaa, in view of the expressed policy by the various sugar companies to phase out outlying plantation towns and return these areas to sugar production with the aim of providing houselots for sugar company employees in the existing urban centers, we have recommended the expansion of the present Urban District mauka of the existing town to the Belt Road, and the expansion on the Hilo side of the present urban boundary across the Kahaupu Gulch between the Honokaa cutoff and the Maunalahoa Highway on the mauka side of the gulch in the vicinity of the Rodeo Arena. At Paauilo we have similarly proposed an extension of the present Urban boundary on the Honokaa side between the old highway and the new Belt Road. In addition, at Kukaiau we have proposed a minor revision on the Hilo side to include existing uses along the Belt Road.

Commission Action: Approved.*

E. *North Kohala Judicial District*

Included in the North Kohala Judicial District are the Urban Districts of Kawi, Kohala, Kapaau, Halaula and Niulii. At Hawi we have included an existing almost fully developed subdivision makai of the town in the Urban District. At Kohala, we have, at the request of Kohala Sugar and the county, recommended expansion of the existing Urban District makai of the town to provide for additional worker housing. We have also recommended returning the makai portion of Halaula from Urban to Agriculture in the vicinity of the Kohala Mill. No changes have been proposed at Niulii.

Commission Action: Approved.*

F. *South Kohala Judicial District*

The South Kohala Judicial District comprising the Urban Districts of Kawaihae, Pukako, Lalamilo, Waimea, Kuhio Village and the recently rezoned Boise Cascade area could, if proposed developments are carried to fruition, have the greatest change in development seen in the State. However, the population forecasts available to us during our review did not reflect the impact that the proposed projects would have if they are developed as proposed. These proposals include the expansion of the Dilrock-Eastern project at Kawaihae, totaling 2,000 acres, the total development plan by Boise Cascade comprising 5,850 acres and the anticipated development proposed by Signal Oil of 8,000 acres. Additional Urban Districting was not requested during this review by Signal Properties or Boise Cascade.

We have recommended approval of that portion of the Dilrock-Eastern project comprising approximately 550 acres between the existing Urban District on the makai side up to the Kawaihae-Kailua Highway on the mauka side. This area includes the existing golf course, proposed low density homesites and condominium apartments.

In the Waimea area we have recommended expansion of the Urban District along Maunalahoa Highway mauka of the town to include existing urban uses and additional land in the Waimea Homestead area as a refinement of the existing boundaries.

Commission Action: Approved.*

G. *North Kona Judicial District*

Included in the North Kona Judicial Districts are the Kealakehe, Kailua-Kahaluu, Keauhou Beach, Keauhou, Holualoa, Kuakini, Puuloa, Honalo and Kainaliu Urban Districts.

This Judicial District could, according to existing forecasts, have the greatest percentage increase in population within Hawaii County.

Here again, the projections available to us seemingly did not anticipate the number or the scale of proposed developments that we reviewed during the course of this study. We have received requests for additional urban zoning along the coast from the Keahole Airport site to Kealekekua Bay, a distance of some 20 miles.

Although lacking sufficient documentation, if future urban and resort growth occurs at even a fraction of what is optimistically mentioned by various landowners and developers, it is inevitable that the area between the Keahole Airport and Kailua will see future requests for urbanization. It was our recommendation that consideration be given for urban zoning of this area from the coast to the Kawaihae-Kailua highway reserving the shoreline and all major areas of archaeologic significance in the present Conservation District.

As an expression of this concept the Land Use Commission approved the proposed resort developments of the Huehue Ranch at Kaloko, Honokohau Resorts at Honokahau Bay and the State's development at Kealakehe. Adjacent to the Kealakehe Urban District a 100 acre area for residential development was recommended makai of Palani Road on the Kailua side of the new Kealakehe School.

Commission Action: Partially Approved.* Area mauka of Palani Road on the Kailua side of the Kealakehe School was approved.

In the area of Kailua we recommend that the lands between the proposed Kawaihae-Kailua highway and the existing mauka urban boundary at Kailua be rezoned urban when the final alignment is adopted and upon petitioning by the various landowners in compliance with the Land Use District Regulations. We further feel that future urban development should be restricted to the makai side of the highway to insure a compact, contiguous urban core area for the Kona Coast.

We consider that this future urban concentration should extend to the vicinity of the intersection of the new road and Kuakini Highway and at this time have recommended extension south between the Kuakini Highway and the existing Urban District makai in the vicinity of Kahului Bay.

Commission Action: Approved.*

In Holualoa we have recommended a small expansion contiguous to the existing Urban District. We have also proposed a consolidation of the urban areas at Honalo

*Approved recommendations adopted at the action meeting held in Hawaii County July 18, 1969.

and Kainaliu by extending an Urban District along Maunalahoa Highway, in addition to an area of expansion on the Kailua side of Honalo extending to Maihi.

Commission Action: Approved.*

H. *South Kona Judicial District*

The South Kona Judicial District includes the Urban Districts of Kealakekua, Konawaena, Captain Cook and Napoopoo. No major changes have been proposed in these areas. We have recommended extending the existing Urban District at Captain Cook along the mauka side of the Maunalahoa Highway to the vicinity of Kalamakowali Homestead.

Commission Action: Approved.*

I. *Kau Judicial District*

Contained in the Kau Judicial District are the Urban Districts of Waiohinu, Naalehu, Pahala and Volcano Resort.

During the course of the review we received proposals from C. Brewer for residential development at Waiohinu, Naalehu and Pahala and resort-residential developments at Honuapo, Puunaluu, Ninole and Waiahukini. We recommended urban zoning at Puualuu, Ninole and Honuapo for the resort, recreational and residential proposals with a provision that the shoreline areas be retained or included in the Conservation District in concert with our shoreline proposals throughout the Kau area. The shoreline conservation designation particularly included the Kaneeleele and Kaieiei Heiaus at Punaluu and Ninole. At Waiahukini, based on the relatively small resort facility proposed and the isolation from any existing Urban District, we recommended that the shoreline and the Pali O Kulani be included in the Conservation District and that the specific site for the proposed resort be maintained in the Agriculture District. We feel that this development would be acceptable under the special permit provisions in the Agriculture District, and should, upon application, be considered for approval.

Commission Action: Partially Approved.*

The Land Use Commission did not include the areas at Punaluu, Ninole and Honuapo and the Urban District as recommended. Instead they requested that these areas be considered along with the other phases on the proposed development through the boundary change application procedure.

At Volcano, our recommendations included expansion of the existing Urban District to include the existing Volcano Golf Course and the proposed commercial and resort development.

Commission Action: Approved.*

J. *Puna Judicial District*

The Puna Judicial District includes the Urban Districts of Olaa summer lots, Ikina-Moana, Hale Ohia, Pahoa, Nanawale, Kapoho, Mountain View, Olaa residential lots, Kurtistown, Olaa and Keeau. Our recommendation consisted of refinements to the present District Boundaries including a change from Rural to Urban at Kalapana, an extension of the Urban District to include the existing and subdivided area on the Hilo side of Nanawale and inclusion of a small existing subdivision on the Kapoho side of Mountain View.

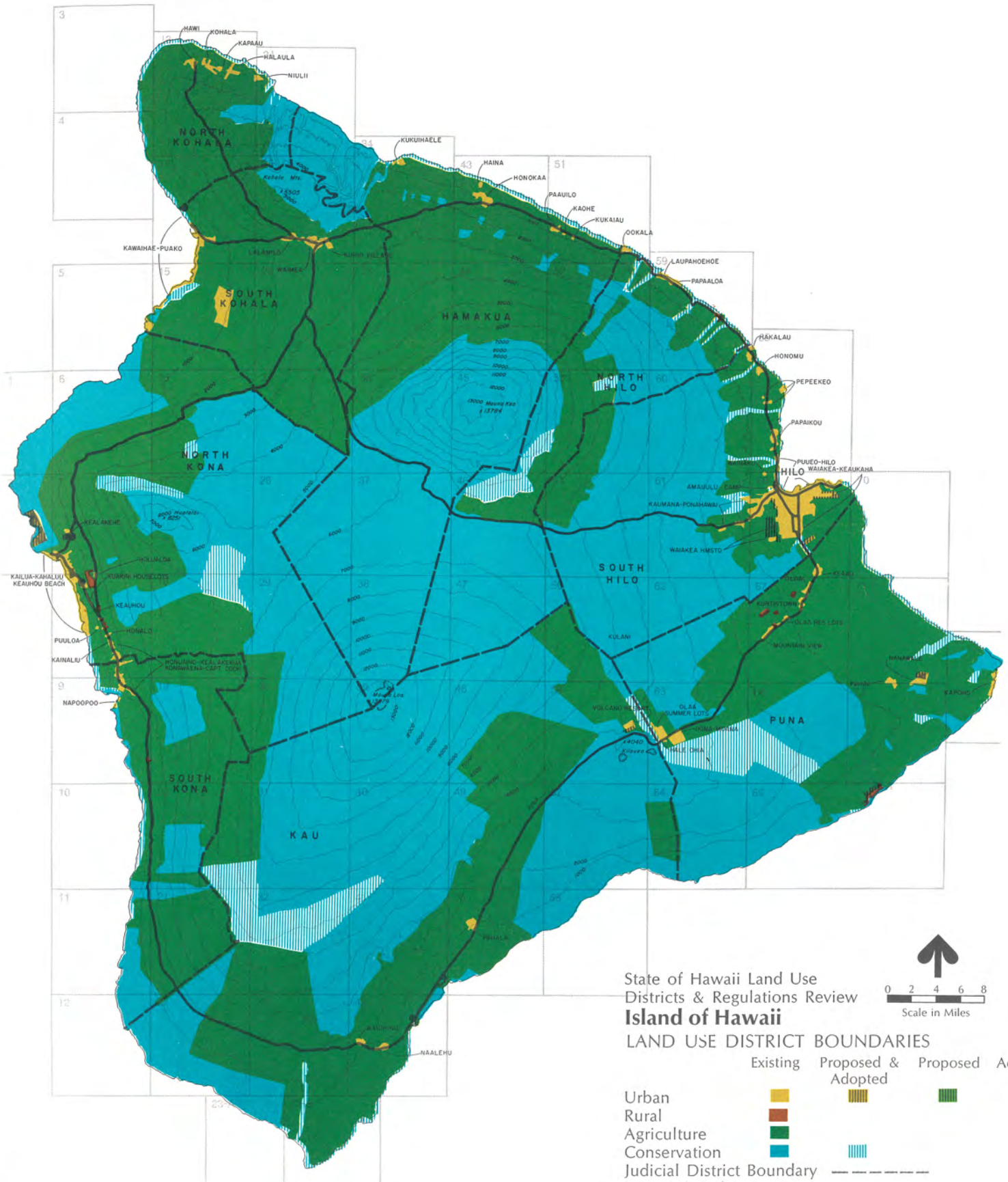
Commission Action: Approved.*

K. *General*

The County Tax Office requested that existing non-conforming subdivisions in the Agriculture Districts be rezoned to the Urban District. Those non-conforming subdivisions, scattered throughout the island, total upwards of 120,000 lots, in some cases minimally developed in locations where generally an urban level of services does not exist. These areas are, in fact, partially responsible for the adoption of the Land Use Law. Adoption of urban zoning in these areas would result in the most fragmented pattern imaginable. We have therefore only recommended areas of non-conforming subdivision for urban zoning where contiguous to existing Urban Districts.

*Approved recommendations adopted at the action meeting held in Hawaii County July 18, 1969.

Urban and Agricultural Districts
Mauna Kea Beach Hotel, Kaunaoa Beach
South Kohala, Hawaii



State of Hawaii Land Use
Districts & Regulations Review

Island of Hawaii

LAND USE DISTRICT BOUNDARIES

	Existing	Proposed & Adopted	Proposed	Adopted
Urban				
Rural				
Agriculture				
Conservation				

Judicial District Boundary
Principal Highway
District Boundary Map Key 1 2
See Appendix D

Scale in Miles: 0 2 4 6 8

Eckbo, Dean, Austin & Williams
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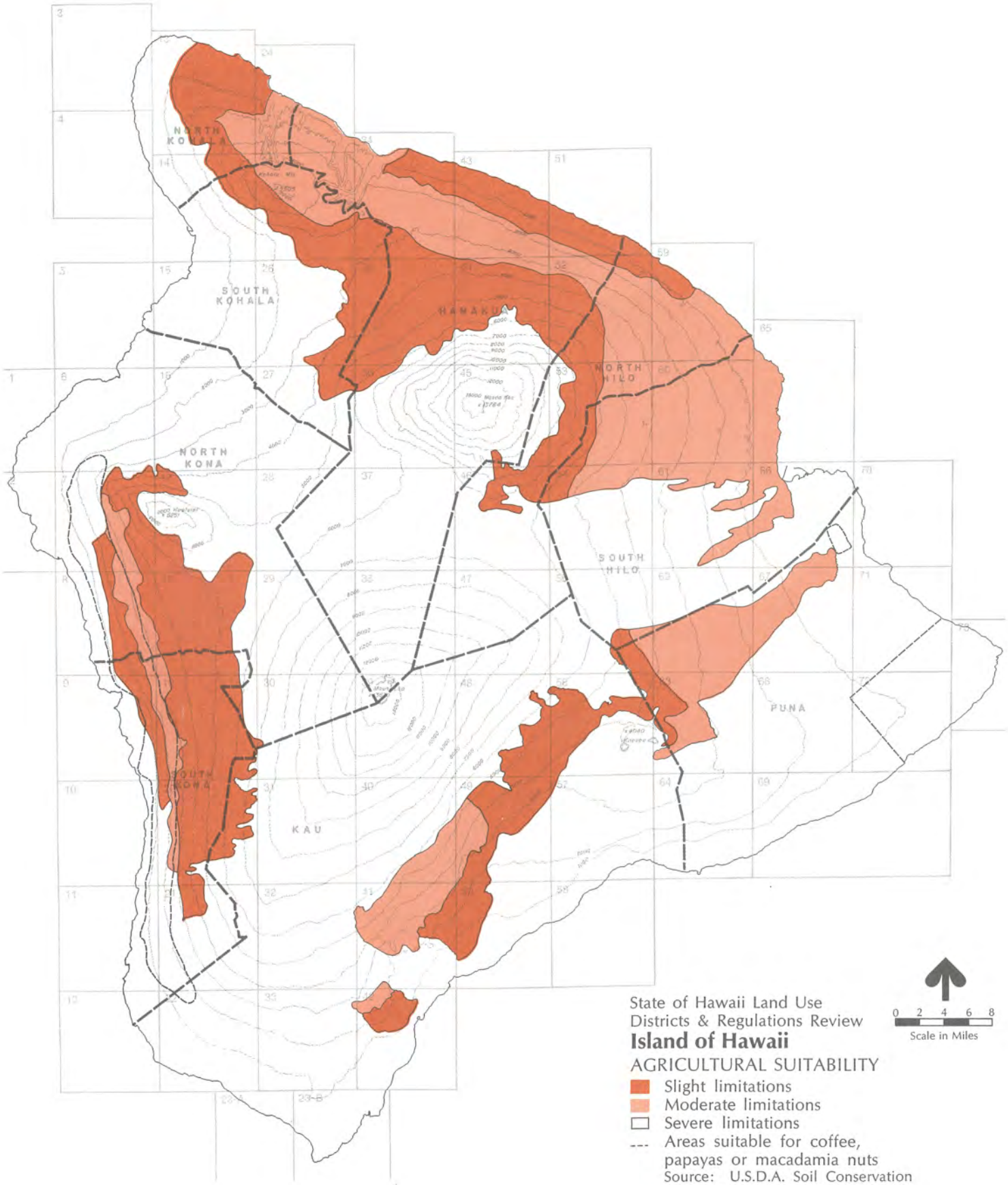

State of Hawaii Land Use
Districts & Regulations Review

Island of Hawaii

AGRICULTURAL SUITABILITY

- Slight limitations
- Moderate limitations
- Severe limitations
- --- Areas suitable for coffee, papayas or macadamia nuts

Source: U.S.D.A. Soil Conservation Service and the Land Study Bureau

12 District Boundary Map Key
See Appendix D

Eckbo, Dean; Austin & Williams
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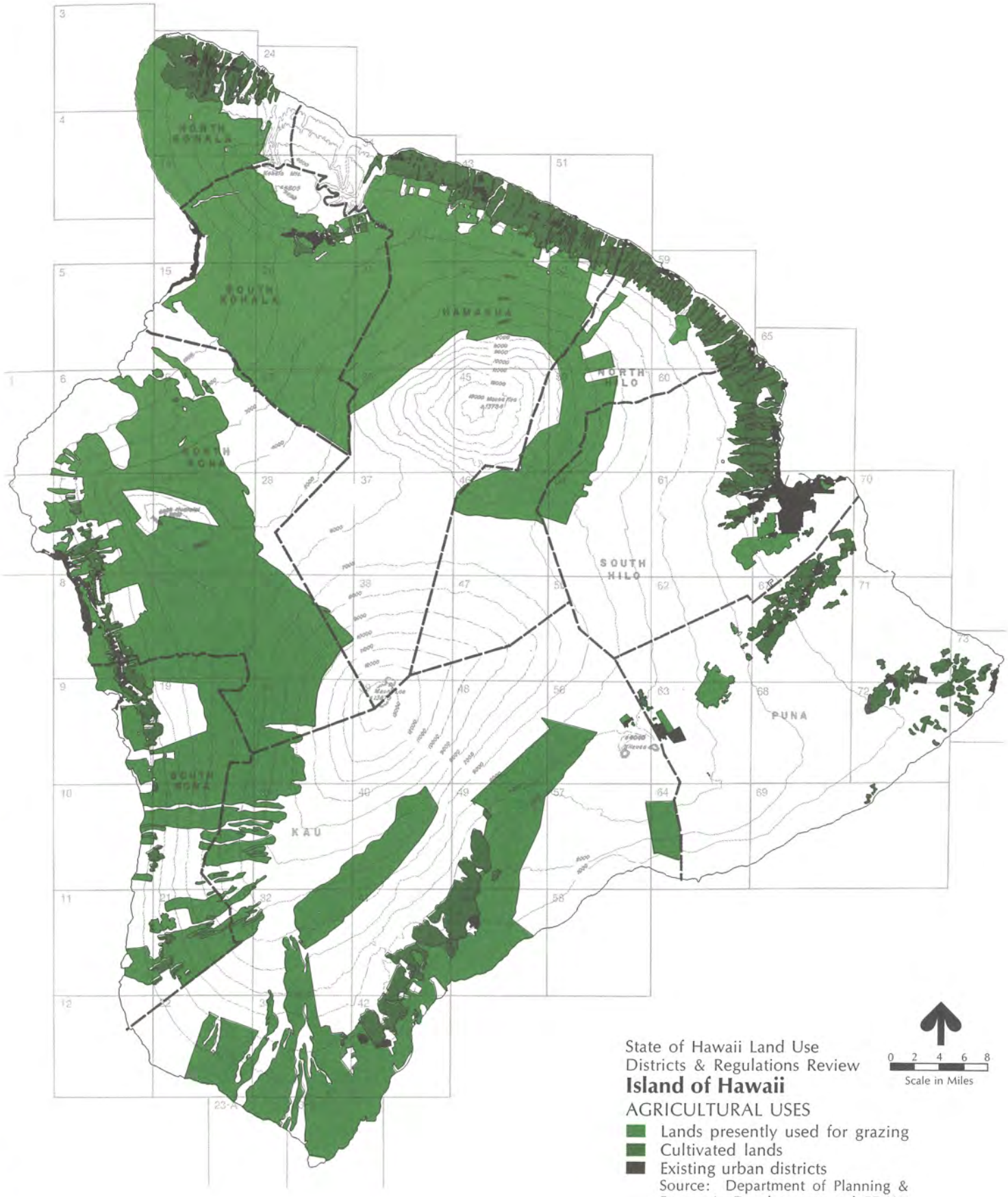

State of Hawaii Land Use
Districts & Regulations Review

Island of Hawaii

AGRICULTURAL USES

- Lands presently used for grazing
- Cultivated lands
- Existing urban districts

Source: Department of Planning & Economic Development and EDAW

1/2 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969

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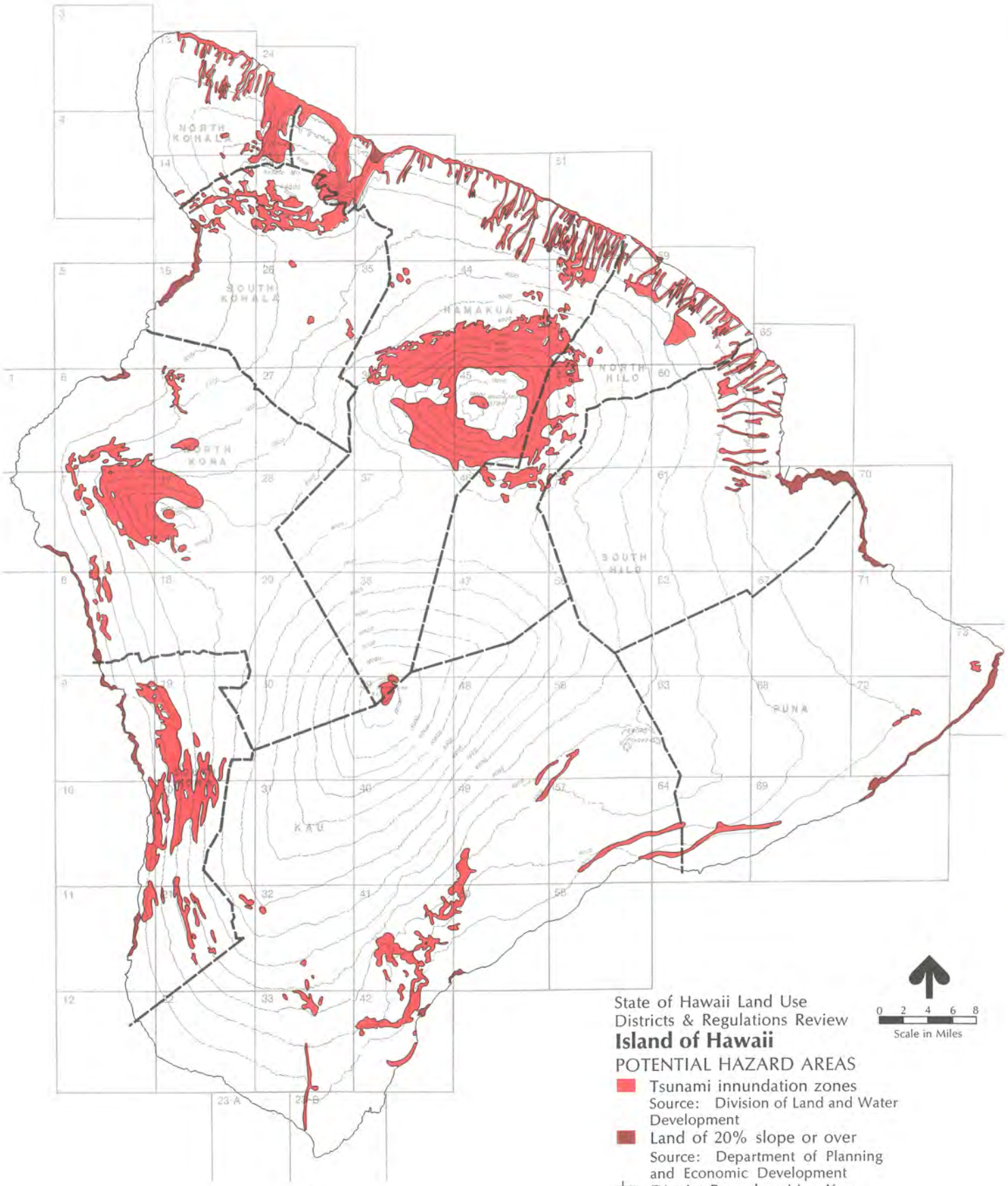
Scale in Miles



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Districts & Regulations Review

Island of Hawaii

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- Tsunami innundation zones
  Source: Division of Land and Water Development
- Land of 20% slope or over
  Source: Department of Planning and Economic Development
- 1/2 District Boundary Map Key
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August 1969

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Island of Hawaii

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- Proposed Parks
- Generalized Scenic Areas
- Sandy Beaches
- ▲ Scenic Sites
- ● Historic Sites

Source: DPED Shoreline Plan, Wenkam Scenic Resource Study, USGS and EDAW

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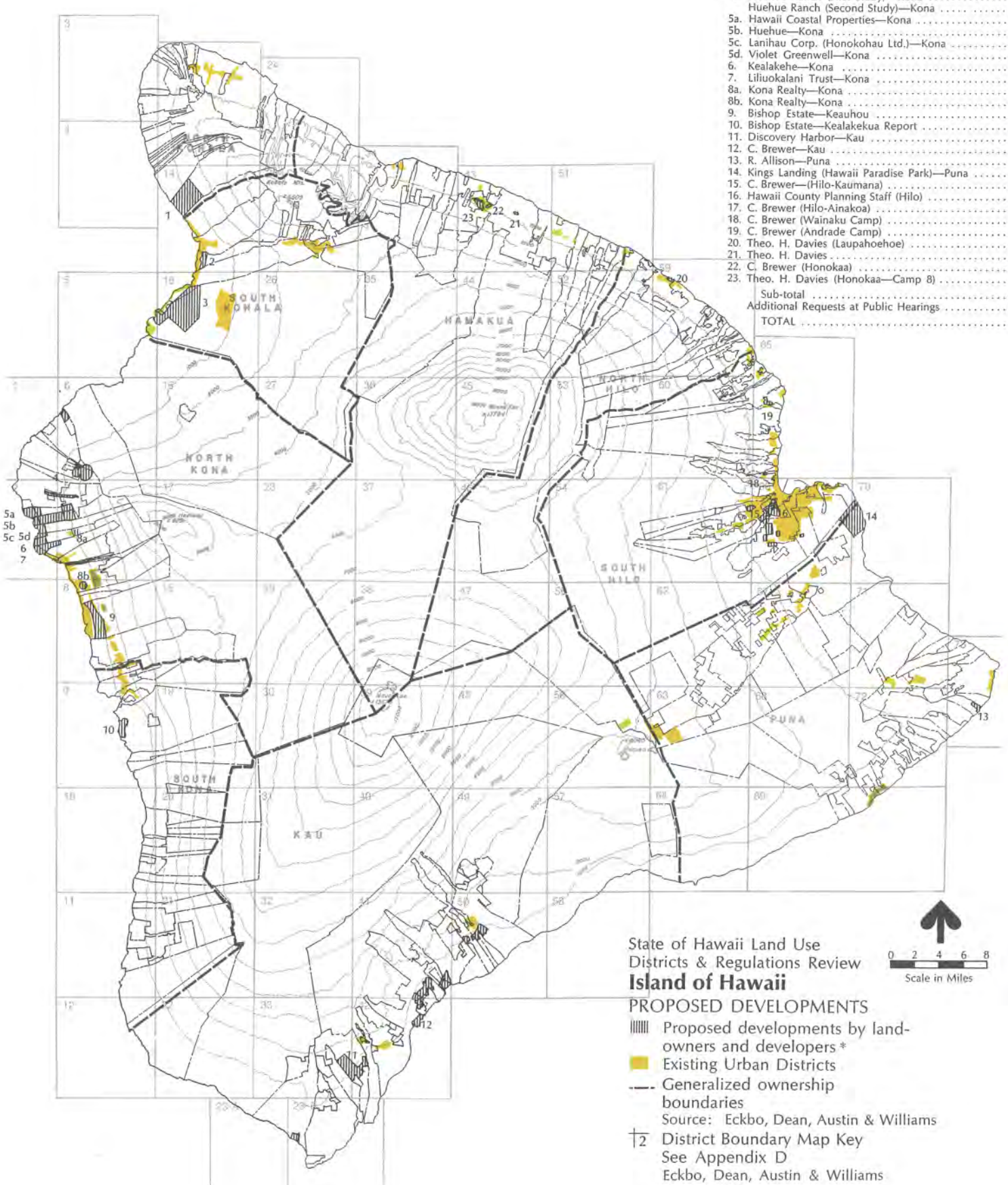


HAWAII COUNTY

		ACRES
1.	Kahua Ranch—Kawaihae	5,000
2.	Dilrock-Eastern—Kawaihae	550
3.	Signal Oil—Kawaihae	8,000
4.	Huehue Ranch (First Study)—Kona	2,507
	Huehue Ranch (Second Study)—Kona	(230)
5a.	Hawaii Coastal Properties—Kona	460
5b.	Huehue—Kona	(595)
5c.	Lanihau Corp. (Honokohau Ltd.)—Kona	320
5d.	Violet Greenwell—Kona	85
6.	Kealakehe—Kona	360
7.	Liliuokalani Trust—Kona	1,500
8a.	Kona Realty—Kona	140
8b.	Kona Realty—Kona	166
9.	Bishop Estate—Keauhou	1,454
10.	Bishop Estate—Kealakekua Report	650
11.	Discovery Harbor—Kau	1,304
12.	C. Brewer—Kau	2,868
13.	R. Allison—Puna	208
14.	Kings Landing (Hawaii Paradise Park)—Puna	2,120
15.	C. Brewer—(Hilo-Kaumana)	210
16.	Hawaii County Planning Staff (Hilo)	805
17.	C. Brewer (Hilo-Ainakoa)	155
18.	C. Brewer (Wainaku Camp)	14
19.	C. Brewer (Andrade Camp)	85
20.	Theo. H. Davies (Laupahoehoe)	18
21.	Theo. H. Davies	13
22.	C. Brewer (Honokaa)	49
23.	Theo. H. Davies (Honokaa—Camp 8)	95
	Sub-total	28,136
	Additional Requests at Public Hearings	4,551
	TOTAL	32,687

State of Hawaii Land Use
Districts & Regulations Review

Island of Hawaii

PROPOSED DEVELOPMENTS

- Proposed developments by landowners and developers *
- Existing Urban Districts
- Generalized ownership boundaries

Source: Eckbo, Dean, Austin & Williams

12 District Boundary Map Key
See Appendix D

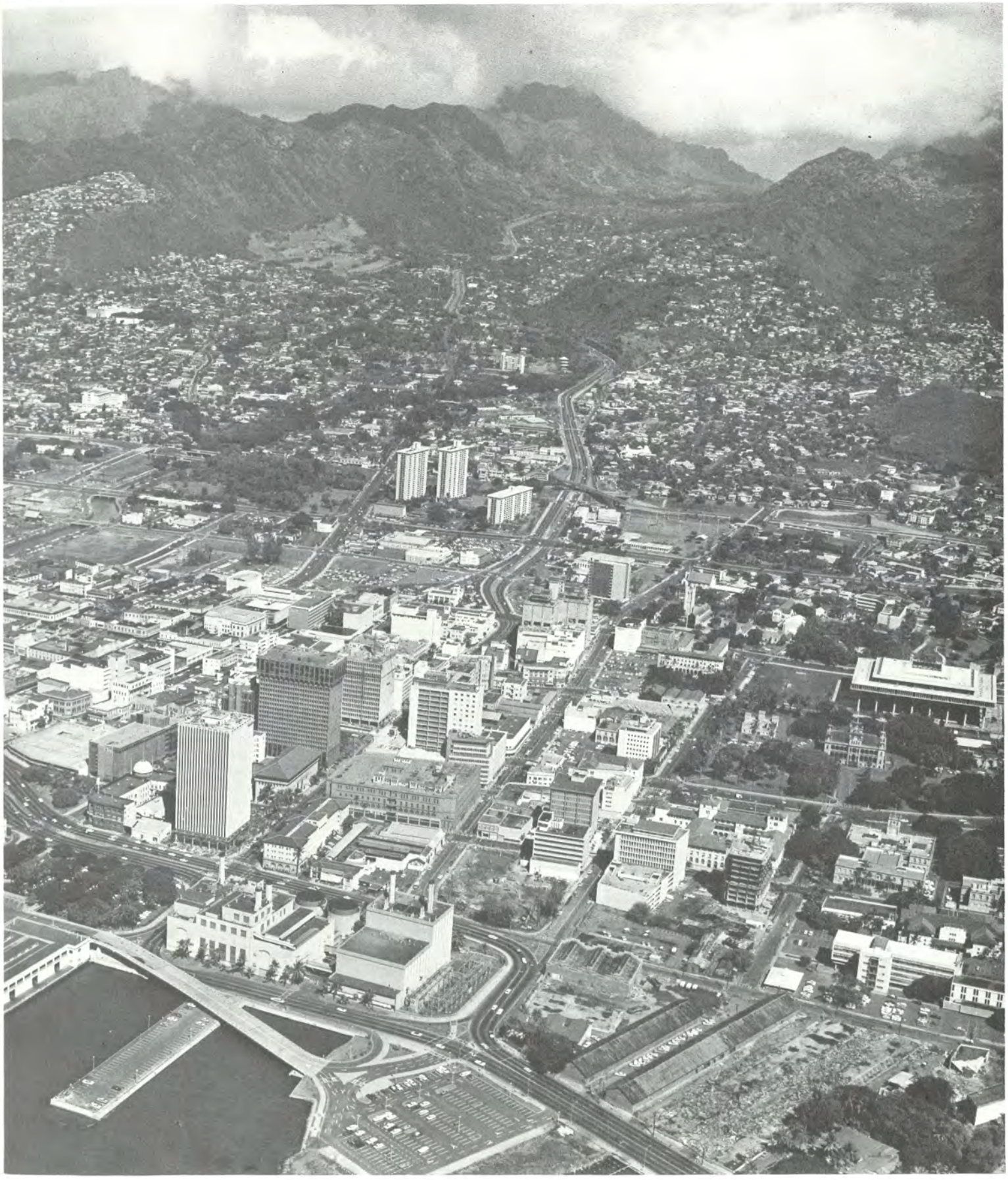
Eckbo, Dean, Austin & Williams
August 1969

0 2 4 6 8
Scale in Miles

Prior to public hearing

CHAPTER 6 / RECOMMENDATIONS FOR LAND USE BOUNDARY CHANGES—HONOLULU COUNTY

Urban and Conservation Districts
Central Business District
Honolulu, Oahu



Conservation and Agriculture Districts
Kualoa, Mokolii, Oahu

I. AGRICULTURE DISTRICTS

The Island of Oahu has 50 percent of the prime agricultural land in the State. This concentration is on the broad sloping plains of the central area and is characterized by the production of sugar cane on the lower, easily irrigated lands and by pineapple on the upper drier areas. From the central area cane production extends around the Waianae Range to the north and south and around the Koolau Range to the north. Sugar production in the Kahuku area has a limited future, but the intermixing of sugar with grazing, fruit and vegetable production has characterized the northeast area and these uses can be expected to continue.

At Waimanalo diversified agriculture is pursued in a more intensive and well planned manner than anywhere else in the State. Every effort should be made to encourage these practices.

No areas are recommended for addition to the Agriculture District. Certain areas have been recommended for redistricting to Conservation where such values dominate, and certain areas have been recommended for transfer to the Urban District where marginal agricultural values are involved or urban expansion is appropriate. The areas are discussed under those headings.

II. CONSERVATION DISTRICTS

A. *General*

The existing Conservation District on Oahu is comprised of two principal areas; the Koolau Mountain Range and the Waianae Mountain Range. Their significance as water resource areas, wilderness areas and scenic phenomena is supreme. In addition to these two major districts, a number of additional scenic sites have been recognized and were originally included in the existing Conservation District; for example, Diamond Head, Punchbowl, Koko Head, and Ulupau Crater. Some additions to these districts have been recommended as follows.

B. *River Valleys*

Kawailoa Gulch, like the adjacent Waimea Valley, is a significant scenic feature in the landscape of Oahu. Steep walled and mostly forested, the valley should be included in the Conservation District.

Commission Action: Approved.*

The upper portion of Waiawa Valley, presently within the Agriculture District, is also a significant scenic area, forested and only of marginal agricultural value. It should be included within the Conservation District as should the adjacent steep topography and forested lands.

Commission Action: Not approved.

Mokua Valley and the adjacent steep topography, are a part of Waianae Mountain Range and the scenic Kaena Point area. The scenic, wilderness and recreation values of the area far surpass those of the marginal agricultural uses presently practiced. The State Department of Land and Natural Resources is presently studying the possibility of developing a regional park in the area, a further indication as to the character of the land. The area should be included within the Conservation District making a continuous zone from Hokua to Kaena Point.

Commission Action: Approved.*

C. *The Shoreline*

The majority of Oahu's shoreline has already been committed to intensive urban uses. Some significant shorelines are included in the existing Conservation District such as at Kaena Point, Mokapu Point and Koko Head. There are five major areas where the opportunity to acknowledge major shoreline resources remains. At Paiko Peninsula and at Kapakahi on the west loch of Pearl Harbor there are major wildlife resources which should be included within the Conservation District.

Commission Action: Partially approved.*

The other major shoreline areas are the sand dunes at Kahuku, the rocky and sandy shore at Barbers Point and the sandy shore at Kualoa Point. It was recommended that these areas be added to the Conservation District.

Commission Action: Not approved.

D. *Lands of Steep Topography*

Olomana Peak, a scenic landmark of the Waimanalo area, comprised of topography well over 20 percent slope, an area of almost vertical pali, should be included in the Conservation District and connect in a contiguous pattern the three Conservation Districts in the area. An area of steep topography between the Pali Highway and Auloa Road should be added to the Conservation District to preserve the scenic quality of the highway. At Waimano and at Maimalu three areas of extremely steep topography should be added to the Conservation District by making minor adjustments in the existing boundary.

Commission Action: Partially Approved.*

Two further additions to the Conservation District were recommended but not accepted by the Commission. The north edge of the Waianae Mountain Range, including Kaukonahua Valley and the steep topography down to the irrigation ditches should be added to the Conservation District. This land is being grazed, but it is susceptible to erosion and such practices should be conducted with caution. The addition of this area would create a district which more properly acknowledges the physiography of the mountain range.

The northern portion of the Koolau Mountain Range is also primarily of steep topography, partially forested and susceptible to erosion. The area has been used for grazing and for military purposes, but conservation values are the most significant.

Commission Action: Not approved.

III. RURAL DISTRICTS

There are no Rural Districts on the Island of Oahu and none were recommended as a result of this review.

IV. URBAN DISTRICTS

The City and County of Honolulu comprises the entire Island of Oahu. It is made up of the Honolulu, Koolaupoko, Koolauloa, Waialua, Wahiawa, Waianae and Ewa Judicial Districts. It was further divided into 16 Planning Districts in the Oahu Transportation Study.[1]

The population of the City and County of Honolulu when the district boundaries were drawn in 1963 was estimated to be 534,900 people.[2] In this review the population estimate for 1968 of 633,200 was used from the Department of Planning and Economic Development provisional estimates.[3]

This represents an increase of approximately 98,300 people or 18 percent over the five year interval.

Interpolation of the population projections contained in the State General Plan

*Approved recommendations adopted at the action meeting held in the City and County of Honolulu August 14, 1969.

[1]*Oahu Transportation Study, Volume I*, City and County of Honolulu, U.S. Department of Housing and Urban Development, and U.S. Department of Transportation, 1967.

[2]Harland Bartholomew & Associates, *Land Use Districts for the State of Hawaii*, 1963.

[3]Department of Planning and Economic Development, *Provisional Estimates of the Population of Hawaii by County*, July, 1969.

Revision Program[4] indicates a potential population increase of about 174,810 people for a total estimated population for 1978 at 808,010. This would represent a population increase of 28 percent.

On the 74,236 acres that were estimated to be in the Urban Districts in 1968, approximately 49,773 were calculated to be presently developed, with the remaining 24,463 acres considered vacant. This provides for an overall gross population density on Oahu of 12.7 persons per acre.

Interpolation of the urban land absorption figures in the General Plan Revision Program indicates that approximately 18,251 acres of urban zoned land would still be vacant after the projected growth has been accounted for. By assuming these projections, the gross density for the developed areas on Oahu would increase to about 14 persons per acre.

The existing City and County of Honolulu General Plan and Detailed Land Use Maps, which are refinements of this General Plan indicate many areas for medium and high density residential development that are presently under-developed. By observation, one may note that a great deal of building activity is presently underway in those areas that have been indicated for this increased density. In fact, in 1968 over 63 percent of the private housing authorizations on Oahu were for multi-family housing.[5] As a result of this, it was quite clear to us that the concept of building generally within the present Urban District boundaries is still valid in light of the vacant lands available and projected to be available in the future.

This is not a concept that we as consultants to the Land Use Commission have derived on our own. It has been expressed clearly in the State General Plan Revision Program to the point of planning growth on Oahu in the present land use districts to the year 1985. Furthermore, the existing county general plan indicates urban areas to take the projected growth through 1980 and these areas indicated are generally the present land use district boundaries.

Perhaps the most important decision to be made in the near future on Oahu will be the location of the second campus site for the University of Hawaii. This decision could well be the major determinant, both in policy and in physical terms for the future urban growth pattern on Oahu. In terms of policy, the location in an area of prime agricultural use or potential could well negate one of the most significant purposes of the Land Use Law. In physical terms the attendant facilities and functions and the generated activities of a typical urban-like campus could, in the absence of an assessment of these factors, cause an even greater impact of future growth.

Presently three sites have been offered the University for a second campus location. Each of these is located in the Ewa Judicial District, the Wahiawa site offered by Amfac-Trousdale, the Ewa-Honouliuli site offered by the Campbell Estate, and the Waipio site offered by Oceanic Properties. In the case of the Wahiawa and Ewa-Honouliuli locations, the landowners and developers are offering sites as a part of proposed development packages that include a commitment of additional new lands for urban development that have not been indicated on State or County general plans.

Following is a detailed discussion of each of the Judicial Districts on Oahu with our recommendations and Commission action. See Table 5 for projection summaries.

A. *Honolulu Judicial District*

The Honolulu Judicial District is made up solely of the Honolulu Urban District and includes Planning Districts 1, 2, 3, 4, 5, 6 and 7. It extends from the International Airport to Makapuu Point and from the shoreline to the ridges of the Koolaus. It is the urban center of Oahu and the State.

In 1968 approximately 54 percent of the estimated resident population of Oahu resided in this area. It is estimated that this population of about 344,460 people in 1968 will increase by about 76,420 people or 22 percent to 420,880 by 1978. At this time it is projected that the Honolulu Judicial District will contain approximately 52 percent of the island's population.

Presently it is estimated that there are 27,163 acres that are zoned urban within this district, of which 19,933 acres are considered developed with 7,230 acres vacant. This provides a gross density of about 17 persons per acre.

Interpolation of the General Plan Revision Program data suggests that about 5,220 acres would still remain vacant in 1978 after the projected increase in population has been absorbed. This would raise the population density to 19 persons per acre. For comparison, if we assume that future development should occur at the existing density of 17 persons per acre, the approximately 4,495 acres will be required within the next five years, which would still leave 2,735 acres vacant.

It is very apparent today by even a cursory view of current developments that substantial increases in density are occurring in many portions of the Honolulu Judicial District. Although a portion of this building activity is not geared for absorption of resident population, a substantial portion is and will be resident occupied.

Clearly it is the intent of the Detailed Land Use maps to maintain and increase, where appropriate, the existing densities. With this in mind, and the fact that the existing urban boundaries were drawn to generally include all lands under 20 percent slope on the Honolulu side of the Koolaus was clear indication to us that the existing boundaries were adequate to accommodate the projected growth.

We did, however, recommend two minor changes that would include the Conservation Districts at Paradise Park in the Manoa Valley and the nursing home at Waialae Iki in the adjacent Urban Districts. This was proposed because we felt that urban uses suggested their inclusion in the Urban District.

Commission Action: Not Approved.

B. *Koolaupoko Judicial District*

The Koolaupoko Judicial District is comprised of Planning Districts 8 and 9 including the Urban Districts of Waimanalo, Maunawili-Kailua-Lanikai, Mokapu, Heeia-Kaneohe, Kaalaea-Kahaluu, Waiahole and Waikane.

It was estimated that approximately 89,280 people resided in these areas in 1968. This accounted for about 14 percent of the resident population of Oahu. As indicated on Table 5 the 1978 projected population is estimated at 121,190 or about 15 percent of the estimated Oahu total. This would account for about a 36 percent population increase of 31,910 people.

Of the 13,965 acres that are estimated to be in the existing Urban Districts, approximately 8,143 acres were considered developed with 5,822 acres vacant. This provided a calculated gross population density of 11 persons per acre.

Interpolation of the General Plan Revision Program data indicates that approximately 4,449 acres would still be vacant in 1978 after accommodating the projected population growth with an increase in density to about 13 persons per acre. In our opinion this would still allow a sufficient amount of land for urban expansion.

We have, however, recommended some additions to the Urban Districts in the nature of providing for more consistent boundaries in our interpretation of the district regulations, or where specifically requested by public agencies for expansion of existing facilities.

In the Kailua area we have recommended additions to the existing Urban Districts to include the Koolau Boys Home, as requested, for the expansion of the Kailua High School facilities and to include the existing city and county corporation yard.

Commission Action: Approved.*

[4]Department of Planning and Economic Development, General Plan Revision Program, 1967.

[5]Bank of Hawaii, *Construction in Hawaii*—1969.

*Approved recommendations adopted at the action meeting held in the City and County of Honolulu August 14, 1969.

In the Heeia-Kaneohe area, the Heeia Fishpond has been recommended to be included in the existing Urban District based on the plans for a water oriented development which entails partial filling of the existing pond. This area has been so indicated on the existing County General Plan which recognized the potential for urban development in this area. In addition, the pond area has little value for reclamation as a fishpond because of the siltation problem and the cost of repairing the existing walls.

Commission Action: Approved.*

Mauka of the Heeia area we have recommended a revision in the existing Urban District boundary to include a small area mauka of the Kahekili Highway.

Commission Action: Approved.*

The existing Agriculture District in the vicinity of Kaalaea-Kahaluu has been recommended for urban zoning on the basis of the existing residential development and the limited existing agricultural use.

Commission Action: Approved.*

No changes were recommended in the Waimanalo, Maunawili, Mokapu, Waiahole, Waikane and Kualoa Urban Districts.

In addition to these recommendations in the Koolaupoko Judicial District, the Land Use Commission approved approximately 91 acres for urban zoning mauka of the Kaelepulu Pond as an addition to the Enchanted Lakes Development in the vicinity of the Koolau Boys Home and Puu o Ehu, makai of the Kalanianaole Highway. Also approved by Land Use Commission action was the rezoning of approximately 90 acres mauka of the Kalanianaole Highway in the same general vicinity.

We had recommended to the Commission that the portion makai of the highway remain in the present Conservation District because of the steep topography and the potential erosion and runoff problem, and that the area mauka of the highway be included in the Conservation District to form a logical and definable boundary along the highway.

C. *Koolauloa Judicial District*

The Koolauloa Judicial District containing Planning District 10, includes the Kaaawa, Punaluu, Hauula, Laie, Kahuku, Kahuku Point, Kawela and Sunset Beach Urban Districts.

In 1968 approximately 10,760 people or 2 percent of the total population of Oahu resided in these areas as shown on Table 5. The interpolated projections for 1978 indicate an increase of about 2,170 people or 20 percent to a total population of 12,930, which would still represent 2 percent of the Oahu total.

Approximately 1,579 acres of the 2,452 acres in the existing Urban Districts were considered developed in 1968 with the remaining 873 acres considered vacant. With the existing estimated population, the current density is about seven persons per acre of developed land. It is suggested by the data in the State General Plan Revision Program that this density will not materially change by 1978 when it is estimated that there will be approximately 780 acres of presently zoned urban land remaining vacant.

Therefore, only one significant change of 200 acres was recommended for urban zoning to accommodate the first phase of the Kahuku resort development between the existing Urban Districts at Kawela and Kahuku Point.

Commission Action: Approved.*

A minor change was also recommended in Hauula Urban District mauka of Kamehameha Highway at Kalaipaloa Point to include an area of existing urban use.

Commission Action: Approved.*

Changes were not recommended in the Kaaawa, Punaluu, Laie or Sunset Beach Urban Districts.

D. *Waialua Judicial District*

Contained within the Waialua Judicial District are the Urban Districts of Kawailoa, Haleiwa, Waialua and Mokuleia which comprise Planning District 11.

The population estimated in 1968 for these areas was approximately 9,500 people or about 2 percent of the total for Oahu. An increase of about 2,320 people by 1978 has been calculated from interpolation of the State General Plan Revision Program. This would bring the projected total to approximately 11,820 for a 24 percent change.

Interestingly the data available suggest that the existing population density for the urban areas is about 14 persons per acre which to us seemed rather high. This was derived by comparing the estimated developed areas totaling 668 acres of the estimated existing Urban Districts of approximately 1,171 acres.

As indicated on Table 5 over 40 percent of the area or 503 acres within these Urban Districts is considered vacant as of 1968, and accordingly an interpolation of the Department of Planning and Economic Development projections indicates the growth foreseen in the year 1978 can well be absorbed within the present boundaries with an adequate reserve of vacant urban lands.

In view of this we have not recommended changes in the present district boundaries in the Kawailoa, Haleiwa or Waialua Urban Districts. We have recommended a minor addition on the Kaena side of the Mokuleia Urban District to include an area of existing urban use.

E. *Wahiawa Judicial District*

The Wahiawa Judicial District covering Planning District 12 includes the Urban Districts of Wahiawa, Schofield, and Whitmore Village.

The population in 1968 for this area was estimated at 39,890 people, or about 6 percent of the Oahu total. Interpolating the population projections for 1978 indicated, based on existing data, that a slight decrease in population might occur. This is the only instance of projected population decrease in the Judicial Districts on Oahu. Assuming that the base data is correct, the only explanation seems to be the fluctuating condition of dependent housing of military personnel in the area.

Another interesting statistic is the amount of land that is estimated to be developed within the existing Urban Districts. The existing Urban Districts total an estimated 1,501 acres of which about 1,223 acres are developed with 278 acres vacant. This would provide a population density of about 33 people per acre which would be double the density of the Honolulu Judicial District. Obviously these figures must include dependent housing on military lands that are not included in the present Urban Districts.

There do, however, appear to be approximately 278 acres of land within the present district for potential urban expansion. We have therefore not recommended additional urban zoning in this judicial district at this time.

F. *Waianae Judicial Districts*

Contained within the Waianae Judicial District are the Urban Districts of Makaha, Waianae, Maili and Nanakuli which comprise Planning District 13.

Population forecasts indicate a potential 19 percent increase in population from 22,800 in 1968 to 27,170 in 1978. This would represent approximately 4 percent of the Oahu total. The existing Urban Districts contain approximately 6,045 acres of which approximately 4,001 acres are estimated to be developed, with the remaining acreage considered vacant.

The present population density is projected at 6 persons per acre in the developed areas. Interpolating the urban useage forecast in the State General Plan Revision Program, approximately 1,756 acres would remain vacant after the projected growth has been accommodated by 1978.

As a result of these projections we have not recommended significant additions in the present district boundaries. We have, however, recommended an adjustment in the Maili area to include an area between the Ewa side of the present Urban District that was rezoned through a boundary change in 1965 and the existing Conserva-

*Approved recommendations adopted at the action meeting held in the City and County of Honolulu August 14, 1969.

tion District in the vicinity of Puu o Hulu Kai.

In addition we have recommended expansion of the existing Urban District in the Nanakuli Valley to include the proposed Nanakuli Educational Complex as requested by the Department of Accounting and General Services.

G. *Ewa Judicial District*

The Ewa Judicial District which includes Planning Districts 14, 15 and 16 is comprised of the Urban Districts of Kahe Point, Palailai, Barbers Point, Makakilo, Ewa, Oneula-Ewa Beach, Puuloa, Waipio Peninsula, Honouliuli, Waipahu, Waipio, Crestview, Pearl Harbor-Pearl City and Aiea-Halawa.

The population contained in these areas in 1968 was estimated to be approximately 116,510 or about 18 percent of the Oahu total. A 50 percent increase to approximately 174,320, or about 22 percent of the projected total for Oahu was estimated for 1978 by interpolation of the estimated growth of the State of Hawaii General Plan Revision Program as shown on Table 5.

Contained within the existing urban areas in this Judicial District of 1968 are approximately 21,939 acres, of which it is estimated that about 14,227 acres are developed with approximately 7,715 acres considered vacant.

The gross density of the existing developed area is calculated to be approximately 8 persons per area. Interpolation of the data available in the General Plan Revision Program indicates that approximately 5,409 acres would still be vacant by 1978 after accommodating the projected growth. This amount of vacant land would result by assuming an increased density of approximately 10.5 persons per acre for the urban areas within the judicial district.

For comparison a second assumption of applying the average population density of the developed urban areas of Oahu of 12.7 persons per acre to the projected increased population for this area would indicate that approximately 4,552 acres would be needed through 1978, leaving about 3,163 acres vacant. If we assume that development will occur at the existing density of 8 persons per acre, approximately 7,226 acres will be required which would leave about 489 acres vacant in 1978.

In all cases it is clear that the projected population could generally be accommodated within the existing Urban Districts if the land is made available for development by the various landowners.

It is our feeling that the major confrontation between expanding urbanization and the preservation of prime agriculture lands — one of the major concerns of the Land Use Law — will occur in the Ewa Judicial District. It is here, adjacent to the fastest growing urban area on Oahu, that the pressures for development of prime agricultural soil are the greatest.

We have not recommended major additions to the Urban District that are not indicated on the existing County General Plan. This is clearly in concert with the Land Use District Regulations which provide for consideration of new areas for urban development as indicated on county and state general plans. The purpose of this consideration has been discussed in detail in Chapter 10. We would only like to emphasize the point that particularly in the Ewa Judicial District the Land Use Commission in reviewing future proposals for urban development must heavily weigh the county's long range policy for development as indicated on this general plan and as a zoning authority should be wary of zoning of lands for urban use not in conformance with these long range plans.

For this reason, we feel that the commitment of the county as indicated on this plan in the Waipio area of approximately 2,000 acres for the Mililani development in the only area that could be considered for additional urban districting at this time. Our recommendation was to consider additional urban zoning of that portion that is presently indicated for urban use on the general plan.

Presently approximately 760 acres of the 2,000 acres are in the Urban District. We recommended approval of the remaining portion that the developers feel they can absorb within the next five years. Because of the proposed and adopted district regulations that do not include golf courses as permitted uses in the Agriculture District, we included the existing golf course at Mililani, presently partially in the Agriculture District, in the total area to be considered for urban districting. This brought the total area for consideration to approximately 1,500 acres.

Additionally, we felt that the Mililani Town Development was one of the few developments with sufficient information, data and projections that enabled consideration for the incremental zoning concept. Because of this we felt that it would be appropriate to approve that portion which the developer will commit for development in the next five years. And upon successful performance, following increments with the area approved in concept would be rezoned.

Commission Action: Since the landowner and developer had filed an application for a boundary change during the course of this review, the Land Use Commission deferred action on this recommendation.

We have also recommended rezoning a large area of land in federal ownership adjacent to the Puuloa and Ewa Beach Urban Districts that is now in the Agriculture District on the basis that there is no existing agricultural use and that the existing military facilities are of the same nature as those in the adjacent Urban Districts.

Commission Action: Approved.*

The Waipio Peninsula although also in federal ownership was not recommended for urban zoning because the land is in extensive agricultural use.

Lands makai of the H-1 freeway between Waipahu, Pearl City and the Pearl City Peninsula, and mauka of the middle loch of Pearl Harbor were recommended for urban zoning. This was a logical infilling between existing built-up urban areas and includes the present site of the new Leeward Oahu Community College.

Commission Action: Approved.*

Mauka of these areas, adjacent to the Waimano Home area, and the recently rezoned Austin-Bishop petition, we have recommended four areas for urban zoning that were not a part of rezoning including the site for the proposed Pearl City Educational Complex.

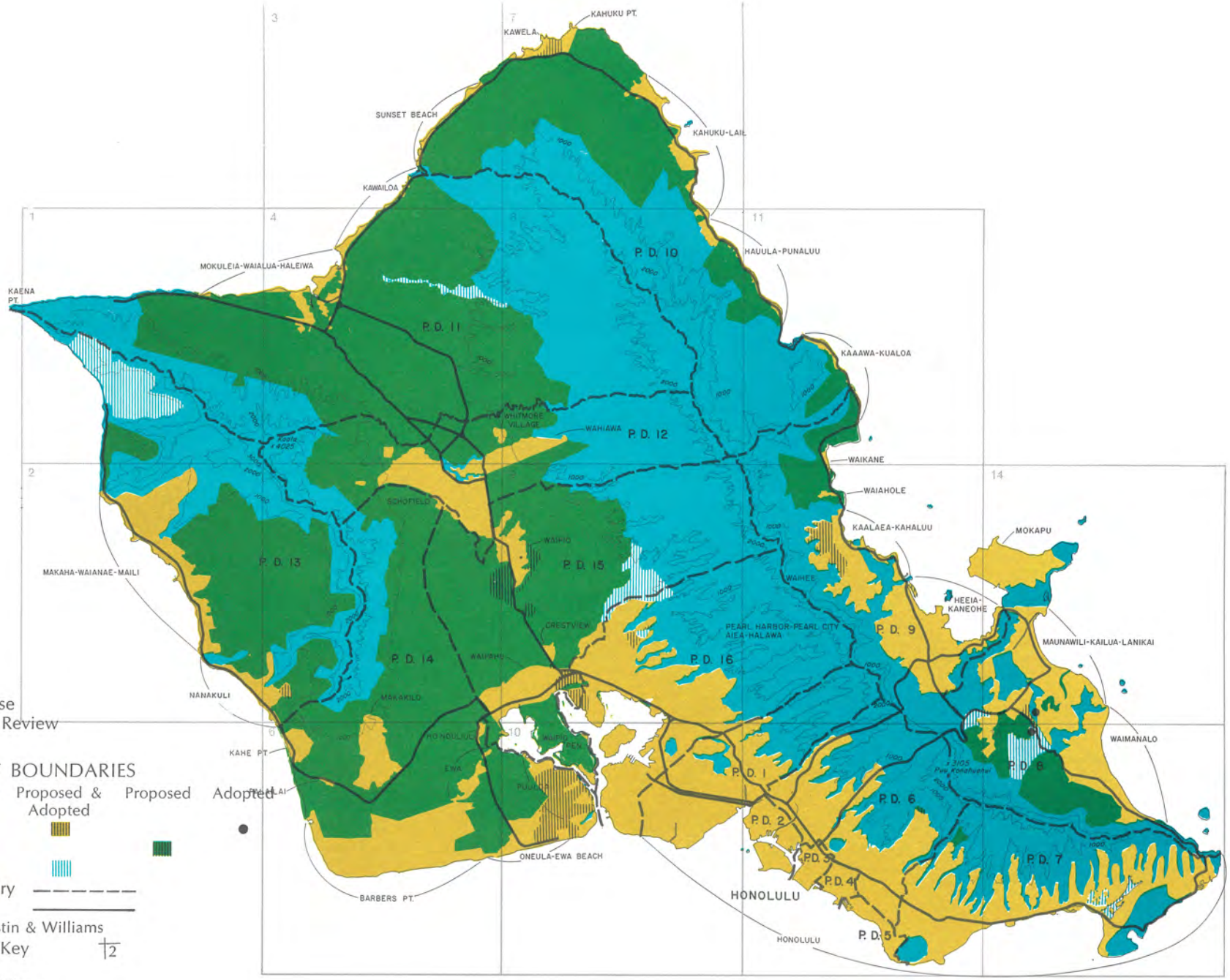
Commission Action: Approved.*

*Approved recommendations adopted at the action meeting held in the City and County of Honolulu August 14, 1969.

TABLE 5 CITY AND COUNTY OF HONOLULU URBAN DISTRICTS

	Estimated Resident Population			Urban Districts (Acres)		
Judicial District	1968	1978	% Change	Existing 1968	Vacant 1968	Vacant 1978
Honolulu	344,460	420,880	+22%	27,163	7,230	5,220
Koolaupoko	89,280	121,190	+36%	13,965	5,822	4,449
Koolauloa	10,760	12,930	+20%	2,452	873	780
Waialua	9,500	11,820	+24%	1,171	503	401
Wahiawa	39,890	39,700	*	1,501	278	236
Waianae	22,800	27,170	+19%	6,045	2,044	1,756
Ewa	116,510	174,320	+50%	21,939	7,715	5,409
Total	633,200	808,010	+28%	74,236	24,463	18,251

Urban and Agriculture Districts
Waipahu, Oahu



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Scale in Miles

State of Hawaii Land Use
Districts & Regulations Review

Island of Oahu

LAND USE DISTRICT BOUNDARIES

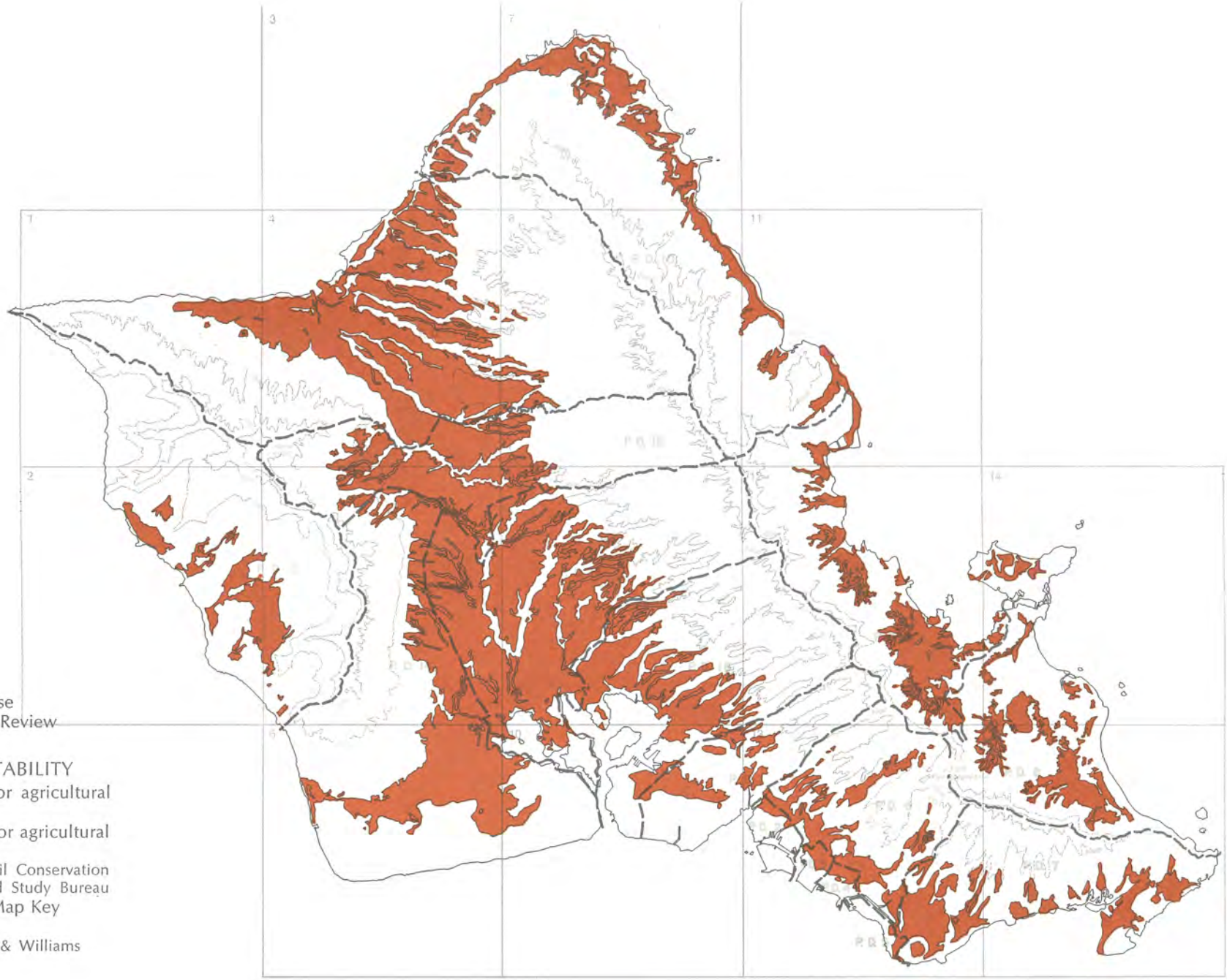
	Existing	Proposed & Adopted	Proposed	Adopted
Urban				
Agriculture				
Conservation				

Judicial District Boundary
Principal Highway

Source: Eckbo, Dean, Austin & Williams

District Boundary Map Key 1/2
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



0 1 2 3 4
Scale in Miles

State of Hawaii Land Use
Districts & Regulations Review

Island of Oahu

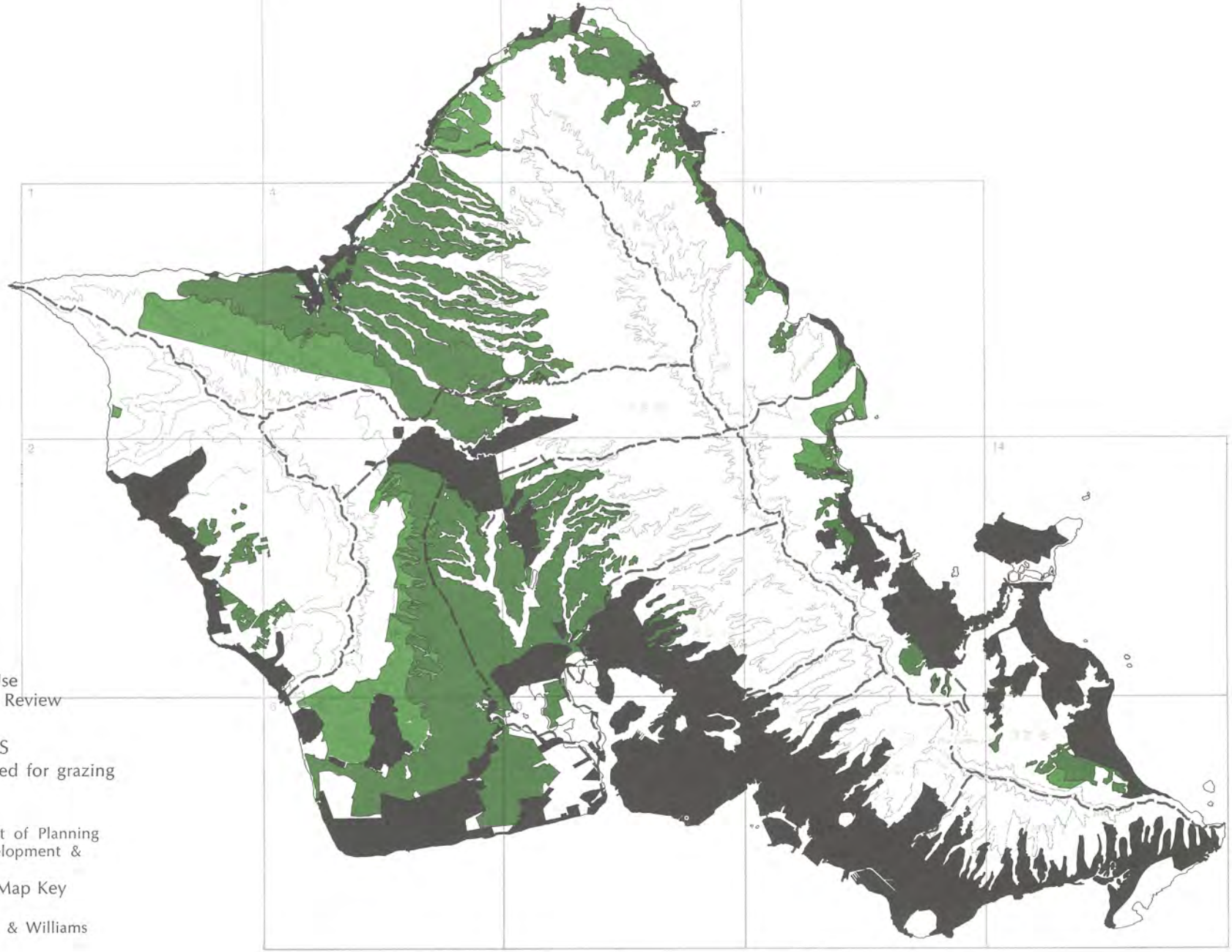
AGRICULTURAL SUITABILITY

- Slight limitations for agricultural suitability
- Severe limitations for agricultural suitability

Source: U.S.D.A. Soil Conservation Service and the Land Study Bureau

12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



0 1 2 3 4
Scale in Miles

State of Hawaii Land Use
Districts & Regulations Review

Island of Oahu

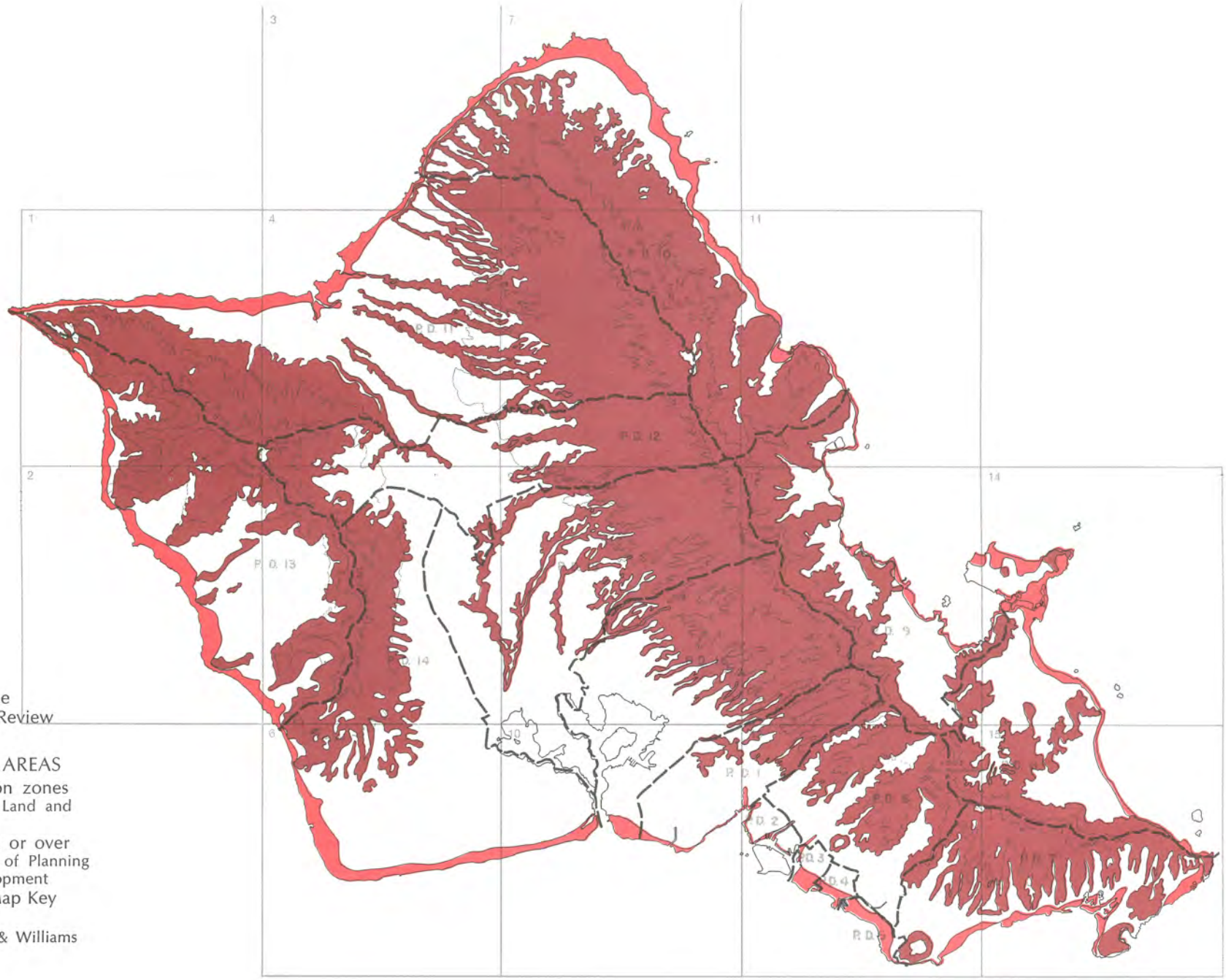
AGRICULTURAL USES

- Lands presently used for grazing
- Cultivated lands
- Urban districts

Source: Department of Planning and Economic Development & EDAW

12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



0 1 2 3 4
Scale in Miles

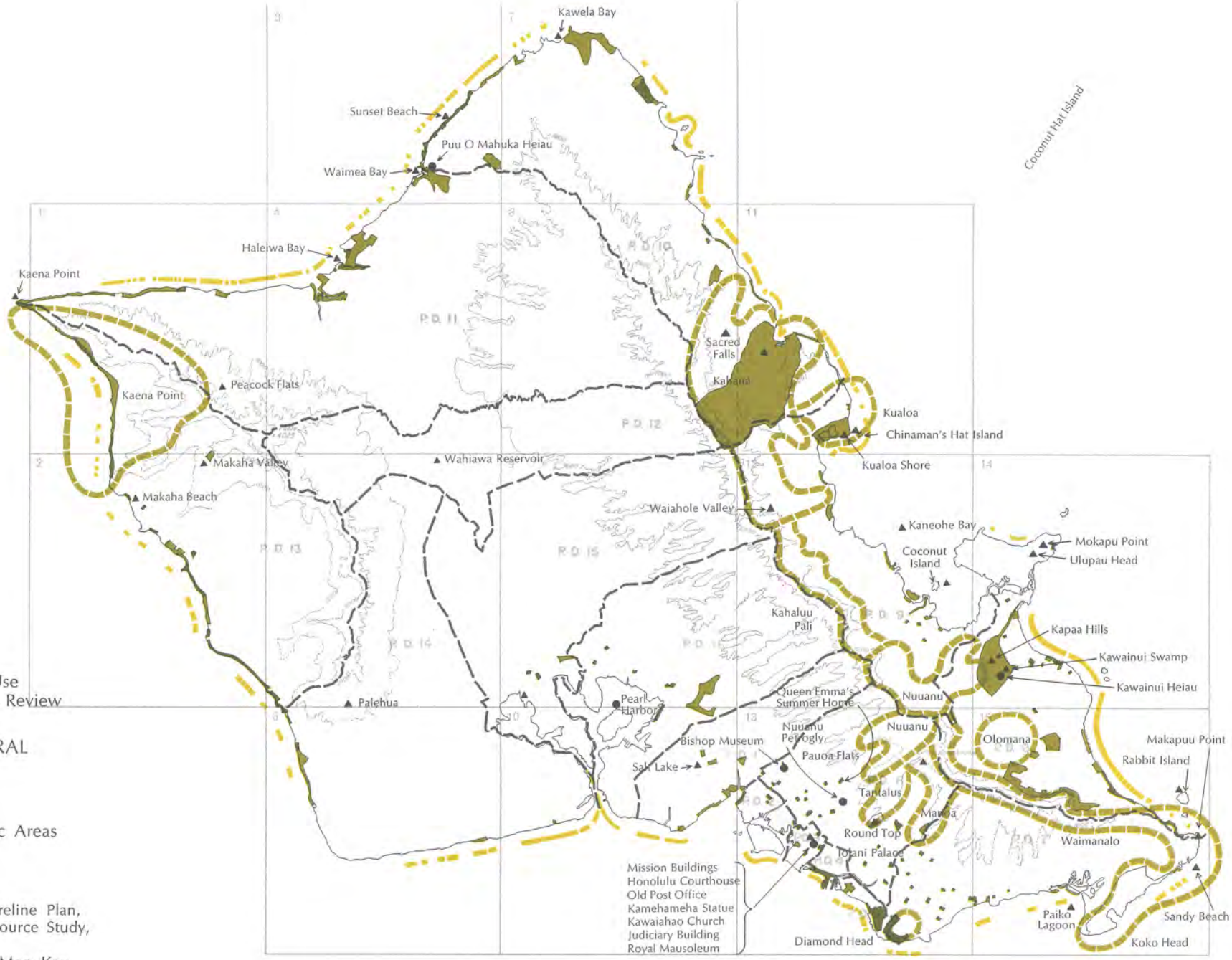
State of Hawaii Land Use
Districts & Regulations Review

Island of Oahu

POTENTIAL HAZARD AREAS

- Tsunami innundation zones
  Source: Division of Land and Water Development
- Land of 20% slope or over
  Source: Department of Planning and Economic Development
- 1/2 District Boundary Map Key
  See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



State of Hawaii Land Use Districts & Regulations Review

Island of Oahu

NATURAL & CULTURAL RESOURCE AREAS

- Existing Parks
- Proposed Parks
- Generalized Scenic Areas
- Sandy Beaches
- ▲ Scenic Sites
- ● Historic Sites

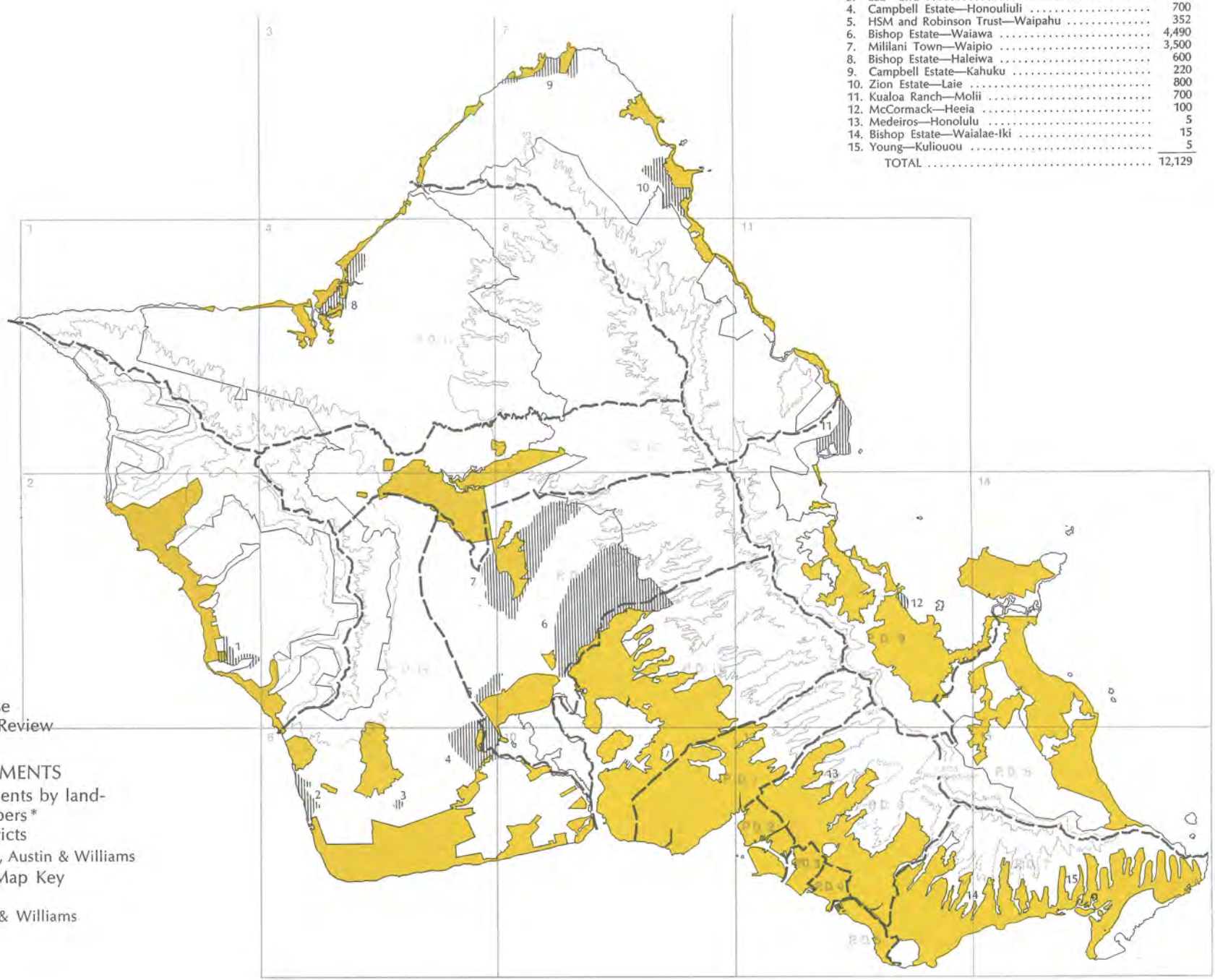
Source: DPED Shoreline Plan, Wenkam Scenic Resource Study, USGS and EDAW

†2 District Boundary Map Key See Appendix D

Eckbo, Dean, Austin & Williams
August 1969

HONOLULU COUNTY

		ACRES
1.	Holt Estate—Maili	300
2.	Ewa Resort—Ewa	300
3.	Lau—Ewa	36
4.	Campbell Estate—Honouliuli	700
5.	HSM and Robinson Trust—Waipahu	352
6.	Bishop Estate—Waiawa	4,490
7.	Mililani Town—Waipio	3,500
8.	Bishop Estate—Haleiwa	600
9.	Campbell Estate—Kahuku	220
10.	Zion Estate—Laie	800
11.	Kualoa Ranch—Molii	700
12.	McCormack—Heeia	100
13.	Medeiros—Honolulu	5
14.	Bishop Estate—Waialae-Iki	15
15.	Young—Kuliouou	5
	TOTAL	12,129



State of Hawaii Land Use
Districts & Regulations Review

Island of Oahu

PROPOSED DEVELOPMENTS

Proposed developments by landowners and developers*

Existing Urban Districts

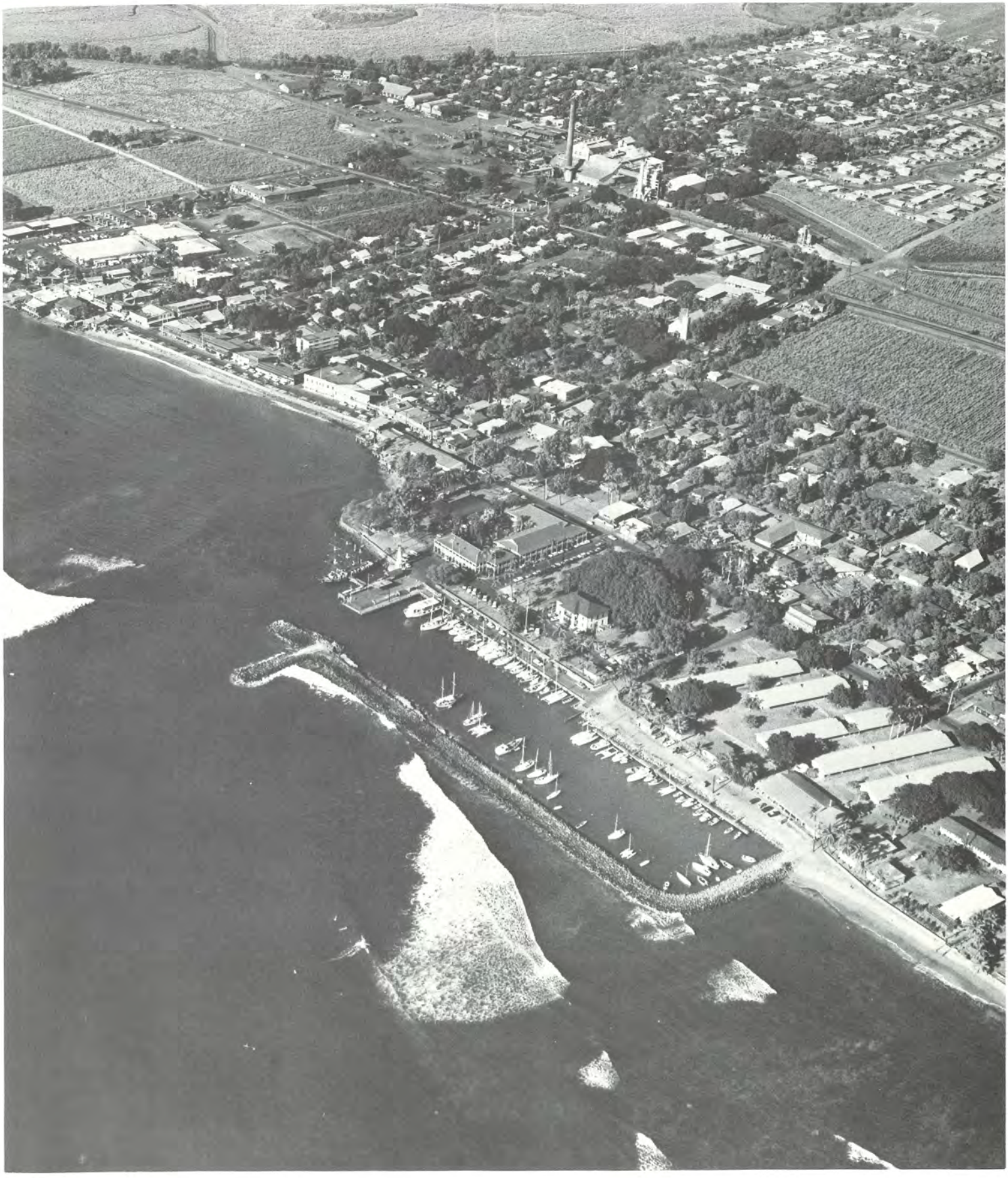
Source: Eckbo, Dean, Austin & Williams

District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969

*Prior to public hearing

Urban and Agriculture Districts
Lahaina, Maui



Urban District
Kahului Harbor, Maui

I. ISLAND OF MAUI

A. *Agriculture Districts*

The Island of Maui can be divided into three distinct areas: East Maui, Central Maui and West Maui. Of these, Central Maui is the most significant from an agricultural standpoint. It includes the Isthmus of Maui, the second largest expanse of prime agricultural land in the State, and the sugar cane lands of Wailuku, Waikapu, Puunene and Paia.

East Maui includes the major part of Haleakala. The soils are geologically young in comparison with the rest of Maui, and agricultural use is limited to grazing. West Maui includes all land west of the Wailuku and Waikapu Plantations. The lands of the level coastal flats are used for pineapple and sugar production. Grazing on the lower slopes is the other significant agricultural use.

Two areas presently used for agricultural purposes should be transferred from the Conservation District to the Agriculture District. At Olowalu, lands makai of the road are used for sugar cane production. The boundary should be adjusted to include these lands. At La Perouse Bay, the Conservation District, designed to include recent lava flows, also includes a small area of grazing. The boundary should be adjusted to include this land in the Agriculture District.

Commission Action: Approved.*

A number of areas in the Urban Districts have been dedicated for agricultural uses. Where such lands are adjacent to an Agriculture District, they should be included in that District. Instances are Makawao and at Kula. In a number of other areas, lands within the Urban and Rural Districts are being used for agricultural purposes with no potential for urban use within the foreseeable future. Such conditions exist at Kokomo and Haiku. These lands should be included in the Agriculture District.

Commission Action: Approved.*

At Haiku vacant lands presently districted Urban have been recommended for Agriculture Districting, in addition to two adjacent areas presently in the Rural District.

Commission Action: Approved.*

Similarly at Kokomo, we have proposed that lands generally undeveloped in the Rural District be changed to the Agriculture District.

Commission Action: Approved.*

At Paia we have further recommended, upon request, that the present urban area mauka of the Paia Mill Road be rezoned to the Agriculture District, reflecting the phasing out of existing camp areas and the return of these areas to sugar cane by 1973.

Commission Action: Approved.*

In Puunene we have also recommended that the areas presently in sugar cane or scheduled to return to cane by 1973 be rezoned from the present urban designation to the Agriculture District.

Commission Action: Approved.*

At both Pukalani and Makawao, areas on the edge of the present Urban District previously denied agricultural dedications, have been recommended for addition to the Agriculture District.

Commission Action: Approved.*

B. *Conservation Districts*

The existing Conservation Districts of Maui center around Puu Kukui on West Maui and the unique Haleakala Crater in East Maui. Watershed, scenic and recreation values are foremost in these areas. The following additions are recommended.

1. *River Valley*

The Honokohau and Honolua Valleys form scenic connections between the Mauka Conservation District and the unique Napili Coast. These valleys have recently been acknowledged in the County General Plan and are designated for open space. They should be included in the Conservation District.

Commission Action: Approved.*

Palikea Stream and Seven Sacred Pools are presently a part of the National Park and districted conservation. The park is presently being expanded in this area and the Conservation District should likewise be expanded to include all the park land. The Manawainui Stream flows through an area of historic significance, three heiaus and the old Mokulau Church. Additionally, much of the area has extremely steep topography. It should be included in the Conservation District.

Commission Action: Approved.*

2. *The Shoreline*

Part of the Napili Coast, the Honolua Bay area, is presently within the Conservation District. This District should be extended along the coast to include the steep cliffs and scenic bays all the way to Waiehu, excluding lands used for agriculture purposes. In the Kahakuloa area the Conservation District should be continued mauka to include the steep undulating terrain and connect with the existing Conservation District.

Commission Action: Approved.*

The shoreline from Paia to the existing Conservation District at Honomanu Bay is mostly comprised of steep cliffs with occasional rocky ledges and sandy bays. The character of the landscape and the scenic qualities involved are significant. Agricultural uses end at the ridge top and lands makai of that point should be included in the Conservation District. Similarly the narrow strip of accessible shoreline at Keanae and Moku Manu should be added to the Conservation District. From Waiohue Bay to Hana the shoreline is again comprised of steep cliffs, rocky ledges and bays. At Waianapanapa the existing Conservation District should be expanded to include the historic rocky shore and the area around the airstrip which has one of the last remaining stands of Hale trees. The shoreline from Hana to La Perouse Bay is again a mixture of steep topography, rocks and sandy bays. Together they comprise a coast of such scenic significance as to warrant inclusion in the Conservation District. At La Perouse Bay the existing Conservation District, designed to include the recent lava flows, should be expanded to more properly fulfill this objective.

Commission Action: Approved.*

Kealia Fishpond is presently within the Conservation District. It should be expanded to include the salt flats along the shoreline.

Commission Action: Partially Approved.* The area mauka of Kealia Fishpond was excluded.

3. *Lands of Steep Topography*

Some additions should be made to the major West Maui Conservation District so that it more clearly includes some areas of very steep topography. Above Lahainaluna School an area of steep topography surrounding and including Kahoma and Kanaha Valleys should be placed in the Conservation District. Also, the Olowalu Valley including the heiau and historic petroglyphs should be included. Similar areas exist above Wailuku and at Kealaloloa Ridge where, although there are some grazing activities, the scenic and topographic considerations are foremost.

Commission Action: Approved.*

**Approved recommendations adopted at the action meeting held in Maui County August 1, 1969.*

An area of land adjacent to the existing Conservation District at Manawainui was included within the original Kahikinui Forest Reserve. It should be included in the Conservation District.

Commission Action: Approved.*

C. *Rural Districts*

No expansion of the Rural Districts is recommended for the island of Maui. A small area at Pukalani in the Urban District has been proposed for a change to the adjacent Rural District.

Commission Action: Approved.*

D. *Urban Districts*

1. *General*

The population for the island of Maui at the time the district boundaries were drawn in 1963 was estimated to be approximately 35,000 people*. Current population to July 1, 1968 has been estimated by the Department of Planning and Economic Development[1] to be 39,800 people for an increase of 4,400 people or 13 percent for the five year interval. This estimated increase is about 5 percent over an interpolation of estimated population for 1968 as derived from the State of Hawaii General Plan Revision Program[2]. In estimating the anticipated growth for the next ten years, the 5 percent adjustment factor was added to judicial district and county totals. These projections are indicated on Table 6.

In 1963 it was estimated that 28,200 people resided in the existing urban areas[3] of approximately 9,500 acres, with the balance of 6,800 living in agricultural or rural locations. If we assume that all of the growth since 1963 has occurred in the urban areas, the 1968 population estimate for these areas totals 32,600 people, and assuming for comparison purposes that the proposed population growth will occur in the existing urban areas, the 1978 projection totals 64,020 people.

The Urban Districts for the Island of Maui as adopted in 1964 and as tabulated by the State of Hawaii Revised General Plan in 1965 were estimated to contain 11,793 acres. Since 1964 approximately 649 acres have been added to this district by boundary changes, thereby providing an estimated total of 12,442 acres in 1968. In the Revised State General Plan 6,566 acres or 57 percent of the land in 1965 was considered vacant. We have not included all areas that have been added to the Urban Districts since 1965 as vacant lands as of 1968, because it is obvious that some of this land has been developed to provide for the estimated population growth.

Lacking sufficient data on the amount of vacant land existing in the Urban Districts in 1968, we have used an assumption based on interpolation of the absorption of vacant lands projected in the Revised State General Plan that provides for the 5 percent population growth adjustment factor. Based on this assumption, the vacant lands within the Urban Districts are estimated to contain 6,288 acres as of 1968, with 6,154 acres considered occupied or developed.

It is estimated that average population density in the existing Urban District for Maui County is between 4 and 5 persons per acre. Applying this average density to the estimated ten year population increase of about 4,900 people, approximately 985 to 1,230 acres of gross urban land will be needed to accommodate this growth. By applying the urban land expansion factor of three times the anticipated growth, between 2,950 to 3,690 acres are required to 1978.

The present vacant lands in the Urban District are estimated to contain 6,282 acres. By applying the higher land absorption figure of 3,690 acres, the county would still have roughly 2,600 acres vacant in the existing Urban Districts after providing for three times the anticipated population growth.

The major urban concentrations are described on existing County General Plans for the Island of Maui are indicated between Honolua-Honokohau and Lahaina; between Waiehu and Paia, including the urban core area of Wailuku-Kahului; and between the Kihei and Keawakapu. In addition to the urban areas of Pukalani and Makawao the Kula area has been indicated for rural or lower density residential development. The county indicated that additional urban lands should be restricted to these general areas.

2. *Lahaina Judicial District*

Included in the Lahaina Judicial District are Honolua-Honokohau, Mailepai, Honokowai and Lahaina Urban Districts. No changes have been recommended in the Honolua-Honokohau, Mailepai area. It is suggested, however, that when changes in the alignment of the Honoapiilani Highway occur, the area makai of the highway corridor be considered upon application for urban zoning in conformance with the newly adopted County General Plan.

We have recommended extension of the present Urban District Boundary above the Kaanapali area in the vicinity of the Puukolii Reservoir along with expansion of the Lahaina Urban District on the Kaanapali side, mauka of the Honoapiilani Highway for the proposed Lahaina Civic Center.

Commission Action: Approved.*

**Approved recommendations adopted at the action meeting held in Maui County August 1, 1969.*

[1] Harland Bartholomew & Associates, *Land Use Districts for the State of Hawaii*, 1963.

[2] Department of Planning & Economic Development, *Provisional Estimates of the Population of Hawaii by County*, July 1, 1969.

[3] Department of Planning & Economic Development, *General Plan Revision Program*, 1967.

[4] Harland Bartholomew & Associates, *Land Use Districts for the State of Hawaii*, 1963.

TABLE 6 MAUI COUNTY URBAN DISTRICTS

Judicial District	Estimated Resident Population 1968	1978[a]	% Change	1978[b]	% Change	Urban Districts (Acres) Existing 1968	Vacant 1968	Vacant 1978
Hana	838	1,275	+50%	933	+ 11%	214	93	82
Lahaina	5,904	8,639	+46%	14,784	+150%	2,092	1,007	541
Makawao	9,253	10,409	+12%	8,516	− 8%	3,699	2,326	2,271
Wailuku	23,812	24,396	+ 2%	28,628	+ 23%	6,437	2,862	2,472
Island of Maui	39,807	44,719	+12%	52,861	+ 33%	12,442	6,288	5,366
Lanai	2,537	3,383	+33%	2,809	+ 11%	525	243	229
Molokai	5,856	7,028	+20%	7,117	+ 22%	4,551[c]	3,945	509
Total	48,200	55,130	+14%	62,787	+ 30%	17,518	10,476	6,104

[a] Interpolation of data. State of Hawaii General Plan Revision Program.
[b] Interpolation of data. Maui County Planning Commission.
[c] Includes 165 acres from Kalawao.

3. *Wailuku Judicial District*

The Wailuku Judicial District includes the urban Districts of Waihee, Waiehu-Paukukalo, Wailuku-Kahalui, Puuohala, Wailuku Heights, Waikapu, Puunene, Maalaea and Kihei-Kamaole. The major change recommended is an extension of Urban Districts mauka of Kahului for residential development adjacent to the Kahului Town Development.

Commission Action: Approved.*

The proposed development at Waihee-Waiehu primarily for residential uses was not recommended for urban zoning as a result of this study. We suggested that this area be considered under the boundary change application procedure which was filed during our review so that the area could be studied in more detail.

Based on the large amount of vacant land in the existing Urban District at Kihei, we have not recommended expansion of the present district boundaries. A small area has been proposed at Maalaea to include existing development mauka of the present boundary.

Commission Action: Approved.*

4. *Makawao Judicial District*

The Makawao Judicial District contains the Urban Districts of Paia-Kuau, Pauwela, Haiku, Haliimaile Pukalani, Makawao, Kula-Kai, Kula-Omaopio, Waiakoa and Keokea. At lower Paia we have recommended an expansion of the present Urban District to include a minor area makai of the Hana Highway adjacent to Baldwin Park.

On the Kahului side of Pauwela we have indicated a refinement of the present urban boundary to include existing uses mauka of the Hana Highway.

Commission Action: Approved.*

In the Makawao-Pukalani area, a large area of 1,200 acres was requested for urban zoning. We suggested that this proposed development be considered in detail under the boundary change application procedure which was filed during our review.

In the Kula area our initial recommendation involved suggested changes from Urban to Rural and Agriculture Districts based on the existing County General Plan for the area. However, upon more detailed investigation, we reconsidered these proposals and have concluded that the present boundaries be maintained. No additional land has been proposed for Urban Districts in the Kula area.

5. *Hana Judicial District*

Within the Hana Judicial District is located the Hana Urban District. No additions to the present district boundaries have been recommended.

II. ISLAND OF MOLOKAI

A. *Agriculture Districts*

The agriculture of Molokai has been dominated by pineapple production and grazing, both dry land enterprises. The recent development of a reservoir on the island for agricultural use may render some changes. Vegetable production has always done well and may be expected to expand Recent developments in the seed corn industry have also been encouraging for agriculturalists. There is no foreseeable future for agricultural production beyond the Agriculture District.

B. *Conservation Districts*

The existing Conservation District is essentially the Molokai Forest Reserve. Three major additions are recommended.

1. *Halawa Valley*

Halawa Valley is of undisputed scenic quality, defined by steep valley walls and ended by a magnificent waterfall. The area and surrounding steep topography should be included in the Conservation District as should the pali coast from Halawa to Waialua.

Commission Action: Approved.*

2. *Forest Reserve*

Not all of the original Molokai Forest Reserve was included in the Conservation District. Some grazing occurs on these lands, but the terrain is rugged and steep and the conservation values are considered foremost. The Conservation District should be expanded to include all of the Forest Reserve.

Commission Action: Approved.*

3. *The Shoreline*

The shoreline along the south coast of Molokai is dotted with fishponds. These are and should remain in the Conservation District. At Makolelau the adjacent land makai of the road should also be in the Conservation District.

From Kalaupapa around the west end to Kaunakakai the shoreline should be included in the Conservation District. There are a number of significant features; the steep pali by the Kalaupapa Lookout, Moomomi Beach, the site of a proposed park development, Ilio Point and the extensive sands at Papohaku Beach, Laau Point and the pali along the south shore. The unique values of these areas warrant their inclusion in the Conservation District.

Commission Action: Partially approved.*

C. *Rural Districts*

No changes were proposed in the Rural Districts for the Island of Molokai.

D. *Urban Districts*

1. *Molokai Judicial District*

The Molokai Judicial District includes the recently rezoned Molokai Ranch Urban District in addition to the Mauna Loa, Kualapuu, Kalae, Kaunakakai, Kamioloa-Moku and Ualapue Urban Districts. We have not recommended additions to these districts at this time.

2. *Kalawao Judicial District*

No changes have been proposed to the existing Kalaupapa Urban District.

III. ISLAND OF LANAI

A. *Agriculture Districts*

The island of Lanai is dominated by the production of pineapple in the central area. Grazing used to be conducted along the east coast. Since the cessation of these activities, the small strip of Agriculture District should be placed in the Conservation District to make a contiguous district around the island.

Commission Action: Approved.*

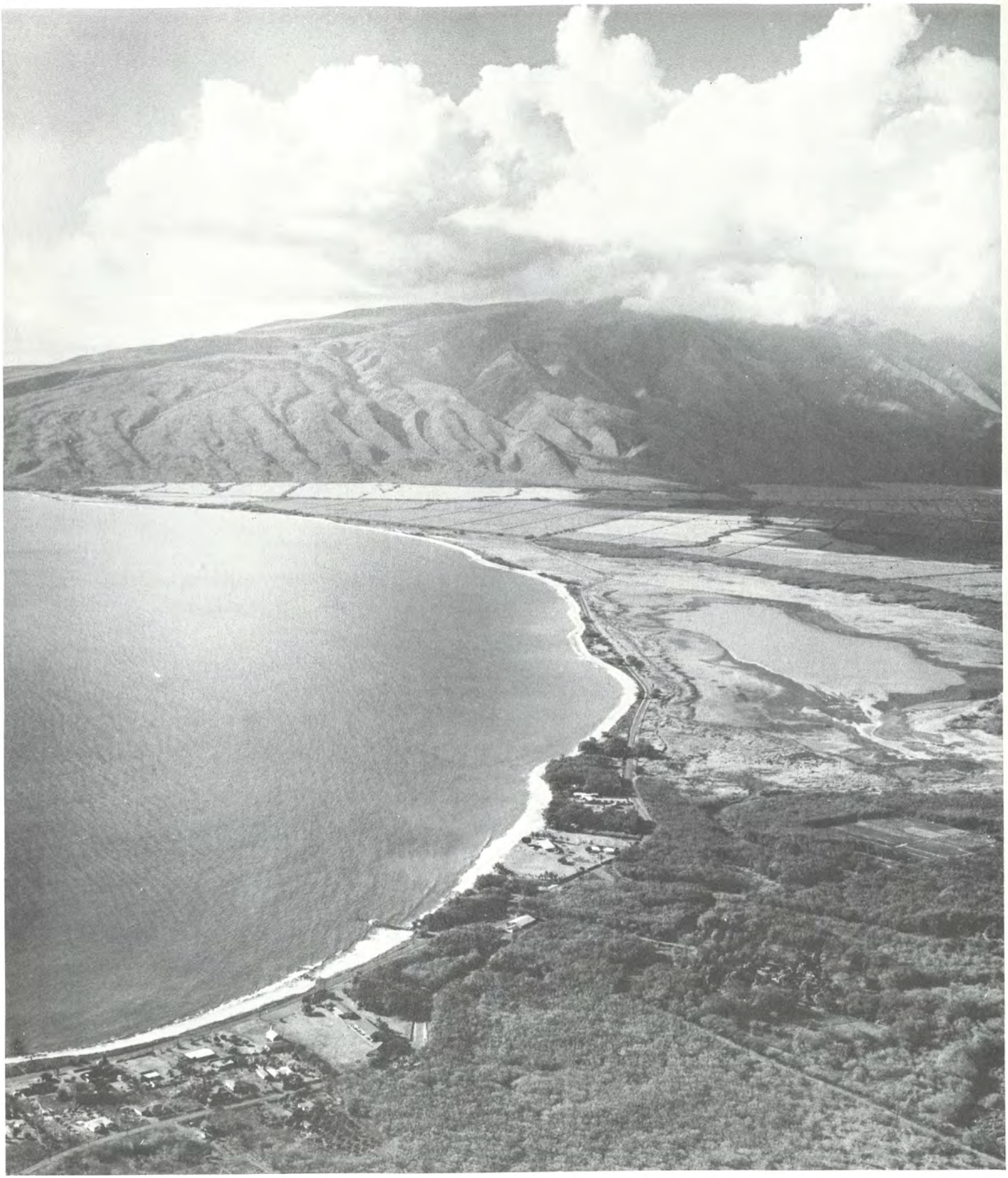
B. *Urban Districts*

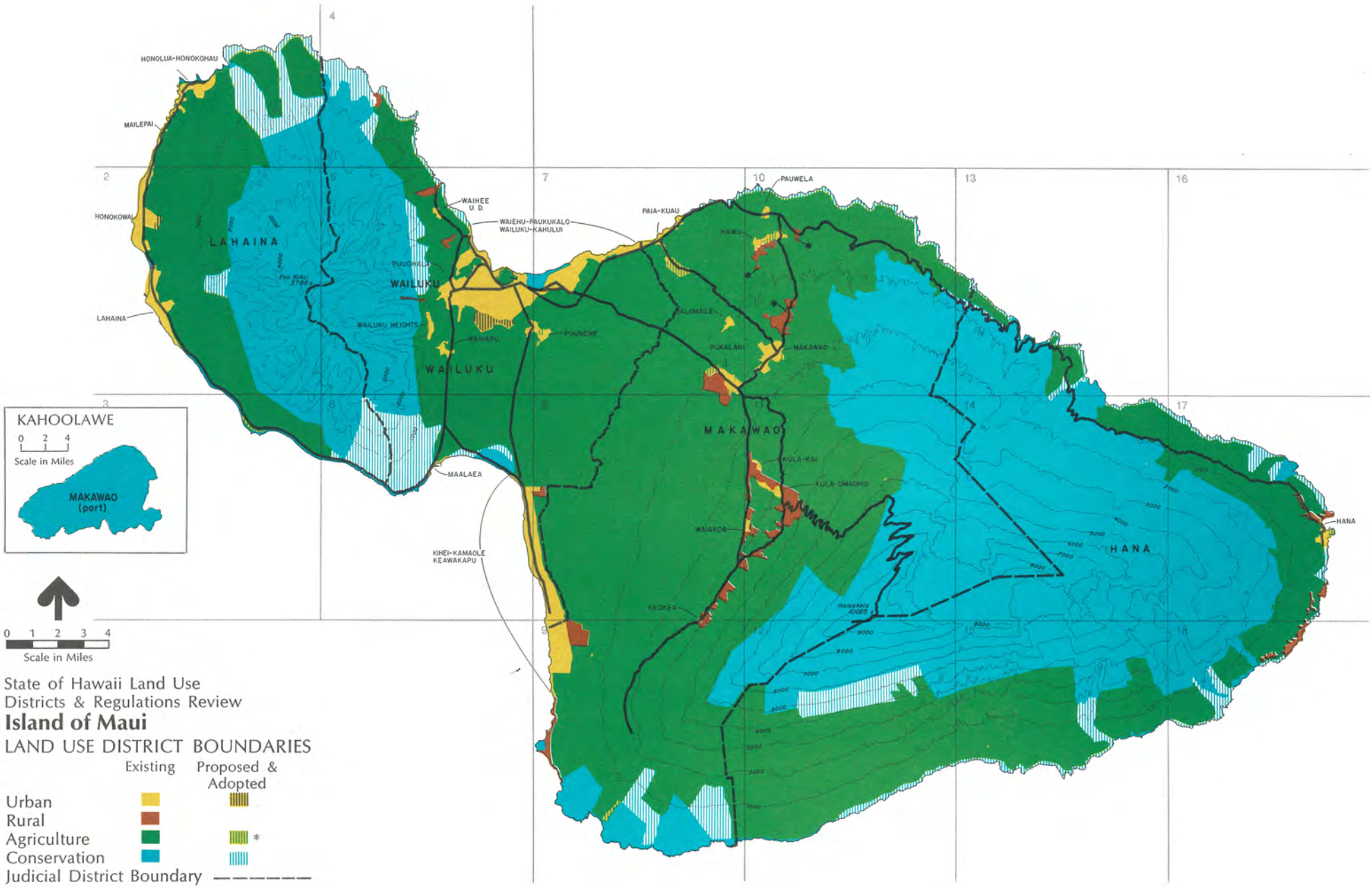
No changes were recommended in the existing Urban Districts.

**Approved recommendations adopted at the action meeting held in Maui County August 1, 1969.*

Urban District
Kaunakakai, Molokai

Urban, Conservation and Agriculture Districts
Kihei, Maui





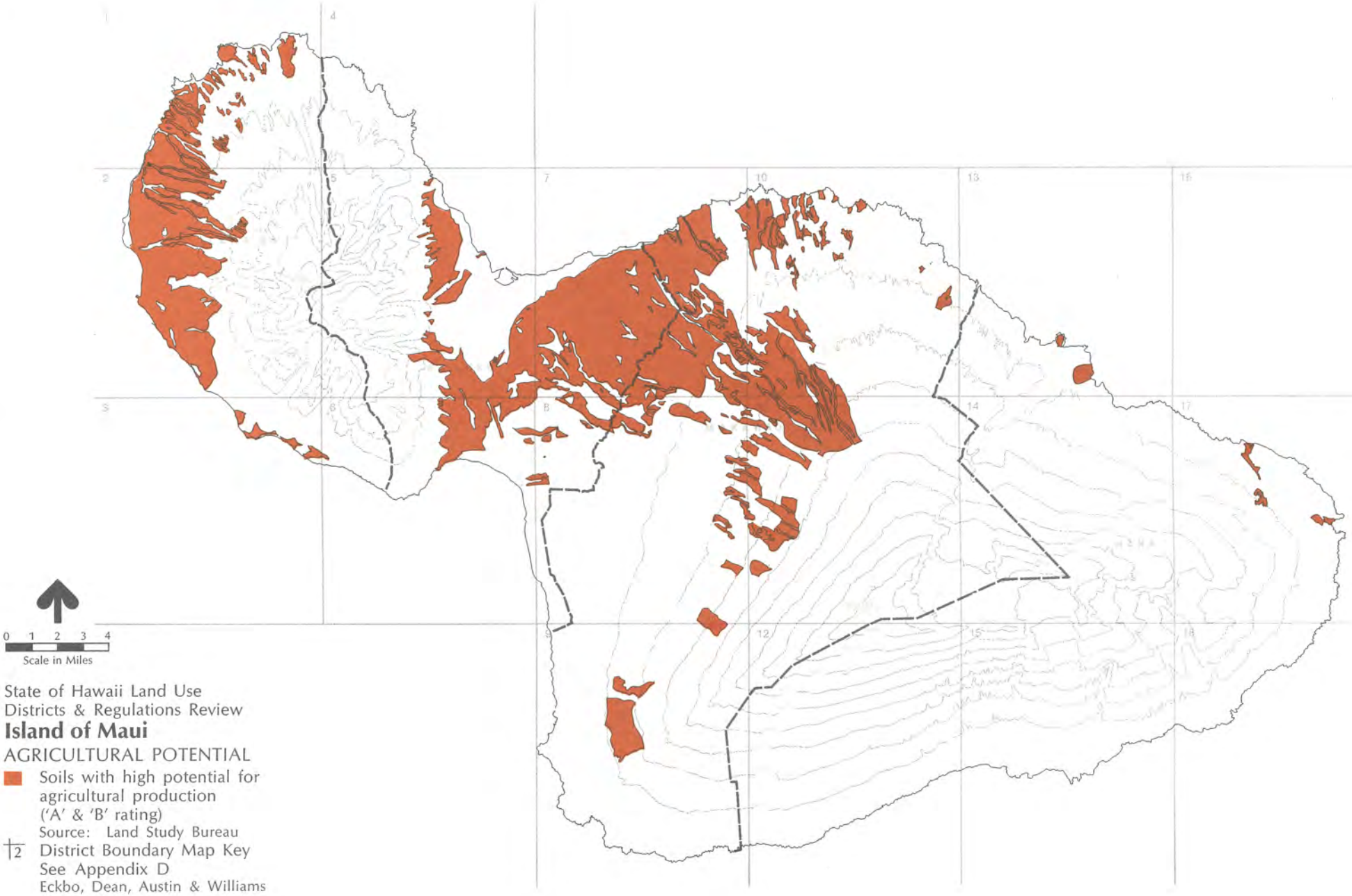
State of Hawaii Land Use
Districts & Regulations Review

Island of Maui

LAND USE DISTRICT BOUNDARIES

	Existing	Proposed & Adopted
Urban		
Rural		
Agriculture		*
Conservation		
Judicial District Boundary		
Principal Highway		

District Boundary Map Key 12
See Appendix D
Eckbo, Dean, Austin & Williams
August 1969



State of Hawaii Land Use
Districts & Regulations Review

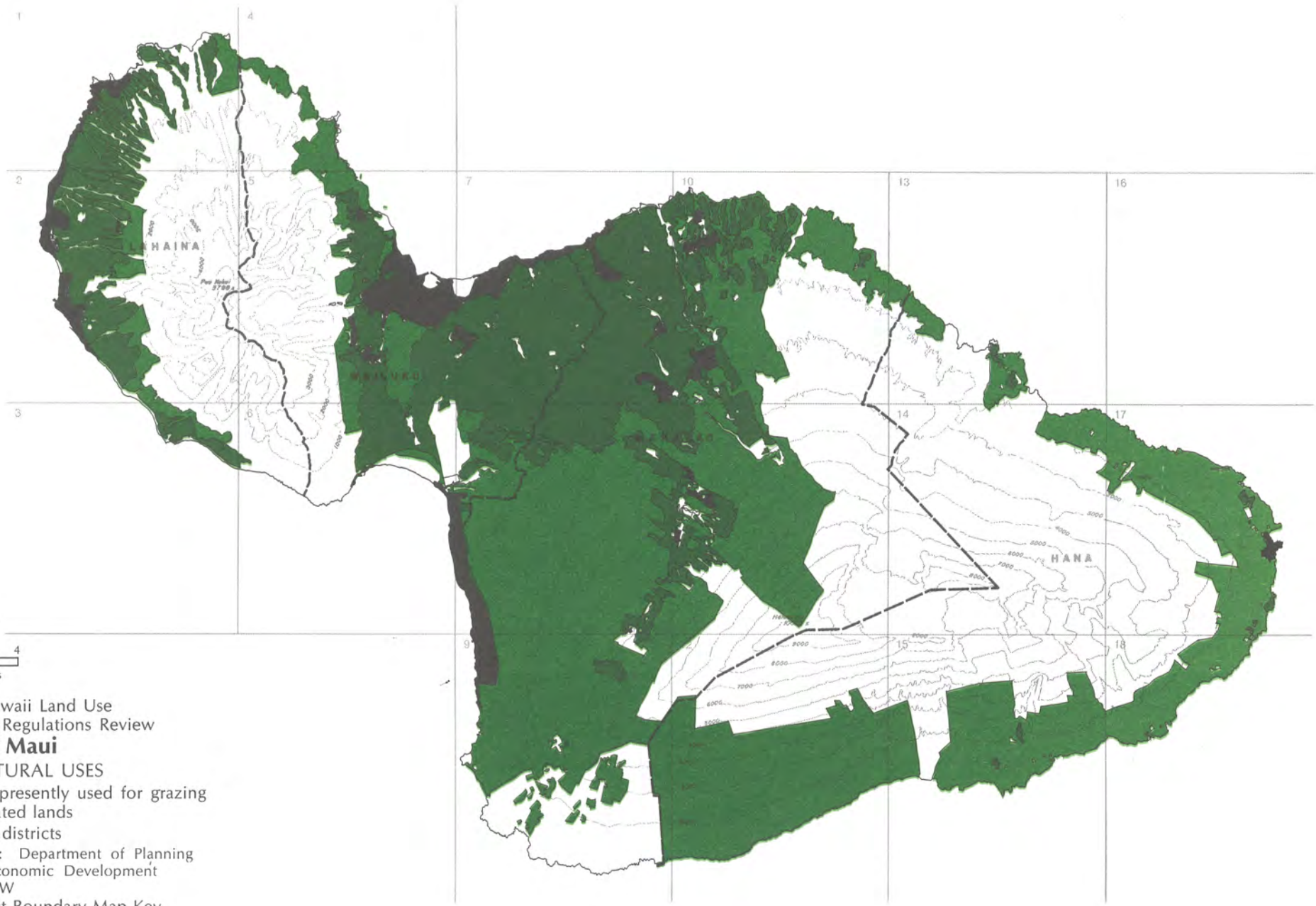
Island of Maui

AGRICULTURAL POTENTIAL

Soils with high potential for agricultural production ('A' & 'B' rating)
Source: Land Study Bureau

12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



State of Hawaii Land Use
Districts & Regulations Review

Island of Maui

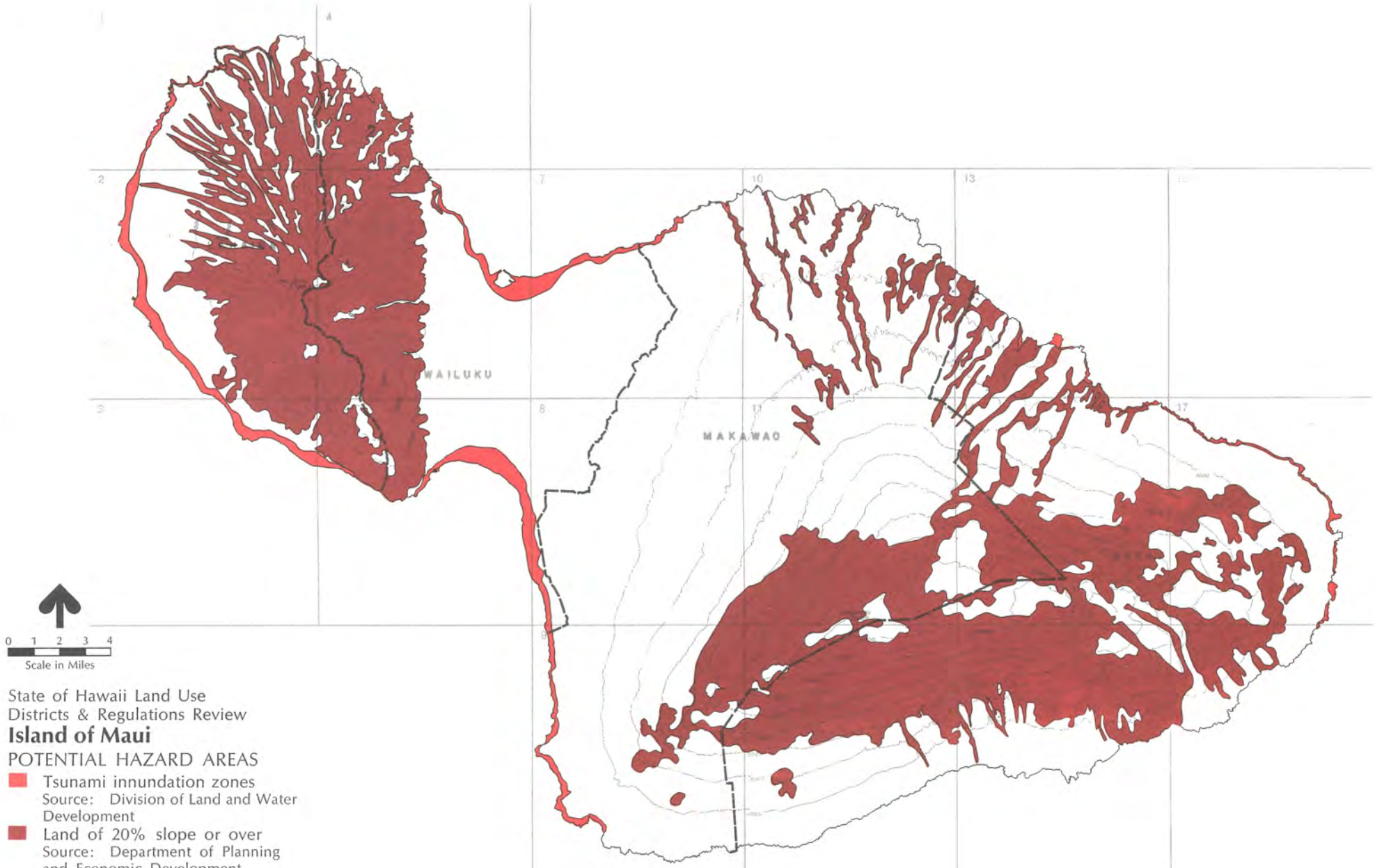
AGRICULTURAL USES

- Lands presently used for grazing
- Cultivated lands
- Urban districts

Source: Department of Planning and Economic Development & EDAW

12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



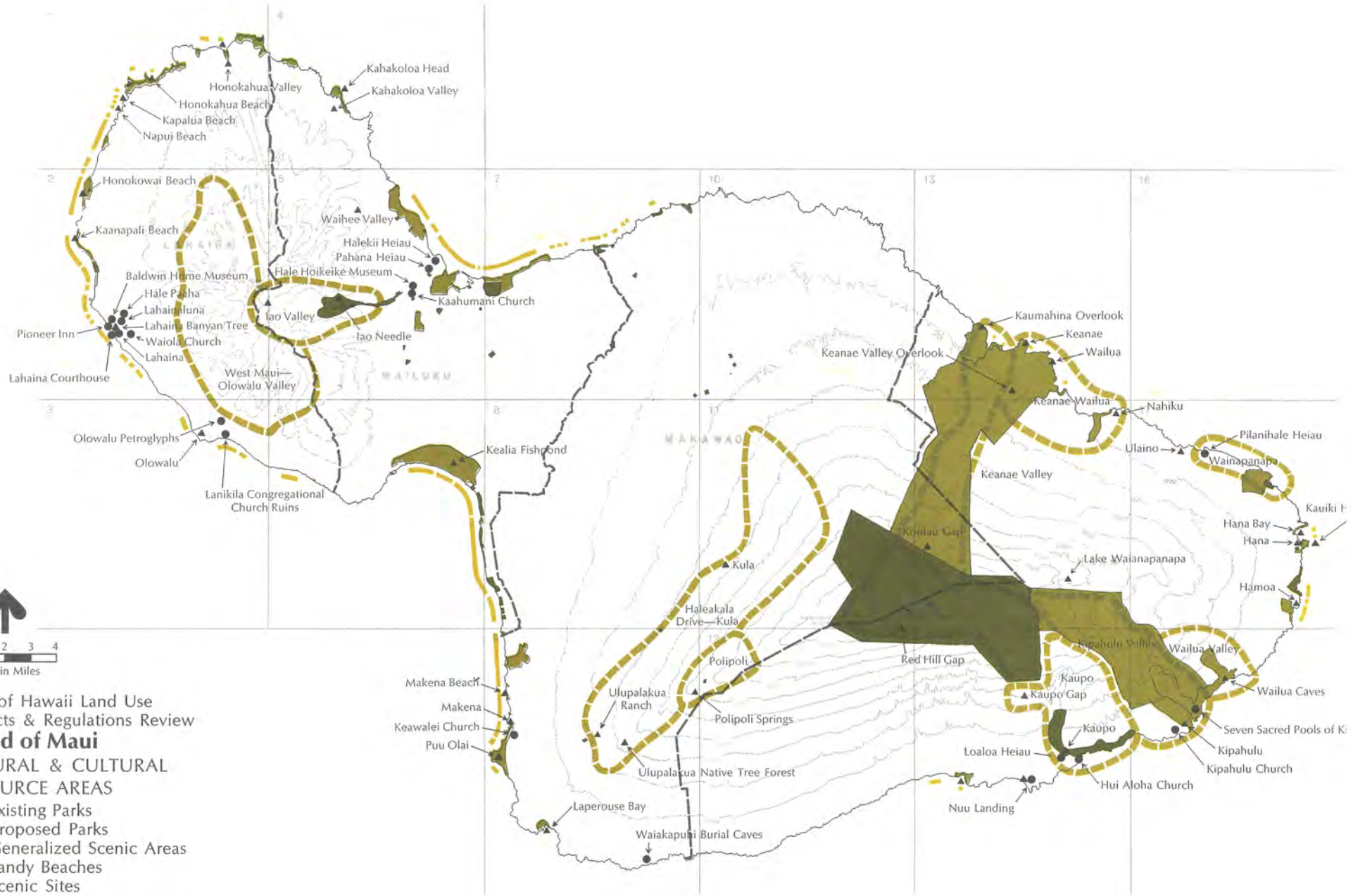
State of Hawaii Land Use
Districts & Regulations Review

Island of Maui

POTENTIAL HAZARD AREAS

- Tsunami innundation zones
  Source: Division of Land and Water Development
- Land of 20% slope or over
  Source: Department of Planning and Economic Development
- 1/2 District Boundary Map Key
  See Appendix D

Eckbo, Dean, Austin & Williams
August 1969



State of Hawaii Land Use
Districts & Regulations Review

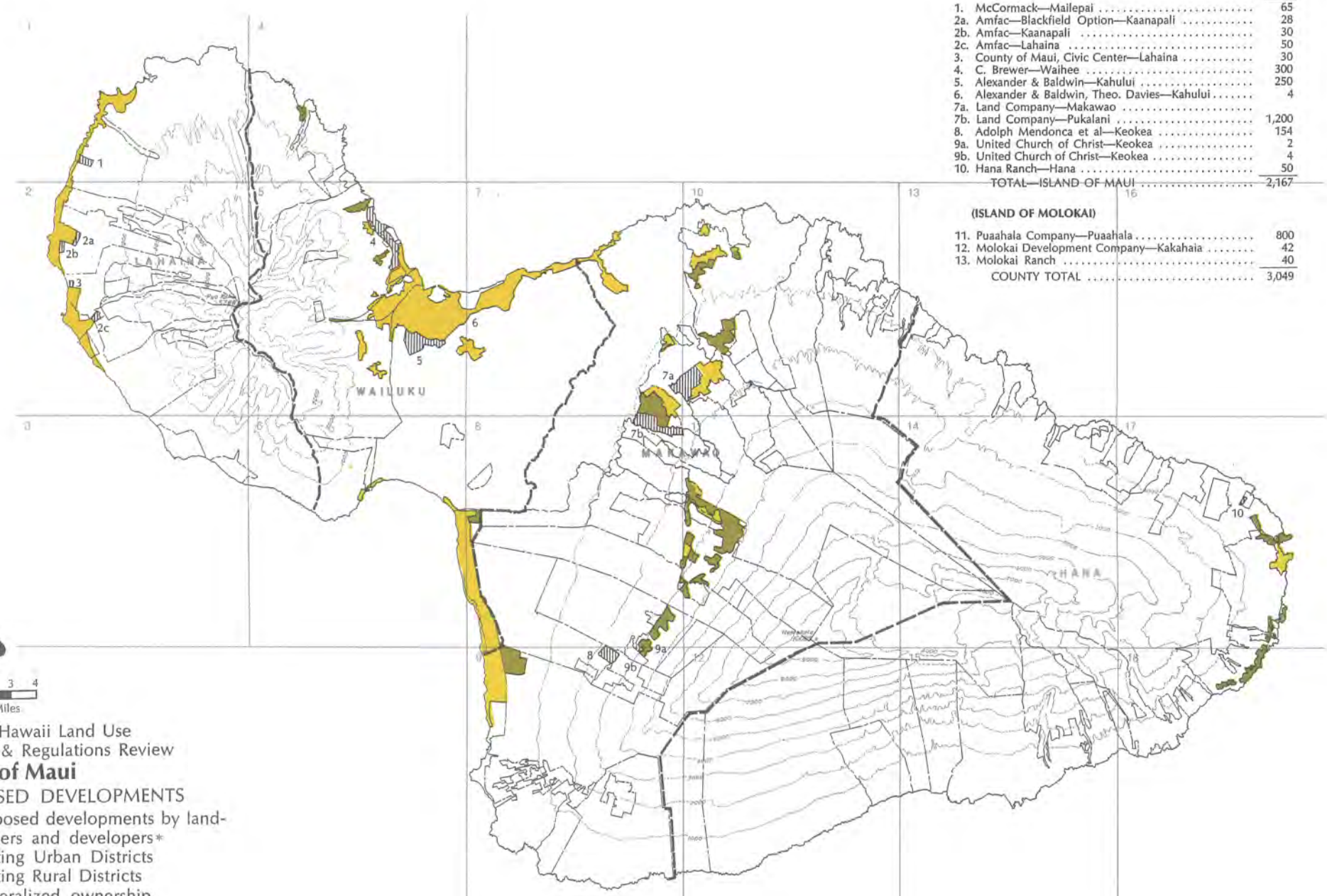
Island of Maui

NATURAL & CULTURAL
RESOURCE AREAS

- Existing Parks
- Proposed Parks
- Generalized Scenic Areas
- Sandy Beaches
- ▲ Scenic Sites
- ● Historic Sites
- 1/2 District Boundary Map Key
  See Appendix D

Source: DPED Shoreline Plan, Wenkam Scenic Resource Study, USGS and EDAW

Eckbo, Dean, Austin & Williams
August 1969



MAUI COUNTY

	ACRES
1. McCormack—Mailepai	65
2a. Amfac—Blackfield Option—Kaanapali	28
2b. Amfac—Kaanapali	30
2c. Amfac—Lahaina	50
3. County of Maui, Civic Center—Lahaina	30
4. C. Brewer—Waihee	300
5. Alexander & Baldwin—Kahului	250
6. Alexander & Baldwin, Theo. Davies—Kahului	4
7a. Land Company—Makawao	
7b. Land Company—Pukalani	1,200
8. Adolph Mendonca et al—Keokea	154
9a. United Church of Christ—Keokea	2
9b. United Church of Christ—Keokea	4
10. Hana Ranch—Hana	50
TOTAL—ISLAND OF MAUI	2,167

(ISLAND OF MOLOKAI)

11. Puaahala Company—Puaahala	800
12. Molokai Development Company—Kakahaia	42
13. Molokai Ranch	40
COUNTY TOTAL	3,049

State of Hawaii Land Use
Districts & Regulations Review

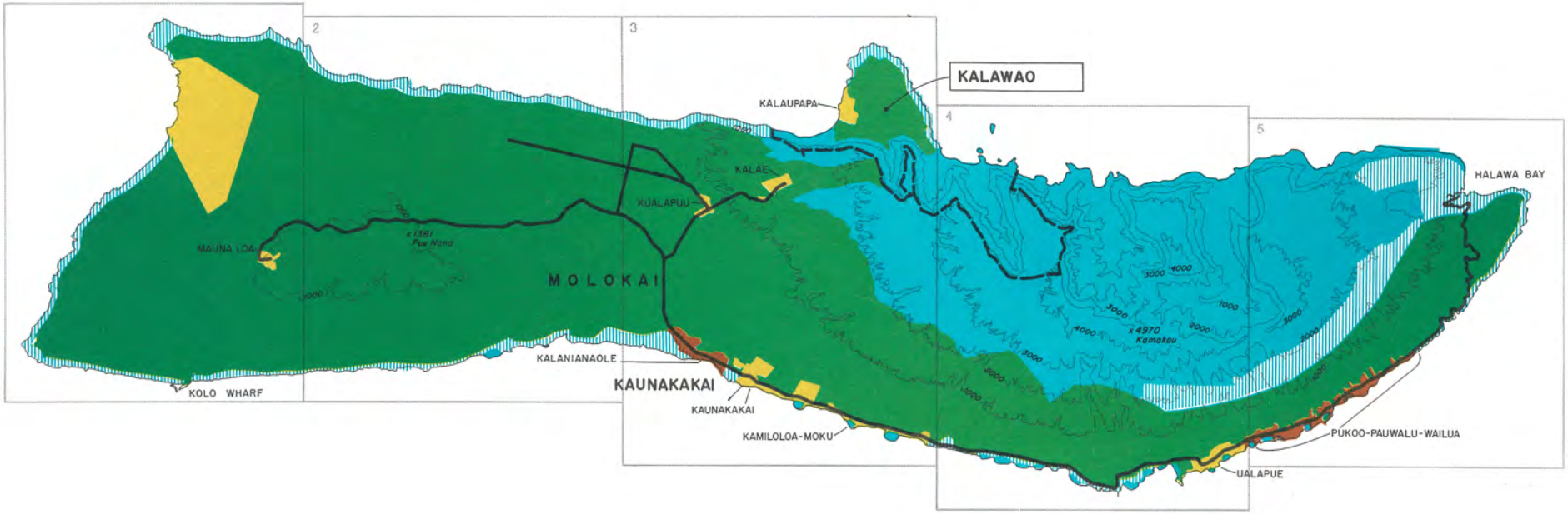
Island of Maui

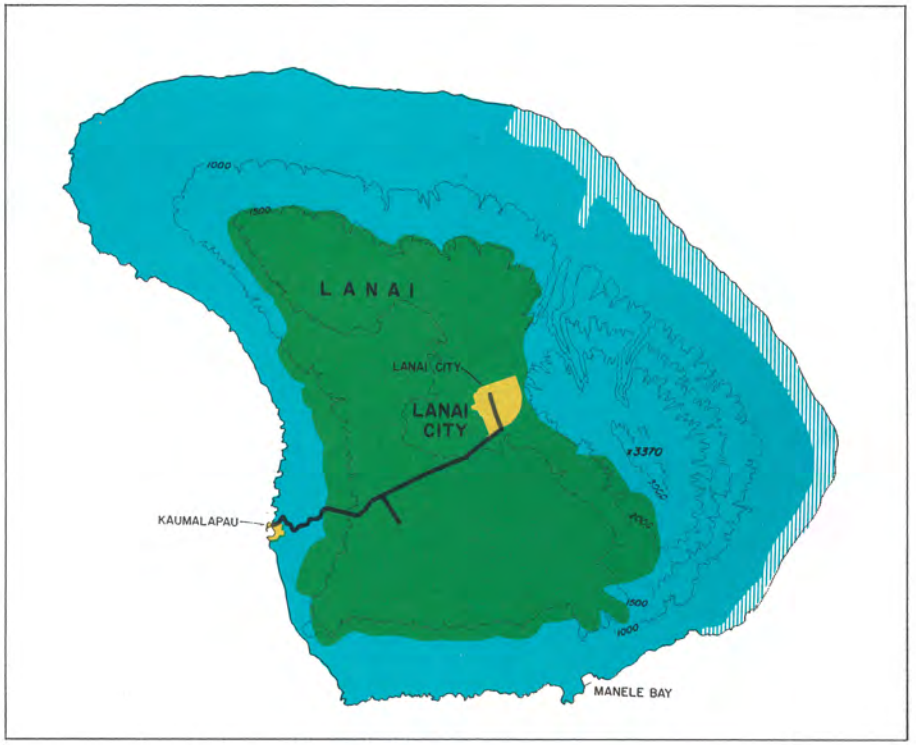
PROPOSED DEVELOPMENTS

- Proposed developments by landowners and developers*
- Existing Urban Districts
- Existing Rural Districts
- Generalized ownership boundaries
- 12 District Boundary Map Key See Appendix D

Source: Eckbo, Dean, Austin & Williams
Eckbo, Dean, Austin & Williams
August 1969

*Prior to public hearing





State of Hawaii Land Use
Districts & Regulations Review

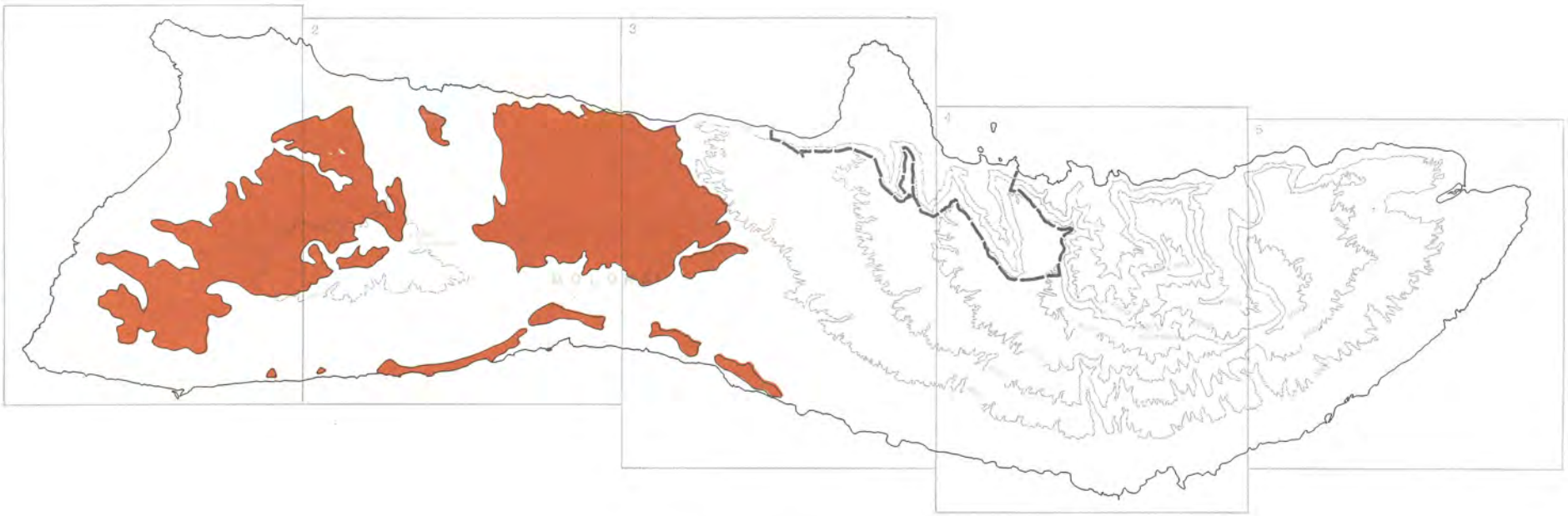
Islands of Molokai & Lanai

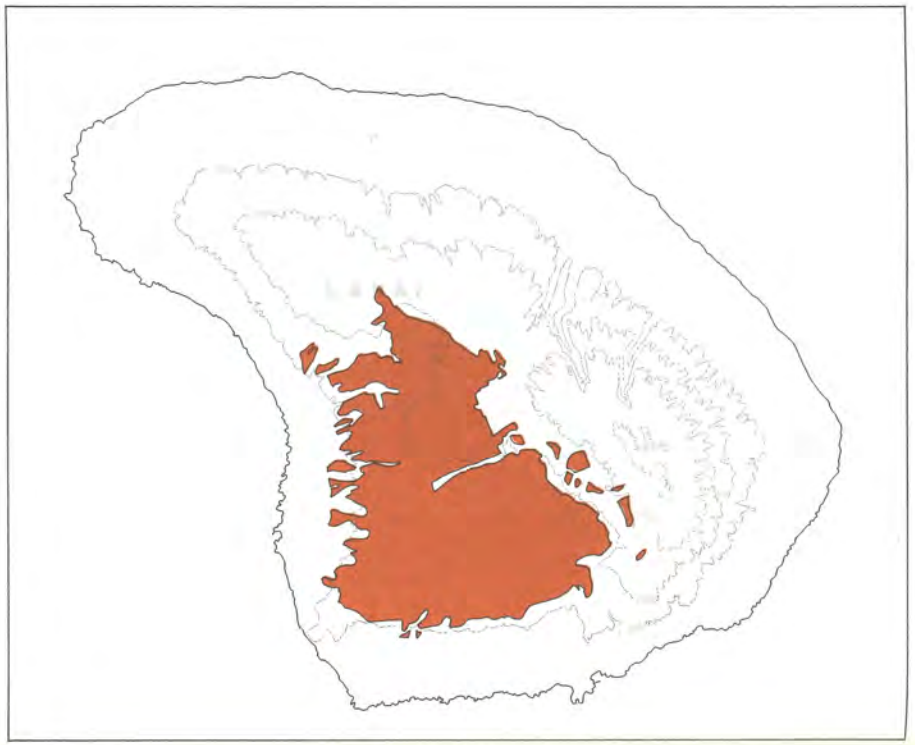
LAND USE DISTRICT BOUNDARIES

	Existing	Proposed & Adopted
Urban		
Rural		
Agriculture		
Conservation		
Judicial District Boundary		
Principal Highway		
District Boundary Map Key		

See Appendix D

Eckbo, Dean, Austin & Williams
August 1969





State of Hawaii Land Use
Districts & Regulations Review

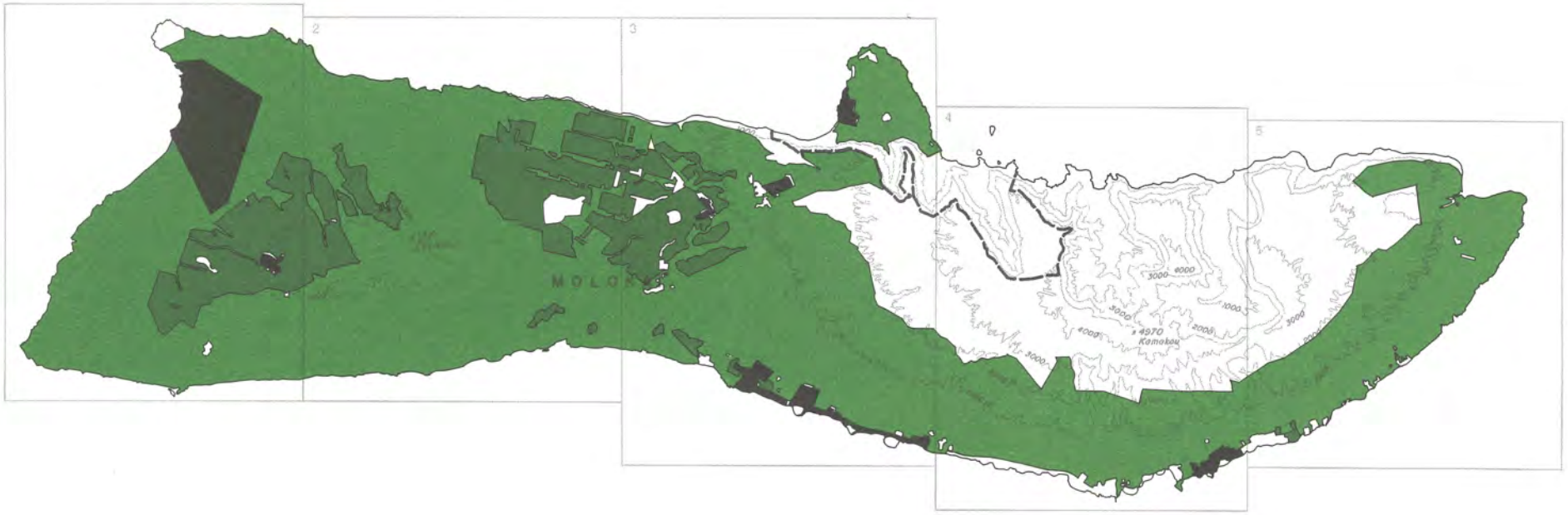
Islands of Molokai & Lanai

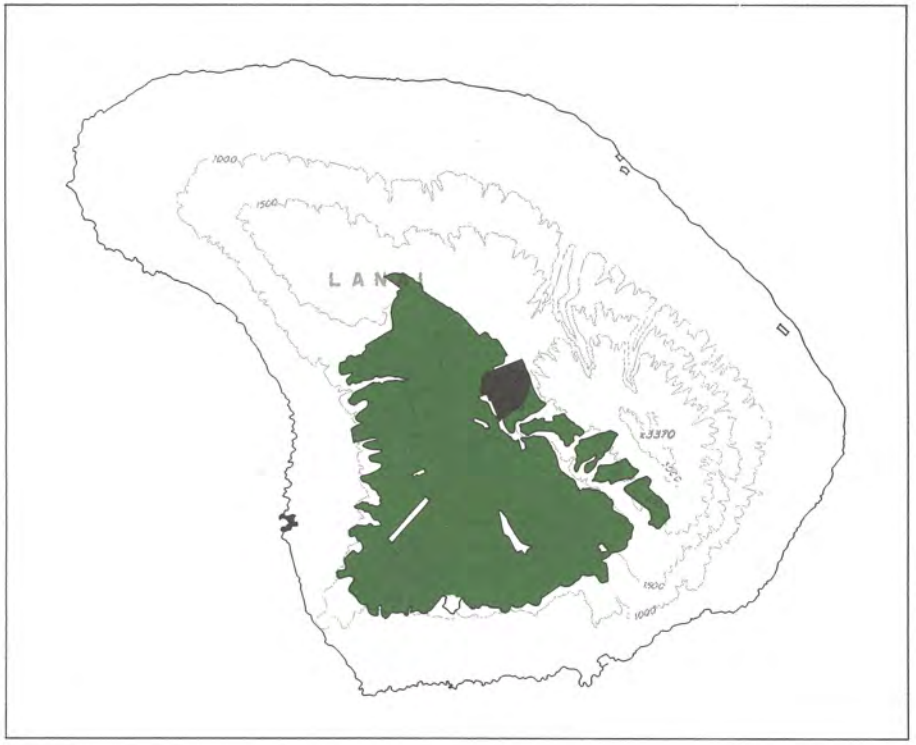
AGRICULTURAL POTENTIAL

Soils with high potential for agricultural production ('A' & 'B' rating)
Source: Land Study Bureau

1/2 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969





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Scale in Miles

State of Hawaii Land Use
Districts & Regulations Review

Islands of Molokai & Lanai

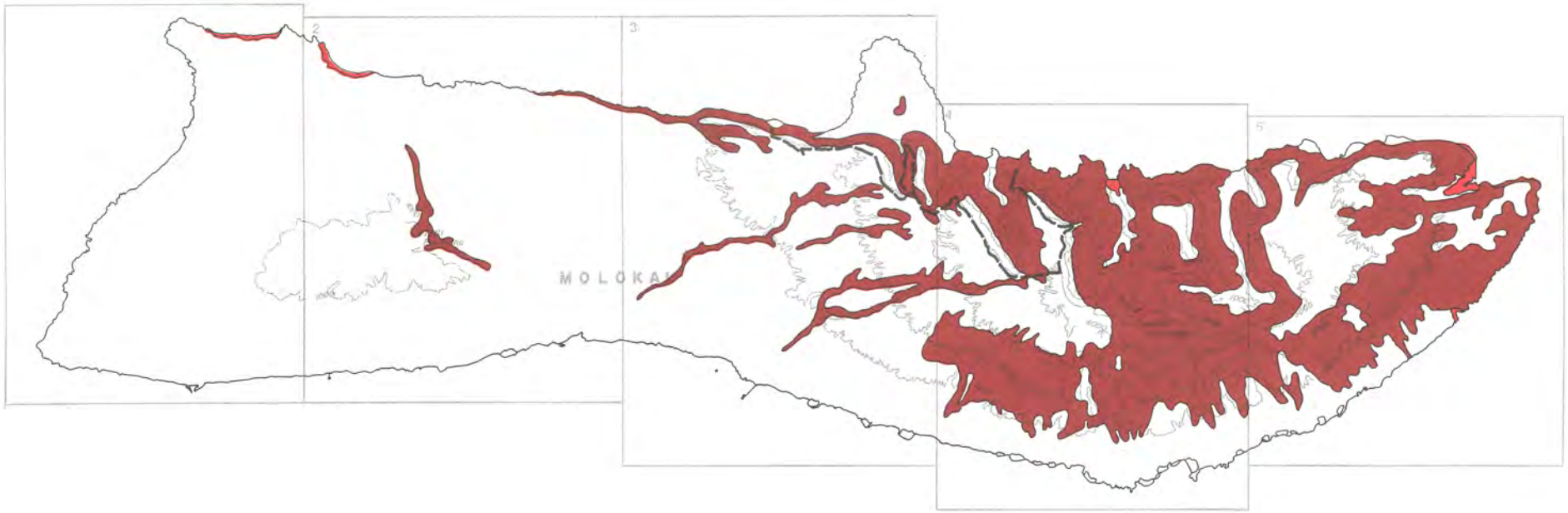
AGRICULTURAL USES

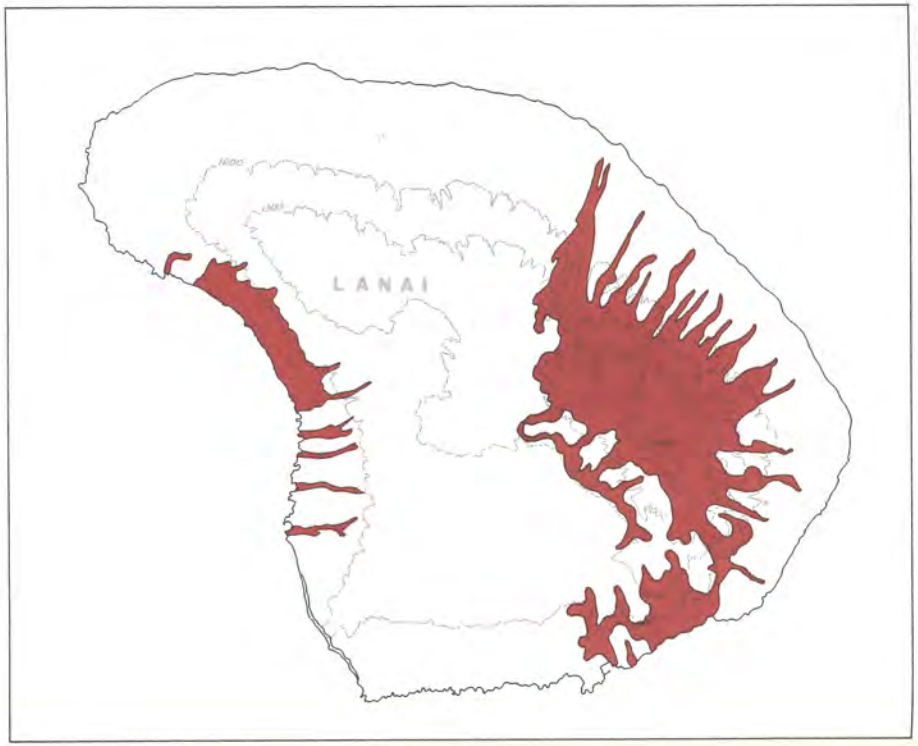
- Lands presently used for grazing
- Cultivated lands
- Urban districts

Source: Department of Planning & Economic Development & EDAW

12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969





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Scale in Miles

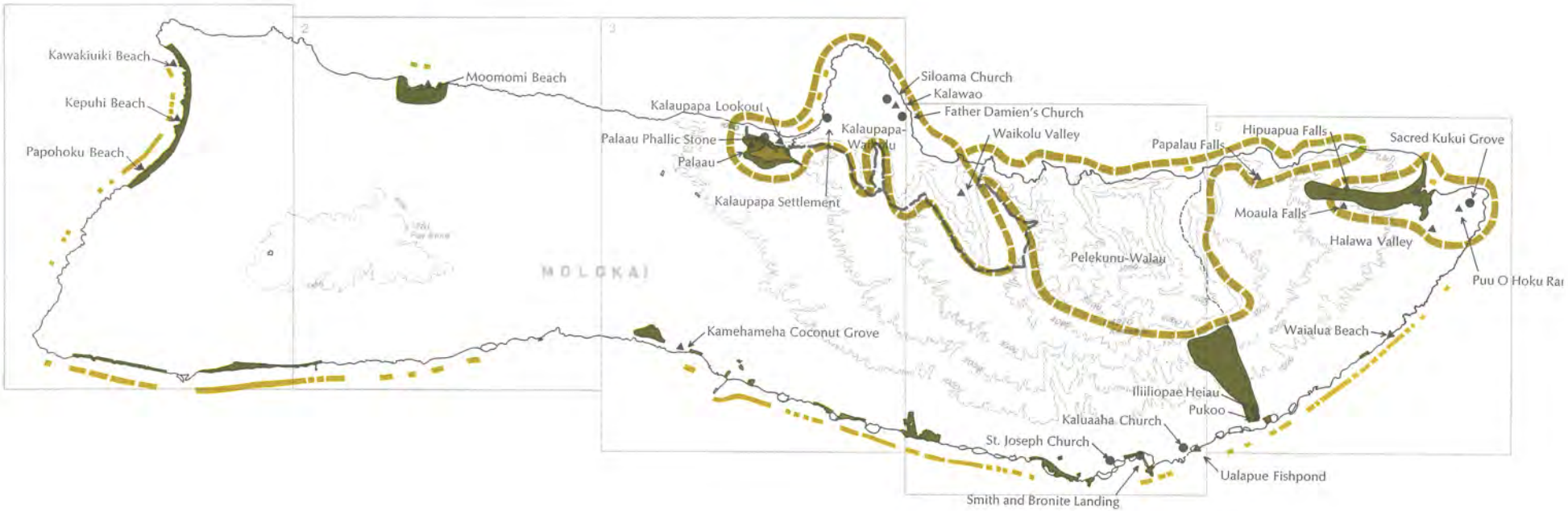
State of Hawaii Land Use
Districts & Regulations Review

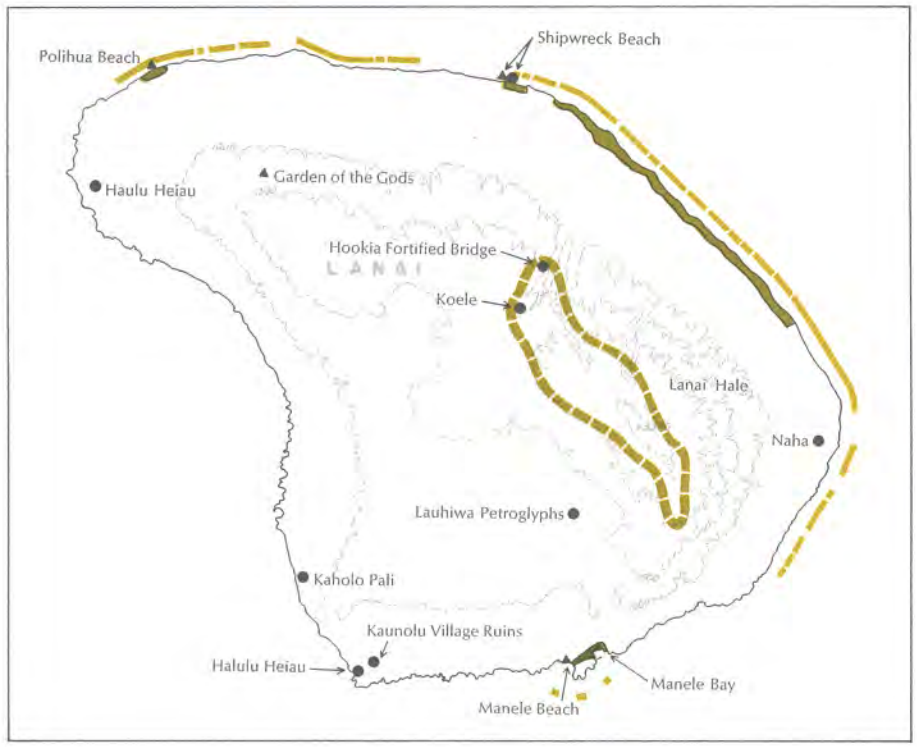
Islands of Molokai & Lanai

POTENTIAL HAZARD AREAS

- Tsunami innundation zones
  Source: Division of Land and Water Development
- Land of 20% slope or over
  Source: Department of Planning and Economic Development
- 1/2 District Boundary Map Key
  See Appendix D

Eckbo, Dean, Austin & Williams
August 1969





State of Hawaii Land Use
Districts & Regulations Review

Islands of Molokai & Lanai

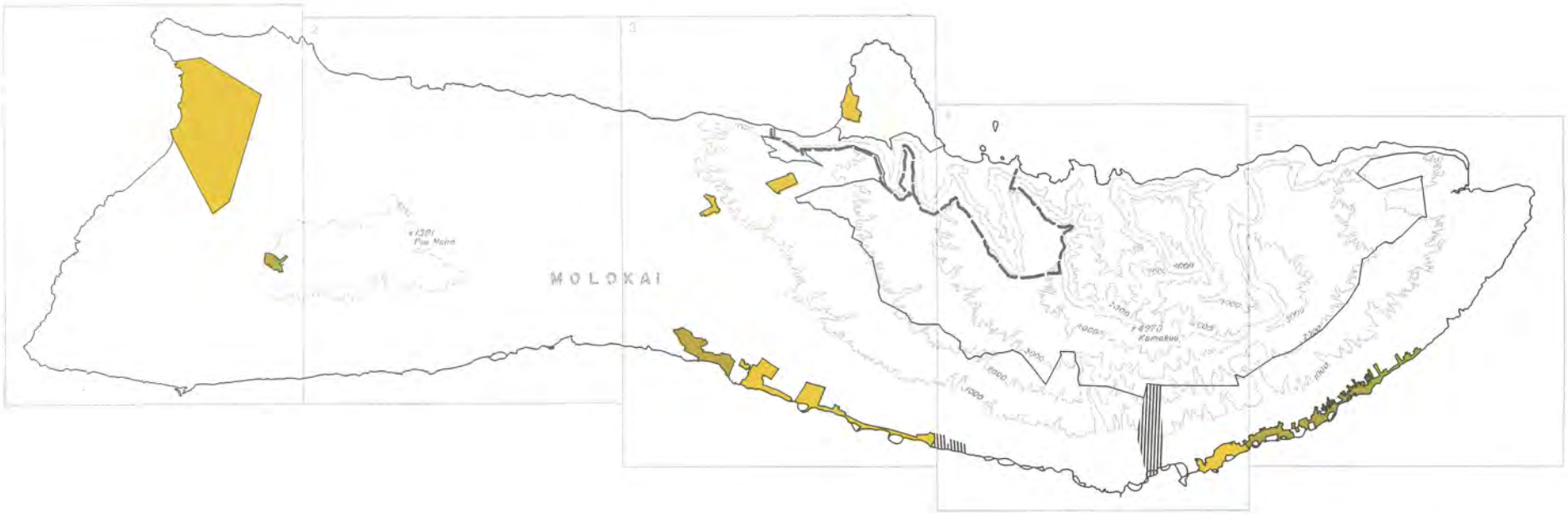
NATURAL & CULTURAL
RESOURCE AREAS

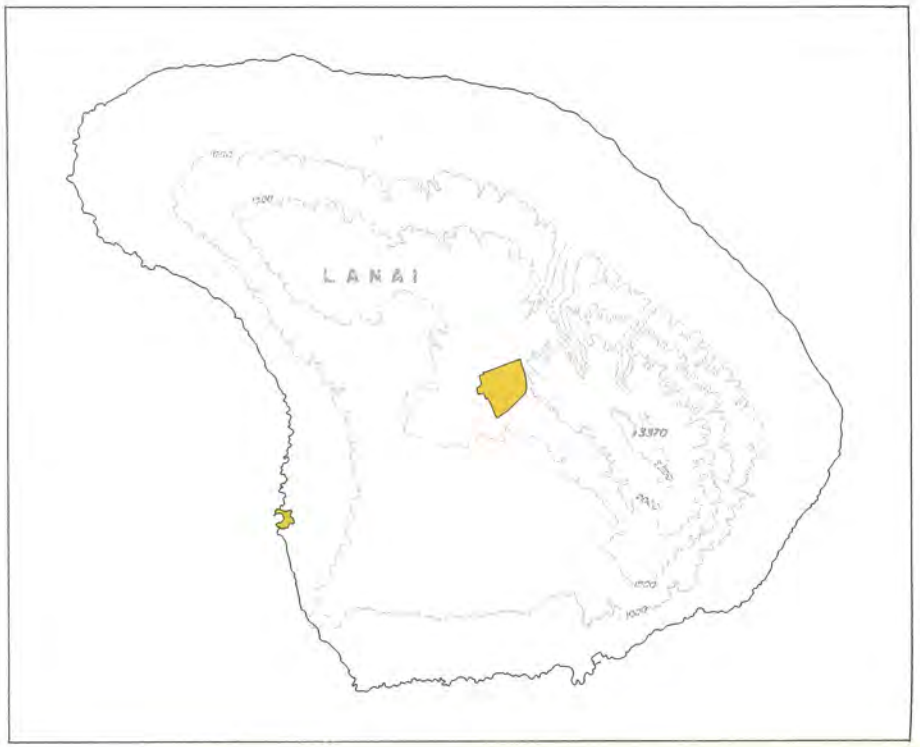
- Existing Parks
- Proposed Parks
- Generalized Scenic Areas
- Sandy Beaches
- ▲ Scenic Sites
- ● Historic Sites

Source: DPED Shoreline Plan, Wenkam Scenic Resource Study, USGS and EDAW

†2 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969





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Scale in Miles

State of Hawaii Land Use
Districts & Regulations Review

Islands of Molokai & Lanai

PROPOSED DEVELOPMENTS

- Proposed developments by land-owners and developers *
- Existing Urban Districts
- Existing Rural Districts

Source: Eckbo, Dean, Austin & Williams

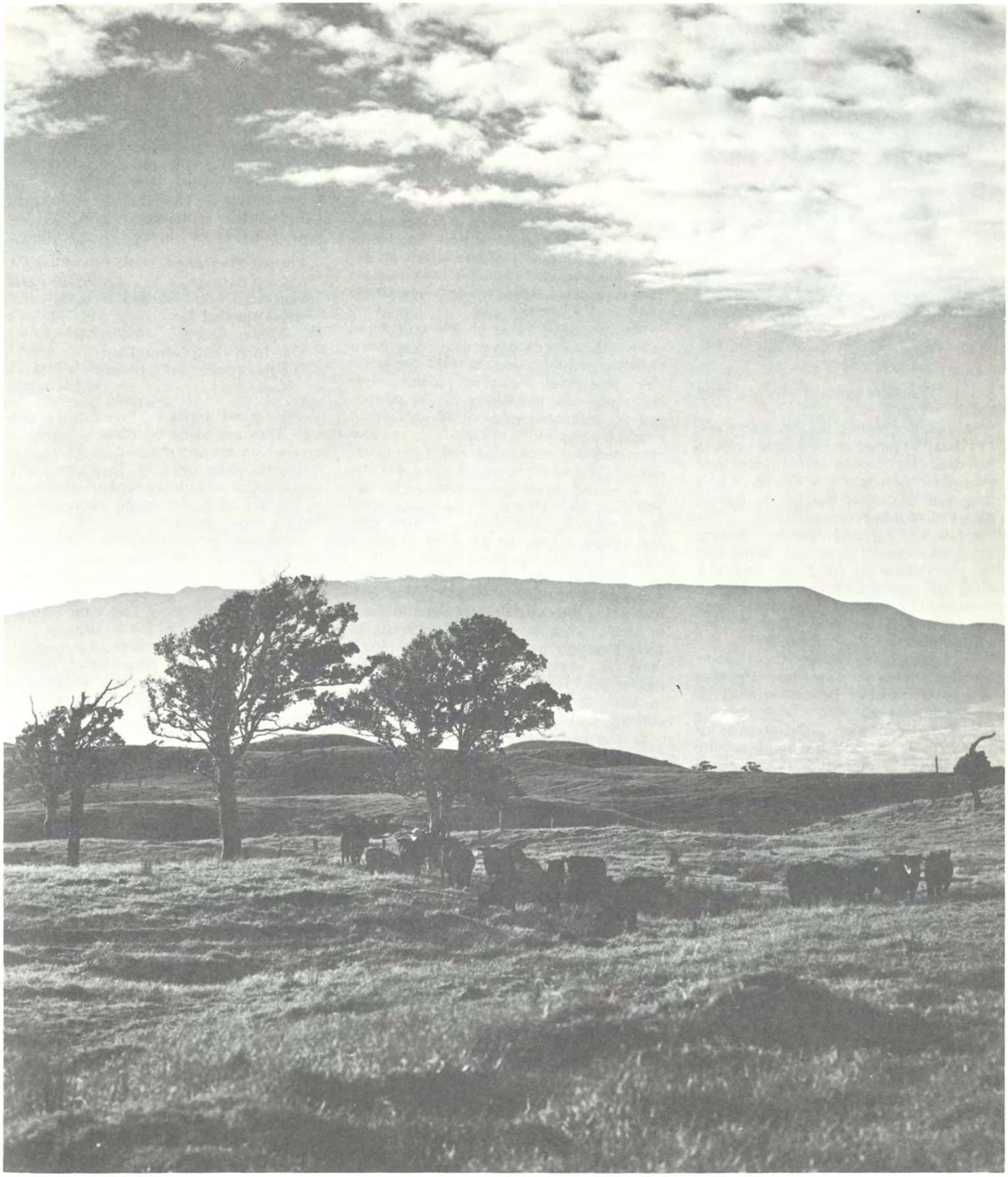
12 District Boundary Map Key
See Appendix D

Eckbo, Dean, Austin & Williams
August 1969

*Prior to public hearing

CHAPTER 8 / AGRICULTURE DISTRICT ISSUES

Agricultural District
Parker Ranch, Hawaii



Agriculture and Conservation Districts
Ulupalakua Ranch, Maui

I. THE PRESERVATION OF AGRICULTURAL LAND

Act 187, Session Laws of Hawaii, 1961, states that:

> "Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have short-term gain to a few but result in a long-term loss to the income and growth potential of our economy."

The Law also acknowledges that "forcing of land resources into uses that do not best serve the welfare of the State" and "the shifting of prime agricultural lands into non-revenue producing residential uses when other lands are available that could serve adequately the urban needs."

In an endeavor to counter these causes of public concern the Law also states that "the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation." The purpose of this chapter is to examine the feasibility and validity of pursuing this mandate and to examine the resultant issues surrounding the preferential treatment of agricultural lands.

The validity for the preferential treatment of agriculture can be established from three different standpoints: a) economic benefits; b) the virtue of a self sustained agricultural market; c) amenity value.

A. *Economic Benefits*

The following are highlights of the agricultural trends from 1958 to 1968.[1] The area of land used for sugar production increased by 40,412 acres from 221,683 in 1958 to 262,100 acres in 1968 (18 percent); pineapple acreage has decreased 5,400 acres from 74,800 in 1958 to 69,400 in 1968 (7 percent); acres of orchard crops have increased 9,121 from 12,379 in 1958 to 21,500 in 1968 (74 percent). The land uses for the State as of 1968 are shown on Table 7.

The general agricultural trend can be measured in dollars as well as acres and compared with the overall economy (Table 8). Although there was an increase in agricultural output from 1959 to 1967, that was of decreasing significance in relation to other major sources of income. However, the agricultural industry has the third largest value, after defense and visitor expenditures. This is a critical role in the diversification of the economy and prevention of an over-dependence upon visitor and defense expenditure. For many years agriculture was the major income source in Hawaii and the dangers of a "mono-economy" were frequently voiced. To simply replace agriculture with the visitor or defense industry would result in little progress toward a well balanced and adequately diversified economy.

The economic value of the agricultural industry is not properly measured in terms of dollar output alone. In 1967 the sugar and pineapple industries alone were responsible for employing 21,490 persons and the estimated value of all agricultural products was $374,417,000.[2] It is also estimated that each dollar has a multiplier effect of 1.6 which means that the industry as a whole could be valued at almost $600,000,000.[3] Despite these facts it is often indicated that agricultural uses cannot survive against the pressures of urbanization. The question is not one of "either-or", however, and the preferential treatment of agriculture through zoning is a means for directing development to areas of non-productive uses. The benefits of such direction were indicated in a study done in 1961,[4] although the precise figures used for the study no longer apply in 1969, the principles are well founded and the conclusions still valid:

1. The conversion of waste or marginal lands to urban use instead of productive agricultural lands results in significant benefits to the general economy of the State.
2. Taxes realized from the conversion of marginal waste lands to urban uses, as described in No. 1 above, represent virtually net gain to the tax accounts of the State.
3. As a result of urban encroachment increased taxes on the adjacent agricultural lands leads to uneconomical agricultural operations.

B. *The Virtue of a Self-Sustained Agricultural Market*

Hawaii has specific soil and climatic conditions which are clear limitations to the production of certain crops. When speaking of a self-sustaining local market, it must be acknowledged that this can only refer to those crops which can reasonably be grown in Hawaii. The "Plan for Agricultural Development in Hawaii"[5] gave the following figures on diversified agriculture.

Present Diversified Crop Acreage	16,330 Acres
Harvested Acres Needed	6,344
Acres Needed for Fodder Crops	30,000
The Total Land Needed for a Reasonably Self-sustained Local Market	52,674 Acres

The figures are not claimed to be precise. They are based on Hawaii yields-per-acre which are about one-third lower than California yields per acre. Thus, any extensive application of more sophisticated technological methods could considerably reduce these figures.

Even with present practices, however, the acreage required for a reasonably self-sustained local market is remarkably small in light of the land area presently used for agricultural purposes, a fact which points out the export bias of the industry.

The figures do not include an acreage for grazing. There are presently 1,160,300[6] acres of grazing in the State, constituting 29 percent of the State's land area. This acreage is inadequate in terms of producing a self-sustaining yield. Production methods would have to change so radically to achieve that level that it is not generally considered economically feasible or even tenable.

In terms only of those commodities which can reasonably be considered, the acreage required is relatively small and could be accomplished within the existing Agriculture District by a change in the production emphasis. The opportunities for bringing presently uncultivated land into economically productive diversified crop production are so slight as not to significantly affect the acreage figures.[7]

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[1] 1958 figures taken from *The State of Hawaii Data Book*, Department of Planning and Economic Development, 1968. 1968 figures are from *Proceedings, Land Study Bureau*, Land Classification Seminar, January 1969.

[2] State of Hawaii Data Book, Department of Planning & Economic Development, 1968.

[3] Ibid.

[4] *Facts Pertaining to the Protection and Zoning of Rural, Agricultural and Urban Lands Within All Counties*, Hawaii State Planning Office and Harland Bartholomew & Associates, March 1961.

[5] *A Plan for Agricultural Development in Hawaii*, prepared by the Department of Agriculture, 1966.

[6] Taken from the Land Study Bureau, Proceedings, Land Classification Seminar, January, 1969.

[7] A Plan for Agricultural Development in Hawaii, prepared by the Department of Agriculture, 1966.

TABLE 7 DISTRIBUTION OF LANDS BY USE, SIX MAJOR ISLANDS OF HAWAII, 1968 (PRELIMINARY)[a]

Land Use	Acreage by Island						Total Area	
	Oahu	Kauai	Molokai	Lanai	Maui	Hawaii	Acres	%
Pineapple	18,900	2,700	17,300	16,400	14,100	—	69,400	1.71
Sugar Cane—Irrigated	38,200	46,200	—	—	47,800	9,600	141,800	3.51
Unirrigated	2,400	13,000	—	—	—	104,900	120,300	2.97
Vegetable	2,100	300	900	—	1,500	1,900	6,700	0.16
Forage	200	200	—	—	*	*	400	0.01
Water Crops	200	300	—	—	200	200	900	0.02
Orchard	1,700	500	100	—	500	21,500	24,300	0.60
Dairy and Feed Lots	600	—	—	—	100	—	700	0.02
Poultry and Swine	400	—	—	—	*	*	400	0.01
Miscellaneous Uses	*	*	*	—	400	—	400	0.01
Recreation	5,100	11,300	400	100	900	800	18,600	0.46
Idle Agricultural Lands	7,900	300	2,300	—	1,300	1,700	13,500	0.34
Grazing	38,400	53,800	86,800	—	188,200	793,100	1,160,300	28.69
Game Management	—	—	—	67,300	—	19,200	86,500	2.14
Forest	29,900	38,800	2,000	6,000	20,400	197,500	294,600	7.28
Forest Reserve	118,100	158,000	48,300	—	155,900	708,800	1,189,100	29.40
National Park	—	—	—	—	17,700	211,300	229,000	5.66
Federal Land (Military)	34,800	1,900	300	—	—	—	37,000	0.92
Pali Land	23,700	22,300	7,500	—	10,200	421,100	484,800	11.99
New Subdivisions	2,400	—	—	—	—	74,300	73,700	1.90
Urban—Civilian	37,700	4,400	1,100	400	6,300	13,300	63,200	1.56
Federal	17,500	200	—	—	—	*	17,700	0.44
Water	6,500	1,000	100	—	400	*	8,000	0.20
Grand Total	386,700	355,200	167,100	90,200	465,900	2,579,200	4,044,300	100.00

*Less than 50 acres.

[a]Land Study Bureau, *Proceedings, Land Classification Seminar,* January, 31, 1969, University of Hawaii, Honolulu, Hawaii.

TABLE 8 VALUE OF SELECTED AREAS OF THE ECONOMY: 1958 TO 1967

Subject	In millions of dollars										Percent increase	
	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1958 to 1967	Annual average
Total agricultural output[a]	276.4	301.4	290.1	307.5	317.2	355.8	338.9	349.5	368.2	374.4	35.5	3.9
Defense expend	327.4	338.0	373.1	401.9	375.8	368.6	415.9	460.0	517.0	600.0	+ 83.3	7.0
Visitor expend	82.7	109.0	131.0	137.0	154.0	186.0	225.0	265.0	302.0	400.0	+383.7	19.1
Value of construction[b]	174.4	206.8	268.5	267.3	257.0	265.2	302.9	338.6	392.4	346.8	+ 98.9	7.9
Value of mineral produced[c]	6.3	7.6	9.3	14.6	14.8	15.3	19.6	20.8	20.8	—	+230.2[d]	16.1[d]

[a]Total value of sugar and pineapple products. Total value of diversified crops and livestock.
[b]Total value of construction put in place in Hawaii.
[c]Includes the value of cement, gem stones, lime pumice, sand and stone and clays.
[d]1958-1966.
Source: *The State of Hawaii Data Book,* Department of Planning and Economic Development, 1968.

Because of increasing population there is likely to be a decrease in the area of land for agricultural practices. With an increase in the acreage needed for a self-sustained market there may be some prudent virtue in endeavoring to achieve the latter.

C. *Amenity Value*

Amenity values in terms of open space or the mere beauty of well managed farm lands are difficult to translate into dollar values. Thus we are deprived of one of the basic means by which we make comparisons and deduce priorities.

Such a handicap should not, however, deter one from the recognition of these values and a realization that people across the nation are voicing an ever increasing concern for the diminishing open spaces of America. Agriculture at least affords some dollar returns while satisfying, in part, a need for open space.

A failure to acknowledge the peripheral values of agriculture may have some unique consequences in the State of Hawaii. An island state cannot readily depend upon its neighbors to assist in the provision of scenic resources. Furthermore, the history of Hawaii is so interwoven with its agricultural history that it seems highly likely that the visitor industry would suffer if this factor were not neglected. It is hard to imagine Hawaii without pineapples and sugar cane.

D. *Summary*

The State Agriculture Plan, presently being developed by the Department of Planning and Economic Development, and due for completion in 1970, should clarify some of the questions as to the economic future of the agricultural industry in Hawaii. Is it possible to eliminate imports of certain products such as pork, beef, potatoes and tomatoes? Is it possible to expand existing successful export crops such as sugar and macadamia nuts? Is it possible to develop new commodities for export?

Meanwhile, however, judgment must be made according to the best available information. While none of the arguments for the preservation of agricultural land presented so far may have an absolute or proven case, together they present a convincing argument. This is not to say that there may never come a time when urban use of presently agricultural land will not represent the best interest of the people and the State of Hawaii. However, the zoning of prime agricultural lands in an endeavor to preserve them and direct urban uses to less productive or marginal lands is unquestionably valid and should remain a prime objective of the Land Use Law.

As competition for these prime lands increases, the preferential treatment through tax benefits offered by the Land Use Law and agricultural zoning may prove inadequate to insure the preservation of agricultural land. It remains to be determined whether subsidies would be valid under these circumstances. The preservation of agricultural land may not be an absolute and proven cause in economic terms. However, benefits will accrue from the fact that preservation of agricultural land will assist in directing the development of less valuable and otherwise undeveloped lands. When such benefits are the determining factors, then other uses should only be permitted to replace agricultural uses in accordance with adopted State or County General Plans.

II. REGULATIONS FOR AGRICULTURE DISTRICTS

In the administration of Agriculture Districts, additional issues have been raised. They all constitute a part of the same major question; do the existing regulations governing Agriculture Districts achieve the objective of preserving prime agricultural land?

A. *Minimum Lot Size*

Land use types have always had certain restrictions within the Agriculture District. Residential uses are permitted, and only as a result of the past legislative session has the lot size been established at a one acre minimum unless the county has imposed greater restrictions. However, one acre lots are not agricultural in emphasis, although agricultural practices may be conducted within the confines of such a small area. If Agriculture Districts are freely subdivided into one acre lots and used for residential purposes, then clearly the objective of preserving prime agricultural land will not be fulfilled and the term Agriculture District would be a misnomer. Furthermore, to permit extensive residential development at such low density is the surest way to devour Hawaii's landscape and aggravate, beyond repair, the land shortage problem.

The average size of a diversified crop enterprise is 5.8 acres.*

Thus a minimum lot size of five acres in Agriculture Districts would typically cause no hardship to small farmers by rendering their lots non-conforming. At the same time five acres probably approximates the minimum acreage at which any agriculture practice can economically function.

*A Plan for Agricultural Development in Hawaii, prepared by the Department of Agriculture, 1966. Note: an "enterprise" refers to production of a specific product. One farm may have more than one enterprise going on at the same time.

B. *Permitted Uses*

There are certain other uses which have been permitted in Agricultural Districts which appear to work in opposition to the purpose of the Land Use Law.

1. *Public Institutions, Buildings and Utilities*

Within this group are such specific uses as schools, universities, colleges and churches. All of these uses are primarily urban in character and are to varying degrees generators of associated urban activities and uses. The consequence of permitting such uses in Agriculture Districts is clear. Not only do the permitted uses themselves have the potential to remove large areas of agricultural land from production, but they also generate a competition for the surrounding areas in which agriculture is invariably the loser. A clear example is at Palani Junction in Kona, Hawaii; a public school was built in the Agriculture District, and the school is now surrounded by urban zoning. Only those public institutions, buildings and utilities that are necessary for the pursuit of agricultural practices should be permitted in the Agriculture District. Such uses not related to agricultural practices should be approved only after specific consideration has been given to each case through the special permit process.

2. *Recreation Uses*

The Law specifically provides for "services and uses accessory" to obvious agricultural uses, and "open area recreational facilities". The term "open area recreational facilities" is subject to a variety of interpretations. The intent behind the words, however, must surely have been to enable the multiple use of lands within the Agriculture District without sacrificing anything of the major purpose of the district—the preservation of prime agricultural land. Those recreation activities which are clearly compatible and not competitive with agricultural practices are those which should be permitted. The Law should be clarified on this point and the regulations changed to exclude certain recreation activities. Golf courses in particular should be excluded from the Agriculture District except by the authority of a special permit. Golf courses with associated activities frequently cover as much as 150 or 200 acres of land. To permit the removal of such a large area of land from agricultural use is contrary to the intent of the Law. Furthermore, golf courses, like schools, tend to be generators of urban uses. Indeed, the contemporary practice in golf course design is to incorporate residential uses with the golf course in what is often an intricate and complex manner. Such an intermixing of compatible uses takes maximum advantage of the land

Agriculture and Conservation Districts
Hanalei Valley, Kauai

available and is a highly commendable practice. Neither golf course nor housing, however, can fairly be considered agricultural use.

3. *Determination of Agriculture District Boundaries*

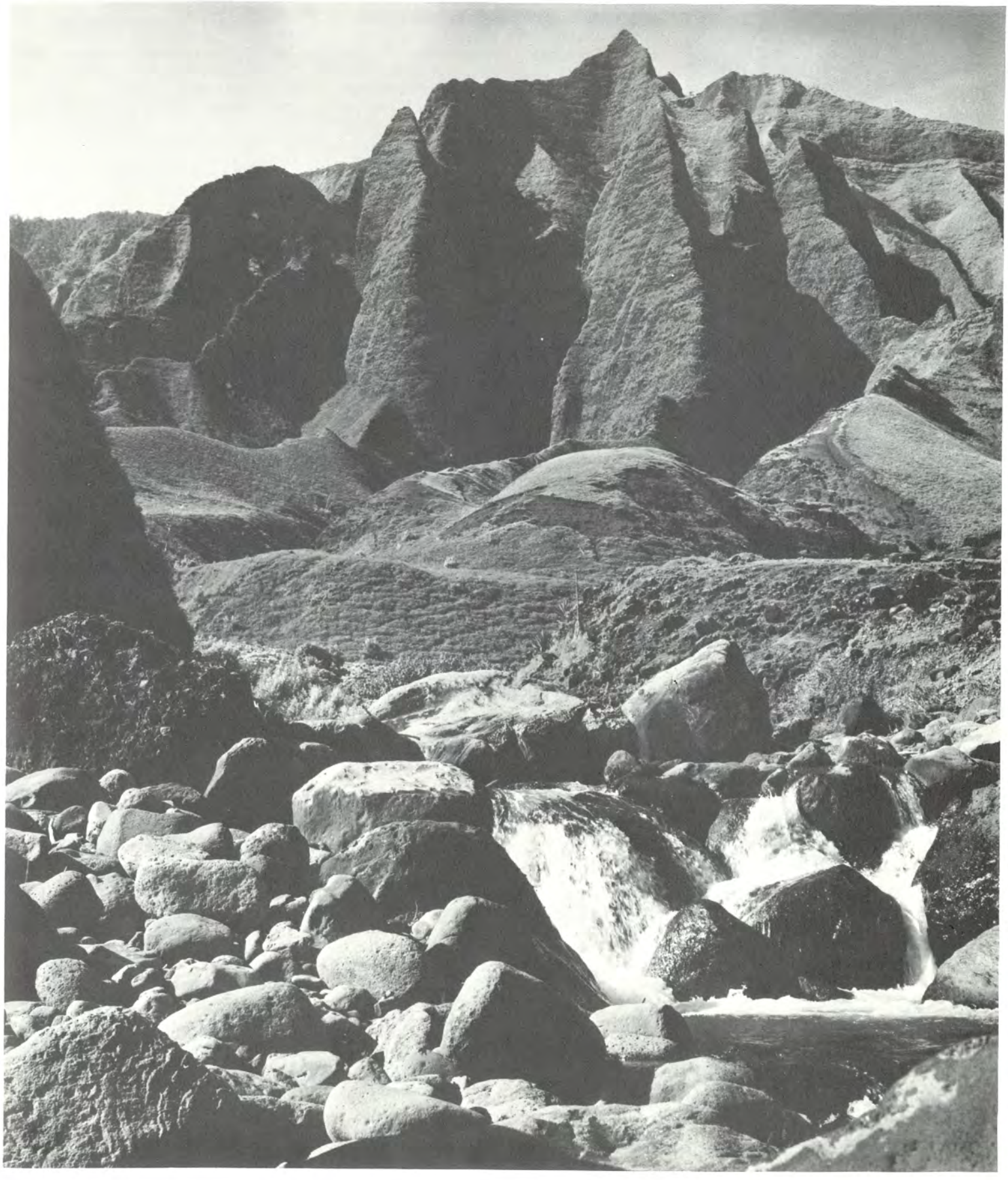
In the determination and review of both Agriculture and Conservation Districts, a regionalizing process was employed. For the Agriculture Districts, two maps were produced:

1) Existing agricultural uses as shown in the General Plan Revision Program and amended according to information gathered from aerial photographs, landowners and field inspection.
2) A classification of land according to its agricultural potential as determined by the Land Study Bureau according to a consideration of soil fertility, topography, temperature, moisture, sunshine, wind exposure, elevation, geology and ground water resources. In the case of Molokai, specific consideration was also given to the agricultural potential with irrigation in an endeavor to reflect the recent development of water resources on the island. In the case of the Island of Hawaii, a classification of land according to its potential for grazing was used to reflect the predominance of this agricultural practice on the island. Lands suitable for cultivated agricultural practices are highly suitable for grazing. Information for the Island of Hawaii was obtained from a study done by the United States Department of Agriculture Soil Conservation Service for the State Department of Land and Natural Resources. The fact that the Land Study Bureau has now completed a detailed land classification for all islands was an invaluable aid in this part of the study. It is one of the rare instances where information was available at a consistent level of accuracy throughout the State.

These two maps comprised the primary determinants for the Agriculture District. They were combined to form a single composite map which was then compared to the existing Agriculture District boundaries. Where agricultural determinants showed up outside of the district or where large areas with a complete absence of agricultural determinants showed up within the Agriculture District, these areas were examined in the field to determine a more appropriate location for the boundary according to definable physical elements which can readily be identified on the ground. The specific recommendations resulting from this process are discussed later and shown on the accompanying maps.

CHAPTER 9 / CONSERVATION DISTRICT ISSUES

Conservation District
Kalalau Valley, Kauai



Conservation and Urban Districts
Kuualii Fishpond
Anaehoomalu Bay, South Kohala, Hawaii

I. INTRODUCTION

We found more confusion and friction throughout the State over the purposes and administration of the Conservation Districts than any other single element of the Land Use Law. On one side are those who think that lands in Conservation Districts cannot be developed or "used" and on the other side are those who think that the Land Board of the Department of Land and Natural Resources is far too permissive and "developer oriented" in its granting of applications for uses in the Conservation Districts.

The questionnaire respondents showed little knowledge of the permitted uses under the multiple use concept. (See Questionnaire in Appendix E, Question No. 14) There is also a rather common misconception that only State owned lands are in Conservation Districts. Table 9, however, indicates that approximately one-third is in private hands.

The County planning agencies of the neighbor islands expressed dissatisfaction with the fact that large areas of their islands in Conservation Districts do not come under their local planning jurisdiction. They are particularly disturbed when significant developments are approved in Conservation Districts without receiving the county's consideration.

Questionnaire respondents indicated a considerable split in opinion when answering the question, "Who should be responsible for the regulation of each District?" (See Appendix, Questionnaire No. 13) Here 29 percent that the Land Use Commission should administer the Conservation Districts while only 32 percent favored the present arrangement. Clearly where there is so much misunderstanding and friction, changes of some kind are in order. These seem to lie in the direction of educating the public in the meaning of conservation and the Conservation District and in improving the administration of these districts.

As a background to the discussion, it is well to bear in mind that Hawaiians are almost unanimously concerned about their natural and scenic resources. Those interviewed and those who returned questionnaires indicated that there is more agreement for conservation and preservation of natural and scenic resources than any other issue. In the highest response to any query, 93 percent of the questionnaire respondents agreed with the statement, "Preservation of scenic and natural resources of the county should receive strong emphasis in government land use planning" (Question No. 29).

TABLE 9 OWNERSHIP OF CONSERVATION DISTRICT LANDS[a]

	Conservation District	"GU" Subzone[b]	"RW" Subzone[c]
Private	613,871 A.	589,607 A.	24,264 A.
State	915,466 A.	835,558 A.	79,908 A.
Federal	262,433 A.	259,250 A.	3,183 A.
Hawaiian Homes	42,841 A.	33,799 A.	9,041 A.
County	6,794 A.	4,779 A.	2,016 A.
TOTALS	1,841,405 A. (45% of State area)	1,722,093 A.	118,412 A.

[a] As of June 1, 1965, DLNR Planning Office

[b] General Use

[c] Restricted Watershed

II. THE DEFINITION OF CONSERVATION

A. *From the Law:*

Act 187, Session Laws of Hawaii, 1961: "Conservation means: Protecting watersheds and water supplies; preserving scenic areas; providing parkland, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry and other related activities."

98H-2, Session Laws of Hawaii, 1963: "Conservation Districts shall include areas necessary for protecting watersheds and water sources; preserving scenic areas; providing parklands, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry and other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

The Law uses the verbs: To protect; to preserve; to provide; to conserve; to prevent. It also provides for related activities and "other permitted uses not detrimental to a multiple use conservation concept."

B. From Regulation No. 4 of the Department of Land and Natural Resources which presently administers Conservation Districts:

> *"Conservation:* A practice, both by government and private landowners, of protecting and preserving, by judicious development and utilization, the natural and scenic resources attendant to lands within the State of Hawaii so as to insure optimum long-term benefits for the inhabitants of the State of Hawaii."

This definition, while recognizing protection and preservation, directly states that the Department of Land and Natural Resources will practice conservation by development and use. Therefore, it is necessary to determine those practices (that is, to define the *kinds* of development) in order to give qualifications to this definition. For instance, such existing permitted uses or practices as airports, hotels and military bombing and maneuver imply a peculiar meaning for "conservation" which should be clearly explained.

Much confusion seems to be the result of an emotional reaction that conservation implies hoarding or freezing up of certain lands; in other words, strict preservation.

C. *More Definitions*

To Conserve—Pertains to the wise use of something valuable that one already has, with the suggestion that it will be

difficult to replace once it has been used up.[1]

Conservation—Planned management of a natural resources to prevent exploitation, destruction or neglect.[2]

To Preserve—Emphasizes keeping something that is valuable exactly as it is without change, and, in some cases, even without using it at all. It suggests greater urgency and, in contrast to "conserve" may suggest that the item in question is literally impossible to replace, once it is gone.

The Conservation District is intended to and presently functions as a management tool for both the conservation and preservation of certain valuable resources. Only in isolated instances is strict preservation the need and intent, i.e., Diamond Head, Haleakala crater and City of Refuge.

III. THE MULTIPLE USE CONCEPT

The Land Use Law recognizes and endorses the "multiple use concept." The Department of Land and Natural Resources also recognizes this concept. It is perhaps best expressed by the following definition and discussion from "A Multiple Use Program for the State Forest Lands of Hawaii", Department of Land and Natural Resources, Division of Forestry, January, 1962.

> "Multiple Use means the management of forest and related land in a manner that will conserve the basic soil resource, while at the same time producing high-level sustained yields of water, timber, forage, recreation and wildlife, harmoniously blended for the use and benefit of the greatest number of people.
>
> . . . kinds of recreation particularly consistent with multiple use management: hunting and fishing, motor drives through the forests, visiting historical sites and vista points or lookouts, photography, picnicking, camping, hiking, horseback riding, mountain climbing, swimming in fresh water streams and ponds, and study of natural areas. The State forest lands are diverse enough to provide all these recreational services and many more."

From the above discussion it should be reasonably clear that the Conservation Districts are intended to be "used" for the most part. Regulation No. 4 of the Department of Land and Natural Resources, which will be discussed, was clearly designed to provide for the administration of this "use".

IV. CRITERIA USED FOR RECOMMENDING REVISIONS TO THE CONSERVATION DISTRICT BOUNDARIES

In our analysis of areas to be considered for inclusion into the Conservation Districts we closely followed the provisions of the Law. Maps were drawn for each island showing areas of more than 20 percent slope, potential tsunami inundation zones, existing and proposed parks, sandy and seasonably sandy beaches and generalized scenic areas and sites. In addition to these criteria, information was received from appropriate State agencies relative to areas of special historic importance, wildlife habitats and endemic plant zones. The shoreline boundaries to be described later were made a part of the recommendations. The Conservation District boundaries adopted in 1964, as modified through subsequent years, were compared with the above information and where conflicts occurred, additional studies including field investigations were made.

The final boundaries are the Land Use Commission's judgement as a result of considerable input of information from studies, site inspections, information received at the public hearings, talks with landowners and the Commissioners' own personal knowledge and experience.

Two studies provided the principal information for designating shoreline resources. An unpublished draft titled, "Hawaii Seashore and Recreation Areas Survey", 1962 by the National Park Service provided a checklist with descriptive data on the beaches and park areas of local, State and national significance. The general development plan, "Hawaii's Shoreline", 1964, by the Department of Planning and Economic Development is a major exposition of the issues, problems and aspirations for the State's shoreline. It provided valuable statistical information as well as desirable development and conservation direction.

For scenic areas and sites, the work concurrently under way by Robert Wenkam was the principal source, and for general recreation resource data, the "Comprehensive Outdoor Recreation Plan", in process, by Donald Wolbrink & Associates, Inc., and Arthur D. Little, Inc., was made available in preliminary form.

The primary source of information for identifying and examining potential flood and tsunami areas was, "The General Flood Control Plan for Hawaii", 1963, by the Division of Water and Land Development. This Division of the Department of Land and Natural Resources is the official flood control agency of the State. Its jurisdiction for zoning applies to Conservation Districts, with the jurisdiction of the counties in flood plain zoning being supreme in Urban, Rural and Agriculture Districts. The Flood Control Plan specified 73 existing and planned programs throughout the State. Every program recommends that a flood plain and/or tsunami zone be established.

Although the Land Use Commission and staff consider the information and recommendations of this plan, there is little contained in it that provides an easy avenue to direct zoning action. For instance, flood plains are not delineated and tsunami zones are very generalized. In the absence of more precise information, and with the presence of a tsunami alarm system, the tendency is to minimize the dire warnings contained in both history and the plan. The issues are so important and complicated that the counties, Land Use Commission, Department of Planning and Economic Development and the Department of Land and Natural Resources should get together to decide who should do the necessary work and who should administer the subsequent districts and work.

Where small properties abut the coastline or lie completely or almost completely within danger areas, the placing of them in Conservation or Agriculture Districts when there are very realizable potentials for urban uses may appear to some as a "taking without just compensation." However, since one of the clear-cut functions of zoning is to protect people against their own carelessness, ignorance or greed, failure to honor the recommendations of the Flood Control Plan is difficult to defend.

Forest and Water Reserve Zones provided the initial base for the Conservation Districts and are still an important consideration in their composition. In some cases the Conservation Districts expanded upon these boundaries; in other cases, principally where grazing was carried on, portions of the zones were placed in the Agriculture Districts. State Division of Forestry personnel and private landowners knowledgeable in the land use practices of the area were the primary sources of information in these areas.

V. SHORELINE CONSERVATION

There can be little doubt that Hawaii's most precious resource, next to life sustaining elements and its people, is its seashore. Almost everything and everyone relates to the ocean front.

The interviews indicated nearly all were concerned about the shoreline as a first priority resource. Of the respondents to the questionnaire, 89 percent agreed with the statement, "Both the conservation and use

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[1]S. I. Hayakawa, *Modern Guide to Synonyms*

[2]Webster's Dictionary

of the waterfront should be planned together."

One of the accomplishments of the current study was the recommendation and subsequent inclusion of a new and uniquely Hawaiian definition of the shoreline in the Land Use District Regulations. Another was the clear-cut action of the Land Use Commission in reaffirming that all fishponds are to be in the Conservation District.

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 of wave action" at varying distances relating to topography and other use factors. A number of criteria have been developed as the result of a search for physical boundaries that more easily and better designate shoreline conditions from adjacent agricultural uses and districts. Similar problems do not exist in relation to Urban or Rural Districts along the sea because the Land Use Commission has designated shorelines in these situations as part of the Urban or Rural Districts and these areas are therefore under county control.

Four major conditions have been recognized and recommendations based upon these conditions have been made for the new Conservation District boundaries.

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.

It has become increasingly clear during the course of this study that an action plan should be prepared for the conservation and development of the Hawaii shoreline. This is an agreement with the conclusions of the State General Plan Revision Program, Part 5, page 48, where it is stated:

> "This is an appropriate field for the preparation of an 'independent functional plan' (as defined in the Summary Volume, Part 1, of these documents). Such a plan can help to reduce conflict and ensure proper and satisfying use of this resource. The plan would not only serve as a heuristic device, but as an important part of long-range comprehensive physical planning for the State. 'Hawaii's Shoreline; prepared by the Department of Planning and Economic Development in 1964, is the first step in functional planning for this area."

VI. THE CONFLICT BETWEEN AGRICULTURE AND CONSERVATION DISTRICT DESIGNATIONS

In applying the criteria of the Land Use Law and District Regulations, many areas of land fit well in both or neither of the Conservation or Agriculture Districts. This was difficult in the original boundary review and presented difficulties in this review. It has been a source of puzzlement and ridicule when lava flows with little or no grazing potential have been placed in Agriculture Districts, and it provides part of the public confusion. It is recognized that the Law does not specifically provide for these marginal lands which have been called wastelands, residual areas and a number of other names for lack of better definition. If the subzones of the Conservation District were designed to allow for these kinds of areas, the problem could be resolved administratively. The Law would not have to be changed.

When such situations arose in determining boundaries under the present review, they were resolved by establishing priorities. Where agricultural practices were intensive and not destructive to natural resources, they received priority for Agriculture Districts. Where agricultural uses were marginal, such as in the case of a forested area partially grazed, and where the conservation values were highly significant, then these received priority for Conservation Districts. Where this system worked, it was fine, but where there was vague definition and where areas suitable for urban development were classified Conservation, or lava flows were classified Agriculture, it became obvious that a gap existed. When the values or lack of values were equal or there were other factors present, difficult and sometimes inconsistent choices had to be made.

In addition to the above conflict arising from loose criteria, one of the principal "other factors present" was a conflict arising from a "choice" of controlling agencies. With the Department of Land and Natural Resources in complete control of land uses in Conservation Districts, and the Land Use Commission's sharing control with the counties over Agricultural Districts, many owners and officials found their judgment being conditioned by what they thought the various potentials might be, not by what they were. To make the situation more complex to judge, one can speculate about how the tax administrator might judge the differences between the zoning and permitted uses of the two districts. At a joint work session with State and County planning officials and representatives of the Department of Taxation, this provided subject matter for one of the more frustrating discussions because of the absence of a ready solution.

VII. ANALYSIS OF REGULATION NO. 4 OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES

A. *History*

Regulation No. 4 is the instrument under which land uses are regulated in the Conservation Districts. The Regulation was authorized by Act 234 (Section 19-70 R.L.H.) in 1957 and adopted by the Board of Land and Natural Resources seven years later. The sections of the Act pertaining thereto are as follows:

1. "The (department) as soon as feasible after (July 1, 1957), shall undertake to review the boundaries of all forest and water reserve zones within each county with the view of making necessary corrections and establishing subzones within such zones, and fixing permissible uses therein. The (department) shall, after such review, prepare a proposed set of regulations, complete with necessary maps, establishing zone and subzone boundaries, and designating permitted uses therein."
2. "Scope of zoning regulations. The (department) shall, after notice and hearing as provided herein, adopt such regulations governing the use of land within the boundaries of the forest and water reserve zones as will not be detrimental to the conservation of necessary forest growth and the conservation and development of water resources adequate for present and future needs. The (department) by means of such regulations may establish subzones within any forest and future needs. The (department) by means of such regulations may establish subzones within any forest and water reserve zone and specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use."

Adoption of Regulation No. 4 came one month before the Conservation District boundaries were established by the Land

Use Commission in 1964 pursuant to Act 187, the "Land Use Law". The Regulation and maps accompanying it divided the Conservation District into two areas with two sets of permitted uses: an "RW" (Restricted Watershed) Conservation Subzone; and a "GU" (General Use) Conservation Subzone.

From the time of boundary adoptions in 1964 to September, 1968, 82 use applications were acted upon, 76 of which were approved and 6 of which were denied. In some of the approved cases it has been felt by a number of people concerned that the administration of the Regulation tended to circumvent the purposes of the Land Use Law when large acreages were involved. Three instances were cited in a Land Use Commission meeting by Commissioner Wenkam, as follows:

> "1) Waialae-Iki special permit for use of 26 acres of conservation lands for subdivision purposes; 2) Lihue Plantation special permit to grow sugar cane on 372 acres of conservation land; 3) Church College of Hawaii special permit for 100 acres to establish a church college on conservation lands."

B. Appearance of Special Subzones

Regulation No. 4 was amended by the Board of Land and Natural Resources on April 26, 1968 by the addition of three special subzones to accommodate Hawaii Loa College, Valley of the Temples Cemetery and Kapakahi Ridge Convalescent Home—all on Oahu. These uses are not included as "Permitted Uses" in the Regulation, so were provided for by establishing special subzones rather than amending the "Permitted Uses".

Previous actions concerning these three projects are interesting and particularly the case of the convalescent home. On two different occasions, in 1964 and 1966, petitions for boundary changes on this property were denied by the Land Use Commission. In 1965 the Board of Land and Natural Resources denied a use application. This was repeated in 1967; but at that time a temporary variance was issued after which, upon reapplication, the final subzone was established. The use applications for both the Cemetary and the College were approved in 1966 but the subzones were not established until 1968.

As it now stands, in its amended form, the Regulation includes the two original subzones (GU and RW) and three special subzones (educational use, cemetery and nursery or convalescent home). Multiple subzones, as a concept, are considered desirable by this consultant and by others as we shall see, but the present combination of generalized areas and specific use areas is a highly questionable precedent to follow.

C. The Dangers of Permissive Uses

Some of the "Permitted Uses" in the "GU" Conservation Subzone might be construed to border on urban uses, particularly if the kind and level of development is permitted to escalate in scope and density beyond a certain point. For instance, two of the "Permitted Uses" read as follows:

> (b) "Cabins, residences, recreational-type trailers and accessory buildings of a non-commercial nature.
>
> (c) "Resort and related residences; hotels and restaurants; guest or resort ranches; country clubs; recreational-type trailer parks; camps; scenic attractions; playground and athletic fields; target ranges, and golf courses; small boat harbors and docks; and other related and appropriate resort and recreational facilities and structures operated for public agencies or for commercial purposes."

In these two cases it is easy to imagine "residences" including subdivisions, and "resort and related residences", etc., becoming large urban concentrations through a process of inevitable growth during which schools and commercial structures might become necessary because of the need to properly serve the people living there.

Permitted (e) "Governmental uses, to include community, public and public service use and/or buildings", can easily accommodate many things and generate other use demands in the neighborhood as can airports such as the new proposed one at Keahole Point, Hawaii County. This particular use cannot be considered remotely consistent with the concepts of the Conservation District set forth in Act 205. There can be little doubt that an entire city will grow up around the airport in time, complete with maintenance shops, support industries, housing facilities, hotels, motels, restaurants, acres of parking lots, access roads and interchanges, service stations, supermarkets and the like.

If asked, most people would concur in the use of Keahole Point as an airport site. But this also raises the question of how it is that the area is in a Conservation District if it is so suitable for major airport and urban use?

The fact of the matter is that the Conservation Districts contain large areas that are suitable for urban development. These areas should be identified, and more orderly processes should be provided for their development and rezoning when they are needed than the present permitted use structure under Regulation No. 4 provides.

Though they do not appear to be as directly permissive as those in the "GU" Subzone, the permitted uses in the "RW" Subzone are just as permissive in their own way. These uses are:

> "(a) water and forestry resources development (b) installation and maintenance of transmission facilities; and (c) any government program or activity."

Transmission facilities and government programs and activities can include, and frequently do, hideous structures perched along the tops and sides of mountains. These installations which intrude upon the public open spaces, views and vistas as a unique twentieth century blight simply should *not* be permitted without sensitive design and location studies. Incidentally, these uses are not subject to the rather stringent conditions established to guide the uses permitted under the "GU" regulations. They are apparently under no control except what might be administratively arranged.

D. State and County Conflict

A continual point of irritation exists between administration of county planning and administration of land uses within the Conservation District because this is the only district in which the county has no power whatsoever except that of issuing building permits. The districts comprise huge areas of each county, and this naturally heightens the conflict. The proportions of each county within Conservation Districts are approximately as follows:

Honolulu	34.8 percent
Kauai	48.4 percent
Maui	40.6 percent
Hawaii	47.2 percent

The potential repercussions and implications of this situation are dangerous. The Department of Land and Natural Resources has never had (and may never have) a planning staff large enough to deal with the tremendous land areas and problems facing it. The pressures on these districts will grow with population increases, and the competition for control of decisions will increase, but the decisions may be less and less subject to rational planning.

A possible solution to the issue appears to be to involve the counties in the decision processes within the Conservation Districts. Two possibilities come to mind and there are probably more, perhaps a combination of these. The best solution may not be found easily because of the complex nature of the problem and the fact that changes in the law may be required if the problem cannot be handled administratively.

Solution No. 1. Provide the counties with the same relationship to the Land Board of the Department of Land and Natural

Resources in response to Conservation Districts that the counties now have to the Land Use Commission in respect to the Agricultural Districts. Under this arrangement, certain land uses would be by special permit only and would have to be approved by the county before being considered by the Board of Land and Natural Resources.

Solution No. 2. Prepare a comprehensive general plan for the Conservation Districts to include a range of subzones from those requiring extreme restriction to those requiring moderate restriction. Those areas requiring moderate restriction could be subject to county land use control, but with specified permitted land uses to be predetermined by the Board of Land and Natural Resources. In this case, the Land Board would establish the basic permitted uses and guidelines, but would not be involved in the detailed administration of the moderately restricted conservation subzones except when special permits were required.

E. A Lack of Public Hearings

An additional complaint frequently expressed about Regulation No. 4 and the Conservation District administration is around the absence of public hearings[3] The Law (Act 234) specifically requires public hearings for the establishment of subzones and regulations, but does not require public hearings for use applications for permitted uses (nor does Regulation No. 4). It has been contended that the Board has granted "non-permitted" uses that would not have been allowed had the public been heard. Since there should be no need for public hearings when the applications are for "permitted uses", it would appear that if the argument for public hearings is valid, and we believe it is. It is an indictment of Regulation No. 4's generosity in permitting uses that should not be allowed.

Regulation No. 4 is an over-permissive regulation providing broad discretionary powers. The public has a right to a better documented policy of management, rather than permitting such complete authority to reside within a discretionary body. Public hearings on all use applications, though desirable, are but part of the solution to the problem. The solution also lies in a better regulation, based upon comprehensive planning.

F. Studies by the Department of Planning and Economic Development

In December, 1966, as a result of two years' work by the Scenic Resources Conservation Committee of the Department of Planning and Economic Development, a report called "Guidelines for Land Use Within the Conservation District" was produced. This was a comprehensive effort to establish more precise guidelines than those contained in Regulation No. 4. It began by recommending ten kinds of subzones, ten kinds of reserve areas, ten kinds of recreation areas, and tailoring the uses permitted under regulation No. 4 to these subzones. The recognition of the need for subzones other than "RW" and "GU" points out a critical weakness of Regulation No. 4. This weakness has also been recognized by the Citizen Advisory Group that helped develop the "Goals for Planning" portion of the State General Plan Revision Program.

The following paragraphs from the Program, Part 2 are concerned with the issue of subzones, as follows:

> "In addition, certain scenic areas are of such overriding importance as a part of Hawaii's most precious natural resource, that they should be subject to special regulations. Such areas include Diamond Head and Punchbowl on Oahu, and Mauna Kea on Hawaii. Since these areas are priceless and cannot be duplicated, they must be identified and protected by special regulations, perhaps stricter than those applied in other Conservation Districts, to ensure that they remain a permanent part of the heritage of all Hawaii. Fair compensation should be made to land-owners affected by these regulations. Areas subject to such regulations should be carefully designated by an appropriate advisory group.
>
> "Classify separately lands that are highly susceptible to serious flooding, tidal wave or lava damage within the Conservation District boundaries. These should be slated for possible acquisition by the State or for possible diversion to uses that would not present a serious danger to citizens.
>
> "Classify lands now in Conservation Districts as follows:
>
> Class A—
> purely conservation use for protection of native flora and other wildlife, and scenic or historic values.
>
> Class B—
> lands devoted to modified conservation use such as game management areas, those planted to exotic timber trees, watershed areas, etc.
>
> Class C—
> multi-use lands primarily conservational but under certain conditions eligible for re-zoning for other purposes. Lands in Classes A and B would be ineligible for re-zoning for other than conservational use.
>
> "Designate on zoning maps sites listed by the Hawaiian Historic Sites Commission as most deserving of preservation. These, together with sufficient land about them to insure their integrity, should be barred to re-zoning for other use. Some of these areas, such as South Point in Hawaii County, might be made into historic parks (including the house sites, caves, wells and heiaus)."

G. Need for Planning

One conclusion that comes to mind in reviewing Regulation No. 4 and the previous two documents referred to, is that the regulation and also the recommendations for its administration and alteration are really stop-gap ways of dealing with an unplanned situation. Zoning (or subzones) should be an end product of comprehensive analysis and planning for the preservation and utilization of the Conservation Districts in conformance with the State goals and policies. Regulation No. 4 can be compared in its generality to an "Interim Zoning Ordinance" which is a device for regulating land use while a more permanent ordinance based upon comprehensive planning can be prepared.

VIII. RECOMMENDATIONS FOR PLANNING AND SUBZONING CONSERVATION DISTRICTS

A. Introduction

The magnitude of the gap in the total State planning structure is brought into focus when one realizes that the Conservation Districts comprise approximately 45 percent of the area of the State—45 percent of the State without a comprehensive plan and related land use policy statement. This certainly is one of the first needs, if improvement is to be made in how land uses are to be regulated in the Conservation Districts. While the Department of Land and Natural Resources and the counties should be involved in such a planning study, the Department of Planning and Economic Development, being the planning arm of State government, should be in charge.

B. Recommendations for New Subzones

It is recommended that the following subzones be established by analysis of the Conservation Districts:

Class A:
Lands for preservation and protection of native flora and fauna, and scenic historic or archaeologic values.

Class B:
Lands for conservation of water and timber resources and game.

[3] The 1969 Legislature passed a law, requiring public hearings for commercial uses in Conservation Districts.

Class C:
Lands for conservation and protection of certain individual water sources and water supply areas.

Class D:
Lands susceptible to serious flooding or tsunami damage.

Class E:
Lands allowing more general use (primarily conservation uses).

Class E lands would be eligible for rezoning to another land use district and developed accordingly. Class D lands might also be eligible after hazardous conditions were alleviated or otherwise provided for. Classes A, B and C, however, would be ineligible for rezoning to another land use district.

Basically then, the lands presently within Conservation Districts comprise five distinct classes. These same classes precisely reflect the mandates of the Land Use Law as well; that is, they embody the five resource categories cited in the Law (Section 19-70) for inclusion in the Conservation District (see quotes under each heading below).

Class A:
Areas requiring preservation and protection allowing certain limited uses, e.g. scenic and historic sites, wilderness areas, natural ecosystems of flora and fauna, coastal areas and shorelines; and existing parks or areas necessary for providing future parks wherein uses are limited but often extensive (recreation). As cited by Law: ". . . areas necessary for preserving scenic areas, providing park lands, wilderness and beach areas, conserving endemic plants, fish and wildlife." Such areas could be designated *Limited Use Conservation Subzones.*

Class B:
Areas requiring conservation and management allowing multiple uses; that is, a greater variety of uses, e.g. forest and water resource management, while at the same time producing high-level sustained yields of water, timber, forage, recreation and wildlife. As cited by Law: ". . . areas necessary for forestry and other related activities." Such areas where management implies both extraction and replenishment of resources could be designated *Multiple Use Conservation Subzones.*

Class C:
Areas of water supply requiring conservation through very restrictive controls; that is, critical watershed areas and water sources particularly vulnerable, e.g. watershed areas directly adjacent to urban concentrations, or around water sources such as at the mouth of an intake or water supply area highly susceptible to erosion or pollution if exposed to public or livestock use. As cited by Law: ". . . areas necessary for protecting watersheds and water sources." All forest lands either constitute or contribute to a watershed. It is to the more specific "critical watershed" or vulnerable water source that the law speaks. such areas could continue to be designated as *Restricted Watershed Conservation Subzones.*

Class D:
Areas of hazard to public welfare, due to susceptibility to serious flooding, tsunami or soil erosion, allowing certain uses not detrimental to public safety and welfare. As cited by Law: ". . . areas necessary for preventing floods and soil erosion." Such areas could be designated as *Potential Hazard Conservation Subzones.*

Class E:
Areas not qualifiable in the above classes yet possessing positive value for future controlled development, allowing more general use; that is, areas that could be developed according to specified broad conditions when need arises. As cited by Law: ". . . other permitted uses not detrimental to a multiple use conservation concept." Such areas are really the only ones that should be designated as *General Use Conservation Subzones.*

C. *Criteria for Establishing Subzones*

Following is a breakdown of those principal land types that should be included within each of the five proposed subzones. Consideration is given to (a) criteria from the State Land Use District Regulations for the establishment of Conservation Districts; (b) additional criteria to further supplement and facilitate the definition of the extent and boundaries of each subzone; (c) the administration of each subzone.

1. "LU" Limited Use Conservation Subzone

   a. Lands necessary for the conservation, preservation and enhancement of scenic, historic, or archaeologic sites and sites of unique physiographic or ecologic significance.

      Lands necessary for providing and preserving park lands, wilderness and beach reserves and for conserving natural ecosystems of endemic plants, fish and wildlife.

      Lands used for national or state parks.

      Lands with a general slope of 20 precent or more which provide for open space amenities and are in close proximity to urban areas or possess unusual scenic qualities.

      Lands having an elevation below the maximum inland line of the zone of wave action, and all marine waters, fish ponds and tide pools (such lands should be subzoned as "PH" Potential Hazard Conservation Subzone if susceptible to tsunami).

      All off-shore and outlying islands.

   b. Dense and semi-dense heavy and light sawtimber stands of native forest (as classfied by the Division of Forestry of the Department of Land and Natural Resources in their *Forest-Type Maps)* should be considered for inclusion into this subzone due to their potential value as native fauna habitat.

      "Non-commercial forest pali" lands and "non-forest pali" lands (as classified on the above Forest-Type Maps) should also be considered for inclusion since these rocky cliffs and outcrop areas generally possess scenic qualities. Any existing or potential scientific natural area, e.g. native dry land forest, unique beach vegetation complexes, etc.

   c. This subzone should be administered solely by the Department of Land and Natural Resources primarily through its Divisions of Forestry, Fish and Game and State Parks.

2. "MU" Multiple Use Conservation Subzone

   a. Lands with a general slope of 20 percent or more (when these lands do not possess significant open space amenities and/or scenic values).

      Lands necessary for forestry and other related activities; or, as also stated in the State Land Use Regulations, other lands may be considered, e.g. lands suitable for growing of commercial timber, grazing, hunting and recreational uses.

      Lands undergoing major soil erosion damage and requiring corrective attention (especially when not in direct proximity to

urban areas where public hazard would be an issue, in which case the "PH" Potential Hazard Conservation Subzone should be employed).

b. Lands classified as "commercial forest" on Forest-Type Maps of the Department of Land and Natural Resources, when not already included in the "LU" Limited Use Conservation Subzone.

Lands designated by the Department of Land and Natural Resources (Fish and Game) as hunting areas, unless already included in "LU" Subzone.

c. This subzone should be administered solely by the Department of Land and Natural Resources primarily throgh its Divisions of Forestry and Fish and Game.

3. "RW" Restricted Watershed Conservation Subzone

a. Lands necessary for protecting watersheds, water sources and water supplies.

b. Lands presently subzoned "RW" by the Department of Land and Natural Resources.

Lands around the mouth of a source (intake of water) when such area is easily accessible to man or livestock and when the water is or may be utilized for human consumption.

Lands comprising so called "critical watersheds" due to immediate proximity to urban contrations.

Lands important for their watershed or water supply capability that are susceptible to soil erosion when frequented by man or livestock.

c. This subzone should be administered jointly by the Department of Land and Natural Resources (primarily through its Division of Forestry and where appropriate through its Division of Water and Land Development) and by each respective County Board of Water Supply.

4. "PH" Potential Hazard Conservation Subzone

a. Lands necessary for the protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami or flooding, to volcanic activity or landslides (especially when such lands are adjacent or in close proximity to urban areas and/or are frequently used by the public, with special attention given to recorded tsunami damaged areas).

Certain scenic shore lands that would otherwise be classified as "LU" Limited Use Conservation Subzone for their scenic value, should be included in this District if such hazards exist.

b. No additional criteria necessary for definition.

c. This subzone should be administered jointly by the Department of Land nand Natural Resources (primarily through its Division of Water and Land Development and where appropriate by its Division of Forestry) and each respective County Planning Commission. The permitted uses in this subzone should be established by the Department of Land and Natural Resources and thereafter the county would approve all use applications before transmittal to the Land Board for final approval. The county would have the right to establish more restrictive uses. Such a technique would be identical to the special permit procedure operative now between the counties and the State Land Use Commission for uses requested in Agriculture and Rural Districts. If hazard is eliminated or other suitable arrangements made by the county, these lands could be considered for transfer to another district.

5. "GU" General Use Conservation Subzone

a. Lands with topography, soils, climate or other related environmental factors that may not be normally adaptable or presently needed for urban, rural or agricultural use.

Lands suitable for farming, flower gardening, operation of nurseries or orchards, . . . grazing, hunting and recreational uses including facilities accessory to such uses.

b. Essentially, lands included in this subzone would lack any real priority for preservation or extensive management and conservation.

These would also be lands not subject to extreme natural conditions that would preclude their use or development. (Some lands of 20 percent or more slope could be included in this subzone and developed if certain engineering and quality standards were adhered to.)

In short, these lands should possess positive value for the controlled future development of a broad variety of uses. Consequently, reasonable accessibility to existing settlement should be a positive criteria—areas isolated within the heart of the Conservation District would be better included within a "MU" or "LU" subzone.

c. This subzone should be administered jointly by the Department of Land and Natural Resources (primarily through its Planning Office and its Division of Land Management) and each respective County Planning Commission. The permitted uses of the subzone should be specified by the Department of Land and Natural Resources with provision that the county may exercise more *restricted* uses. Each application for special permits would be through the county before reaching the Department of Land and Natural Resources for final approval. If need dictated, these lands would also be re-zone able to another District such as Urban or Rural.

D. Suggested Permitted Uses Within Conservation Subzones

Following is a breakdown of uses appropriate to each subzone with some discussion of conditions for use. Both "permitted uses" and "conditions for use" from the present Regulation No. 4 have been drawn upon with all additions or modifications to the original *underlined*. Uses not permitted are expressly prohibited.

1. "LU" Limited Use Conservation Subzone

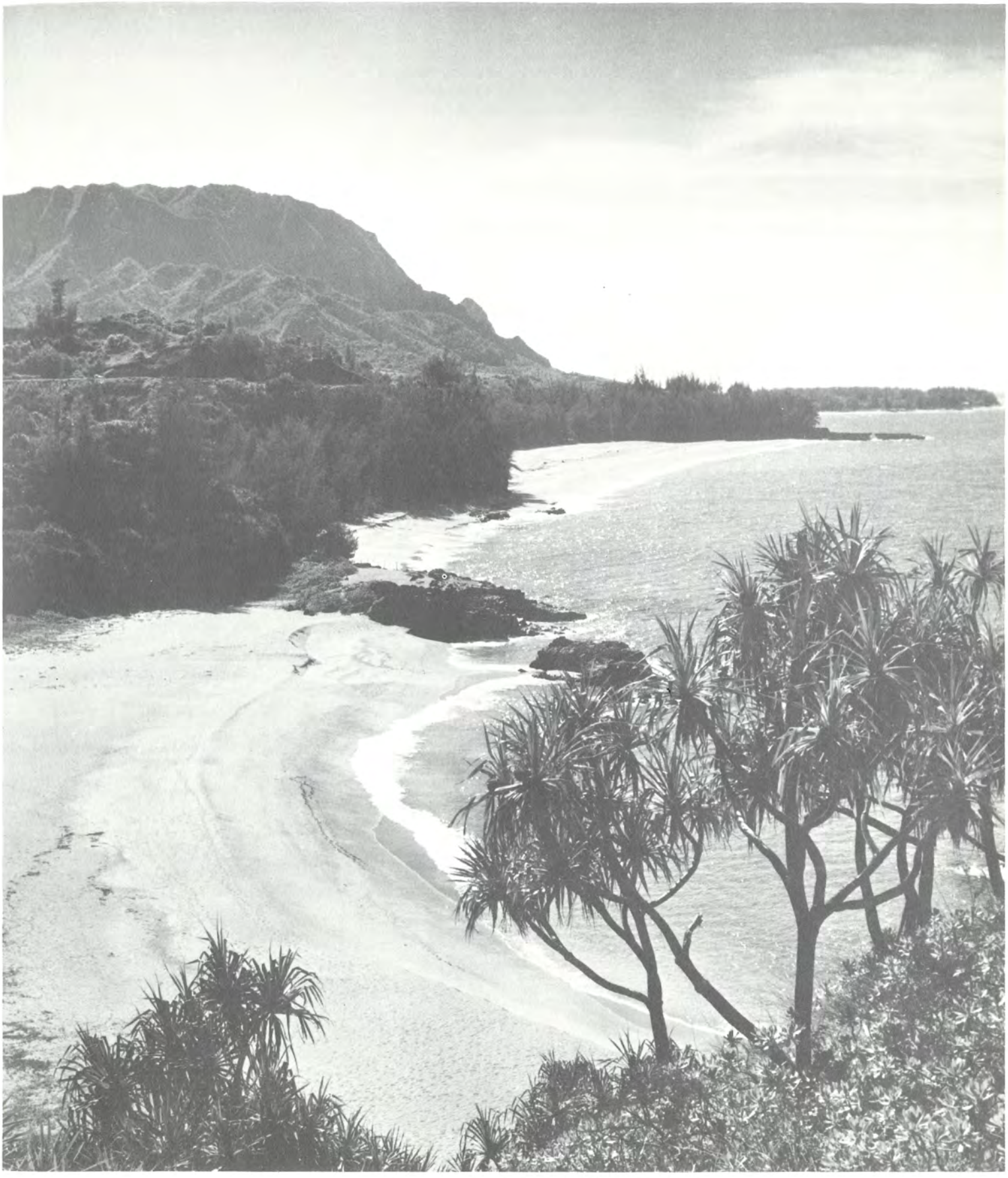
a. Public recreational facilities and areas *limited to* National, State and County Parks, *monuments or landmarks,* historic, *scenic or archaeologic sites, and related day and overnight uses and facilities of State and National Parks.*

b. *Controlled* water and forestry resources development *and management.*

c. Cabins *which are state or federal owned or operating under permit from same,* recreational-type trailers and accessory *facilities and* buildings of non-commercial nature *when such designated areas are inside parks, except in wilderness parks.*

d. Public utility activities for the development, storage, and distribu-

Conservation District
Waikoko, Lumahai Beach, Kauai



tion of water, *according to approved design and site standards.*
e. Road, trail and bridle path.

2. "MU" Multiple Use Conservation Subzone
   a. Public, quasi-public and private recreational facilities and areas, including, but not limited to, State and County parks, *monuments or landmarks,* historic, *archaeologic and scenic landmarks and sites.*
   b. Cabin, residences, recreational-type trailers and accessory buildings of a non-commercial nature.
   c. Guest or resort ranches, recreational-type trailer parks, camps, scenic attractions, playground and athletic fields, target ranges, and small boat harbors and docks, and other related and appropriate resort and recreational facilities and structures operated for public agencies or for commercial purposes.
   d. Public and private utility and similar activities to include areas required for the development, generation, storage, distribution, transmission, receiving, boosting, repeating, maintenance, repair, alteration and related processing of electricity, radio, radar, television, telephone, telegraph, water, sewage, fuel and other similar commodities.
   e. Governmental uses, to include community, public and public service uses and/or buildings.
   f. Military and related service activities not covered in other paragraphs to include, but not to be limited to, training, maneuver, weapons firing and impact areas and similar activities.
   g. Road, trail and bridle path.
   h. *Water and forestry resources development.*
   i. Logging operations and portable sawmills.
   j. Excavation and quarrying and *sand removal.*
   k. *Controlled or restricted* grazing of livestock and other animals *by permit only.*
   l. Tree farming.
   m. Hunting and fishing activities and establishment of areas therefor.
   n. *Introduction of exotic species of flora and/or fauna by special* permit.
   o. *Small* airstrips and heliports and related facilities where shown as a necessity due to lack of other suitable access.

3. "RW" Restricted Watershed Conservation Subzone
   a. Water and forestry resources development *and appurtenant structures.*
   b. Installation and maintenance of transmission facilities *according to approved design and site standards.*
   c. Government *scientific,* recreational *or service* programs or activities *(excluding structures) not detrimental to wise watershed management practices; e.g. hunting by special health permit.*
   d. *Introduction of exotic species of flora and/or fauna by special* permit.

4. "PH" Potential Hazard Conservation Subzone
   a. Water and forestry resources development.
   b. Government uses to include community, public and public service uses and/or buildings, *as long as these uses do not seriously contribute to public hazard.*
   c. Public, quasi-public and private recreational facilities and areas, including, but not limited to, National, State and County parks, *monuments or landmarks,* and historic, *scenic, or archaeologic sites.*
   d. Scenic attractions, playground and athletic fields, target ranges and golf courses, small boat harbors and docks, and other related and appropriate recreational facilities operated for public agencies of for commercial purposes *whose use will not seriously contribute to public hazard.*
   e. Road, trail and bridle path.
   f. Excavation, quarrying and *sand removal.*
   g. *General* agricultural operations.
   h. Grazing of livestock and other animals.
   i. Tree farming.
   j. Hunting and fishing activities and establishment of areas therefor.
   k. Military and related service activities not covered in other paragraphs to include, but not to be limited to, training, maneuver, weapons firing and impact areas and similar activities.
   l. Airstrips and heliports and related facilities, where shown as a necessity due to lack of other suitable access.
   m. *Introduction of exotic species of flora and/or fauna by special permit.*

5. "GU" General Use Conservation Subzone
   a. *Residential subdivisions when in conformity with County General Plans or, in the absence of such, with County Planning Commission approval.*
   b. Cabins, residences, recreational-type trailers and accessory buildings of a non-commercial nature.
   c. Resort and related residences; hotels and restaurants, guest or resort ranches, country clubs, recreational-type trailer parks, camps, scenic attractions, playground and athletic fields, target ranges and golf courses, small boat harbors and docks, and other related an appropriate resort and recreational facilities and structures operated for public agencies or for commercial purposes.
   d. Public and private utility and similar activities to include areas required for the development, generation storage, distribution, transmission, receiving, boosting, repeating, maintenance, repair, alteration and related processing of electricity, radio, radar, television, telephone, telegraph, water sewage, fuel and other similar commodities.
   e. Governmental uses, to include community, public and public service uses and/or buildings.
   f. Military and related service activities not covered in other paragraphs to include, but not to be limited to, training, maneuver, weapons firing and impact areas and similar activities.
   g. Airports, airstrips and heliports and related facilities, where shown as a necessity due to lack of other suitable *location.*
   h. Road, trail and bridle path.
   i. Logging operations and portable sawmills.
   j. Excavation and quarrying *and sand removal*
   k. *General* agricultural operations.
   l. Grazing of livestock and other animals.
   m. Tree farming.
   n. Hunting and fishing activities and establishment of areas therefor.
   o. *Water and forestry resources development.*

NOTE: When proven that lands in a "GU" General Use Subzone have significant potential for grazing or for other agricultural uses, a boundary change should be sought.

When lands in a "GU" Subzone are contiguous to an Urban District or are in a suitable location for urbanization according to County General Plans, a boundary change should be sought.

CHAPTER 10 / URBAN DISTRICT ISSUES

Urban District
Waikiki, Honolulu, Oahu

Urban and Agriculture Districts
Lahaina, Maui

I. POPULATION

The regulations for defining Urban Districts indicate that "sufficient reserve areas for urban growth in appropriate locations based on ten (10) year projections" be provided. Population estimates, projections and interpolations were determined when land use boundaries were drawn in 1964. In preparation for establishing these boundaries the population estimates were interpolated for the base year of 1963, thus establishing the intervals for subsequent boundary review periods.

For the purposes of this review, population estimates were made for the year 1968 using the established base year (1963). The estimates were by county and judicial district. Projections, also by county and judicial district, based on current data and provisional estimates of the Department of Planning and Economic Development, were made for the year 1978. Current population estimates and projections were available in five year increments for the years 1960 through 1985. The projections used here generally have been straight line arithmetic interpolations for the years 1968 and 1978. Interpolations for 1968, developed from the General Plan Revision Program, were compared with the latest provisional estimates for the population of Hawaii. This comparison indicated that projections and estimates generally being used by governmental agencies and economic and planning consultants do not concur with the best available data.

The results of this comparison as shown on Table 10 indicate that the population estimates for the total resident population in 1968 are lower for the State and City and County of Honolulu and higher for the neighbor islands than have previously been considered. However, population projections including such variables as births, deaths and net migration must be viewed as forecasts which are only as good at a point in time as available data and forecasting procedures will permit.

It was not the intent of this study to develop independent population estimates and for this reason we have relied on the most consistent data available throughout the state by judicial district, or in the case of the City and County of Honolulu by planning district.

Since the provisional estimates as of July 1, 1968 were available only as county totals, the apportioning of existing population by judicial district was accomplished by applying the latest percentage of population distribution (1967) for each judicial district against the county total.

For the 1978 population forecast, the procedure consisted of interpolating projections for 1975 and 1980 by judicial district, and then adjusting the totals by applying the percentage increase or decrease that is indicated on Table 10. This procedure involved the assumption that the differences in projections for the year 1968 will continue in relation to the estimates for the year 1978.

A county and State tabular summary is indicated on Table 11 reflecting the estimated population for 1968, the projected forecast for 1978, and the percentage increase.

Because of the variations in statistical methods, base year assumptions and rate of increase projection, it is suggested that population figures be considered in a probable range estimate rather than as definitive figures.

Examining the projected 10 year population growth trend with the preceding 8 year interval, the comparison indicates that the percentages of increase that are forecast for the next 10 year period will generally compare with the increase that has occurred from 1960 to 1968. (Table 12)

TABLE 10 ADJUSTED TOTAL RESIDENT POPULATION—1968

	1968 Interpolation[bc]	1968 Provisional Estimate[a]	% Increase/ Decrease (Rounded)
The State	824,800	778,300	— 6%
Honolulu County	683,200	633,200[d]	— 7%
Other Counties	134,048	145,100	+ 8%
Hawaii County	60,347	65,700	+ 9%
Kauai	27,045	31,200	+15%
Maui	46,656	48,200	+ 3%

[a]Provisional Estimate of the Population of Hawaii by Counties, July 1, 1968, Statistical Report 64, State of Hawaii Department of Planning and Economic Development, January 31, 1969.

[b]Table 48, Total Resident Population of the State of Hawaii by Judicial Districts: 1965 to 1985, Population Projections Part 4, State of Hawaii General Plan Revision Program, Department of Planning and Economic Development, 1967.

[c]Data refers to resident population; totals include residents temporarily absent and crews of Navy and Coast Guard ships homeported in Hawaii, but excludes visitors present.

[d]The 1968 provisional estimate for the City and County of Honolulu has been further revised downward to 624,604, resulting in a 9% decrease over the 1968 interpolation.

TABLE 11 ESTIMATED TOTAL RESIDENT POPULATION—1968-1978[a]

	1968	1978	% Increase
The State	769,700[b]	972,900	26%
Honolulu County	624,600[c]	808,000	29%
Other Counties	145,100	164,900	14%
Hawaii County	65,700	73,700	12%
Kauai County	31,200	36,000	15%
Maui County	48,200	55,200	14%

[a]Totals have been rounded to nearest hundred.

[b]State total has been adjusted to reflect revised estimates of resident population for Honolulu County.

[c]Current revised estimates.

TABLE 12 CHANGE IN TOTAL RESIDENT POPULATION—1960-68 & 1968-78

	1960	1968	% Change 1960-1968	Estimated % Change 1968-1978
The State	632,800	769,700	22%	26%
Honolulu County	500,400	624,600	25%	29%
Other Counties	132,100	145,100	10%	14%
Hawaii County	61,300	65,700	7%	12%
Kauai County	28,200	31,200	11%	15%
Maui County	42,600	48,200	13%	14%

TABLE 13 AVERAGE COSTS OF SINGLE FAMILY RESIDENCES

	Cost to Build Per Sq. Foot	Sales Price Per Sq. Foot	Cost Related to Sales Price
Hawaii	$17.43	$26.35	66%
California	12.01	15.76	76%
Oregon	12.71	15.50	82%
Washington	14.78	17.43	85%
Nation-wide	12.80	15.40	83%

II HOUSING

The Land Use Law generally affects housing and the distribution of supporting services by the districting of lands for urban use. Once land has been districted Urban, the Land Use Law provides that specific uses and activities allowed are under the county's jurisdiction and administration.

> "Urban Districts shall include activities or uses as provided by ordinances of regulations of the County within which the Urban District is situated."

In the initial establishment of boundaries for Urban Districts, those lands in urban use including areas of existing housing, and a sufficient amount of land for urban expansion were provided. Along with this, provision for boundary changes by the Land Use Commission to the Urban District based on "proof of need," and additionally either that the land in question "is usable and adaptable for the use proposed" or that "conditions and trends of development have so changed" as to require the proposed redistricting.

This provision gives the Land Use Commission latitude in approving boundary changes when the application is for the stated use of providing new areas of housing.

In 1965 the land in existing Urban Districts totaled approximately 119,100 acres[1] of which 25,400 acres[2] were estimated to be in residential use. Since 1965 approximately 11,400 acres have been added to the Urban Districts, and of this amount approximately 7,800 acres were requested for residential use. However, at the present time there is very little that the Land Use Commission can do to insure that the lands once districted urban will be used to satisfy the housing needs within the State.

Proximity to employment and suitability in terms of topography, climate, access, services, cost and other factors influence the distribution patterns of housing.

Land Use District Boundaries can tightly or loosely contain urban and rural areas, measured by overall density. A tightly contained urban area will make the most economical use of public services. Police and fire protection, schools, transportation systems, water, electricity, storm sewer and sewage systems cost less initially and cost less in day to day operations and maintenance if they are concentrated into relatively small geographic areas serving large numbers of people. On the other hand, a loosely contained urban area of lower density with large areas of vacant land may provide more opportunities for development of lower cost housing.

The existence of a large housing market, favorable labor and material market, large areas of available and cheap land, the auto, good roads and easy financing combined in the 1940's and 1950's to create huge opportunities for single family housing on a mass scale. The situation today is somewhat different. There is still a large unsatisfied market, but cheap land and favorable labor and material markets are not generally available within reasonable distances of employment opportunities. This has created a shortage of housing available to low and middle income families throughout the State. The shortage has reached a crisis situation in certain areas where a large percentage of the population does not qualify for public housing and cannot afford to purchase housing in the private market because of rising costs.[3]

The cause of these rising costs may be attributable to many factors. Among those cited are rising costs of land, material and labor. However, the report by the Interim Committee on Housing, a group formed by the 1968 Legislature to examine housing needs and costs in Hawaii[4] offered the opinion that the factors that are causing the high cost of housing are not "due to construction wages, nor does freight cost explain more than a minor portion of it". The report continues that "it will not do much good to make giant subsidies for interest rates or mortgages or cheap land if there is no way to guarantee the end price of the house".

For comparison purposes the following information is offered by the 1968 Federal Housing Administration indicating that housing costs in Hawaii range from 50 per- costs on the mainland, as indicated on Table 13.

Tourism only complicates the problem by creating the need for worker housing, and at the same time by channeling off construction activity and resources into more speculative and higher investment return markets. Low cost housing that is required to attract workers in newly developing resort areas is precisely the kind of housing that is not being provided to satisfy the demands Many of the large proposed resort developments reviewed as a result of this study indicate the need for support housing to attract the necessary workers and maintain economically sound developments. However, to date, the provision of support housing has not kept up with the existing and expanding resort areas.

The Land Use Law can no more control the cost of housing than it can control the cost of land. There is no assurance to date that redistricting lands to urban use will lower the cost of land or help provide low cost housing. Additionally, there is little indication that land use zoning is interfering

[1] Land Use Commission staff estimate

[2] Department of Planning and Economic Development, *Revised General Plan*.

[3] Interim Committee on Housing, Hawaii State Legislature, *Housing Cost in Hawaii*, 1969.

[4] Ibid.

with providing lower cost housing. This judgment is based on the fact that out of 128 boundary change requests since 1964, only five have been for the purpose of providing low cost housing.

The Land Use Commission cannot create cheap land by any action. Zoning large areas Urban or Rural would only tend to increase the market price of them though the price might settle down somewhat after a first speculative flurry. But basically such rezonings will always tend to increase land cost. While the tightly "closed vessel" theory may increase land prices inside urban boundaries, if it is truly tightly closed it should keep land prices at a substantially lower level outside. This does not create cheap land for building—it maintains cheap land for agricultural or conservation purposes in accordance with the Law. Provision of cheap land will have to come through government or private subsidy or both, it would appear.

III. TOURISM

Tourism related to urban land use in the State of Hawaii extends well beyond the mere accommodation of resort uses and facilities. It includes as a "multiplier effect" all of the airports, highways, beaches, parks, golf courses, shops and other recreational, entertainment, commercial and industrial facilities that are needed to satisfy the growth of tourism in the state.

However, the Land Use Law and Regulations makes no specific provision covering the development of resort areas beyond the all-inclusive terminology of districting urban land for accommodating enough growth in the forseeable future based on ten year projections.

As the fastest growing segment of the economy, increasing at an average annual rate of 17 percent since 1960,[5] the tourist industry has surpassed the total value of agricultural production as of 1967, and at this present rate of growth, could become the major segment of the Hawaiian economy by 1970. As a result of this growth, the present inventory of 23,000 hotel rooms is planned to be augmented by completion of an additional 10,000 rooms in 1970, and a projection of 30,000 additional rooms through 1975.

These increases are based on the assumptions that the factors responsible for current growth rates will continue. Although the tourist industry is highly sensitive to external market factors, the assumptions are based on a continuance of general economic growth, increased levels of personal disposable income, more leisure time and people entering retirement at early ages, increased air travel at lower costs, and the tourist—tourism syndrome that has been accepted in our value system through promotion and advertising programs.

However, it must be mentioned that reversals or stabilization of such an upward spiraling trend can occur and with sobering effects. One current example is the drop in the percentage of hotel room occupancy in the first quarter of 1969 that has been attributed to many factors, and among those mentioned are extended conflict in Vietnam, general inflationary conditions, fluctuation of the stock market, the 10 percent federal surcharge, the building boom of hotel rooms, the winter weather conditions, reduced airfares to other tourist destinations, or past experience in visitors' being unable to reserve adequate accommodations.

Another cautionary note is offered as a result of the large part (estimated to be between 12 percent to 16 percent in 1968) which military personnel on rest and recuperation (R&R) plays on the visitor industry in Hawaii. Although the effect of a redistribution of our armed services and the eventual de-escalation of the Vietnam conflict would not necessarily affect the level of room occupancy initially, the effects would surely be felt in the near future following such changes.

This discussion is not intended to be a critique of the tourist or visitor industry. Efforts in this area have previously been made by the Hawaii Visitors Bureau and various governmental agencies. At the present time a study is underway by Mathematica of Princeton, New Jersey to evaluate policy programs through a cost-benefit analysis of tourism for the State of Hawaii that could bear heavily on the projections for future resort developments.

A considerable amount of this future development, particularly on the neighbor islands will require rezoning to Urban Districts if the projects are deemed feasible and are judged to satisfy future demands. The problem in reviewing these resort proposals is that they, without exception, are accompanied by proposals for other uses such as residential, commercial and recreational areas as a part of the development package. This is usually done to share the development costs over more than one use or developer and to provide a broader economic return on investment. In examining this proposal the statement is made that the resort portion of the development plans is not economically feasible without the supporting uses. In fact a common method of implementation is to develop a land sale program initially to gain sufficient "front end" money to help finance subsequent phases of the projects, including the building or resort areas. This may or may not be an economic fact of life, but what is of concern is that so many of the proposals are similar in character and context and will be seeking larger penetrations of the market on timetables that may be unfeasible to implement. There are simply not enough hotel operators that are geared to act as fast as the development plans indicate. One example of the length of time involved in developing a major tourist destination area is the Kaanapali development on the island of Maui. Construction of the project began in 1960 with plans for seven hotel complexes. To date four hotels have been built and are in operation, with approximately 1100 hotel rooms. Estimates for completion with an ultimate 3,600 room inventory range from 15 to 30 years. Compounding this problem is the shortage of skilled construction and hotel workers.

When such a time lag occurs as a result of not being able to gain commitments from the various hotel chains, coupled with the shortage of construction workers to build the proposed development, and the lack of workers to staff new resort areas, the optimistic projections of the visitor industry must be tempered by the problems of actual implementation. In addition, the problem will be further compounded by concurrent development proposed in more than one tourist destination area.

In examining the resort development plans that were made available to us during the study, it was apparent that in order to implement these plans, one assumption had to be that the same hotel operator will be willing to develop on more than one island at the same time and presumably in more than one location on the same island.

However, one of the largest landowners and resort developers in the State expressed a concern based on their experience in attracting major hotel chains for new resort developments, that the hotel operators are simply not able to act on development proposals as fast as planning reports and proposals indicate, and that the construction of hotel rooms, particularly on the neighbor islands are at the present time hampered by a lack of construction and hotel workers to satisfy even the current needs.

IV. ROLE OF THE STATE IN GUIDING DEVELOPMENT

As a result of the Land Use District Boundary and Regulation Review, there have been requests for approximately 51,300 acres to be considered for Urban Districting. This figure when compared with the existing urban Land Use Districts of 123,127 acres indicates the potential activity that is being considered by the various landowners and developers. The overwhelming majority of these proposals comprise development that will be geared

[5]Bank of Hawaii *Annual Economic Report*, 1968.

to markets outside of the State, namely the greatly expanding tourist industry and the development of retirement or second home "investment" opportunities.

The effects of these proposed developments are having and will continue to have is a major impact on the future economy of the State. However, to date, this impact is not adequately being measured in its effects on the local residents and the level of services and facilities that are available to them. Particularly in the neighbor islands, where proposed developments will play a very large role in the distribution of economic growth, the effects of gauging the existing communities against future expansion will become critical. Burgeoning tourist and resort development are not necessarily damaging to the local resident, since they create direct and indirect economic activity in the form of new construction, new jobs, property and excise tax revenues. But the State role in guiding and directing this activity cannot currently be judged and compared in a consistent manner throughout the State.

The various State agencies and departments that are instrumental in providing capital improvement program projects that will serve existing and proposed developments are not able to examine their proposal against a current, physical State General Plan embodying the goals and policies that will guide the growth of the State.

One example of how the State, through its capital improvements expenditure guides future development without a clear statement of policy, and without an adequate assessment of the impact that these capital improvements have may be seen on the west coast of the Island of Hawaii. The new highway between Kawaihae and Kailua, the new trans-Pacific airport at Keahole, and continued development at Kealakekua are implicit statements of State policy without a comprehensive plan of how these facilities will affect the future growth of the Country of Hawaii. It must be mentioned that at the present time the Department of Planning and Economic Development is undertaking a study of the entire area to examine this problem, but unfortunately it is occurring after the capital improvements programs are underway and private development activity has begun.

V. ROLE OF PRIVATE LANDOWNERS AND DEVELOPERS

Land in private ownership and control, is the prime motivator and impetus for current and proposed development throughout the State. Of the proposed developments of over 100 acres that have been reviewed as a part of this study, approximately 90 percent of the acreages involve lands that are owned or controlled by the largest landowners.

Because of the unique land ownership pattern, owners are now in position of being able to initiate or support development programs at a scale unprecedented in Hawaii.

There are many problems and questions to be answered in reviewing these proposed developments, among which is the impact that they have on the social and physical environment of the State.

The dynamics of urban growth and new areas of settlement and development could dilute the unique Hawaiian landscape quite easily by incremental expansion in a continuous and monotonous manner. Not that all urban growth in Hawaii will be the same, but we are seeing a potentially damaging level of sameness in proposed developments that may outstrip any urban expansion that has occurred to date. These developments are typically located adjacent to the coast and emphasize a "mixed use" concept including resort-recreational areas (which, on the neighbor islands, are usually described as second homes or retirement communities), the ever-present golf courses, little if any industrial or commercial base, and an "open space system" which is usually no more than an offering of reserved land that is difficult or costly to build on.

One major concern is whether or not these developments can accommodate the future needs of the residents and the people that will come to Hawaii as a generation of other activities from these developments. As development progresses and the land ownership and control is further divided, the unique opportunity to set aside land for the needs of future generations will be lost, greatly diminished, or available only at greatly inflated cost.

One example is that of the sandy beach areas along the state shorelines. It goes without saying that these beach areas are the principal recreational resources for the people of the State, plus the major attraction for all visitors and tourists. Over 60 percent of the proposed developments of over 100 acres reviewed in this study involved the use of shoreline areas for resort or residential use.

A case in point that indicates the potential problem that can develop along these shoreline areas has occurred on the Island of Oahu where the City and County has authorized the purchase of five acres of beach front property in the Waianae District that may run as high as eight dollars ($8) per square foot. The high price reflects the pressures of urbanization, in this case a proposed condominium project, on shoreline areas where development proceeds before acquisition or dedication of land for public facilities.

This is but an example of the problem of phasing private development with planning for public facilities. Some of the other problems involve the location and distribution, of school sites, adequate park and open space and highway and freeway corridors to provide sufficient area for expansion and beautification without additional purchases of rights-of-way.

We feel that it would be in keeping with the traditions of Hawaii to view land tenure as a stewardship and privilege, and thereby requiring certain additional qualifications be placed on new development namely, the developer or landowner donating agreed on portions of land to the State or County for public use. In exchange for this donation a system of tradeoffs should be established allowing the developer higher densities or larger areas of development. By relieving the State or county from the purchase of land to expand public facilities, the development and construction of these facilities can occur at a faster rate, resulting in increased value in social and economic terms to the surrounding developments.

VI. SCATTERED URBAN DEVELOPMENT

In Act 187, one of the declarations of purpose was to restrict "scattered subdivisions with expensive, yet reduced public services" in the State of Hawaii. In the District Regulations, one of the criteria for determining lands for Urban Districts specifies that they "shall not include lands which will contribute towards scattered urban developments." The question is what defines scattered urban development.

When we discuss scattered urban development, we are not referring to urban "sprawl". Sprawl in this context includes the haphazard and arbitrary development on the fringe of existing urban areas. Scattered urban development refers to the location of new urban areas that by themselves are not self supporting or self sustaining.

This issue raises the subject of new towns. In a sense the Land Use Commission is sanctioning the development of a few of these. Mililani New Town is perhaps the primary example, but the Dilrock proposal on Hawaii, the Molokai Ranch proposal on Molokai, the Boise Cascade proposal on Hawaii are intended new communities and, in fact, new towns, though they may lack the economic base to make them new towns in every sense of the word. There is a question that is raised by the development of these new communities, and that is whether or not they represent scatterization simply in "new clothing". Those that do not develop

into complete new self-sufficient communities, will be scattered areas depending principally on other existing urban areas for a large part of their services such as schools, and jobs, especially if the need for second homes and homes for retired people does not fully materialize.

Of course there are two major factors involved in scattered urban development. One concerns economic and social costs, and the other a value judgement of one type of settlement arrangement over another.

Economic and social costs involve the problem of providing an urban level of services to an outlying area, presumably taxing the ability to provide and maintain the level of services to existing urban areas. The counter argument is offered that new developments pay for themselves through the increasing property taxes to the State and the county, and the fact that the developer pays the improvement costs. Again the problem is the scale we are dealing with, and the people whom we are building for. If, as has been indicated, a housing shortage exists throughout the State, particularly for low and moderately priced houses, then we should be building on land with the lowest development cost in order to pass the savings to the home buyer. At first indication this would support the argument that favors building on lower cost land that is not adjacent to existing urban areas. But the higher improvement costs that are incurred in developing such areas, though initially paid for by the developer, are directly passed on to the home buyer, thus inflating the purchase price.

Social cost and effect are a little harder to define and even harder to measure. If the mechanism existed today in the State, we would compare in a comprehensive planning process the health and well being of the residents in various types of residential developments to judge what the social effects of scattered urban development versus incremental expansion of existing urban areas might be.

However, lacking the mechanism to evaluate these social implications, we cannot specifically speak of the social impact of the problems of scattered urban development.

VII. INCREMENTAL ZONING, PERFORMANCE TIME AND CONTROL OF PROPOSED DEVELOPMENTS.

At the present time, there is little that the Land Use Commission can do to insure that a proposed development once zoned to the Urban District will be carried through on the basis upon which it was approved. Once redistricted Urban, the counties are given the enforcement power to determine and regulate the uses that can occur. But financial problems can also stop or slow down projects and a host of other things can occur beyond the control of the people involved. This situation has raised the issues of incremental zoning and performance time requirements.

Presently there are two procedures that can occur regarding consideration for rezoning. Either the proposed development is previously indicated on existing County General Plans, or the petitioner requests an amendment to the general plan after redistricting is granted.

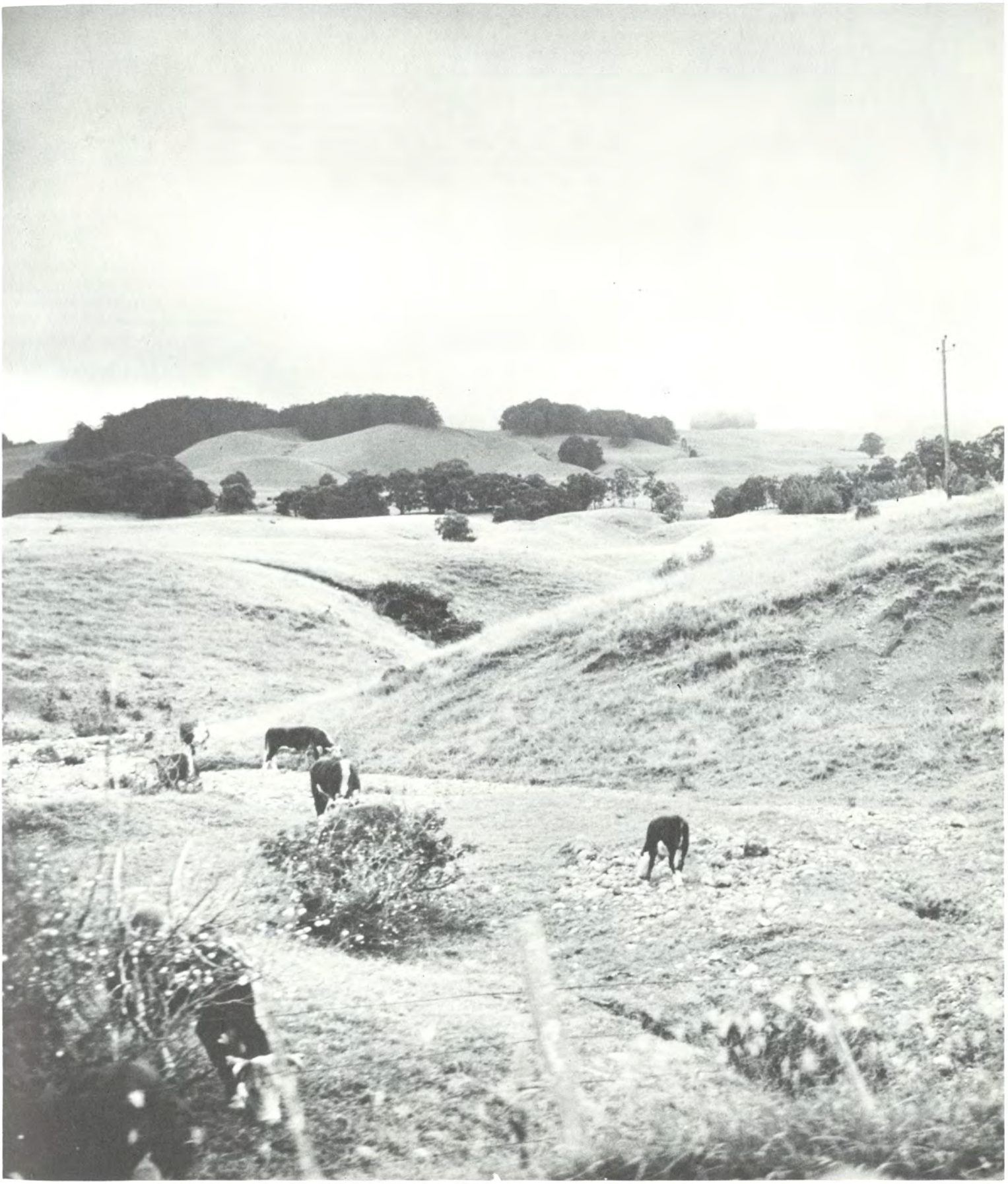
In either case, cooperation and communication between State and county required. The Land Use Commission is charged with acting in the best interests of the State, and the county, of course, is acting in its best interest. These interests should be mutually inclusive regarding all actions and particularly regarding large new developments.

The counties exercise specific controls within the Urban Districts by requiring subdivision approval and by issuing building permits. In addition to these restraints, we have proposed two regulations that will give the Land Use Commission more control over performance and implementation of large developments requiring rezoning. Incremental zoning refers to approval in whole or in part of a development concept for projects over 100 acres, with a granting of a boundary change for the first increment not to exceed enough land for approximately five years' development.

Approval of subsequent increments of the development will be given if the developer implements his p r o p o s e d development as presented and approved. In addition we are recommending that the Land Use Commission require substantial completion of a development within five years of granting a special permit.

CHAPTER 11 / RURAL DISTRICT ISSUES

Rural and Agriculture Districts
Kula, Maui



Rural and Agriculture Districts
Makena, Maui

The original definition of Rural Districts was accomplished as directed by the Law, through a recognition of:

> "areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included."

Furthermore the Law provides that the Rural District shall include uses:

> "as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentrations of people are absent, and where small farms are intermixed with such low density residential lots."

The two most serious questions in our mind about the value of the Rural District are the compatibility of the mixed uses permitted and the tendency toward wasteful sprawl that it permits. Agricultural and residential uses are not always compatible. The smoke from cane burning, the attendant sensory stimuli from pig farming, chicken farming and slaughter houses are all liable to be in direct conflict with desirable residential conditions. A more detailed classification of the permitted agricultural uses so as to exclude those which are noxious and incompatible with residential activities would exclude many farm uses which are presently conducted and are reasonably economic on small areas of land. The result would be to render most Rural Districts almost identical with Urban District since the dominant uses would be residential.

To permit widespread residential development in areas developed to agricultural or near agricultural standards is contrary to the very deepest objectives of the Land Use Law. This is the potential of the Rural District and as such it is one of the weakest and potentially most blighting elements of the land classification system.

The intensive residential use on one-half acre lots with no mixed agricultural uses (for example, Pukalani, Maui) is an obvious deviation from the intent of the Law. To pursue this type of development is a sure way to destroy mile after mile of open landscape, an irretrievable and, in Hawaii, clearly limited resource. This scale of development, in the quantities required to meet future needs, will eliminate the historical small scale intimate relationship between Hawaiian home and landscape.

In determining areas suitable for Rural classification, the Law spells out conditions which give little recognition of the potential for change. Change, that is, not from but to Rural from another district. However, 567.2 acres of land have been classified Rural since the permanent boundaries were adopted in 1964 as a result of specific requests for boundary changes. In each case the same reason for requesting the boundary change was cited by the applicant; "Low density residential development."

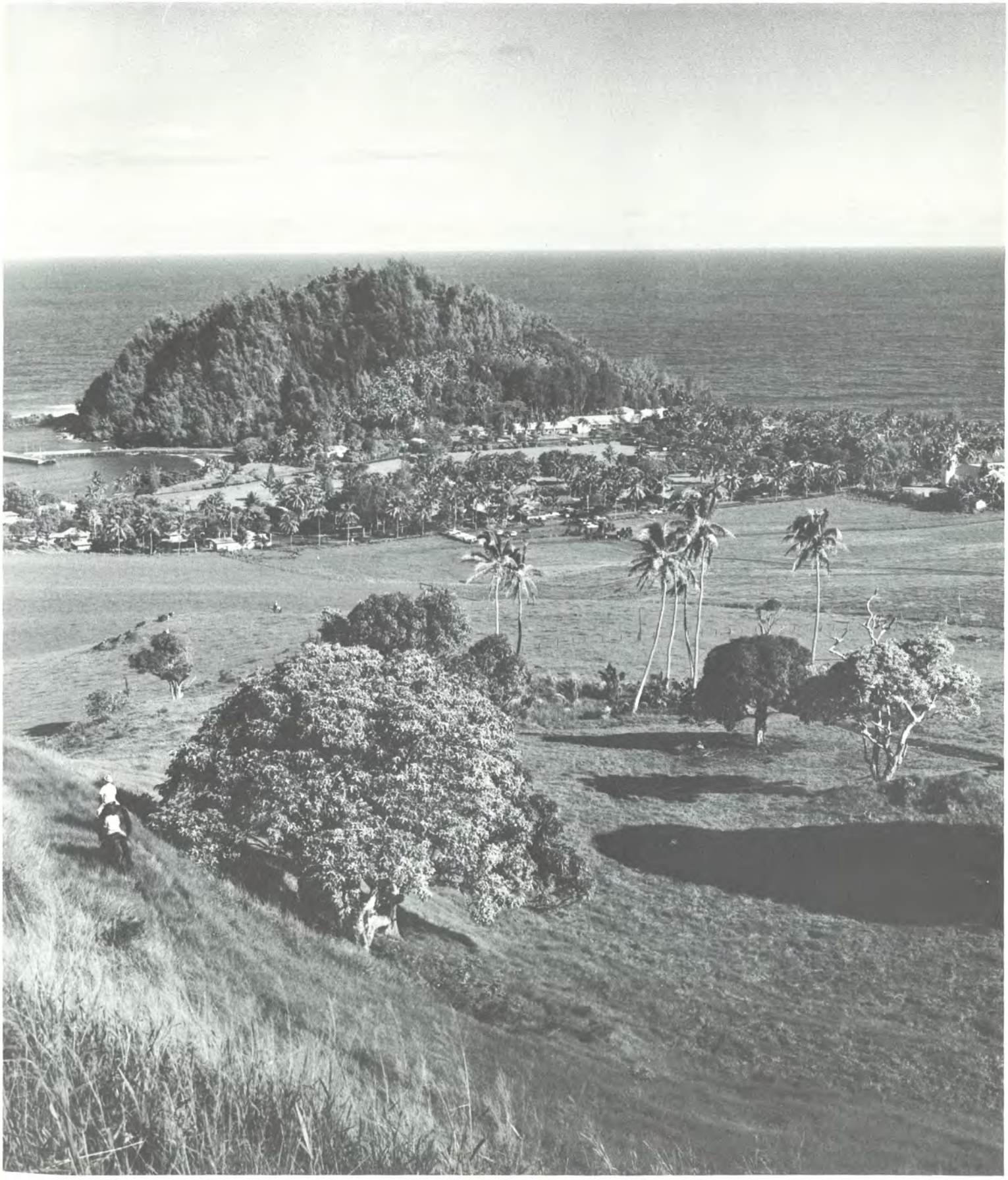
Such uses of the Rural District would suggest that the fears of potential damage through sprawling low density residential development are entirely valid.

In reviewing the existing district boundaries, there has been an endeavor to resolve some of these issues. Where Rural Districts are adjacent to Urban Districts, the level of services (roads, water, sewage, police, fire) is often identical. The rural resident is potentially receiving a tax break for the privilege of living in a low density community with an urban level of services. In such areas it has been recommended that the district classification be changed from Rural to Urban.

Conversely in areas where the dominant use of the land has been and still is agriculture, with little or no residential development, then the area has been recommended for inclusion within the Agricultural District. Only in areas where there is truly an intermixing of residential and agriculture uses should the district be retained, and in some cases added to when such additions make for more accurately defined consistent and homogenous land use district. If and when the density of residential development increases and the quality of services improves in these Rural Districts, they should be classified Urban. It is apparent to the consultant that the Rural District could be eliminated and the division of agricultural uses from urban uses more clearly defined.

CHAPTER 12 / HAWAII LAND POLICY

Agriculture, Urban and Conservation Districts
Hana, Maui



CHAPTER 12 / HAWAII LAND POLICY

Conservation and Urban District
Salt Pond Beach
Port Allen Airport Area
Hanapepe, Kauai

I. HISTORY

The Hawaiian Islands were discovered and first settled perhaps as long ago as the second century A. D. The Polynesian pioneers paddled large double canoes from Tahiti and other southern islands with their families, equipment, animals and plants. The journeys were some of the most impressive feats of navigation and one of the most fascinating migrations in history.

Because of their volcanic origin, the islands have a unique topography. Because of the Polynesian's love of the soil and their skill in cultivating it, land use patterns today reflect both the physical characteristics of the islands and the ancient Polynesian feudal culture.[1]

Land divisions and subdivisions for the most part followed rational lines related to topography, food capability and water supplies. Divisions into "ahupuaa" commonly followed ridges and water courses so that even many of today's ownerships reflecting the old boundaries are long thin land areas stretching from the sea upward into the mountains. This method of subdividing the land permitted the chief and his people to get food from the ocean, to grow taro, sweet potatoes and bananas in the low, fertile, irrigated stream bottoms, to raise their chickens and pigs in the upper areas and obtain the products of the forests such as fruit and bird feathers (for costumes) from the mountains. Land ownership as such did not exist. All land actually belonged to the king. This somewhat oversimplified statement describes the basic land tenure pattern existing when Captain Cook rediscovered Hawaii in 1778 and up until 1848 when King Kamehameha III sgned into being the first "division of lands," later known as "The Great Mahele."

A number of significant changes took place in the first half of the 19th century. King Kamehameha I brought all of the islands under his control as a result of his conquests near the end of the 18th century. However, western cultural patterns, including those of private ownership of lands in fee simple, were being simultaneously introduced. They came in conflict with the old feudal land system as a result of the influx of a large foreign population involved in the whaling, fur and sandalwood trades. Not a small part of the land reform was also due to the efforts of the missionaries who were no less eager to improve the status of the commoners than they were their own through possession of land in fee simple.

"The Great Mahele" resulted in the following distribution of land. Approximately 1,500,000 acres were distributed among the chiefs, "Konokihis;" about 1,000,000 acres were reserved by Kamehameha III as "Crown Lands;" about 1,500,000 acres were given by the King to the government; and something less than 30,000 acres were awarded to native tenants in "Kuleanas." These were some of the more valuable taro lands in the Islands.

That this basic pattern of land ownership still exist some 120 years later in spite of numerous land exchanges is shown by the following. Today the State of Hawaii is heir to what remains of "Government Lands" and "Crown Lands." State lands comprise 34 percent, while federal lands account for another 8 percent of the total land area of the State. Approximately 58 percent of the land area is in private ownership, but in this sector are only 50 owners, each holding 5,000 acres or more, 8 of whom hold 50,000 acres or more, and 4 of whom hold 100,000 acres or more, for a total of 46 percent.

II. STATE LANDS

As might be expected, since the State is one of the principal landowners, State land policy is consistently a strenuously debated political issue; and Hawaiian history is full of the records of legislative battles over public land deals and policy issues. Because much State owned land has use capability for agriculture and urban development, it is available for lease, sale or use under license or revocable permit. The Division of Land Management of the Department of Land and Natural Resources is generally in charge of these programs. Generally, lands are available for lease only, but there are exceptions including the sale of residential houselots and sales of commercial, industrial or resort properties subject to legislative review.

Because the Department of Land and Natural Resources is also in charge of all land use matters in Conservation Districts, it is placed in a competitive position with private landowners of Conservation District lands and with the Counties who are jealous of their planning and zoning rights which do not extend over the Conservation Districts.

III. PRIVATELY OWNED LANDS

With 58 percent of the land in private ownership and three-fourths of that in the hands of but 50 large ownership, many of the Land Use Commission's actions involve the lands of the large landowners. While this gives rise to a general opinion that large ownerships receive preferential treatment, it is nevertheless an historical fact of life in the State. Starting with sugar and then with pineapple and cattle, large acreages have been required for profitable operations. Because the bulk of the best lands were owned by the King and his chiefs, they were the lands in demand for the large plantations and ranches. They passed gradually through marriage, lease, sale and inheritance to large ranchers, trusts, estates and corporations.

Because agricultural pursuits are in decline and tourism and population are rapidly growing, there are considerable pressures for conversion of sugar, pineapple and ranch lands into resort and urban developments where short term profits may be greater. This poses resolution of a conflict, from time to time when the Land Use Commission has to decide an issue involving desirable urban or resort development on prime or even somewhat marginal agricultural land, or on a beach which historically has been available for public use.

Presently, mainland and island investment capital and properties are finding beneficial partnerships and other opportunities in the State. These are reflected in Land Use Commission files where current activity includes Dilrock-Eastern, Boise Cascade, Signal Oil, Equitable Life, Grosvenor International, Prudential Life, Consolidated Gas and Oil and many other well known mainland concerns along with old time islanders such as Bishop Estate, C. Brewer, Alexander and Baldwin, Amfac, Theo. Davies, Parker Ranch, Dillingham Corporation, Castle and Cooke and Campbell Estate, to mention but a few.

IV. STATE PLANNING AND ZONING

Because of the above factors, State participation in planning and zoning is a most timely and logical move. Though in something of a precarious position, agriculture has been and still is one of the

[1]Never a fully feudal system because military service was not required of the lowest order of land tenants and tenants were not bound to the land.

Conservation and Urban Districts
Honokohau Fishpond
North Kona, Hawaii

basic industries of the State. In the conversion of lands to other purposes, restraints and constraints equally and fairly applied, are a proper role of the State. Basing these on long range planning is the technique of an advanced society, and Hawaii is certainly one of the most advanced and adventuresome of any of the United States.

V. FUTURE POLICY SHIFTS

It would appear that patterns of land ownership and use are changing, if very slowly. State owned lands tend to shrink and large land holdings are slowly being subdivided permitting more diversity in ownership. However, these processes are occurring so slowly that neither appears to suggest any quick policy change.

A. *Statewide Development*

One direction for policy study is in relation to the imbalance in relative growth rates among the various islands, a situation which poses several alternatives. Oahu, which contains Honolulu, is the third largest island. It has roughly 9 percent of the State's land area, 50 percent of the prime agricultural land, and about 85 percent of the State's population. The other islands are relatively unpopulated, to the point that there are such limited educational and cultural resources that many of the most talented young people leave the islands as soon as they can. Companion to the imbalances in size and population are the opportunities and generating forces which, on one hand, support continued growth on Oahu, and on the other hand tend to stifle growth on the neighbor islands. State government, however, is in a position to do something about this situation if it desires. The State's large landowners who own lands on the various islands, can help with this situation also.

It is within the province of State government to: 1): encourage equal development of all islands; 2) encourage the concentration of development on Oahu; or 3) encourage the concentration of development on the neighbor islands and try to restrict it on Oahu. At the present time we believe there is no clear-cut policy direction, unless it is one of encouraging development of all islands. This, we content, is unequal because of the inequalities of opportunities cited above.

In our opinion there are two directions to take. The first, with which we do not agree but have seen seriously proposed, is to purposely urbanize Oahu and keep the neighbor islands as agricultural support areas and vacation lands. We do not support this idea because, through loss of open space, it would destroy the quality of the Oahu environment and therefore the quality of life on the island, while not improving the quality of neighbor island life. The idea of saving the neighbor islands as a "vacation paradise" for Honolulans is faulty from two standpoints. First, the cost of travel makes them too remote for many people, unless this is solved with an inexpensive ferry system now being planned. Second is the fact that neighbor island desires and goals include much more broadly based economic and social environments that can only result from growth.

The second direction, with which we do concur, is to use the resources of the State and encourage private interests, to develop the neighbor islands and purposely remove as much pressure from Oahu as possible. State government is presently going part way in this direction by urging and helping private interests in the tourist destination areas identified on Maui, Kauai, Molokai and Hawaii. It can do more by way of assistance, but it can also do more by open persuasiveness.

A current case in point that illustrates the issue is the proposed new University of Hawaii campus. Three large landowners of prime agricultural lands on Oahu, presently zoned Agriculture, are interested in having the proposed University built on their lands. Obviously where the University settles it will generate, as a by-product of the expenditure of public funds, a complete city. All three landowners who are offering sites on Oahu have or could have suitable sites on the neighbor islands. A conscious State decision to build the new university on a neighbor island could serve a policy of relieving pressure on Oahu while improving the cultural and economic life of dation for an eventual community of 80,000 to 100,000 people. Though there may be good reasons why this particular illustration may not exactly fit the situation, we think it is an excellent example of the way in which such a policy could work, and suggest that it be explored.

B. *State Owned Land*

The problem of transferring, exchanging and selling State Land in Hawaii has been an issue surrounded by dispute and political controversy. Nevertheless, the question that should be asked is: "Do the lands presently owned by the State represent those which best serve the interest of the public through public ownership and administration?" The answer is probably neither a clear "yes" nor "no." However, some criticism of the State as landlord to extensive ranching concerns and resort developments seems valid at a time when there is a need for State ownership of lands for public use—parks, and in particular beach parks.

In spite of the controversial nature of the problem, the State should determine which of its lands are of least significance to the public interest, realize these assets through public auction and apply such funds to the aquisition of beach parks, areas of major scenic resources, and other lands of obvious public value, such as privately owned watershed lands.

Urban District
Honolulu, Oahu

CHAPTER 13 / LAND USE PLANNING IN ECONOMIC PERSPECTIVE[1]

Urban, Agriculture and Conservation Districts
Wailua, Kauai

I. INTRODUCTION

Whether in terms of economic history economic structure, or economic prospects, Hawaii must be judged a much-studied state. Furthermore, the State has generated some highly provocative, although as yet not fully tested, approaches to analytical technique. Many of these studies have been conducted under official auspices by and for agencies of State government. Others have been sponsored by private economic interests eager to explore their present problems and their future role in Hawaii's economy. Still others have been the work of individual analysts with their academic probes of specific aspects of the economy. And to the list must be added those studies of new technological opportunity in agriculture, industry, and commerce which, although not primarily economic in scope, have powerful economic implications for the condition of the State.

For the most part these many studies have been of excellent quality, although sheer bulk has, inevitably, produced some duplication. As might be expected, some of the studies have emphasized academic purity and have surrounded the results with the more or less severe constraints of assumption and hypothesis. Although the dividends from such efforts have not been immediate and obvious, they have frequently advanced the state of the analytical art and have pointed to new and useful explorations for the future. Many other studies have started with a strong pragmatic orientation and have been designed to lead, however hesitantly, to public and private policy for the public and private good.

The scope of economic studies of recent vintage is very wide indeed. But all such studies have served to emphasize the unique economic characteristics and to provide an understanding of the resource base of the State of Hawaii. Soil characteristics have been identified and classified—not exhaustively but nonetheless usefully. Topographic and geologic opportunities and limitations have been explored. The familiar resources of a beneficient climate and unique scenic beauty have been analyzed for their economic implications. The insular quality of the State, with its sharply-defined land masses, has especial meanings for the economist, not the least of which is the relative clarity of the data he has to work with. Yet this quality has been examined with a clear understanding that physical insularity does not imply a closed economy, for economic relationships with the mainland states and with the rest of the world are fundamental to Hawaii's economy. Most recently the economic potential of the ocean has stimulated beginning analysis of great future importance. Finally, the unique characteristics of present and future population, viewed both as a productive resource and as a market potential, have been the object of extensive and occasionally sensitive investigation.

In the light of this body of recent and ongoing research there would seem to be little point, for purposes of the present study, to attempting detailed additions to the substantial volume of existing knowledge of such things as crop statistics, tourist days, labor productivity, wage rates, and export-import activity. And certainly the effort required to provide new predictions of such economic imponderables as federal expenditures in Hawaii might more profitably be turned to other pursuits.

This is not to say that such detailed information is unimportant for public and private policy or that it should not be constantly maintained and refined. Indeed it might reasonably be expected of the present study that a display of new insights for further investigation be given a position of some prominence.

Nevertheless, it is intended that this analysis serve the principal purpose of providing a kind of economic framework for public land use decisions. Thus, the major issue to be explored and developed is that of economic *perspective* in the highly pragmatic context of land use planning. Certainly it is the economic pressures which are built up in the market place which define the need for public planning. And it is the response of the market place to specific acts of public policy which tests the effectiveness of the planning program.

Historically, and particularly since the acquisition of statehood, Hawaii has developed a unique set of political and economic institutions for planning the use of limited land resources. And these institutions have been provided with a unique set of instruments for the realization of planning goals—unique at least in American experience. It remains to be seen whether these institutions and instruments have been effective or whether they contain defects which tend to frustrate the planning purpose. The ultimate test must be, purely and simply, the accomplishment of observable results. Nevertheless, it is frequently possible to detect high pressure in advance of serious disease and to take early preventive action.

II. PUBLIC PLANNING AND MARKET PLACE ECONOMICS

It is axiomatic that if the unrestricted operations of the market place were to provide optimum public welfare there would be no need for public planning, public intervention, public control, public persuasion, public ownership, public inducement, or most taxation. Indeed, with the possible exception of the need to control the occasional aberrant personality, there would be no need for the institution of government itself.

But experience has shown that, in spite of the many virtues of the market place as an allocator of resources, there are clear and large gaps between free market performance and any reasonable definition of the public good. In recognition of this fact, government in the United States has evolved as a conscious intruder upon the "free" play of market forces to express public purposes which are frequently capable of measurement by the traditional market yardstick. Of course, opinions differ as to the appropriate extent of such intrusion. But the fact remains that the very existence of a governmental form bears testimony to public demand for services and for resource allocations which are not exclusively dependent upon votes cast through the monetary machinery of purchase and sale. Public planning by various units of government represents nothing more nor less than an attempt to rationalize this governmental intrusion so that it will truly represent public demand in the present and help to create a habitable, pleasant, and meaningful environment for the future.

The need for such intrusion seems especially apparent with respect to those problems generally classified under the "land use" label. Furthermore, the problem of land use allocation becomes particularly severe when decisions are made under the combined force of limited land masses and strong development demands. Certainly this combination of elements defines with great clarity the present condition of Hawaii's land use economy.

Much of the difficulty associated with a free play of economic forces in the alloca-

[1]Prepared by Dr. Leslie E. Carbert, Tax Economist, Palo Alto, California.

tion of land uses comes from two basic features of land ownership. In the first place, the land mass subject to allocation is in multiple ownership. In the second place, ownership parcels are by no means homogeneous in terms of their present use, their economic potential, or the manner in which they might reflect the broad public interest.

These characteristics have profound meaning for the future condition of Hawaii's environment and dictate the constraints which surround the development of public policy. In the face of some development pressures landowners with suitable properties tend to seek *early* development, fearing that the profit opportunities might soon vanish. Thus, a pattern of competitive development is generated which typically produces *over*development. When this happens, several other events take place. Development profits are reduced, with consequent effects on less fortunate or less secure investors. Land prices are driven up in advance of development, thus tending to accentuate the economic pressures for the conversion of land from agricultural to urban uses. And the pattern of land development bears no particular relationship to public goals. Finally, this kind of competitive development tends to require excessive public expenditures for the provision of a variety of public services.

The fact that ownership parcels lack homogeniety in use, in potential, or in public benefit frequency means that owners of prime agricultural lands attempt conversion to urban uses before the owners of lesser or marginal quality. After all, the owner of prime land has no particular reason to allow owners of marginal land to participate in the profits of development while he continues in the less profitable pursuit of agricultural income. Furthermore, it is frequently the case that development *costs* are lower on prime agricultural lands.

Consider the hypothetical case that a single landowner (aside from State and federal lands) owns all land in Hawaii. Certainly his development decisions would be quite different from those which are made under multiple ownership. He would undoubtedly develop more slowly and cautiously, and he would undoubtedly develop low income lands to the maximum extent possible before prime agricultural lands, in spite of some cost differentials. In one sense at least the State planning progress must stimulate this kind of unified economic decision, uncluttered by concepts of competition between owners and differences in land quality. As we shall see, there are many techniques for pursuing this planning goal.

In Hawaii the structure of land ownership presents unique opportunities and unique challenges. Many of the old, pre-statehood patterns prevail. Land is still held in large acreages and in many cases parcels of single ownership still show a variety of land types, topographical features, and climatic conditions. As a result, some of the planning difficulties should be reduced in intensity. But the fact that land ownership resides in relatively few hands also creates its own difficulties, for it tends to concentrate economic power. It might reasonably be assumed that occasionally this economic power is translated into political power, so that the planning hurdles are somewhat increased in height.

Of course economic issues directly connected with land use are not the only economic issues of concern to governmental institutions and the planning process. Indeed, we shall see, a number of economic goals are built into the General Plan Revision Program and its supporting documents. The fact that these are clearly stated as *planning* goals provides a pointed suggestion that governmental powers can be addressed to their pursuit. For certainly they are not stated either as inevitabilities or as impossibilities or as someone else's responsibility.

The intrusion of government into the economic environment may take several forms, all of which are sanctioned, in some degree, by constitutional, statutory, and administrative practices as well as by judicial interpretation. But more fundamentally, the intrusions are sanctioned by the traditions of public acceptance as these traditions are themselves subject to evolutionary change.

In its gentlest form, government can seek to exercise *moral suasion*, to suggest the broader public responsibilities of the private sector. Such techniques are sometimes used successfully in the field of aesthetics and, increasingly, in the field of employment practices. But clearly the technique is of limited application.

Second, it is common for government to *induce* responses from the private sector by offering economic advantages through the tax system. Examples of this kind of intrusion will occupy a later chapter in this report.

In an opposite sense, governmental intrusion into market practices can take the form of expenditure programs designed to *stimulate* and economic response through judicious and timely purchases of factors of production. This technique would, of course, include all governmental programs which provide services to the private sector—from public works to research and information systems.

And clearly government can intrude through an exercise of the police power (with appropriate constitutional protections) to *control* some aspects of economic activity in the private sector.

And, as a last resort, government can exercise its prerogatives of eminent domain to enter the market place and purchase resources outright to become an economic participant through *ownership*.

Thus, the five basic techniques by which government in American experience is able consciously to interfere with market processes are persuasion, inducement, stimulation, control, and ownership. Not unexpectedly, all five are represented in modern Hawaii practice in various blends and with various intensities. The extent to which they *may* be used in any community is defined by the political structure of the community. The extent to which they can be used *successfully* is defined by the fundamental economic characteristics of the community, its resource base and its market potential.

III. ECONOMIC GOALS FOR HAWAII

Economic goals for Hawaii are stated throughout the General Plan Revision Program prepared in 1967 by the Department of Planning and Economic Development. Most explicitly, however, they are stated in Part 1, *Elements of the State Planning Process*, pp. 19-20; Part 2, *Goals for Planning*, p. 5 (in summary form); and Part 3, *Patterns of Economic Growth*, pp. 1-4. Although there is some inconsistency in these several volumes in the use of the term "goals," the following seems a fair representation of the basic sense of the goals statement. We have somewhat altered the language and the order, but the meaning is the same.

1. To assure continued economic development, compatible with the needs of a growing population;
2. To assure continued growth in per capita income
   a. by maintaining a level of full employment, and
   b. by assuring a continued development of the quality of the labor force;
3. To improve income distribution;
4. To achieve a more evenly balanced level of activity throughout the State.

As is the case with all planning goals, these are broad statements of economic purpose. They are somewhat amplified at several places elsewhere in the General Plan Revision documents.[3]

Other State goals listed in the General Plan Revision Program have definite economic content. Thus, in terms of goals

[3] *State of Hawaii, General Plan Revision Program*, Part 2, "Goals for Planning," Department of Planning and Economic Development, Honolulu, 1967, p. 12.

related to the maintenance of the Land Use Law, the expressed goal to "Preserve agricultural lands with high potential for successful agricultural uses and avoid use of these lands for urban development where practical" raises issues of enormous economic importance. The goal to stimulate construction of low-cost housing also has a significant economic ingredient, both in terms of demands presented to other sectors and in terms of real income distribution. And the goal to make Hawaii the focal point of the Pacific basin for trade and other purposes produces some exciting economic images.

But one goal is conspicuous by its absence. Although not exclusively an economic issue, its economic implications are overwhelming. There is no clearly-stated population goal in the General Plan Revision Program. The omission is important, both from a policy point of view and from an analytical point of view.

In policy terms one cannot be sure whether population increase is a desirable goal to pursue, or whether a course of action should be plotted which will slow down or limit population increase. In finer perspective, such an overall State goal might be broken down into its county components. Obviously, State action can neither force nor prevent population increase. But there are many more subtle ways to influence population movement, particularly through judicious use of land use controls, the provision of job opportunities, and the like. Perhaps some clue to the reason for the omission is contained in one of the goals statements: One of the required goals is "An increase in State economic development efforts over the planning period, *compatible with the needs of a growing population.* . . ."[3] From this, and similar statements, the impression is conveyed that State policy must simply *react* to population changes (both interstate and intrastate) and that the term "population *policy*" is therefore an empty one.

In analytical terms the omission is equally striking and leads to some confusion of language. Consider the following, for example, in the introductory explanation of the economic model:

> "The required levels of economic activity are related to specific goals. The economic model is designed to seek those levels of activity which are consistent with these specified goals. *One of the most important of the goals is the level of population in 1985.* Concern here centers on defining the levels of activity which must be realized in future years in order to be compatible with specified levels of population. To do this, the model initially assumes an *expected* growth path for population and examines the implied *required* level of activity. Alternative growth paths may be chosen." (Italics added, except for the word "required".)[4]

In this paragraph the use of the term "goals" is not to be confused with the use of the term "goals" in the sense of a planning aim. As used in the economic model, the population of 1985 is really an *expectation*. The real goal is expressed as an accommodation of the economic system to this expectation. We shall return to this important analytical distinction later in this chapter.

It should also be noted that the goals expressed in the General Plan Revision Program are to be interpreted as *statewide* goals, calling for policies at the State level. As suggested by the last goal listed above, however (the need for balanced economic activity), two interpretations are possible. From later comments it seems clear that both are intended. Thus, the term "balance" might be taken to mean a reasonable distribution of economic growth among all of Hawaii's counties. Or the term "balance" might be taken to mean a reasonable variety of types of economic activity. The goal might well refer to the need for both geographical balance and a generally diversified economic structure.

The concept of geographical balance of future economic growth is particularly important for studies of changes in land use patterns. It is desirable from a number of points of view to assure the neighbor islands an adequate share of future development, especially if such development is carefully planned and sensitively executed. Not the least of these reasons is the need to retain many of the working-age population now migrating from the neighbor islands to Oahu and the mainland in response to the declining relative importance of agriculture in Hawaii and in response to developing agricultural technology. But of equal importance is the fact that such geographical dispersion would tend to reduce the development pressures on the already overburdened land mass of the Island of Oahu.

The need for a generally diversified economic structure is readily apparent. Although Hawaii is hardly a "one-crop" economy, resources are indeed limited and the economic base is a relatively narrow one. The issue is not only one of economic growth but of economic stability. Thus, while tourism (and the trade, services, and construction which it supports) represents a large and growing part of the economy of Hawaii, it has a kind of built-in unpredictability, subject, as it is, to fluctuations in the national economy. Similarly, military expenditures (and the trade and services they support), although having a reasonably stable history, must be viewed as a source of potential instability. Agriculture has, of course, provided a stabilizing influence which is extremely important. We do not join those who worry about the fact that the agriculture sector in general (and sugar and pineapples in particular) is the slowest growing element of the economy. Given the rapid growth of other sectors it would be remarkable indeed if the agricultural sector did not exhibit a *relatively* small increase. Agriculture still serves as a solid base to support expansion in other economic areas. But in spite of this contribution to economic stability, diversification of future economic growth is still a laudable goal.

There is another important reason to seek selective diversification. It has frequently been observed that present development trends in Hawaii are not such as to increase the level of per capita income. In a recent study on the economic foundation of the General Plan Revision, Artle and Rider observed ". . . that at present the most significant elements of growth in Hawaii are generating lower-wage employment opportunities."[5] The authors go on to comment in text and tables that the trade and services sectors accounted for 50.6 percent of employment by private industry in 1964. For wage and salary payments, however, the sectors accounted for only 43.7 percent of the total. Income received from these sectors represented 47.4 percent of the total. Furthermore, there can be no doubt about the rapid growth characteristics of the trade and services sectors. Between 1950 and 1964 income increased by 623 percent, wage and salary disbursements by 214.9 percent, and employment by 97.3 percent.

By way of contrast, agriculture employment accounted for 7.7 percent of total private employment, while agricultural wage and salary disbursements accounted for 8.7 percent of the total. Agricultural income accounted for 8.4 percent of the total. In both income and wage and salary disbursements agriculture showed slight increases of 9.2 percent and 10.8 percent respectively. But agriculture employment

[3] *Ibid.*, p. 5. Italics added.

[4] *State of Hawaii, General Plan Revision Program*, Part 3, "Patterns of Economic Growth," Department of Planning and Economic Development, Honolulu, 1967, p. 1.

[5] Artle, Roland A., and Rider, Robert W., *The Hawaiian Economy: Problems and Prospects*, Department of Planning and Economic Development, Honolulu, 1966, p. 3.

showed a decrease of 46.6 percent from 1950 to 1964.

It follows, insofar as these sectors are concerned, that agriculture, as a declining industry *in terms of numbers employed,* is a relatively high wage and salary sector; while the trade and services sectors, as examples of extremely rapid growth in employment, are relatively low wage and salary sectors.

"The trade and service sectors accounted for 36 percent of jobs in 1950 and *fully 51 percent of all jobs within the private sector in 1964.* The large difference between the importance of these sectors as a source of jobs and as a source of income illustrates the low-paying nature of the employment opportunities being generated. Yet they are by far the most significant sectors in Hawaii's economy."[8]

It might also be that an expansion of the trade and service categories induces further population increase, so that overall per capita income figures would be further depressed. This, of course, would not tend to be the case with the agricultural sector.

This analysis does not suggest that a major goal of public policy should be a "back-to-the-farm" goal—even if this were at all realistic. It does suggest, however, a more orderly transition, and most particularly a search for employment categories, as part of an economic development program, which will add more to wage and salary payments and per capita income than do the trade and service sectors.

The analysis also bears directly upon the goal to increase the quality of the labor force, expressed here as part of the broader goal of increasing per capita income. A movement of the labor force from agriculture, with declining employment opportunities, to other economic pursuits with *higher* wage scales almost inevitably means more sophisticated training programs for new entrants to the labor force and retraining programs for existing members of the labor force. Even diversification within the agricultural sector undoubtedly requires the learning of new skills. Clearly such objectives can only be pursued as joint objectives of the public and private sectors of the economy.

IV. PROJECTIONS, REQUIREMENTS, AND PLANS

One of the key elements of the General Plan Revision Program is the economic model. The volume entitled *The Hawaiian Economy: Problems and Prospects,* prepared by Dr. Roland A. Artle and Dr. Robert W. Rider and presented to the Department of Planning and Economic Development in 1966, is a major offering in the field of economic planning. The approach used is really a "first-of-its-kind" in that it is readily adaptable to planning requirements. Yet even this effort must be considered as work in progress, for many gaps exist in the basic data structure which make it extremely difficult to identify crucial relationships in the economy of Hawaii.

The basic approach of the economic model in its present condition is well described in the Introduction to Part 3, *Patterns of Economic Growth,* of the State Plan Revision Program. It begins with a projection of population in Hawaii to the year 1985. The model itself is such that its ingredients can be readily adapted to any expected level of population, so that the population projection is not crucial to the internal construction of the model. Indeed, one would expect the population projection to be refined as the year 1985 approaches. In other words, the model itself is flexible in this respect. The model consists of a more or less complex set of mathematical expressions which describe the relationships between the major segments of the Hawaii economy. Even these relationships are, of course, subject to change over time. It is the purpose of the model to show the alternative patterns of growth which will be *required* if the stated goals of full employment and improved distribution of income are to be consistent with the population level projected for 1985. These patterns of growth are not necessarily *expected* patterns. They are not even properly described as *probable* patterns. They are, simply, *required* patterns if the stated goals are to be achieved and if present population projections are accurate.

In effect (and with some analytical limitations), the model provides instructions to planners and policy makers as to the kind of economy Hawaii must have if goals are to be achieved. The elements of the economy may be juggled in a variety of ways, each of which would be consistent with the constraints of the model. but clearly, some of these combinations would be more realistic than others. It would be theoretically possible to devise an economic structure which would provide this consistency but which would be outrageously unrealistic in terms of any practical rules of economic development in Hawaii. It is the job of the planner to sift these alternatives and to balance desirability (in non-economic terms) and realism.

At least two other readings might be given to the basic meaning of the economic model. It might be interpreted to mean that if, in 1985, the economy does not follow the required path, and if the goals of full employment and a better distribution of income are in fact achieved, the population of 1985 will not be as presently projected. Or, more significantly, it might be interpreted to mean that if, in 1985, the population is in fact as presently projected, but the required path of growth is not followed, the combination of full employment and better income distribution will not occur.

Thus, it is analytically possible to make a complete circle of the logic and to argue from economic structure to population as well as from population to economic structure. This is so because the model is essentially descriptive, of magnitudes and relationships, and does not attempt *casual* analysis. In this way it is possible to avoid the demographer's dilemma as to whether population brings jobs or jobs attract population. It is also possible to avoid very important questions about population mobility in the short run as opposed to the long run, and population mobility between states (or nations) as opposed to mobility between counties within Hawaii. (We are not suggesting a *conscious* avoidance of these questions. They are important for the planner. But they are largely irrelevant for the model builder.)

But, as suggested earlier, the planning process should also attempt a consideration of population policy itself. In planning terms, population need not be just an independent variable to be used as a standard of performance. And from the point of view of the present study, pragmatism would require a translation of the required paths of economic development into their land-use meanings. All of these are extremely difficult tasks and fraught with some dangers. But they are essential if the planning challenge is to be met.

Perhaps the greatest difficulty of all occurs after these problems have been solved. After a population goal has been established, after the most desirable (and most realistic) development path has been selected, and after the translation into land use terms has been completed (obviously in a rough way by our present level of knowledge), it is necessary to develop a specific set of public policies to assure the results. Analysis is essential. But policy is equally indispensable if the planning purpose is to be accomplished. It is at this point that economic goals must be contrasted with goals which have little or no economic content. It is at this point that any competition between goals is brought sharply into focus.

V. CONCLUSIONS

It is beyond the scope of the present study to attempt a detailed examination of the economic model or of other analytical

[8] Ibid, p. 16.

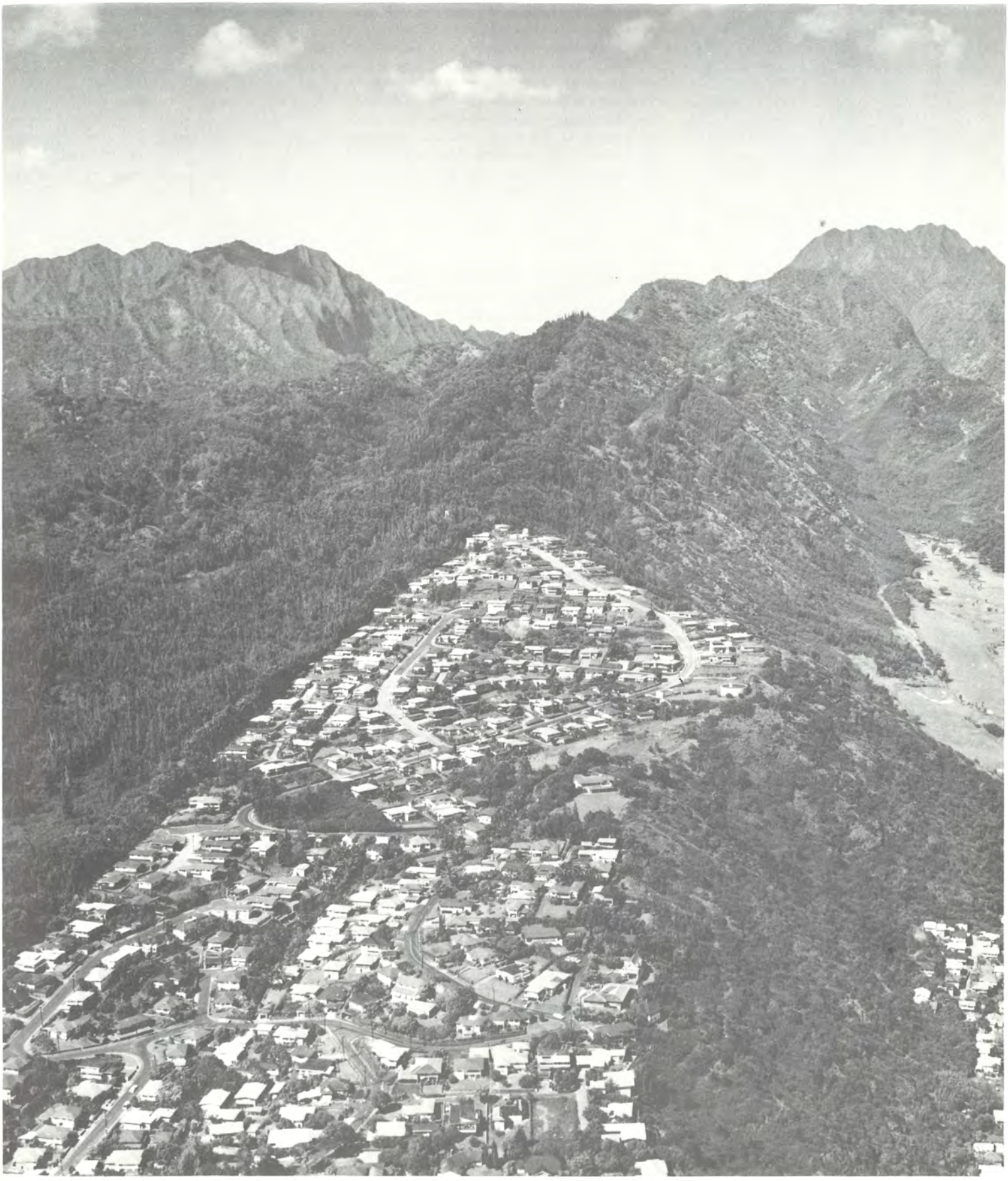
representations of the economy of Hawaii. It has been our purpose, rather, to provide an economic backdrop for a study which is basically concerned with questions of land use policy.

A careful reading of the economic model and other economic studies suggests the limited variety of Hawaii's resource system. We are constantly reminded that climate and natural beauty are basic resources upon which a major segment of the economy depends. But at least one of these is by no means an exhaustible resource. The natural beauty of the State is as capable of depletion, if it is handled harshly and with insensitivity, as a vein of coal in West Virginia. So, too, agricultural pursuits must be viewed in two ways—first, for the solid economic base which they provide; and second, for the subtle support they give to other elements of the economic system. Note that this is not an aesthetic argument, although such an argument can certainly be made. It is, in truth, an economic argument, for the open space which agriculture represents is a salable commodity, even though the gross profits show up in a different segment of the economic structure.

Only when questions of economic development are translated into their land use meanings in the context of severely limited land supplies can these economic conflicts be exposed. Only when concepts of economic development are presented as competitive demands for scarce resources can the planning alternatives be clearly enunciated. One of these scarce factors is, of course, labor. But opportunities for population increase, changing technology, and the promise of increased incomes soften the force of this argument. In Hawaii the scarcest factor is land. The nature of its use, whether planned or unplanned, can effect the economy and the environment in large and irreversible ways.

CHAPTER 14 / STATE AND COUNTY INTERRELATIONS IN PLANNING AND ZONING

Urban and Conservation Districts
Alewa Heights, Oahu



CHAPTER 14 / STATE AND COUNTY INTERRELATIONS IN PLANNING AND ZONING[1]

Agriculture and Conservation Districts
Ulupalakua Ranch, Maui

I. THE PURPOSES OF STATE AND COUNTY PLANNING

A. *Distinctions between Planning and Land Use Control*

Two fundamental assumptions underlie the objectives of long-range planning and zoning: (1) that the uncontrolled market fails to allocate land in a manner which fully or best serves the public interest; and (2) that major changes or improvements in the physical pattern of our communities can be achieved only over a long period of time by a series of related incremental actions.

These assumptions lead to the conclusion that the public must intervene in the process by which land uses are determined and that public intervention, to be effective, must be accomplished over an extended time period requiring long-range future planning. Over many years, the processes and techniques for accomplishing long-range planning and land use control have been developed, tested, strengthened and made more adaptable to the democratic goals of the community. Among the specific purposes which the process of planning and land use control is expected to serve in present-day society are the following:

1. Estimation of the future needs of the community for various classes of land and the identification and protection of land areas adequate and suitable for the needs.
2. Prevention of public and private waste which would result from the misuse of land and the over or underprovision of the public facilities and services necessary for its use.
3. Protection and enhancement of the environment through the most harmonious relationship of activities to each other and through properly relating the pattern of human activities to the geographical and physiographic conditions of the site.
4. Protection of valuable open space, beauty spots, and historic areas from unnecessary encroachment and destruction.
5. Establishment of principles and standards designed to achieve an optimum future community in terms of efficiency, safety and beauty.
6. Identification of the public and private actions necessary to achieve such an environment and providing for efficient and orderly financing and construction.
7. Protection of public and private investments against erosion or destruction from unsuitable and ill-timed future developments.

Currently, planning is becoming more developmental — in the sense that less reliance is put solely on the projected image of future development as shown by a single long-range General Plan. This is true at all levels of planning. Econometric models, short and intermediate-range plans, "Planning, Programming, Budgeting System" procedures and other tools are now in use to flesh out more traditional long-range planning techniques. The long-range General Plan, however, still retains its special role in the process as the key coordinating document in which broad social, physical and economic policies are reflected in terms of their long-range development consequences. The long-range General Plan is particularly essential in guiding the location of specific boundaries for land use control, which is a relatively short-range process. The long-range General Plan is necessary to relate future land use patterns to long-range circulation and public facilities planning.

The process of planning proceeds from general statements of policy to increasingly precise plans. County and State policies need to be reconciled at a goal level as well as at a regulatory level. If coordination is not achieved at the policy level, it is difficult or impossible to coordinate plans and programs later. Finally, long-range planning and land use control (zoning) must not be confused. Zoning must not be construed to be, or substituted for, long-range planning. Zoning is a short-range process of land control based on a succession of long-range plans. In anticipation of intensive development, it is not normally projected longer than five years.

B. *The Purposes of State Planning and Land Use Control*

The State of Hawaii must continue to set forth basic policies as to the best future development of the Islands as a whole and of each island as an entity within the whole. Only the State can, at the same time, both protect the quality of life on the Island of Oahu and provide for a richer life on the neighbor islands. Complete control of development or of population distribution and growth is neither feasible nor desirable, but resolving the question of the present imbalance of development and population between Oahu and the neighbor islands is a State responsibility. State planning must always be sensitive to the needs of the people living and working on each island, as well as for the State as a whole.

State planning and land use control should strengthen rather than take the place of County planning and zoning. Together with expressing the development policies of the Hawaiian Islands, the State can help the Counties cope with public and private interests too potent politically for local governments. The State can protect the Islands' natural resources and lead the way in opposing premature and speculative development. In summary, the special purpose of State planning and land use control in Hawaii appear as follows:

1. Establishing overall social, economic and physical development policies for the Hawaiian Islands as a whole, and showing how each County can best fit into the State as a whole.
2. Providing stronger protection for agriculture, recreation, and other natural resources on all the islands than can be provided by the counties alone.
3. Helping counties resist development pressures from private land owners and other interests too powerful for a county to resist when such pressures are not in the best interest of the county or the State.
4. Providing for direct control by the State of public lands and open lands such as parks, forest and wild life preserves, historical areas, and beaches.

C. *The Purposes of County Planning and Zoning*

The counties are delegated normal planning and zoning functions by the State. In addition, the counties need to provide frequent periodic inputs to important State planning and land use control functions. With this grass roots input, State planning and land use control can best be made aware of the needs and desires of its citizens (particularly on the neighbor islands.) Counties now adopt and administer the land use regulations for the State Urban Land Use Districts. They may adopt regulations in Agriculture and Rural Districts which are stricter than the State regulations. The counties have no zoning authority in Conservation Districts. The following

[1]This chapter was prepared by Williams and Mocine, City and Regional Planners, San Francisco, California.

appear to be among the most important functions of county planning and zoning in Hawaii:

1. Preparation and adoption by each county of a long-range General Plan together with related short-range plans and programs. These plans need to represent local interests and desires and should be submitted both to the citizens of the county and as an input to the State.
2. Submittal to the State of adopted county goals and those particular county problems — social, economic and physical — which will need action at the state level for solution.
3. Adoption and maintenance of modern county zoning and subdivision legislation to insure that development in all parts of the county will be of acceptable quality.
4. Establishment of multiple channels through which the government and citizens of each county can freely communicate with the State.

County development policy decisions need to be formally referred to the State and the State should give consideration to such inputs. State planning and land use control in Hawaii makes it possible for the State to be more responsive to the county level of government than is possible in many other states.

II. PRESENT INTERRELATIONS OF STATE AND COUNTY PLANNING AND LAND USE CONTROL

A. *State Planning and Land Use Control*

Hawaii has special advantages over other American regions in its ability to use state as well as local powers to control its "regional" destiny. State planning and land use controls can be added to local planning and zoning powers to protect Hawaii's special way of life, its beauty and its natural resources. This section of the report explores the success achieved toward this objective to date and the improvements deemed necessary in the future.

The full history of state planning and land use control in Hawaii is covered in detail in other sections of this report. Reference here is made to those aspects of the State programs which bear on the interrelation of state and county planning and land use control.

The 1967 General Plan Revision Program

The General Plan Revision Program does not contain "traditional" land use, circulation and public facilities elements, as specifically noted in the introduction to the Summary Volume. The current Revision emphasizes the policy, programmatic and developmental aspects of State planning. Hawaii's 1967 General Plan Revision Program consists of six volumes, including the research preparatory to a General Plan. The studies are useful and will yield future dividends in planning in the Islands. They are, however, somewhat incomplete in that they include no series of decisive, coordinative long-range plans. There appears to be some confusion as to just what long-range state planning should consist of, and some volumes, such as Part 6, *Planning for Recreation,* include neither plan nor program but only a statistical methodology for recreation planning. There is frequent discussion of the need for continuous comprehensive planning, but little recognition that planning must from time to time produce coordinative documents containing development decisions. Thus, there is a lack of a useful guide for the state and local agencies dependent upon an expression of State policies for development. The State Land Use Districts (zoning maps) appear somehow confused with a long-range Land Use Plan for the state.

B. *The General Plan Revision Program includes the following documents:*

Part 1 — Elements of the State Planning Process (A Summary Volume)

The introduction to this volume states that there has been a "fundamental change in the concept of state planning" and that "levels of economic activity are translatable into requirements for land use transportation and other public facilities." This statement is true and fundamental to long-range planning at all levels of government.

It goes on to state that: "The philosophy of governmental planning . . . has shifted from the rather narrowly conceived approach emphasizing land use, transportation and other public facilities . . . to a more comprehensive and flexible format based on the PPBS (Planning, Programming, Budgeting System) now being adopted at the national level. . . ." What seems to be lacking here is a recognition that even in PPBS there is need for long-range land use, circulation and public facilities plans to coordinate and guide the many separate elements of the kinds of planning referred to in the General Plan Revision Program.

Part 2 — Goals for Planning

Goals for planning have to do with the preservation of Hawaii's natural beauty, the need for growth in per capita income and the movement of families out of poverty, for opportunities to enrich life, etc. The stated goals are an appropriate and essential part of the General Plan Revision Program. These are referred to from time to time in this report and a full list of them will be found in Chapter 2 under "State Goals as a Point of Reference."

Part 3 — The State Economic Model

This document describes the econometric model set up to relate economic activities to stated goals and demographic growth, and job requirements. It is a useful tool which will become even more useful as the State develops and reviews alternative proposals for its future development. The model recognizes the probability of future budgetary deficits at the state and local levels. This is discussed in detail in Chapter 13.

Part 4 — Population Projections

This volume is a thorough review of the projected demographic characteristic of the Hawaiian Islands. The projected 1985 population is 1,217,000 — aging as elsewhere in the United States. It contains a warning that there can be serious adverse effects on the quality of development on the Islands due to the pressure of population growth.

Part 5 — Patterns of Land Use

This volume includes very little that is new. It summarizes documents such as the existing Land Use Districts and the Oahu Transportation Study that have been made from time to time in recent years. In addition to reprints of the State Land Use District maps, there is Existing Land Use as of 1966 and "Development Factors Maps" which are proposed to help in the future planning for the Hawaiian Islands. Despite the lack of any long-range plans, there is repeated reference to the Land Use Maps as representing the "State Plan for Land Use." It is stated ". . . that the State Land Use Plan may be identified at any moment with the district boundaries established under provisions of the Land Use Law." There again appears to be confusion of land use control methods with long-range plans. These are quite rigid plans — by contrast a long-range General Plan contains a whole hierarchy of rigidity, from near certainty to suggestive proposals.

A table compares future demands for urban land with the amount of land available in the Statel Land Use Urban Districts. The looseness of these Urban Land Use Districts (particularly outside of Oahu) is indicated by the fact that unused open space in the neighbor islands will only decrease from 54 percent to 38 percent in the next 18 years.

A section titled "Some Issues in Land Use Planning" discusses general subjects such as the sea and shoreline, outdoor recreation, public facilities requirements (related to economic growth), together with the need for a six-year capital improvements program.

A section on "Transportation" refers to the Oahu Transportation Study and the land use model prepared as part of that study. It also includes reference to airports, harbors, etc.

Recommended Planning Program (Part 1)

The need for a continuing "comprehensive planning program" is emphasized. The discussion refers to the need for "program" planning such as short-range single agency studies, and "functional" planning which would include planning among several agencies. "Comprehensive planning" is defined to include budgets, programs, and objectives as well as plans. If "comprehensive" planning is defined in such a way as to include *all* plans, studies, and programs, past, present and future, long and short-range, the value and purpose of preparing coordinative long-range plans has been lost. The baby is in danger of being drowned in too much bath water!

Part 6—Planning for Recreation: A Methodology for Functional Planning

This interesting volume contains a "systems" approach to planning for recreation. How effectively it has been tested is not known, but since neither plan nor program is included the volume appears somewhat irrelevant in the context of the series.

In summary, the General Plan Revision Program lays a sound foundation for revised *long-range land use, circulation and public facilities plans* to guide development policies throughout the Islands. The need for such plans is urgent to help in the next revision of the State Land Use Districts.

Procedures such as PPBS help make meaningful the planning processes developed in the United States over the last half-century. Use of PPBS should not suggest, however, that a miscellaneous collection of long and short-range projections, plans, regulatory maps, programs, techniques, and budgeting procedures takes the place of a series of coherent documents prepared periodically as a guide to the private and public actions which develop the human environment. This is what the General Plan "system" is planning is all about.

In conclusion, the six volume State of Hawaii General Plan Revision Program appears to omit some documents which desirably should be included.

C. County Planning and Land Use Control

This analysis of county planning and zoning is based on a conference of state and county planning officials in Hawaii and on available published material, including the most recent County Zoning Ordinances. Particular attention is paid to those sections of the County Ordinances such as Rural and Agriculture Districts which relate to State Land Use controls. A tentative examination shows that there is a broad range of zoning history and degree of sophistication as to zoning in the four counties. These differences in county ordinances make the interrelationship of State and county planning and land use control vary from island to island in the State.

1. *Oahu*

The first official planning agency in the territory of Hawaii was the City and County of Honolulu Planning Commission, 1915.

The first Zoning Ordinance was approved in 1922. The position of the City Planning Engineer was created in 1924; in 1939 a full-time professional staff was appointed. A Master Plan was initiated in 1939 and resulted in completion of Zoning Maps and a Street Plan in 1945. In 1959, the City Charter modified the organization by creating the Planning Department as an independent administrative agency and carried over the original Master Plan. in 1960, a "General Plan for Urban and Urbanizing Area for the City and County" was prepared but not officially adopted. Recently a Zoning Board of Appeals was created.

A new comprehensive Zoning Ordinance was adopted in 1968 to be effective January 2, 1969. One of the few County ordinances to mention provisions of State land use control acts, the Ordinance provides for a Preservation Zone (agriculture and uses such as cabins with a five-acre minimum parcel size). The Ordinance has two Agriculture Zones — one with a two-acre minimum and the other with a three-acre minimum parcel size. The urban zones are up-to-date and sophisticated with seven low and medium density residential and five apartment zones, a hotel zone, five commercial zones, and an industrial zone. "Land Use Intensity" provisions apply to residential zones. There are special "Planned Development" provisions (for housing, resorts, shopping, historic, cultural, and scenic uses, etc.).

2. *Maui*

The Maui County Planning and Traffic Commission was established in 1959. An interim Zoning Ordinance was enacted in 1958.

The present Zoning Ordinance was adopted in 1961 and coded in 1966. Certain areas of the county are still under the Interim Zoning Ordinance. The Subdivision Ordinance was adopted in 1951 and amended in 1962. The Zoning Ordinance includes single and two-family residential districts, an apartment district, a hotel zone, three commercial zones and two industrial zones. There are two types of agriculture zones — the one named "Agricultural" provides for a minimum parcel size of five acres for animal husbandry, one acre for fowl, one-half acre for a dwelling. The "Farm" zone allows animals on one acre, fowl on one-half acre. There is also a historic zone. There is no "Planned Development" regulation. The Maui Zoning Ordinance appears to be not quite as up-to-date as zoning in several of the other Counties. Coordination with State Land Use District Regulations appears not to be mentioned.

3. *Hawaii*

The Hilo City Planning Commission was organized in 1930. In 1945 the Planning and Traffic Commission of the City of Hilo and County of Hawaii was established. In 1961, a "Metropolitan Hilo Area Plan" was prepared. In 1959, a plan was developed for the Kona district and in 1962 a plan was prepared for the Hamakua-Kohala district. A General Plan is proposed for the Kau Area. In 1968 the Hilo Development Plan was prepared and adopted.

The Hawaii County Zoning Ordinance was adopted in 1968. It includes a series of three residential districts, a residential-agricultural district (with a one-half to three-acre minimum parcel size), a resort district, four commercial districts and two industrial districts. The Agriculture District provides for a minimum parcel size of one to forty acres (as mapped), and a U-zone requires a five-acre minimum parcel size. There is also an S Safety Zone and an O Open Zone. Provision is made for "Planned Unit Development" with a minimum parcel size of twenty acres and there is a CPD Cluster Zone with a two-acre minimum parcel size. The County Planning Director stated that the larger end of the parcel size scale is consistently applied in the Agriculture District. The Ordinance specifically states that it is based on a "County General Plan" and appears otherwise progressive.

Hawaii County has had a Subdivision Ordinance since December, 1966. The new Ordinance requires a high standard of improvements by the developers to discourage speculative subdivisions.

4. *Kauai*

The Kauai County Planning and Traffic Commission was established in 1958. In conjunction with the preparation of the State General Plan, plans for five planning areas (most of the periphery of the Island) were completed by the Planning and Traffic Commission. A new General Plan is being prepared currently.

An ordinance to regulate use of property in Waimea, Koloa, Lihue, Kapaa, and Hanalei was adopted in 1960. The draft of a new Comprehensive Zoning

Ordinance has been prepared but not adopted. The new Ordinance proposes two residential districts, an unclassified district (with a minimum one-half acre parcel size), a hotel district, two commercial districts, two industrial districts, and a rural district (with a one-half acre parcel size). The agriculture district proposes a three-acre minimum parcel size. There is provision for Planned Unit Development and Cluster Development. Although the Ordinance appears reasonably modern, it may not be too well tailored for an agricultural, resort-oriented island such as Kauai. A new ordinance should be prepared and adopted based on the new General Plan.

III. PROBLEMS AND GAPS IN PRESENT PLANNING AND ZONING PRACTICES AND PROCEDURES

A. *State Practices and Procedures*

The most critical gap observed was the lack of a new long-range land use, circulation and public facility plan (Long-Range General Plan) to guide the Boundary Re-Review Project. This problem was critical since up-to-date General Plans had not been prepared or adopted by many of the islands either. Now long-range General Plans need to be prepared jointly by the State Department of Planning and Economic Development, the Department of Land and Natural Resources, and each of the counties. These plans could help to interim reviews of the Land Use Boundaries, and if begun soon, would provide the basis for the next Land Use Boundary Review Project.

B. *Department of Land and Natural Resources*

Regulation 4 — Other problems relate to the Conservation District and Regulation 4 of the Department of Land and Natural Resources. Refer to Chapter 9, "Conservation District Issues" for a more detailed analysis of this subject.

C. *Problems of State and County Coordination*

Planning and land use control in Hawaii desirably will include coordination of county and state participation at every step. This has not consistently been the case. Joint county-state participation is not now provided for in many situations. The present situation with respect to land use in the Conservation District is but one example. County zoning ordinances also need specifically to refer to how the county ordinance is coordinated with State policies. This is particularly important in open zones.

D. *County Practices and Procedures*

It appears that many of the county Zoning Ordinances, although seemingly quite modern, could better reflect the special social, economic and environmental characteristics of the Islands. These tentative conclusions as to problems are based primarily on reading the Ordinances. As an example in the very state where land ownerships are large and where agriculture is a key element in the economy the agricultural minimum parcel size requirements are strikingly low.[2] Hawaii County allows parcel sizes in agricultural zones to be set as high as forty acres, but the minimum is one acre (in the Unclassified Zone the minimum parcel size is five acres).

By contrast, the proposed ordinance for Kauai would allow a minimum parcel size of three acres anywhere in the Agriculture Zone. Maui requires five acres in an "Agriculture" Zone for animals but allows animals on one acre in the "Farm" Zone. The State's Conservation District has a minimum parcel size of 10 acres. Why are not large parts of the Hawaiian Islands in zones with minimum parcel sizes of 25 acres, 100 acres or larger? There is little to discourage land speculation based on relatively small parcels acquired from large landowners.

E. *Problems from Speculative Land Development*

Zoning should encourage the future *use* of land, not the sale of land for speculation. Good zoning does not encourage cutting land up into parcels (even provided with streets and utilities) primarily for speculative sale. It is foolish to allow subdivision of open land into parcels which are not going to be developed within a reasonable period of time. A subdivider must be required to demonstrate that someone needs and will actually build on the land parcels he creates.

Much of the speculative cutting up of land now taking place is not based primarily on real use of the land in the near future. It has the following characteristics:

1. The land to be subdivided is chosen for its cheapness, not necessarily for its attractiveness or suitability for urban, suburban or summer home development. It is intended to be bought primarily for private speculation rather than for use.
2. In earlier years, requirements for paved streets and other utilities discouraged the subdivision of land essentially for speculative purposes. This is no longer the case, although the neighbor islands are still chosen because the standards for improvements are low. If the subdivider acquires the land for as little as $500 per acre and resells it for $25,000 an acre (6,000 sq. ft. lots), he can even afford to put in streets and utilities of some sort at his own expense (although he may still prefer bonds).
3. The land is marketed at a very rapid rate, sometimes most of it within a little over a year.
4. The ultimate proof that the land was not sold for real development is that most of the lots in subdivisions of this type don't get built on. Even lots in retirement communities in attractive surroundings may have four out of five parcels undeveloped in five years. In subdivisions sold mainly for speculation, nine out of ten parcels or more may be vacant ten years after purchase.
5. There are political incentives and problems. It is difficult, for example, for the Supervisors of a relatively poor County to turn down a subdivider who will increase the taxes on a large tract of land to fifty times their present amount.

Good long-range planning can specify, with reasonable assurance, both the desirability and the likelihood of new development. This particularly applies to large and relatively remote areas in the neighbor islands. Requests for rezoning and subdividing such areas need to be subjected to rigorous criteria as to reasonableness.

IV. CONCLUSIONS

A. *State and Local Land Use Control*

Land use regulation by the State of Hawaii is intended 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." Has this program been as successful as hoped?

It is said that a state government must do what a local government cannot or will not do. Political constraints affecting local planning and zoning are familiar to all. In Hawaii, broader public interests are expected to prevail over local political pressures. How effective are the county governments currently in recommending against premature, speculative or undesirable urban development? How effective is the Land Use Commission in turning down inappropriate petitions for changes in district boundaries?

It is important that the state and county zoning standards and policies be high rather than permissive. Effective land use control needs to be restrictive enough so that major new development normally requires a change in the land use district.

[2] In the Napa Valley vineyards in California, the Supervisors recently passed a 25 acre *minimum* parcel size.

B. *State Land Use Controls*

The following recommendations are the distillation of a thoughtful review of Hawaii planning and land use control problems.

This review suggests that the present controls are *not* strong enough in certain ways to accomplish the goals stated in the State's new General Plan Revision. If the counties continue to establish low minimum zoning standards for agriculture and open space the state must step in. The need for "super" agricultural zones with minimum parcel sizes of 25 acres, 100 acres, or even larger is clear. These zones would apply both in areas which should not foreseeably be urbanized and in agricultural areas on the fringe of urban expansion where greenbelts are necessary.

The Department of Planning and Economic Development needs to prepare long-range plans (in some cases, intermediate and short-range plans and programs) for all islands consistent with the policies of the current State General Plan Revision. These plans would relate projected land uses, circulation facilities and public facilities to the future development on each of the islands. There should be provision for a strong input from each of the counties to such a planning program.

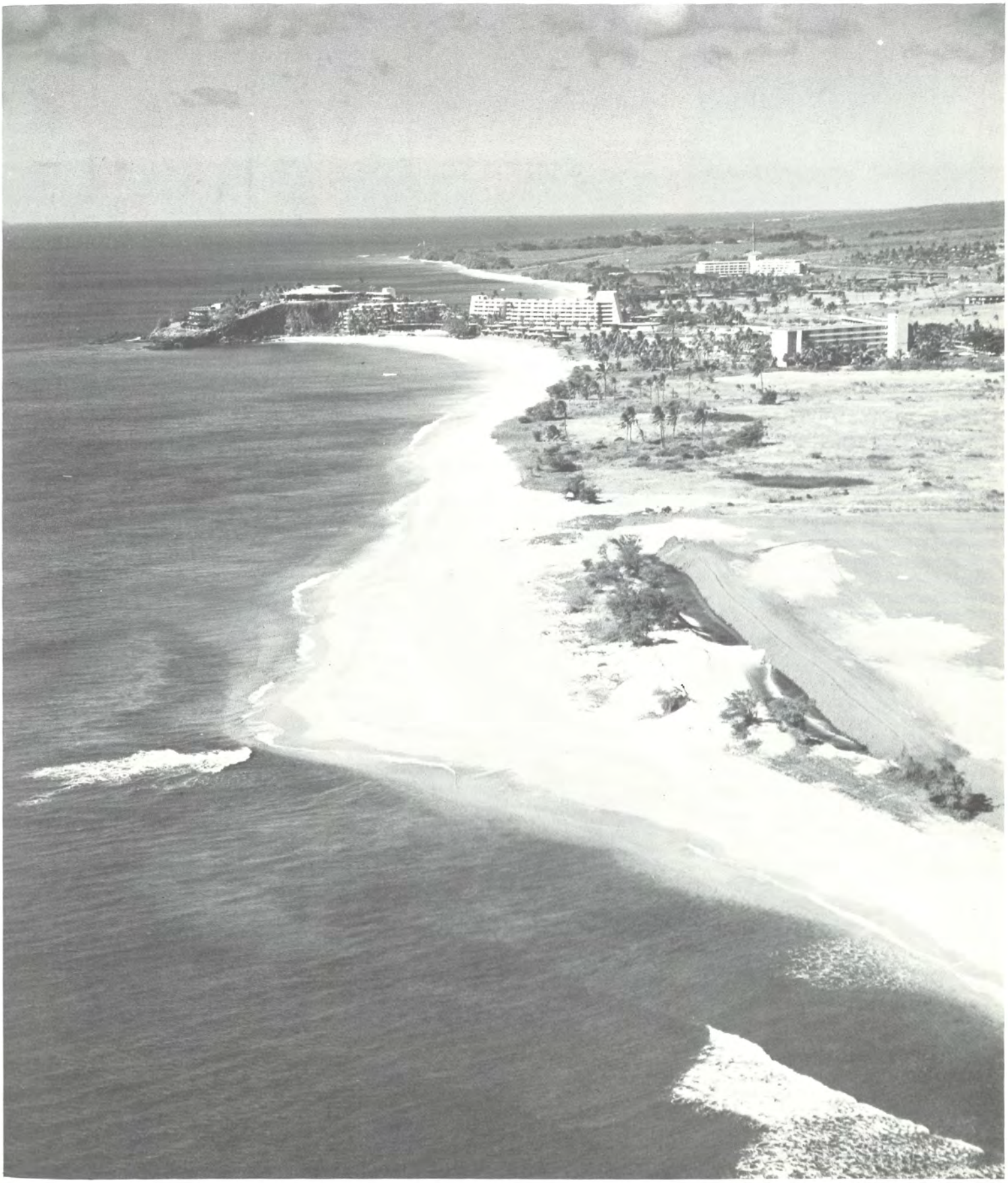
C. *County Planning and Zoning*

Each county (with state participation) must continue to prepare the plans needed to guide its future development. Plans prepared by the counties need to be reviewed by the state as to how they relate to state planning policies. This is one important way in which county and State policies can be meshed. These county plans apprise the state of the policies desired by the people who live and work in the county. When plans are meshed, it is easier to mesh land use controls. As mentioned, county planning needs to include the Conservation District too. The following summarizes recommendations as to county planning and zoning policies:

1. Each County needs to prepare a long-range County General Plan and revise it not less frequently than every five years. The Plan needs to be based on State social and economic policies, but above all needs to reflect local needs and desires of the County residents.
2. Each county needs concurrently to prepare intermediate and short-range plans and programs for areas with critical problems or subject to development pressures — such as newly urbanizing areas, business districts, urban fringes, resort and recreation communities, etc.
3. Each county needs strong up-to-date zoning. County zoning need not be uniform throughout the State of Hawaii. Each County Zoning Ordinance should express the needs and desires of the particular county as seen through the eyes of the county government. Each Ordinance should, however, be prepared in concert with State Land Use policies.
4. County zoning ordinances should be revised periodically. Ordinances need to include minimum parcel size requirements appropriate to ownership patterns and the particular types of agriculture practiced — frequently much larger than at present. In many instances, there is a need for "super" agricultural zones as mentioned earlier.
5. County zoning must not be so restrictive as to create a monopoly in land availability, but must be restrictive enough so that the County government, rather than private interests, have control of the county's future. This means that two or two and one-half times the amount of land anticipated to be needed in five years for urban uses could be zoned — but not ten times or twenty times.

The State of Hawaii has made extraordinary efforts to protect its resources and its continuing greatness as a state. Protection requires both agreement on significant goals and the adoption of firm regulations. Hawaii has agreed on outstanding goal statements. The state and local governments now need to concentrate even more on making sure that the regulations necessary to achieve the goals are firm and well enforced.

Urban District
Kaanapali, Maui



CHAPTER 15 / TAXATION AS A TOOL OF PLANNING[1]

Urban and Conservation Districts
Enchanted Lakes
Kailua, Oahu

I. SOME CONCEPTUAL ISSUES

A. *Introduction—The Planning Commitment*

Although Hawaii is by no means unique in this respect, the statutes of the State clearly indicate a legislative intent to build into the tax system the notion that taxes can be used as tools of planning.

Whether tax policy has in fact assisted in the pursuit of planning goals is, of course, another matter. In the field of tax legislation many hazards lie between an expression of legislative intent and observable and agreeable results.

Furthermore, it might well be that some inherent limitations surround State tax policy to prevent the effective use of taxation as a tool of planning. Perhaps, for example, the tax instrument can be nothing but a blunt hammer inappropriate to that kind of delicate planning which requires a sharp surgical scalpel. And it is fair to ask whether the present body of Hawaii tax law demonstrates the kind of internal consistency (within the tax structure itself), and the kind of external consistency (between tax laws and other relevant tools of planning) which the planning process demands. The clear necessities of legislative compromise frequently result in individual policies which tend to be competitive rather than cooperative—offsetting rather than complementary.

Thus, tax policy as a tool of planning must be tested by three different standards: 1. the translation of legislative intent into accomplished results; 2. the finesse with which the policy can be applied; and 3. the consistency of policy formulations. Each of these is an open question in the Hawaii experience. Each of these must be explored before the opportunities of using taxation as an effective tool of planning can be fully understood.

We feel that the abundant literature concerned with Hawaii's economic condition (past, present, and future) has given insufficient attention to fundamental concepts. This conceptual vacuum is equally apparent in the treatment of specific issues of tax policy in a planning context. On the surface these concepts seem easily understood and almost self-evident. But when attempts are made to develop consistent policies which regulate, persuade, and induce the private sector to perform according to expressed standards of the public interest, the "easy" concepts are too frequently forgotten. A careful reading of Hawaii's tax laws tends to support this observation.

Tax inducement is one instrument of public policy often used to promote the goals of planning. Some states have adopted extreme measures, to provide total exemptions to entice general or particular industrial activity. Other states have been concerned with assuring a favorable "business climate," with no clear definition of the term and no clear expectation of economic results. Still other states have fallen into the trap of offering tax advantages to those who would pursue the desirable course in any event and have thus given away part of the public fisc unnecessarily.

Only rarely have states attempted to articulate a set of planning goals and to aim all relevant state policies at the target. Hawaii appears to be a member of this latter select group, although even here the commitment has been partial and the results inconclusive. From the planning point of view, therefore, Hawaii deserves commendation. But it is still appropriate to question the relevance and the consistency of tax policy with respect to stated and implied planning goals.

Tax policy in its planning clothes is a policy of inducement rather than a policy of control. It attempts to persuade the economic man (or the economic corporation) to pursue his *self* interest in the *public* interest by injecting costs for behavior which is not in the public interest and by injecting avoidance opportunities for behavior which is in the public interest.

The present study of taxation as a tool of planning has been designed to provide another reminder of useful ways of thinking of tax policy in the context of these statewide goals. Later in the analysis we hope to provide a kind of test of the effectiveness of present laws for this planning purpose.

There can be no question of the fact that the style and posture of the Hawaii tax laws suggest a conscious attempt to provide inducements to accomplish a planning purpose. For good or ill, the State of Hawaii is committed, in some degree, to the use of taxation as a conscious tool of planning.

It must be made clear at the outset that the present analysis does not pretend to be a study of the general virtues and deficiencies of the Hawaii tax system. In spite of strong temptations, we are not here engaged in a study which has the tax system as its focus. We are, rather, concerned with a more or less specific set of planning issues related to land use policies, and are asking two tax-oriented questions: 1. does the tax system have unplanned (unconscious) effects which aid or hinder the pursuit of planning goals? and 2. how might we use the tax system as one gadget among many in the tool box to accomplish the planning purpose?

Even though we are not engaged in a study of the Hawaii tax system *per se*, it would seem appropriate to put one or two conceptual notions to rest early in the discussion. If the Hawaii tax system is to be used as an effective tool of planning it seems reasonable to explore the differences between a tax system which pretends to be passive (but never really is) and a tax system which openly admits to its active role as a participant in the processes of economic change.

Yet even this active role must be conditioned by other sorts of demands which are placed upon any state and local tax system. Amont these competing demands are the need for adequate revenues, the issue of equity, and the assumed sanctity of the existing system of governmental relationships (federal, state, and local). Once over this conceptual hurdle we may explore the planning opportunities with a greater sense of security.

B. *The Concept of Neutrality—The Straw Man*

It is frequently suggested that state and local tax systems should be constructed on principles of neutrality with respect to resource allocation and with respect to income distribution.

The idea of neutrality is simply that the tax system should not affect economic decisions to produce one kind of product as opposed to another; or to use a particular combination of land, labor, and capital as opposed to another combination. The idea of neutrality also assumes that the present distribution of income is desirable, or at least that it should not be changed by the tax system. The separation of resource allocation and income distribution is one of convenience rather than one of reality, for it is clearly impossible to devise policies which will isolate income allocation effects from resource allocation effects. Every decision to change the relationship between the use of capital, land, and labor has implications for income distribution between capitalists, landowners, and laborers. And every tax program which favors

[1]Prepared by Dr. Leslie E. Carbert, Tax Economist, Palo Alto, California.

economic development at the expense of increasing overall housing costs has income distribution implications.

1. *The Question of Income Distribution*

The question of income distribution poses the greatest theoretical difficulties for economists, if only because the question touches philosophical issues at so many points and raises so many fundamental questions about the relationship between private action and public responsibility. In any event, the question is usually dismissed in the state and local tax forum by the argument that income distribution policies can only be effectively pursued at the federal level of government.

This concession seems to us to be an unnecessary and over-eager abdication of state and local responsibility, especially in the context of the Hawaii community. Certainly the *opportunity* to influence income distribution through state and local tax policy is ever present. And a specific pattern of income distribution can just as easily be presented as a state *goal* to be pursued as an accomplished *fact* to which the state must react. Furthermore, tax policy designed to advance the overall planning purpose, and, more specifically, the allocation of land uses, cannot be evaluated without an examination of its implications for income distribution. *Taxation of any sort imposed by any level of government represents an intrusion upon "normal" market forces and inevitably results in a different distribution of income than would be the case without such intrusion.* We shall see, for example, that Hawaii's tax laws favor intensive development at the probable expense of single-family residences. The question remains as to whether the intrusion is a purposive one or an accidental one. Obviously, the planning case must be based upon purpose rather than upon accident.

2. *The Question of Resource Allocation—Land Use*

But even more important for the present analysis, it is clear that neutrality is an impossible dream in issues of resource allocation. If, it is improbable absence of taxes, certain patterns of land use would emerge in response to the workings of market forces and principles of profit maximization, it is highly unlikely that a tax system could be devised which would provide the same patterns of land use. Compulsory levies by government mean automatic changes in the profit calculus and automatic changes in the expectations of profits. Tax liability means automatic rethinking of resource decisions and automatic reallocation of resources. A decision to employ land resources for one purpose in the absence of taxes must be cast in a new light when tax liability is involved.

Again, in matters of resource allocation the notion of tax neutrality is a sterile one. If neutrality is defined in terms of marketplace allocations—based upon *voluntary* processes of bargaining, purchase, and sale—tax effects which reflect *compulsory* payments cannot, by their very nature, be neutral. Taxes individually or taxes collectively must have economic effects (or exert economic pressures) which are generically different from those of the market place. The question remains as to whether the non-neutral effects of tax policy are planned or unplanned.

Perhaps this case against neutrality as a tax principle is stated too strongly. Certainly it assumes the existence of economic man carefully calculating profit maximization opportunities before and after taxes. In realistic terms such a man (or corporation) must be a rare breed. But at least it can be maintained that every tax exerts some *pressure* to change patterns of economic behavior and resource allocation. The amount of the pressure is partly a function of the size of the tax burden and partly a function of the strength of the profit maximization motive on the part of those required to pay the tax.

While most modern economists admit the futility of applying the neutrality argument to any system of state and local taxation, there is often an implicit assumption that a tax *which more nearly approximates* neutrality is to be preferred to a tax which has sharply defined economic effects. Some kinds of taxes are reasonably imitative of the pricing system and thus tend towards neutrality in their effects. So-called "user" taxes fit this category. And clearly taxes of general application are likely to be less "disruptive" of market patterns of resource allocation than taxes with specific application and concentrated impact. This point should be kept in mind in judging Hawaii's real property tax. Or the impact of a particular form of taxation on any one sector of the economy may be so slight that its effects will be limited to those which result from changes in disposable income with only trace effects upon economic decisions which are designed to avoid the tax.

Preference for types of taxes which have minimal effects upon economic decisions is thus based upon the philosophical notion that the normal workings of the market place provide better uses of resources than any which are subject to the influence of governmental fiscal action. It follows that an argument which espouses the virtues of the neutrality principle in state and local taxation (either as an absolute or as a preference among alternatives) in fact argues for no state and local taxes at all. A market place measure of neutrality can insist on nothing less.

It need hardly be mentioned that such philosophical conclusions of neutrality are in direct conflict with those which stress the need for public planning and which give the institution of government some responsibility for the total environmental condition. Fortunately, at least in official policy declarations, the State of Hawaii has not chosen to draw such narrow boundaries for a definition of the public interest.

C. The Concept of "Unconscious" Economic Effects

Having decided that economic neutrality and taxation are irreconcilable issues, we can readily conclude that judgment of the efficacy of a tax system must rest upon other standards. Certainly questions of present and expected revenue needs, the desire for overall equity in the system, the need for some income elasticity of the tax base, and even the pragmatic question of political acceptability are legitimate standards for the evaluation of a tax system. Indeed, tax reform proposals can stand or fall on just such questions. In Hawaii tax history the general excise tax owes its existence (and some of its present criticism) to issues of this sort.

Yet, in spite of the importance of these several ways of looking at a tax system, it cannot be denied that each manipulation of the structure, whether the change qualifies as a major reform or merely as a minor administrative revision, has repercussions on the economy of the state. And even though the basic reason for the change, as determined by the most sensitive reading of legislative intent, stresses issues which are not consciously aimed at economic effect, it is important to pose the economic question and measure the economic impact in terms which are as precise and as quantified as possible. For only with such identification is it possible to place tax policy beside other issues in proper decision-making perspective.

Although it is our purpose to attempt an identification of the major economic pressures created by Hawaii's tax structure, particularly with reference to patterns of land use, it has not been possible in the time available for the study to provide careful or even approximate measures of tax impact. The task of making such analyses is greatly magnified by the fact that there exists no requirement that statistics be gathered and maintained to satisfy this important analytical need. The tax ingredient of the total planning activity might well be purified with additional attention to the raw data requirements which lie behind a rational decision-making process. This point will reappear in the form of a series of important recommendations.

For present purposes and later analysis it

is useful to identify three categories of unconscious economic effects.

1. *The Other Purposes of a Tax System*

First, there are unconscious economic effects which result from the fact that tax policy must be responsive to other kinds of demands. In Hawaii law it seems reasonable to assume, for example, that the property tax exemption provided sufferers of Hansen's disease (Section 128-15) were designed for purposes other than those related to their effects upon the economy of the State. And one is entitled to doubt that the cemetary exemption (Section 128-18 (b) (4)) was designed to express the planning purpose that Hawaii required more cemetaries and fewer crematoria. In these and other cases overall economic effects must be judged secondary to the real purposes of the exemptions.

2. *The Lack of Analysis*

Second, many unconscious economic effects result from incomplete analysis at the time of legislative enactment. In this sense the economic effects are simply unanticipated. It seems clear, for example, that Hawaii's general excise tax "presents a de facto investment tax on both new and expanding firms, a deficiency which is further accentuated by the tax's tendency to pyramid."[2] It might reasonably be argued that this form of taxation tends to inhibit capital investment or dampen the effects of other positive inducements to capital investment. Yet it is doubtful that such negative incentives truly reflect a planning goal for the economic condition of the State. Anticipation of these results in a planning framework might well have suggested an original or subsequent modification of this tax provision.

3. *Legislative Intent and Administrative Performance*

Third, unintended economic effects must be associated with the gap between a statutory expression of legislative intent and the ultimate effect of the tax as it is administered. The most obvious candidate for example purposes in this respect is, of course, the real property tax, for it is a common observation that property tax statutes typically grant large discretionary powers to administrative agencies. It should not come as a surprise that such conditions tend to produce economic effects which are unanticipated by the statutes. Hawaii is by no means unique in its grant of discretionary powers, although, as we shall see, permissiveness seems to be a bit overdone in the Real Property Tax Law. It remains for later analysis to see whether the *results* of the law meet the apparent *intent* of the law.

It must now be clear in this exposition, as it certainly is in the day-to-day concerns of legislators responsible for tax policy of the State, that a variety of impulses determines the character of the tax structure and the effects which this structure has upon the economic condition of the State. Tax

It must now be clear in this exposition, policy is not solely responsive to the purposive demands of a planned economy, even though economic effects are ever present. Economic effects are frequently unplanned because other motives intrude, because of inevitable deficiencies in the analysis of economic effects, and because statutory purpose is not always matched by administrative accomplishment.

D. *The Concept of Planned Effects*

The use of state and local tax policy as a conscious devise to shape economic behavior for public benefit presupposes a statement of the public benefit and a preliminary understanding of cause and effect relationships in an economic setting.

1. *Taxation and Planning Goals*

For present purposes it is appropriate to assume that "public benefit" is defined, in a broad and general way, by statements of community goals. In the Hawaii case these goals are expressed in Part 2 of the *General Plan Revision Program* entitled "Goals for Planning" prepared by the State of Hawaii Department of Planning and Economic Development and issued in 1967. A search for causse and effect relationships is evident in many publications, official and otherwise, and is, of course, one of the main preoccupations of the present study.

2. *The Recoil Principle*

In a planning context it is useful to think of taxation as providing negative incentives. In more earthy terms, this idea simply suggests that taxes are indeed painful and that whenever possible the victims try to avoid the pain by avoiding the instrument which inflicts it. This effect we shall call "the recoil principle."

But clearly the taxpayer's response is in some sense dependent upon the magnitude of the stimulus. Recoil from a pinprick is likely to be more casual than recoil from a stout blow to the solar plexus. This is to say that response to a large tax liability is likely to be more dramatic and urgent that response to a small tax liability.

Nevertheless, it is certainly true that in the profit and loss statement a dollar of tax cost is just as significant as a dollar of labor cost, a dollar of interest cost, a dollar of rental cost, or a dollar of transportation cost. And because all are indeed costs they must be equally representative of the recoil principle. The profit motive insists that all costs, taxes, included, be minimized.

While all costs are, in some degree, responsive to governmental policy at the state and local levels, the great difference between them is that tax costs stand out as presenting clear opportunities for direct and purposive action by government. Hence, on the surface, there would appear to be unique opportunities for using taxation as a tool of planning.

Thinking of tax policy as a device to provide negative inducements suggests a perspective for assessing the power of any tax program in any given taxing jurisdiction. Using Hawaii as an example, it is theoretically possible to *prevent* selected kinds of economic activity by the use of tax policy, quite without reference to the policies of other states. This result could be accomplished, of course, by levies high enough to make undesirable pursuits unprofitable after the imposition of the tax.

On the other hand, it is not possible for Hawaii to assure the *presence* of selected kinds of economic activity by tax policies developed without reference to those of other States. Even assuming that all other (i.e., non-tax) conditions are identical, Hawaii tax policy cannot attract a profit-seeking enterprise by tax offerings if other states are offering *greater* tax advantages. Tax policies designed to attract industrial location or other business activity are limited to the imposition of a zero levy (i.e., total exemption). And even this extreme policy will be ineffective if other states offer equivalent exemptions. (In this nomenclature negative taxation is considered to be a subsidy and hence is classified as public expenditure.) In other words, tax policy designed to *attract* economic activity is limited in two ways: it is limited at the level of zero tax liability; and it is limited by the actions of other states. However, tax policy designed to *prevent* certain kinds of economic activity is confronted with no such limitations.

It might seem strange that tax policy should be used to *prevent* economic development. After all, expanded economic activity is generally considered to be next to godliness. But remember that planning rules relate to the *quality* of development as well as to the *quantity* of development. If economic development means the destruction of other environmental elements of high social virtue, intelligent planning would suggest a system of overall priorities. The property tax in particular is able to provide specific tools to express these planning priorities.

Thus, if Hawaii tax policy is a planning framework is designed to do nothing more than offer exemptions or partial exemptions or favorable treatment, two questions emerge: 1. can any level of exemption, in-

[2]Arthur D. Little, Inc., *Hawaii's General Excise Tax: Prospects, Problems and Prescriptions,* November 1968, p. 4.

cluding total exemption, be great enough to provide significant economic effects? The answer to this question requires a sensitive understanding of the Hawaii economy and its potential. 2. Can Hawaii compete effectively with other states through tax exemptions, even assuming other economic conditions to be identical?[3] In exploring this second question it is important to recognize that interstate tax competition need not be directed to Hawaii to have economic effects upon Hawaii. It is not necessary that California compete, in its tax policy, directly with Hawaii to have an effect upon economy of Hawaii. If California chooses to compete with New York, Louisiana, or Ohio, Hawaii will notice the effects. As in any street brawl it is possible for bystanders to be victimized by the disputes of the principal competitors.

It follows that taxation as a tool of planning can be effective in the absolute sense only as a preventive device—only if it is designed to persuade people *not* to do things which they would do in the absence of taxation. In matters of public planning it seems that too little attention has been given to this concept of the taxation tool. Certainly it provides a vision of tax policy as a *complement* to zoning and other exercises of the police power and not just a *substitute* for the use of such direct control techniques. Hawaii tax law shows little recognition of this opportunity for preventive policy.

It is necessary to explore one other aspect of the recoil principle, for observable tax costs provide only part of the answer. Business enterprises about to commit themselves to relatively long-term investments must be concerned with measuring more than *present* costs. They must also be concerned with estimating *potential* costs over the life of the investment. As a result, the question of expectations is also significant in evaluating the potency of the recoil principle in planning by taxation. If it is reasonable to assume that the pain is likely to be of short duration the taxpayer might well conclude that the pain is more bearable than the effort required to avoid it. It is fair to conclude, however, that expectations of short pain are rare (and perhaps irrational) in most calculations to tax impact.

Nevertheless, it is not unusual for business enterprises to select a location within a taxing jurisdiction and seek to reduce tax burdens after their arrival by urging changes in tax policy. In this sense, it must not always be assumed that taxpayer response is purely passive.

Especially in cases where the business becomes such an important part of the economy of the community or the state that the relationship is one of virtual dependency, the pressure to alter the tax climate may be very powerful indeed. The idea that some industry or economic pursuit must be "saved" to preserve the economic base of a dependent community has served to change many a tax law and to provide many an exemption. It is the unenviable job of the planner to estimate the reality of the claimed consequences and to determine whether inflicted pain will have real or only feigned economic effects.

For Hawaii this question is more than theoretical. Should agriculture receive tax favors because it represents an economic base which must be preserved? Should the tax system be arranged to retain an economic base which will give the youth of Hawaii incentives to stay in Hawaii, and even in the counties of their heritage? And to what extent should the planning process recognize the impact of tax burdens on business decisions to continue operations, to expand, or to relocate? All of these are legitimate planning questions, and all require an understanding of the real meaning of what we have called "the recoil principle."

Attempts by business enterprises contemplating industrial location to predict patterns of state and local taxation for a series of potential sites are always difficult. Aside from the general and somewhat rueful observation that state and local taxes are constantly rising, uncertainty and unpredictability seem to characterize tax costs more than other kinds of costs. For these reasons, many observers of the tax scene have concluded that taxes tend to play a small and residual role in the location decision.[4] With the exception of some of the more notable tax havens (Puerto Rico, for example), it seems generally true that tax policy aimed at industrial attraction is severely proscribed. The Hawaii condition provides no obvious exceptions to this conclusion.

For planning purposes it is important not only to realize that any tax produces recoil pressures but to identify the probable path of retreat. A variety of opportunities is available, the selected path being determined by the nature of the tax, the character of the business, and the alternatives available. It should be noted, too, that not all taxpayers find equal opportunities to recoil. There are, in effect, different levels of flexibility to retreat from the blow. For example, a firm already located in Hawaii and committed to heavy and long-term investment is obviously more vulnerable to an unfavorable tax levy than an identical firm still contemplating a move to Hawaii. And an economic activity heavily dependent upon a unique resource for which the demand curve is relatively inelastic tends to exhibit similar vulnerability.

Of course there is no mystery about the techniques of tax avoidance, although sometimes the collective pursuit of easier burdens produces economic effects which come as a surprise to planners, tax administrators, fiscal experts, and policy makers. Existing firms, or indeed whole industries, can move out of the taxing jurisdiction or plan a phased decline while the outstanding investment is maturing or simply plan to accommodate expansion requirements elsewhere. Departure by attrition is not uncommon.

Tax differentials probably play a small role in decisions of this sort when the movement is between states, except perhaps for the so-called "footloose" industries. But there is reason to suppose that tax differentials sometimes activate the recoil machinery in relocations over shorter distances. This effect is particularly evident in long-run relocations from central cities to suburbs and in the development of industrial enclaves for tax protection purposes. And it is also evident in the effects produced by *intra*state differences in tax burdens arising from a governmental structure allowing a degree of local autonomy.

Because of its traditionally local orientation, the property tax plays a principal role in the definition of these local recoil pressures. In some states location on one side of the road can provide substantially different property tax burdens than location on the other side of the road. For the most part, these differences are accidental, and are the result of political habits carefully nurtured by home-rule traditions. But, though accidental, these patterns do provide students of public finance with a demonstration of a land-use planning opportunity which is uniquely attached to the property tax system.

Hawaii cannot be analyzed in the same terms as any other state in the Union in this respect. Centralized administration and a centralized governmental and policy structure provide a different framework for property tax analysis from those principles which are relevant to other states. To be sure, the Land Use Law provides an ingenious and highly simplified Hawaiian substitute for the effects of intrastate variety common in other states. In effect, land use districts are a substitute for the multiple taxing jurisdictions of other states.

3. The Magnetic Principle

The statement of basic concepts would

[3] *Ibid*, p. 109, et. seq. "Beggar Thy Neighbor Overtones" are clearly relevant.

[4] Carbert, Leslie E., *The Impact of State and Local Taxes in North Carolina and the Southeastern States*, North Carolina Tax Study Commission, Raleigh, 1956, pp. 68-90.

not be complete without a brief treatment of the opposite planning tool of the fiscal system. If tax policy reflects the recoil principle of planning, public expenditure policy might be said to exert a kind of magnetic effect.

Some states have expressed this magnetic intent in a rather direct way by various kinds of subsidies to selected enterprises or to business in general. Some, for example, have made provision for low-cost loans for development purposes. Other states have imitated the federal land-grant policies of an earlier day by making direct gifts (or "gifts" with insignificant compensation) of land. But more frequently the policy has been exercised through the normal governmental processes of providing public services to private enterprises. Hawaii is clearly a member of this last group. In the magnetic appeal of public expenditure policy lies a powerful tool of land use planning. It is often maintained, for example, and with some apparent justification, that California's historically liberal fiscal policy with respect to its system of public higher education, with some assist from the federal research and development budget, has greatly enhanced the economic condition of the sophisticated electronics industry and has been more than a little supportive of advanced agricultural techniques in a variety of ways. Public support of research activity clearly provides monetary benefits of great attraction which can be justified if it does indeed perform the function of a planning tool for a broader social benefit.

In a more specific sense, land use planning goals can be advanced by a careful application of public utility policy. The provision of water supply, sewage disposal facilities, transportation access for employees and products, and the provision of adequate police and fire protection can be quite persuasive in basic profit and loss terms. Furthermore, the pursuit of such policies can be highly selective and can more readily be applied to specific parcels of land than can the real property tax. Again, Hawaii provides some superb examples. For who can fail to notice the widening of highways adjacent to proposed new developments, as one of many obvious public services provided to the private sector.

By the same token, a willingness to make use of the magnetic effect of public expenditure policy provides another kind of test of the seriousness and consistency of the planning purpose. If those who administer the Land Use Law in Hawaii designate specific parcels of land for continued agricultural use while other agencies of State and local government express willingness to provide full urban utility services at public expense, it would seem appropriate to question the consistency of public policy.

In our opinion, Hawaii has not demonstrated an outstanding determination to use public expenditure policy for the pursuit of its planning goals, although it is clear that opportunities for coordinated policy are greater in Hawaii than in any other American state. The same motif of centralized authority prevails in the field of public expenditures as in the field of taxation, although perhaps to a somewhat lesser degree in the former than in the latter. It follows that the rule of consistency with overall planning objectives is applicable to each arm of fiscal policy—expenditures and taxation.

E. Summary of Conceptual Issues

There are many ways of looking at a state and local tax system. The system must be adequate to assure sufficient revenues to support necessary expenditures. The system must be reasonably fair in its distribution of tax burdens. The system must respond to changing patterns of economic behavior (the elasticity concept). The system must in some sense be responsive to those pressures best described by the term "political acceptability." The system must be consistent with the existing pattern of governmental relationships without demonstrating a slavish devotion to this pattern. But, in addition, the system must be asked to perform according to a set of planning rules—to promote desirable economic effects and to discourage undesirable economic effects. The last of these requirements provides the focus for the present study, although in pragmatic terms the other requirements cannot be neglected.

In the State of Hawaii, planning goals have been articulated in an imaginative and productive way. These goals are expressed in Part 2 of the *General Plan Revision Program* and have achieved their principal force through the Land Use Law. To be sure, these goals are preliminary, incomplete, somewhat hesitant, and not always consistent. But the goals have indeed been articulated, so that it is fair to judge public policy by its relevance to these goals. Furthermore, the State of Hawaii has taken clear and official steps to indicate its willingness to make use of taxation as a tool to advance the planning purpose. The evidence for this conclusion is to be found principally in the unique structure of the real property tax.

Taxation represents a definite intrusion upon the free play of market forces. It follows that neutrality as a principle of state and local taxation is a hollow concept, whether the issue is presented in terms of income distribution or in terms of the allocation of economic resources. Our principal concern is with problems of resource allocation and, within this concept, with decisions which affect the limited resource of land in Hawaii.

It seems unproductive to think of Hawaii's tax system as providing meaningful opportunities for general economic development. This conclusion is based upon the concept that other resources issues are of such overwhelming importance that no useful purpose could be served by attempting to create a "tax haven" environment, especially in view of the uncertain effects of interstate competition. This conclusion is not, of course, designed to justify profligacy in matters of state and local finance, for certainly negative overall effects are possible if the tax environment appears to be exceedingly hostile. Nor, on the other hand, is it to neglect the possibility that economic changes generated outside the tax system can be slowed down and perhaps rationalized by careful application of tax policy. But it still seems fair to conclude that reasonable manipulations of the tax structure in Hawaii are likely to produce slim benefits in terms of such broad aggregates as the level of State output and total personal or per capita income payments.

The real opportunities for using tax policy as a tool for economic planning seem to lie is the more specific applications of *intra*state land use planning. In this respect, the real property tax appears to present unique challenges. This conclusion is based upon the concept that property tax liability is directly related to particular parcels of property, and hence provides an opportunity to influence economic decisions through the distribution of its burdens.

While tax policy must be translated into economic effect through its ability to persuade in negative terms (the recoil principle), public planning should not neglect the magnetic influence of expenditure policy. This latter opportunity exists principally, although not exclusively, through the provision of those public services which help to define an urban condition.

The usefulness of tax policy as a tool of planning must be tested by three standards: 1. the translation of legislative intent into accomplished results; 2. the finesse with which the policy can be applied; and 3. the consistency of policy formulations.

Finally, it is impossible to resist the conclusion that these conceptual issues are useful not only as a framework for the present analysis. In addition, they provide essential standards for a *continuing* judgment of public policy. In all planning efforts it is important to assure built-in machinery for testing the effectiveness of the efforts. As will be indicated later in this work, many of the attempts to develop such effectiveness tests were frustrated by

the fact that raw data are simply unavailable in a condition suitable to the basic planning purposes suggested by the law. As a result, it will later be argued that the law itself might profitably be revised to provide its own testing machinery, requiring that information be maintained for specific planning purposes. To the planner who has become accustomed to the "stepchild" role, forced to chew the data leftovers prepared for other meals, this notion might appear somewhat revolutionary. But it seems a small request, if taxation is to be used as a tool of planning, to ask that tax information be collected, assembled, and reported in a manner designed to assist the planning process as well as to assure the proper and traditional functions of the tax administrator.

II. THE HAWAII TAX SYSTEM IN BRIEF

A. *The Tax Structure*

The easiest and perhaps the most appropriate characterization of the Hawaii tax system is its relative simplicity in basic structural terms. Three major tax types account for 75 percent of all State and local tax collections (excluding unemployment compensation). By a slightly different grouping which links the use tax to the general excise tax and which classifies both personal and corporate income taxes as "taxes on income," the three levies account for almost 80 percent of total State and local collections. The remaining 20 percent is made up of eleven "separate" levies. With the exception of gasoline tax revenues, virtually all of which are assigned for special-fund purposes, no single levy of these eleven types exceeds 4 percent of State and local tax collections. Table 14 shows this basic structure.

Table II shows, in broad outline, the Hawaii structure compared with state and local tax collections for the United States as a whole. In percentage terms, Hawaii collects slightly more through sales and gross receipts levies and approximately the same through the corporate income tax as do other states. The remarkable contrast is shown in the relatively small percentage of collections from the property tax and the relatively large percentage represented by the individual income tax. The income tax comparison, of course, reflects the fact that twelve states (including four large states) do not levy taxes on individual income. Considering state tax collections alone, only Washington and Illinois collect a larger percentage of their revenues than does Hawaii from sales and gross receipts levies.

Obviously the tax structure in Hawaii cannot be assessed without a serious examination of the general excise tax. Fortunately, this has been the subject of extensive recent analysis in a report submitted to the State of Hawaii Department of Taxation by Arthur D. Little, Inc., entitled *Hawaii's General Excise Tax: Prospects, Problems, and Prescriptions,* November 1968. The report indicates that, in terms of broad industry groupings, retail trade accounted for almost 39 percent of total excise tax collections in 1963, amounting to 115 percent of the net income of this group. "If retailers had not been able to shift at least a portion of the tax forward to the consumer, their general excise tax liability would have been equivalent to a net income tax of more than 100 percent."[5] The next largest contribution to total general excise tax payments was made by the contract construction industry (16 percent), followed by the wholesale trade sector (14.2 percent). These three categories accounted for 60 percent of general excise tax payments. If payments by the services category are added, the total amounts to 80 percent. The clearly appropriate assumption that a large percentage of these payments was shifted forward to consumers, with a pyramiding effect, demonstrates the contribution of Hawaii's tax system to consumer prices.

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[5] Arthur D. Little, Inc., *op. cit.*, p. 30.

TABLE 14 STATE AND LOCAL TAX COLLECTIONS IN HAWAII[a]

1967 and 1968

Source	1967 collections (in thousands)	1967 Percent of Total	1968 collections (in thousands)	1968 Percent of Total
Gross income and use[b]	$104,495	34.95	$114,460	35.06
Real property[b e]	60,144	20.12	63,705	19.51
Personal income[b d]	63,512	21.24	70,312	21.54
Corporate income[c]	10,525	3.52	11,196	3.43
Fuel	20,317	6.80	21,911	6.71
Liquor	5,797	1.94	6,291	1.93
Tobacco	4,669	1.56	4,973	1.52
Insurance	3,932	1.31	5,147	1.58
Public Service Companies	8,964	3.00	10,545	3.23
Banks and other financial coporations	1,725	.58	1,495	.46
Inheritance and estate	1,592	.53	1,606	.49
Conveyance	88	.03	264	.08
Licenses, Permits, and others	763	.25	839	.26
County Collections	12,429	4.16	13,731	4.21
Totals	$298,952	100.00	$326,475	100.00

[a] excluding unemployment compensation.
[b] reduced by Natural Disaster refunds and credits.
[c] includes payments on estimated taxes.
[d] includes withheld and estimated tax less refunds.
[e] adjusted for delayed collections.
Source: Tax Foundation of Hawaii, *Government in Hawaii,* 1969.

TABLE 15 STATE AND LOCAL TAX COLLECTIONS—HAWAII AND UNITED STATES[a]
1967

Source	United States collections (in millions)	United States percent of total	Hawaii collections (in millions)	Hawaii percent of total
Sales and gross receipts	$20,554	33.6	$104,495	34.9
Property	26,280	42.9	60,144	20.1
Individual income	5,835	9.5	63,512	21.2
Corporate income	2,227	3.6	10,525	3.5
Other	6,344	10.4	60,276	20.2
Totals	$61,241	100.0	$298,952	100.0

[a] excludes unemployment compensation taxes.
Source: Tax Foundation, Inc., *Facts and Figures on Government Finance*, 1969.

More importantly, these percentages are shown at levels which reflect 1965 rates. These projections show retail trade charged with 41 percent of total payments, contract construction with almost 17 percent, and wholesale trade with 14.6 percent. These three categories represented 72.5 percent of total payments. The addition of the service category yields a total of 84.5 percent. The manufacturing category dropped from 11.8 percent at 1963 levels to 8.2 percent at 1965 rates.[8]

It is also interesting to note that agriculture and fisheries accounted for only .5 percent of general excise tax payments by 1965 rates. If pineapple canning, sugar processing and other food processing are added to this amount, agriculture and agriculture-related industry accounted for only 4.7 percent of the total.

The Hawaii property tax is, in relative terms, a fairly low tax. Although Hawaii ranks thirteenth among the states in per capita personal income, on the scale which ranks state and local property taxes as a percent of total personal income Hawaii ranks forty-first. Furthermore, Table 15 shows that the United States as a whole places more than twice as much reliance upon the property tax as does Hawaii in terms of all state and local tax collections. In fact, of the fifty states, only Alabama showed a lower figure for property tax revenue as a percent of total state and local tax revenue, with Delaware and South Carolina showing approximately the same percentages as Hawaii. The three west coast states of California, Oregan, and Washington showed percentages of 50.2, 47.4, and 31.2 respectively, compared with 20.1 for Hawaii.

Thus, by any overall measure, the property tax in Hawaii is not a large revenue element. This is not to say, of course, that individual taxpayers are always gently treated by the Hawaii property tax. As will be shown later, the tax has a rather narrow base. As a result, burdens tend to be concentrated and may indeed be quite severe for those taxpayers who are not the priviledged recipients of exclusions, exemptions, and favorable treatment in the rate structure.

B. *The Tax Structure and Land Use Planning Opportunities*

Of the three major tax types which form the State and local tax structure in Hawaii certainly the type which provides the greatest opportunities for land use planning is the real property tax. This is not to say that taxes on income (personal and corporate) and the general excise tax are unavailable for these purposes, but the latter opportunities seem decidedly limited.

It might be possible, for example, to encourage certain kinds of economic activity by adjustments to the structure of the corporate income tax and thus influence the uses to which land resources are put. But the advantages of relatively uniform treatment are so great with this type of taxation that social benefits to be derived by conscious discrimination would have to be very large indeed and capable of clear demonstration to justify the extensive use of these techniques for planning purposes.

On the other hand, it might be that the pursuit of planning goals through the real property tax (for example, in the so-called dedication law) tend to produce unintended opportunities for individual or corporate speculative gains. Perhaps these opportunities can be lessened by a careful use of the corporate and personal income tax structure or through a judicious use of other less significant elements of the Hawaii tax system.

Furthermore, it is not necessary to think of the present Hawaii tax structure as somehow frozen in style. In terms of land use planning needs, or in other terms by which a tax system must be judged, there might be good reason for inventing new types of taxes (new, at least for Hawaii) or for altering the emphasis within the present structure.

Still, the steps which have already been taken in Hawaii to develop the real property tax as a tool of land use planning are too far advanced to permit the judgment that other tax types are likely to have the same capacity for potent policy action.

Perhaps the most significant limiting feature with respect to the use of the real property tax for land use planning comes from the fact that it already appears to produce rather low burdens as a general rule. In effect, there may be nothing more to give away. But, as suggested earlier, perhaps it is time to think of using the real property tax as a prohibitive device (the "recoil" principle again) rather than as a protective or magnetic device.

C. *Summary of the Hawaii Tax System*

The Hawaii tax system is relatively simple in style, consisting of three major sources of taxation for State and local revenue purposes. Although one of these three is the real property tax, compared with other states in the United States the property tax tends to understatement.

It is obvious that the real property tax presents the greatest opportunities for land use planning, partly because the present structure of the tax indicates a policy commitment to such uses and partly because of the inherent qualities of the tax.

Although other forms of taxation would seem to be less available for the per-

[8] *Ibid.*, p. 29.

formance of planning tasks, they should not be neglected as devices to close gaps created by other policy actions.

III. THE REAL PROPERTY TAX AND LAND USE PLANNING

A. *An Overview*

1. General Economic Development

It seems clear, from the earlier statement of concepts and the earlier economic summary, that the Hawaii tax system in general and the Hawaii property tax in particular are poor candidates for the jobs of enticing industrial location and of stimulating the economic development of the State as a whole. Even though it is essential to maintain a tax system which is not demonstrably hostile, the likelihood that the system can be used as a major promotion device is very slight indeed. The overwhelming significance of resource comparisons, market opportunities, transportation costs, and the possibility of interstate tax competition would seem to suggest that even the most liberal concessions in the Hawaii tax laws are not likely to provide important and lasting changes in the complexion of the overall economy of the State.

To be sure, it is possible that sharply revised tax laws might serve to prolong the pursuit of certain kinds of economic activity, particularly in the agriculture sector of the economy. But even here non-tax forces which are presently in evidence and which are bound to increase in intensity must, in the long-run, be expected to overpower any positive opportunities which the tax system can provide. As a State, Hawaii does not seem to have the proper economic attributes to make the "tax haven" a reasonable image for the predictable future.

2. Specific Planning Purposes

But it is not at all clear that the Hawaii tax structure must be assigned a passive or impotent role in the *specific* planning chore of assigning particular land masses to particular economic uses. In other words, while it might not be possible to provide tax inducements to raise the level of Hawaii's productivity or Hawaii's income-generating capacity, it might well be possible to shape the character of Hawaii's economy by tax devices and to use the tax system for the *internal* purposes of land use planning.

To consider extreme examples, it might not be possible to offer sufficient tax incentives to offset the economic costs of locating an integrated steel production facility or an automobile manufacturing establishment in Hawaii. But it might be possible to force a concentration of urban and industrial development into appropriate areas or to prevent such development in areas which are designated for other uses. These opportunities are, indeed, the central theme of the present study.

There can be no question of the fact that the real property tax is, in theory, uniquely available for these specific land use purposes. By its very nature, the property tax has a spatial reference which most other forms of taxation lack. Tax liability is clearly hooked to particular parcels of land. The property tax relates to the situs of land and hence provides a planning opportunity to control the use of land through a geographical manipulation of tax burdens. These policy opportunities are magnified by the highly centralized structure of the Hawaii tax system.

The degree of specificity with which such policies can be applied is, of course, somewhat limited by the provisions of the United States Constitution and the need to assure a clear public purpose before tax discrimination is made fully acceptable.

But the planning power of the real property tax is more sharply tested by political circumstance. One must always ask the question: *"How seriously are the Legislature and the Administration committed to manipulating the structure of the property tax for land use planning purposes?"* Obviously only the Legislature and the Administration can answer this question in any final way, although the present structure of the law does suggest a willingness to pursue the technique. Long before the question of constitutional p r i v i l e g e assumes real significance, this question of political commitment intrudes. Does the present Hawaii property tax law really mean what it appears to say, and is the entire administrative structure geared to pursue what appears to be legislative intent?

3. The Deficiences, in Summary

We find the present real property tax law to be deficient, from a planning point of view, in two general aspects: 1. In spite of the ease with which the central thrust of the law can be detected, the law itself does appear to contain inconsistencies. 2. The law does not provide sufficient insurance that its purposes will be translated into actual economic effect. In our judgment this latter is the greater deficiency of the two, in part because legislative intent can be frustrated by inadequate insurance, and in part because it is not uncommon to find opportunities for mighty profits flowing from weak laws.

B. *The Real Property Tax — Its Elements and Meanings*

1. Introduction — A Thumbnail Sketch

Any individual property tax burden is the result of a simple multiplication of the tax base (assessed value of taxable property) and the tax rate. While the novice taxpayer may be attracted or repelled by one or the other of these elements, the rational economic man responds to the final burden. The fact that this simple idea is imperfectly understood is attested to by the gamesmanship (frequently observed in the Hawaii press) which defines the relationships of those who establish assessment levels and those who set tax rates. The object of the game is for both the multiplicand and the multiplier to achieve maximum invisibility, even though the result is a known quantity.

Under the provisions of law, the Director of Taxation is permitted to determine the ratio of assessed to market value. The current level is publicly declared to be 70 percent. For the moment, the validity of this declaration is of no consequence, although we do feel that proof of the assessment level is presently inadequate. We will later argue that the law itself should provide for independent checks.

But whatever the level, the apparent conflict between the assessor and those county officials who establish tax rates is largely (but not entirely) spurious. Real burdens are the product of county budgets, and responsibility for these burdens need not be shared by rate fixers and assessors.

Nevertheless, public policy can be expressed either through the definition of the tax base or through the application of the tax rates. Most states which attempt to use the property tax for some planning purpose have concentrated on the tax base and have developed exemption policies and classification schemes which have offered favors through the assessment system. Hawaii tax law clearly indicates that both of these avenues — base and rates — are considered appropriate routes for land use policy.

Chapter 128 of the Hawaii Tax Laws provides the foundation for the definition of the tax base, although one subsection logically belongs in Chapter 129. Chapter 129 provides the basic machinery for the determination of tax rates, although it is incomplete without the mental transfer of that one subsection from Chapter 128.

The major land use planning elements of the real property tax are contained in the following thumbnail sketch of the statutory provisions. Each category is more fully explored later in the analysis. But one or two preliminary warnings are necessary so that clear distinctions might be made between the apparent intent of the law and the actual effect of the law.

At the moment we are concerned only with statutory language. Administrative discretion, as represented by written regulations or by unwritten practice, is not presently relevant. (But the temptation is too great not to anticipate a conclusion that Hawaii law provides extraordinary discretionary power to administrative authorities

— and probably to the *wrong* administrative authorities.)

In addition, these features of the real property tax law which might have some effect upon land uses or general economic conditions but which appear to owe their existence to other policy motives are not of immediate concern. Such elements of the law might have economic effects, but these effects are either tangential or reflect an eleemosynary purpose beyond the scope of the present report. (Thus, for example, a variety of exemptions for educational, charitable, and other purposes are omitted from the summary and from the later analysis.)

Finally, it might be admitted that present interpretations of legislative intent are highly subjective and are more the result of semantic analysis than of full legal examination. Furthermore, the interpretations have not been developed with the kind of sensitivity that can come only from "living with the law" for a prolonged period. Nevertheless, it is felt that this final limitation is not a severe one, in part because it is in the nature of the Hawaii tax law that the issues stand out rather boldly, and in part because the basic structure of the law is relatively new, so that a fresh interpretation is likely to be as valid as a more experienced observation.

With these qualifications, the thumbnail sketch of the main issues and the apparent purposes behind the Real Property Tax Law (other than revenue) are as follows:

a. Land use planning and the real property tax *base*.

(1) The exemption structure (at various places in Chapter 128) represents an attempt to accomplish two major purposes:

(a) To encourage particular kinds of activities, and

(b) To reduce some presumed inequities elsewhere in the tax structure.

We are not here concerned with those exemptions which reflect constitutional prohibitions.

(2) Fair market value appraisals (Section 128-9 and Section 128-2) represents two needs:

(a) The need to provide the assessor with a standard to guide his judgment, and

(b) The need to provide a basic standard of equity in the property tax system.

(3) The agricultural dedication law (Section 128-9.2) represents a desire to preserve agricultural lands for agricultural uses, with certain protections against "unjust enrichment." It is important to test the consistency of this element of the property tax law with the stated purposes of the Land Use Law, for some inconsistencies seem evident in the opportunity to dedicate lands for agricultural purposes in urban districts. Furthermore, it is important to test the effectiveness of the protections against unjust enrichment. But the basic purpose of this law is *a conservation purpose.*

(4) The wasteland development law (Section 128-9.30 to 128-9.38, inclusive) represents an attempt to induce the early development of otherwise unproductive lands. Here again there are provisions to prevent unjust enrichment. In this case, however, the basic purpose of the law is *a development purpose.*

(5) The urban dedication law (Section 128-21.5) represents an attempt to encourage the preservation of some open spaces in the urban context beyond that provided by the police power of county zoning administration — again, however, with protections against unjust enrichment. In this sense, the urban dedication law has as its purpose *conservation or creation* of open spaces within an area of urban development.

b. Land use planning and property tax *rates*.

(1) The classification system provides the basic mechanism of the graded rate structure. Even though this subsection [128-9 (d)] is placed in the valuation section of the statutes (and in spite of the injunction provided the assessor) the language has no other real point except to provide the base for the graded property tax rate structure.

(2) The graded rate structure (Chapter 129) is frequently cited as Hawaii's unique contribution to American public finance. Whether the implied applause is merited or not, the effects of the law on the Hawaii condition are proper subjects of concern. Certainly the purpose of the law is to *encourage development* of properties in urban classifications by imposing relatively high tax burdens on undeveloped properties in urban classifications and, conversely, by granting conditions of relatively low tax burdens on fully-developed urban properties.

It is within the structure of this law that the real urban questions must be posed, *for pressures to fully develop urban land must express the urban conflicts between single-family residental housing needs and the needs for developing more intensive land uses in the form of a variety of high-rise structures.*

2. Tax Base Issues

From these elements of the Hawaii real property tax law (and with some interpolation from the Land Use Law), several fundamental issues emerge.

- In the face of obvious development pressures, highest priority should be given to the development of lands located in districts designated as "urban."
- In spite of the desirability of such development it is important to preserve some urban-style open spaces.
- Second priority for development should be assigned to lands classified as "wasteland" in the Real Property Tax Law.
- Development pressures should be resisted for lands classified under the Land Use Law as "agriculture."
- If lands in agriculture districts are to be developed, priority should be given to lands of marginal quality.
- There is an underlying theme that, even though economic encouragement is admissible as a technique of State policy, some protections are necessary to prevent excessive and unintended economic gain.
- There are clear linkages between the Real Property Tax Law and the Land Use Law which in fact make them inseparable. In one sense the property tax is called upon to serve as a tool of the Land Use Law. In another sense, the policy machinery of each law (economic inducement in one case and the police power in the other) interact to create pressures which test the meaning of each law.

a. The exemption structure

Table 16 shows gross property valuations and the exemptions which, when deducted from the gross, lead to net taxable values for purposes of real property taxation.

It appears from Table III that approximately 40 percent of the gross property valuations are exempt from taxation. But care must be taken with this interpretation. With the exception of the exemption for homes, all other categories are *totally* exempt. It is doubtful that great care is taken in establishing values for these exemptions or even that adequate evidence exists for this reporting purpose.

(1) the inventory question

Because the Hawaii property tax law is defined as a tax on *real* property, the fact that personal property (and business inventories in particular) are not part of the tax base does not technically permit the application of the term "exemption" to personal

TABLE 16 REAL PROPERTY VALUATIONS IN HAWAII BY COUNTIES

January 1, 1968

County	Gross Valuations (in thousands)	Exempt Property[a]	Net Taxable Valuations (in thousands)	Percent of Total Net Taxable Valuations
Hawaii	$ 376,873	$ 123,558	$ 253,315	6.96
Honolulu	5,234,122	2,149,728	3,084,394	87.75
Kauai	148,028	45,962	102,066	2.80
Maui	285,438	85,998	199,440	5.48
Totals	$6,044,461	$2,405,246	$3,639,215	100.00

[a] including 50% of appeals.
Source: Reports of Department of Taxation, State of Hawaii.

property. Nevertheless, the fact that business inventories are not subject to taxation is a matter of some significance. Obviously Hawaii business institutions who find inventories an important part of their asset structures have an advantage over similar business in other states who still impose a property tax on inventories.

With one or two possible exceptions, however, the omission of inventories from the tax base is not likely to have a large effect upon the overall economy of the State. Retail establishments receive substantial benefit from the fact that inventories are not part of their taxable property. But retail locational decisions are influenced only slightly, if at all, by this fact. Market considerations are so important that other considerations, including property tax burdens, are of minor concern to all but the marginal enterprise.

In manufacturing terms, the inventory issue seems to be overwhelmed by transportation cost differentials and basic resource costs. It is difficult to think of the inventory exclusion as attracting any significant body of manufacturing enterprise. In the opposite sense, it is difficult to think of the full property taxation of inventories as turning away any manufacturing enterprise that might otherwise be attracted.

There is one major exception to this conclusion, at least in theoretical terms. For resource-based industries the omission of inventories from the tax base should support allied manufacturing activities. Obviously, the major resource-based industries are agriculture oriented, and pineapple and sugar production stand out as the best examples of the point. Although Hawaii enjoys some subsidiary processing in pineapple, it is remarkable that the processing of sugar in the Islands is so technologically shallow. To be sure, the question of inventory taxation is only part of the issue, but other economic questions would seem, on the surface at least, to suggest the virtues of full refining and packaging before shipping. And since the chief competitor in this enterprise is California, a State with a relatively heavy (although declining) impost on inventories, the comparison would seem to favor Hawaii.

In these days of increasing property tax exemptions and an increasing distaste for taxes on business inventory, it would appear to be rank heresy to propose extending the present base of the Hawaii real property tax to inventories. It can still be argued, however, that the economy of the State would suffer little from such an extension, and probably not at all if some resource-based manufacturing activity were exempt. The argument will later be made that even though the real property tax in Hawaii is not an abnormally large revenue producer, it is selectively burdensome — particularly on single-family residential property. If there is interest in broadening the property tax base an extension of the levy to business inventories would seem to be an option with the fewest unfortunate economic consequences.

(2) the exclusion of growing crops

In a somewhat similar sense growing crops is specifically excluded from the definition of "property" or "real property" (Section 128-1). The intent of this exclusion is clear enough, but its effects are somewhat cloudy. Presumably a purchaser of agriculture land who contemplates later development for urban uses can enjoy the income from growing crops, free of the burdens of property taxation levied upon the crops themselves. Furthermore, as we shall see later, there are some overlaps between this exclusion and the dedication opportunities of Section 128-9.2.

In view of the assessor's obligation to follow the fair market value rule, he must experience some difficulty in placing a value on the land exclusive of the value of the crops growing on the land. Certainly any sale of land with crops extant would reflect the value of the crops as well as the value of the land which is able to grow the crops. Comparative sales analyses would reflect the same blending of values.

There must, then, be a conscious and explicit calculation to exclude the value of the crops if the language of Section 128-1 is to be implemented. In the absence of a clear demonstration of this calculation, one can only wonder whether the statutory exclusion is meaningful. In any event, any discussion of property tax advantages offered by law to the agricultural sector of the economy must recognize the existence of this exclusion. It cannot be neglected simply because it is an "exclusion" rather than an explicit "exemption." In effect, the amount of the value excluded for growing crops must be added to the benefits of dedication and the benefits (if any) of land use classification.

(3) the listed exemptions

The listed exemptions which are most relevant for present purposes are the total exemption granted to "fixtures which are categorized as machinery and other mechanical or other allied equipment which are primarily and substantially used in manufacturing or producing tangible personal products" (Section 128-21.6); the general but limited exemptions based upon home ownership; and the total exemption of property used "in connection with the manufacture of pulp and paper from bagasse fibre" (Section 128-20.3).

Extended analysis of these exemptions is unnecessary for present purposes. In most cases the objectives are rather clear. The

bagasse fibre exemption is particularly interesting because it is designed to stimulate a new industry and fits nicely into the goal of economic diversification based upon the more complete use of a domestic resource. As circumstances have proved, this property tax exemption has not accomplished its purpose yet, mainly because other economic considerations have had greater meaning. Nevertheless, one might expect the exemption to improve the chances of survival if other economic details provide a basis for this development. Although the exemption is limited to a five-year period after construction of the plant is started, it would seem that at least part of the property might receive continued exemption through Section 128-21.6.

The land use rationale for the exemption of fixtures used in manufacturing tangible personal property is somewhat less solid. It might be argued that the exemption represents an attempt to attract general manufacturing enterprise to Hawaii. As indicated earlier, however, the likelihood of producing any such results through property tax exemptions (let alone through *partial* exemptions) is indeed remote. If particular industries are deemed to be desirable additions to the economy, and if they are also found to be responsive to property tax pressures, it whould seem desirable to develop a specific exemption policy similar to that for bagasse fibre and abandon the costly general exemption. As it is, this exemption is surely an example of a device to persuade people to do what they would probably be doing anyway.

Since this Section of law was enacted only in 1967 it is obviously too early to attempt a measurement of its actual effects. We would suggest, however, that a continuing observation of these effects over the next several years would be most useful.

The only conceivable argument for a general exemption for such machinery and equipment would be the vague equity point that inventories and other personal property are not subject to taxation so that the machinery and equipment used in their manufacture should also be exempt. At best, however, this is a strained argument and might be expected to lead to the suggestion, for the next round, that *all* machinery and equipment be exempt.

In any event, it is clear that the exemption provided by Section 128-21.6 serves further to narrow the base of an already slim property tax structure, with consequent effects upon those taxpayers who are not so favored.

The home exemption is not designed with an economic development purpose in mind. That is to say, the purpose of the exemption is not to persuade individuals to move to Hawaii, to own rather than to lease, or otherwise to condition their behavior because of the exemption. As is the case with most such exemptions the intent seems, rather, to introduce a note of "ability-to-pay" into a tax structure which is generally regressive in its impact.

Table 16 showed that *all* listed exemptions amount to $2.4 billion, or approximately 40 percent of gross valuations. Tables 17 and 18 show that total home exemptions amount to $469 million, or approximately 7.8 percent of the gross valuation of all property. The amount shown as the value for home exemption is approximately 27.3 percent of the gross valuation of homes.

These tables also show that the City and County of Honolulu accounts for 87.7 percent of the gross valuation of homes but only 78.3 percent of the home exemption. In the same jurisdiction, 68.1 percent of the gross valuation of homes is represented as fee ownership, while 73.4 percent of the exemptions relates to fee ownership.

Finally, it should be noted that the value of the home exemption ($469,600,000) accounts for 19.5 percent of total listed exemptions. As indicated earlier, this final comparison might not be too reliable. in view of the uncertainty which attaches to the gross value figures for properties which are 100 percent exempt.

No useful purpose would be served in the present context by a detailed examination of the home exemption. But it might be noted that a statutory language is somewhat vague in several places. Perhaps the most crucial issue in this respect is that the term "value" is not defined. It would be logical to assume that the value of the property which serves as the measurement base of the graded exemption structure is the *assessed* value as finally determined after the assessment ratio is applied rather than the full *market* value of the property. If the latter interpretation were placed on the statutory language the Director of Taxation would have complete control over the size of the exemption through his power (Section 128-2) to determine the percentage to be applied to fair market value in the determination of the assessment rolls.

TABLE 17 GROSS[a] VALUATIONS OF HOMES IN HAWAII, BY COUNTY
January 1, 1968

	Fee Ownership		Leasehold		Total		Percent of County Totals		
County	amount in thousands	Percent of State Total	amount in thousands	Percent of State Total	amount in thousands	Percent of State Total	Fee Ownership	Leasehold	Total
Hawaii	$ 89,571	7.3	$ 2,742	.6	$ 92,313	5.4	97.0	3.0	100.0
Honolulu	1,026,002	83.3	481,152	99.1	1,507,154	87.7	68.1	31.9	100.0
Kauai	36,752	3.0	242	.0	36,994	2.1	99.3	.7	100.0
Maui	79,881	6.5	1,253	.3	81,134	4.7	98.5	1.5	100.0
State Totals	$1,232,206	100.0	$485,389	100.0	$1,717,595	100.0	71.7	28.3	100.0

[a] Before exemptions.
Source: Reports of the Department of Taxation, State of Hawaii.

TABLE 18

EXEMPT VALUATIONS OF HOMES IN HAWAII, BY COUNTY

January 1, 1968

County	Fee Ownership		Leasehold		Total		Percent of County Totals		
	amount in thousands	Percent of State Total	amount in thousands	Percent of State Total	amount in thousands	Percent of State Total	Fee Ownership	Leasehold	Total
Hawaii	$ 44,622	12.0	$ 970	11.0	$ 45,592	9.7	97.9	2.1	100.0
Honolulu	270,161	72.9	97,670	98.6	367,831	78.3	73.4	26.5	100.0
Kauai	18,442	5.0	139	.1	18,581	4.0	99.2	.7	100.0
Maui	37,307	10.1	289	.3	37,596	8.0	99.2	.8	100.0
State Totals	$370,532	100.0	$99,068	100.0	$469,600	100.0	78.9	21.1	100.0

Source: Reports of the Department of Taxation, State of Hawaii.

If the term "value" is interpreted as *market* value, the exemption is deducted *before* the assessment ratio is applied. Thus, if the Director elects a 70 percent ratio the effective exemption is 70 percent of $5,500 (at the maximum) or $3,850. If, on the other hand, the term "value" is interpreted as *assessed* value, the exemption is deducted *after* the assessment ratio is applied. Thus, if the Director elects a 70 percent ratio, the effective exemption is $5,500 (at the maximum). For a home with a market value of $10,000 this difference is important. With a market value interpretation and a 70 percent ratio the final tax base would be $3,150—(10,000—5,500X .7). With an assessed value interpretation and the same ratio the final tax base would be only $1,500—(10,000X.7—5,500).

If the Director elects a 50 percent ratio the final net assessed value on a $10,000 home would be zero if the exemption were deducted after the ratio. Under the same ratio conditions but with a market value interpretation, the final assessment base would be $2,250.

No matter how the law is administered by present authorities with respect to the meaning of value, it is obvious that the law grants surprising discretion to the Director of Taxation for such interpretation. In land use terms, an assessor eager to promote intensive development in urban areas can make the home exemption virtually meaningless by pursuing two permitted courses at the same time. He can first assume that the language of Section 128-13 (a) (1) and (2) means *market* value. Second, under the powers granted by Section 128-2, he can establish a low assessment ratio. Total property tax collections need not be affected by this later decision, for counties may simply increase tax rates to accommodate to the lower assessment ratios. But home exemptions, especially in the lower-value classes, could be virtually eliminated, making it even more difficult to support single-family residences in areas already feeling the economic pressures of intensive development and the graded rate structure.

It is doubtful that this development purpose is the real intent of the exemption law. Nevertheless, the vagueness of the statutory language permits this interpretation by administrative officials. In any event, it is proper to argue that such planning authority should not be placed in the hands of the tax administrator. It should, rather, be stated as a clear expression of legislative intent in the law itself, with any remaining administrative responsibility assigned to a planning agency rather than a taxing agency.

The exemption law is quite specific in other respects, notably in the filing requirements and in other descriptions of the applicant's responsibilities. But in the basic definition of value some tightening of the language would seem to be in order.

One must also be aware of the common difficulty which arises from specifying fixed dollar amounts of exemption in the statutes. Certainly the general effects of inflation, and the particular pressures produced by changing property values in Hawaii, tend to make stated dollar amounts somewhat irrelevant in a short period of time. But perhaps this is not a serious deficiency, as Act 252 (SB 983) of the 1967 Session of the Legislature would indicate. As economic conditions change the size of the exemption can be changed by legislative action. But some thought might be given to defining the exemption as a percentage of the assessment base rather than as a fixed dollar amount.

b. The fair market value concept

It is a clear requirement of the Hawaii Real Property Tax Law that the assessor (Director of Taxation) must, with some important exceptions, establish values according to market value principles. The frequent use of the term "highest-and-best-use" and the delineation of other specifications, such as those which appear in Section 128-9 (f), must not be allowed to confuse the issue. For these are simply extensions of the market value definition and might almost be treated as a package of synonyms for the market value concept.

While the assessor is expected to determine, in his best judgment, the highest and best use of the property being valued, he is under definite judgmental restrictions to follow the rules of market-place logic. His judgment must reflect not *his* notion of highest and best use. It must, rather, reflect the judgment of the *market place*. The arguments that "the market place is irrational," or that "people are paying ridiculous prices for land," or that "this selling price might show what people are willing to pay but it doesn't represent the 'real' value of the land" have no place in the professional language of an assessor faced with a market value injunction in the law. Of course he might be wrong in his evaluation and interpretation of market forces, especially in view of the special difficulties of mass appraisal requirements and an inadequate budget. But he commits a greater professional crime if he attempts to substitute his own direct judgment for that of the market place. The assessor is at his best when he is a mirror of market opinion, whether the image is a pleasant one or an ugly one.

In effect, then, we would argue that since the statutes have selected fair market value as the appraisal standard for property tax purposes, no further elaboration is necessary. It is not necessary to talk about "highest and best use" or "location, accessibility, transportation facilities, size, shape, topography, quality of soil, water priv-

ileges, availability of water and its cost, easements and appurtenances, zoning . . ." and the like. Yet this superfluous language does appear in Section 128-9 (f). In any market transaction all of these (and many more) factors lie in the background of the bargain. If the assessor does not reflect these market considerations, in all of their complexity and even though they appear outlandish, he may be criticized for not pursuing his statutory function as a market place mirror.

All of this highly summarized argument is well sanctified in the professional appraisal literature. But in the pursuit of our responsibilities in the present study we have found it remarkable that so much misunderstanding appears to exist about the meaning of the market value concept and its relevance to the use of the real property tax for land use planning.

We cannot, of course, claim to have conducted a thorough empirical investigation of assessment practices in Hawaii. Such an analysis would require much more time and energy than were available, and any effort short of a full probe would be in danger of doing more harm than good. But it is fair to say that we have detected a sensitivity for these issues among the relevant personnel of the Department of Taxation. Others who have worked harder in this field seem to share our opinion.[7]

The fact remains that no single issue is more important in understanding the relationship between the property tax structure in Hawaii and the land use policy declarations of the Legislature and the Land Use Commission than that of the market value principle which is built into the Real Property Tax Law.

The market value question becomes especially significant when the assessor is faced with a governmental decision and with governmental action which any potential purchaser must consider as he uses a sharp pencil to determine his bargaining strength in a market transaction. Consider three hypothetical situations from the point of view of the assessing agency faced with fulfilling the market value requirements of the Hawaii law. Because the illustrations are indeed hypothetical, we shall assume that all other conditions are identical in their economic meaning, and seek to expose the essence of the governmental posture.

All of the parcels are in agricultural use. All have the same potential, for urban development. All have the same soil conditions, topography, size and so on. The missing ingredient to be tested is the force of governmental attitude. Having established the fact that the market definition requires the assessor to imitate the market place, the *only* relevant issue which remains is the objective analysis of market response to present and potential governmental action. (We will talk about the dedication issue later).

CASE I: The Land Use Commission establishes boundaries which place the property in question in an agriculture classification. No agency of State or county government shows any intention of offering urban services of any kind to serve the area. The Land Use Commission, through past demonstrations of its determination to make its classification system meaningful, gives no evidence of a flexible attitude. In effect, the total governmental machinery, at all levels of government and through all agencies, demonstrates a clear determination to follow the plan, with a full exercise of police powers, to preserve the agricultural quality of the property in question.

As the assessor approaches a problem of this sort he is obliged to ask whether the market place takes these severe conditions seriously, for they do indeed severely limit free market action. Assuming that governmental posture is clear and positive, the assessor's *market value* determination will no doubt reflect "value in agricultural use" and not "value for urban development" for only the former kind of value will be synonomous with the market value definition. Agricultural use will be highest and best use precisely because governmental regulations say so.

Perhaps we might call this "The Case of Clear Governmental Intent."

CASE II: The Land Use Commission establishes boundaries which place the property in question in an agriculture classification. There are, however, certain indications that the Commission might change its classification upon the strong urging by the petitioner of the need for urban development. Furthermore, a sensitive reading of attitudes of county officials indicates the possibility that, if the classification were changed, urban services would be made available (with or without cost to the property owner). Somewhat the same feelings are generated by agencies of State government who are responsible for providing a variety of services, including access (all modes), water facilities, and the like. There is, in short, some demonstration of flexibility with respect to the meaning and force of the police power and with respect to the provision of governmental services to satisfy urban or developmental demands.

The assessor must approach a problem of this sort with the same mental attitude. His close and inevitable connections with the people in government who are making the decisions and his knowledge of their "true" intentions are irrelevant. He must ask whether that abstract thing called "the market place" makes the same interpretations of governmental purpose. In all probability the two will coincide rather closely. He will no doubt conclude that, in spite of the apparent intent of the law, the demonstration of administrative flexibility has persuaded the market place to pay little attention to the superficial.

In good market-place terminology, perhaps this case should be called "The Window-dressing Case."

CASE III: The Land Use Commission establishes boundaries which place the property in question in an agriculture classification. It is really impossible to determine whether the classification is likely to be changed, even under pressure. Some comparable cases have been judged favorably for the petitioners and some have been judged unfavorably. And there is always the possibility that the composition (and consequently the posture) of the Commission will change. There is evidence to suggest that other agencies of State and county government are willing to react to problems and seek to provide services after an urban "need" has been demonstrated, but not much evidence to suggest that they are willing to use their powers and responsibilities to shape the environment. In short, the total governmental process is unpredictable—at least as unpredictable as interest rates, labor costs, the condition of future demands for services, and the magnitude of future tax burdens.

The assessor's problem is the same in this case as in the other two, except that it is probably more difficult. Given this set of governmental conditions, how much would a buyer be willing to pay for this parcel of property? What economic resources would he be willing to commit for a major investment? Does a potential buyer view the ambivalence of the governmental position as an asset or as a liability? To what extent is a potential buyer (and developer) willing to gamble on the possibility of changes in governmental attitude, to invest now in the expectation of later gain?

Again the assessor must use his best judgment to answer these very real questions if he is to perform adequately what appears on the surface to be a simple

[7] Miklius, Walter, *Taxation of Urban Land: Nonconforming Use Residential Properties*, University of Hawaii, January 1968, p. 28. This excellent cameo study is an extremely useful addition to the tax literature of Hawaii. However, the present conclusion is based upon a sales-assessment study undertaken in 1957 and showed a mean assessment ratio of 50 percent. The praise expressed was for the uniformity of assessments rather than for the level of assessments.

mechanical function of determining value. The assessor can be very "inside" in terms of what he knows about the governmental posture. But he must do his best to determine *market-place* attitudes to governmental posture.

Perhaps, in view of the uncertainties involved, this case should be called "The Speculation Case." But it might just as well be called "The Most Realistic Case."

Here, then, are three hypothetical cases which define the fundamental issue. If the market place thinks that governmental decisions are serious and relatively permanent, values of land will reflect these thoughts. If the market place finds ready opportunities for altering the decisions of government, governmental insincerity will be reflected in land values through market transactions. And if the market place views the governmental process as confused and uncertain, it will reflect this confusion with the wildest sort of speculation. In this sense, governmental restrictions are simply other elements to be conjured with in the business decision-making process. They are not immutable, although they can be sturdy.

The same issues relate to all aspects of governmental activity which intrude upon market processes. The assessor must face local zoning restrictions with the same kind of vision, to observe market response to the specific set of rules established for land use in urban districts.

We have established the fact, then, that the assessor is required to reflect the attitudes of the market and the attitudes with which the market approaches any governmental intrusion. Furthermore, the assessor must not be exclusively concerned with the *words* of the law which tell him to look at zoning or other restrictive provisions. He must prove the market-place meaning of zoning and test the *effectiveness* of the public policy.

And here, we feel, is a major source of misunderstanding. The easy assumption that the Land Use Law in Hawaii carries the full exercise of the police power and that this power is automatically translated into a market response is a common and dangerous misconception.

The task of interpreting market value for assessment purposes (an unenviable responsibility under the best of circumstances) is made especially difficult in Hawaii. It is easy enough to conclude that market-place rules must prevail. But before these rules can be made useful it is necessary to locate and define the market place. Any assessor eagerly searches for "market evidence," "sales price data," and the like. The rather peculiar and almost feudal land patterns in Hawaii give the assessor very little of this essential evidence. Certainly no other state that has exhibited the development pressures of current Hawaii experience has shown such a paucity of market response in terms of solid, clean, sales-price evidence. This remarkable fact is annoying to the short-term analyst (as it has been to us), but it must be thoroughly frustrating to the assessor who searches the market for evidence and finds (not none) but little. In Hawaii, lands with development potential are simply not sold with regularity, so that traditional market evidence is notable for its scarcity. In no other American state of our knowledge is it a remarkable event worthy of roadside advertising to find that land is available for sale "in fee simple."

But how does this market value principle, so deeply and properly embedded in the Hawaii Real Property Tax Law, affect the issue of land use planning?

The basic issue is as clear in Hawaii as it is in California or any other state with observable development pressures. These pressures tend to increase property values. If the assessor is honest in the pursuit of his statutory functions he reflects these values in his assessments. Increased assessments tend to intensify the pressures because they force higher property tax burdens for undeveloped land, so that the only way out is to convert land from agricultural use to urban use, timed in such a way as to extract maximum economic benefit. The pattern is a classic one.

The issue is purely and simply the extent to which government wants to intrude by providing other mechanisms for planning. The Land Use Law is supposed to have this effect, not only to exercise a direct influence through the police power but to exercise an indirect influence by breaking the assessment circle through the market value principle. If the Land Use Law (and its zoning counterpart at the county level) does *not* have this effect it is because the market does not take the police power seriously. But the assessor cannot be faulted for following the dictates of his own law. But of course his performance must be subject to periodic analysis.

We have gone to some pains to identify a source of misunderstanding about the deeper meanings of the market value principle because it seems crucial to an appreciation of the problems which face the Department of Taxation in its role as property tax administrator. In the performance of this role the Department should, we would argue strongly, be completely neutral with respect to issues of land use planning. The Department of Taxation must *respond* to the land use planning decisions of other governmental agencies, in order to reflect the attitudes of the market place to these decisions. But, as an agency administration, it should not be called upon to *shape* these decisions. Unfortunately, as we shall see later, the Hawaii Real Property Tax Law forces the Department of Taxation to assume a planning role which it does not deserve. (Whether this role is accepted willingly or reluctantly is totally irrelevant to the present discussion). In this respect we find the *law* to be at fault. And here is another source of misunderstanding which attaches to the market value principle.

But it is also possible to view the market value requirements of the Real Property Tax Law as a missed opportunity. For analytical purposes it should be possible to make use of market value determinations as a test tube device to explore, on a continuing basis, the effectiveness of the Land Use Law. While this analytical function is not the central purpose of a tax administration agency, the opportunities are immense if they are viewed in a total public policy atmosphere. There should, in fact, be a completely conjunctive relationship (at least for analytical purposes) between the Department of Taxation and planning agencies at both state and local levels. We find this relationship to be badly defined and confused—not because of personality conflicts in the usual sense of this term nor because of the normal operations of a bureaucratic structure, but simply because of the inadequacies of a law which provides a confusion of responsibilities.

There can be no question of the fact that the discretionary powers granted the Department of Taxation in effect also grant substantial policy power over the tax base and the way property tax burdens are distributed. Nor can there be any question of the fact that these discretionary powers have substantial effects upon patterns of land use, thereby giving the Department of Taxation substantial *planning* powers. But the more subtle point that is often missed is that the kind of market value evidence which is really essential in the performance of the assessment function would also, with small alterations, be extremely useful in the performance of the control functions implied by the Land Use Law.

At present market value evidence to test the effectiveness of the Land Use Law and county zoning ordinances is, at best, inadequate. We have reached this conclusion reluctantly after a fairly vigorous search through available statistical series, all of which were prepared with other administrative purposes in mind. To be sure, some highly selective and somewhat suggestive evidence is available, and is presented elsewhere in this study. Evidence of the history of actions by the Land Use Commission which helps to define the willingness of the Commission to approve re-

classification applications is certainly pertinent. And of course changes in assessments which occur as a result of (or at least in conjunction with) boundary changes or re-classifications show the *assessor's* opinion of market response. But *direct* and uncluttered evidence of market attitudes is very sparse indeed.

And to be sure, the relatively brief experience with the Land Use Law in its present form would not suggest the possibility of constructing a satisfying body of statistical evidence. But preparation for the future is also a central purpose of the present study.

The fact remains that there is no clear indication that the assessor accurately reflects the market attitude to governmental restrictions on the uses of Hawaii's land resources or that adequate tests are provided of the effectiveness of these restrictions. If the planning purposes which are so evident in the law are to be properly fulfilled, it might well be that the preparation of such evidence should be a basic element of the body of relevant statutes.

Thus, we are still left with two basic questions: 1. does the market place pay any attendtion to governmental restrictions? and if so 2. how does the tax administrator reflect this market response?

There should, of course, be some way of testing the effectiveness of both State and county zoning restrictions. The best kind of evidence would be clear market value figures for many parcels of property (obtained from actual sales transactions) before and after a boundary or zoning designation or a boundary or zoning change. A second-best statistic would be sales evidence for comparable properties on either side of a land use boundary (agriculture on one side and urban on the other, for example). For either of these alternatives present evidence is at best fragmentary and speculative.

One point made earlier needs further elaboration. Section 128-9 (d) requires the Director of Taxation to classify land in each county into six designated classes. For purposes of valuation this section can be nothing more than a convenient reporting device, without real effect upon the valuations themselves. *The market value constraints are not lifted merely because the assessor is required to give labels to certain kinds lof lands.* In effect, the classification reports reflect the assesor's attitudes about highest and best use (already described as a synonym for market value) but are not really part of the process of *determining* market values. The last sentence of this subsection (d) is interesting, but in fact adds little to the central thrust of the valuation process. This language is as follows:

> "In assigning land to one of the general classes the director of taxation shall give consideration to districting established by the land use commission pursuant to chapter 98H, the districting established by a county in its general plan and zoning ordinance, use certifications established in the general plan of the State, and such other factors which influence highest and best use.

As indicated above, all of these considerations are relevant to the determination of market value. *How* relevant they are depends upon much more than the official declarations of the Land Use Commission or zoning ordinances by county officials. By his market value obligations the Director of Taxation is not only *permitted* to ignore these evidences of the police power, he is *obliged* to do so when the market place itself does not take them seriously. *For this reason, it is possible to find that some lands classified as agriculture, conservation, or rural by the Land Use Commission are classified as hotel, commercial, or industrial by the Director of Taxation.*

This is not to say that the classification scheme has no bearing on land uses as these uses are influenced by property tax burdens. But it is to say that this influence is expressed through the tax *rate* (the graded structure) rather than through the tax *base*. Hence, it would be much more appropriate (although hardly crucial) if Section 128-9 (d) were made part of Chapter 129.

The essence of the above argument is that the assessor is obliged by the law to pursue the thinking of the market place. This is the meaning of Section 128-2. But there are exceptions to the rule which are worthy of note. The major exceptions are those which relate to dedicated lands, but these are of sufficient importance to merit more intensive examination later.

The remaining exception to the market value rule is in Section 128-9 (g), relating to the valuation of buildings. It is interesting to note that, in subsection (f), describing land valuation techniques, the language reads that "In determining the value of land, *consideration shall be given to . . .*" (emphasis added); while the language of subsection (g) reads that "Buildings *shall be valued . . . upon the basis of* cost of replacement less depreciation, if any." (Emphasis added.) With respect to land the conditions are *permissive*. With respect to buildings the conditions are *compulsory*.

In appraisal theory, replacement cost less depreciation is generally considered to establish the upper limit of market value, but it will not necessarily *be* market value. The subsection continues with language which provides that increases in value which are produced by certain types of maintenance and repairs will not be included in the value for assessment purposes.

Again, it seems clear that the law is designed to induce such maintenance efforts by putting the market value definition aside. This, of course, is a legitimate planning purpose, but it must be understood to provide a further concentration of the tax base on land in urban categories. In a subtle way this language assumes a development posture. And it is still appropriate to raise questions about the effect of tax laws on patterns of income distributions as between urban home owners (or lessees) and land developers.

c. The dedication laws

(1) dedication of agricultural lands

It is evident from the structure of Section 128-9.2 that the dedication device as applied to agricultural lands has been designed with two major purposes in mind. The law is aimed at the preservation of agricultural lands. And it attempts to prevent speculative gains which might flow from the tax advantages offered by the law. There is at least some reasonable question as to whether the law itself is capable of performing either task very effectively.

One other early conclusion is possible: with the exception of the relatively insignificant offerings of Section 128-21.5 (an exemption for dedicated lands in urban districts), the agricultural dedication law is the only element of the Hawaii Real Property Tax Law which is *directly* concerned with a conservation purpose. The indirect effects of other elements of the law which urge development in urban districts might be important for a conservation purpose simply because they tend to reduce pressures which would otherwise be intense and irresistible. But these effects are not only indirect, they are of indeterminate potency.

The Land Use Law in certain of its aspects and the agricultural dedication portion of the Real Property Tax Law remain as the only clear stalwarts on the conservation side of the debate. And each of these is demonstrably inadequate.

As is well known, the need for dedication laws of this sort exists only where pressures for the conversion of agricultural land to higher use (in the valuation sense) are great. States or regions which are growing in population or experiencing other forms of development of industrial or commercial nature are ready candidates for this classification. In the late 1960s and for the predictable future Hawaii qualifies admirably.

Fundamentally, the pressures are economic pressures, and, as discussed earlier, are expressed in the market place

for land by those who would bid up the offering prices in the expectation of immediate or early development. If these increasing market values are reflected in increasing assessments for property tax purposes, taxes on land actually used for agricultural production become prohibitively expensive, so that the gross return from agricultural use is inadequate to offset the costs (including taxes) of continued agricultural use. Hence, development is speeded up. This development, furthermore, is largely unplanned and tends to take place on land which is the most buildable and most accessible. Frequently this land is of prime agricultural quality and is, therefore, unique in its agricultural capabilities.

If there is a clear community desire to preserve these agricultural lands in whole or in part, there are many things which government might do to interrupt the sequence of economic events. Direct subsidies might be offered to make the gross returns from an agricultural use more nearly competitive with returns available from other land uses. Government might assume some of the costs of agricultural pursuits by providing product and market research, low interest rate loans, medical programs and low-cost housing for farm workers, and the like. Or government might provide a variety of tax benefits ranging from total exemption from all taxes (admissable if the preservation of agricultural lands provides an agreed upon public benefit) to minor advantages for specific agricultural pursuits.

All of these governmental actions are designed to improve the net returns to agricultural business, so that other economic opportunities which require other kinds of land uses will be comparatively less attractive. If these governmental gifts are large enough there can be no question that agricultural lands could be preserved. As with all subsidy or tax relief programs the social costs will be borne by the remainder of the taxpaying public, with burdens distributed according to the character of the tax system.

To a greater or lesser extent government in Hawaii (at some level) makes use of all of these (and other) techniques. *The common point of reference is that each policy affects the profit and loss statement of the agricultural sector in some fashion.*

But another kind of policy is possible. This, of course, is a policy which involves the use of the police powers of government to prevent uses of designated lands for other than agricultural purposes. There are also profit and loss implications in the exercise of this sort of policy, although they are of secondary significance. But in terms of the operative meaning of the dedication law the profit-and-loss implications of regulatory actions are worth exploring.

If the prohibition of non-agricultural land uses in areas zoned for agriculture is effective, and if those who trade in land *know* that the prohibition is effective, the police power will be reflected in the market values of agricultural land. With proper assessment practices the police power will again be reflected in assessed values and ultimately in tax liability. Given the prohibitions of the Land Use Law, agriculture automatically becomes the highest and best use of any property so classified by the Commission.

Thus, the police power must be important for its own sake and the prohibitions which it imposes. But it must also be interpreted as having a profit-and-loss effect through the property tax system. This, clearly, is the dual purpose of the Land Use Law in Hawaii.

The Land Use Law says, in effect, that land classified agriculture shall be used for nothing but agriculture. It follows that the *market* value of such land should be the value of the land *in agricultural use*. The dedication law (Section 128-9.2 (a)) gives the property owner of agricultural land the right "to have his land assessed at its vaule in such use . . ." In the light of the Land Use Law (and assuming the full effectiveness of that law), the dedication section adds nothing to the economics of the Real Property Tax Law.

Thus, the mere existence of the dedication provisions represents a legislative recognition that the Land Use Law, and the police powers it implies, is not fully effective in its prohibitions. It further implies that the *market place* does not find the Land Use Law to be an effective instrument of land use control, or, at the very least, that the assessor does not properly translate market opinion into taxable values! The extent to which applications are made for the use of the dedication provisions gives a rough measure of the distrust of the market place in the unbroken chain of effects from regulation to tax burdens implied by the Land Use Law. If the Land Use Law were fully effective there would be no advantage (and some disadvantage) to be gained from dedication law applications.

We have already discussed the possibility that portions of the Hawaii tax law might offer inducements to taxpayers to do what they might well do anyway in their own best interests. In such cases the offer of tax advantage must be viewed as a gift without economic effect. But the dedication law offers inducements to taxpayers to do what another law—the Land Use Law—tells them they *must* do. On the surface the fact that both laws exist at the same time is a curious anachronism! But given the discretionary authority of the Land Use Commission and the frequency of its use, it is still possible that both laws must be judged good and necessary.

So the agricultural dedication law exists,

TABLE 18 TOTAL LANDS DEDICATED TO AGRICULTURAL USE, BY COUNTY

1963 - 1969, inclusive

County	Total Acreage Dedicated	Total Valuation before Dedication (In Thousands)	Total Valuation after Dedication (In Thousands)	Difference in Valuation (In Thousands)	Percent Reduction in Valuation	Number of Petitions Approved
Hawaii	6,942.631	$ 802.1	$ 443.5	$ 358.6	44.7%	61
Honolulu	2,645.451	6,359.5	4,199.4	2,160.1	34.0%	230
Kauai	5,102.294	2,205.4	811.0	1,394.4	63.2%	221
Maui	2,934.203	2,336.1	590.1	1,746.0	74.7%	248
Totals	17,624.579	$11,703.1	$6,044.0	$5,659.1	48.4%	760

Source: Reports of the Department of Taxation, State of Hawaii.

because, for one reason or another, the Land Use Law does not fully preserve lands whch are classified as agriculture. The dedication law is supposed to provide an extra ounce of security. But one is still entitled to ask whether the present form of the law is likely to provide this security.

Land dedication opportunities in Hawaii first became possible in the 1963 assessment year. Since that time considerable use has been made of the law, with 760 petitions approved, accounting for 17,625 acres of agricultural land. Table 19 elaborates these figures.

One or two remarkable pictures emerge from this tabular material. From Table 19 we learn that there was indeed a large difference between the total valuation before dedication and the total valuation after dedication. The act of dedication did, in fact, provide a reduction in valuations of approximately 48 percent. At first sight this tabulation might seem to give a strong indication that at the very least the assessor does not think the Land Use Law has been effective in terms of its effects upon market values. But it must be noted that the total figures of Table 19 include dedications of agricultural lands in districts classified as *urban* by the Land Use Commission. (We will return to the policy implications of this issue later.) For these lands the prohibitions of the Land Use Law are not *supposed* to apply.

Thus, it is for non-urban, agricultural lands that the dedication law should be meaningless if the Land Use Law were fully protective of the agricultural classification—for which, in other words, there should be *zero* reduction in valuation as a result of the dedication. Although accurate statistics are not available, the size of the reduction would give some measure of the market attitude (or at least the assessor's opinion of the market attitude) to the potency of the police power restrictions.

In any event, both laws do now exist and it is still fair to ask whether the agricultural dedication law is likely to be strong where the Land Use Law appears to be weak. Are we entitled to conclude that the dedication law is effective simply because it is being used? Perhaps, but not necessarily. It might well be that landowners have simply found a new mechanism in the Real Property Tax Law with which to speculate profitably.

Unfortunately, experience with the dedication law is still too sparse to permit careful conclusions in either direction. It is in the nature of the law itself that we must wait for a period approximating ten years for anything like solid evidence.

But it is possible to critically examine the law itself for a test of its internal logic and the kinds of economic pressures which it creates and to which it must respond. Even so, most of the "answers" must simply be posed as questions, for the law is uncertain in its effects and vague in its meanings. Many crucial decisions are made the responsibility of the Department of Taxation. As is well known, administrative interpretations may change without benefit of statutory alteration—especially when discretionary authority itself is written into the statutes.

Throughout the following examination our two beginning questions are useful as background: 1. Is the law likely to have the land use effects it is supposed to have? and 2. Is speculation in land values, as related to the offerings of the dedication law, adequately prevented? It is our conclusion that the law is so skeletal and that it grants such broad discretionary powers in the administrative process that a definitive answer to either of these questions is quite impossible.

The following set of questions, arranged in loose outline form, is designed to demonstrate some of the uncertainties of the law and to hint at possible consequences. The questions also suggest, by implication, the major ways in which we feel the dedication law might be profitably revised.

It is our further opinion that all of these questions ought to be answered in clear statutory language and not by administrative interpretation. Of necessity the latter has a changeable and, to some extent an invisible quality that seems inappropriate to such an important subject.

Furthermore, the dedication law is fundamentally a *planning* law which uses taxation as a tool, rather than a *tax* law with some incidental planning purpose. For the residue of administrative discretion which the statutes might grant, the assignment should be to a planning agency (perhaps the Department of Planning and Economic Development or the Land Use Commission) rather than to the taxing agency. Obviously, the Department of Taxation must be the valuation agency. But reassignment would seem to be in order for other elements of the dedication law which require administrative discretion.

For these reasons, the way the law is now *administered* seems largely irrelevant. The present emphasis upon *statutory* interpretation is not based upon any lack of cooperation on the part of the Department of Taxation. On the contrary, the personnel of the Department were extremely helpful where they could be helpful.

All of the questions relate to Section 128-9.2, subsections (a) through (g), of the Hawaii Real Property Tax Law. Unfortunately, many of the questions are somewhat technical, but they are of great importance to the meaning of the law.

Subsection (a):

(i) Can land be dedicated for a "specific" agricultural use and later be used for a higher *agricultural* use without penalty? If so, there are significant speculative opportunities in this provision.

(ii) Can a dedicated parcel be in several land use districts? (Presumably so, in view of the "and/or" language.) If so, there are opportunities to use one portion of the land to enhance the value of another and later abandon a portion of the dedication—with penalty, of course.

(iii) What is meant by the phrase ". . . and have his land assessed at its value is such use . . ."? Precisely how is the assessor supposed to determine the value of property according to its used?

NOTE: It is assumed by the dedication law, that, for dedicated lands, the assessor may not make use of the market value concept. Presumably, "value in use" is something less (or *can* be something less) than market value. This, after all, defines the basic purpose of the law! For market valuations no statutory instructions are needed, in spite of the fact that Section 128-9 (f) is replete with unnecessary elaboration. The market provides its own rules and its own sales evidences. But when the market logic is explicitly abandoned, something else must be substituted. The dedication law is silent where it needs to be vocal.

Presumably the assessor must establish "values in use" by capitalizing expected future income in agricultural use. But nothing in the statutory language says so. If this is the case, the following, more specific questions are relevant:

1. Are *present* income and *expected future* income synonymous? The answer to this question can be important, especially if it is possible to convert to higher agricultural uses within the dedication.
2. Is "income" the rental income of the lessor or the operating income of the lessee?
3. For what time period should the assessor capitalize income:
   - — in perpetuity?
   - — for the original period of the dedication, with a reversionary interest added (i.e., the residual value of the land at the end of the dedication discounted to the (present)?
   - — for the remainder of the dedication period with a reversionary interest added?
   - — for the remainder of the dedica-

tion period after a five-year notice of cancellation [see subsection (c)]?
— for some other time period at the discretion of the Director of Taxation?

4. What capitalization rate must the assessor use and with what theoretical justification?
— "prime" interest?
— "prime" interest rate plus a risk factor?
— some arbitrary rate at the discretion of the Director of Taxation?
5. Is the assessor still permitted to consider sales evidence for dedicated lands? Assume two comparable parcels of agricultural land, both in agricultural districts, and both under dedication. Assume parcel A is sold and that dedication continues in effect. Should the assessor consider this sales price in his appraisal of parcel B? If the sales price of parcel A (dedicated) exceeds the capitalized income value of parcel B (dedicated, and otherwise comparable), which value should the assessor prefer?

NOTE: this last result is clearly possible, for the market may view the *agricultural* potential of the land differently from the assessor—or a potential buyer may be using a different capitalization rate for a different period of time.

Although these points may seem somewhat technical, they can greatly affect the value placed upon the property in question. Millions of dollars can be made on the simple decision to use a capitalization rate of 8 percent as opposed to 7½ percent. The market can provide no guide because market processes are supposed to be ignored. And the statutes are silent! Any kind of excess seems to be permitted by the informality of the law in the name of administrative discretion. *What indeed is meant by the* phraise " . . . and have his land assessed at its value in such use . . ."?

Subsection (b):

(i) What is meant by "economic feasibility" in describing the determination of the Director of Taxation of acceptability for dedication of agricultural lands in urban districts?

(ii) Is the finding of the Land Study Bureau, with respect to the suitability of land for agricultural use, expected to include consideration of the economic effect of potential public works projects?

(iii) How does the statute expect the Director of Planning and Economic Development to respond to the requirement that he "make a finding of fact as to whether the intended use is in conflict with the overall development plan of the State?" This is especially puzzling in view of the opportunities to dedicate lands in urban districts to agricultural use, for the dedication purpose seems opposed to the "development plan of the State." And we are still not sure what "the development plan of the State" really is!

Subsection (c):

(i) What is the meaning of the term "automatically renewable" as applied to the ten-year expiration date of the dedication?

NOTE: There is an important semantic difference in the context of this language between the term "automatically renewable" and the term "automatically renewed."

The former meaning suggests that if the owner wants the dedication to be renewed he must make a new petition at the 10-year date. The petition would then be automatically "renewed." But if the owner did *not* want to renew the dedication the contract would be automatically *canceled—without the 5-year-notice requirement!*

The latter meaning suggests that the owner need do nothing to have the dedication renewed. By this it would follow that *whenever* the owner wants to cancel the dedication (even one day before the 10-year period expires) he must give a 5-year notice of such intent.

This issue might seem narrowly procedural and even silly. But it must be important to the assessor (Director of Taxation) because the interpretation has meaning for the valuation process—particularly as the 10 year expiration date approaches. It is also important to know how the market place views the statutory language, in all its lack of clarity. If a potential buyer in the ninth year of the dedication (with no prior notice by the present owner to cancel the dedication) seeks to buy the property, is he contemplating the purchase of a one-year dedication or a six-year dedication? The difference must affect land values. Again, the statutes are highly confusing and the assessor is left without a guide through the maze. Of course the issue has not yet become serious, simply because of the short life of the law. But the market must have been thinking.

Subsection (d):

(i) What is the effect of the five percent penalty for cancellation of the dedication? In the light of rapidly increasing land values, is five percent *really* supposed to be a *penalty?*

(ii) How is the assessor expected to measure "the amount of taxes that were paid and those that would have been due from assessment in the higher use"?

NOTE: Obviously the assessor must keep two sets of valuation records for dedicated lands. He must record "highest-and-best-use" values for each year. And he must record "value-in-use" values for each year. But, for penalty purposes, he is supposed to record *taxes* (not just assessments) that would have been due under each set of circumstances. In this calculation is the assessor expected to recalculate the tax *rate* that would have been levied if the dedication had not been granted, or is he expected to apply the tax rate actually applied with the dedication as a given fact? The volume of dedications from 1963 to 1968 indicates that this issue might well be a serious one. Surely the fact of the dedications has caused counties to levy tax rates which are higher than they would have been if the dedications had not been approved. In recalculating tax liability for the application of the five percent penalty, does the law expect the assessor to reflect a constant *budget* or a constant *tax rate?* Again, many millions of dollars and the basic purpose of the law could be at stake.

Subsection (e):

NOTE: There are no questions here. The meaning of the language is clear enough. But there is an issue. In this subsection the procedure is such that the petitioner must file an application to be considered within a finite time period—between September 1 and December 15 of each year. Under the Land Use Law, however, a petitioner for a boundary change may file at any time and expect a Commission decision at any time. For some curious reason requests for boundary change are given a greater urgency than requests for dedication. Loosely translated, this might be assumed to mean that the need for development is given more sanctity than the need for conservation!

Subsection (g):

(i) Why is there a difference between the *general* definition of the lessee-"owner" (the 10-year minimum lease) and the *specific* definition which appears in subsection (a) (1) relating to land in an urban district (the 5-year minimum lease)?

General questions:

(i) Does the dedication attach to the *land,* as a binding and continuing contract, which remains in effect even after sale and which

thus become an essential part of the sales agreement? Or is the dedication attached to the land *owner* who makes the application? It is hard to believe that the latter would be the case, but the language of the law is not clear.

(ii) If the dedication agreement is in the nature of a contract, is it equally binding on the *State?* It is clear enough that either the owner or the Director of Taxation may cancel the agreement after five years with a five-year notice. But what would be the effect on existing dedications if the law itself were repealed or amended in some substantial way (for example, by a cancellation of the "automatically renewable" clause or by an increase in the penalty rate)? The law does not make it clear that the agreement is in the form of a contract which is legally binding on the State as well as the owner. If this language were clarified to implement the apparent intent of the law, future legislation could not, of course, alter a prior contractual commitment.

(iii) If there is "a change in major land use classification by a state agency, such that the owner's land is placed within an urban district" [Subsection (c)] and the dedication is thereafter canceled (within sixty days) by mutual agreement, is the penalty of subsection (d) applied? Presumably, the answer to this question is "no," for the penalties of subsection (d)—the payment of back taxes plus five percent—are applied only upon the "Failure of the owner to observe the restrictions on the use of his land . . ." If this is the proper interpretation, there is a glorious opportunity for speculation. Such speculation would have several dimensions: 1. a speculation that the land is ripe for urban development; 2. a speculation that the Land Use Commission will change the classification; and 3. a speculation that the Director of Taxation will agree to a cancellation of the dedication. Given the probability of some fairly large stakes, the opportunity for profit, with substantial and non-recoverable tax reduction during the negotiations, it might well be that the speculation looks more like a security. It might also mean the subversion of the purposes of both the Land Use Law and the dedication elements of the Real Property Tax Law. *Thus, the dedication law might well increase the pressures which already face the Land Use Commission to produce an affirmative vote to change land use classifications. In this subtle but terribly important way the vagueness of the dedication law tends to place it in conflict with the State goals expressed in the Land Use Law.*

(iv) What is the purpose of permitting agricultural dedications in urban land use districts? Table VII shows the history of such dedications through 1968. While these dedications do not represent the majority of the dedications—by acreage, value, or number of applications—they are very large indeed in all of these respects. In this provision there is a clear and direct conflict between the Real Property Tax Law and the Land Use Law as administered by the Land Use Commission. Certainly it must be assumed that it is a fundamental purpose of the Land Use Law to provide for *development* within urban districts—in part because such development is beneficial and necessary, and in part because development in urban districts tends to relieve the economic pressures for development in the three other districts. On the surface, this provision in the dedication law seems to frustrate *both* the development purposes of the Land Use Law and those aspects of the Land Use Law which seek to preserve the agricultural or other conservation qualities of the Hawaii environment. If these agriculture lands in urban districts are so dedicated, there would seem to be no reason for not changing the land use boundaries. *But a more important conclusion is that if these agricultural lands are located in urban districts there would seem to be no justifiable reason for the dedication*—except of course, to offer tax advantages on a non-planning platter. We have earlier discussed the ways in which the dedication law tests the real meaning of the Land Use Law. To the extent that the dedication law permits dedication to agricultural lands in urban districts, the test is reversed. The Land Use Law tests the real meaning of the dedication law. The implied question is simply "Is the dedication law designed for a land use planning purpose, or is it really a device to produce lower property taxes to support speculation in later development opportunities?"

This series of questions is undoubtedly incomplete. Many other uncertainties probably occur to a potential applicant for dedication. And because such large discretionary power is given by the law to the Director of Taxation, a potential applicant must find himself speculating not only upon the economic circumstances of his condition but even more importantly upon the whims of the administrator. We must repeat that we have examined no evidence which suggests that these legal powers have so far been misused. But the opportunity for caprice is clearly apparent in the law itself.

Consider, in the following hypothetical example, the most liberal interpretation of the dedication law, to illustrate only some of the possible effects.

The hypothetical case:

A landowner owns a large parcel of land, part of which is presently in an agriculture district and part of which is in an urban district. He seeks and obtains dedication of the entire acreage. The assessor, in valuing the property according to its present agricultural production, makes use of a high capitalization rate and a capitalization period that corresponds to the period of the dedication (ten years) without considering a reversionary interest. Furthermore, the assessor considers only *actual* income from agriculture rather than *potential* income from agriculture. The result is a very low assessment.

In the ensuing years of the dedication a number of things happen. The assessment remains relatively constant until the eighth year. The owner does not file a notice to cancel the dedication. Development pressures, especially on that portion of the land in the urban district, increase greatly. After eight years the owner sells the land in the urban district to a potential developer who knows that the dedication is "automatically renewable" but who has no intention of filing an application for renewal. The sales price is greatly inflated as compared with the assessed value for agricultural use. The former owner receives a substantial capital gain which is subject to taxation for income tax purposes at the long-term rate. The new owner is still able to obtain the benefits of the dedication law because the contract attaches to the land and passes with the sale. In the ninth year of the dedication the new owner develops the land and willingly pays the five percent penalty.

In calculating the penalty for the new owner the assessor computes for each year the difference between the actual assessed value of the land and the assessed value

which would have been applied under market value rules. But in computing the differences in *tax liability* for each of the years the assessor uses not the actual tax rates applied in each of those years but the hypothetical tax rates which would have been applied if the property had been subject to market value appraisals all along (on the assumption that county budgets were not affected by the dedication). By this process the penalty to be paid by the new owner is minimized. In any event, the circumstances are such that the economic gain to the new owner far exceeds the five percent penalty.

In the meantime, the original owner still owns that portion of his holdings located in the agriculture district. The "next-door" urban development has greatly increased the market value of his agricultural property. In addition, over the eight-year period he has, by virtue of State water projects, State research in new agricultural products and techniques, and new access facilities provided at State expense, converted his agricultural activities to higher economic (but still agricultural) purposes. Still the dedication continues in effect. The assessor does not take notice of the gradual expiration of the dedication because of the "automatically renewable" provision. In other words, over the ten-year period the assessor does not gradually approach market valuations on the assumption of a ten-year expiration.

Towards the end of the original dedication period the owner of the agricultural land successfully petitions the Land Use Commission to change his classification to urban. He then files proper notice with the State within 60 days, receives the necessary approval and the dedication is canceled. The owner then proceeds to develop the land for urban purposes *without payment of the five percent penalty*. In effect, with the full cooperation of the law he has used the dedication provisions to avoid a substantial tax burden and the apparent purposes of two laws have been subverted. Of course the example *is* hypothetical. But a strict interpretation of the law would seem to permit this result. And of course the landowner must seek the favorable action of at least two State agencies. But even if he were unsuccessful in the latter effort, a five percent penalty would hardly seem a staggering burden in the light of much larger potential gains from development or sale.

With a dedication law so constructed it is miraculous that agricultural lands in Hawaii are not by now *fully* dedicated, with the possible exceptions of those types at the two extremes of the spectrum. Owners of lands for which urban development is clearly impossible would gain nothing by dedication. Owners of lands for which *immediate* development is contemplated would gain little from dedication in comparison with the contemplated gains from development. But all others would be foolish not to seek dedication. After all, if worst comes to worst, it seems a reasonable conclusion that five percent money is likely to be a happy find for any borrower in the predictable future.

In a sense, the real meaning of the dedication law does come down to the question of the cost of money. If a landowner is willing to commit his property to agriculture for two or three years and receive the tax benefits of dedication, while waiting for profitable economic circumstances to appear, the worst he can expect is a five percent penalty if he changes his mind. Where else is money available at this price?

From the point of view of *public* policy, why is the penalty not made *prohibitive?* If a violation of the dedication "contract" is a violation of public policy, why should the penalty not be made much greater than the opportunity for gain? If the penalties of the dedication law were 25 percent or 30 percent one might be entitled to assume that the real purposes of the law were being fulfilled. If landowners refused such rigorous conditions we would at least have definite proof of their insincerity in the dedication process. And then we might well focus attention upon the Land Use Law and its police power implications.

Short of this kind of punitive action, and given the quite reasonable expectations that pressures for increased economic development in Hawaii will continue, it is doubtful that in twenty years the effects of the Hawaii dedication law will be noticeable unless the conditions of the law are substantially sharpened and strengthened.

For all its innovative qualities, the Hawaii dedication law in its present form cannot be considered a device to preserve agricultural lands in agricultural use in the face of increasing land values. It is, in fact, a license to profit for a time.

And if changes are to be made, they must be made soon. For if the dedications have the force of contracts the present uncertainties of the law will become frozen in such a way as to *prevent* and not promote the planning process. There is indeed an urgency!

(2) dedication of urban open spaces

Another dedication provision in the Real Property Tax law which might conceivably be characterized as "conservation oriented" is contained in Section 128-21.5, as added by the laws of 1965. The techniques of the dedication are similar but not identical to those for agricultural land, with similar "protections" against using the dedication for speculative purposes. In this case, however, the applicant need satisfy *only* the Director of Taxation that the dedication "has a benefit to the public at least equal to the value of the real property taxes for such land." [Subsection (b)]. Thus, the tax administrator is given *all* of the planning responsibility, with no required consultation (let alone approval) by State or county planning agencies, and with only the vaguest kind of statutory guidelines.

It should first be noted that there are no acreage limitations in this section of the Real Property Tax Law. It has already been seen that there is a good deal of agriculturally used land presently located in urban districts. Some of these lands are under the dedication provisions of Section 128-9.2 and some are not. Some are not under agricultural dedication because applications have been denied, perhaps as a result of unfavorable findings on the part of the Director of Planning and Economic Development or the Land Study Bureau. We must remember, too, that many more lands in agricultural use can be placed in urban districts in future years through actions of the Land Use Commission.

There would seem to be nothing in the language of the urban dedication law to prevent an applicant from filing under *this* section if he were unsuccessful under the agricultural dedication section. For the second application he would need only the approval of the Director of Taxation. The only constraint is that the Director of Taxation is supposed to make a finding of public benefit. But surely this finding is an implied obligation in the agricultural dedication law as well. We doubt that the laws would consciously grant any administrative agency the opportunity to make decisions which were *not* to the public benefit.

Again, the language of the statutes as to the ingredients of "public benefit" adds almost nothing to the meaning of the law. "Such findings shall be measured by the cost of improvements, the continuing maintenance thereof, and such other factors as the director may deem pertinent." [Subsection (b)]. May the Director of Taxation decide that the economic benefits of continued *agricultural* use, through effects on employment patterns and income added to the economy are "at least equal to the value of the real property taxes for such land"? Certainly agricultural use would be consistent with the term "open space" if provision were made for minor access and overlooks for "momentary repose, relaxation, and contemplation." [Subsection (h)]. Nothing in the law restricts the dedication to the point from

which things are viewed. A good case might be made for including in the dedication the thing being viewed—if you will—the *source* of the contemplation. And large acreages might qualify as providing "public recreation" if access were permitted for hunting, fishing, or public camping. And an aesthetic definition of public benefit might qualify a large dedication as an example of "such other factors as the director may deem pertinent." And "landscaping," in the meaning of subsection (h), can certainly mean land used for commercial purposes or, presumably, a private garden (of whatever quality) which can be seen from a public thoroughfare.

We do not argue that these purposes are not admirable and desirable. But we feel obliged to ask whether they represent the real intent of this section of the law, and whether the tax administrator is the proper official to be making such cosmic planning decisions.

The issue becomes even more important when Section 128-21.5 is viewed as part of the *exemption* structure of the Real Property Tax Law. Although dedications are involved as conditions, the urban dedication law proposes total exemption and not just a partial exemption through the "valuation-in-use" concept. Furthermore, it provides an exemption for *all* real property, not just land.

There is also more than a little statutory obscurity in the scant instructions for measuring benefits. Why are the *costs* of improvements and continued maintenance relevant to a measure of public *benefit?* Perhaps, under certain circumstances, public benefit would be maximized if these costs were zero, that is, if there were no improvements at all. And, in contrasting these public benefits (however measured) with "the value of real property taxes for such land," is the Director of Taxation expected to make his findings without regard to the economic benefits and the potential tax revenues which would be produced by *alternative* uses? Is he, in effect, instructed to contrast public benefit with *present* taxes *or with the taxes which would be produced by total development without dedication?*

Granted the probability exists that such large acreage dedications do not represent the real purpose of this exemption provision. Perhaps this section of the law is intended to provide dedications of small parcels of land, intimately connected with high-rise structures but landscaped as plazas and urban gardens adjacent to city streets and available for public use and enjoyment—but not required by county zoning and set-back provisions. (This conclusion is sheer guesswork. The law itself carries only the mildest sort of hints in this direction.) And granted, little use has been made of this section of the statutes since its passage in 1965. It is still proper to ask whether future administrators will exhibit a posture of reluctance or permissiveness, and whether property owners will eventually discover, to their own advantage, the vacancies in the statutory language.

Vague and confusing statutes are not at all unusual in the body of state law in the United States. But illustrations of undesirable exploitation of obscurity are also legion. Frequently, where the substance of the law is vague, the administrator is at least favored with a clear preliminary statement of legislative intent. The specifics of the law are preceded with a section which has the full effect of law, to provide an indication of purpose. This, of course, is "second-best" language, but it would provide a definite improvement of this section of the Hawaii Real Property Tax Law.

Without further analysis it needs to be recorded that all of the deficiencies previously identified in our examination of agricultural dedications attach to the urban dedications of Section 128-21.5. These deficiencies are particularly apparent in those subsections which attempt to protect against undue speculation while dedication advantages are being enjoyed. By now, the question "are these provisions designed to protect the public interest or to insulate the private interest?" is purely rhetorical.

But perhaps the most important conclusion is again contained in the following unavoidable question: *If public benefit is the proper criterion for judging the efficacy of the dedication, why cannot the same effect be produced by an extension of the police power?* With the exception of the 1967 amendment relating to "land within a historic district," the urban dedication law explicitly applies only to land which "is not within the setback and open space requirements of applicable zoning and building code laws and ordinances. . . ." If a public purpose is to be served by extending urban open space rules beyond present zoning and setback requirements, perhaps this public purpose could best be served directly by extending the zoning and setback requirements! And perhaps any necessary improvements to enhance public enjoyment could more economically be provided by *public* outlays, or, hopefully, by the cooperative expenditures of the public and private sectors.

In the private sector there can surely no longer be any question of the public relations advantages to be gained from a sensitive expenditure of private funds for plazas, walkways, and places of repose and contemplation adjacent to urban office buildings and other profit-oriented structures. For, in part at least, the "contemplation" is of the corporate name engraved above the portico and the feeling of contentment rubs off on the donor in the form of community goodwill.

Far from criticizing these motives, we applaud them as a beautiful blend of the private concern and the public interest. But it seems strange that tax advantages should be offered to pursuade the private sector to pursue its own best long-run interests. And it seems strange that where private-sector reluctance is encountered the public purpose should not be expressed through the machinery of zoning and setback requirements, and other architectural mandates, combined with appropriate expenditures of *public* funds for improvement and maintenance. Such expenditures, might at least approximate taxes foregone under dedication.

Certainly the existing evidence of the use of the urban dedication law does not suggest the overwhelming significance of this section of the Real Property Tax Law. But the law is significant beyond its present demonstrations. Three issues seem to define the case: 1. given the possibility of high charity on the part of the Director of Taxation, the language of the law is such as to permit the wildest sort of usage, for purposes presumably not part of original legislative intent; 2. the law attempts to induce the private sector to do things which the private sector ought to conclude are in its own best interests, even without tax advantages; and, above all, 3. the mere existence of the law emphasizes the timidity of governmental institutions to *mandate* the public interest where it is clearly defined and where the issues are surrounded with some sense of urgency.

Again, when the tax law is placed in the total statutory framework, the ambivalences stand out in bold relief. To what extent should the State of Hawaii, wearing its public-interest clothes, attempt to pursuade (perhaps with unnecessarily liberal inducements) when it might command? We do not propose to answer the question, for it can only be effectively answered by the electorate who must live with the decision. But it is fair to remark that every act of pursuasion is expensive for someone. In this portion of the law, as elsewhere, the donors are not abstract institutions of government but very real people called taxpayers who do not enjoy the exemption. And, for those who tend to forget, it is important to note that taxation is also compulsory and represents another kind of police power exercise. Hence, the real issue is not between persuasive policies and compulsory policies. The real issue is "*who* is being compelled, and by what processes, to pursue the public benefit?"

(3) classification for wasteland development

Sections 128-9.30 through 128-9.38 of the Real Property Tax Law are clearly development oriented. Although they are not properly described as part of the dedication structure, they have some of the dedication characteristics in the sense that favorable tax treatment is conditional upon taxpayer performance. In this case, however, the taxpayer who receives a wasteland classification must develop his property in a manner specified in the application within one year. The penalty for non-compliance is similar to that in the dedication laws—the difference between taxes paid and taxes which would have been paid, plus five percent interest.

To begin with, let us examine the meaning of the penalty provisions, for they are truly mysterious. If the title of the law has any significance, that is, if "wasteland" really means "wastelands" or, in appraisal terms, "land which is virtually worthless," the assessment would approximate zero.

Assume the extreme case for purposes of argument. The assessment is zero. An owner of such land might contemplate urban development, attempt to finance a project, receive protections under the wasteland development law, find the project impossible, be subject to the declassification provisions of Section 128-9.37, and be forced to pay a penalty calculated as five percent of zero. The penalty is hardly prohibitive! And even assuming some small positive assessment, the penalty could not be severe. In effect, the penalty provisions make it possible for the landowner to borrow public funds at five percent, not to *develop* the property, but to *test the opportunity to develop the property*. But if the project should prove feasible, the "property classified as wasteland development property by the director shall be, *for a period of five* years, assessed for real property tax purposes at its value as wasteland." (Section 128.9-36—emphasis added.) If the property is truly wasteland for *all* purposes (including urban development), the owner will have lost virtually nothing in the process. But if the property is valuable as urban development property but worthless for other purposes, the property owner stands to gain a good deal.

The whole question, then, turns upon the definition of "wasteland" before and after the application for such classification. The apparent purpose of the wasteland law is to urge the development of lands not capable of producing anything but urban-style development. But, once again, this interpretation of statutory meaning is derived from the vague implications of the title of the law, and not from the substantive language of the law. It is almost unbelievable that the entire provision rests on the definition of wasteland which appears in Section 128-9.31 (d)—" 'Wasteland' means land which is classified as such by the Director of the department of taxation. . . ."

It is easy to fall into the trap of interpreting the law by a quick reading of the *title* of the law. But what, in fact, is wasteland? Clearly, it is whatever the Director of Taxation says it is. Complete latitude is granted. Presumably the land is supposed to be presently unproductive. (At least this is implied by the preliminary statement of legislative intent). But there is also a clear implication that the land is not *permanently* assigned to the waste basket. The whole purpose of the law is based upon the assumption that land which is presently being "wasted" can be made "productive." One can only guess as to whether the concept of "productive" embraces the notion of agricultural productivity (perhaps with the assistance of public expenditures) or whether the concept implies productivity in industrial, commercial or residential terms (perhaps with the assistance of public expenditures). Only the Director of Taxation knows for sure, and his rules are the rules of man and not the rules of law.

The most stunning conclusion from a reading of the wasteland development law is that the Director of the Department of Taxation is forced to assume the role of a planning official without meaningful legislative instruction. "Land classified as wasteland development property shall be administered by the department [of taxation] and the department may from time to time make rules and regulations. . . ." (Section 128-9.34). "Within one year following the approval of the application, the owner shall develop that portion of his land as specified in his application and as approved by the director. *Additional areas shall be developed each year as prescribed by the director.*" (Section 128-9.35—emphasis added.) The development issue bears no relationship to the Land Use Law, to actions of the Land Use Commission or the Department of Planning and Economic Development or county planning agencies or the General Plan for the State. The Director of Taxation has, in this respect, become the chief planner for the State, acting with minimal legislative guidance and without reference to other laws which have significance for land use planning. We submit that this is no job for a tax administrator.

It must be said, however, that the basic purposes of the wasteland classification law appear to be sound. As mentioned earlier, it makes a good deal of sense to induce the development of poorer grade land, not only for the reasons cited in the preamble of Section 128-9.30, but also because such development helps to relieve the pressures on the development of prime agricultural land. A five-year partial forgiveness of property tax liability seems an appropriate inducement. The inducement is likely to be especially effective if the land is located in urban districts. Site value considerations are likely to increase the market value of land, thereby suggesting its conversion to higher use. Thus, a wasteland classification would tend to be more meaningful if the land were located in an urban district. Indeed, it might be that the purposes of the law would be better served if the minimum acerage limitation (not less than twenty-five acres) were reduced or removed.

3. The Graded Rate Structure

Needless to say, the most controversial element of the Hawaii Real Property Tax Law is the graded rate structure—the so-called "Pittsburgh Law"—defined and developed in Chapter 129. As noted earlier, Section 128-9 (d) is an integral part of the graded rate structure.

It is now well known that the purpose of the law is to provide gradual increases in the property tax burdens imposed upon land and gradual decreases in the property tax burdens imposed upon buildings in all land use districts except conservation and agriculture. This scheme, in turn, is designed to promote early development of lands located in urban and rural land use classification. If we assume constant county budgets, the graduated rate structure has the effect of changing the relative shares of the property tax borne by land as opposed to the structures on the land, in favor of the latter. Thus (still assuming constant budgets), steadily increasing costs of land ownership through higher tax burdens provide an inducement to property owners to intensify the use of land areas consistent with income opportunities.

For operational and analytical purposes it is useful to think of the tax *base* and the tax *rates* as separate parts of the calculation of tax burdens. But we have already discovered that the concept of highest and best use as a market-place phenomenon cannot be divorced from governmental action. The market place provides its own interpretation of governmental police powers, to reflect the potency of rules, regulations, prohibitions, and permissiveness. In the same way, the graded rate structure introduces a new element for market-place interpretation of highest and best use. The market place must consider the opportunities offered by the graded rate structure in its offering prices. As a result, the opportunity to participate in the relative advantages of high rise structures through the graded rate structure will tend

to increase the demand for land for these purposes. Hence, the price of such land will increase. If the assessor property reflects the market posture, the assessed value of such land will also increase, thereby amplifying the need to enlarge the income-producing structures supported by the land, and, through the use of comparative techniques in assessment, amplifying the economic burdens of those owners with small (e.g., single-family residences) or old structures.

It follows that the primary effect of the graded rate structure is expressed through the rate structure itself. But there is an important secondary effect expressed through the crossover influences of the rate structure on highest and best use, land values, and assessed valuations.

In other states, where the tax rate is uniformly applied to all types of taxable property, the influence of the property tax on economic development comes mainly from tax burden differences between competing *jurisdictions*. Thus, assuming common assessment practices, larger budgets in city A than in city B mean higher tax rates in city A than in city B and higher tax burdens in city A than in city B. All other things being equal, economic development is attracted to city B. To an even greater extent the tax comparisons within other states are between the total burdens inside cities and the total burdens outside cities. But it is clear that the tax burden contrasts are *between jurisdictions* and not *between types of property*. (Note that we do not argue that the contrasts are truly significant! We talk only of property tax *influences* or *pressures*, not of actual property tax effects. We still argue that for most states, let alone Hawaii, property tax burdens and their built-in uncertainties are likely to be overwhelmed by other economic comparisons in the final calculation.)

Of course, some of these interjurisdictional issues are present in the State of Hawaii. They are relevant to differences between counties. But because of the relative simplicity of the Hawaii governmental structure, the differences are easily analyzed. This kind of visibility tends to reduce the competition between jurisdictions, so that budgets, tax rates, and overall tax burdens tend to be equalized. Where tax burden differences continue to exist they tend to reflect budgets which provide additional services to business (by which we mean the entire sector of the economy devoted to the development purpose), thus offsetting the differences in tax burdens.

This sort of pattern seems to be beautifully descriptive of the Hawaii condition, although much more work would be required to prove the impression with scientific purity. Differences in tax rates between counties are relatively small, and those differences which do exist appear to be such as to emphasize the higher costs of a developmental orientation. A search for the truth of this hypothesis might be an exciting piece of research for the future.

In any event, it seems clear that the major competitive pressure created by the graded rate structure of the Hawaii Real Property Tax is a pressure to develop land which is not presently developed (land in conservation and agriculture districts excepted). In effect, the Hawaii tax law and the Hawaii governmental structure substitute differentials *between types of property* for differentials *between jurisdictions*.

In its ultimate effects, the present Hawaii law proposes that the tax rates applied to buildings in the relevant classifications be 40 percent of those applied to land. Forget, for the moment, the interim steps by which this 40 percent level is reached and assume the ultimate case. When the stakes are this great the classification system of Section 128-9 (d) assumes new significance. And again the power of the Director of Finance becomes a potent planning power.

The Director of Taxation is required to classify all land in each county according to standards of highest and best use. The classes are carefully enumerated in Chapter 128 as "(1) single family and two family residential, (2) three or more family apartment and hotel and resort, (3) commercial, (4) industrial, (5) agricultural, and (6) conservation." While the Director of Taxation is required to "give consideration to the districting established by the land use commission. . . ." etc., he is not obliged to classify in perfect or even approximate conformity. His standard of judgment is still fundamentally directed by the market place through the concept of highest and best use.

A hypothetical case:

A parcel of land is in actual agricultural use and is located in an agricultural district. It is adjacent to an urban district boundary and has felt some pressure for development as an urban property. The Director of Taxation classifies the property as "three or more family apartment and hotel and resort" . . . i.e., class (2). This act of classification has the immediate effect of increasing the assessed value of the land. But it also has the effect of substantially increasing the tax *rate* for the property. Because the land is placed in class (2) it must share the higher tax rate borne by land in the "hotel" category, in spite of the fact that it does not contain a hotel *and in spite of the fact that the Land Use Commission has "zoned" the land for agricultural use.*

At this point the chess game begins. If the land owner wants to stay in agriculture he is pressured to move towards dedication. If he wants to develop he is pressured to exert counter-pressures on the Land Use Commission to change the classification so that he can build hotels. If he is not sure what he wants to do he would be foolish not to seek dedication and take his chances with later applications for boundary changes and possibly accept the minimal penalties of the dedication law.

Furthermore, as development continues on class (2) lands within the urban district, the tax pressures on class (2) lands within an agriculture district intensify. The assessment increases because, in the assessor's opinion, the market place does not pay much attention to the designations of the Land Use Commission. The tax rate also increases because every increase in the "hotel" category increases the share of the county budget which must be borne by class (2) lands—*no matter where they are located*. Every time someone builds a hotel in an urban district the pressures for someone to build a hotel in an agriculture district with a class (2) designation increase, simply because the tax costs of not doing so increase. *By a simple act of classification under the provisions of Section 128-9 (d) the Director of Taxation is again given supreme planning powers which have little relationship to his duties as a tax administrator.* This conclusion will support a later recommendation.

Another hypothetical case:

A parcel of land is located in an urban district and is used to support a small single-family residence built some 30 years ago. The Director of Finance recognizes the development pressures and changes the classification of the land from (1)—single family residence to class (3)—commercial. Immediately, he reflects the higher use classification in the assessment of the property. But the tax *rate* also reflects the new classification. The single-family residence, with a low-value building, and consequently with relatively little to gain from the 40 percent building factor, experiences a substantial increase in property tax liability. Furthermore, each commercial establishment that is constructed increases the burden, because each new construction increases the percentage responsibility of the commercial class for payment of the total county tax bill.

Again, the simple act of classification serves to increase the property tax liability of the landowner (and consequently of the lessee, if any).

The difference between the first hypothetical case and the second hypothetical case is that State planning authorities had decided, in the first case, that the land should be retained in agriculture. In the second case, the State had decided that the land should be urban. But assume,

in the second case, that the *county* planning officials had decided that the urban property in question should be single-family residential. The action of the Director of Taxation would then be in direct conflict with local planning decisions —at least to the extent that the Director's classification would exert pressures which were contrary to the local planning purpose.

In the graded rate structure of the Real Property Tax, the State of Hawaii has embarked upon a process of discrimination for a planning purpose. But in doing so it has granted planning powers to the Director of Taxation which might, in the exercise of his assigned responsibilities, work in direct conflict with the planning aims of the Land Use Commission at the State level and of the county planning authorities at the local level.

We can find no fault with the legislative provisions which provide the Governor with power to limit the reduction in the building tax factor—given the legislative determination to achieve the ultimate 40 percent ratio by 1978 at the latest. The speed with which the ultimate result is approached seems an appropriate part of the executive decision-making process. This is not to deny that the fundamental conflict will remain, whatever the executive decision within the legislative mandate.

But we do have some complaint with the uncertainties which exist after the 70 percent level is reached. By the provisions of the law the Governor may, by imposing maximum delays, postpone the 70 percent level until 1972. But after the 70 percent level is achieved, further reductions require the "prior approval of the governor" [Section 129-2 (d) (4) (i)]. Thus, it is possible that the building factor will never be reduced below 70 percent, even though the statutes indicate the desirability of a 40 percent factor. (It should be mentioned that there is a technical flaw in the language of Section 129-2 (d) (4) (ii) and (iii). The language suggests two-year changes of ten percent. We assume that this language really means ten percentage *points*. A reduction of ten percent from 70 percent would yield a ratio of 63 percent. But a reduction of ten percentage points from 70 percent would yield a ratio of 60 percent. There *is* a mathematical difference.)

The real problem with the legislative grant of gubernatorial authority after the 70 percent level is reached is that it tends to create uncertainty, an issue which might be of some significance for anyone contemplating investment in development. If the legislature really wants to establish a 40 percent level for the building tax factor, it would seem appropriate at least to continue the two-year delay program, so that potential investors could be certain of a 40 percent level by 1978 at the latest. The uncertainty of the present law after the 70 percent level is reached seems, once again, to demonstrate some legislative timidity in declaring, in unequivocal terms, what the public purpose really is.

There can be no question that the graded rate structure is development priented. Nor can there be any question that the law imposes especial economic pressures upon single-family residences and particularly upon low-value, older-construction single-family residences. Of course, such pressures appear to be consistent with the basic purposes of the law—namely to promote development and to make it as expensive as possible to support less than highest and best use in urban districts. But perhaps one is entitled to ask whether the legislature has provided meaningful alternatives for single-family residential needs.

But even more importantly, the graded rate structure of Chapter 129 raises the issue of which authority should be responsible for planning the destiny of the State of Hawaii. In Chapter 129 the legislature has divided the responsibility between the Governor and the Director of Taxation, with much greater (although somewhat more subtle) responsibility given to the Director of Taxation.

The graded rate structure, in its present form, has been in existence only since 1963. And so far the building tax factor has been reduced only to the 70 percent level. For these reasons we feel that it is premature to judge the effects of the law before it has really been utilized—or at least before its potential effects have been experienced. One can guess, however, that these effects might be significant, increasing the pressures to intensify development and making it more and more expensive to support single-family residences in many parts of urban districts.

But the real key to the meaning of the graded rate structure is in the classification power given to the Director of Taxation. *And this power is not even defined in the graded rate chapter of the laws.* It bears repeating that even though Section 128-9 (d) is part of the chapter which defines the tax *base*, its real significance is to be found in the role it plays in Chapter 129 which defines the determination of tax *rates* and the imposition of the tax itself. The present location of this provision gives the whole law a deceptive quality. Surely, even without specific statutory language, the assessor must be granted the right to use all the classification techniques and mechanical conveniences he needs to perform his assessment functions. In this process he would simply be *reflecting* market opinion of highest and best use. But in fact the classification section gives the assessor (i.e., the Director of Taxation) truly significant *policy* powers. Through the graded rate structure he is able to *create* market pressures relating to highest and best use.

Part of the difficulty raised by this classification responsibility arises from an imperfect public understanding of the meaning of the term "highest and best use." The concept does not imply some kind of superior knowledge of the best possible use to which a given parcel might be put for all time to come. It does imply a changeable notion of highest and best use as market attitudes and technological aptitudes change. Thus, the assessor cannot possibly claim to have knowledge of potential use which is superior to that of the market, since he is supposed to reflect these market attitudes. He is even supposed to reflect the demonstrable irrationalities of market-place decisions. The job of interpreting market attitudes (particularly in Hawaii where the evidence is so sparse) is difficult at best. But to ask the assessor to perform a godlike role and to have greater knowledge about land use potential than anyone else is not only asking too much, it is asking the assessor to perform a role which is irrelevant to his assessment function.

But there is an even more basic source of difficulty. It might well be that we should return to our initial analogy: "Perhaps . . . the tax instrument can be nothing but a blunt hammer inappropriate to that kind of delicate planning which requires a sharp surgical scalpel." If it is true that intensive development in urban districts is desirable, and if it is also true that some single-family residential development is still desirable in such districts, the tax instrument must be greatly refined to provide *specific* distinctions, parcel by parcel, by planning rules, or be abandoned as a useful tool of planning.

To anticipate a later suggestion, one such refinement might well be to remove the classification responsibility from the Department of Taxation and assign it to a combination of State and local planning authorities. The Director of Taxation could still, of course, classify in any way he wants as a kind of short-hand device to assist the appraisal process. *But, for purposes of applying the graded rate structure, we would suggest that the classification be designed to support the State and local zoning laws, not to counteract them.* There is every reason to support highest and best use principles for assessment purposes. But, given the planning purposes of the so-called "Pittsburgh Law," there is no reason to classify property according to the highest and best use for tax *rate* purposes.

If this latter suggestion were adopted, a

curious thing would soon happen. Any official reinforcement of the zoning laws, either directly through a sturdier exercise of police powers or indirectly through a consistent use of the tax laws, would tend to bring highest-and-best-use values and "values in planned use" closer together. Gradually, the market place would respond to consistent and vigorous public action, so that classification for graded rate purposes would not only provide a demonstration of such public action but truly mirror market attitudes for land use purposes.

Thus, it appears to us that the classification issue is central to an understanding of the potential effects of the graded rate structure. And the classification provisions are faulty in two major ways and in one minor way. It is of major importance that classification responsibility is given to the wrong authority. It is also of major importance that the present classification requirements force a planning function to wear ill-fitting taxation garments. It is of minor importance that the classification provisions are placed in the wrong section of the Real Property Tax Law.

Yet even this last conclusion has more than superficial meaning, for it is symptomatic of a deeper ailment, namely, that the Hawaii Real Property Tax Law doesn't really know whether it wants to be a tax law or a planning law! Such a simple thing as statutory structure can provide evidence of schizophrenia in the public sector and suggest the urgency of immediate treatment.

C. Summary of the Real Property Tax Law

Although other elements of the Hawaii tax structure have economic effects on the Hawaii condition and on patterns of land use, it seems apparent that the major tax instrument of *conscious* planning is the real property tax.

Yet we must not overestimate the planning importance of the real property tax. As state and local tax structures go, Hawaii places little overall emphasis on the property tax. Because of the assignment of most governmental functions to State government and because the property tax is restricted to providing funds for local use, other types of taxation assume a greater than normal significance in the total state and local tax structure.

Among other things, this relative insignificance of property taxation means that there is little opportunity to consider further reductions in property tax burdens as inducements to overall economic development. Especially in view of the pattern of Hawaii's resources and markets the property tax just doesn't have much left to offer in these broad developmental terms.

Nevertheless, because of the pattern of exemptions and partial exemptions and a graded rate structure, the low overall burdens of the property tax structure should not necessarily be interpreted as low burdens on individual taxpayers. Indeed, the clear planning purposes of the law make discrimination a legislatively-defined virtue rather than an unconscious defect. Such discrimination, because of the relationship between tax burdens and specific land parcels, provides some opportunity for land use planning *within* the State, even though overall economic effects are likely to be minimal.

It is impossible to avoid the observation that the Hawaii Real Property Tax Law is obscure, inconsistent, and somewhat deceptive in its assumption of planning responsibilities. These defects appear both in Chapter 128, dealing with a definition of the tax base, and in Chapter 129, dealing with the determination of tax rates.

Questions about the exemption structure are largely based upon economic issues which challenge the effect of the exemptions. Given the present and probable condition of the Hawaii economy, do the exemptions of business inventories (technically an exclusion rather than an exemption), and of fixtures used in manufacturing tangible personal property produce economic results which offset the extra burdens which are placed on other kinds of property which are not exempt?

Much more important questions are raised about the meaning and effect of dedication laws—both agricultural and urban. In this consideration we find a real test of the relationship between tax inducement policy and zoning policy at both State and local levels. It seems clear that the present laws is not likely to produce the effects which are publicly expressed as State goals in the Land Use Law and in the State General Plan Regision Program.

By the same token, it seems clear that the dedication laws provide inadequate protection against speculation and the exploitation of public policy for private purposes. On the contrary, the dedication laws seem to offer new opportunities for such speculation. There are, to be sure, built-in penalties, but the penalties are of uncertain application and exert negligible pressure for the pursuit of the public purpose.

We also find some inconsistency of purpose in the opportunity to dedicate lands in agricultural use which are within urban districts.

Most especially, we feel that Hawaii's dedication laws give planning authority to the Department of Taxation when such authority might more properly be given to State and local planning agencies. Furthermore, this grant of authority is accompanied by very little legislative direction and almost no expression of legislative purpose. As a consequence, administrative agencies are asked to pursue an ill-defined objective with an abundance of discretion. From a planning point of view, this can only be considered a major defect in the law.

We find no fault with the market value rules provided by the law to the Director of Taxation in the pursuit of his assessment functions. We do, however, find fault with the law when it proposes, in the dedication and exemption sections, that principles of highest and best use are to be vacated. We would identify the fault as a failure to provide adequate standards for measuring "value" where the market place is ruled out of the calculation.

It is extremely important to view the fair market value concept as an opportunity to test the significance of other laws—notably the Land Use Law and county zoning ordinances. The evidence for such a test does not now exist in any volume to support sweeping conclusions. In part this vaccuum exists because of the basic nature of the Hawaii economy. But in part it exists because the overall planning need for special planning data has not been fully recognized. Yet a system of taxation might easily supply these data needs.

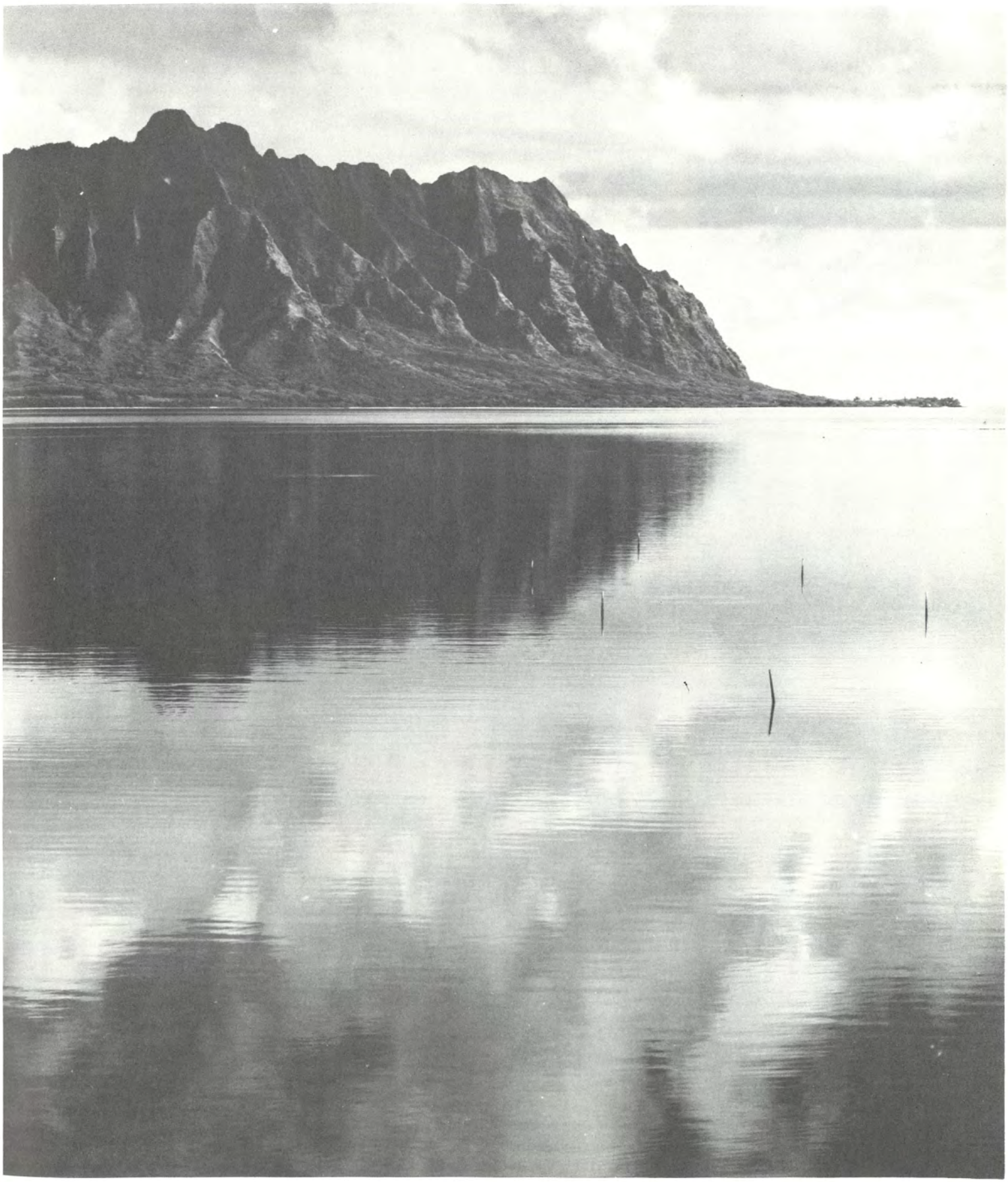
It is indeed evident that there is a significant misunderstanding about the relationship between market value concepts and the police power actions of government. The Director of Taxation cannot be faulted for pursuing his statutory obligations to reflect the attitudes of the market place to a variety of zoning restrictions. (We do not, however, find any persuasive evidence that this obligation is or is not being properly pursued. Proof on either side of this issue would require a much more detailed and extensive analysis than this study has been able to supply.)

The purposes of the graded rate structure (the "Pittsburgh" aspects of the Real Property Tax Law) seem clear enough. But two fundamental, if rhetorical, questions remain: 1. should the Governor be granted the opportunity to create real economic uncertainties below the 70 percent building tax factor level? and 2. should the classification system be such as to permit the tax laws to work in opposition to planning laws.

Perhaps a suitable overall conclusion to this examination of the Hawaii Real Property Tax Law (still from a land use planning point of view) is that the posture of the law is vague and uncertain. The assignment of administrative responsibility reflects this vagueness and uncertainty, for a job of tax administration is curiously mixed with a job of planning. The result cannot possibly be as hospitable as the present Hawaii environment. We suggest that there is some urgency in the revision of Hawaii's Real Property Tax Laws.

CHAPTER 16 / ATTITUDE REGARDING LAND USE AND THE LAND USE LAW

Conservation and Agriculture Districts
Kualoa, Kaneohe Bay, Oahu



Conservation and Agriculture Districts
Waipio Valley, Hawaii

I. INTRODUCTION

In order to become familiar with personal opinions regarding land use matters in general and the Land Use Law in particular, two techniques were used—personal interviews and mailed questionnaires. The questions asked were formulated around the basic issues of conservation, urban development, zoning, property taxes, administration of the Land Use Law, economics and tourism. Questions were pre-tested to avoid as many ambiguities as possible, but in retrospect, it is felt that there were weaknesses in many of the questions. It is hoped that the next review program may improve on these as a result of our experience. The questions used in both the questionnaires and interviews will be found in Appendix E.

The following are summaries and analyses of the interviews and questionnaires. As will be seen when referring to other sections of the report, many of the recommendations for action are supported by the opinions received.

II. SUMMARY AND ANALYSIS OF INTERVIEWS

A. General

The task of interviewing not less than twenty people in each County (80 total) was one of the most fruitful in terms of information, insight and ideas relative to the strengths and weaknesses of the Land Use Law. People interviewed included county and State political leaders, county planning directors and commissioners, businessmen, developers, landowners, government employees, attorneys, realtors, conservationists and many others not within these classifications.

The interviews ranged from one-half hour up to about one and one-half hours depending upon the respondent's circumstances, interest and knowledge of the subjects. Of perhaps greatest benefit was the opportunity to gain from a large reservoir of experience and judgment in a short period of time.

It is interesting to note that there were some differences in the responses from different islands with respect to certain questions, but this is not considered very significant because the samplings were relatively small and not designed to match in occupation and interests. It is also interesting to note that the interviews and answers to questionnaires supported each other for the most part.

People generally agreed on certain questions and were extremely divided on others. When extreme divisions of opinion were expressed it was considered to be the result of a misunderstanding or weakness in the question itself, lack of factual information, or simple disagreement which is always present to some degree.

B. Points of Agreement

People interviewed generally agreed with the following statements:

1. The Land Use Law has succeeded in its objective to use zoning and property assessment to encourage the best use of the land.
2. Preservation of prime agricultural land should continue to be a goal of land use policy.
3. Preservation of scenery, agriculture and historic places has a beneficial effect on the State's economy.
4. The Land Use Law has not discouraged economic development.
5. The Land Use Law has not hurt development, in fact it has encouraged better development.
6. More urban development is desirable throughout the islands and people think that the rate of building and development is going to increase rather than remain steady or decrease.
7. The Land Use Commission should consider the quality of proposed developments before permitting re-zonings.
8. Some lands over 20 percent slope could be used for development provided safeguards are taken.
9. Tourism should be encouraged, but there are dangers in unlimited tourism such as congestion, the cutting off of beaches so that local residents cannot use them, the spoiling of scenic areas and the competition with plantations for labor.
10. The Land Use Law favors large landowners and developers.
11. The district boundaries should continue to be determined by the State Land Use Commission, and the counties should continue to administer land uses within the Agriculture, Rural and Urban Districts.
12. Coordination of activities with the Land Use Commission is generally satisfactory.

Interpretation:

From the above, it would appear that the people interviewed are generally satisfied with the Law, its effects and its administration, with the exception that it favors large landowners and developers. They feel that it is succeeding in its initial purposes and is not hurting the economy of the State. People are optimistic about the future, but are concerned about the quality of development and the possible loss of amenities through uncontrolled tourism. It is interesting to note that when asked if the alleged favoritism toward large landowners was wrong, they generally agreed that it was not, and that such favoritism was more a recognition of the general reality that large interests were favored by their ability to hire professional and technical assistance and accomplish large projects more successfully than small owners. The concern for high quality development and the hope that it could be a consideration in re-zonings was coupled with the acknowledgement that such considerations would be very difficult to accomplish.

The spoken support of the Law can be tempered somewhat by the fact that people tend to express satisfaction with existing situations that do not bother them too much, rather than go to the trouble of inviting change and the conflicts which accompany the changing process. Notwithstanding this opinion, it must be concluded that general support for the Law exists among those interviewed.

C. Divided Opinions

Those interviewed had many different and varied opinions with regard to the following issues:

1. The main points of conflict around the Law.
2. Recommendations for amending the Law.
3. Ways of improving coordination between the Land Use Commission and other public and private sectors.
4. The effects of the Land Use Law on land speculation.
5. What agency should administer the Conservation Districts.

Interpretation:

In Hawaii County the fact that both State and County are involved in zoning was cited by many to be the main source of friction around the Land Use Law. Though this issue was raised by some in other counties, it can be concluded that the presence of this particular argument in Hawaii County can be attributed to a few very vocal, strong personalities living there, people who in fact do not agree among them-

selves on other legal and local issues and were very open about it to the interviewer.

Again in Hawaii County, many people complained about the ambiguities of the district regulations and the district boundaries, pointing out that very large areas of little agricultural value were included in agriculture districts. This complaint was frequently accompanied by the opinion that the Land Use Commission was inconsistent in its judgment and that since it never stated its opinions, people could not understand how or why the conclusions were reached.

D. Suggestions for Improving Law and Procedures.

Recommendations for amending the Law were numerous, but non received any significant consensus. Following are the suggestions:

1. Establish acreage limitations in agriculture districts so that speculation does not occur with large areas.
2. Place time limits on development.
3. Provide for more than four districts.
4. Eliminate the Rural District.
5. Create subzones in conservation districts.
6. Amend definitions and concepts of the Conservation District.
7. Provide absolute protection for prime agricultural land.
8. Speed up the processes—simplify procedures for minor changes in boundaries.
9. Provide a relationship between the Commission's Executive Officer and county planning directors to improve communications and minimize conflict.
10. Make county planning directors members of the Land Use Commission.
11. Have the counties administer the Law.

Many of these recommendations have been considered important enough to receive special attention, some finding expression in the proposals for revising the regulations. Others are the subject of further recommendations of this report.

To improve relations between the Land Use Commission and individuals and agencies the following conclusions were presented:

1. Improve communications.
2. Educate the public on the Law and its concepts.
3. Speed up the petition process.
4. Have Commission Staff and county planning staffs reach joint decisions.

With the exception of point 4, which is not necessarily a possibility, the recommendations are being partially implemented or are the subject of recommendations of this study. The movie produced as a part of the review program has been shown at public hearings and meetings throughout the State. It and other media such as a brief summary of the review program in a pamphlet will assist in bringing much needed information to the public.

E. Opinions Regarding Land Speculation

Answers to the question about the effect of the Law on land speculation revealed that some felt the Law had slowed speculation; some concluded it had not been effective; and some were of the opinion that it had changed the nature of speculation. A few felt that the Law had increased speculation.

Apparently everyone felt that he knew the meaning of the term "speculation", while obviously many inexact meanings could be ascribed. Consequently, this question would have to be judged one of the less effective ones. In spite of this, the opinions that the Law had changed the nature of speculation deserves review. The reason given was the Law had stifled the old type speculation of quick turnover and encouraged speculation by large landowners who could invest in Agriculture and Conservation District lands and wait a considerable length of time. Support for this viewpoint can be found in the arguments stated in Chapter 15 dealing with property taxes and land dedication.

F. Opinions About the Conservation Districts.

A question dealing with the administration of the Conservation Districts revealed that most people did not know that the Department of Land and Natural Resources was the zoning agency in these districts. This indicated a serious lack of knowledge about the Law and the reason for some of the confusion that existed. Of those who did know the facts, about half felt the counties should have authority and the other half were equally adamant in their support of the authority remaining with the Department of Land and Natural Resources. A very significant number of people voiced the opinion that the Land Use Commission itself should exercise controls over the Conservation Districts.

III. QUESTIONNAIRE SURVEY OF ATTITUDES[1]

A. Introduction

During October 1968, questionnaires concerning the State Land Use Law were mailed to a selected sample of 1,500 citizens of the State. This was a very special survey. It was not intended to be an opinion poll, as might be administered by Harris or Gallup, concerning the State Land Use Law. Although most citizens share a concern for the preservation of the State's scenic beauty, its economic growth, and the provision of a habitable environment for their children; only a small fraction of the population is sufficiently involved with or informed about the State Land Use Law to evaluate its relationship to these common goals.

Nor was the survey an academic exercise; the purposes of this survey were essentially pragmatic. The findings were to aid in the tasks of redrawing district boundaries, criticizing the provisions of the current Law, and discovering and possibly solving the problems that have attended its administration. We are not, therefore, so much interested in current public opinion, vis-a-vis, the Law, or in an idle description of what opinions and attitudes we have gathered as we are interested in collecting the observations and insights of people who may help in the tasks we have undertaken. This is a most critical departure from conventional survey research objectives; and the departure has had an important bearing upon the selection of the sample, evaluation of the data, and the content of this report.

There is, of course, no master list of knowledgeable parties. The sampling plan had to rely on a 'catch as catch can' rationale (Questionnaires were sent to a relatively large number of potentially informative respondents; a relatively high rate of non-response was anticipated; and the returned sample was evaluated but not held to be representative of the sample universe.) Because a high rate of sample attrition is anticipated, it is not particularly important for the drawing of the initial sample to be especially rigorous. Instead, the initial sample should attempt to meet two criteria:

1. It should include potential respondents who would have the greatest likelihood of responding (or exclude groups of potential respondents whose likelihood of responding is doubtful).
2. It should include in the sample a sufficient variety of potential respondents so that the information gathered is an expression of the way the Law and its effects look from a number of different vantage points.

We sent questionnaires to architects; planners; landscape architects; teachers in related fields; attorneys; large landowners; builders; contractors; developers; engineers; government officials; realtors; officers of banks and savings and loan associations; union officials; leaders of civic, trade, and business associations; and conservationists. The collection of potential re-

[1]This section of the report was prepared by The Environmental Analysis Group, Inc., San Francisco, California.

spondents was made with more expedience than rigor. Names and addresses were collected from the telephone directory, the membership lists of associations and groups, and the consultation of knowledgeable informants. No respondent was personally selected or excluded from the sample by virtue of some special knowledge we had about him or a special relationship he may have had to the Law, the Commission or the study. Lists of potential respondents within each occupation or interest group were collected. If the list was relatively short, everyone on it was sent a questionnaire; if long, a fraction of the names were used in the sample.

Thirty-eight percent of the sample returned usable questionnaires before the deadline. One reminder letter was sent. We did not send other encouraging postcards, letters, or a second questionnaire to people who chose not to respond. We assume that those who responded are special. They have either a special expertise, a special proximity, a special interest, or a special sense of public spirit. They are, in a sense, 570 unpaid consultants to the State, and we have looked at their attitudes and opinions with this in mind.

The sample was grouped into ten sub-sample groups as shown in Table 20.

TABLE 20 RESPONSE BY SUB-SAMPLE GROUP TO QUESTIONNAIRE

Sub-sample	No. of Returned Questionnaires	No. of Questionnaires Mailed	% of Response
Environmentalists (architects, landscape architects, city planners & related educators)	89	210	42
Realtors	88	230	38
Attorneys	80	230	35
Developers	54	120	45
Bankers	53	160	33
Conservationists	52	100	52
Government Officials	47	150	30
Engineers	47	100	47
Associations (leaders of civic, trade & business groups)	36	100	36
Union leaders	24	100	24
Totals	570	1,500	38%

Who responded. As a group, the sample is a high cut of Hawaii's citizenry. One-third held a graduate degree and almost 70 percent had graduated from college; the median income of the group was 15 to 20,000 dollars, and 25 percent earned more than 25,000 dollars per year. More than half owned property other than their own residence in the State; and more than half had resided in the State for more than twenty-five years. Even in this rather rarified company, less than half of the respondents had had dealings with the Land Use Commission and only approximately 15 percent claimed to be "very familiar" with the Commission and the Law.

The organization of this report. Given that we are most concerned with the light these citizens can shed upon the Law and its administration, we have kept statistical descriptions and head-counts on the various questions to a minimum. There is some value, however, in referring to the collective opinions of this group. In areas where their reported opinions and attitudes diverge from one another, it is probable that differing opinions would be obtained in a more general population. When, on the other hand, respondents from differing walks of life and changing vantage points nonetheless demonstrate consensus concerning a particular issue, it is more likely that consensus is current among knowledgeable informants. The conclusions drawn from converging and diverging opinions are, strictly speaking, only conjectures. They do not represent a single, definable, segment of the population. One thing is relatively certain: were the questionnaire carried to an extended sector of the population, opinions, attitudes, and suggestions would have waned into less interest, knowledge, and conviction. The reader, therefore, must contribute to this report his understanding of the Law, the Commission, and the goals of both. The value of the data is not a function of the number or percent of respondents voicing a particular opinion, but the directive or informational value of the samples attitudes and perceptions.

We will be looking at a number of issues related to the Law. First, the attitudes surrounding the regulation of land use—is regulation considered necessary? . . . how much regulation? . . . with what objectives or goals? . . . and, by whom? These questions will be analyzed by the sub-sample categories and by other background variables in order to evaluate the influence of a respondent's vantage point vis-a-vis the Law on his expressed attitudes. Next, we will look at a number of issues that concerned many of the respondents: favoritism and the Law; effects of the current Law upon land use. Finally, we will consider some of the suggestions offered by the sample.

B. Should Land Use be Regulated?

Most people[1] think that land use regulation is necessary. Seventy-nine percent of the returned sample indicated that owners should *not* have absolute control over the use of their lands (disagreed to 29-B, see Appendix E, for complete questionnaire); 12 percent indicated that "the owner of land should have the right to determine its use without government control"; the remainder (9 percent) had no opinion or did not answer.[2] Opinions varied among the sub-samples. Among government officials, environmentalists, and engineers, 90 percent support some kind of control; among developers, 59 percent supported controls.

At least a majority of each sub-sample sees the need for regulation. Question 29-8, however, refers to regulation without tying the respondent down to some ready definition. It is easy to support the concept of government controls, but more difficult to agree upon the scope and breadth of the regulatory power of the State. While most respondents supported regulation, we can be sure that the definitions of "regulation" were different in each respondent.

Question 15 asked: "Which of the following sentences best describes your attitude toward the present zoning laws?"

1. Present zoning laws are a reasonable exercise of legislative authority for the welfare of the people.
2. Present zoning laws are necessary, but are not up-dated often enough to satisfy current needs.
3. Present zoning laws are necessary because of limited land resources.
4. Present zoning laws violate property rights.
5. Present zoning laws are unconstitutional.

[1] For the sake of style, phrases like "most people", "a majority", "few respondents", and so forth, are used to refer to proportions of the returned sample of 570 respondents.

[2] Unless explicitly stated otherwise, all percents throughout the report are on a base of 570.

Respondents choosing answers one or three have indicated either the practical necessity of regulation or an unconditional approval of the State's legitimate authority vis-a-vis land use. Respondents choosing answer two agree to the necessity of land use controls, but balk at unconditional approval. Answers numbers four and five imply that the Law is illegitimate.

Given the additional leverage of more than a yes-no choice, the sub-sample groups widened the differences among them. Among government officials, conservationists, engineers, and environmentalists, 50 percent or more indicated support without conditions for the necessity or the legitimacy of land use regulations. Developers and realtors were least convinced. Among developers, approximately one-quarter indicated unconditional support, and among realtors, the proportion sank to 18 percent as indicated on Table 21.

Not surprisingly, only conditional support for the concept of land use regulation is related to the respondent's level of satisfaction[2] with the current Law.

It is impossible to ascertain whether dissatisfaction with the Law has caused disenchantment with the concept, or disbelief in the concept has promoted dissatisfaction with the Law. Whichever, the two notions are strongly related to each other. (Table 22)

A third indicator of the necessity of the Law was used in the questionnaire. Respondents were asked whether ". . . historic places, scenic areas, wildlife and other natural resources of your country would be preserved if urban developments were permitted with land use controls?" For their answer, the respondents could choose between: (1) Definitely would be preserved without controls, (2) Probably would be preserved without controls, (3) Probably would not be preserved without controls, (4) Definitely would not be preserved. A total of 13 percent of the general sample thought that natural resources definitely or probably would be preserved without controls; 38 percent thought resources would probably not be preserved and 45 percent thought they would definitely not be preserved without controls. If we compare responses to this question with the previous question (concerning the necessity for controls) the two responses are, again, related. (Table 23)

The obvious perhaps requires statement: There is a relatively small proportion of the sample that does not see the need for the legitimacy of controls, and for whom the Law is not satisfactory. The antagonism toward the Law among these respondents is general. Most of the sample, for example, indicated that they believed the preservation of ". . . historic places, scenic qualities of wildlife and other natural resources . . ." greatly increased the economic potential of their respective counties. Six in ten so indicated. However, among respondents who thought that resources would probably or definitely be preserved without controls. the economic value of such preservation was more often seen as only slightly positive or non-existent.

What are we to make of these relationships? Clearly between 10 and 20 percent of the sample have a rather general antagonism toward the Law, its objectives, and its underlying rationale. Realtors and developers, who constitute 19 percent of the returned sample, contributed 47 percent of those who saw relatively little need for land use controls (Question 21). Among the remainder of the sample, attitudes to-

TABLE 21 SUPPORT FOR ZONING LAWS BY SUB-SAMPLE GROUPS

	Engr.	Envir.	Attny.	Dvlpr.	Govnt.	Consrv.	Realtr.	Banks	Union	Assns.
Unconditional Support										
"For the welfare of citizens"	30%	34%	30%	15%	43%	29%	11%	23%	4%	11%
"Limited land necessitates"	21	16	13	11	15	27	7	13	33	28
Conditional Support										
"Necessary but outdated"	32	34	31	35	21	25	45	55	38	36
Rejection										
"Violates property rights"	4	2	6	9	2	0	9	4	4	3
"Unconstitutional"	0	0	0	4	0	0	0	0	4	0

[2] In order to facilitate our inquiry into the sources of satisfaction and dissatisfaction with the Land Use Law, we have combined the responses of each respondent to a number of questionnaire items. The combination forms a relative index of each respondent's satisfaction with the Law and the Commission. The index includes eight questions; each touches a different dimension of the respondent's satisfaction. A respondent with a maximum score on the index indicated that:

1) The Land Use Law has aided proper development of the land in his County (responses 1 or 2, question 5), and . . .
2) The Land Use Law has guided the proper use of lands ("Agree", question 29-6), and . . .
3) The State has a legitimate right to control land use ("Disagree", question 29-8), and . . .
4) The present zoning laws are necessary or a reasonable exercise of Legislative authority for the welfare of the people (responses 1 or 3, question 15), and . . .
5) The procedures for applying to the Land Use Commission for district boundary changes and/or special permits are adequate and generally efficient (response 3, question 16), and . . .
6) The Law's current land classifications are adequate (response 3, question 16), and . . .
7) The Law is absent of favoritism (response 4, question 10), or if the respondent indicated favoritism, he also indicated that the favoritism was in the best interest of the County or State.

No respondent was assigned a full maximum score. The distribution of satisfaction index scores was divided into three groups: High, medium, and low scores. These scores should not be interpreted in an absolute sense by the reader. A "high" satisfaction score does not mean that the respondent is, in fact, satisfied or even pleased with the Land Use Law; rather, the score implies that respondents with a "high" score are relatively more satisfied than respondents with a "low" or "medium" score.

ward the Law are built upon a foundation that generally recognizes the Law's necessity and its legitimacy.

Regulation—with what objectives?

Eighty percent of the respondents agreed that the primary goal of the Land Use Law was to "*encourage use of all land in the manner best suited to the long-range goals of the State*". An additional 8 percent claimed "preservation of agricultural lands" as the primary goal. Whatever the specific goals and implementation, virtually no one wants to see "the use of lands maintained as they are today".

After respondents were asked what the primary goal of the Land Use Law was now, they were given the opportunity to express an opinion regarding what the goal of the Law should be. Again, the majority selected the statement cited above.

On the second question, respondents were permitted to choose between State and county as the governmental unit to which the goals of the Law should be oriented. Realtors were the only group which showed a significant shift to county emphasis. One-fourth of the realtors indicated that the Land Use Law should "encourage use of all land in a manner best suited to the long-range goals of the *County*", as opposed to the State.

While there is agreement regarding the actual and ideal goal of the Law, examination of the other questions regarding goal objectives clearly shows varying interpretations of exactly what is "the manner best suited" to accomplish long-range goals. Basically, it appears to be a disagreement over what these long-range goals should be.

C. Most Important Factor in Land Use Planning

In question 29, respondents were asked to indicate agreement or disagreement with a series of statements concerning uses of the land which should be encouraged or discouraged by the Land Use Law.

Two of the statements presented rather different attitudes regarding the *most important* factor to be considered in government directed land use planning. One statement specifically stressed *urban development for industrial and manufacturing growth* while the other stressed *conservation*.

The degree of agreement to each statement in the various sub-categories is shown on Table 24.

As the reigning factor in determining government planning policies, preservation is ahead of development by almost two to one. Of the total sample, one-fourth favored urban development compared to roughly one-half placing prime emphasis on preservation as the planning goal. Conservationists and environmentalists lead the other subgroups in favoring preservation and disfavoring urban development.

Preservation of historic places, scenic qualities and wildlife and other natural resources would appear to be the direction this group of respondents calls for in the planning effort. The sampling method, as explained in the introduction to the report, does not permit us, however, to generalize to the larger population.

Those who disagree with both directions tend to have either a medium or high score on the satisfaction index. Apparently, the people who find the Law generally to their liking see a balance between the two.

Elements of Land Use Meriting Strong Emphasis

Three statements in the questionnaire allowed the participants in the study to state their views on factors which, though perhaps not the prime one, should be considered in the planning of land use.

Table 25 emphasizes the desire of all the groups to have the Law protect the natural resources of the State at least to some degree. The preservation of agricultural lands is also important to the groups although about 20 percent fewer respon-

TABLE 22

SATISFACTION SCORE BY LEVEL OF SUPPORT FOR THE CONCEPT OF REGULATION

	High Satisfaction	Medium Satisfaction	Low Satisfaction	Total	Base
Unconditional Support	61%	38%	1%	100%	(230)
Conditional Support	31	66	3	100	(203)
Rejection	0	20	80	100	(30)

TABLE 23

LEVEL OF SUPPORT FOR CONCEPT OF REGULATION BY ATTITUDES TOWARD THE NECESSITY OF CONTROLS

	Probably Preserved	Probably Not	Definitely Not	Total	Base
Unconditional	8%	39%	53%	100%	(226)
Conditional	12	44	44	100	(197)
Rejection	41	34	24	99	(29)

TABLE 24

ATTITUDES TOWARD DEVELOPMENT VS. CONSERVATION ASPECTS OF THE LAND USE LAW

	The most important factor for government land use planning . . .			
	Urban Development for Industrial and Manufacturing Growth		Preservation of Historic Places, Scenic Qualities, Wildlife and Other Natural Resources	
	Agree	Disagree	Agree	Disagree
Attorneys	29%	56%	31%	55%
Engineers	28	62	51	40
Developers	28	59	37	52
Realtors	28	57	52	36
Bankers	28	57	53	42
Associations	28	56	42	44
Union Officials	25	54	54	29
Government Officials	23	60	38	45
Environmentalists	20	72	58	37
Conservationists	10	75	58	35
Totals	25%	61%	48%	42%

dents in the total sample indicate special support for this kind of preservation. More government and association officials appear to champion the cause of agricultural lands than respondents in the other groups.

The greatest spread among the groups was in response to the question regarding urban development for tourist activities. Realtors lead in support of this guide to government planning while significantly more conservationists oppose this particular goal.

D. Who Should Regulate?

Questions 12 and 13 (see Questionnaire Appendix E) dealt with the responsibilities of State and county. Question 12 reads:

> "In your opinion, who should be responsible for drawing the boundaries between Urban, Rural, Agricultural and Conservation Districts?"

1. State Land Use Commission
2. Department of Land and Natural Resources
3. County Supervisors
4. County Planning Commission
5. Other
6. No opinion

More of the sample indicated that the power should reside with the Land Use Commission than with other agencies. A relatively large proportion of the sub-samples chose not to respond to the question, however as shown in Table 26.

A majority of conservationists, engineers, bankers, government officials and attorneys would leave the power with the Commission. Among the remaining subgroups support diminished, and in some cases, migrated to county authority.

When analyzed by county, the residents of Oahu demonstrate more support for the Land Use Commission than residents of other islands as shown in Table 27.

Familiarity with the Law did not affect respondents' selections, as is shown in Table 28.

The respondents conception of the necessity of controls for the preservation of ". . . historic places, scenic areas, wildlife and other natural resources . . ." was strongly related to the question of boundary drawing power as shown in Table 29.

As the conviction that land control is necessary increases, respondents become more favorable toward the Land Use Commission as the boundary drawing power.

General satisfaction with the Land Use Law, as indicated by the satisfaction index is perhaps most strongly related to the attitudes toward who should draw boundaries as indicated in Table 30.

While most respondents would give boundary-drawing power to the Land Use Commission, opinions varied concerning

TABLE 25

IMPORTANCE OF ISSUES IN LAND USE PLANNING

	"Should receive strong emphasis in land use planning . . .		
	Urban Development for Tourists' Activities"	Preservation of Agricultural Lands"	Preservation of Scenic & Natural Resources"
Realtors	83%	65%	91%
Government Officials	81	87	96
Developers	72	57	89
Associations	67	81	94
Environmentalists	66	78	99
Engineers	64	62	94
Bankers	60	74	94
Attorneys	59	59	91
Union Officials	50	67	83
Conservationists	46	71	92
Total	66%	69%	93%

TABLE 26

RESPONSIBILITY FOR BOUNDARY DEFINITIONS BY SUB-SAMPLE CATEGORY

	"The responsibility for drawing boundaries should fall to"					
	LUC	DLNR	Cnty. Sup.	C. Pl. Comm.	Other	Total
Conservationists	63%	8%	2%	10%	6%	89%
Engineers	57	—	4	21	6	88
Bankers	55	8	6	17	4	90
Government	53	—	2	23	4	82
Attorneys	51	7	4	14	10	86
Environmentalists	46	12	—	10	9	77
Realtors	36	6	3	26	8	79
Developers	35	7	13	19	6	80
Unions	29	25	4	4	8	70
Associations	19	17	3	33	6	78

TABLE 27

RESPONSIBILITY FOR BOUNDARY DEFINITIONS BY COUNTIES

	LUC	DLNR	Cnty. Sup.	C. Pl. Comm.	Other	N.A.	Base
Oahu	51%	8%	4%	14%	8%	15%	(396)
Other Counties Combined	38	8	5	30	5	14	(154)

TABLE 28

RESPONSIBILITY FOR BOUNDARY DEFINITIONS BY FAMILIARITY WITH LAND USE LAW

	LUC	DLNR	Cnty. Sup.	C. Pl. Comm.	Other	Total
Very familiar with the Law	48%	4%	4%	22%	9%	100%
Somewhat familiar with the Law	47	8	3	20	7	100
Have no knowledge of the Law	49	14	6	6	8	100

TABLE 29

RESPONSIBILITY FOR BOUNDARY DEFINITION
BY ATTITUDE TOWARD NECESSITY OF CONTROL

	LUC	DLNR	Cnty. Sup.	C. Pl. Comm.	Other	N.A.	Base
Definitely or probably be preserved without controls (controls not necessary)	18%	11%	8%	34%	14%	14%	(71)
Probably not preserved (control probably necessary)	50	5	6	19	7	14	(223)
Definitely not preserved (control necessary)	55	10	1	14	6	15	(251)

TABLE 30

RESPONSIBILITY FOR BOUNDARY DEFINITIONS
BY SATISFACTION INDEX

	LUC	DLNR	Cnty. Sup.	C. Pl. Comm.	Other	N.A.	Total
Low Satisfaction	13%	10%	10%	27%	24%	16%	100%
Medium Satisfaction	47	9	3	18	7	15	99%
High Satisfaction	70	5	1	9	4	10	99%

the power to regulate districts once boundaries are drawn as shown in Table 31.

More of the respondents desired that Urban Districts be regulated by the county than by any of the other agencies. Regarding Rural Districts, only union officials would have the Land Use Commission regulate; bankers and conservationists were split between the Land Use Commission and county authorities; among the remaining groups of respondents, again, more respondents requested county authority. The same pattern is evident with regard to agricultural districts: conservationists and bankers preferred the Land Use Commission; environmentalists were split; and the remainder chose county power. Less consensus was evident for Conservation Districts; conservationists chose the Department of Land and Natural Resources, along with developers, unions, and associations; realtors, government officials, and engineers were split evenly among the three authorities (Land Use Commission, Department of Land and Natural Resources, and county authority); finally, bankers were split between the two State agencies, and attorneys chose county authority.

Possibly, excepting conservationists (and some others), there is a general preference for county power within Urban, Rural and Agricultural Districts.

E. Attitudes Toward the Law: An Exploratory Evaluation

1. Introduction

No one envied the Commission its job. The Law and its administration is complicated. The impressions we have retained from reading the questionnaires cannot be adequately reflected in tables and percents.

Every questionnaire was individually read. Many of them did not lend themselves to generalizations. The continuing Communist conspiracy was seen by one respondent as the root cause of land legislation; another would have the State purchase every square foot of land in the State, making it a universal wildlife reserve and park. As one progressed through the questionnaires, however, some ideas were repeated with more frequency. And once read completely, the stack of questionnaires leaves behind a number of dominant impressions.

Regardless of the occupation of the respondents, he is concerned about the Law. No doubt many potential respondents without this concern failed to mail back the questionnaire. The concern is most frequently expressed through any of a number of avenues of objection. Some respondents exhorted the Commission to "get down to earth" or stay away from "theory planners" or some other equally ethereal suggestion. Many respondents cited, (and eloquently reported) personal, particular incidences of oversights and injustices that they had suffered at the hands of the administrators.

Late in the questionnaire we asked:

> "Please describe below, in as great detail as possible, what could be done to make the Land Use Laws better for your County or the Land Use Commission more responsive to your needs."

It is significant that almost half of the questionnaires were blank on this question. Certainly many respondents felt that the question was outside their competence. Many others, however, probably despaired of the complexity and the subtlety of composing an appropriate orchestration for conservation, economic growth, and a bulging population.

"There are no simple solutions", was a comment that accompanied many of the suggestions.

Suggestions for change were, however, by no means lacking. They included a broad range of possibilities. The Commission should be made up of more qualified members; the Commission should be removed from politics; the Commission should be elected; the Law should be publicized, the Law should be inextricably tied to a comprehensive State plan and variances should never be granted; the Law should be repealed and power, where taken, returned to the Counties; longer terms for Commission members in order to stimulate expertise; more studies of the ramifications of Commission decisions; and so forth.

Respondents from different sub-sample groups revealed different concerns. Realtors and developers reacted in the following fashion:

2. Realtors and Developers

Thirty-three developers (65 percent) and forty-nine realtors (56 percent) submitted recommendations.

With the exception of a few realtors and developers who wanted to see the Law repealed and the Commission abolished, the major changes suggested revolved around

TABLE 31

RESPONSIBILITY FOR DISTRICT REGULATION BY SUB-SAMPLE CATEGORY[a]

"After the district boundaries are set, the responsibility for regulating the detailed uses should fall to the . . ."

	LUC	DLNR	Cnty. Sup.	C. Pl. Comm.	Other	Total
Regulation of Urban Districts						
Bankers	28%	4%	15%	38%	9%	94%
Conservationists	23	8	13	33	19	96
Realtors	18	1	9	60	9	97
Unions	17	8	31	48	0	104
Environmentalists	15	4	10	42	17	88
Attorneys	15	1	16	50	14	96
Engineers	13	2	11	64	11	101*
Developers	9	0	24	52	9	94
Associations	6	3	19	47	14	89
Government	6	2	21	81	0	110*
Regulation of Rural Districts						
Unions	38%	13%	17%	13%	—	81%
Bankers	36	11	11	28	8	94
Conservationists	33	12	10	25	17	97
Engineers	30	2	13	47	6	98
Environmentalists	22	4	6	36	18	86
Realtors	20	2	14	50	8	94
Attorneys	17	5	14	45	14	95
Associations	17	3	6	47	17	90
Government	11	9	19	74	—	113*
Developers	9	3	36	48	9	105
Regulation of Ag. Districts						
Conservationists	42%	21%	4%	13%	15%	95%
Bankers	42	23	11	11	8	95
Engineers	34	13	11	34	6	98
Government	28	17	17	51	6	119*
Realtors	27	16	10	34	7	94
Unions	25	25	13	21	—	84
Environmentalists	25	18	4	19	21	87
Developers	24	15	17	30	9	95
Associations	22	22	6	28	11	89
Attorneys	22	19	13	38	11	103
Regulation of Cons. Districts						
Bankers	38%	36%	6%	9%	6%	95%
Government	38	38	9	30	—	115*
Conservationists	37	42	2	6	10	97
Engineers	32	30	9	21	6	98
Attorneys	29	16	9	27	11	92
Realtors	27	28	6	24	9	94
Environmentalists	24	29	2	13	19	87
Developers	22	39	11	13	9	94
Unions	21	46	8	4	—	79
Associations	17	39	3	19	14	92

[a]Multiple responses were permitted.

the administration of the Law rather than its goals.

While the content of the response to the question on changes in the Law or Commission was quite broad, there were some points made with frequency sufficient to merit comment.

It is apparent that the majority of realtors and developers who chose to respond to this open-ended question believe that the State Land Use Commission is a needless duplication of other government agencies or that it has unjustly usurped the power of these agencies, especially the county planning commissions. A significant number in this group of respondents felt the county planning commission were closer to the problems of the areas and could be more responsive to the needs of the local citizens.

On this point of administration of the Law, attitudes ranged from beliefs that the Commission should be abolished to proposals that the state agency remain, but with severely limited jurisdiction.

Typical of those who wished to eliminate the Land Use Commission entirely are the following comments:

> "Land Use Commission should be eliminated. County and State Planning Department should plan. If citizens disagree with (County Planning Department) they should be given the opportunity to take their gripes to our Appeals Board and thereafter to the Courts", commented our realtor.
>
> "Fire the Land Use Commission—let local landowners determine their own land use by a local District Area Committee made up of landowners within a small geographical area or areas of each County. The County through its County Land Commission would implement the decision of the local District Committee." This was the opinion of a developer.

Some took a more moderate view.

> "Place the matter of land use control within the jurisdiction of the respective counties with only a broad-brush classification by the State Agency", suggested a developer.
>
> "Land Use Commission should work in closer relation with the County Planning Commission and adopt more changes as recommended by the Planning Commission unless its recommendations are against the policies and legislative intent."

Whatever the way realtors and developers propose to solve the problem of State vs. County authority, it is the problem which evoked the largest number of comments.

Through an analysis of their suggestions for change in the nature of the Commission

one would conclude that at present the realtors and developers who responded to the questionnaire do not have a high regard for the motives of the Commission. The main objection to the Commission was that its interests were political when they ought not to be. As one realtor said, "Appointment of Commissions should be based on qualifications to serve and non-political which is not the case today nor in the past." One developer commented, "Have a body qualified to make wise decisions based on logic and insight rather than politics or friendships." The distrust of the reasons for Commission decisions is perhaps one of the reasons realtors and developers would prefer that the land use regulatory power be returned to the County.

Another recurring complaint focused on the need for more frequent up-dating of the Law and more publicity regarding the Commission decisions. These two concerns are recognition of the lack of adequate communication between the Commission and the public—too little input from the public side and too little output from the Commission. The following comments from two developers stress these points:

> "Review, revise and publicize the goals and objectives of the Commission in light of the short term community needs and periodically revised long term goals of the State. This should be presented to the public and governmental administrators in the year prior to the statutory review year so that the community retains confidence in the Law and its administration. Is it, or is it not, doing the job the community needs to have done? Should the Law be repealed, amended, etc.? Assuming a positive answer, then update the goals."
>
> "Improve communication between the Land Use Commission, County Planning Commission, State Department of Land and Natural Resources and the people of the State. Direct contact and better visual on the site inspection of developments and decisions. A better, more thorough, understanding of rulings and findings of the Commission passed on to the people. Give relief to house lot property owners in fast growing tourist developed areas."

In sum, most frequently recommended change was a return of zoning power to the counties; this was suggested by 23 percent of the realtors and developers. Second most frequent was the removal of politics, favoritism, and cliquishness from the Commission. Ten percent called for the repeal of the Land Use Law; few had good words for the Commission. A general reading of the responses would suggest that many individual developers and realtors hold the opinion that the Commission is anachronistic, inflexible, uncommunicative, uninformed, incompetent, political (in a definitely pejorative sense), and out of touch with the county and the needs of its people. It is noteworthy that most of the suggestions and recommendations directed themselves to the Commission itself, rather than the existing zone boundaries or the structures of the Law.

3. Environmentalists

The suggestions offered by environmentalists were diffuse and varied. In some cases the same suggestions were offered by a number of respondents. They can be grouped into the following:

1) education-publicity
2) new methods for selecting commissioners
3) "tightening" land use control and the formulation for an explicit, comprehensive plan
4) the coordination of governmental control

Among environmentalists who offered suggestions, a continuous thread of complaint and a shared conception of the current status of land use control pervades the responses. The desire for more publicity and education in land use implies that the administration of controls is shrouded in secrecy and loosened by public apathy. The exercise of control is not, therefore, itself circumscribed by the awareness and concern of a knowledgeable public. Taken together, the environmentalists would initiate a crash program of public involvement. The program would include: a) advance notification and publicity of hearings, b) a broad-based public airing of the Law and its goals. ("This is not just a dry report in the classified ad section, but a real professional public relations job, like Hawaii Visitors Bureau uses".), c) land use courses in the primary and secondary schools, and d) televised hearings and a full accounting of the rationales for the granting of privileges.

The underlying rationale for these proposals is the pervasive feeling that the Commission is overpowered by applicants with money and position and cannot manifest the will of the citizens of the State without their knowledge and support. The strictures of the Law, consequently, are loosely interpreted and Commission decisions become *ad hoc* discretionary things.

The same looseness of control is implied by environmentalists who suggested that a unifying principle of control is lacking in the administration. One respondent wrote:

> "We need to establish land use plans that will provide for development to support a multiple approach to economic growth; i.e., industry and tourism on a long-range basis, *and then stick to the plan*. Land use planning needs a maximum of thought and consideration towards a good, sound plan, then a minimum of change in the plan as opportunists and operators sense an opportunity to make changes in the plan to achieve a short-term profit by compromising the long-term direction of development the plan must preserve. In my opinion, Hawaii's land use planning has been fragmented or piecemeal, and needs an all-encompassing objective look, development of a sound long-term master plan, and then legislation that makes it really tough to change by playing politics at the County or even State level to make revisions to benefit speculators."

A number of environmentalists called for a new method of selecting Commission members. Suggestions varied from a professional board made up of planners, economists, developers, etc. Some would elect the board. Others would put board selection on a merit system.

Finally, there is a melancholy thread which connotes the danger of loose planning or an ill-defined or poorly understood plan. The mistakes made today, we are warned, are not easily undone; and the notion of a plan that is continually varied from or amended is no plan at all. The return of power to the counties was not stressed.

4. The General Sample

One cannot read the remedial suggestions of hundreds of respondents without feeling a deep undercurrent of frustration with current methods. The magnitude of the problem of statewide land use planning contributes to the respondents sense of disquiet. There is also a pervasive sense that decisions and judgments are closed-door things, passed down from a distant and not entirely believable authority.

The most demonstrable manifestation of disquiet with the Law in our study is the allegations of favoritism. Many respondents charged that the Land Use Law and the Commission favored monied or powerful applicants and gave short shrift to the "common man". This complaint is reflected by the total sample in the responses to Question 10:

> "Do you think the present Land Use Law favors any segment of the population?"
>
> 1. favors large landowners/large developers

2. favors small landowners/small developers
3. favors government interests
4. is a fair and just law equally protecting all citizens of the State
5. no opinion

Multiple responses were accepted to the question. Only one-fifth of the responses described the Law as "fair and just"; almost half (46 percent) indicated that the Law favored large landowners and developers; 26 percent "favors government"; and only 3 percent indicated favoritism benefiting the small landowner or small developer. A total of three-quarters of the responses indicated that the Law favors a special group or groups. Among respondents who felt that the Law favored large landowners, more than eight in ten also felt that such favoritism was contrary to the best interests of the county or the State. The impression of favoritism, moreover, was critical to the respondent's willingness to subscribe to the authority of the Land Use Commission. Among respondents who saw no favoritism in the Law, 70 percent would have the Land Use Commission draw district boundaries; among respondents who saw favoritism, the proportion dropped to 40 percent.

Remedies for favoritism were plentiful. Many respondents suggested more publicity for Commission meetings, decisions and explanations. One suggested the Commission meet in the evening when interested parties could attend more easily; another suggested televised meetings; another suggested a program of education for school children and college students, including visits to the Commission sessions. Three-quarters of the sample indicated that the Commission should ". . . completely justify its findings as a matter of public record". (Question 17).

Publicity or public scrutiny was not the only antidote. Suggestions ranged from the proposal that Commission members should be elected or appointed for professional expertise, to a severe re-writing of the Law in language sufficiently precise for Commission decisions to be deduced from the Law rather than debated.

The picture these findings suggest is clear enough. The Commission and the Law appear to some to be hand-maidens of monied interests and large developers. But the picture includes some curious elements. First, we might expect that conservationists would be most adamant in their rejection of such a state of affairs. Likewise, developers, realtors, and bankers, if we were to (for the moment) stereotype them as self-interested, might be least concerned with the potentially remunerative favoritism. But the existing Commission appears to be most favorably appreciated by conservationists and least appreciated by developers and realtors. Conservationists, government officials and engineers scored highest on a satisfaction index as shown in Table 32.

TABLE 32

SATISFACTION INDEX SCORES
BY SUB-SAMPLE GROUP

	Low Satisfaction	Medium Satisfaction	High Satisfaction
Government	4%	40%	55%
Conservationists	12	48	40
Engineers	13	49	38
Environmentalists	11	56	33
Associations	28	44	28
Attorneys	16	58	26
Developers	43	35	22
Bankers	15	64	21
Realtors	36	50	14
Unions	25	67	8

Conservationists were also more likely to favor the Land Use Commission, as opposed to other State and County Agencies as the drawer of district boundaries. How can we reconcile these findings? Perhaps conservationists are happy with what they can get, or developers feel a sting of unfairly favored competitors.

Within each group and for each respondent a personal story of his ideas, fears and hopes for Hawaii exists. The criticisms and complaints are tiles in a mosaic of discontent. There are many ways to arrange the tiles and numerous conceptions of the points where land control fails. We have paraphrased from a group of questionnaires one such mosaic.

> Zoning depresses the supply of land for development. Boom prices follow. The (artificial) inflation of land prices increases the tax burden for the owner, and makes the acquisition of land more difficult for landless citizens. High taxes, in turn, force land zoned "urban" into intensively urban use. The buildings grow taller and more commercial, and as they do, the small homeowner or the aspirant to home ownership is pressed even more. When re-zonings are granted, the owner is blessed with a past period of favorable taxes and a clamoring demand for land. (As one respondent wrote: ". . . somebody makes a killing".) Re-zonings, and special permits become fully fledged partners in the real estate business. Some real estate transactions depend upon obtaining changes in the Land Use District. And, with little public understanding of the criteria for granting changes, success appears chancey. A decision upon which hangs an agent's commission, a seller's profit, and a buyer's capital is made without the promise of compensation if the Commission decides against the applicants. Prospective buyers are dampened by the anticipation of costly hearings and an unknown probability of success. To those with business to conduct with the land, the invisible hand of the marketplace is firmly grasped by the visible hand of government.
>
> The picture is little brighter for conservationists. Boundary changes are granted haphazardly and with little thought to their long-range consequences. The language of the Law nowhere prescribes how fast the builders may nibble at supposedly protected lands. The "realities" of politics nudge the authorities to avoid flying in the face of powerful campaign supporters.
>
> Tax assessments are often at variance with the stated uses prescribed by the Commission. County and State maps differ on fine points. The objectives are only vaguely explained and different interpretations are common. In sum, a law that is failing tends to fail everyone, and becomes unjust. . . .

The interpretation and evaluation of each respondent's complaint is impossible. What strikes us about the criticisms is their level of generality and the frequency of *ad hominum* attacks. The administration of the Land Use Law was not criticized like a product would be. There were very few comments about specific district boundaries or specific points of the Law. Some of this scarcity can be attributed to a lack of specific knowledge by the respondents. However, the variety of diffuseness of the criticisms suggest to us a different explanation.

We sense that the questionnaires are feeding back not only the substantive failures of the Commission and the Law but

the frustration of most of the respondents when they attempted to come to grips with the problem of land use control itself.

We are seeing, therefore, the sparks that fly when each citizen, on his own, confronts the land control problem. Some dealt with their frustration through platitudinous suggestions like the "need for better planning", or "more thorough methods", or whatever. Those who had more specific recommendation, for example, "the permanent retiring of some agricultural lands", invariably cautioned that their suggestion was a piece-meal thought and that the problem was complex and multifaceted.

At best, this kind of criticism suggests that most of the sample is aware of the difficulty of worthwhile government planning and control. At worst, this kind of criticism suggests that the Land Use Law and the Land Use Commission exists in a context of futility. No clear light shows the ways to resolve conflicting interests.

We can, therefore, bring into some perspective some of the appeals of some of the sample. The stressing of the need for publicity and public environment for example, is indicative of the respondent's feeling that no Law nor no Commission could handle the task. Without the mobilization of public interests and public responsibility the problem is too big to be solved.

One need not look far for some of the sources of this hypothesized fatalistic malaise.

5. The unspoken context

Population growth is the most important problem to the land planner. Yet, it is a dimension of the problem of land use control that is only rarely mentioned by the respondents. Most likely, p o p u l a t i o n pressure is the topic about which the least is said because there is little to say beyond that population increase is an inexorable tide in Hawaii's future. It is hard to face, but as long as the variable of population goes unmentioned in the dialogue of land planning, the planning is consigned to a fantasy world. In the back of the minds of the administrators of Land Use Laws and those for whom the Laws are administered, is the vision of a burgeoning, metastasizing population. As Kingsley Davis put it, it is a variable we continue to plan for rather than plan. The growth, is tacitly accepted as a prime mover in the determination of land use. The planner is relegated to the role of an antagonist. It seems he is interminably exhorting everyone to build the dykes higher, plug the leaks, and hold the line when everyone knows that the river is not going to stop rising. The strategy that the planner suggests is a rear-guard action—it is the grudging defense of ever diminishing territory—and the winner will be sheer numbers.

F. Concluding Notes

One of the most important goals of the Commission's review of the Land Use Law is the revision of district boundaries. It is noteworthy that specific district boundaries were rarely, if ever, really mentioned by respondents.

One respondent said the problem of land use control is the determination of the precise point at which "you kill the goose that laid the golden egg". The analysis of this report certainly is sympathetic with this point. The problem that has not been resolved by the Land Use Law is the problem of different geese and different points of mortality.

Another respondent summarized his perception of the problem of land use control:

> "Mr. Williams:
>
> Thanks for the opportunity to make my views known for this purpose, although I may contradict myself in a few places. I am absolutely positive on one score, however, and that is that we must have good, sound planning. This is essential where land is limited and future economic growth *must* be provided for. Everyone seems to look to tourism as the panacea for the economic future in Hawaii, but it seems to me that industry is much less fickle, and a better bet for the long haul to provide jobs and a sound economic base—with tourism as "gravy".
>
> However, if all of these considerations are to be provided for in a long-range plan to benefit the State and its people, the provisions for economic development as it related to land use planning must be complete as possible, as sound as possible, and the direction development will take must be guaranteed to the extent possible for longterm investment and development. In other words, large capital must be assured that land use will be implemented as portrayed in the plan, without significant change, to protect the investment large i n v e s t o r s make—and that a few years down the pike politics will not result in sweeping or significant changes in land use being implemented to the detriment of investments made.
>
> The control of such a program and the development of the program itself must be placed in the highest limit possible, high in authority and integrity. It cannot be in the hands of those motivated by personal profits or gain. Just thoughts."

The sources of discontent differed, but it is inescapable that the problem of land use control will not be resolved without a rationale, a set of goals, and a sense of commitment that is shared by a large sector of those who are, by their actions, shaping the land.

Public Hearing of the Land Use Commission

CHAPTER 17 / ANALYSIS OF ADMINISTRATIVE ACTIONS UNDER THE LAND USE LAW[1]

Field Checking by the Land Use Commission

TABLE 33 GENERAL STATISTICAL ANALYSIS OF ADMINISTRATIVE ACTIONS

Type of Application	No. of Apps.	Total Areas Requested (in acres)	Requests Approved (in acres) Wholly	Partly	Total
Boundary Changes	128	9514.0	3550.1	1811.5	5361.6
Special Permits	55	984.0	361.7	408.0	769.7
Use Applications	82	6275.9	500.9	4661.8	5162.7

Type of Application	No.	% of Requests Approved Wholly	No.	Partly	Total
Boundary Change	78	60.9%	16	12.5%	73.4%
Special Permits	20	36.4%	19	34.5%	70.9%
Use Applications	22	26.8%	49	59.8%	86.6%

I. REVIEW OF ADMINISTRATIVE ACTIONS

A. Introduction

All petitions for boundary changes, special permits in agriculture and rural districts, and use applications in conservation districts made since the adoption of final boundaries of the Land Use Districts on August 23, 1964 through September 1968 have been reviewed. The data collected concerning these applications during that four year period are analyzed in this chapter and recommendations are made for changes in procedures based upon this analysis and review.

In the pages which follow, the nature of the data collected is briefly described and specific analyses based on that data are then provided. The analyses are followed by Section II on recommendations. An appendix supplied to the Land Use Commission and not a part of this report serves as a data bank containing a computer printout of the recorded data and accompanying resource information for the use of the data.

B. A Brief Description of Source Materials, Data File and Basis of Analyses

1. The Data Collection Process

The analysis of administrative actions under the Land Use Law is based on data collected from the files of the Land Use Commission, the Department of Land and Natural Resources, the counties and other sources. The first step in the analysis was the design of a consistent format with coded entries to be used in recording the actions taken both by the Land Use Commission and the Department of Land and Natural Resources.

The uniform data format included the following elements.

- An identification of each application, based on the docket number used by the Land Use Commission.
- Geographic location.
- Area (in acres.)
- A description of the land characteristics.
- A classification of the uses requested.
- A listing of the criteria (from the Land Use Law or from the Regulations) that were mentioned by the staff in their review of the application.
- Recommendations or comments by other agencies, and by citizen groups or individuals.
- The Land Use Commission or Department of Land and Natural Resources' staff recommendations.
- The action taken by the Commission or Board and the vote of each commissioner voting.
- The results of the action.
- The time to process the application.
- The assessed valuation of the land before and after the action (when available) and a notation of whether the land has been dedicated under Hawaii's tax laws.
- A listing of the policy issues which the consultant assessed were affected by the application. A rating of the relative importance of the application, both by the agency staff and the consultant staff.

RESPONSE TO STATUS QUESTIONNAIRES

	Mailed	Responses	%
Boundary Change	71	47	66
Special Permit	32	21	66
Use Application	61	44	72

In the second step of the analysis, descriptive material for each application was reviewed, and data on the application were recorded in a standard format on standard forms. Information was requested from all petitioners who received approval of their applications concerning the date of utilization[2] status of the petitioner's development, and any changes in ownership of the subject property.

2. Conversion to Computer Format

The next step in the process was to transfer the data on the standard collection forms to tabulating cards and ultimately to a computer file.

The applications in each of the three data files (i.e., Boundary Change, Special Permit, and Use Applications) were organized in the following manner:

County and Island
County Planning Area or Judicial District
Geographic Locale
Application Identification (including year and docket number).

Thus, all the applications of a particular type for a specific geographic area are grouped together to facilitate comparison between applications.

3. Basis for Analysis

The following analyses of administrative actions under the Land Use Law and regulations are based solely on the data bank information contained in the computer printout.

C. General Statistical Analyses

1. Summary of all actions by Type and Outcome

The following transactions were processed for the entire State of Hawaii over the study period.

In terms of the percentage of acres for which changes were requested, the following figures were relevant to approvals.

[1]This chapter is excerpted from a report prepared by Baxter/McDonald, Inc., Berkeley, California.

[2]Date of utilization refers to the date on which the petitioned use of the Land was initiated or upon which construction was started.

Of those applications that were not approved, only a small percentage were withdrawn. The largest percent withdrawn was 7 percent for Boundary Change applications. The great majority of the remaining applications were denied, and in a few cases the applications were not acted upon for reasons such as default of the applicant, cancellation of an application, or action incomplete or pending.

2. Summary of Approved Applications

The three classes of applications (Boundary Changes, Special Permits and Use Applications) were further divided, and only those applications that had been approved totally or partially were considered. In this instance, a summary was made of parcels in terms of the status of the project after the approval had been received. This project status was further summarized according to whether or not the ownership of the parcels had changed in the period from 1 to 5 years after the application.

Of the 78 Boundary Change applications that were approved in total, 23 are known to have been completed, or are on schedule according to the original plan; 12 are known not to have begun; 2 have been abandoned; the status of 41 is not known. Of those applications approved only in part, 5 are on schedule, 3 are not begun, and the status of 8 is unknown.

The conclusions that can be drawn from those applications that were approved totally or in part for Special Permits or for special uses in Conservation Districts are difficult to interpret because information is lacking. The average response rate from all petitioners was 68 percent (112 responses to 164 questionnaires mailed to petitioners.) Slight variations were experienced in response rate according to the type of petitioner, as noted below:

3. Size of Applications (Boundary Changes & Special Permits)

The average size of the 128 Boundary Change applications was 74.3 acres, and the applications ranged in size from 1400 acres to 0.3 acres. The median application size was 12.1 acres. The distribution of sizes of applications shows a preponderance of relatively small applications with only a few large applications. Although the average size was 74.3 acres, only 16 of the 128 Boundary Change applications were over that size. Only 15 applications involved parcels over 100 acres.

Corresponding figures for Special Permit applications show an average request for 17.9 acres and a median request for 2.8 acres. Again, there was a preponderance of smaller applications. Of the 55 Special Permit applications 38 involved 10 acres of land or less.

TABLE 34 SUMMARY OF LAND USE COMMISSION ACTIONS ON BOUNDARY CHANGE PETITIONS

BOUNDARY CHANGES—OAHU	%	Acres
All Applications		
18 Approved	53%	402
7 Approved in Part	21%	1,360
2 Withdrawn	6%	816
7 Others (Denied, etc.)	21%	1,998
Large Applications (50 or more acres of $50,000 or more assessed value)		
12 Approved	63%	356
3 Approved in Part	16%	1,309
1 Withdrawn	5%	811
19 Others	16%	1,991

BOUNDARY CHANGES—HAWAII	%	Acres
All Applications		
28 Approved	60%	1,278
6 Approved in Part	13%	433
3 Withdrawn	6%	6
10 Others	21%	308
Large Applications		
8 Approved	57%	1,038
4 Approved in Part	29%	410
0 Withdrawn	0%	0
2 Others	14%	224

BOUNDARY CHANGES—KAUAI	%	Acres
All Applications		
17 Approved	74%	1,200
3 Approved in Part	13%	18
1 Withdrawn	4%	2
2 Others	9%	16
Large Applications		
5 Approved	83%	1,026
1 Approved in Part	17%	6

BOUNDARY CHANGES—MAUI	%	Acres
All Applications		
12 Approved	60%	641
0 Approved in Part	0%	0
2 Withdrawn	10%	29
6 Others	30%	100
Large Applications		
2 Approved	50%	459
0 Approved in Part	0%	0
1 Withdrawn	25%	1.4
1 Other	25%	58

TOTAL STATE	%	Acres
All Applications		
78 Approved	61%	3,550
16 Approved in Part	13%	1,812
9 Withdrawn	7%	857
25 Others	20%	2,424
		+/− 8,643
Large Applications		
27 Approved	63%	2,880
8 Approved in Part	19%	1,725
2 Withdrawn	5%	812
6 Others	14%	2,272
		+/− 7,690

4. Issues Affected by Applications

The consultant defined over 100 separate issues and noted where they were applicable to each application. Although the results do not have a specific bearing on an analysis of how well the Land Use Commission has performed in the past, they nevertheless are relevant in examining the indicated frequencies of the various issues involved. The results of the "issues" analyses are summarized below.

a. Issues Concerning Boundary Change Applications

Eleven issues were cited between 5 and 10 times and only the following 6 issues were cited over 10 times.

Issue	*Times Cited*
"The question of conflicting designation between state and county general plans and land use districts"	12
"The question of better criteria for the definition of Rural District, for instance, in order to reduce the size of areas so classified"	16
"The relationship of topography to land use zoning"	17
"The effect of the Land Use Law on large and small owners"	23
"The question of a Land Reserve for future urban expansion"	31

b. Issues Concerning Special Permit Applications

Only the following 3 issues were cited 4 or more times.

Issue	*Times Cited*
"The effectiveness of the law in determining the locations of compatible and incompatible uses"	4
"The question of better criteria for the definition of Agricultural Districts"	4
"The question of better criteria for approval of Special Permits by the Land Use Commission"	11

The issues most frequently cited are listed as follows:

Issue	*Times Cited*
"The effectiveness of the administration of Regulation No. 4 in achieving the goals of the Land Use Law"	11
"The question of the need to apply design standards in Land Use Districts and Regulations"	14
"The need to stimulate development of the natural resources as well as preservation of the resource assets of each island"	16
"The question of separate conservation district subzones or reserve areas for areas needing a moderate level of protection for such purposes as forestry, watershed, wilderness, or fish and game"	16

5. Voting Behavior of the Land Use Commission

An analysis of the votes of the 13 Land Use Commission members who have served on the Commission since 1964 was made as a part of the analysis.

The most striking conclusion from the analysis concerned the number of unanimous votes for both Boundary Change and Special Permit applications. The Boundary Change applications are most significant since the total number of Special Permit applications is rather small and generalizations from such small numbers may be misleading. An average of nearly 50 percent of the Boundary Change applications received a unanimous vote for approval. Only a small number received a unanimous vote for denial.

Only a small number received a unanimous vote for denial.

The history of voting behavior also reveals significant numbers of close votes. On the Island of Oahu, for example, the results of 11 out of 34 votes would have been reversed if one Commissioner had changed his mind.[3] Similarly, there were significant numbers (e.g. 6 out of 34 on Oahu) where a change of two Commissioners would have reversed the vote.

A review of the two parts of the report to detect characteristics of Commissioners' votes that relate to the home island of the Commissioners, did not suggest any demonstrable relationship between the Commissioner's vote and the Commissioner's home location. In general, the analysis of voting behavior did not suggest that further inspection of the voting patterns of Commissioners was particularly likely to contribute further to the analysis of the Land Use Law.

[3]For the interest of those who feel a simple majority rather than a two-thirds majority should prevail, in only *two* cases would the petitions have passed with one less aye vote.
Four (4) dockets did not include breakdowns of Commissioner's votes and were not considered in the above total.

D. Agriculture Districts

This report summarizes and analyzes the data collected concerning the 95 cases in which applications were made for boundary changes from Agriculture District, and the 9 cases in which applications were made for boundary changes *to* Agriculture District. A number of analyses were made to determine the nature and extent of boundary changes during the study periods.

1. Acreages

A total of 4,096.6 acres were the subject of approved changes *from* Agriculture District classification to some other classification (R, U, or C.) The sub-totals for each county were:

From Agriculture Districts

Hawaii	1,453.6 acres
Kauai	313.0 acres
Maui	663.8 acres
Honolulu	1,666.2 acres

During the same period, however, a total of 999.7 acres were the subject of approved changes from some other district classification *to* Agriculture District classification. The net change over the period was 3,096.9 acres *from* Agriculture Districts to some other classification.

The subtotals for the 999.7 acres which were changed *to* Agriculture District classification were as follows:

To Agriculture Districts

Hawaii	61.8 acres
Kauai	916.1 acres
Maui	6.8 acres
Honolulu	15.0 acres

A total of 2,321.1 acres of land in Agriculture Districts was involved in denials of change applications. Most of this total, however, was due to the denial of one application for a boundary change involving 1,276.0 acres in Honolulu County at Waimalu.[4] Substotals for acreages denied in boundary changes from Agriculture Districts were:

Denied from Agricultural Districts

Hawaii	277.2 acres
Kauai	—0— acres
Maui	64.9 acres
Honolulu	1,979.0 acres

Finally a relatively insignificant 46.4 acres were the subject of applications for changes from Agriculture Districts which, for one reason or another, were withdrawn or canceled.

The above figures, as noted, apply to

[4]This case was repetitioned and in May, 1969 the Land Use Commission granted Urban Districting to 812 acres and placed 728 acres into the Conservation District.

agricultural boundary changes to and from any other district classification. A special analysis was prepared to identify just those cases in which an application was made for a boundary change from an Agricultural District to Urban District classification. The following acreages were the subject of approvals in whole or in part.

Agricultural District to Urban District

Island	*Acres Approved*
Oahu	1,563.5
Hawaii	1,410.1
Kauai	229.5
Niihau	0.0
Maui	173.4
Molokai	0.0
Lanai	19.6
All Island Total	3,396.1

2. County Analysis—Selected Factors

a. Relationship of Actual Use to Proposed Use

Hawaii Of the 42 applications in Hawaii County, data concerning land uses was not recorded in 4 cases. Of the 38 cases with recorded data, in all but 6 cases, the principal use of the land at the time of application was an agricultural use or the land was open or vacant. In the 6 remaining cases, the principal use of the land was recorded as lower density residential. Of the 38 applications for which data was recorded, the use proposed was residential in 31 cases. The use on the adjacent land was recorded in 30 cases, and of these 30, only 7 were not in a residential or commercial use of some kind. In every case where adjacent use was recorded as lower density residential and the use proposed for the subject land was also recorded lower density residential, the application was approved.

Kauai Some land use information was recorded in each of the 18 applications made from Kauai County. In all but 4 of these applications, the land was in some kind of agricultural or open condition at the time of application. In every case, the use applied for was lower density residential, and in all but one case(where the application was withdrawn) the application was approved in whole or in part. Again, the adjacent land use was revealing. In the 16 cases where information was recorded, 12 cases show an adjacent land use of low density residential.

Maui Principal and adjacent land uses are recorded for all of the 18 applications made from Maui County. The data shows that in all but 3 of these cases the principal use of the land at the time of application was in an agricultural or open use (the majority for sugar, pineapple or other crops). Uses proposed were residential in 16 of the 18 cases. Adjacent uses in all but 3 of the 18 cases involved some non-agricultural use (11 residential, 2 commercial, and 2 resort uses).

Honolulu Principal uses in 13 out of the 17 applications in Honolulu County were agricultural or open. The other four cases involved 2 residential uses, 1 park, and 1 military facility. Of the 15 cases for which Urban Boundary inclusion was sought, the proposed use was residential in all but one instance (where a resort use was sought and approved). In 10 of those 15 cases the adjacent use was recorded as residential (another 2 were cases in which the principal use was recorded as residential, and one case was missing data). Only 2 of the 15 lacked any residential use on or adjacent to the subject land.

b. *Relationship to County General Plans*

Although data concerning County General Plan uses is absent from a significant number of cases recorded, an indication of land use relationships to the applications reveals the following highlights.

Hawaii Of 22 cases with full data, over half (12) were requests where the County General Plan use was "residential or single family", the use proposed by the applicant was "lower density residential" and the application was approved. The county general plan use was "agriculture general" in 7 cases and in each of these 7 the applicant proposed lower density residential use. In 4 of the 7 cases the application was denied, and in 3 it was approved.

Kauai Of the 8 cases with full data, 7 involved proposed residential uses (5 in Urban and 2 in Rural District reclassification). Of these 7 cases, the county plan was "agriculture general" in 3, "residential or single family" in 3, and "corps and grazing" in the remaining 1.

Maui There was full data for 16 of Maui's 18 applications for boundary changes from Agricultural District classification. In almost half of these applications wherein the county general plan use was "residential or single family", the application was for lower density residential use and was approved. Three approvals of lower density residential use applications were made of lands for which the county use was "agriculture general" (2 involved reclassification to Rural rather than Urban Districts). Four of the 16 applications sought boundary changes to Rural classification with lower density residential uses proposed where the county general plan use was "historic site". The applications were approved against staff recommendations in 2 of those cases and were denied in accord with staff recommendations in the other two.

Honolulu Full data was present for analysis of 15 of Honolulu's 17 applications. In 7 of the applications, the County General Plan was "agricultural general," and in all but one of these instances the applicant sought residential use in Urban District classification. Three of these 6 applications were approved, 2 denied, and 1 withdrawn. The seventh such application was for a resort and it was approved. In another four applications, the County General Plan use was "residential or single family", the proposed use was residential in Urban classification, and the application was granted. Two of these favorable actions were against staff recommendatio Another two applications were for residential use were the County General Plan was "military"; these applications were approved.

c. Relationship of Staff Recommendations to Actions Taken

In 63 of all 95 applications in the four counties for boundary changes from Agricultural District classification, the Commission action followed the staff recommendations (i.e. in 66 percent of the cases). In 17 of the 95 applications (18 percent),

TABLE 35 STAFF RECOMMENDATIONS AND COMMISSION ACTIONS BY COUNTY

	Hawaii		Kauai		Maui		Honolulu	
	#	%	#	%	#	%	#	%
F	27	64%	13	72%	10	56%	13	76%
NF	5	12%	4	22%	5	28%	3	18%
CU	3	7%	0	0%	0	0%	1	0%
*	7	17%	1	6%	3	16%	1	6%
	42	100%	18	100%	18	100%	18	100%

F—Action followed staff recommendations.

NF—Action did not follow staff recommendation.

CU—Action did not follow staff recommendation completely because of condition attached.

*—Withdrawn or data incomplete.

the Commission action did not follow the staff recommendation. In 3 of the 95 (3 percent) the Commission did not follow completely the staff recommendation, which had conditions attached. In 12 of the 95 (13 percent), either the data was incomplete or the petition was withdrawn.

On a county-by-county basis the numbers and percentages of the applications and action in relation to staff recommendations are summarized in Table 35.

The relationship of these actions to the applications of major significance as interpreted by the consultant is interesting to note. Of the 15 cases rated of major significance, the staff recommendation was followed in 7, not followed in 6, and was noted as complete where the staff had recommended partial approval in 2. Honolulu County was the major contributor to the instances where the staff recommendation was followed in cases of major significance. Fully 5 of the 7 cases in which the staff recommendations were followed occurred in this County. Conversely, 5 of the 6 intances where the staff recommendation was not followed in cases of major significance occurred in counties other than Honolulu.

3. Agricultural Suitability of Lands in Applications

Table 36 contains a summary of the acreages in each category according to suitability for agriculture[1] and changes from Agricultural District classification to some other district (U, R, or C). The tabular totals show the acreages approved, denied, or involved in a withdrawn application, for each agricultural suitability code type. Note that of the 4,096.6 acres approved, over half (2,702.7) fell in agricultural suitability code type "E" (unsuitable). Of 2,646.8 acres of prime (A, B, V, W) agricultural lands requested, only 284.8 acres were approved for redistricting out of Agriculture.

4. Criteria Cited in Actions on Applications

The statutory criteria cited by the Land Use Commission staff in applications for boundary changes from Agricultural Districts to Urban Districts which were approved are summarized in Table 37. It will be noted that the criteria in question were found satisfied in 176 instances and not satisfied in 48. The criteria cited most often as met in connection with an approved application were "contiguous to urban land" (met 39 times) and "satisfactory topography" (met 33 times). "Economic feasibility and proximity to services" was a close runner up, being met 31 times. "Appropriate location and plans" was the fourth criteria most often met (22 times.)

Although Table 37 is restricted to applications in which the Commission approved a boundary change from Agriculture, it is interesting to note that the criteria "contains reserve for urban growth" (not met in 7 cases), "agricultural capacity but need justifies urban use" (not met in 5 cases), and "doesn't contribute to scatter" (not met in 5 cases). In only 2 cases was a denial supported by a citation that the criterion "contiguous to urban land" was not met.

[1]Suitability for agricultural use refers to Land Study Bureau detailed land classifications.

TABLE 36
BOUNDARY CHANGE APPLICATIONS FROM AGRICULTURAL DISTRICT
ACREAGES OF SOIL TYPE APPROVED, DENIED OR WITHDRAWN PER COUNTY

Applications for Change from Agricultural District	AGRICULTURAL SUITABILITY CODE							
	Prime Ag Soil					Prime Ag Soil		
	A	B	C	D	E	V[a]	W[b]	X[c]
HAWAII								
Approved	—	2.1	517.2	299.0	635.3	—	—	—
Denied	—	—	(95.3)	(6.7)	(175.2)	—	—	—
Withdrawn	—	—	(1.2)	(.7)	(4.1)	—	—	—
KAUAI								
Approved	—	—	(97.3)	37.0	107.6	—	71.1	—
Denied	—	—	—	—	—	—	—	—
Withdrawn	—	—	—	—	(1.5)	—	—	—
MAUI[d]								
Approved	—	—	91.0	64.9	433.1	25.7	49.7	—
Denied	—	—	—	(64.9)	—	—	—	—
Withdrawn	—	—	(1.4)	—	—	—	(28.0)	—
HONOLULU								
Approved	—	74.3	—	—	1,526.7	62.5	—	2.7
Denied	(1.0)	—	—	—	—	(1,978.0)	—	—
Withdrawn	—	—	—	—	(4.5)	—	—	—
Total of Type Approved	—	76.4	705.5	400.9	2,702.7	88.2	120.2	2.7
Total of Type Denied	1.0	—	95.3	71.6	175.2	1,978.0	—	—
Total of Type Withdrawn	—	—	2.6	.7	10.1	—	28.0	—

[a](Class A irrigated)
[b](Class B irrigated)
[c](Class C irrigated)
[a, b, c, d]Does not include 4.9 acres from Case AA 66110.

TABLE 37

APPLICATIONS FOR BOUNDARY CHANGE *FROM* AGRICULTURAL DISTRICTS TO URBAN DISTRICTS
CITATION OF STATUTORY CRITERIA IN APPLICATIONS WHERE CHANGE *APPROVED*.

	Met Criteria					Did Not Meet Criteria				
Urban District Criteria	Hawaii	Kauai	Maui	Hono.	Criteria Subtotals	Hawaii	Kauai	Maui	Hono.	Criteria Subtotals
City Like Concentration with Services	5	2	3	2	12	2	1	0	1	4
Economic Feasibility and Proximity to Services	13	6	7	5	31	2	1	0	3	6
Plantation Camp & Community Services	3	1	0	1	5	0	0	0	0	0
Contains Reserve for Urban Growth	4	1	3	2	10	7	5	0	3	15
Satisfactory Topography	15	9	4	5	33	0	0	0	0	0
Contiguous to Urban Land	16	10	4	9	39	0	2	0	0	2
Appropriate Location/Plans	7	4	4	7	22	3	1	0	0	4
Agricultural Capacity but Need Justifies Urban Use	2	1	1	4	8	0	2	0	4	6
Small Area Exception	0	0	0	1	1	0	2	0	2	4
Doesn't Contribute to Scatterization	9	0	3	3	15	3	4	0	0	7
Subtotal					176					48

E. Rural Districts.

1. Introduction

There were 18 applications for boundary changes either from or to Rural District classification during the study period. Only 2 cases sought reclassification from Rural to another classification (Urban in both cases). The balance of 16 applications sought reclassification to a Rural District. In all but 3 of these 16 cases, the applicant's land was in Agricultural classification at the time of application.

Total acreages involved in the applications were as follows:

To Rural	Approved	Denied	Withdrawn
Hawaii	—	3.0	1.3
Kauai	83.5	5.0	—
Maui	470.8	65.5	—
Honolulu	—	—	—
Subtotals	554.3	73.5	1.3

a. Use Relationships

In the 2 cases of applications for changes from Rural boundaries (both in the County of Maui) there was residential use on or adjacent to the subject land and the request was for residential use in Urban classification. Both applications were denied.

In the applications for changes to be included within Rural boundaries, there was some residential use on or adjacent to the subject property in 7 of the 14 cases for which data was recorded. Of these, 4 applications were denied and 3 were approved. Of the 7 applications in which there were no residential uses associated with the subject land, only 2 were denied.

County General Plan information was recorded for all but 4 of the applications for changes to Rural District classification. Of the 11 cases with general plan data, the general plan use was "agriculture-general" in 5. All but 1 of these applications was approved. In 4 cases the County General Plan was Rural. The application was approved in 2 and denied in 2. In the 2 cases (one application processed twice) wherein the County General Plan was "preservation/conservation", the application was denied.

b. Staff Recommendations

Of the 14 cases with full data concerning applications for changes to Rural boundary inclusion, a significant 6 were cases in which the Commission action did not follow the staff recommendation. Of these 6, 4 occurred in the County of Maui where the most important cases tend to cluster.

c. Criteria Cited

In such a few cases, it is difficult to draw any strong conclusions concerning the criteria cited in either denying or approving an application. This difficulty is compounded since no data are recorded for a number of the cases in question. For the few cases with data, statutory criteria were cited as "met" 6 times in connection with 3 cases. On the other hand, statutory criteria were cited as "not met" 4 times in connection with 2 cases. One possibly revealing statistic may be found in connection with "other criteria" cited. The Criterion "doesn't contribute to scatter" was cited 6 times as *not* met in connection with approved applications and 5 times as not met in connection with denied applications.

F. Conservation Districts

1. Introduction

During the study period, there were 24 applications for boundary changes which related to Conservation Districts. All but 3 of these 24 applications were for boundary changes from Conservation District classification. By far the majority occurred in Honolulu County and the great majority were approved. The number of applications for changes from Conservation District classification in the counties and the actions taken on them were:

From Conservation	Approved	Denied	Withdrawn
Hawaii	2	1	*
Kauai	1	*	*
Maui	1	2	*
Honolulu	9	4	1
Subtotals	13	7	1

Only 3 cases sought changes to Conservation classification. All were in Honolulu County and all were approved.

The total acreages involved in each county according to whether the application was approved, denied, or withdrawn. Although the County of Honolulu had the greatest number of cases, the acreage involved was a relatively small 49.8 acres. On the other hand, Kauai's one application (approved) removed 850.0 acres from Conservation classification to use as a sugar plantation in Agricultural District classification.

2. County Analysis—Selected Factors

The following highlights should be noted concerning the 21 applications for changes from Conservation District to some other classification. In 17 of the 21 applications, the new classification sought was Urban. In 14 of those 17 cases, there was a residential land use either on or adjacent to the land which was the subject of the application.

In 8 of the applications the County General Plan use designated for the land in question was "preservation/conservation." In 4 of these cases the applications were

denied, 2 were approved in part, 1 completely approved, and 1 withdrawn. The use sought in all but 2 of these cases was "lower density residential."

Commission action failed to follow staff recommendations in 6 cases, 2 of which were noted of major significance by the consultants.

A question of particular relevance in Conservation District boundary applications is the participation of various governmental agencies and private groups.

From Conservation	Approved	Denied	Withdrawn
Hawaii	196.0	31.5	—
Kauai	850.0	—	—
Maui	2.0	.6	—
Honolulu	49.8	19.3	811.0
Total Acres "from":	1,097.8	51.4	811.0
To Conservation			
Hawaii	—	—	—
Kauai	—	—	—
Maui	—	—	—
Honolulu	130.5	—	—
Total Acres "to":	130.5		

Only the County Planning Commissions or staffs were involved in the cases in the Counties of Hawaii, Kauai, and Maui. Applications attracting more extensive participation were only present in Honolulu County. Of all applications for changes from a Conservation District, a County Planning Commission was involved on 20 occasions. County recommendations coincided with Land Use Commission action in 13 cases, did not coincide in 6, and in 1 case the application was withdrawn. In the County of Honolulu, the Planning Commission is recorded as making recommendations in 13 cases. In 8 of these the Land Use Commission action coincided with the recommendation, in 5 it did not. In the other counties, the Planning Commissions made recommendations in 7 cases. The Land Use Commission action coincided in 4 of these and did not in the other 3.

Of the 10 cases in which county planning staff recommendations were made, the Land Use Commission action coincided only 4 times; did not coincide in 5. In the remaining case, the application was withdrawn (although the planning staff recommended approval).

3. Use Applications

a. Introduction

Applications to the Department of Land and Natural Resources (DLNR) for permission to carry out particular uses in Conservation Districts are the subject of this section. Land uses in these districts are governed by the provisions of the Department's Regulation No. 4. Under the heading "Use Applications" there are 5 particular kinds of applications. The types of applications are for; (1) uses specifically permitted by the Regulation; (2) uses not specifically permitted by the Regulation; or new uses; (3) changes in subzones; (4) special subzones; and (5) temporary variances not to exceed one year unless renewed. By far the greatest number of applications fall within the first two categories mentioned.

Table 38 contains a summary of the number of applications made for each type of use in the four counties. The numbers in parentheses indicate the number of applications which were denied or withdrawn. This table shows clearly that well over half of the uses requested were in one of two use categories: residential or agricultural. The table also shows that the rate of denied applications was slightly greater for residential applications than for agricultural. In total, there were 82 use applications; 57 for permitted uses; 18 for unpermitted or new uses (17 of these in Honolulu County); and a small balance of 7 applications in other categories.

Table 39 summarizes the acreages involved in each county for each type of use request and by the Department of Land and Natural Resources' action taken. The column headed "Adopted" refers to those cases (usually for new or not specifically permitted uses on non-conforming land) wherein the use may be adopted without necessity of formal board action. It is interesting to note that applications were denied in only 6 cases, but that the total acreage involved was a substantial 1,112.4 acres (in comparison with the 5 5,162.7 which were subjects of approvals or adoptions).

This table also shows the preponderance of conditional approvals where use applications are concerned. Fully 90 percent of the acreage for which use changes were approved or adopted was subject to conditional approval. The reason for this is that regulation No. 4 attaches design and performance condition to use applications.

Adoptions of non-conforming uses accounted for about 8 percent of the total acreage approved or adopted.

b. Selected Factors

(1) Reasons Cited by Applicants

Analysis has provided limited insight regarding the reasons cited by applicants in connection with their applications. In the category of applications for permitted uses which were granted, there were 40 cases where reasons were cited, and in 13 the data were not recorded. The most common reason cited was "need for proposed use" (recorded 18 times or almost half of all reasons given). The next most frequently given reason was "land usable or adaptable for the use proposed", recorded 12 times. The proportions of the frequency of these reasons held roughly comparable for the counties individually.

In the category of applications for non-permitted or new uses adopted or approved, there are 18 recorded entries of reasons cited by applicants, and 7 cases contain no entries. The 18 recorded entries involved 11 applications in the County of Honolulu. Of the 18 reasons entered 5 were "requested use conforms to county zoning", 4 were "land is usable or adaptable for the use proposed", and 2 were "conforms to county general plan".

(2) Staff Recommendations—Comment

It does not appear that the formal Department of Land and Natural Resources board action significantly deviates from the staff recommendation.

(3) Conditions Imposed On Use

In a review of approved or adopted applications for permitted uses, and for unpermitted or new uses, it is seen that in all but a minor fraction of those cases the routine condition requiring "compliance with all statutory conditions, codes, etc., (from Regulation No. 4)" was imposed. In 14 of the 65 approved or adopted applications for permitted uses, and for unpermitted or new uses, this standard condition was supplemented with some other condition. In 6 cases, the standard condition was supplemented with some other condition. In 6 cases, the standard condition was supplemented by conditions on "design standards for construction and landscaping". In 5 there were additional construction conditions imposed. In 2 there were additional "management controls over applicant's use or performance" and in 1 an added condition was imposed to allow "archeological and historical survey prior to any site work".

(4) Comparison of Conditions with Status of Project

Of the 40 cases where the standard condition of compliance with all statutory provisions was imposed, in 18 cases the project was substantially completed according to the original plans and proposals. In another 18 cases, however, there were no data available for the status or result. Of the others, in 1 case, the project was in progress according to the original plans and proposals. In 2, the project was not yet begun according to original plans and proposals, and in 1 case the project was in progress with significant change from the original plans and proposals.

Of the 5 cases in which construction conditions were imposed, the project was completed according to plans in 2 instances. There were no data for 2 cases. In

TABLE 38
USE APPLICATIONS (CONSERVATION DISTRICTS)
SUMMARY OF ACTION TAKEN ON ALL APPLICATIONS AND ACREAGES INVOLVED[a]

	Approved						Adopted		Denied				Withdrawn or Canceled	
	Total		Partial		Conditional				Total		W/Temp. Var.			
	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres	No.	Acres
HAWAII														
Permitted Uses					9	1,772.9			2	(1,059.1)			1	(5.5)
Change of Subzones					2	687.8								
Temporary Variance					3	11.1								
Unpermitted or New Use(s)							1	2.1						
KAUAI														
Permitted Uses					4	419.1			1	(11.0)				
MAUI														
Permitted Uses			1	4.8	6	665.2								
HONOLULU														
Permitted Uses	3	77.7	1	.7	21	877.5	1	220.0	3	(24.9)	1	(6.7)	2	(2.0)
Special Subzones					1	216.0							1	(3.2)
Unpermitted or New Use(s)					1	6.7	17	201.1						
ACTION (SUBTOTALS)	3	77.7	2	5.5	47	4,656.3	19	423.2	6	(1,095.0)	1	(6.7)	4	(10.7)

Total number of cases = 82
Total acreage approved or adopted = 5,162.7 acres
Total acreage denied or withdrawn = 1,112.4

6,275.1 TOTAL ACRES ACTED UPON, DENIED OR WITHDRAWN

TABLE 39
USE APPLICATIONS (CONSERVATION DISTRICTS)
USES REQUESTED IN ALL APPLICATIONS

	Hawaii				Kauai	Maui	Honolulu			Subtotals Type of Use (Denied)
	Permitted	Unperm. /new	Change Subzones	Temp. Var.	Permitted	Permitted	Permitted	Unperm. /new	Special Subzones	
Residence	1	1			1(1)	1	7(4)	15		26(5)
Recreation Areas	—	—	—	—	—	—	—	—	—	0
Resort	3(2)	—	—	—	—	—	5	—	—	8(2)
Government	—	—	—	—	1	—	—	—	—	0
Pub/Pvt Utility	—	—	—	—	—	1	8	—	—	10
Military	—	—	—	—	—	—	1	—	—	1
Air Transp.	—	—	—	—	—	—	—	—	—	0
Routes	—	—	—	—	—	—	1	—	—	1
Agriculture	5(1)	—		3	3	3	6(1)	—	—	21(2)
Forestry	—	—	—	—	—	—		—	—	0
Restr. Watershed	1—	—	—	—	—	1		—	—	2
Hunting & Fishing	—	—	—	—	—	—		—	—	0
Extraction	2—	—	—	—	—	2	3	1	—	8
Other	—	—	—	—	—	—	1(1)	1	2(1)	4(2)
(Blank)	—	—	1	—	—	—		—	—	1
SUBTOTALS	12(1)	1	2	3	5(1)	8	32(6)	17	2(1)	82

Type of Action (Denied)

one case the project had not begun according to original plans and proposals.

Of the 6 cases in which design standards for construction and landscaping were imposed, 4 were substantially completed according to plans, 1 was in progress according to plans, and the status of the remaining case was not known.

G. *Urban Districts*

1. Summary of Requests

Those boundary change applications which involved a change or requested change into or out of the "Urban" classification have been selected.

A total of 3,641.9 acres moved (by Commission approval) into the Urban classification while applications for 3,210.9 acres were denied. The breakdown by island is listed in Table 40 together with the number of applications that were involved to give more proportion to the comparisons.

The movement is heavily toward urban classification, and the number of denials, in terms of number of applications made, might indicate that the commissioners' inclination is in the same direction as the property owners'—into the urban category. There is very little requested movement out of "urban"—the figures provide a convenient better than 10:1 request for movement into urban as opposed to request for movement out of urban.

Not surprisingly, all requests for a classification from Urban involved a total application where there was also a request for transfer of other land to Urban. It was surprising, however, that in one case on the island of Kauai the request to Urban was approved, but the request for classification from Urban was denied.

II. CONFLICTS IN RECOMMENDATIONS

In general, there was not a great deal of conflict between the recommendations of the County Planning Commissions, the Land Use Commission staff and the actions of the Land Use Commission. Table 41 indicates that there was complete or partial agreement[1] among all three groups in 72 percent of the cases. In an additional 15.6 percent of the cases, the Land Use Commission itself agreed with the County Planning Commission and overruled its staff. In only three cases (3.33 percent) did the Land Use Commission overrule both groups.

There was complete agreement in more than 70 percent of the cases on every island except Oahu. It was also on Oahu where there occurred the largest percentage of County/Land Use Commission agreements in opposition to Land Use Commission staff recommendations and the largest percentage of staff Land Use Commission agreements in opposition to the County.

In those applications where only two groups recommended or acted (e.g., where staff and LUC are recorded but where there is no recorded county recommendation) there was general agreement, and there was only one case of conflict. In nearly half the cases where an application was withdrawn, there had been a conflicting recommendation between Land Use Commission staff and County.

III. FINDINGS AND RECOMMENDATIONS ON ADMINISTRATIVE PROCEDURE

A. *Qualifications*

The statistical analysis of data provides but one of several important insights into the workings of the Land Use Law, and on the basis of it alone, certain findings and recommendations can be made.

B. *Major Findings*

1. Inadequate Documentation of Commission Decisions

The Land Use Commission, like many other regulatory bodies, does not document the reasons for its decisions to a level of detail sufficient to determine the factors

TABLE 40

BOUNDARY CHANGE APPLICATIONS CONCERNING URBAN DISTRICTS

	To Urban (acres)		Number of Applications		
	Approved	Denied	Approved	Denied	Partial Approval
Hawaii	1606.1	708.9	(25)	(9)	(6)
Kauai	229.5	18.0	(11)	(0)	(2)
Lanai	19.6	—0—	(1)	(0)	(0)
Maui	173.4	35.0	(8)	(2)	(0)
Oahu	1613.3	2449.0	(16)	(7)	(4)
Total	3641.9	3210.9	(61)	(18)	(12)

	From Urban (acres)		Number of Applications	
	Approved	Denied	Approved	Denied
Hawaii	61.8	—0—	(2)	(0)
Kauai	60.1	11.0	(3)	(1)
Lanai	4.8	—0—	(1)	(0)
Oahu	45.5	—0—	(3)	(0)
Total	172.2	11.0	(9)	(1)

TABLE 41

CONFLICT SUMMARY

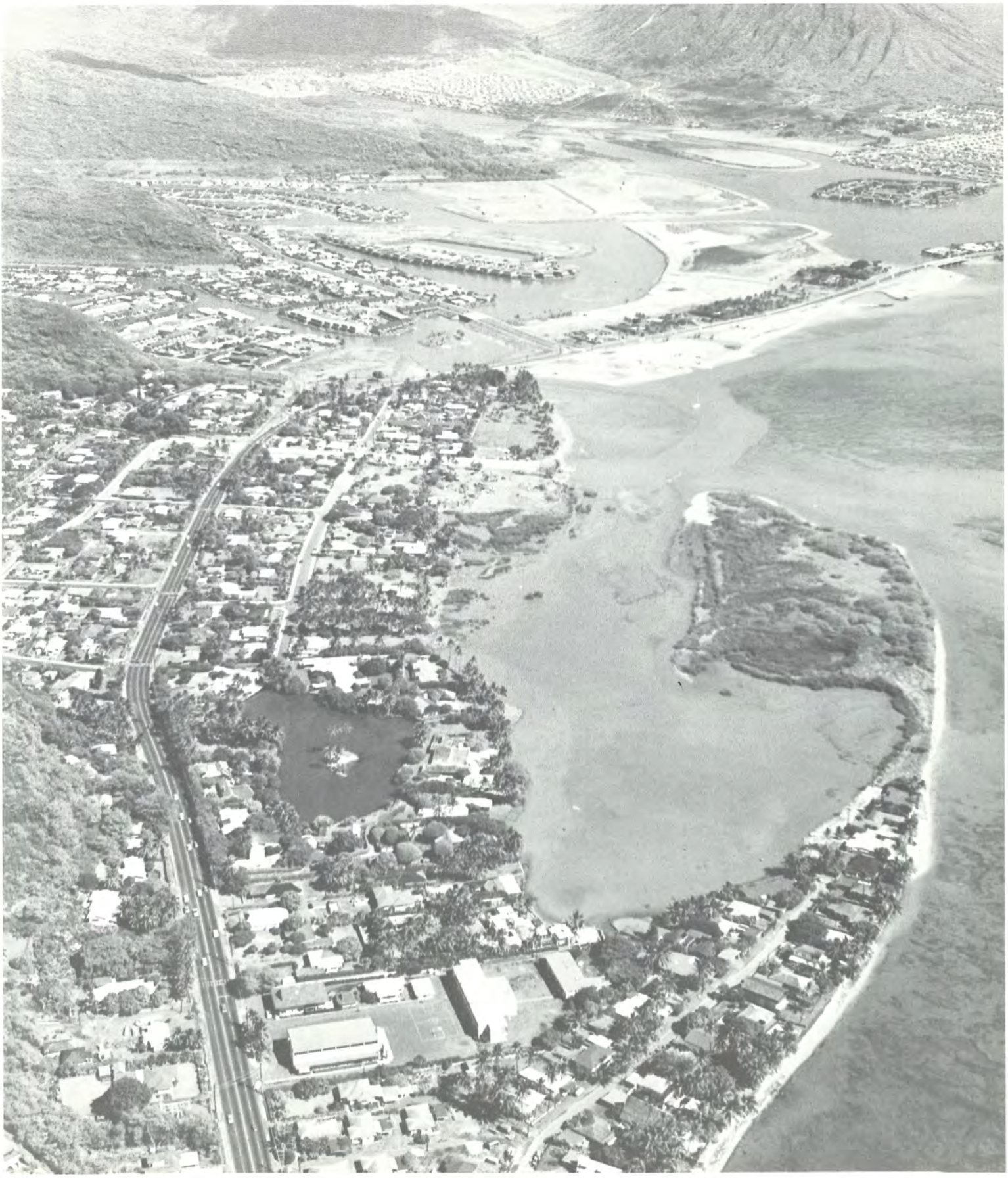
(In cases where County Planning Commission and LUC stac recommendations and LUC actions were reported)

	LUC, LUC Staff & CPC Agreed	LUC Staff only Overruled	LUC Staff & CPC overruled	CPC only overruled	CPC only overruled Total
Hawaii	23	6	1	3	33
Kauai	13	1	1	—	15
Lanai	2	—	—	—	2
Maui	8	1	—	1	10
Oahu	19	6	1	4	30
	65	14	3	8	90

CPC = County Planning Commission
LUS = Land Use Commission

[1]That is, the recommendations were not in complete opposition. For example, one or two groups might recommend partial approval and another might recommend complete approval. The classification of each application is shown in the right hand column of Table 1.

Urban and Conservation Districts
Paiko Peninsula and Hawaii-Kai, Honolulu, Oahu



that led to a final decision. This same complaint was found in the interviews and questionnaire answers as discussed in Chapter 7. In the cases studied, a review of the historical record alone is seldom sufficiently detailed to permit any but the most superficial analysis of *why* particular actions were taken. While there has been noticeable improvement in the documentation of staff recommendations, the actions of the Commission (or the Department of Land and Natural Resources board) consist only of a numerical summary of the final vote taken. In stating this major finding, we are aware that the Commission often records testimony presented to it. The recording of facts and opinions submitted in support of or in opposition to Commission actions, while a mark of good public agency procedure, is not equivalent to the documentation of the grounds for Commission action.

2. Effective Mechanisms for Recording Views of Local Governments

Communications between the Commission, other State agencies and the Federal government regarding land use questions have improved in frequency over the study period. At the present time, the mechanisms for concerned agencies to express their opinions on pending Commission actions are well established and appear to be working smoothly. As noted directly above, however, it is difficult to assess the effects that local opinions have on Commission decisions because no documentation is provided.

3. No Consistent Minimum Information on Each Application

Actions concerning applications have not been recorded in a manner that facilitates comparison. While the consistency of staff procedures shows a marked improvement during the period of the study, the amount of effort it took to collect material illustrated that the necessary data were not available in a consistent format. Although there is a good deal of expository material included in the staff descriptions of each application, there is no consistent attempt to provide a minimum set of common data about *every* application. The use of a consistent form to record quantiative data about applications would not only facilitate studies such as this one, but would also act as a checklist to assure that all relevant data were obtained and recorded.

4. No Regular Follow-Up Procedures

A fourth observation that has considerable public policy implication concerns the fact that there is no automatic procedure for following up on an application after it has been decided. Such items as the actual status of the project; changes in tax rate, if any; change in ownership; or in general, the outcome of the action, are not regularly collected. Yet, conditions of use are a fundamental part of approvals for use applications in the Conservation District. Further, such information as whether projects proceed under the original owner or are sold, or whether parcels are reassessed after approval would contribute day-to-day insights into the success of the Land Use Law and would provide invaluable information for the next review which was not available to this study.

C. *Recommended Revisions*

The proposed revisions to Land Use Commission procedures outlined here are expressed only in general terms.

1. Public confidence in the procedures of the Land Use Commission as well as potential improvement in the decision processes used by the Commission would both be aided if the Commission would place much greater emphasis on documentation of conclusions. An appropriate model might be the procedures used by the appellate courts, or by the federal regulatory agencies where concurring or dissenting opinions, as well as mere votes, are tallied as part of the official record. Opinions by commissioners should state both the factual and the judgmental basis for decisions, the statutory or administrative criteria that led to the decision, a summary of any pro and con arguments that affected the commissioners' votes, and in general, the rationale for the vote being cast.

   The opinions need not be voluminous but should state succinctly the arguments that led to each vote. Actual drafting of concurring and dissenting opinions could be done by the staff under the guidance of and with the approval of the majority and minority commissioners.

2. It is recommended that the docket file for each application be recorded in a consistent format. Information concerning the application (e.g., size and location of parcel, uses requested, reasons for request) and description of subsequent actions should, whenever possible, be included on a standard form. The standard form that was used to record information in the present analysis is an example of a consistent information format, but it should be noted that motivation for using standard data recording techniques in the future is not to facilitate analyses during later reviews of the Land Use Law. Far more important is that the use of a consistent method for recording information about applications and action on applications will serve as a checklist, to insure that all relevant information is collected for each application, and to aid consistency of judgment about all applications.
3. It is recommended that procedures be established to provide for automatic follow-up of each application not withdrawn or denied completely. This follow-up will serve both to compare performance of applicants with the statements of intent that they supply during the course of their application, and will provide a meaningful source of information on how the Land Use Law functions in practice, as experience continues to be gained in its operation.

Conservation, Agriculture and Urban Districts
Wailua River, Kauai

Urban District
Kaanapali, Maui

I. INTRODUCTION

This chapter presents a legal review of selected matters related to the Land Use Law and its administration. These are drawn from a more comprehensive work by the legal consultants[1] of the boundary review program, and are presented here as the essential digest of matters that appear to be of prime importance to the review.

These matters include:

II. A discussion of decisions in cases involving the Land Use Commission.

III. Cases in other states which may indicate the vulnerability of the Land Use Law.

IV. Determining boundaries between uplands and shorelines.

In addition to the above, a review of past legislative bills and resolutions, opinions of the Attorney General's Office, recommended changes in the Rules of Practice and Procedure and other specific matters were prepared and submitted to the Land Use Commission.

II. DECISIONS IN CASES INVOLVING THE LAND USE COMMISSION

Cases.

Gillette v. The Land Use Commission, Civil 1198, in the Second Circuit, *Tamura v. The Land Use Commission* Civil 1961, and *Allison et al. v. The Land Use Commission,* Civil 1383, in the Third Circuit, all involve appeals from the decisions of the Land Use Commission in which the final land classifications for the areas in which the lands in question were located were changed from the preliminary classifications.

The *Tamura* and *Allison* cases involved tracts of lands in the same general area, the Panaewa Houselot Subdivisions Waiakea, South Hilo, Hawaii. While Tamura applied for a special permit to subdivide 1.96 acres of land into four residential lots, whereas Allison et al., who owned 59 out of 60 parcels of land of approximately 174 acres, applied for a boundary change to permit subdivision of their lands, the issue that was common to both these cases was a change in the classification of the zone from urban to agricultural.

Tamura's appeal was based on Section 5 of Act 187, which authorized the creation of temporary land use district boundaries.

Previously, the area had been classified as urban but under the interim boundaries the area became agricultural. Allison, on the other hand, made his appeal on the basis of Section 98H-2 and 98H-3 under Act 205 which had amended the earlier Act 187, which authorized the adoption of final district boundaries under which the area was designated as agricultural instead of rural or urban.

In both cases the petitioners had obtained their property under land patents which provided that patentees could use the land for residential purposes for a period of ten years from the date of issuance of the patent and that the patentees could subdivide the land only if the lots conformed to the minimum requirements set by the Hawaii County Planning and Traffic Commission. Under the requirements laid down by the Hawaii County Planning and Traffic Commission, each lot had to contain an area of not less than 10,000 square feet and owners of subdivided lots had to, within five years, construct a single-family dwelling containing a floor area of not less than 850 square feet exclusive of garage and open lanais.

In both cases separate decisions were rendered by different judges and the decisions, in essence, are contrary. In *Tamura* the plaintiff had applied for a special permit to proceed with the subdivision which had been denied by the Hawaii County Planning and Traffic Commission. That decision had been appealed to the Third Circuit and Judge Felix had previously rendered a decision in June, 1965 reversing the Planning Commission. Judge Felix had reversed the Hawaii County Planning and Traffic Commission on the grounds that it had prevented the plaintiff from getting the full benefit of its land patent because it failed to allow him to subdivide yet it had held him to the other requirements of the land patent. Moreover, the Legislative intent behind Act 187 seemed to indicate an intention to continue the land in an urban rather than rural classification. As a result of the decision by Judge Felix, the Hawaii Commission changed its recommendation to approval, but when it was then referred to the State Land Use Commission for approval the Commission denied the application. Tamura appealed but Judge Monden upheld the Land Use Commission in January 1967 on the grounds that constitutional prohibitions against impairing the obligation of a contract was not an absolute one to be read with legal exactness in answering the argument that the land patent obligated the state to approve the subdivision. Moreover, he held that Section 5 of Act 187 did not prevent the Hawaii County Planning and Traffic Commission, in the exercise of its discretion and in the interest of public welfare, to classify said land as agricultural based on existing use of property at that time.

In *Allison* Judge Ogata on September 3, 1968, reversed the decision of the Land Use Commission on the petition of the plaintiff to change the district boundary from agricultural to urban or rural. Judge Ogata's decision stated that under the requirements of Section 98H-2, Revised Laws of Hawaii 1955, as amended, there was a duty to set standards for determination of boundaries consistent with the prescribed mode and under the adopted land use district regulations, the reasonable inference that could be drawn was that the land was and is best suited for residential development rather than agricultural pursuits.

In contrasting the two decisions, Judge Monden seemed to proceed on the assumption that the State, in the proper exercise of its police powers, could determine land classification and allow special permits for exceptions to the land use classification and in the absence of a clearly capricious and arbitrary determination that such a permit was not to be allowed or a land use classification made, the decision of the State Land Use Commission should stand. On the other hand, Ogata takes a legislative policy approach. He examined the land use regulations that had previously been designated and examined the provisions of Section 98H-2, Revised Laws of Hawaii 1955, as amended, to infer what the proper land use classification was for the area. He then decided that the decision by the Land Use Commission was inconsistent with these regulations and the standards laid down by the statutes. Both judges are from the Third Circuit. In fact, Judge Monden disqualified himself from hearing the *Allison* case because of his decision in *Tamura*.

The *Gillette* case, which involves basically the same kind of problem as *Tamura* and *Allison;* is still pending in the Second Circuit Court. The petitioner owns three acres of land situated at Kula, Maui, the classification of which was shifted from urban to a rural classification. His appeal is based upon the fact that under the original zoning made by the Commission and when he bought the land, the land was classified as urban and the land is currently in urban use. However, in the final determination of

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the boundaries, the area was changed from an urban classification to a rural classification by the Land Use Commission. Gillette's appeal is based on a reading of Section 98H-2, Revised Laws of Hawaii 1955, as amended, which states in relevant part: "The commission shall set standards, for determining the boundaries of each district, provided that (a) in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;" The wording of the statute seems to clearly indicate that if that land is now in urban use then it should be continued in urban use. Moreover, Section 98H-2 also seem to indicate that lands now within an urban classification that do not have a city-like concentration of people, structures, streets, or other related land uses such as is defined in Section 2 of Act 187; nevertheless, may still be considered as urban. In view of the decision in the *Allison* case, the Land Use Commission may be reversed in this case.

These cases serve to illustrate the problems involved in changing land use classifications which adversely affect landowners because of confusion engendered by the reading of sections such as Section 98H-2, Revised Laws of Hawaii 1955, as amended, and the standards stated in land use regulations for determining land classification.

A series of cases involve the Hawaiian Trust Company, as trustee for the Estate of John Ena v. the Land Use Commission, on the classification of land situated in Manoa Valley. These are the cases designated by Civil Nos. 12980, 12981, 17377 and 14039. In all these cases, the petitioner who held a leasehold estate in Manoa Valley affected by the classification sought to have the temporary district boundaries in the area which were made on April, 1962, amended from a conservation to an urban classification.

In Civil Nos. 12980 and 12981, the Petitioner based his appeal on an alleged violation of Section 98H-5, Revised Laws of Hawaii 1955, as amended, in that the inclusion of the property was a mistake in the belief that the land was in a forest and water reserve zone and that a change of the use of the land to urban use was in progress when the change was made. The Petitioner also contended that that was a failure to comply with Section 6C-3a, which requires at least 20 days' notice for a public hearing despite the fact that Section 98H-9 provides that public hearings on amendments shall be held after 100 days but within 210 days of the original receipt of a petition.

In Civil Nos. 17377 and 14039 the grounds for appeal was based upon an alleged violation of Sections 4 and 18 of the Constitution of the State of Hawaii and the 5th Amendment of the United States Constitution in that the action of the Land Use Commission deprived the landowner of his property without due process of law.

In all these cases, however, the appeals were eventually withdrawn by stipulation. These cases, however, illustrate the very broad constitutional argument that an aggrieved landowner frequently uses in appeals, that the action by the state is classifying land which adversely affects — deprives him of property without due process of law. In a much narrower context they also raise the question of whether the adoption of land use boundaries must comply with the Administrative Procedures Act as well as land use statutes.

In *Kula Development Co. v. Land Use Commission*, plaintiff sought declaratory relief in Circuit Court, based upon a proposed determination of the land use boundaries in Kula, Maui by the Land Use Commission which would have put plaintiff's land in an agricultural area although under the temporary boundaries established in 1962 it was in an urban zone. The substantive issue here was the standard that the Land Use Commission used in deciding to change the proposed boundaries. The case, however, is probably more significant for its procedural aspects because of the remedy the plaintiff sought. He sought a declaratory judgment on the theory that indecision by the Land Use Commission as to how it would classify the area where plaintiffs owned land caused great uncertainty for the plaintiff and therefore, prompted his attempt to seek declaratory relief. Section 6C-7 of the Administrative Procedures Act under which petitioner brings his action provides for a declaratory ruling by a Court on any agency rule. It, however, is an unresolved issue whether, the setting of boundary lines are subject to the requirements of the Administrative Procedures Act.

Another case, *Nuuanu Valley Community Association v. the Land Use Commission*, is also noteworthy primarily for its procedural aspects. The petitioner appealed from a decision of the Land Use Commission which was entered in January, 1966, to amend the urban district boundaries in Nuuanu Valley so as to incorporate 3.6 acres which was in the Conservation District. The petitioner sought intervention on grounds that the petition was not in the best interests of the Nuuanu Valley Community Association and created a dangerous erosion and potential landslide area. The case was ultimately dismissed with prejudice, but it served to demonstrate the applicability of Section 6C-14, Administrative Procedures Act, pertaining to judicial review of contested cases in land use cases.

The other two cases, *Lyman v. Land Use Commission* Civil No. 20579 and Civil No. 20615, which are still pending involve the substantive issue of whether or not a body of water surrounded by land takes the character of the surrounding land as was contended for by the appellant or as the Land Use Commission contended that it should be classified as a conservation area within the meaning of its Interim Rule 3.1 which provided that all areas of the state below high water mark should be classified as conservation.

The case also illustrates the previously mentioned problem whether the designation of boundaries and boundary maps, by the Land Use Commission are required to comply with the Administrative Procedures Act of the Revised Laws of Hawaii. The plaintiff, the Trustee of the Bishop Estate, contended that all land use boundaries had to be shown on the district boundary maps as filed with the Lieutenant Governor. The applicable map showing Heeia Fish Pond, the area of litigation, showed no separate land use designation.

The procedural issue here is an important one. The Rules of Practice and Procedure that are issued with the Land Use Commission clearly seem to be in accordance with Sections 6c-2(2), Revised Laws of Hawaii 1955, as amended, of the Administrative Procedures Act, which provides the procedure for adopting rules of practice. Moreover, other provisions in the Rules of Practice and Procedure such as Rule 1.22, Emergency Rule Making, and Section 1.25, Petition for Declaration Rulings, seem to be in accordance with the procedure laid down in Rule 6C-3(c) and Section 6C-7 providing for declaratory rules by agencies. While the rules of practice and procedure require compliance with the Administrative Procedures Act, it is arguable whether the substantive rules and regulations, the determination of boundaries, and the designation of boundary maps have to comply with the Administrative Procedures Act in view of the different notice requirements of 6C-3 (Administrative Procedures Act), 98H-4 and 98H-7). The *Lyman* case and cases such as those involving Hawaiian Trust Company illustrate the problem.

III. CASES IN OTHER STATES WHICH MAY INDICATE THE VULNERABILITY OF PRESENT LAND USE LAWS IN HAWAII

Lambert v. Seabold, 229 A. 2d 116 (Ct. App. Md., 1967)

The land involved was zoned for residential use. Petitioner had previously sought a zoning change to business which was turned down by the County Zoning Commission and Board of Appeals for the County because there were no changes of conditions and no evidence of mistake in the original zoning.

Later, however, the Board of Appeals rezoned the property, although there was no

change in conditions, by ruling that the zoning map was in error because the council did not consider the existing uses in the area.

Court reversed the Zoning Board of Appeals' decision stating that when the Zoning Board found no mistake in the original zoning map in a previous proceeding for the change of zone and no change in the character of the area it was arbitrary and capricious for the Board to reclassify the property in a later proceeding.

Comment:

This case seems to raise the possibility under the Hawaii land use laws, of a party's appealing a decision possibly made by the Land Use Commission to change a previous boundary or to permit a special use within a given district. If such a change is based upon simply a change of viewpoints or conceivably, simply a change in membership of the Commission, then the decision conceivably could be attacked on the grounds that it is arbitrary and capricious because the Commission is arriving at an opposite conclusion on precisely the same set of facts and the same law.

The issue presented in this case is tied to one previously discussed in recommendations for changing rules of practice and procedure of deferring reconsideration of a petitioner's re-application to the Land Use Commission for a boundary amendment, regulation changes or special permit if he chooses not to appeal to a circuit court for a specified period. The underlying rationale for the latter recommendation was to prevent reconsideration of proposals unless there were substantially new reasons for submitting proposals for reconsideration. If this recommendation should be accepted, then the possibility of situations arising such as in *Lambert v. Seabold*, should be comparatively rare.

National Land Company v. Kohn, 215 A.2d 59 (Sup. Ct. Pa., 1968).

East Township in Pennsylvania, a rather affluent residential village type area with a strong rural character, had various zoning ordinances in force governing various minimum lot areas for prescribed portions of the township. One such ordinance called for a one acre minimum lot size.

The petitioner had bought some land in the township for subdivision development when the one acre limitation was in effect. However, the village then changed the ordinance to provide for a minimum lot size of four acres. Petitioner sought a variance, and then later in a court proceeding challenged the constitutionality of a four acre minimum lot zoning.

The village presented various arguments to support their ordinance such was the inadequacy of the sewage system, inadequacy of the roads, and difficulty of fire protection for many small lots. The court, however, dismissed these contentions because the argument had force only if the one acre minimum lot size affected the entire township. In the township, only a fraction of the land area had previously been in the one acre minimum lot size.

The village also argued that a four acre minimum lot size was necessary for the preservation of open space and a green belt.

The court answered this contention by saying that the four acre lots failed to accomplish this goal because only if there was no market for four acre lots will the land continue to be open and underdeveloped and a green belt created.

Another principal argument that the village used was that the rural character of the area has to be preserved. The court, however, said that if the township was developed on the basis of this zoning, it could not be serious about its contention that the land would retain its rural character because the township would simply be dotted with larger houses on larger lots.

The court concluded that the primary purpose behind the zoning ordinance was to prevent the entrance of newcomers and to avoid future burdens, economic and otherwise, upon the administration of public services and facilities and could not be held valid.

Comment:

There is substantial case authority that has upheld similar minimum lot restrictions. There is, however, also other case authority which support the holding in this case. This case, does, however, illustrate that a municipal or state body, even when it exercises planning and zoning functions for the public welfare cannot do so arbitrarily and capriciously. There must be substantial and reasonable justification for the zoning ordinance.

The case also seems to present an analogy to the situation where the Hawaii State Legislature has set minimum lot size in rural areas. However there is a vast difference between the setting of a four acre lot minimum lot and a one-half lot acre minimum in areas classified as rural under present land use laws. Moreover, in the cited case, the ordinance was basically meant to exclude certain economic groups. In the lot size designations for rural areas, the Hawaii Legislature is attempting to preserve the areas characterized by small farms and low density residential development. It is true that the rural classification under present land use laws does offer potential for the influx of affluent landowners who like sizeable houselots and wish to avoid urban concentration. The one-half acre minimum, however, would hardly be considered, however, as an intentional barrier against the economically less fortunate.

Clairmont Development Company, Inc. v. Morgan, 149 S.H. 2d 489 (Sup. Ct. Ga., 1966).

Petitioner in the case held an option to purchase land when it was re-zoned from residential to commercial. He invested funds and time planning a shopping center and owed the owner of the land $50,000 under a contract of sale. The town then re-zoned the land back to residential.

Petitioner challenged the town's action in court and the court held that petitioner had a vested property right which was protected by the constitution.

Comment:

This case has some aspects which are similar to *Tamura* and *Gillette v. The Land Use Commission* cited in our previous analyses, see page 168. Both Tamura and Gillette had a kind of "vested" right in that they had held land under a land patent which permitted them to subdivide but which was turned down by the Land Use Commission because of a change in classification of the area from urban to agricultural. The case illustrates a problem area which would be comparatively rare under the Hawaii Land Use Laws, since even where boundary changes are now made under land use laws, generally the boundaries are affected so as to only encompass a petitioner landowner's holdings. Presumably, there would be no major shifting in boundaries which would affect landowners within an area who are surprised by the change in classification.

Mary Chess Inc. v. City of Glen Cove, 273 N.Y.S.2d 46 (Ct. of App. N.Y., 1966)

Petitioner owned a four and one-half acre vacant parcel of land enclosed by an oval-shaped road and surrounded by 15 acres of industrial lands which had been so used since 1915.

A 1960 ordinance passed by the City of Glen Cove upgraded the zoning from light manufacturing to one-half acre single family residences and certain other specified uses.

Petitioner appealed the classification because he wanted to use the property for industrial use. The court found ordinance unconstitutional, in that none of the property was adaptable to permitted uses and thus was a deprivation of his property rights.

Comment:

This case is cited because of the applicability of its fact situation to an appeal under Hawaii Land Use Laws for a boundary change or special permit. Conceivably a petitioner may argue that a boundary change or special permit should be granted for his land because contiguous land is being used in a manner consistent with the boundary change that he wishes. Unless the Land Use Commission can show that its decision, if contrary to the landowner's wishes, is based on a legitimate exercise of the police powers of the state, then the

possibility of invalidation by the court remains.

Morris County Landing Improvement Company v. Township of Parsippany — Troz Hills, 40 N.J. 539, 193 A.2d 232 (1963).

Petitioner challenged a zoning ordinance that wiped out the potential economic value of a sand and gravel business by placing some 66 acres of the petitioner's land in a conservation zone and requiring him to keep it in its natural swampland state. The town argued that its ordinance was a justifiable exercise of its police powers in the interest of conservation and promoted a flood control plan.

The New Jersey Supreme Court overturned the ordinance, however, on the grounds that there was an unconstitutional deprivation of the property without compensation. The court however, gave the township sufficient time to change the ordinances and the court noted that the sand and gravel business could be excluded if some other reasonable use was allowed for the property.

Comment:

Although this case is now six years old, it is still a highly important one to note. Even though the village sought to justify its ordinance on legitimate conservation and flood control grounds in effect the court overturned the ordinance because the petitioner's property was totally useless to him because it could not be put to any economically valuable use. It is conceivable that landowners in any of the conservation land use districts, may run into similar difficulties, in the restrictive economic possibilities for his land. A number of cases previously cited involving the Hawaiian Trust Company (Civil No. 12980 and 12981) alluded to this issue. A landowner would normally expect to make some economic use of his property and he could hardly be expected to be willing that his property be used only for perpetuating conservation when a higher return in some other use is possible. Unless landowners in a conservation area are given some flexibility in their use of land, special permits or boundary changes, appeals by landowners in conservation areas are likely to be troublesome.

IV. DETERMINING BOUNDARIES BETWEEN UPLANDS AND SHORELINES

In Hawaii, the state retains title to the shorelands. The question arises, however, as to where the boundary lies between shorelands and uplands.

In Hawaii, this question seems to have been settled by the recent decision in the *Matter of the Application of Ashford,* 440 P.2d 76 (1968). Petitioner in the case sought to have the landcourt register title to certain land situated on the Island of Molokai. The land had been part of two Royal Patents, and a question which arose for determination was where the makai boundaries of the patents ran which were described as running "ona ke kai" (along the sea).

The state contended that it ran along the line of vegetation or the line of debris left by the wash of waves. This would sometimes be called the line of waves mark. This was some twenty to thirty feet above the line claimed by the petitioner.

The petitioner claimed that the line ran along the mean high waterline which is represented by the contour traced by the intersection of the shore and the horizontal plane of mean high water based on publications of the U.S. Coast and Geodetic Survey. The Coastal and Goedetic Survey has generally defined mean high tide at any one location as being the average elevation of all high tides as observed at a location through a complete tidal cycle of 18.6 years. Since there are normally two high tides per day, one higher than the other, the average of the two is much lower. Moreover, since the tidal forces of the moon and the sun when at new moon and full moon are stronger than at the first and third quarters, tides are also higher during corresponding periods when the position of the moon differs. Hence, the mean high tide always runs considerably lower than the highest reach of the tide.

The court held that "ona ke kai" ran along the vegetation line or line or debris basically, because when the Royal Land Patents were issued in 1866 by King Kamehameha V, it contended the sovereign did not have any knowledge of the data contained in the publications of the U.S. Coast and Geodetic Survey and could not have granted title along the boundary as claimed by the petitioners. The court stated that Hawaiian land laws are unique in that they are based on ancient tradition, custom, practice and usage; and according to the testimony of certain witnesses who lived in the area, the ancient custom was to locate a public and private boundary dividing private land and public beaches along the upper reaches of the waves as represented by the edge of vegetation or the line of debris.

A strong dissenting opinion was written by Judge Marumoto in the case. He viewed the boundary issue as being one that was important for the future. Yet he saw the majority determining the seaward boundaries of private land by a practice primitive in concept and haphazard in application and result and rejecting a practice scientific in concept, uniform in application, and precise in result which the United States Supreme Court had upheld in *Borax Ltd. v. Los Angeles,* 296 U.S. 10 (1935). Judge Marumoto also argued that when the Royal Land Patents were issued, the fact that King Kamehameha IV did not have knowledge as to the information available from the Coastal and Geodetic Survey, was immaterial. What was material was whether in 1866, Hawaii was sufficiently advanced scientifically to know that tide levels could be determined by the use of assembled tidal data so that such knowledge might be imputed to the King and his ministers.

The difficulty with the *Ashford* decision as Judge Marumoto indicates, is that it is directly contrary to the U.S. Supreme Court decision in *Borax.* In that case the City of Los Angeles, grantee of tidelands by acts of the California legislature sued the Borax Company to quiet the city's title to tidal lands adjacent to Mormon Island, a valuable and litigation prone bit of real estate in Los Angeles harbor. Borax had title under a Federal patent issued in 1881. The case ultimately went to the U.S. Supreme Court which affirmed the lower 9th Circuit Court of Appeals in holding that the boundary should be determined by the mean high water mark rather than a "neap" tide line which was apparently the rule in California courts or the vegetation line which in this case was below the mean high water mark although normally, it would be above the line.

The fact that the U.S. Supreme Court held the mean high water mark should determine a boundary is not binding on a Hawaii court, in a matter of local land law. There were no constitutional issues raised in the *Borax* case which would have a pronounced binding force on the Hawaii court. Such a decision, however, does have enormous persuasive force.

At least one other state, Washington, has, in a recent 1966 decision, adapted a vegetation line as defining the boundary between uplands and the shore. In *Hughes v. State,* 67 Wash. Dec. 2d 787, 410 P.2d 20 (1966) the Supreme Court of Washington rejected a trial court's ruling which had adapted the mean high tide rule. In adapting the line of vegetation rule, the Washington Supreme Court also rejected the rule adopted by the Ninth Circuit Court of Appeals in *U.S. v. Washington,* 294 F.2d 830 (9th Cir., 1961) 369 U.S. 817 (1962) in which that court upheld the mean high water line in a suit brought by the United States for the benefit of the heirs of Samsons Johns, a Quinault indian living in the State of Washington to when the United States had patented the land after statehood.

Both methods of determining shore boundaries have their strong points. The vegetation line or line of wave action is probably more easily ascertainable and probably has a stronger historical basis. On the other hand, the mean high watermark eliminates extremes in the tides and has a stronger scientific basis. See "Where the

Beach Begins", Vol. 42, University of Washington Law Review, October 1966.

The possibility of accretion which was not raised in *Ashford* may be a troublesome one. Shorelines frequently are washed away or built up by deposits of sand and soil. Upland owners who own land to the seashore will generally want the right to build up accretion in order to have continued access to the water. If it is determined however that an upland owner's right to the shoreline was one existing at some time in the past at the vegetation line, it may be impossible to determine. *Ashford* as such, however represents the latest Hawaii law on the matter.

APPENDIX

Agriculture, Urban and Conservation Districts
Ewa, Oahu

APPENDIX A-1

ACT 187, SESSION LAWS OF HAWAII 1961

AN ACT RELATING TO THE ZONING POWERS OF THE STATE AND THE ASSESSMENT OF REAL PROPERTY BASED UPON ZONES ESTABLISHED BY THE STATE AND MAKING AN APPROPRIATION THEREFOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. *Findings and declaration of purpose.* Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. Inadequate basis for assessing lands according to their value in those uses that can best serve both the well-being of the owner and the well-being of the public have resulted in inequities in the tax burden, contributing to the forcing of land resources into uses that do not best serve the welfare of the State. Scattered subdivisions with expensive, yet reduced, public services; the shifting of prime agricultural lands into nonrevenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action.

Therefore, the Legislature finds that in order 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 and to create a complementary assessment basis according to the contribution of the lands in those uses to which they are best suited, the power to zone should be exercised by the State and the methods of real property assessment should encourage rather than penalize those who would develop these uses.

SECTION 2. *Exercise of the zoning powers of the State.* The Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new chapter to be appropriately numbered and to read as follows:

"CHAPTER 98H

STATE LAND USE COMMISSION

Sec. 1. Definitions. When used in this chapter:

(a) 'Agriculture' means the raising of livestock or the growing of crops, flowers, foliage, or other products.

(b) 'Commission' means the State land use commission established by this chapter.

(c) 'Conservation' means: protecting watersheds and water supplies; preserving scenic areas; providing parkland, wilderness and beach reserves; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; and other related activities.

(d) 'District' means an area of land zoned by the commission for urban, agricultural or conservation use as provided in this Act.

(e) 'Planning commission' means the planning commission of each county.

(f) 'Urban' means areas characterized by "city-like" concentrations of people, structures, streets and other related land uses.

Sec. 2. *Establishment of the commission.* The State land use commission is hereby created. The commission shall consist of seven members who shall hold no other public office and shall be appointed in the manner, and serve for the term, set forth in section 14A-3. One member shall be appointed from each of the senatorial districts and one shall be appointed at large. The director of the department which is responsible for administering the provisions of Act 234, SLH 1957 and the director of the department of planning and research shall serve as ex-officio voting members. The commission shall elect its chairman from one of its appointed members. The members shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties.

The commission shall be a part of the department of planning and research for administration purposes as set forth in section 14A-4.

The commission may engage employees necessary to perform its duties, including administrative personnel and one or more field officers. One field officer may be named as the executive officer of the commission. Field officers shall be persons qualified in land use analysis. Departments of the State government shall make available to the commission such data, facilities and personnel as are necessary for it to perform its technical duties. The commission may receive and utilize gifts and any funds from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities and submit an annual report of its activities, accomplishments and recommendations to the governor and to the legislature through the governor.

Sec. 3. *Classification and districting of lands.* There shall be three major classes of uses to which all lands in the State shall be put: urban, agriculture and conservation. The commission shall group contiguous land areas suitable for one of these three major uses into a district and designate it as an urban district, agricultural district or conservation district, as the case may be. The commission shall set standards for determining the boundaries of each class of districts; provided that in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included; in establishment of the boundaries for agriculture districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and in the establishment of the boundaries of conservation districts, the 'forest and water reserve zones' provided in Act 234, SLH 1957, are hereby re-named 'conservation districts' and, upon the effective date of this chapter, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, SLH 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.

Zoning powers are granted to counties under section 138-42 shall govern the zoning within the districts, with the exception that areas may not be zoned for urban uses except in those districts that are designated as urban by the commission. Zoning powers within conservation districts shall be exercised by the department to which is asssigned the responsibility of administering the provisions of Act 234, SLH 1957.

Sec. 4. *Adoption of district boundaries.* The commission shall prepare use classification maps not later than 18 months from the effective date of this chapter showing proposed boundaries of districts for conservation, agricultural and urban uses. At least one public hearing shall be held in each county prior to the final adoption of the district boundaries for that county. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the planning commission of the appropriate county. If there is no planning commission, then the notice shall be published at least 15 days prior to the hearing in a newspaper of general circulation within the county. Such notice shall indicate the time and place the maps showing the proposed district boundaries within the county may be inspected prior to the hearing.

At the hearing, interested owners, lessees, officials, agencies and individuals may appear and be heard. They shall further be allowed at least 15 days following the final public hearing held in the county to file with the commission a written protest or other comments or recommendations. The planning commission of the county concerned shall be furnished with copies of any written protest, comment or recommendations. The planning commission of the county concerned shall be furnished with copies of any written protest, comment or recommendation. The district boundaries within a county shall be adopted in final form within a period of not more than 90 days and not less than 45 days from the time of the last hearing in the county, provided that district boundaries for all counties shall be adopted in final form not later than 24 months from the effective date of this chapter. The commission shall prepare and furnish each county with copies of classification maps for that county showing the district boundaries adopted in final form.

Sec. 5. *Temporary district boundaries.* Prior to the final adoption of district boundaries as provided in section 4 of this chapter, the commission shall adopt and enforce the interim regulations as provided in section 9 for temporary districts whose boundaries shall be determined and shown on interim use classification maps. These temporary districts shall be determined so far as practicable and reasonable to maintain existing uses and only permit changes in use that are already in progress until the district boundaries are adopted in final form. Such temporary district boundaries shall be established and mapped as soon as possible, but only after public hearings as provided in section 4, but in any case, these temporary district boundaries shall be adopted not later than nine months after the effective date of the chapter.

Sec. 6. *Amendments to district boundaries.* Any department or agency of the State or county, or any property owner or lessee through the county planning commission may petition the commission for a change in the boundary of any district. Within 120 days after receipt of such petition, the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning commission for com-

ments and recommendations in the same manner as any other request for a boundary change.

Within 120 days after the receipt of the petition and recommendations from the county, the commission shall advertise a public hearing to be held on the appropriate island in accordance with the requirements of section 4. Within not less than 45 days after such hearing the commission shall act upon the petition for change. The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified and either of the following requirements has been fulfilled: (a) The petitioner has submitted proof that the land is not usable or adaptable for the use in which it is classified, or (b) Conditions and trends of development have so changed since the adoption of the present classification, that the present classification is unreasonable.

Sec. 7. *Special permits.* The commission may permit, by regulation, certain unusual and reasonable uses other than those for which the district is classified. If any person desires to use his land in a certain specified manner, but is denied such use because (a) His land is situated in a district which prohibits such use or the regulations adopted by the commission do not permit the desired use, or (b) Either the county planning commission or the department to which is assigned the responsibility of administering the provisions of Act 234, SLH 1957, rules that the use for which the district in which his land is situated is classified or the regulations adopted by the commission do not permit such desired use, he may petition the commission for permission to use his land in the manner desired. The commission shall conduct a hearing in the county in which the petitioner's land is situated, within a period of not less than 30 nor more than 120 days from the receipt of the petition. The commission shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The commission shall consider any unusual condition or use that could not reasonably have been anticipated when the district boundaries and regulations were adopted or amended, and may, under such protective restrictions as may be deemed necessary, permit such desired use, but only when such use would promote the effectiveness and objectiveness of this chapter. A decision in favor of the petitioner shall require five affirmative votes. Appeals from any final order of the commission may be made to the circuit court of the circuit in which the land is situated, and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Sec. 8. *Adoption of land use regulations.* The commission shall, within 18 months from the effective date of this chapter, prepare proposed regulations prescribing the appropriate uses for the land in the various classes of districts. At least one public hearing shall be held in each county in the manner provided in section 4 of this chapter prior to the final adoption of the regulations. The final regulations for the State shall be adopted within a period of not more than 90 days and not less than 45 days from the time of the final hearing in the State, provided that the regulations shall be adopted in final form not later than 24 months from the effective date of this chapter.

No regulation adopted by the commission shall deprive any owner or lessee of real property of its use or maintenance for the purpose or purposes to which it is then lawfully devoted, except that regulations may be adopted for the elimination of non-conforming uses upon a change in ownership, lessee or land use.

Sec. 9. *Interim regulations.* Prior to the adoption of the regulations in their final form as provided in section 8, the commission shall adopt and enforce temporary regulations. Such temporary regulations shall be related to, and shall be designed to maintain the existing condition, in so far as practicable and reasonable until the adoption of regulations in their final form. Such interim regulations shall apply to those interim use districts zoned in the manner provided in section 5. Such temporary regulations shall be adopted as rapidly as possible, but only after public hearings as provided in section 4 of this chapter, but in any case the temporary regulations shall be adopted not later than nine months from the effective date of this chapter.

Sec. 10. *Amendments to regulations.* By the same methods set forth in section 6, a petition may be submitted to change, or the commission may initiate a change in the regulations on land use. No such changes shall, however, be made, unless a hearing or hearings are held in each of the counties. Within not less than 45 and not more than 90 days after the last of such hearings, the commission shall act to approve or deny the requested change in regulations. Such petition for a change shall be based upon proof submitted that conditions exist that were not present when the regulation was adopted or that the regulation does not serve the purposes of this chapter.

Sec. 11. *Uses of field officers.* Notwithstanding the provisions of sections 6 and 7 requiring a hearing by the full commission if any application requiring a hearing is received which the commission in the course of its regular meetings shall not be able to hear for more than 60 days, it may authorize a field officer to conduct such a hearing and make a recommendation, provided all other necessary rules for hearings are adhered to. The recommendations of the field officer shall be submitted to the commission at its next meeting, and any recommendation, or rulings by the commission as a result of this recommendation, shall be subject to a review of the full commission at the next hearing date scheduled for the county in which the land concerned is located, if either the commission or the applicant notified the other party at least 20 days prior to this date.

Sec. 12. *Periodic review of districts and regulations.* Irrespective of changes and adjustments that it may have made, the commission shall make a comprehensive review of the classification and districting of all lands and of the regulations at the end of each five years following the adoption thereof. The assistance of appropriate State and county departments shall be secured in making this review and public hearings shall be held in each county in accordance with the requirements set forth for the adoption in final form of district boundaries and regulations under this chapter.

Sec. 13. *Enforcement.* The county planning commission shall enforce within its county the use classification districts and regulations adopted by the commission and shall report to the commission all violations thereof.

Sec. 14. *Penalty for violation.* Any person who violates any provision of this chapter, or any regulation established pursuant to this chapter, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

Sec. 15. *Adjustments of assessing practices.* Upon the adoption of district boundaries and regulations, certified copies of the use classification maps showing the district boundaries and the regulations shall be filed with the department of taxation. Thereafter the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted.

Sec. 16. *Conflict.* Except as specifically provided by this chapter and the regulations adopted thereto, neither the authority for the administration of the provisions of Act 234, SLH 1957 as it has been assigned by Act 1, ISS 1959, as it may be amended, nor the authority vested in the county planning commissions under the provisions of section 138-42 shall be affected."

SECTION 3. Chapter 128, Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new section to be appropriately numbered and to read as follows:

"Sec. ____. *Dedicated lands.* (a) A special dedicated land reserve is established to enable the owner of any parcel of land within an agricultural district and/or a conservation district to dedicate his land for a specific ranching or other agricultural use and to have his land assessed at its value in such use.

(b) If any owner desires to use his land for a specific ranching or other agricultural use and to have his land assessed at its value in this use, he shall so petition the director of taxation and declare in his petition that his land can best be used for the purpose for which he requests permission to dedicate his land and that if his petition is approved he will use his land for this purpose.

Upon receipt of any such petition, the director of taxation shall request the land study bureau to make a finding of fact as to whether the land in the petitioned area is reasonably well suited for the intended use. The finding of the land study bureau shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit and present use of surrounding similar lands and other criteria as may be appropriate.

The director of taxation shall also request the director of planning and research to make a finding of fact as to whether the intended use is in conflict with the overall development plan of the State.

If both findings are favorable to the owner, the director of taxation shall approve the petition and declare that the owner's land is dedicated land.

(c) The approval by the director of taxation of the petition to dedicate

*The Section is now numbered as Section 246-12 Hawaii Revised Statute.

shall constitute a forfeiture on the part of the owner of any right to change the use of his land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the director of taxation upon five years notice at any time after the end of the fifth year. In case of a change in major land use classification by a State agency, such that the owner's land is placed within an urban district, the dedication may be cancelled within sixty days of the change, without the five years notice, by mutual agreement of the owner and the director of taxation.

(d) Failure of the owner to observe the restrictions on the use of his land shall cancel the special tax assessment privilege retroactive to the date of the petition, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a five per cent per annum penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over one calendar year to use the land in that manner requested in the petition or the overt act of changing the use for any period. Nothing in this paragraph shall preclude the State from pursuing any other remedy to enforce the covenant on the use of the land.

(e) The director of taxation shall prescribe the form of the petition. The petition shall be filed with the director of taxation by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the assessment based upon the use requested in the dedication shall be effective on January 1, next.

(f) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(g) The term 'owner' as used in this section includes lessees of real property whose lease term extends at least ten years from the date of the petition."

SECTION 4. *Appropriation.* There is hereby appropriated out of the general fund of the State of Hawaii the sum of $50,000, or so much thereof as may be necessary, to the State land use commission for the expense of establishing, operating and administering the functions of the commission for the period beginning July 1, 1961, and ending June 30, 1962.

SECTION 5. If any section or part of this Act is invalid for any reason, such invalidity shall not affect the validity of the remaining sections and parts of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 11, 1961)

APPENDIX A-2

ACT 32
H. B. No. 1070
H. D. 1

A BILL FOR AN ACT

AMENDING SECTION 98 H-4, REVISED LAWS OF HAWAII 1955, AS AMENDED, RELATING TO THE LAND USE LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to reduce the number of days in which petitions for boundary changes may be processed. Experience has shown that the number of days required to process the petition under the present Act has caused undue hardship on some landowners.

SECTION 2. Section 98H-4, Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

"Section 98H-4. *Amendments to district boundaries.* Any department or agency of the state or county, or any property owner or lessee may petition the commission for a change in the boundary of any district. Within five days of receipt, the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within forty-five days after receipt of the petition by the county, the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. Upon written request by the county planning commission, the commission may grant an extension of not more than fifteen days for the receipt of such comments and recommendations. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning agency for comments and recommendations in the same manner as any other request for a boundary change.

"After sixty days but within one hundred and twenty days of the original receipt of a petition, the commission shall advertise a public hearing to be held on the appropriate island in accordance with the requirements of section 98H-3. The commission shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing. Within a period of not more than ninety days and not less than forty-five days after such hearing, the commission shall act upon the petition for change. The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified and either of the following requirements has been fulfilled: (a) the petitioner has submitted proof that the land is usable and adaptable for the use it is proposed to be classified, or (b) conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable."

SECTION 3. This Act shall take effect upon its approval.

Approved May 5, 1965—(S) John A. Burns, Governor of the State of Hawaii

APPENDIX A-3

ACT 205
H. B. No. 1016
H. D. 1
S. D. 3

A BILL FOR AN ACT
RELATING TO LAND USES IN THE STATE OF HAWAII

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Experience and research to date on the application of the provisions of Act 187, Session Laws of Hawaii 1961, have demonstrated the need for clarifying the provisions of said Act 187 not only with reference to the division of authority between the Land Use Commission and the counties, but also with respect to the hardship caused to land owners who wish to develop lands included in agricultural districts but where such lands are not at all suitable for agricultural uses. The purpose of this Act, therefore, is to clarify the provisions of Act 187, Session Laws of Hawaii 1961, in order to provide for a more effective administration and a more equitable application of the provisions of said Act 187.

SECTION 2. Chapter 98H, Revised Laws of Hawaii 1955 (1961 Supplement), relating to the State Land Use Commission, is hereby amended to read:

"CHAPTER 98H

STATE LAND USE COMMISSION

"Section 98H-1. Establishment of the commission. The State land use commission, hereinafter called the commission, is hereby created. The commission shall consist of seven members who shall hold no other public office and shall be appointed in the manner and serve for the term, set forth in section 14A-3. One member shall be appointed from each of the senatorial districts and one shall be appointed at large. The chairman of the board of land and natural resources and the director of the department of planning and economic development shall serve as ex-officio voting members. The commission shall elect its chairman from one of its appointed members. The members shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties.

The commission shall be a part of the department of planning and economic development for administration purposes, as provided for in section 14A-4.

The commission may engage employees necessary to perform its duties, including administrative personnel and one or more field officers. One field officer shall be named as the executive officer of the commission. Field officers shall be persons qualified in land use analysis. Departments of the State government shall make available to the commission such data, facilities and personnel as are necessary for it to perform its technical duties. The commission may receive and utilize gifts and any funds from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities, accomplishments and recommendations to the governor and to the legislature through the governor.

"Section 98H-2. Districting and classification of lands. There shall be four major land use districts into which all lands in the State shall be placed: urban, rural, agricultural and conservation. The 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 (a) in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included; (b) in the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included; (c) in the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with high capacity for intensive cultivation; and (d) in the establishment of the boundaries of conservation districts, the 'forest and water reserve zones' provided in section 19-70, are hereby re-named 'conservation districts' and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 19-70, 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.

Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentration of people, structures, streets and urban level of services are absent, and where small farms are intermixed with such low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; and open area recreational facilities.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness and beach; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept.

"Section 98H-3. Adoption of district boundaries. The commission shall prepare district classification maps not later than January 1, 1964 showing all the proposed boundaries of conservation, agriculture, rural and urban districts. At least one public hearing shall be held in each county prior to the final adoption of the district boundaries for that county. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the planning commission of the appropriate county. If there is no planning commission, then the notice shall be published at least 20 days prior to the hearing in a newspaper of general circulation within the county. Such notice shall indicate the time and place that the maps showing the proposed district boundaries within the county may be inspected prior to the hearing.

At the hearing, interested owners, lessees, officials, agencies and individuals may appear and be heard. They shall further be allowed at least 15 days following the final public hearing held in the county to file with the commission a written protest or other comments or recommendations. The district boundaries within a county shall be adopted in final form within a period of not more than 90 days and not less than 45 days from the time of the last hearing in the county, provided that district boundaries for all counties shall be adopted in final form no sooner than May 1, 1964, nor later than July 1, 1964. The county concerned shall be furnished with copies of any written protest, comment or recommendation. The commission shall prepare and furnish each county with copies of classification maps for that county showing the district boundaries adopted in final form.

"Section 98H-4. Amendments to district boundaries. Any department or agency of the State or county, or any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent. Within 5 days of receipt the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within 90 days after receipt of the petition the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning agency for comments and recommendations in the same manner as any other request for a boundary change.

After 100 days but within 210 days of the original receipt of a petition the commission shall advertise a public hearing to be held on the appropriate island in accordance with the requirements of section 98H-3. The commission shall notify such persons and agencies that may have an interest in the subject manner of the time and place of the hearing. Within a period of not more than 90 days and not less than 45 days after such hearing the commission shall act upon the petition for change. The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified and either of the following requirements has been fulfilled: (a) the petitioner has submitted proof that the land is usable and adaptable for the use it is proposed to be classified, or (b) conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable.

"Section 98H-5. Zoning.

(a) Except as herein provided, the powers granted to counties under section 138-42 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to the provisions of section 19-70.

(b) Within agricultural districts, uses compatible to the activities described in Sec. 98H-2 as determined by the commission shall be permitted. Other uses may be allowed by special permits issued pursuant to the provisions of this chapter. The county standards for agricultural subdivision existing as of May 1, 1963, shall constitute the minimum lot sizes of agricultural districts within the respective counties.

(c) Unless authorized by special permit issued pursuant to the provisions of this chapter, only the following uses shall be permitted within rural districts:

(1) Low density residential uses;
(2) Agricultural uses; and
(3) Public, quasi-public and public utility facilities.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre.

"Section 98H-6. Special permit. The county planning commission and the zoning board of appeals of the City and County of Honolulu may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which his land is located or the zoning board of appeals in the case of the City and County of Honolulu for permission to use his land in the manner desired.

The planning commission, or the zoning board of appeals as the case may be, shall conduct a hearing within a period of not less than 30 nor more than 120 days from the receipt of the petition. The planning commission or the zoning board of appeals shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The planning commission or zoning board of appeals may, under such protective restrictions as may be deemed necessary, permit such desired use, but only when such use would promote the effectiveness and objectives of this chapter. The planning commission or the zoning board of appeals shall act on such petition not earlier than 15 days after the public hearing. A decision in favor of the applicant shall require a majority vote of the total membership of the planning commission or of the zoning board of appeals, which shall be subject to the approval of the commission. A copy of the decision together with the findings shall

be transmitted to the commission within 10 days after the decision is rendered. Within 45 days after receipt of the county agency's decision, the commission shall act to approve or deny. A denial either by the county agency or by the commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure.

"Section 98H-7. Adoption of regulations. The commission shall by January 1, 1964, prepare proposed regulations relating to matters within its jurisdiction. At least one public hearing shall be held in each county in the manner provided in section 98H-3 of this chapter prior to the final adoption of its regulations. The final regulations for the state shall be adopted within a period of not more than 90 days and not less than 45 days from the time of the final hearings in the state provided that its regulations shall be adopted not later than July 1, 1964.

"Section 98H-8. Non-conforming uses. The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although such use, including lot size, does not conform to the provisions of this chapter; provided that no non-conforming building shall be replaced, reconstructed or enlarged or changed to another non-conforming use and no non-conforming use of land shall be expanded or changed to another non-conforming use. In addition, if any non-conforming use of land or building is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.

"Section 98H-9. Amendments to regulations. By the same methods set forth in section 98H-4, a petition may be submitted to change, or the commission may initiate a change in its regulations. No such changes shall, however, be made unless a hearing or hearings are held in each of the counties. Within not less than 45 and not more than 90 days after the last of such hearings, the commission shall act to approve or deny the requested change in regulations. Such petition for a change shall be based upon proof submitted that conditions exist that were not present when the regulation was adopted or that the regulation does not serve the purposes of this chapter.

"Section 98H-10. Use of field officers. Notwithstanding the provisions of section 98H-4 requiring a hearing by the full commission, if any application requiring a hearing is received which the commission in the course of its regular meetings shall not be able to hear for more than 60 days, it may authorize a field officer to conduct such a hearing and make a recommendation, provided all other necessary rules for hearings are adhered to. The recommendations of the field officer shall be submitted to the commission at its next meeting, and any recommendation, or rulings by the commission as a result of this recommendation, shall be subject to a review of the full commission at the next hearing date scheduled for the county in which the land concerned is located, if either the commission or the applicant notified the other party at least 20 days prior to this date.

"Section 98H-11. Periodic review of districts. Irrespective of changes and adjustments that it may have made, the commission shall make a comprehensive review of the classification and districting of all lands and of the regulations at the end of each five years following the adoption thereof. The assistance of appropriate State and county departments shall be secured in making this review and public hearings shall be held in each county in accordance with the requirements set forth for the adoption in final form of district boundaries and regulations under this chapter.

"Section 98H-12. Enforcement. The appropriate county officer or agency charged with the administration of county zoning laws shall enforce within each county the use classificaton districts adopted by the commission and shall report to the commission all violations thereof.

"Section 98H-13. Penalty for violation. Any person who violates any provision of this chapter, or any regulation established pursuant to this chapter, shall be fined not more than $1,000.

"Section 98H-14. Adjustments of assessing practices. Upon the adoption of district boundaries, certified copies of the classification maps showing the district boundaries shall be field with the department of taxation. Thereafter, the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted

"Section 98H-15. Conflict. Except as specifically provided by this chapter and the regulations adopted thereto, neither the authority for the administration of the provisions of section 19-70 nor the authority vested in the counties under the provisions of section 138-42 shall be affected."

SECTION 3. Chapter 128.2 (a) is amended by adding the words "a rural district" between the words "agricultural district" and "and/or a conservation district".

SECTION 4. All district boundaries, interim and permanent, and all actions of the commission heretofore established or taken pursuant to the provisions of Act 187, Session Laws of Hawaii 1961, are hereby continued in full force and effect; provided that within such districts so established except conservation districts, the zoning regulations of the county shall apply.

SECTION 5. If any section or portion of this Act is held invalid for any reason, such invalidity shall not affect the validity of the remaining sections or portions of this Act.

SECTION 6. This act shall take effect upon its approval.

APPENDIX B

STATE OF HAWAII
LAND USE COMMISSION

PART I. RULES OF PRACTICE AND PROCEDURE*

Sub-Part A. Rules of General Applicability

1.1 These rules govern procedure before the Land Use Commission of the State of Hawaii under Act 187, Session Laws of Hawaii 1961, as now or hereafter amended, and such other related acts as may now or hereafter be administered by the Land Use Commission. They shall be construed to secure the just, speedy and inexpensive determination of every proceeding.

1.2 *Definitions*

(a) As used in the rules and regulations prescribed by the Commission, except as otherwise required by the context:

(1) The term "Commission" means the Land Use Commission.

(2) The term "Act" means Act 187, SLH 1961 as now or hereafter amended.

(3) Unless otherwise indicated the term "section" refers to a section of Act 187, SLH 1961 as now or hereafter amended.

(4) Petitioner. In proceedings involving petitions or applications for permission or authorization which the Commission may give under statutory or other authority delegated to it, the parties on whose behalf the petitions or applications are made are styled petitioners.

(5) Proceedings. The term "proceeding" as used in these rules shall mean the Commission's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the Commission's jurisdiction, initiated by a filing or submittal or a Commission notice of order, and shall include (a) proceeding involving the adoption of district boundaries; (b) proceedings involving the adoption of land use regulations; (c) petitions or applications for the granting of any right, privilege, authority or relief under or from any provision of the Act or of any regulation or requirement made pursuant to a power granted by the Act; (d) an investigation or review instituted or requested to be instituted by the Commission; (e) other proceedings involving the adoption, amendment or repeal of any rule or regulation of the Commission, whether initiated by Commission order or notice or by petition of an interested person.

(6) Party. The term "party", wherever used in these rules, shall mean each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in a proceeding. The Attorney General, in his capacity as counsel for the Commission, shall be present at all proceedings governed by these rules. The Attorney General or his representative shall be designated as "Counsel for the Commission", and shall be served with copies of all

**Adopted by the Land Use Commission at the action meeting held in Kauai County July 8, 1969. Filed in the Lieutenant Governor's Office July 25, 1969, effective August 1969.*

papers, pleadings, maps and documents as are all other parties to the same proceeding.

(b) Unless otherwise specifically stated, the terms used in rules and regulations promulgated by the Commission pursuant to powers granted by statute shall have the meaning defined by such statute, or if not defined by statute, in accordance with their plain and ordinary meaning.

(c) A rule or regulation which defines a term without express reference to the statute or to the rules and regulations, or to a portion thereof, defines such terms for all purposes as used both in the statute and in the rules and regulations, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to the feminine gender.

1.3 *The Commission*

(a) Office. The office of the Commission is at Honolulu, Hawaii. All communications to the Commission shall be addressed to the Land Use Commission, Department of Planning and Economic Development, State of Hawaii, Honolulu, Hawaii, unless otherwise specifically directed.

(b) Hours. The office of the Commission shall be open from 7:45 a.m. to 4:30 p.m. of each week-day unless otherwise provided by statute or executive order.

(c) Sessions. The Commission meets and exercises its powers in any part of the State of Hawaii. All meetings of the Commission shall be open to the public, except that the Commission may meet in executive session, from which the public may be excluded, by a recorded vote of not less than two-thirds of the total membership of the Commission. Nor order, regulation, ruling, contract, appointment or decision shall be finally acted upon at such executive session.

(d) Quorum and number of votes necessary to validate acts. Unless otherwise specifically provided by statute, a majority of all the members to which the Commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the Commission is entitled shall be necessary to make any action of the Commission valid; provided, however, that any change in the boundary of any district pursuant to Section 205-4, Hawaii Revised Statutes, shall require the concurrence of six members.

(e) Executive Officer.

(1) The executive officer shall have charge of the Commission's official records and shall be responsible for the maintenance and custody of the docket, files, and records of the Commission, including the transcripts of testimony and exhibits, with all papers and requests filed in proceedings, the minutes of all action taken by the Commission and all its findings determinations, reports, opinions, orders, rules, regulations, and approved forms. The executive officer shall also prepare for the Commission the draft of an annual report of the Commission's activities, accomplishments, and recommendations for submission to the Governor and to the Legislature through the Governor.

(2) Authentication of Commission action. All orders and other actions of the Commission shall be authenticated or signed by the executive officer or such other persons as may be authorized by the Commission.

(f) Field Officer.

(1) Defined. The term "field officer" as used in this part includes the executive officer of the Commission or any other employee qualified in land use analyses and authorized by the Commission to hold a hearing for the purpose of taking evidence and to make a recommendation to the Commission in a proceeding in which an application or petition has been filed with the Commission.

(2) Disqualification. A field officer assigned by the Commission to hold a hearing and to make a recommendation shall withdraw from a proceeding at any time he deems himself disqualified or he may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the Commission or by the executive officer to whom the Commission has delegated the matter for investigation.

(3) Powers. A field officer designated by the Commission to hold a hearing and to make a recommendation in a proceeding shall have the following powers:

(a) To give notice concerning and to hold hearings;
(b) To administer oaths and affirmations;
(c) To examine witnesses;
(d) To issue subpoenas;
(e) To rule upon offers of proof and receive relevant evidence;
(f) To regulate the course and conduct of the hearing;
(g) To hold conferences, before or during the hearing, for the settlement or simplification of issues;
(h) To rule on motions and to dispose of procedural requests or similar matters;
(i) Within his discretion, or upon the direction of the Commission, to certify any question to the Commission for its consideration and disposition;
(j) To make a recommendation to the Commission in writing to be acted upon by the Commission in accordance with the Act.
(k) To dispose of any other matter that normally and properly arises in the course of proceedings, and to take any other action authorized by these rules, by the Act, or by any other statute.

(4) The field officer's authority in each case will terminate either upon the submission of his recommendation to the Commission or upon the certification of the record in the proceeding to the Commission or when he shall have withdrawn from the proceeding upon considering himself disqualified, or when he has been withdrawn by the Commission for good cause found.

(5) The recommendations of the field officer or any ruling of the Commission made on the basis of his recommendations shall be subject to review by the Commission at the next hearing date scheduled for the county in which the land concerned is located, if either the Commission or the applicant or petitioner notifies the other party at least twenty days prior to that date.

(g) Requests and submittals. All documents required to be filed with the Commission shall be filed in the office of the Commission at Honolulu, Hawaii, within such time limits as prescribed by law, rules and regulations or by order of the Commission; copies of official documents, or opportunity to inspect public records shall be made to the Commission office.

1.4 *Public Records*

(a) The term "public record" as used in this part is defined as in Section 92-4, Hawaii Revised Statutes, and shall include all maps, rules, regulations, written statements, of policy or interpretation formulated, adopted or used by the Commission, all final opinions and orders, minutes of meetings of the Commission and any other material on file in the office of the Commission unless accorded confidential treatment pursuant to statute or the rules of the Commission.

(b) All public records will be available for inspection in the office of the Commission, Honolulu, Hawaii, during established office hours unless public inspection of such records is in violation of any State or Federal law; provided that, except where such records are open under any rule of court, the Attorney General may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the Commission, the State, or any governmental agency or subdivision is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character, reputation or business of any person.

(c) Copies of public records. Public records printed or reproduced by the Commission in quantity shall be given to any person requesting the same and paying the actual cost thereof. Photocopies of public records shall be made and given by the executive officer to any person upon request and upon payment of the actual cost thereof, and certified copies of extracts from public records shall also be given by the executive officer upon

request and upon payment of 20 cents a folio of one hundred words for such extracts.

(d) Requests for public information, for permission to inspect official records or for copies of public records will be handled with due regard for the dispatch of other public duties.

1.5 *Appearances and Practice before the Commission*

(a) An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer or employee of a corporation or trust or association may represent the corporation, trust or association and an officer or employee of an agency of the State or a political subdivision of the State may represent such agency in any proceeding before the Commission.

(b) A person may be represented by or with counsel or any other person to whom he has given written or verbal authority in any proceeding under these rules.

(c) A person shall not be represented in any proceeding before the Commission or a hearing officer except as stated in paragraph (a) and (b) of this section.

(d) When an individual acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that under the provisions of these rules and the law, he is authorized and qualified to represent the particular person on whose behalf he acts. The Commission may at any time require any person transacting business with the Commission in a representative capacity to show his authority and qualification to act in such capacity.

(e) No person who has been associated with the Commission as a member, officer, employee or counsel shall be permitted at any time to appear before the Commission in behalf of or to represent in any matter, any party in connection with any proceeding or matter which such person has handled or passed upon while associated in any capacity with the Commission. No person appearing before the Commission in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would himself be precluded by this section from appearing before the Comimssion in such proceeding or matter.

(f) No person who has been associated with the Commission as a member, officer, employee or counsel thereof shall be permitted to appear before the Commission in behalf of, or to represent in any matter, any person in connection with any proceeding or matter which was pending before the Commission at the time of his association with the Commission unless he shall first have obtained the written consent of the Commission upon a verified showing that he did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during his association with the Commission.

Sub-Part B. Proceedings Before the Commission

1.6 *General*

(a) The Commission may on its own motion or on petition of any interested person or any agency of the State or County government hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules and regulations. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Commission shall, unless specifically prescribed in these rules be such as in the opinion of the Commission will best serve the purposes of such proceedings. Also, any rule in Part I, Rules of Practice and Procedure, may be suspended or waived by the Commission or the presiding officer to prevent undue hardship in any particular instance.

(b) Commencement of proceeding. Proceedings are commenced by order of the Commission upon its own motion, or by the filing of petition or application the processing of which necessitates a statutory hearing.

1.7 *Filing of Documents*

(a) All pleadings, submittals, petitions, reports, maps, exceptions, briefs, memoranda and other papers required to be filed with the Commission in any proceeding shall be filed with the executive officer of the Commission. Such papers may be sent by mail or hand carried to the Commission office in Honolulu, Hawaii, within the time limit, if any, for such filing. The date on which the papers are actually received by the Commission shall be deemed to be the date of filing. Applications for changes in the Land Use District Boundaries shall be filed on the prescribed application form supplied by the executive officer of the Commission.

(b) All papers filed with the Commission shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8½" x 14" in size except that tables, maps, charts and other documents may be larger, folded to the size of the documents to which they are attached.

(c) All papers must be signed in ink by the party signing the same or his duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(d) Unless otherwise specifically provided by a particular rule, regulation or order of the Commission, one original shall be filed.

(e) The initial document filed by any person in any proceeding shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

1.8 *Docket.* The executive officer shall maintain a docket of all proceedings and each proceeding shall be assigned a number.

1.9 *Computation of Time.* In computing any period of time prescribed or allowed by these rules or regulations or order of the Commission, the day of the act, event or default, after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less. A half holiday shall be considered as other days and not as a holiday.

1.10 *Continuances or Extensions of Time.* Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the Commission or its executive officer may (1) before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to be the result of excusable neglect.

1.11 *Amendment of Documents and Dismissal.* If any document initiating or filed in a proceeding is not in substantial conformity with the applicable rules or regulations of the Commission as to the contents thereof, or is otherwise insufficient, the Commission, on its own motion, or on motion of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing, if it relates to the same proceeding.

1.12 *Retention of Documents by the Commission.* All documents filed with or presented to the Commission may be retained in the files of the Commission. However, the Commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.

1.13 *Public Information.*

(a) Unless otherwise provided by statute, rule or order of the Commission, all information contained in any pleading, submittal, petition, statement, recommendation, report, map, exception, brief, memorandum or other document filed with the Commission pursuant to the requirements of a statute or rule or regulation or order of this Commission shall be available for inspection by the public.

(b) Confidential treatment may be requested for good cause where authorized by statute. For good cause shown, the Commission shall grant such request.

(c) Matters of public record may be inspected in the office of the Commission in Honolulu during regular officer hours. Copies of matters of public record will be furnished to any person upon request and upon payment of the charges thereof as set forth in Rule 1.4.

1.14 *Commission Decision.* All final orders, opinions or rulings entered by the Commission in a proceeding shall be served upon the parties or persons participating in the proceeding by regular mail or personal delivery by the Commission and shall be released for general publication. Copies of such published material shall be available for public inspection in the office of the Commission or may be obtained upon request and upon payment of charges, if any.

1.15 *Substitution of Parties.* Upon motion and for good cause shown, the Commission may order substitution of parties, except that in the case of death of a party substitution may be ordered without the filing of a motion.

1.16 *Consolidations.* The Commission, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

Sub-Part C. Rules Applicable to Amendments to Rules and Regulations and District Boundaries and to Declaratory Rulings and to Special Permits.

1.17 *Notice of Proposed Amendment.*

(a) When pursuant to a petition therefor, or upon its own motion, the Commission proposes to amend a district boundary or rule or regulation, a notice of the proposed amendment will be published in the respective counties as set forth in Sections 205-4 and 205-9, Hawaii Revised Statutes, and such notices shall also be mailed to the Planning Commission of the county or counties involved and to all persons who made a timely request for advance notice of the Commission's proceedings.

(b) A notice of the proposed amendment will include:

(1) A statement of the date, time and place where the public hearing will be held;

(2) Reference to the authority under which the amendment is proposed;

(3) A statement of the substance of the proposed amendment;

(4) Docket number assigned to the proceeding; and

(5) In the case of a proposal to amend or review a district boundary, a statement of the time and place where maps showing the proposed or existing district boundaries within the county may be inspected prior to the public hearing.

1.18 *Further Notice of Amendment.* In any proceeding where the Commission deems it warranted, a further notice of the proposed amendment may be issued by publication thereof in a newspaper of general circulation in the State.

1.19 *Conduct of Hearing*

(a) Public Hearing. A public hearing shall be held at least once in the county or counties to be affected by the proposed amendment of district boundaries or rules or regulations.

(b) Presiding Officer. Each such hearing shall be presided over by the chairman of the Commission or by a field officer in the case where a field officer has been assigned to hear the matter. The hearing shall be conducted in such a way to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall take all actions necessary to insure the orderly conduct of the hearing.

(c) Continuance of hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but such hearing may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(d) Order of proceeding. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(e) Submission of evidence. All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, be sworn, after which he shall state his name, address, and whom he represents at the hearing, and shall give such other information respecting his appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any other representative of the Commission, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it.

(f) Oral and written presentation at such hearing. All interested persons or agencies of the State or political subdivisions of the State will be afforded an opportunity to submit data, views or arguments which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the Commission within fifteen days following the close of public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed amendment. The Planning Commission of the county concerned and such other persons designated by the presiding officer shall be furnished with copies of any written protest or other comments or recommendations, and they shall be afforded a reasonable time within which to file comments in reply to the original protest, comments or recommendations. The period for filing written protest, comments or recommendations may be extended by the presiding officer for good cause.

(g) Transcript of the evidence. Unless otherwise specifically ordered by the Commission or the presiding officer, testimony given at the hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record.

1.20 *Commission Action.* At the close of each public hearing, the Commission shall announce the dates within which its decision shall be made. The Commission will consider all relevant comments and materials of record before taking final action in a proceeding.

1.21 *Petition for Amendment of District Boundaries or Rules or Regulations or Special Permits.*

(a) Scope. As applicable any owner and lessee and any interested person, or any agency of the State or County government may petition the Commission for the amendment of established district boundaries or of rules or regulations and for requests for special permits pursuant to Chapter 205, Hawaii Revised Statutes.

(b) Form and contents. Petitions shall conform to the requirements of Rule 1.7. Petitions for amendments of boundaries or regulations, for issuance of a special permit, or for other action shall specify the amendment or permit or other action desired and state concisely the nature of the petitioner's interest in the subject matter and his reasons for seeking the amendment, permit, or other action and shall include any facts, views, arguments and data deemed relevant by petitioner. The Commission may also require the petitioner to serve other persons or governmental agencies known to be interested in the proposed amendment or action. No request for the amendment or action which does not conform to the requirements set forth above will be considered by the Commission.

(c) Procedures. Petitions involving proceedings before the Commission will be given a docket number and shall become matters of public record. The Commission shall set and give notice of public hearings pursuant to the provisions of the Act and rules and regulations. The provisions of this section shall not operate to prevent the Commission, on its own motion, from acting on any matter disclosed in any petition.

1.22 *Fee Accompanying Petition.* All petitions requiring a public hearing shall be accompanied by a fee of Fifty Dollars ($50.00) to partially cover the cost of public hearing and publication. The Com-

mission shall waive the requirement of this fee for petitions by any governmental agency.

1.23 *Reconsideration of Petitions.* The Commission shall not reconsider its action on any petition after the period within which the Commission is required to act on such petition under Chapter 205, Hawaii Revised Statutes, or its rules and regulations. The Commission further shall not reconsider its action on any petition after 6:00 p.m. of the first week day following the date of such action.

1.24 *Re-Application by Petitioner.* The Commission shall not consider any petition covering substantially the same request for substantially the same land as had previously been denied by the Commission within one year of the date of such denial unless the petitioner submits significant new data or additional reasons which substantially strengthen his petition, provided that in no event shall any such new petition be accepted within six (6) months of the date of such previous denial.

1.25 *Petition for Declaratory Ruling*

(a) Form and Contents. On petition of an interested person, the Commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the Commission. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds promoting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of Rule 1.7.

(b) Additional data and supporting authorities. The Commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) Dismissal. The Commission may, without notice or hearing, dismiss a petition for declaratory ruling which fails in material respect to comply with the requirements of this part, or for other good and sufficient cause.

(d) Request for hearing. Altho igh in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the Commission may in its discretion order such proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for declaratory ruling shall set forth in detail in his request the reasons why the matters alleged in the petition together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.

(e) Declaratory ruling on Commission's own motion. Notwithstanding the other provisions of this sub-part, the Commission may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty.

APPENDIX C

STATE OF HAWAII
LAND USE COMMISSION
PART II. STATE LAND USE DISTRICT REGULATIONS*

Sub-Part A. General Provisions

2.0 *Title.* These regulations shall be known as the State Land Use District Regulations.

2.1 *Purpose.* These rules and regulations are intended to clarify and implement Act 187, S.L.H. 1961 as now or hereafter amended. They are intended to preserve, protect and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii.

2.2 *Minimum Requirement.* These rules and regulations shall be minimum requirements only. In the event that any County imposes stricter requirements, the County's ordinances or regulations shall be controlling in that County.

2.3 *Definitions*

(a) The term "Land Use Law" shall mean Act 187, S.L.H. 1961 as now or hereafter amended.

(b) The term "Commission" shall mean the Land Use Commission of the State of Hawaii.

(c) The term "Map" shall mean the Land Use District Maps of the Land Use Commission.

(d) The term "District" shall mean an area of land, including lands underwater, established as an Urban, Agricultural, Conservation or Rural District.

(e) The term "owner" shall include lessees of real property.

(f) The term "Planning Commission" shall mean the County Planning and Traffic Commission or the City and County Planning Commission or the Zoning Board of Appeals of the City and County of Honolulu.

(g) The term "State" shall mean the State of Hawaii.

(h) The term "building" shall mean any structure having a roof, including, but not limited to attached carports and such devices.

(i) The term "accessory building or use" shall mean a subordinate building or use which is incidental to and customary with a permitted use of the land.

(j) The term "public institution and building" shall mean any institution or building being used by governmental agency for public purpose.

(k) The term "dwelling" shall mean a building designed or used exclusively for residential occupancy, but not including home trailers, multi-unit buildings, mobile homes, hotels, motels, boarding and lodging houses, tourist courts or tourist homes.

(l) The term "farm dwelling" shall mean a single-family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling.

(m) The term "single-family dwelling" shall mean a dwelling occupied exclusively by one family.

(n) The term "family" shall mean an individual or two or more persons related by blood, marriage or adoption; or a group comprising not more than five persons, not related by blood, marriage or by adoption.

(o) The term "lot" shall mean a parcel of land.

(p) The term "lot of record" shall mean a lot recorded in the land records of the State of Hawaii.

(q) The term "premises" shall mean a lot together with all buildings and structures thereon.

(r) The term "structure" shall mean and include any constructed or erected material or combination of materials, which requires location on the ground, including, but not limited to, buildings, radio towers, sheds, storage bins, fences and signs.

(s) The term "sign" shall mean and include an identification, description, illustration or device which is affixed to a building, structure or land and which directs attention to a product, place, activity, person, institution or business.

(t) The term "non-conforming use" shall mean the use of a building or structure, or of a parcel of land, lawfully existing at the time of adoption of the State Land Use District Regulations and Boundaries or subsequent amendments made thereto, that does not conform to the State Land Use District Regulations and Boundaries.

(u) The term "non-conforming structure" shall mean a building or structure, lawfully existing at the time of adoption of the State Land Use District Regulations and Boundaries or subsequent amendments made thereto, that does not conform to the State Land Use District Regulations and Boundaries.

(v) The term "zone of wave action" shall mean that portion of the shore lying between the sea and any visible marks which indicate the farthest extent to which the maximum annual wave advances inland including but not limited to (1) the vegetation line or line of debris (2) the crest of the sand or dune line or (3) the rocky shore.

**Adopted by the Land Use Commission at the action meeting held in Kauai County July 8, 1969. Filed in the Lieutenant Governor's office July 25, 1969, effective August 1969.*

(w) The term "land" shall include areas under water within the boundaries of the State.

(x) The term "economic feasibility" shall mean the degree to which (1) the market demand for the goods and services proposed by the petitioner is accurately estimated and appears to be substantial enough to indicate a probability of sufficiently profitable endeavor to justify the rezoning requested, and (2) the costs of providing public services will be overcome by the public revenues to be accrued through taxes and other sources or will otherwise be offset by effects beneficial to the economy of the State.

2.4 *Definitions Pertaining to Grammatical Usage and Construction*

(a) Words used in the present tense include the future tense.

(b) The singular number includes the plural; and the plural, the singular.

(c) The word "shall" is always mandatory except where its usage in these rules and regulations requires a less absolute application to be consistent with the intent and spirit of the Land Use Law and of these regulations.

(d) The word "may" is always permissive.

(e) The word "persons" includes a firm, partnership, or corporation, as well as an individual.

(f) Terms not herein defined shall have the meanings customarily assigned to them.

Sub-Part B. Lande Use Districts

2.5 *Districts and District Maps.* In order to effectuate the purposes of the Land Use Law, all the lands in the State shall be divided and placed into one of the four (4) Districts:

"U" Urban District
"A" Agricultural District
"C" Conservation District
"R" Rural District

The boundaries of the above-mentioned Districts are shown on the maps on file in the Commission office. Not all ocean areas and off-shore and outlying islands of the State in the Conservation District are shown when deemed unnecessary to do so. The maps shall be designated as the "Land Use District Maps of the State of Hawaii".

2.6 *Standards for Determining District Boundaries.* The following standards shall be used in establishing the district boundaries. They shall also be used as guides for the periodic review of district boundaries, for the granting of amendments to the district boundaries and for other changes and adjustments.

2.7 *"U" Urban District.* In determining the boundaries for the "U" Urban District, the following standards shall be used:

(a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

(b) It shall take into consideration the following specific factors:
(1) Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
(2) Substantiation of economic feasibility by the petitioner.
(3) Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection.
(4) Goals and objectives of the State and County.
(5) Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.

(c) It shall include plantation camps that are characterized by residences, school, businesses and other related uses.

(d) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions.

(e) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, particularly when indicated for future urban use on State or County General Plans.

(f) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State and County General Plans.

(g) Lands with a high capacity for intensive cultivation shall not be included in this District when other lands are available that can adequately serve the urban needs.

(h) Lands which do not conform to the above standards may be included within this District:
(1) When surrounded by or adjacent to existing urban development; and
(2) Only when such lands represent a minor portion of this District.

(i) It shall not include lands which will contribute towards scattered urban developments.

(j) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

2.8 *"A" Agricultural District.* In determining the boundaries for the "A" Agricultural District, the following standards shall apply:

(a) Lands with a high capacity for agricultural production shall be included in this District except as otherwise provided for in other sections of these regulations.

(b) Lands with significant potential for grazing or for other agricultural uses shall be included in this District except as otherwise provided for in other sections of these regulations.

(c) Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District.

(d) Lands in intensive agricultural uses shall not be taken out of this District if it will significantly impair economical agricultural production.

(e) Lands not included in an Agricultural District and of indeterminate production potential may be included in this District at such time as the productive capacity or potential of the land is demonstrated to the satisfaction of the Land Use Commission by the owner or by a State, County or Federal Agency.

2.9 *"C" Conservation Districts.* In determining the boundaries for the "C" Conservation District, the following standards shall apply:

(a) Lands necessary for protecting watersheds, water sources and water supplies shall be included in this District except as otherwise provided for in other sections of these regulations.

(b) Lands susceptible to floods, and soil erosion, lands undergoing major erosion damage and requiring corrective attention by State or Federal Government, and lands necessary for the protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami and flooding, to volcanic activity and landslides may be included in this District.

(c) Lands used for national or state parks may be included in this District.

(d) Lands necessary for the conservation, preservation and enhancement of scenic, historic or archaeologic sites and sites of unique physiographic or ecologic significance shall be included in this District except as otherwise provided for in other sections of these regulations.

(e) Lands necessary for providing and preserving parklands, wilderness and beach reserves, and for conserving natural ecosystems of endemic plants, fish and wildlife, for forestry, and other related activities to these uses shall be included in this District except as otherwise provided for in other sections of these regulations.

(f) Lands having an elevation below the maximum inland line of the zone of wave action, and all marine waters, fish ponds and tide pools of the State shall be included in this District unless otherwise designated on the district maps. All off-shore and outlying islands of the State of Hawaii are classified Conservation unless otherwise indicated.

(g) Lands with topography, soils, climate or other related environmental factors that may not be normally adaptable or presently needed for urban, rural or agricultural use, shall be included in this District, except where such lands constitute areas not contiguous to the Conservation District.

(h) Lands with a general slope of 20% or more which provide for open space amenities and/or scenic values shall be included in

this District except as otherwise provided for in other sections of these regulations.

(i) Lands suitable for farming, flower gardening, operation of nurseries or orchards, growing of commercial timber, grazing, hunting, and recreational uses including facilities accessory to such uses when said facilities are compatible with the natural physical environment, may be included in this District.

2.10 *"R" Rural District.* In determining the boundaries for the "R" Rural District, the following standards shall apply:

(a) Areas consisting of small farms shall be included in this District.

(b) It shall include activities or uses as characterized by low density residential lots of not less than one-half (½) acre and a density of not more than one-single family dwelling per one-half (½) acre except that it shall not include areas where "city-like" concentrations of people, structures, streets and urban level of services are present.

(c) Generally, parcels of land not more than five (5) acres shall be included in this District.

(d) It may include other parcels of land, which are contiguous to or contained within this District and are not suited to low density residential uses or for small farm or agricultural uses.

(e) Parcels of land consisting of small farms needs not be included in this District if their inclusion will alter the general characteristics of the area.

2.11 *Interpretation of District Boundaries*

(a) Except as otherwise provided, a district name or letter appearing on the district maps applies throughout the whole area bounded by the district boundary lines.

(b) The following rules shall apply whenever uncertainty exists with respect to the boundaries of the various Districts:

(1) Whenever a district line falls within a street, alley, canal, navigable or non-navigable stream or river, it shall be deemed to be in the midpoint of the foregoing. If the actual location varies slightly from the location as shown on the district maps, then the actual location shall be controlling.

(2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling.

(3) Unless otherwise indicated, the district lines shall be determined by the use of the scale contained on the map.

(4) All water areas within the State are considered to be within a use district and controlled by the applicable district regulations.

(c) Whenever subparagraphs (a) and (b) mentioned hereinabove cannot resolve an uncertainty concerning the location of any district line, the Land Use Commission, upon written application or upon its own motion, shall determine the location of such district lines.

2.12 *Land Use District Maps.*
The Land Use District Maps, showing all existing boundaries, shall be kept on file in the Commission office.

Sub-Part C. Land Use Regulations

2.13 *Permissible Uses Within the "U" Urban District.*
Any and all uses permitted by the Counties, either by ordinances or regulations, shall be allowed within this District.

2.14 *Permissible Uses Within the "A" Agricultural District.*
Except as otherwise provided, the following land and building uses are compatible and permitted within this District except when a county ordinance or regulation is more restrictive. Except as otherwise provided, uses not expressly permitted are prohibited.

(a) Growing of crops, including but not limited to flowers, foliage, fruits, forage and timber.

(b) Game and fish propagation.

(c) Raising of livestock, including but not limited to poultry, bees, fish or other domestic animals.

(d) Farm dwellings, farm buildings, or activities or uses related to farming and animal husbandry.

(e) Public institutions and buildings which are necessary for agricultural practices.

(f) Public and private "open area" types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and over-night camps.

(g) Public, private, and quasi-public utility lines, transformer stations, etc., and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures.

(h) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest.

(i) Roadside stands for the sale of agricultural products grown on the premises.

(j) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-permitted uses.

2.15 *Permissible Uses Within the "C" Conservation District.*
Any and all uses permitted by regulations of the Department of Land and Natural Resources pursuant to the provisions of Section 183-4, Hawaii Revised Statutes, shall be allowed within this District.

2.16 *Permissible Uses Within the "R" Rural District.*
Except as otherwise provided, the following land and building uses are permitted within this District except when county ordinances or regulations are more restrictive. Uses not expressly permitted are prohibited, except as otherwise provided.

(a) Any and all uses permitted under Rule 2.14 relating to agricultural uses and those uses that are compatible within the Agricultural District.

(b) Low density residential uses with a minimum lot size of one-half (½) acre. There shall be no more than one-single family dwelling per one-half (½) acre.

(c) Public, quasi-public and private utility facilities.

Sub-Part D. Non-Conformance

2.17 *Statement of Intent.*
The regulations contained in this Sub-Part D are intended to reasonably expedite the eventual elimination of existing uses or structures that are not in conformity with the provisions of this part because their continued existence violates basic concepts of health, safety and welfare as well as principles of good land use. However, in applying the aforesaid regulations, no elimination of non-conforming uses or structures shall be effected so as to cause unreasonable interference with established property rights.

2.18 *Non-Conforming Uses of Structure.*

(a) Any lawful use of lands or buildings existing at the effective date of these regulations may be continued even though such uses do not conform to the provisions hereof.

(b) Except as otherwise provided, the following provisions shall apply to non-conforming uses or structures within any District:

(1) It shall be changed to another non-conforming use or structure.

(2) It shall not be expanded or increased in intensity of use.

(3) It shall not be re-established after discontinuance and abandonment for a continuous period of one (1) year.

2.19 *Non-Conforming Areas and Percels*

(a) A lot of record may be occupied by any use permitted by these regulations, including a single-family dwelling; provided, however, this exception shall not apply to subdivisions that have not received proper approval by the Counties.

(b) Any proposed subdivision of land which is not in conformity with these regulations, but which has received approval by the County having jurisdiction on or before the date of adoption of these regulations, shall be permitted as a non-conforming area subject to the ordinances and regulations of the County. All lots within the non-conforming area shall be considered as non-conforming parcels.

(c) Any parcel of land which is in a Rural District and which is smaller than one-half (½) acre, shall be deemed a non-conforming parcel.

2.20 *Casual or Illegal Use of Land*
A casual, intermittent, temporary, or illegal use of lands or buildings shall not be sufficient to establish the existence of a non-conforming use.

2.21 *Existence of Non-Conforming Use is a Question of Fact*
Whether a non-conforming use exists shall be a question of fact and shall be decided by the County Planning Commission after public notice and hearing.

2.22 *Illegal Non-Conforming Uses*
An illegal non-conforming use of lands or buildings shall not be validated by the adoption of these regulations.

Sub-Part E. Special Permits

2.23 *Petition Before County Planning Commission*
Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural or rural use may petition the County Planning Commission within which his land is located for permission to use his land in the manner desired. If approved, the County Planning Commission shall forward the petition to the Commission for its action as hereinafter provided.

2.24 *Test to be Applied*
Certain "unusual and reasonable" uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use".
(a) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
(b) That the desired use would not adversely affect surrounding property.
(c) Such use would not reasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
(d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
(e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the District.
(f) That the proposed use will not substantially alter or change the essential character of the land and the present use.
(g) That the proposed use will make the highest and best use of the land involved for the public welfare.

2.25 *Condition to be Established*
The County Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, which time limit shall be a condition of the special permit. If the permitted use is not substantially established to the satisfaction of the County Planning Commission within the specific time, it may revoke the permit. The County Planning Commission may with Land Use Commission concurrence extend the time limit if it deems that unusual circumstances warrant the granting of such an extension.

2.26 *Notice and Hearing*
The County Planning Commission shall conduct a hearing within a period of not less than 30 nor more than 120 days from the receipt of the petition. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the Planning Commission of the appropriate county

2.27 *Decision*
The County Planning Commission shall act on special permit petitions not earlier than 15 days after the public hearing but within a reasonable time thereafter.

2.28 *Submission of Records to the Land Use Commission*
(a) A copy of the decision of the County Planning Commission permitting such use, together with the Planning Commission's findings, shall be transmitted to the Commission within 10 days after the decision is rendered. Within 45 days after receipt of the county agency's decision, the Commission shall act to approve or deny the decision.
(b) The Planning Director shall transmit a written copy of said decision to the Commission together with, but not limited to, the following records:
(1) Formal petition;
(2) Intermediate rulings or motions rendered relative to said petition;
(3) Evidence received or considered, including oral testimony, exhibits, maps and a statement of matters officially noticed;
(4) Staff report or memorandum presented at the hearing;
(5) Findings of fact and reasons therein in support of the county agency's ruling in approving said petition.

2.29 *Uses Within Conservation District*
Uses of land within a Conservation District are governed by the Rules and Regulations of the State Department of Land and Natural Resources under Chapter 183, Hawaii Revised Statutes.

Sub-Part F. Amendments to District Boundaries and Regulations

2.30 *Procedure to Amend District Boundaries*
(a) Any department or agency of the State or County, or any property owner and lessee may petition the Commission for a change in the boundary of any District. The Commission may also initiate changes in district boundaries provided that such petition shall be submitted to the appropriate county planning agency for its comments and recommendations, and otherwise conforms with the requirements of Section 205-4, Hawaii Revised Statutes. Within five (5) days after receipt of the petition, the Commission shall forward a copy of the petition to the Planning Commission of the County wherein the land is located. Within 45 days after receipt of the petition, the County Planning Commission shall forward the petition, together with its comments and recommendations, to the Commission. Upon written request by the County Planning Commission, the Commission may grant an extension of not more than 15 days for the receipt of such comments and recommendations.
(b) The following guidelines are established to aid petitioners, whenever they are seeking an urban or rural use of lands situated in either a Rural, or Agricultural, or Conservation District, in determining whether they should proceed under a special permit or boundary change application.
(1) Whenever said land is contiguous to an Uran District and petitioner is seeking an urban use and his land is situated in either a Rural, or Agricultural, or Conservation District. petitioners should seek a boundary change.
(2) Whenever said land is contiguous to a Rural District and petitioner is seeking a rural use and his land is situated in an Agricultural or Conservation District, petitioner should seek a boundary change.
(3) Whenever a petition covers substantial acreage of lands and petitioner seeks a use other than for which it districted, he should seek a boundary change.
(c) Petitions for an urban use are also subject to the provisions of Section 2.32, below, regarding incremental zoning.

2.31 *Test to be Applied*
The Commission may permit amendment to any district boundary provided that the petitioner has submitted proof that the area is needed within the next five year period for a use other than that for which the District in which it is situated is classified and provided that either one of the following requirements has been fulfilled:
(a) The petitioner has submitted proof that the land is usable and adaptable for the use to which it is proposed to be classified; or
(b) Conditions and trends of development have so changed, since the adoption of the existing classification, that the proposed classification is reasonable.
The Commission shall not approve any amendments to the district boundaries that would be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

2.32 *Zoning in Increments*
(a) Petitioners submitting applications for rezoning to urban shall also submit proof that development of the premises in accordance with the demonstrated need therefor will be accomplished within 5 years from the date of Commission approval. In the event full urban development cannot reasonably be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments, each such increment to be completed within no more than a 5-year period.
(b) If it appears to the Commission that full development of the total premises cannot reasonably be completed within 5 years and that the incremental development plan submitted by the petitioner is reasonable, and if the Commission is satisfied that all other pertinent criteria for rezoning the premises or part thereof to Urban are present, then the Commission shall rezone to Urban only that portion of the premises which the petitioner plans to develop first and upon which it appears that total development can reasonably be completed within 5 years. At the same time, the Commission will indicate its approval of the future rezoning to Urban of the total premises requested by the petitioner, or so much thereof as shall be justified as appropriate therefor by the petitioner, such approval to indicate a schedule

of incremental rezoning to Urban over successive periods not to exceed 5 years each.

(c) Upon receipt of an application for rezoning to Urban of the second and subsequent increments of premises for which previous approval for incremental development has been granted by the Commission, substantial completion of the urban development, in accordance with the approved incremental plan, of the preceding increment zoned to Urban will be prima facie proof that the approved incremental plan complies with the requirements for boundary amendment.

2.33 *Performance Time*
Petitioners requesting amendments to District Boundaries shall make substantial progress in the development of the area rezoned to the new use approved within a period specified by the Commission not to exceed five (5) years from the date of approval of the boundary change. The Commission may act to reclassify the land to an appropriate District classification upon failure to perform within the specified period according to representations made to the Commission; provided that the Commission, in seeking such a boundary reclassification, complies with the requirements of Section 205-4, Hawaii Revised Statutes.

2.34 *Notice and Hearing*
After 60 days but within 120 days of the original receipt of a petition, the Commission shall advertise that a public hearing will be in the County in which the land is situated. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the Planning Commission of the appropriate County.

2.35 *Decision*
Within a period of not more than 90 days and not less than 45 days after such hearing, the Commission shall act upon the petition for change. The Commission may approve the change with six affirmative votes.

2.36 *Amendments to Regulations*
By the same methods set forth in Rule 2.30, a petition may be submitted to change, or the Commission may initiate a change in, these Regulations. No such change shall be made unless a hearing is held in each of the Counties. Within not less than 45 and not more than 90 days after the last of such hearings, the Commission shall act to approve or deny the requested change. Such petition for a change shall be based upon proof submitted that conditions exist that were not present when the Regulations were adopted or that the Regulations do not serve the purposes of the Land Use Law.

Sub-Part G. Miscellaneous Provisions

2.37 *Fees*
An application for a change in District Boundaries or in these Regulations shall be accompanied by a certified check for $50.00 payable to the State of Hawaii, for the purpose of partially defraying public hearing costs. The Commission shall waive this fee on any petition submitted by any governmental agency.

2.38 *Enforcement*
The appropriate county officer or agency charged with the administration of county zoning laws shall enforce within each County the use classification districts adopted by the Commission and shall report to the Commission all violations thereof.

2.39 *Periodic Review of Districts*
Irrespective of changes and adjustments that it may have made, the Commission shall make a comprehensive review of the classification and districting of all lands and of the Regulations at the end of each five years following the adoption thereof. The assistance of appropriate state and county departments shall be secured in making this review and public hearings shall be held in each County in accordance with the requirements set forth for the adoption in final form of district boundaries and Regulations.

2.40 *Penalties*
Any person who violates any provision of the Land Use Law or Regulations shall be fined not more than $1,000. Each day of a continuing violation shall be a separate offense.

2.41 *Adjustments of Assessing Practices*
Upon the adoption of district boundaries and any amendments thereto, the executive officer of the Commission shall file certified copies of the classification maps showing the district boundaries with the Department of Taxation. Thereafter the Department of Taxation shall, when making assessments of property within a District, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted.

2.42 *Dedicated Lands*
Notwithstanding any approval by the Director of Taxation of a petition of a landowner within any district to dedicate his land for specific ranching or other agricultural use under Section 246-12, Hawaii Revised Statutes, the Land Use Commission may change the Land Use District in which the land is situated.

2.43 *Validity*
If any section or part of these Regulations is held invalid for any reason whatsoever, such invalidity shall not affect the validity of the remaining sections or part of these Regulations.

2.44 *Effective Date*
These Regulations shall become effective when officially adopted in a manner provided by law.

APPENDIX D

STATE OF HAWAII
LAND USE COMMISSION

PART III. STATE LAND USE DISTRICT BOUNDARIES

3.1 The District Boundary maps for the entire State, on file in the Commission office, are numbered and/or named as follows:

(a) *COUNTY OF KAUAI*

Island of Niihau:
- Niihau

Island of Kauai:
- Key Map for Land Use District Maps, County of Kauai
- K-1 Makaha Point
- K-2 Kekaha
- K-3 Haena
- K-4 Waimea Canyon
- K-5 Hanapepe
- K-6 Hanalei
- K-7 Waialeale
- K-8 Koloa
- K-9 Anahola
- K-10 Kapaa
- K-11 Lihue

(b) *COUNTY OF MAUI*

Island of Molokai:
- Key Map for Land Use District Maps, County of Maui (Molokai and Lanai)
- Mo-1 Ilio Point
- Mo-2 Molokai Airport
- Mo-3 Kaunakakai
- Mo-4 Kamalo
- Mo-5 Halawa

Island of Lanai:
- Lanai

Island of Kahoolawe:
- Kahoolawe

Island of Maui:
- Key Map for Land Use District Maps, County of Maui (Maui)
- M-1 Honolua
- M-2 Lahaina
- M-3 Olowalu
- M-4 Kahakuloa
- M-5 Wailuku
- M-6 Maalaea
- M-7 Paia
- M-8 Puu O Kali
- M-9 Makena
- M-10 Haiku
- M-11 Kilohana
- M-12 Lualailua Hills
- M-13 Keanae
- M-14 Nahiku

M-15 Kaupo
M-16 Hana
M-17 Kipahulu

(c) *COUNTY OF HAWAII*

Island of Hawaii:

H-1 Makalawena
H-2 Keahole Point
H-3 Mahukuna
H-4 Keawanui Bay
H-5 Anaehoomalu
H-6 Kiholo
H-7 Kailua
H-8 Kealakekua
H-9 Honaunau
H-10 Kauluoa Point
H-11 Milolii
H-12 Manuka Bay
H-13 Hawi
H-14 Kawaihae
H-15 Puu Hinai
H-16 Puu Anahulu
H-17 Hualalai
H-18 Puu Lehua
H-19 Kaunene
H-20 Puu Pohakuloa
H-21 Papa
H-22 Pohue Bay
H-23-A Puu Hou
H-23-B Ka Lae
H-24 Honokane
H-25 Kamuela
H-26 Nohonaohae
H-27 Keamuku
H-28 Naohueleelua
H-29 Puu O Uo
H-30 Sulphur Cone
H-31 Alika Cone
H-32 Puu O Keokeo
H-33 Kahuku Ranch
H-34 Kukuihaele
H-35 Makahalau
H-36 Ahumoa
H-37 Puu Koli
H-38 Kokoolau
H-39 Mauna Loa
H-40 Keaiwa Reservoir
H-41 Punaluu
H-42 Naalehu
H-43 Honokaa
H-44 Umikoa
H-45 Mauna Kea
H-46 Puu Oo
H-47 Puu Ulaula
H-48 Kipuka Pakekake
H-49 Wood Valley
H-50 Pahala
H-51 Kukaiau
H-52 Keanakolu
H-53 Puu Akala
H-54 Upper Piihonua
H-55 Kulani
H-56 Kilauea Crater
H-57 Kau Desert
H-58 Naliikakani Point
H-59 Papaaloa
H-60 Akaka Falls
H-61 Piihonua
H-62 Puu Makaala
H-63 Volcano
H-64 Makaopuhi Crater
H-65 Papaikou
H-66 Hilo
H-67 Mountain View
H-68 Kalalua
H-69 Kalapana
H-70 Keaau Ranch
H-71 Pahoa North
H-72 Pahoa South
H-73 Kapoho

(d) *CITY AND COUNTY OF HONOLULU*

Island of Oahu:

Key Map for Land Use District Maps, City and County of Honolulu

O-1 Kaena
O-2 Waianae
O-3 Waimea
O-4 Haleiwa
O-5 Schofield Barracks
O-6 Ewa
O-7 Kahuku
O-8 Hauula
O-9 Waipahu
O-10 Puuloa
O-11 Kahana
O-12 Kaneohe
O-13 Honolulu
O-14 Mokapu
O-15 Koko Head

APPENDIX E

LAND USE ATTITUDE SURVEY QUESTIONNAIRE

The following is a copy of the original questionnaire with the total response to each question given in percentages.

Where written responses were requested, see Chapter 16, Section III for summaries of these responses.

In addition, one of the computer printouts, tabulating the number and percentage response for each group surveyed, is included.

October 11, 1968

SURVEY OF ATTITUDES TOWARD LAND USE AND THE HAWAII LAND USE LAW

General Instructions: Please answer each question *as an individual,* not as a representative of a group. We are interested in *your* opinions. Please indicate your response to each question by placing an "X" in the blank opposite the reply which best reflects your answer to the question. Unless otherwise instructed, please give *one answer* to each question. The number to the left of the space provided for your answer is for our use in machine coding. Thank you for your cooperation.

1 How familiar are you with the Hawaii Land Use Law?
1. 19% very familiar with the Law
2. 64% somewhat familiar with the Law
3. 15% have no knowledge of the Law

2. How familiar are you with the Hawaii Land Use Commission and its operation?
1. 17% very familiar with the Commission
2. 65% somewhat familiar with the Commission
3. 16% have no knowledge of the Commission

WHATEVER THE EXTENT OF YOUR KNOWLEDGE CONCERNING THE LAW OR THE COMMISSION, PLEASE CONTINUE WITH THE QUESTIONNAIRE. YOUR BEST GUESS IS ALL THAT IS EXPECTED.

3. What *is* the *primary* goal of the Land Use Laws?
1. 8% preservation of agricultural land
2. 1% encouragement of urban development
3. 2% preservation of natural beauty and scenic qualities
4. 0% encouragement of industrial development
5. 79% encourage use of all land in the manner best suited to the long range goals of the State
6. 1% use of property tax to encourage best use of land
7. 7% no opinion

4 What do you think the *primary* goal of the Land Use Law *should be?*
1. 1% preservation of agricultural land
2. 1% encouragement of urban development
3. 3% preservation of natural beauty and scenic qualities
4. 1% encouragement of industrial development
5. 16% encourage use of all land in a manner best suited to the long range goals of the County
6. 66% encourage use of all land in a manner best suited to the long range goals of the State
7. 1% use of property tax to encourage best use of land
8. 10% no opinion

5. How do you think the Land Use Law has affected land development in your county?
1. 8% has greatly aided proper development
2. 52% has somewhat aided proper development
3. 8% has had no affect on development
4. 17% has hindered proper development
5. 5% has greatly hindered proper development
6. 10% no opinion

6. What has the Land Use Law done to property values in your county?
1. 13% raised property values greatly
2. 28% raised property values somewhat
3. 23% had no obvious affect on property values
4. 9% lowered property values somewhat
5. 2% lowered property values greatly
6. 22% no opinion

7 In your opinion, has the Land Use Law changed the nature of land speculation in your County?
1. 41% has not changed the nature of land speculation
2. 45% has changed the nature of land speculation (PLEASE INDICATE HOW IN THE SPACE BELOW)

_____
_____
_____

8. How do you think the property tax system of Hawaii affects land use in your County?
MULTIPLE ANSWERS ARE ACCEPTABLE IF NECESSARY FOR COMPLETENESS
1. 15% helps to preserve land in existing form
2. 44% forces land into urban use
3. 19% enhances economic development
4. 15% inhibits economic development
5. 26% encourages speculation
6. 6% discourages speculation
7. 14% no opinion

9. Do you think property tax *should be used* as a tool for land use planning?
1. 27% yes, as an incentive for proper use of land
2. 2% yes, as a penalty against improper use
3. 31% yes, as both an incentive and penalty
4. 32% no, property tax should not affect land use
5. 5% no opinion

10. Do you think the present Land Use Law favors any segment of the population? MULTIPLE ANSWERS ARE ACCEPTABLE IF NECESSARY FOR COMPLETENESS.
1. 46% favors large landowners/large developers
2. 3% favors small landowners/small developers
3. 26% favors government interests
4. 20% is a fair and just law equally protecting all citizens of the State
5. 18% no opinion

(IF YOU INDICATED ABOVE THAT THE LAND USE LAW FAVORS ONE OR MORE INTERESTS, PLEASE SHOW BELOW HOW YOU FEEL ABOUT THIS FAVORITISM.)

10a. Do you think the Law's favoritism to one interest is . .
1. ____ in the best interest of the county
2. ____ in the best interest of the state
3. ____ against the best interest of the county
4. ____ against the best interest of the state
5. ____ has no affect on county interests
6. ____ has no affect on state interests
7. ____ no opinion

11. At present, there are four district classifications provided for by the Law: urban, rural, agricultural, and conservation. In your opinion, should there be more or fewer classifications, or are the present classifications correct? IF YOUR RESPONSE TO THIS QUESTION IS MORE OR FEWER CLASSIFICATIONS, PLEASE INDICATE IN THE SPACE PROVIDED WHICH SHOULD BE ADDED OR DELETED.
1. 8% fewer classifications (DELETIONS) _____
_____
2. 18% more classifications (ADDITIONS) _____
_____
3. 58% no change is needed
4. 12% no opinion

12. In your opinion, who should be responsible for drawing the boundaries between urban, rural, agricultural and conservation districts?
1. 46% State Land Use Commission
2. 8% Department of Land & Natural Resources
3. 4% County Supervisors
4. 18% County Planning Commission
5. 7% Other (Please Specify)
6. 14% no opinion

13. After the district boundaries are set, who should be responsible for regulating the detailed uses within each district? PLEASE INDICATE WHO SHOULD BE RESPONSIBLE FOR THE REGULATION OF EACH DISTRICT.

State Land Use Commission	1. 15%	2. 22%	3. 29%	4. 29%
Dept. of Land & Natural Resources	1. 3%	2. 6%	3. 17%	4. 32%
County Supervisors	1. 15%	2. 13%	3. 10%	4. 6%
County Planning Commission	1. 51%	2. 43%	3. 28%	4. 18%
Other (Please specify)				
_____	1. ____	2. ____	3. ____	4. ____
_____	1. ____	2. ____	3. ____	4. ____
_____	1. ____	2. ____	3. ____	4. ____
No opinion	1. 11%	2. 11%	3. 11%	4. 10%

14. Which of the following uses do you think are permitted in the General Use *Conservation Subzones* subject to the approval of the Board of Land & Natural Resources? Place an "X" in the blank opposite each use which you think is permitted.
1. 76% public recreation facilities
2. 35% private recreation facilities
3. 45% cabins, residences and recreation type trailers
4. 23% resort and related residences; hotels and restaurants
5. 28% governmental uses including public buildings
6. 20% airstrips and heliports
7. 40% logging operations
8. 28% excavation and quarrying

15. Which of the following sentences best describes your attitudes toward the present zoning laws?
1. 24% present zoning laws are a reasonable exercise of Legislative Authority for the welfare of the people.
2. 36% present zoning laws are necessary, but are not up-dated often enough to satisfy current needs.
3. 16% present zoning laws are necessary because of the limited land resources.
4. 5% present zoning laws violate property rights.
5. 1% present zoning laws are unconstitutional.
6. 16% no opinion

16. The procedures for applying to the Land Use Commission for district boundary changes and/or special permits are . . .
1. 14% overly involved and too complicated
2. 24% somewhat overly involved and complicated
3. 18% adequate and generally efficient
4. 5% somewhat lax and meaningless

5. 2% overly lax and meaningless
6. 19% no knowledge of procedures
7. 14% no opinion

17. To what degree should the Commission justify its findings as a matter of public record?
1. 74% completely explain reasons for its findings
2. 20% give some justification for its findings
3. 1% only record its vote
4. 2% no opinion

18. What is the major economic force in your County at present?
1. 46% tourism
2. 14% agriculture.
3. 1% manufacturing/industrial
4. 12% military
5. 4% other (please specify) _____
6. 21% no opinion

19. What would you like to be the major economic force in your County twenty years in the future?
1. 30% tourism
2. 9% agriculture
3. 19% manufacturing/industrial
4. 1% military
5. 13% other (please specify) _____
6. 23% no opinion

20. How do you think the Land Use Law has affected economic growth in your County?
1. 6% greatly increased economic growth
2. 26% somewhat increased economic growth
3. 27% not affected economic growth one way or the other
4. 20% somewhat discouraged economic growth
5. 4% greatly discouraged economic growth
6. 13% no opinion

21. Do you believe the historic places, scenic areas, wildlife and other natural resources of your County would be preserved if urban developments were permitted without Land Use Controls?
1. 4% definitely would be preserved without controls
2. 9% probably would be preserved without controls
3. 38% probably would not be preserved without controls
4. 45% definitely would not be preserved without controls
5. 1% no opinion

22. To what extent does the preservation of historic places, scenic qualities, wildlife and other natural resources affect the economy of your County?
1. 60% greatly increases the economic potential
2. 22% slightly increases the economic potential
3. 12% has no obvious effect on the economy
4. 1% slightly lowers the economic potential
5. 1% greatly lowers the economic potential
6. 2% no opinion

23. The coast line of your island and particularly its beaches is a limited natural resource. Please indicate whether you agree or disagree with each of the following by placing an "A" (Agree) or "D" (Disagree) or "O" (No opinion) in the blank opposite *EACH* statement.

A	D	O		
49%	38%	5%	1. ____	residential development should be restricted along the waterfront
56%	33%	5%	2. ____	resort development should be restricted along the waterfront
79%	12%	3%	3. ____	industrial development should be restricted along the waterfront
37%	50%	6%	4. ____	all development should be restricted along the waterfront
5%	80%	6%	5. ____	no development should be restricted along the waterfront
80%	8%	5%	6. ____	public access to the waterfront should be preserved by zoning
89%	3%	3%	7. ____	both the conservation and use of the waterfront should be planned together

24. In general, how do you feel about urban development for your County? Should it be . . .
1. 26% unlimited and encouraged
2. 57% somewhat limited
3. 11% greatly limited
4. 1% stopped
5. 3% no opinion

25. Regarding tourists, is it in the best interest of your County to . . .
1. 1% attract more, at whatever costs to the citizens
2. 58% attract more, only if the interest of the county citizens can be served
3. 18% attract more, for the benefit of the county citizens
4. 7% attract only a specific type of tourist
5. 6% maintain your present level of tourism
6. 2% discourage tourists

26. Where do you think the *public investment capital* in your County should be placed for short and long term gain? MULTIPLE ANSWERS ARE ACCEPTABLE.

	For Short Term Gain	For Long Term Gain	Both
tourist/commercial development	1. 14%	2. 45%	19%
agricultural development	1. 5%	2. 44%	7%
recreation development	1. 5%	2. 50%	18%
industrial development	1. 5%	2. 48%	9%
military development	1. 9%	2. 20%	4%
other (specify) Other	1. 0%	2. 3%	2%
No Opinion	1. 0%	2. 1%	6%
_____	1. ____	2. ____	
no opinion	1. ____	2. ____	

27. About how often have you had dealings with the Land Use Commission?
1. 53% never
2. 11% once
3. 16% two or three times
4. 6% three or four times
5. 11% five times or more

28. How would you describe those dealings?
1. 7% very satisfactory
2. 26% moderately satisfactory
3. 8% moderately unsatisfactory
4. 5% very unsatisfactory

29. There is a wide range of opinions regarding the appropriate uses of the lands of your County in the State of Hawaii. Below are a series of statements regarding land use. Please indicate whether you agree or disagree with each of the following by placing an "A" (Agree), or "D" (Disagree), or "O" (No opinion) in the blank opposite *EACH* statement. *Each statement applies to your county.* This is the most crucial phase of the survey; therefore, it is most important to us to have indication of your general philosophy regarding land use.

A	D	O		
66%	23%	6%	1. ____	urban development for tourist activities should receive strong emphasis in government land use planning
69%	21%	6%	2. ____	preservation of agricultural lands should receive strong emphasis in government land use planning
93%	2%	1%	3. ____	preservation of the scenic and natural resources of the County should receive strong emphasis in government land use planning
25%	61%	9%	4. ____	urban development for industrial and manufacturing growth of the County is the most important factor for governmental land use planning
48%	42%	6%	5. ____	preservation of the historic places, scenic qualities and wildlife and other natural resources is the most important factor for government planning
42%	31%	21%	6. ____	the Land Use Law has guided the proper use of lands

30%	49%	16%	7. ____	conservationists do not understand the need for economic development
12%	79%	4%	8. ____	the owner of land should have the right to determine its use without government control
3%	89%	3%	9. ____	every effort should be made to maintain the use of all lands exactly as they are today
54%	37%	4%	10. ____	tourism could destroy your County as a desirable place to live
34%	52%	9%	11. ____	owing to the limited land area, the number of tourists to your County should be limited
30%	58%	6%	12. ____	due to the need for economic development, the administration of the Land Use Law should encourage maximum tourism.

Please describe below, in as great detail as possible, what could be done to make the Land Use Laws better for your County or the Land Use Commission more responsive to your needs.

To make our analysis more meaningful we need a demographic description of our sample. While there is no way we can identify a specific respondent, we do need the following information about each one.

30. What is your occupation? Please be as specific as possible.

31. How much education have you had? Please check highest level completed.
    1. 1% grade school
    2. 3% some high school
    3. 8% completed high school
    4. 15% some college
    5. 25% college graduate
    6. 12% some graduate school
    7. 32% graduate degree
32. What is your approximate annual income?
    1. 0% under $5,000
    2. 12% $5,000 to $10,000
    3. 22% $10,000 to $15,000
    4. 20% $15,000 to $20,000
    5. 15% $20,000 to $25,000
    6. 18% $25,000 to $50,000
    7. 7% over $50,000
33. On which of the islands do you currently live?
    1. 4% Kauai
    2. 71% Oahu
    3. 1% Molokai
    4. 0% Lanai
    5. 6% Maui
    6. 7% Hawaii
34. How long have you lived on the island named above?
    1. 1% less than one year
    2. 7% one to five years
    3. 18% five to fifteen years
    4. 13% fifteen to twenty-five years
    5. 52% over twenty-five years
35. How long have you lived in the Hawaiian Islands?
    1. 0% less than one year
    2. 6% one to five years
    3. 14% five to fifteen years
    4. 9% fifteen to twenty-five years
    5. 61% over twenty-five years
36. Do you personally own property (excluding your own private residence) in the State of Hawaii?
    1. 54% yes
    2. 37% no

APPENDIX F

Computer Tabulation / Survey of Attitudes Toward the Hawaii Land Use Law / Building Program Associates

1/		2/ 3/	ENGNR (47)	ENVIR (89)	ATTNY (80)	DVLPR (54)	GOVNT (47)	CONSRV (52)	REALTR (88)	BANKS (53)	UNION (24)	ASSNS (36)	TOTAL (570)
Q	1) FAMILIARITY WITH HAWAII LAND USE LAW												
	VERY FAMILIAR	1	26(12)	21(19)	25(20)	24(13)	43(20)	12(6)	19(17)	4(2)	0(0)	6(2)	19(111)
	SOMEWHAT FAMILIAR	2	55(26)	62(55)	63(50)	63(34)	49(23)	75(39)	75(66)	62(33)	54(13)	75(27)	64(366)
	NO KNOWLEDGE	3	17(8)	16(14)	11(9)	11(6)	6(3)	13(7)	3(3)	34(18)	46(11)	19(7)	15(86)
	TOTALS		98(46)	99(88)	99(79)	98(53)	98(46)	100(52)	98(86)	100(53)	100(24)	100(36)	99(563)
Q	2) FAMILIARITY WITH HAWAII LAND USE COMMISSION		4/ 5/										
	VERY FAMILIAR	1	23(11)	20(18)	15(12)	22(12)	36(17)	12(6)	18(16)	2(1)	0(0)	8(3)	17(96)
	SOMEWHAT FAMILIAR	2	57(27)	64(57)	66(53)	65(35)	57(27)	79(41)	72(63)	64(34)	46(11)	61(22)	65(370)
	NO KNOWLEDGE	3	17(8)	13(12)	17(14)	9(5)	2(1)	10(5)	7(6)	34(18)	54(13)	31(11)	16(93)
	TOTALS		98(46)	98(87)	99(79)	96(52)	96(45)	100(52)	97(85)	100(53)	100(24)	100(36)	98(559)
Q	3) PRIMARY GOAL OF LAW IS												
	PRESERVATION OF AGR. LANDS	1	4(2)	10(9)	7(6)	15(8)	17(8)	10(5)	6(5)	4(2)	0(0)	3(1)	8(46)
	ENCOURAGE URBAN DEVLP.	2	0(0)	0(0)	0(0)	2(1)	2(1)	0(0)	0(0)	4(2)	0(0)	0(0)	1(4)
	PRESERVE NATURAL BEAUTY	3	0(0)	2(2)	2(2)	4(2)	6(3)	0(0)	0(0)	0(0)	0(0)	8(3)	2(12)
	ENCOURAGE INDST. DEVLP.	4	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	1(1)	0(0)	0(0)	0(0)	0(1)
	ENCOURAGE LONG RANGE USE	5	89(42)	78(69)	82(66)	65(35)	66(31)	81(42)	83(73)	85(45)	79(19)	72(26)	79(448)
	ENCOURAGE BEST USE VIA TAX	6	0(0)	0(0)	1(1)	2(1)	0(0)	4(2)	0(0)	0(0)	4(1)	6(2)	1(7)
	NO OPINION	7	6(3)	8(7)	5(4)	9(5)	4(2)	6(3)	7(6)	6(3)	13(3)	11(4)	7(40)
	TOTALS		100(47)	98(87)	99(79)	96(52)	96(45)	100(52)	97(85)	98(52)	96(23)	100(36)	98(558)
Q	4) PRIMARY GOAL OF LAW SHOULD BE												
	PRESERVATION OF AGR. LANDS	1	0(0)	0(0)	0(0)	6(3)	2(1)	4(2)	1(1)	0(0)	0(0)	0(0)	1(7)
	ENCOURAGE URBAN DEVLP.	2	0(0)	0(0)	0(0)	0(0)	2(1)	0(0)	1(1)	2(1)	0(0)	0(0)	1(3)
	PRESERVE NATURAL BEAUTY	3	6(3)	4(4)	1(1)	2(1)	2(1)	2(1)	1(1)	0(0)	4(1)	6(2)	3(15)
	ENCOURAGE INDST. DEVLP.	4	0(0)	0(0)	1(1)	0(0)	0(0)	0(0)	1(1)	0(0)	4(1)	0(0)	1(3)
	ENCOURAGE LONG RNG USE CTY	5	13(6)	9(8)	16(13)	20(11)	19(9)	13(7)	25(22)	17(9)	4(1)	22(8)	16(94)
	ENCOURAGE LONG RNG USE ST.	6	79(37)	73(65)	72(58)	52(28)	55(26)	73(38)	57(50)	77(41)	63(15)	56(20)	66(378)
	ENCOURAGE BEST USE VIA TAX	7	0(0)	2(2)	0(0)	2(1)	0(0)	0(0)	0(0)	0(0)	4(1)	0(0)	1(4)
	NO OPINION	8	2(1)	9(8)	9(7)	15(8)	13(6)	8(4)	10(9)	4(2)	17(4)	17(6)	10(55)
	TOTALS		100(47)	98(87)	100(80)	96(52)	94(44)	100(52)	97(85)	100(53)	96(23)	100(36)	98(559)
Q	5) EFFECT OF LAW ON LAND DEVLP.												
	GREATLY AIDED DEVLP.	1	9(4)	7(6)	1(1)	7(4)	15(7)	13(7)	7(6)	6(3)	0(0)	14(5)	8(43)
	SOMEWHAT AIDED DEVLP.	2	57(27)	58(52)	50(40)	39(21)	64(30)	54(28)	35(31)	66(35)	46(11)	53(19)	52(294)
	NO EFFECT ON DEVLP.	3	4(2)	10(9)	10(8)	11(6)	11(5)	4(2)	8(7)	6(3)	8(2)	3(1)	8(45)
	HINDERED DEVLP.	4	15(7)	12(11)	16(13)	30(16)	4(2)	13(7)	32(28)	13(7)	4(1)	11(4)	17(96)
	GREATLY HINDERED DEVLP.	5	2(1)	2(2)	7(6)	2(1)	0(0)	6(3)	11(10)	2(1)	13(3)	6(2)	5(29)
	NO OPINION	6	13(6)	9(8)	15(12)	7(4)	2(1)	10(5)	5(4)	8(4)	25(6)	14(5)	10(55)
	TOTALS		100(47)	99(88)	100(80)	96(52)	96(45)	100(52)	98(86)	100(53)	96(23)	100(36)	99(562)
Q	6) EFFECT OF LAW ON LAND VALUES												
	GREATLY RAISED VALUES	1	15(7)	11(10)	2(2)	11(6)	11(5)	13(7)	19(17)	11(6)	21(5)	28(10)	13(75)
	SOMEWHAT RAISED VALUES	2	36(17)	19(17)	14(11)	22(12)	32(15)	27(14)	27(24)	42(22)	42(10)	47(17)	28(159)
	NO EFFECT ON VALUES	3	13(6)	27(24)	26(21)	28(15)	34(16)	19(10)	26(23)	15(8)	13(3)	8(3)	23(129)
	SOMEWHAT LOWERED VALUES	4	13(6)	4(4)	24(19)	11(6)	6(3)	4(2)	10(9)	8(4)	0(0)	0(0)	9(53)
	GREATLY LOWERED VALUES	5	4(2)	1(1)	4(3)	2(1)	0(0)	0(0)	5(4)	0(0)	0(0)	0(0)	2(11)
	NO OPINION	6	17(8)	31(28)	29(23)	20(11)	15(7)	35(18)	9(8)	23(12)	21(5)	17(6)	22(126)
	TOTALS		98(46)	94(84)	99(79)	94(51)	98(46)	98(51)	97(85)	98(52)	96(23)	100(36)	97(553)
Q	7) HAS LAW CHANGED NATURE OF SPECULATION												
	HAS NOT AFFECTED SPEC.	1	49(23)	43(38)	51(41)	37(20)	45(21)	37(19)	35(31)	51(27)	25(6)	22(8)	41(234)
	HAS AFFECTED SPEC.	2	43(20)	42(37)	41(33)	50(27)	40(19)	44(23)	57(50)	30(16)	50(12)	58(21)	45(258)
	TOTALS		91(43)	84(75)	92(74)	87(47)	85(40)	81(42)	92(81)	81(43)	75(18)	81(29)	86(492)
Q *	8) EFFECT OF PROPERTY TAX ON LAND USE												
	HELPS PRESERVE LAND AS IS	1	9(4)	10(9)	16(13)	20(11)	11(5)	13(7)	23(20)	15(8)	13(3)	19(7)	15(87)
	FORCES LAND INTO URBAN USE	2	55(26)	64(57)	36(29)	48(26)	47(22)	54(28)	34(30)	23(12)	29(7)	33(12)	44(249)
	ENHANCES ECONOMIC DEVLP.	3	15(7)	12(11)	19(15)	13(7)	32(15)	10(5)	23(20)	34(18)	17(4)	25(9)	19(111)
	INHIBITS ECONOMIC DEVLP.	4	11(5)	15(13)	16(13)	20(11)	6(3)	10(5)	24(21)	17(9)	13(3)	8(3)	15(86)
	ENCOURAGES SPECULATION	5	32(15)	38(34)	19(15)	17(9)	36(17)	38(20)	8(7)	15(8)	42(10)	36(13)	26(148)
	DISCOURAGES SPECULATION	6	4(2)	3(3)	2(2)	7(4)	4(2)	6(3)	8(7)	13(7)	4(1)	11(4)	6(35)
	NO OPINION	7	15(7)	10(9)	19(15)	7(4)	6(3)	15(8)	15(13)	17(9)	17(4)	17(6)	14(78)
Q	9) SHOULD PROPERTY TAX BE USED FOR LAND USE PLANNING												
	YES, AS INCENTIVE	1	21(10)	30(27)	24(19)	26(14)	34(16)	27(14)	25(22)	28(15)	17(4)	33(12)	27(153)
	YES, AS PENALTY	2	2(1)	2(2)	2(2)	0(0)	2(1)	2(1)	5(4)	2(1)	0(0)	0(0)	2(12)
	YES, PENALTY OR INCENTIVE	3	40(19)	30(27)	30(24)	20(11)	32(15)	29(15)	31(27)	40(21)	29(7)	25(9)	31(175)
	NO , SHOULD NOT AFFECT USE	4	30(14)	29(26)	36(29)	50(27)	19(9)	37(19)	30(26)	26(14)	33(8)	36(13)	32(185)
	NO OPINION	5	6(3)	4(4)	5(4)	2(1)	9(4)	6(3)	5(4)	2(1)	17(4)	3(1)	5(29)
	TOTALS		100(47)	97(86)	97(78)	98(53)	96(45)	100(52)	94(83)	98(52)	96(23)	97(35)	97(554)

[1]Question Number
[2]Sub-Sample Group Key
Engnr—Engineers
Envir—Environmentalists (Architects, Landscape Architects, Planners)
Attny—Attorneys
Dvlpr—Developers
Govnt—Government Officials
Consrv—Conservationists
Realtr—Realtors
Union—Uion Leaders
Assns—Associations (Civic, Trade, etc.)
[3]Total Number of Responses by Sub-Sample Group
[4]Percentage Response by Sub-Sample Group to Question
[5]Number of Responses by Sub-Sample Group to Question

		ENGNR (47)	ENVIR (89)	ATTNY (80)	DVLPR (54)	GOVNT (47)	CONSRV (52)	REALTR (88)	BANKS (53)	UNION (24)	ASSNS (36)	TOTAL (570)
Q 10) *	SEGMENT OF POPULATION FAVORED BY LAND USE LAW											
	FAVORS LARGE OWNERS/DEVLPRS 1	53(25)	51(45)	44(35)	31(17)	45(21)	42(22)	56(49)	34(18)	54(13)	56(20)	46(265)
	FAVORS SMALL OWNERS/DEVLPRS 2	4(2)	1(1)	2(2)	2(1)	4(2)	8(4)	2(2)	0(0)	4(1)	0(0)	3(15)
	FAVORS GOVERNMENT INTERESTS 3	26(12)	28(25)	29(23)	41(22)	23(11)	21(11)	31(27)	13(7)	0(0)	22(8)	26(146)
	EQUALY PROTECTS ALL 4	15(7)	16(14)	20(16)	17(9)	45(21)	21(11)	16(14)	23(12)	8(2)	19(7)	20(113)
	NO OPINION 5	17(8)	16(14)	19(15)	20(11)	4(2)	25(13)	9(8)	30(16)	29(7)	19(7)	18(101)
Q 11) *	SHOULD THERE BE MORE OR FEWER CLASSIFICATIONS											
	FEWER CLASSIFICATIONS 1	9(4)	8(7)	7(6)	17(9)	9(4)	4(2)	7(6)	4(2)	8(2)	6(2)	8(44)
	MORE CLASSIFICATIONS 2	19(9)	19(17)	19(15)	11(6)	19(9)	29(15)	18(16)	9(5)	17(4)	14(5)	18(101)
	NO CHANGE NEEDED 3	57(27)	52(46)	51(41)	54(29)	68(32)	58(30)	61(54)	75(40)	42(10)	61(22)	58(331)
	NO OPINION 4	13(6)	12(11)	20(16)	11(6)	2(1)	6(3)	10(9)	8(4)	29(7)	8(3)	12(66)
	TOTALS	98(46)	91(81)	97(78)	93(50)	98(46)	96(50)	97(85)	96(51)	96(23)	89(32)	95(542)
Q 11A(*	CLASSIFICATIONS TO BE DELETED ARE											
	URBAN 1	0(0)	0(0)	0(0)	6(3)	0(0)	0(0)	1(1)	0(0)	8(2)	3(1)	1(7)
	RURAL 2	4(2)	0(0)	0(0)	13(7)	4(2)	4(2)	5(4)	0(0)	4(1)	3(1)	3(19)
	AGRICULTURAL 3	0(0)	0(0)	0(0)	4(2)	0(0)	0(0)	2(2)	0(0)	4(1)	0(0)	1(5)
	CONSERVATION 4	0(0)	0(0)	0(0)	6(3)	0(0)	0(0)	2(2)	2(1)	0(0)	0(0)	1(6)
Q 12) *	RESPONSIBILITY FOR BOUNDARY DEFINITIONS											
	STATE LAND USE COMM. 1	57(27)	46(41)	51(41)	35(19)	53(25)	63(33)	36(32)	55(29)	29(7)	19(7)	46(261)
	DEPT LAND/NATURAL RESOURCES 2	0(0)	12(11)	7(6)	7(4)	0(0)	8(4)	6(5)	8(4)	25(6)	17(6)	8(46)
	COUNTY SUPERVISORS 3	4(2)	0(0)	4(3)	13(7)	2(1)	2(1)	3(3)	6(3)	4(1)	3(1)	4(22)
	COUNTY PLANNING COMMISSION 4	21(10)	10(9)	14(11)	19(10)	23(11)	10(5)	26(23)	17(9)	4(1)	33(12)	18(101)
	OTHER 5	6(3)	9(8)	10(8)	6(3)	4(2)	6(3)	8(7)	4(2)	8(2)	6(2)	7(40)
	NO OPINION 6	11(5)	17(15)	11(9)	15(8)	15(7)	8(4)	16(14)	9(5)	25(6)	19(7)	14(80)
	TOTALS	100(47)	94(84)	97(78)	94(51)	98(46)	96(50)	95(84)	98(52)	96(23)	97(35)	96(550)
Q 13A) *	RESPONSIBILITY FOR REGULATING URBAN DISTRICTS											
	STATE LAND USE COMM. 1	13(6)	15(13)	15(12)	9(5)	6(3)	23(12)	18(16)	28(15)	17(4)	6(2)	15(88)
	DEPT LAND/NATURAL RESOURCES 2	2(1)	4(4)	1(1)	0(0)	2(1)	8(4)	1(1)	4(2)	8(2)	3(1)	3(17)
	COUNTY SUPERVISORS 3	11(5)	10(9)	16(13)	24(13)	21(10)	13(7)	9(8)	15(8)	21(5)	19(7)	15(85)
	COUNTY PLANNING COMMISSION 4	64(30)	42(37)	50(40)	52(28)	81(38)	33(17)	60(53)	38(20)	38(9)	47(17)	51(289)
	OTHER NO OPINION 5	11(5)	17(15)	14(11)	9(5)	0(0)	19(10)	9(8)	9(5)	0(0)	14(5)	11(64)
Q 13B) *	RESPONSIBILITY FOR REGULATING RURAL DISTRICTS											
	STATE LAND USE COMM. 1	30(14)	22(20)	17(14)	9(5)	11(5)	33(17)	20(18)	36(19)	38(9)	17(6)	22(127)
	DEPT LAND/NATURAL RESOURCES 2	2(1)	4(4)	5(4)	2(1)	9(4)	12(6)	2(2)	11(6)	13(3)	3(1)	6(32)
	COUNTY SUPERVISORS 3	13(6)	6(5)	14(11)	26(14)	19(9)	10(5)	14(12)	11(6)	17(4)	6(2)	13(74)
	COUNTY PLANNING COMMISSION 4	47(22)	36(32)	45(36)	48(26)	74(35)	25(13)	50(44)	28(15)	13(3)	47(17)	43(243)
	OTHER NO OPINION 5	6(3)	18(16)	14(11)	9(5)	0(0)	17(9)	8(7)	8(4)	0(0)	17(6)	11(61)
Q 13C) *	RESPONSIBILITY FOR REGULATING AGRICULTURAL DISTRICTS											
	STATE LAND USE COMM. 1	34(16)	25(22)	22(18)	24(13)	28(13)	42(22)	27(24)	42(22)	25(6)	22(8)	29(164)
	DEPT LAND/NATURAL RESOURCES 2	13(6)	18(16)	10(8)	15(8)	17(8)	21(11)	16(14)	23(12)	25(6)	22(8)	17(97)
	COUNTY SUPERVISORS 3	11(5)	4(4)	13(10)	17(9)	17(8)	4(2)	10(9)	11(6)	13(3)	6(2)	10(58)
	COUNTY PLANNING COMMISSION 4	34(16)	19(17)	38(30)	30(16)	51(24)	13(7)	34(30)	11(6)	21(5)	28(10)	28(161)
	OTHER NO OPINION 5	6(3)	21(19)	11(9)	9(5)	6(3)	15(8)	7(6)	8(4)	0(0)	11(4)	11(61)
Q 13D) *	RESPONSIBILITY FOR REGULATING CONSERVATION DISTRICTS											
	STATE LAND USE COMM. 1	32(15)	24(21)	29(23)	22(12)	38(18)	37(19)	27(24)	38(20)	21(5)	17(6)	29(163)
	DEPT LAND/NATURAL RESOURCES 2	30(14)	29(26)	16(13)	39(21)	38(18)	42(22)	28(25)	36(19)	46(11)	39(14)	32(183)
	COUNTY SUPERVISORS 3	9(4)	2(2)	9(7)	11(6)	9(4)	2(1)	6(5)	6(3)	8(2)	3(1)	6(35)
	COUNTY PLANNING COMMISSION 4	21(10)	13(12)	27(22)	13(7)	30(14)	6(3)	24(21)	9(5)	4(1)	19(7)	18(102)
	OTHER NO OPINION 5	6(3)	19(17)	11(9)	9(5)	0(0)	10(5)	9(8)	6(3)	0(0)	14(5)	10(55)
Q 14) *	USES PERMITTED IN GENERAL USE CONSERVATION SUBZONES											
	PUBLIC RECREATION FAC. 1	85(40)	81(72)	82(66)	80(43)	81(38)	83(43)	72(63)	53(28)	67(16)	72(26)	76(435)
	PRIVATE RECREATION FAC. 2	38(18)	38(34)	34(27)	50(27)	47(22)	56(29)	34(30)	4(2)	21(5)	14(5)	35(199)
	CABINS RESIDENCES 3	55(26)	43(38)	47(38)	56(30)	53(25)	52(27)	34(30)	26(14)	46(11)	42(15)	45(254)
	RESORTS, HOTELS, RSTRNTS. 4	23(11)	21(19)	19(15)	35(19)	28(13)	42(22)	26(23)	4(2)	25(6)	8(3)	23(133)
	GOVERNMENT USE 5	21(10)	30(27)	19(15)	44(24)	38(18)	50(26)	28(25)	4(2)	21(5)	28(10)	28(162)
	AIRSTRIPS HELIPORTS 6	15(7)	22(20)	21(17)	33(18)	23(11)	37(19)	20(18)	6(3)	8(2)	3(1)	20(116)
	LOGGING OPERATIONS 7	47(22)	37(33)	34(27)	54(29)	55(26)	50(26)	34(30)	30(16)	33(8)	28(10)	40(227)
	EXCAVATIONS QUARRYING 8	30(14)	24(21)	25(20)	44(24)	32(15)	37(19)	25(22)	17(9)	21(5)	28(10)	28(159)
Q 15)	ATTITUDE TOWARD ZONING LAWS											
	FOR THE WELFARE OF CITIZENS 1	30(14)	34(30)	30(24)	15(8)	43(20)	29(15)	11(10)	23(12)	4(1)	11(4)	24(138)
	NECESSARY BUT OUT DATED 2	32(15)	34(30)	31(25)	35(19)	21(10)	25(13)	45(40)	55(29)	38(9)	36(13)	36(203)
	LIMITED LAND NECESSITATES 3	21(10)	16(14)	13(10)	11(6)	15(7)	27(14)	7(6)	13(7)	33(8)	28(10)	16(92)
	VIOLATES PROPERTY RIGHTS 4	4(2)	2(2)	6(5)	9(5)	2(1)	0(0)	9(8)	4(2)	4(1)	3(1)	5(27)
	UNCONSTITUTIONAL 5	0(0)	0(0)	0(0)	4(2)	0(0)	0(0)	0(0)	0(0)	4(1)	0(0)	1(3)
	NO OPINION 6	13(6)	10(9)	17(14)	20(11)	17(8)	17(9)	24(21)	4(2)	13(3)	19(7)	16(90)
	TOTALS	100(47)	96(85)	97(78)	94(51)	98(46)	98(51)	97(85)	98(52)	96(23)	97(35)	97(553)

		ENGNR (47)	ENVIR (89)	ATTNY (80)	DVLPR (54)	GOVNT (47)	CONSRV (52)	REALTR (88)	BANKS (53)	UNION (24)	ASSNS (36)	TOTAL (570)
Q 16) APPLICATIONS FOR CHANGE TO LAND USE COMMISSION ARE ...												
OVERLY COMPLICATED	1	6(3)	13(12)	15(12)	17(9)	11(5)	8(4)	24(21)	9(5)	8(2)	19(7)	14(80)
SOMEWHAT COMPLICATED	2	26(12)	13(12)	20(16)	37(20)	36(17)	12(6)	31(27)	15(8)	29(7)	25(9)	24(134)
ADEQUATE	3	17(8)	21(19)	24(19)	15(8)	26(12)	25(13)	15(13)	15(8)	4(1)	11(4)	18(105)
SOMEWHAT LAX	4	4(2)	6(5)	1(1)	4(2)	6(3)	12(6)	5(4)	6(3)	13(3)	6(2)	5(31)
OVERLY LAX	5	0(0)	2(2)	4(3)	2(1)	0(0)	0(0)	2(2)	2(1)	0(0)	0(0)	2(9)
NO KNOWLEDGE OF PROCEDURE	6	26(12)	25(22)	16(13)	7(4)	4(2)	21(11)	14(12)	42(22)	21(5)	19(7)	19(110)
NO OPINION	7	15(7)	15(13)	19(15)	13(7)	15(7)	21(11)	6(5)	9(5)	17(4)	17(6)	14(80)
TOTALS		94(44)	96(85)	99(79)	94(51)	98(46)	98(51)	95(84)	98(52)	92(22)	97(35)	96(549)
Q 17) SHOULD COMMISSION FINDINGS BE PUBLICLY JUSTIFIED												
COMPLETELY JUSTIFIED	1	77(36)	80(71)	76(61)	70(38)	70(33)	85(44)	69(61)	74(39)	63(15)	67(24)	74(422)
GIVE SOME JUSTIFICATION	2	21(10)	16(14)	22(18)	13(7)	19(9)	13(7)	23(20)	23(12)	17(4)	31(11)	20(112)
ONLY RECORD VOTE	3	0(0)	1(1)	0(0)	4(2)	2(1)	0(0)	2(2)	0(0)	0(0)	0(0)	1(6)
NO OPINION	4	2(1)	1(1)	0(0)	6(3)	4(2)	0(0)	2(2)	2(1)	13(3)	3(1)	2(14)
TOTALS		100(47)	98(87)	99(79)	93(50)	96(45)	98(51)	97(85)	98(52)	92(22)	100(36)	97(554)
Q 18) MAJOR ECONOMIC FORCE IN COUNTY TODAY IS ...												
TOURISM	1	49(23)	49(44)	50(40)	39(21)	43(20)	44(23)	55(48)	49(26)	21(5)	33(12)	46(262)
AGRICULTURAL	2	11(5)	3(3)	10(8)	28(15)	19(9)	6(3)	9(8)	19(10)	21(5)	31(11)	14(77)
MANUFACTURING AGRICULTURAL	3	0(0)	0(0)	4(3)	0(0)	0(0)	0(0)	0(0)	2(1)	0(0)	3(1)	1(5)
MILITARY	4	17(8)	19(17)	13(10)	7(4)	11(5)	19(10)	8(7)	8(4)	17(4)	3(1)	12(70)
OTHER	5	2(1)	2(2)	7(6)	2(1)	0(0)	10(5)	2(2)	2(1)	0(0)	6(2)	4(20)
NO OPINION	6	19(9)	22(20)	14(11)	19(10)	26(12)	17(9)	23(20)	17(9)	33(8)	25(9)	21(117)
TOTALS		98(46)	97(86)	97(78)	94(51)	98(46)	96(50)	97(85)	96(51)	92(22)	100(36)	97(551)
Q 19) MAJOR ECONOMIC FORCE IN COUNTY IN TWENTY YEARS SHOULD BE												
TOURISM	1	28(13)	28(25)	14(11)	35(19)	21(10)	31(16)	45(40)	40(21)	21(5)	31(11)	30(171)
AGRICULTURAL	2	15(7)	9(8)	6(5)	15(8)	11(5)	10(5)	8(7)	4(2)	4(1)	11(4)	9(52)
MANUFACTURING AGRICULTURAL	3	23(11)	11(10)	31(25)	11(6)	21(10)	10(5)	13(11)	28(15)	29(7)	17(6)	19(106)
MILITARY	4	0(0)	3(3)	2(2)	0(0)	0(0)	2(1)	1(1)	0(0)	0(0)	0(0)	1(7)
OTHER	5	4(2)	18(16)	21(17)	7(4)	13(6)	21(11)	8(7)	6(3)	13(3)	14(5)	13(74)
NO OPINION	6	23(11)	21(19)	24(19)	24(13)	28(13)	23(12)	20(18)	21(11)	25(6)	25(9)	23(131)
TOTALS		94(44)	91(81)	99(79)	93(50)	94(44)	96(50)	95(84)	98(52)	92(22)	97(35)	95(541)
Q 20) EFFECT OF LAW ON ECONOMIC GROWTH												
GREATLY INCREASED GROWTH	1	2(1)	4(4)	0(0)	0(0)	9(4)	13(7)	7(6)	8(4)	8(2)	17(6)	6(34)
SOMEWHAT INCREASED GROWTH	2	36(17)	17(15)	15(12)	22(12)	38(18)	25(13)	19(17)	42(22)	21(5)	47(17)	26(148)
GROWTH UNAFFECTED	3	21(10)	39(35)	39(31)	22(12)	26(12)	29(15)	25(22)	17(9)	21(5)	11(4)	27(155)
SOMEWHAT DISCOURAGED GROWTH	4	17(8)	15(13)	26(21)	31(17)	15(7)	10(5)	31(27)	21(11)	8(2)	6(2)	20(113)
GREATLY DISCOURAGED GROWTH	5	2(1)	1(1)	2(2)	9(5)	0(0)	4(2)	9(8)	2(1)	4(1)	6(2)	4(23)
NO OPINION	6	21(10)	18(16)	15(12)	6(3)	9(4)	17(9)	6(5)	9(5)	29(7)	14(5)	13(76)
TOTALS		100(47)	94(84)	97(78)	91(49)	96(45)	98(51)	97(85)	98(52)	92(22)	100(36)	96(549)
Q 21) NATURAL RESOURCES PRESERVED WITHOUT CONTROLS												
DEFINITELY PRESERVED	1	6(3)	1(1)	2(2)	6(3)	0(0)	0(0)	13(11)	2(1)	4(1)	6(2)	4(24)
PROBABLY PRESERVED	2	9(4)	9(8)	13(10)	15(8)	4(2)	0(0)	15(13)	2(1)	4(1)	8(3)	9(50)
PROBABLY NOT PRESERVED	3	34(16)	21(19)	45(36)	44(24)	43(20)	29(15)	38(33)	57(30)	29(7)	42(15)	38(215)
DEFINITELY NOT PRESERVED	4	51(24)	67(60)	38(30)	22(12)	51(24)	67(35)	30(26)	38(20)	46(11)	39(14)	45(256)
NO OPINION	5	0(0)	2(0)	1(1)	7(4)	0(0)	0(0)	1(1)	0(0)	4(1)	3(1)	1(8)
TOTALS		100(47)	99(88)	99(79)	94(51)	98(46)	96(50)	95(84)	98(52)	88(21)	97(35)	97(553)
Q 22) EXTENT PRESERVATION AFFECTS ECONOMY												
GREATLY INCREASED POTENTIAL	1	51(24)	67(60)	50(40)	46(25)	62(29)	67(35)	65(57)	60(32)	67(16)	64(23)	60(341)
SLIGHT INCREASED POTENTIAL	2	28(13)	13(12)	30(24)	26(14)	19(9)	15(8)	22(19)	26(14)	8(2)	28(10)	22(125)
NO EFFECT ON POTENTIAL	3	11(5)	10(9)	15(12)	20(11)	13(6)	12(6)	9(8)	9(5)	4(1)	8(3)	12(66)
SLIGHTLY LOWERED POTENTIAL	4	4(2)	0(0)	1(1)	2(1)	0(0)	2(1)	0(0)	2(1)	4(1)	0(0)	1(7)
GREATLY LOWERED POTENTIAL	5	2(1)	1(1)	0(0)	0(0)	2(1)	0(0)	0(0)	0(0)	4(1)	0(0)	1(4)
NO OPINION	6	4(2)	4(4)	1(1)	0(0)	2(1)	0(0)	0(0)	0(0)	8(2)	0(0)	2(10)
TOTALS		100(47)	97(86)	97(78)	94(51)	98(46)	96(50)	95(84)	98(52)	96(23)	100(36)	97(553)
Q 23A) RESIDENTIAL DEVLP. RESTRICTED ON COAST LINE												
AGREE	1	57(27)	54(48)	42(34)	20(11)	64(30)	67(35)	42(37)	58(31)	54(13)	44(16)	49(282)
DISAGREE	2	40(19)	28(25)	45(36)	63(34)	23(11)	23(12)	45(40)	36(19)	17(4)	53(19)	38(219)
NO OPINION	3	0(0)	2(2)	7(6)	2(1)	11(5)	8(4)	7(6)	2(1)	21(5)	3(1)	5(31)
Q 23B) COMMERCIAL DEVLP. RESTRICTED ON COAST LINE												
AGREE	1	70(33)	60(53)	55(44)	26(14)	55(26)	79(41)	50(44)	58(31)	54(13)	58(21)	56(320)
DISAGREE	2	28(13)	25(22)	35(28)	59(32)	32(15)	13(7)	39(34)	34(18)	21(5)	36(13)	33(187)
NO OPINION	3	0(0)	1(1)	6(5)	2(1)	11(5)	6(3)	6(5)	4(2)	17(4)	6(2)	5(28)
Q 23C) INDUSTRIAL DEVLP. RESTRICTED ON COAST LINE												
AGREE	1	83(39)	79(70)	84(67)	70(38)	65(40)	88(46)	70(62)	81(43)	71(17)	86(31)	79(453)
DISAGREE	2	13(6)	8(7)	11(9)	15(8)	6(3)	4(2)	22(19)	11(6)	8(2)	14(5)	12(67)
NO OPINION	3	2(1)	0(0)	2(2)	2(1)	6(3)	6(3)	2(2)	4(2)	13(3)	0(0)	3(17)

		ENGNR (47)	ENVIR (89)	ATTNY (80)	DVLPR (54)	GOVNT (47)	CONSRV (52)	REALTR (88)	BANKS (53)	UNION (24)	ASSNS (36)	TOTAL (570)
Q 23D) ALL DEVLOPMENT RESTRICTED ON COAST LINE												
AGREE	1	45(21)	49(44)	36(29)	15(8)	45(21)	62(32)	24(21)	30(16)	33(8)	25(9)	37(209)
DISAGREE	2	53(25)	34(30)	55(44)	69(37)	43(20)	27(14)	61(54)	57(30)	38(9)	58(21)	50(284)
NO OPINION	3	0(0)	0(0)	2(2)	2(1)	11(5)	10(5)	9(8)	9(5)	21(5)	11(4)	6(35)
Q 23E) NO DEVLOPMENT RESTRICTED ON COAST LINE												
AGREE	1	2(1)	1(1)	2(2)	15(8)	0(0)	2(1)	9(8)	8(4)	13(3)	6(2)	5(30)
DISAGREE	2	96(45)	81(72)	84(67)	63(34)	83(39)	88(46)	76(67)	79(42)	58(14)	78(28)	80(454)
NO OPINION	3	0(0)	0(0)	5(4)	0(0)	15(7)	8(4)	9(8)	9(5)	21(5)	11(4)	6(37)
Q 23F) ZONING TO PRESERVE PUBLIC ACCESS TO COAST LINE												
AGREE	1	91(43)	78(69)	77(62)	56(30)	85(40)	87(45)	77(68)	96(51)	79(19)	81(29)	80(456)
DISAGREE	2	4(2)	7(6)	14(11)	24(13)	2(1)	6(3)	10(9)	0(0)	4(1)	6(2)	8(48)
NO OPINION	3	2(1)	2(2)	4(3)	4(2)	11(5)	6(3)	7(6)	0(0)	8(2)	8(3)	5(27)
Q 23G) CONSERVATION AND USE SHOULD BE PLANNED TOGETHER												
AGREE	1	96(45)	89(79)	92(74)	74(40)	89(42)	94(49)	84(74)	96(51)	83(20)	92(33)	89(507)
DISAGREE	2	0(0)	2(2)	2(2)	7(4)	2(1)	2(1)	7(6)	0(0)	4(1)	0(0)	3(17)
NO OPINION	3	2(1)	0(0)	2(2)	4(2)	6(3)	2(1)	3(3)	0(0)	4(1)	6(2)	3(15)
Q 24) URBAN DEVLP. SHOULD BE												
UNLIMITED AND ENCOURAGED	1	17(8)	19(17)	25(20)	39(21)	9(4)	8(4)	35(31)	32(17)	42(10)	39(14)	26(146)
SOMEWHAT LIMITED	2	66(31)	52(46)	61(49)	48(26)	81(38)	63(33)	51(45)	58(31)	33(8)	50(18)	57(325)
GREATLY LIMITED	3	13(6)	21(19)	7(6)	6(3)	4(2)	25(13)	5(4)	4(2)	8(2)	8(3)	11(60)
STOPPED	4	0(0)	2(2)	0(0)	0(0)	2(1)	2(1)	1(1)	2(1)	0(0)	0(0)	1(6)
NO OPINION	5	4(2)	1(1)	5(4)	0(0)	2(1)	0(0)	3(3)	2(1)	13(3)	3(1)	3(16)
TOTALS		100(47)	96(85)	99(79)	93(50)	98(46)	98(51)	95(84)	98(52)	96(23)	100(36)	97(553)
Q 25) BEST INTREST OF COUNTY IS TO												
ATTRACT TOURISTS FOREMOST	1	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	3(3)	2(1)	0(0)	3(1)	1(5)
ATTRACT BUT CITIZENS FIRST	2	66(31)	58(52)	67(54)	35(19)	62(29)	56(29)	51(45)	62(33)	46(11)	69(25)	58(328)
ATTRACT TO BENEFIT CITIZENS	3	17(8)	13(12)	13(10)	44(24)	17(8)	12(6)	18(16)	17(9)	17(4)	19(7)	18(104)
ATTRACT SPECIAL TYPE	4	4(2)	10(9)	9(7)	4(2)	9(4)	8(4)	3(3)	6(3)	13(3)	3(1)	7(38)
MAINTAIN PRESENT LEVEL	5	6(3)	7(6)	4(3)	4(2)	4(2)	4(2)	8(7)	11(6)	13(3)	6(2)	6(36)
DISCOURAGE TOURISTS	6	0(0)	3(3)	2(2)	2(1)	0(0)	10(5)	0(0)	0(0)	4(1)	0(0)	2(12)
TOTALS		94(44)	92(82)	95(76)	89(48)	91(43)	88(46)	84(74)	98(52)	92(22)	100(36)	92(523)
Q 26A) PUBLIC INVESTMENT CAPITAL INTO TOURIST/COMMERCIAL DEVLP.												
SHORT TERM GAINS	1	17(8)	15(13)	16(13)	11(6)	26(12)	13(7)	5(4)	13(7)	21(5)	6(2)	14(77)
LONG TERM GAINS	2	36(17)	43(38)	36(29)	31(17)	43(20)	37(19)	66(58)	53(28)	42(10)	61(22)	45(258)
BOTH	3	28(13)	21(19)	22(18)	35(19)	19(9)	6(3)	15(13)	17(9)	8(2)	6(2)	19(107)
Q 26B) PUBLIC INVESTMENT CAPITAL INTO AGRICULTURAL DEVLP.												
SHORT TERM GAINS	1	2(1)	6(5)	4(3)	2(1)	6(3)	4(2)	3(3)	8(4)	4(1)	11(4)	5(27)
LONG TERM GAINS	2	43(20)	46(41)	41(33)	46(25)	43(20)	40(21)	50(44)	43(23)	38(9)	39(14)	44(250)
BOTH	3	11(5)	9(8)	6(5)	13(7)	9(4)	6(3)	3(3)	4(2)	0(0)	6(2)	7(39)
Q 26C) PUBLIC INVESTMENT CAPITAL INTO RECREATION DEVLP.												
SHORT TERM GAINS	1	6(3)	2(2)	4(3)	6(3)	4(2)	0(0)	6(5)	6(3)	8(2)	11(4)	5(27)
LONG TERM GAINS	2	53(25)	48(43)	41(33)	41(22)	60(28)	56(29)	61(54)	45(24)	46(11)	47(17)	50(286)
BOTH	3	17(8)	25(22)	29(23)	24(13)	19(9)	10(5)	13(11)	13(7)	8(2)	3(1)	18(101)
Q 26D) PUBLIC INVESTMENT CAPITAL INTO INDUSTRIAL DEVLP.												
SHORT TERM GAINS	1	4(2)	4(4)	6(5)	6(3)	6(3)	6(3)	5(4)	2(1)	4(1)	11(4)	5(30)
LONG TERM GAINS	2	53(25)	45(40)	47(38)	43(23)	57(27)	38(20)	51(45)	51(27)	54(13)	42(15)	48(273)
BOTH	3	11(5)	13(12)	15(12)	9(5)	11(5)	6(3)	2(2)	4(2)	4(1)	8(3)	9(50)
Q 26E) PUBLIC INVESTMENT CAPITAL INTO MILITARY DEVLP.												
SHORT TERM GAINS	1	11(5)	10(9)	10(8)	11(6)	4(2)	8(4)	11(10)	9(5)	4(1)	8(3)	9(53)
LONG TERM GAINS	2	17(8)	16(14)	17(14)	17(9)	28(13)	15(8)	26(23)	23(12)	25(6)	22(8)	20(115)
BOTH	3	9(4)	4(4)	7(6)	0(0)	4(2)	4(2)	1(1)	6(3)	4(1)	3(1)	4(24)
Q 26F) PUBLIC INVESTMENT CAPITAL INTO OTHER												
SHORT TERM GAINS	1	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
LONG TERM GAINS	2	4(2)	2(2)	6(5)	2(1)	6(3)	4(2)	1(1)	0(0)	4(1)	3(1)	3(18)
BOTH	3	0(0)	6(5)	2(2)	7(4)	2(1)	0(0)	1(1)	0(0)	0(0)	0(0)	2(13)
Q 26G) PUBLIC INVESTMENT CAPITAL INTO NO OPINION												
SHORT TERM GAINS	1	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)
LONG TERM GAINS	2	0(0)	1(1)	4(3)	0(0)	0(0)	2(1)	0(0)	4(2)	0(0)	3(1)	1(8)
BOTH	3	4(2)	4(4)	6(5)	0(0)	4(2)	15(8)	5(4)	11(6)	17(4)	6(2)	6(37)

		ENGNR (47)	ENVIR (89)	ATTNY (80)	DVLPR (54)	GOVNT (47)	CONSRV (52)	REALTR (88)	BANKS (53)	UNION (24)	ASSNS (36)	TOTAL (570)
Q 27) HAVE DELT WITH COMMISSION												
NEVER	1	57(27)	56(50)	47(38)	30(16)	40(19)	56(29)	40(35)	87(46)	79(19)	64(23)	53(302)
ONCE	2	9(4)	4(4)	9(7)	13(7)	11(5)	19(10)	16(14)	2(1)	8(2)	22(8)	11(62)
TWO OR THREE TIMES	3	11(5)	13(12)	21(17)	33(18)	21(10)	8(4)	24(21)	4(2)	8(2)	8(3)	16(94)
THREE OR FOUR TIMES	4	4(2)	7(6)	13(10)	7(4)	2(1)	6(3)	8(7)	4(2)	0(0)	0(0)	6(35)
FIVE TIMES OR MORE	5	17(8)	17(15)	6(5)	11(6)	23(11)	10(5)	9(8)	0(0)	0(0)	6(2)	11(60)
TOTALS		98(46)	98(87)	96(77)	94(51)	98(46)	98(51)	97(85)	96(51)	96(23)	100(36)	97(553)
Q 28) WOULD DESCRIBE DEALINGS AS												
VERY SATISFACTORY	1	9(4)	6(5)	6(5)	7(4)	4(2)	13(7)	8(7)	4(2)	4(1)	3(1)	7(38)
MODERATELY SATISFACTORY	2	26(12)	25(22)	29(23)	43(23)	43(20)	21(11)	28(25)	4(2)	8(2)	19(7)	26(147)
MODERATELEY UNSATISFACTORY	3	6(3)	8(7)	9(7)	9(5)	13(6)	4(2)	11(10)	0(0)	0(0)	11(4)	8(44)
VERY UNSATISFACTORY	4	6(3)	4(4)	5(4)	6(3)	2(1)	4(2)	10(9)	0(0)	4(1)	0(0)	5(27)
TOTALS		47(22)	43(38)	49(39)	65(35)	62(29)	42(22)	58(51)	8(4)	17(4)	33(12)	45(256)
Q 29A) EMPHASISE URBAN DEVELOPMENT FOR TOURIST ACTIVITIES												
AGREE	1	64(30)	66(59)	59(47)	72(39)	81(38)	46(24)	83(73)	60(32)	50(12)	67(24)	66(378)
DISAGREE	2	26(12)	26(23)	29(23)	22(12)	13(6)	40(21)	10(9)	28(15)	17(4)	19(7)	23(132)
NO OPINION	3	9(4)	4(4)	5(4)	0(0)	4(2)	10(5)	5(4)	9(5)	25(6)	6(2)	6(36)
Q 29B) EMPHASISE PRESERVATION OF AGR. IN PLANNING												
AGREE	1	62(29)	78(69)	59(47)	57(31)	87(41)	71(37)	65(57)	74(39)	67(16)	81(29)	69(395)
DISAGREE	2	30(14)	16(14)	30(24)	35(19)	9(4)	17(9)	26(23)	21(11)	8(2)	6(2)	21(122)
NO OPINION	3	6(3)	4(4)	6(5)	2(1)	2(1)	8(4)	7(6)	2(1)	17(4)	8(3)	6(32)
Q 29C) EMPHASISE PRESERVATION OF NATURAL RESOURCES												
AGREE	1	94(44)	99(88)	91(73)	89(48)	96(45)	92(48)	91(80)	94(50)	83(20)	94(34)	93(530)
DISAGREE	2	4(2)	0(0)	2(2)	6(3)	0(0)	0(0)	6(5)	2(1)	0(0)	0(0)	2(13)
NO OPINION	3	0(0)	0(0)	1(1)	0(0)	2(1)	4(2)	1(1)	0(0)	8(2)	3(1)	1(8)
Q 29D) EMPHASISE URBAN DEVELOPMENT FOR INDUST. , MFG. GROWTH												
AGREE	1	28(13)	20(18)	29(23)	28(15)	23(11)	10(5)	28(25)	28(15)	25(6)	28(10)	25(141)
DISAGREE	2	62(29)	72(64)	56(45)	59(32)	60(28)	75(39)	57(50)	57(30)	54(13)	56(20)	61(350)
NO OPINION	3	6(3)	6(5)	5(4)	6(3)	15(7)	12(6)	13(11)	11(6)	13(3)	8(3)	9(51)
Q 29E) MOST IMPORTANT TO PRESERVE NATURAL RESOURCES												
AGREE	1	51(24)	58(52)	31(25)	37(20)	38(18)	58(30)	52(46)	53(28)	54(13)	42(15)	48(271)
DISAGREE	2	40(19)	37(33)	55(44)	52(28)	45(21)	35(18)	36(32)	42(22)	29(7)	44(16)	42(240)
NO OPINION	3	6(3)	2(2)	5(4)	4(2)	15(7)	6(3)	9(8)	2(1)	8(2)	8(3)	6(35)
Q 29F) LAW HAS GUIDED PROPER LAND USE												
AGREE	1	40(19)	42(37)	34(27)	37(20)	72(34)	52(27)	36(32)	49(26)	25(6)	36(13)	42(241)
DISAGREE	2	19(9)	39(35)	34(27)	39(21)	11(5)	23(12)	40(35)	23(12)	38(9)	33(12)	31(177)
NO OPINION	3	36(17)	17(15)	21(17)	11(6)	15(7)	23(12)	22(19)	25(13)	29(7)	25(9)	21(122)
Q 29G) CONSERVATIONISTS DONT UNDERSTAND NEED FOR ECONOMIC DEVLP.												
AGREE	1	32(15)	22(20)	25(20)	52(28)	21(10)	13(7)	55(48)	21(11)	13(3)	25(9)	30(171)
DISAGREE	2	57(27)	62(55)	36(29)	28(15)	65(26)	77(40)	30(26)	53(28)	58(14)	47(17)	49(277)
NO OPINION	3	9(4)	10(9)	29(23)	11(6)	19(9)	8(4)	14(12)	23(12)	21(5)	19(7)	16(91)
Q 29H) OWNERS SHOULD NOT BE CONTROLED BY GOVERNMENT												
AGREE	1	2(1)	3(3)	5(4)	31(17)	4(2)	12(6)	15(13)	8(4)	25(6)	33(12)	12(68)
DISAGREE	2	91(43)	90(80)	80(64)	59(32)	91(43)	83(43)	75(66)	83(44)	54(13)	64(23)	79(451)
NO OPINION	3	4(2)	2(2)	5(4)	2(1)	2(1)	4(2)	8(7)	6(3)	13(3)	0(0)	4(25)
Q 29I) MAINTAIN IT AS IT IS TODAY												
AGREE	1	2(1)	2(2)	1(1)	2(1)	4(2)	0(0)	2(2)	2(1)	8(2)	11(4)	3(16)
DISAGREE	2	96(45)	91(81)	86(69)	87(47)	89(42)	96(50)	93(82)	91(48)	71(17)	81(29)	89(510)
NO OPINION	3	0(0)	0(0)	4(3)	2(1)	4(2)	2(1)	2(2)	4(2)	13(3)	3(1)	3(15)
Q 29J) TOURISM COULD DESTROY COUNTY AS A PLACE TO LIVE												
AGREE	1	62(29)	70(62)	60(48)	35(19)	45(21)	73(38)	42(37)	47(25)	50(12)	50(18)	54(309)
DISAGREE	2	34(16)	26(23)	24(19)	56(30)	47(22)	23(12)	52(46)	45(24)	25(6)	39(14)	37(212)
NO OPINION	3	0(0)	1(1)	7(6)	2(1)	6(3)	2(1)	3(3)	4(2)	17(4)	6(2)	4(23)
Q 29K) TOURISM SHOULD BE LIMITED												
AGREE	1	36(17)	53(47)	30(24)	19(10)	32(15)	50(26)	20(18)	30(16)	25(6)	39(14)	34(193)
DISAGREE	2	57(27)	35(31)	55(44)	70(38)	51(24)	33(17)	67(59)	57(30)	46(11)	50(18)	52(299)
NO OPINION	3	4(2)	8(7)	6(5)	0(0)	15(7)	15(8)	10(9)	9(5)	21(5)	6(2)	9(50)
Q 29L) ADMINISTRATION SHOULD ENCOURAGE TOURISTS												
AGREE	1	28(13)	13(12)	24(19)	48(26)	28(13)	8(4)	56(49)	34(18)	25(6)	33(12)	30(172)
DISAGREE	2	68(32)	79(70)	57(46)	41(22)	62(29)	83(43)	36(32)	53(28)	54(13)	50(18)	58(333)
NO OPINION	3	2(1)	2(2)	7(6)	0(0)	9(4)	8(4)	6(5)	9(5)	13(3)	8(3)	6(33)

			ENGNR (47)	ENVIR (89)	ATTNY (80)	DVLPR (54)	GOVNT (47)	CONSRV (52)	REALTR (88)	BANKS (53)	UNION (24)	ASSNS (36)	TOTAL (570)
Q 31)	EDUCATIONAL BACKGROUND												
	GRADE SCHOOL	1	0(0)	0(0)	0(0)	2(1)	0(0)	0(0)	1(1)	0(0)	8(2)	0(0)	1(4)
	SOME HIGH SCHOOL	2	0(0)	0(0)	0(0)	2(1)	2(1)	2(1)	2(2)	4(2)	21(5)	8(3)	3(15)
	COMPLETED HIGH SCHOOL	3	0(0)	1(1)	0(0)	9(5)	11(5)	6(3)	13(11)	13(7)	25(6)	17(6)	8(44)
	SOME COLLEGE	4	2(1)	7(6)	0(0)	17(9)	15(7)	19(10)	23(25)	25(13)	21(5)	28(10)	15(86)
	COMPLETED COLLEGE	5	47(22)	36(32)	1(1)	37(20)	21(10)	27(14)	24(21)	34(18)	8(2)	11(4)	25(144)
	SOME GRADUATE WORK	6	28(13)	16(14)	0(0)	7(4)	13(6)	8(4)	13(11)	11(6)	8(2)	17(6)	12(66)
	GRADUATE DEGREE	7	23(11)	37(33)	94(75)	17(9)	34(16)	38(20)	11(10)	11(6)	0(0)	14(5)	32(185)
		TOTALS	100(47)	97(86)	95(76)	91(49)	96(45)	100(52)	92(81)	98(52)	92(22)	94(34)	95(544)
Q 32)	APPROXIMATE ANNUAL INCOME												
	UNDER 5000	1	0(0)	0(0)	0(0)	0(0)	0(0)	2(1)	0(0)	0(0)	0(0)	0(0)	0(1)
	5000 TO 10000	2	2(1)	6(5)	1(1)	0(0)	2(1)	21(11)	13(11)	23(12)	42(10)	42(15)	12(67)
	10000 TO 15000	3	23(11)	22(20)	16(13)	17(9)	28(13)	19(10)	15(13)	43(23)	33(8)	17(6)	22(126)
	15000 TO 20000	4	30(14)	28(25)	11(9)	22(12)	30(14)	19(10)	17(15)	13(7)	4(1)	14(5)	20(112)
	20000 TO 25000	5	32(15)	12(11)	21(17)	15(8)	15(7)	15(8)	14(12)	6(3)	8(2)	11(4)	15(87)
	25000 TO 50000	6	13(6)	21(19)	27(22)	17(9)	15(7)	17(9)	20(18)	9(5)	0(0)	14(5)	18(100)
	OVER 50000	7	0(0)	3(3)	14(11)	15(8)	4(2)	4(2)	14(12)	4(2)	0(0)	3(1)	7(41)
		TOTALS	100(47)	93(83)	91(73)	85(46)	94(44)	98(51)	92(81)	98(52)	88(21)	100(36)	94(534)
Q 33)	ISLAND OF RESIDENCE												
	KAUAI	1	2(1)	0(0)	2(2)	6(3)	9(4)	4(2)	5(4)	4(2)	13(3)	8(3)	4(24)
	OAHU	2	74(35)	89(79)	84(67)	52(28)	53(25)	81(42)	60(53)	74(39)	63(15)	58(21)	71(404)
	MOLOKAI	3	0(0)	0(0)	0(0)	4(2)	0(0)	0(0)	1(1)	0(0)	0(0)	11(4)	1(7)
	LANAI	4	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	3(1)	0(1)
	MAUI	5	6(3)	1(1)	2(2)	11(6)	21(10)	4(2)	9(8)	4(2)	4(1)	6(2)	6(37)
	HAWAII	6	4(2)	1(1)	6(5)	6(3)	11(5)	4(2)	13(11)	11(6)	8(2)	11(4)	7(41)
		TOTALS	87(41)	91(81)	95(76)	78(42)	94(44)	92(48)	88(77)	92(49)	88(21)	97(35)	90(514)
Q 34)	LENGTH OF RESIDENCE THERE												
	UNDER 1 YEAR	1	2(1)	0(0)	0(0)	2(1)	0(0)	0(0)	0(0)	2(1)	0(0)	3(1)	1(4)
	1 TO 5 YEARS	2	11(5)	15(13)	5(4)	2(1)	4(2)	13(7)	3(3)	4(2)	4(1)	11(4)	7(42)
	5 TO 15 YEARS	3	23(11)	30(27)	16(13)	15(8)	15(7)	23(12)	8(7)	13(7)	8(2)	19(7)	18(101)
	15 TO 25 YEARS	4	11(5)	15(13)	14(11)	9(5)	11(5)	17(9)	14(12)	15(8)	13(3)	6(2)	13(73)
	OVER 25 YEARS	5	40(19)	31(28)	60(48)	50(27)	64(30)	38(20)	63(55)	57(30)	63(15)	61(22)	52(294)
		TOTALS	87(41)	91(81)	95(76)	78(42)	94(44)	92(48)	88(77)	91(48)	88(21)	100(36)	90(514)
Q 35)	LENGTH OF RESIDENCE IN ISLANDS												
	UNDER 1 YEAR	1	2(1)	0(0)	0(0)	2(1)	0(0)	0(0)	0(0)	0(0)	0(0)	0(0)	0(2)
	1 TO 5 YEARS	2	6(3)	13(12)	4(3)	2(1)	0(0)	12(6)	0(0)	4(2)	4(1)	11(4)	6(32)
	5 TO 15 YEARS	3	21(10)	28(25)	14(11)	11(6)	9(4)	21(11)	5(4)	11(6)	4(1)	11(4)	14(82)
	15 TO 25 YEARS	4	4(2)	12(11)	6(5)	7(4)	6(3)	17(9)	9(8)	13(7)	8(2)	3(1)	9(52)
	OVER 25 YEARS	5	53(25)	37(33)	71(57)	54(29)	79(37)	42(22)	74(65)	64(34)	67(16)	75(27)	61(345)
		TOTALS	87(41)	91(81)	95(76)	76(41)	94(44)	92(48)	88(77)	92(49)	83(20)	100(36)	90(513)
Q 36)	OWN PROPERTY EXCLUDING RESIDENCE												
	YES	1	49(23)	42(37)	64(51)	54(29)	49(23)	44(23)	73(64)	51(27)	29(7)	58(21)	54(305)
	NO	2	38(18)	49(44)	30(24)	26(14)	45(21)	48(25)	15(13)	42(22)	58(14)	42(15)	37(210)
		TOTALS	87(41)	91(81)	94(75)	80(43)	94(44)	92(48)	88(77)	92(49)	88(21)	100(36)	90(515)

APPENDIX G

ANALYSIS OF LEGAL ACTIONS

Gillette et al. v. State Land Use Commission, Civil 1198.

Gillette has appealed from decision of Land Use Commission reclassifying area where three acres of land is situated at Onaopio, Kula, Maui, from an urban to a rural classification.

Gillette's appeal is based on the original (temporary) urban zoning made by the Commission, that it was classified urban when he bought the land, that the land was in urban use; that the land is not suited for agricultural uses; and that the land is needed by Gillette for residential use of the kind permissible only with urban use.

The Maui Planning Commission had opposed the application because it opposed urban zoning altogether in Kula.

The Land Use staff based their recommendation to change from urban to rural on the grounds that there was an adequate amount of land in urban zoning.

The action was brought under Section 6C-7 (Revised Laws of Hawaii 1955, as amended) seeking a Declaratory judgment on validity of agency rules and regulations and is still pending in the Second Circuit Court.

Comment.

See the Attorney General's opinion and the Judge Monden opinion in *Tamura* and Judge Ogata's decision in *Allison* as being important to the ultimate resolution of the case. Petitioner's argument seems supportable by the statutory reading of Section 98H-2, which seems to require land in urban use to be continued classified as urban.

Tamura v. Land Use Commission. Civil 1261.

A decision was rendered by Judge Monden in January, 1967, upholding State Land Use Commission denying request of plaintiff to subdivide 1.96 acres of land into four residential lots located in the Panaewa Houselots Subdivision, Waiakea, South Hilo, Hawaii.

In the same case, plaintiff had earlier applied for a special permit to proceed with subdivision plans which was denied by the Hawaii County Planning and Traffic Commission. This decision was appealed to the Third Circuit Court and Judge Felix rendered a decision June 30, 1965 reversing the Planning Commission. Hawaii County Planning and Traffic Commission thereupon recommended approval but the petition was denied by the State Land Use Commission, which had changed the classification of the area from urban to agricultural.

Tamura's appeal was based primarily on the original land patent issued by the State Department of Land and Natural Resources for the land which he had bought which provided that land could be used for residential purposes for a period of ten years from the date of issuance of patent and that the patentee could subdivide the land if the lots conformed with minimum requirements set by the Hawaii County Planning and Traffic Commission, which required that each lot must contain an area of not less than 10,000 square feet and that owners of the (subdivided) lots shall within 5 years construct a single-family dwelling containing a floor area of not less than 850 square feet exclusive of garage and open lanais.

Judge Felix reversed the Planning Commission on the basis that the decision by the Planning Commission prevented plaintiff from getting full benefit from his patent although he was held to other requirements of the patent. He also referred to legislative intent behind Act 187, to continue land classified originally as urban in an urban classification.

Judge Monden based his decision on the grounds that constitutional prohibition against impairing the obligation of a K is not an absolute one to be read with legal exactness and thus the patent did not create a binding contract; that Section 5 of Act 187 did not prevent Hawaii County Planning and Traffic Commission and the Land Use Commission in the exercise of their discretion and in the interest of public welfare, to classify land as agricultural, based on existing use of property at that time; and that appellant should have known that property would be put in an agricultural zone because of incidental agricultural use.

Comment.

Judge Ogata's decision in the *Allison* case (September, 1968) is contrary. One ground of distinction between the *Allison* case and *Tamura* is that Judge Monden's decision was based in part on the wording of Act 187, Section 5, which, in authorizing the Land Use Commission to set up temporary boundaries, did not require that the existing boundaries be maintained. In *Allison*, however, the appeal by the petitioner was made partly on the basis of Act 205 and Judge Ogata's decision was based in part on an interpretation of Section 98H-2, which was not referred to by Judge Monden.

Ralph E. Allison et al. v. State Land Use Commission, Civil 1383.

Decision by Judge Thomas S. Ogata (September 3, 1968) on appeal from decision of the Land Use Commission on petition (by May, 1966) of plaintiff to change a district boundary from an agricultural to an urban or rural district. The petitioners wanted the right to subdivide lands for residential purposes. They owned 59 of 60 parcels encompassing 174 acres located in the Panaewa Houselots Subdivision, Waiakea, South Hilo, Hawaii.

The Hawaii County Planning and Traffic Commission had recommended placing the land in a rural classification and had stated that General Plan provided for adequate classification of residential areas within the City of Hilo, although the Hawaii General Plan included areas which were not designated as agricultural but were contiguous to urban districts; and that no subdivision be approved until an adequate water supply by improvement district was provided. The lands in question included residential, agricultural, and wooded vacant areas. The petitioners had purchased property under land patents similar to that of Tamura. The Land Use Commission generally followed the Hawaii County Planning and Traffic Commission's recommendations and conclusions —except it put the land in an agricultural classification. The Commission stated that no new conditions or trend of development has arisen to justify amendment of present boundaries to permit urban or rural use, and that further extension would contribute towards scattered development and put burden on public facilities; that the land patent did not create a binding contract; and that land could be used for residential purposes, provided requirements of land use law were met.

Judge Ogata's decision reversed the Land Use Commission. He stated that under Section 98H-2, there was a duty to set standards for determination of boundaries consistent with the prescribed mode and that the Commission had adopted land use district regulations and the reasonable inference that could be drawn from the regulations is that the land was and is best suited for residential development rather than agricultural pursuit. He further found that the classification was not found on a legitimate exercise of the police powers of the State, bears no relation to the public interest or benefits no one, and is unfair and discriminating.

Comment:

The Ogata decision is important because it seems to open the door for an appeal based on the fact that petitioner's land under temporary boundary classification was different from the permanent boundaries to his detriment. While there seems to be an examination of underlying factors, nevertheless, simply on the basis of the previous temporary classification, a petitioner may be able to raise an argument that, the change in classification deprived him of a vested right.

Hawaiian Trust Company as Trustee v. State Land Use Commission. Civil Nos. 12980 and 12981.

Petitioner appealed from the decision of the Land Use Commission placing its land located in Manoa Valley in a conservation area. It wanted the land classified as urban. Civil 12980 involving the main parcel of land, Civil 12981 a second parcel of 122,700 square feet.

Temporary district boundaries were adopted by the Land Use Commission in April, 1962, putting land in conservation area, although previously the area was zoned urban.

The decision by the Land Use Commission was based on need for a watershed area although property involved in Civil 12981 was acknowledged by the Land Use Commission as being too small for having any value of this type.

Appeal was based on an alleged violation of Section 98H-5 in that inclusion was due to a mistaken belief of the agency that subject land was in a "forest water reserve zone" provided for in Section 19.70, Revised Laws of Hawaii, 1955; that a change in the use of the subject land to urban use was in progress when change made; and failure to comply with Section 6C-3(a) Administrative Procedure Act.

The case was dismissed by stipulation for dismissal with prejudice on August 2, 1966.

Comment:

These cases, along with Civil Nos. 14039 and 17377, relate to a problem similarly discussed in *Gillette, Tamura,* and *Allison,* a change in land use boundaries from a previous classification. This case also raises the question which has not yet been resolved whether the setting of land use boundaries must comply with the requirements of Section 6C as well as Chapter 98, relating to adoption of land use boundaries.

Kula Development Corporation v. Land Use Commission. Civil No. 13900.

Plaintiff sought declaratory relief (filed March 10, 1964) based on a proposed determination of boundaries affecting plaintiff's land in Kula, Maui by Land Use Commission as agricultural although under temporary

boundaries determined in April, 1962, it was designated as an urban district.

Petitioner alleged frequent changes by the Land Use Commission as to the proposed classification from urban to agricultural to rural as the basis for seeking relief.

The case was dismissed by stipulation.

Comment:

This case is noteworthy for the issue whether amendment of boundaries can be the subject of a declaratory judgment under Section 6C-7, Revised Laws of Hawaii 1955, as amended, a provision of the Administrative Procedures Act.

Hawaiian Trust Company as Trustee of the Trust Estate of John Ena and the Roman Catholic Church v. Land Use Commission. Civil No. 17377.

Appeal (August 12, 1965) from decision of Land Use Commission. Land in question was owned by Roman Catholic Church and leased to appellant in Manoa Valley Appellant in July 29, 1963, petitioned to have temporary district boundaries (made in April, 1962) amended from conservation to urban, which was denied on July 14, 1965.

Appeal was based on alleged violation of Sections 4 and 18 of the Constitution of the State of Hawaii and the 5th Amendment of the United States Constitution, the taking of property without due process of law.

Nuuanu Valley Community Association v. Land Use Commission. Civil No. 18533.

Appeal February 14, 1966 from decision of Land Use Commission entered on June 14, 1966, to amend urban district boundary at Nuuanu Valley, Oahu, so as to incorporate approximately 3.6 acres owned by Nuuanu Ventures which was previously in the conservation district.

Petitioner sought intervention on grounds that the decision was not in the best interests of the Nuuanu Valley Community Association because a dangerous erosion and potential landslide area was created.

A Motion to Dismiss was made because there was no genuine issue and Petitioner had opportunity to participate in hearing except to cross examine petitioner's witnesses. The case was dismissed with prejudice by stipulation.

Comment:

This case demonstrates the problem of applicability of Rule 6C-14 of the Administrative Procedures Act, which permits aggrieved parties to appeal from an agency's decision, to the determination of land use boundaries.

Hawaiian Trust Company as Trustee of the Estate of John Ena v. Land Use Commission, Civil 14039.

Appeal from decision of Land Use Commission (March 6, 1964) who denied appellant's Petition for Amendment of Temporary District Boundaries made in April, 1962 from conservation to urban which affected appellant's land in Manoa Valley.

Appeal was based on alleged violation of Section 4 and 18 of the Constitution of the State of Hawaii and the 5th Amendment to the United States Constitution in that appellant was deprived of his property without due process of law.

Dismissal by Stipulation was made August 1, 1966.

Comment.

See Civil No. 12980 and Civil No. 12981.

Lyman v. Land Use Commission (Heeia Fish Pond). Civil Nos. 20579 and 20615.

An appeal was made on December 2, 1966 from decision of Land Use Commission on October 20, 1966. Maps made by Land Use Commission showed no separate designation for Heeia Fish Pond. Appellant contended that the pond took on character of surrounding lots which has been zoned for urban use.

The Land Use Commission contended that its Rule 3.1 applied, which provides that "unless otherwise indicated, all areas of the State having an elevation below high water mark are classified "C" although the district boundary lines which reach the sea are extended for convenience of reading, a short distance offshore".

Civil No. 20615 is the same claim except that petitioner seeks the Court's declaratory judgment determining the controversy.

Appeal is based on an alleged inconsistency that the State land use regulations created in making a land use classification which is void as contrary to or in excess of the authorizing statute because the land use classification was different from the classification shown on the District Map.

Comment:

This case demonstrates the question whether changes in district boundaries, and district maps are considered as regulations which must comply with 6C, Revised Laws of Hawaii 1955, as amended, as well as with the requirements of Section 98H-3.

II. *OPINIONS OF THE ATTORNEY GENERAL*

The attorney general's opinions are on various problems that the Land Use Commission encountered in the course of administering the land use regulations and statutes. They should be read with a viewpoint that they often illustrate problems which can be resolved by amending of existing rules and regulations.

Three of the opinions deal with questions derived from the power granted to the various county commissions in designating lot size in agricultural districts. One opinion rendered by the attorney general is on the question of whether the Land Use Commission which had prescribed in its interim regulations the minimum lot size within an agricultural district had the power to so designate a lot size. Another opinion was rendered on the contention made that if the Land Use Commission was without power to set minimum lot size requirements then, in view of another provision of the interim regulations which allowed single-family dwellings, the Commission was also powerless to prevent lands situated in an agricultural district from being developed into residential subdivisions. A related opinion was on the question of whether the counties had the authority to increase the minimum lot size in an agricultural district in the light of Section 98H-5(b) which provided that the county standards for agricultural subdivisions existing as of May 1, 1963, shall constitute a minimum lot size of agricultural districts within the respective counties. In all these cases interpretation of statutes which were relatively clear and unambiguous, were the basis for the attorney general's opinions.

Opinions on whether the Land Use Commission had the power to create a rural district by amending the interim boundaries prior to the adoption of the permanent boundaries and whether the landowner had the right to petition the Land Use Commission to require a change of a designation from agricultural to urban land even though the land had been previously dedicated under the special provisions of Section 128-92, which provided for cancellation of dedication in case of a land use change, were also largely based on interpretation of statutes which were relatively unambiguous.

An opinion on whether the Department of Planning and Economic Development could enter into joint association agreements with the Macadamia Nut Association of Hawaii for the promotion and sale of macadamia nuts at the New York World's Fair is on a special problem of a non recurring type.

In addition, opinions are rendered on questions which are primarily procedural. One opinion was on the question of who can petition for a boundary change. Another attorney general's opinion was to advise on permitting additional time for petitioners to present cases. Another was on the question of whether the Land Use Commission had the power to reconsider its action in denying a boundary petition when the motion for reconsideration is made after the statutorily described 90-day period within which the Commission must act. This is a matter not presently covered by present statute or regulation and is important enough to warrant some consideration as a matter to be covered by a future regulation. Another opinion was rendered on the question of whether the Land Use Commission had the power to approve an applicant's Special Use Permit for a helicopter pad within an agricultural district for a duration in excess of that approved by the County Planning Commission. The opinion demonstrates a somewhat technical problem; the Land Use Commission review power of decisions by County Planning Commission to grant special permits is one merely of approval or denial.

An opinion on the question of whether the granting of special permit (in this case for a resort development) required development within a specified period was similar to those rendered on the statutory interpretations of land use statutes. Although there was no applicable statute, the decision of the attorney general was made on the basis of the weight of general legal authority.

The attorney general also issued an opinion in which the validity of the Gillette claim was considered which has been mentioned under the cases previously discussed. In view of Judge Ogata's decision in the *Allison* case and the provisions of Section 98H-4, the opinion merely presents a possible line of argument as to the factors the court will consider.

June 25, 1962. Whether the Land Use Commission can prescribe by regulation the minimum lot size within an agricultural district.

The Land Use Commission had prescribed in its Interim Regulations 2.1(b) which prescribed appropriate use of land situate within an agricultural district that "Minimum lot size within the district shall be 5 acres."

Attorney general's opinion was that Land Use Commission had no power to determine lot size; that instead, the power was vested in the county under Section 138-42 (county zoning). Act 187 authorizing Land Use Commission to set up regulations specifically provides that zoning powers now granted to counties under Section 138-42, shall govern the zoning within the district, with the exception that areas may not be zoned for urban use except in those districts designated as urban by the Commission.

Comment.

Decision is based on interpretation of an unambiguous portion of Act 187, which covered the problem.

July 31, 1962. Opinion letter by Attorney General to answer contention that if Land Use Commission was without power to set minimum lot size requirements, then in view of another provision of the Interim Regulations which allows single-family dwelling units within agricultural district, the Commission was powerless also to prevent lands situated in an agricultural district from being developed into residential subdivisions under existing county zoning ordinances.

Attorney General's opinion found contention untenable. He argued the power granted to Land Use Commission was power to enact regulations which tended to promote the purpose and spirit of the Act and carry it into effect. Any regulations which subverted it was void and unenforceable.

The regulation permitting single-family dwellings would fail if used to subvert the purpose of the act. The attorney general's opinion was that the regulation in its existing form was void and unenforceable.

Comment.

The interim regulation in question may have been meant to apply to single-family dwelling units which had already been present and existing in areas designated as agricultural.

December 12, 1962. Opinion letter whether a special permit may be granted as alternate relief in a proceeding for a change of boundary.

Attorney general's opinion was that a special permit could not because under the provisions of Section 7 of Act 187, Session Laws of Hawaii 1961 relating to special permits, the Land Use Commission was required to notify all persons and agencies interested in the subject matter, but was not so required in amendment of district boundaries under Section 6. Hence, since the requirement for notification in the Special Permit cases was of a higher order than the published notice in the amendment of boundaries procedure, the granting of a special permit in lieu of amendment of boundary proceeding could not be granted.

Comment.

The same distinction still applies under Sections 98H-4 and 98H-6.

May 7, 1963. Attorney general's opinion letter as to whether Department of Planning and Economic Development could enter into joint associate agreement with Macadamia Nut Association of Hawaii for the promotion of sale of macadamia nuts at the New York World's Fair 1964-65.

The attorney general's opinion was that it could because Section 28A-3, Revised Laws of Hawaii 1955, as amended, provides the Department of Planning and Economic Development the power to "contract with qualified private and public agencies, associations, firms or individuals . . . in pursuance of the [Department's] duties and functions", and Section 28A-6, Revised Laws of Hawaii 1955, as amended, provides that the Department had the duty to "disseminate information developed for or by the [Department] pertaining to economic development to assist present industry in the State, attract new industry and investments to the State, and assist associations of produces and distributors of Hawaiian products to introduce new products to consumers."

Comment.

The statutory authority relied upon provides a broad basis for supporting the attorney general's opinion.

January 14, 1964. Opinion letter by the Attorney General on question of whether Land Use Commission had the power to create a rural district by amending the interim boundaries prior to the adoption of the permanent land use boundaries.

Attorney general's opinion was based on satisfying the test laid down by Section 98H-4, Revised Laws of Hawaii 1955, as amended, in the petitioning by any property owner or lessee or department or agency of the State for a change in the boundary of any district, interim or permanent, by submitting proof that the land is usable and adoptable for the use it is proposed to be classified.

January 30, 1964. Opinion rendered on question of whether the landowner had the right to petition the Land Use Commission to require a change in the designation for agricultural to urban even though the land was dedicated under the provisions of Section 128-92.

The attorney general answered in the affirmative because Section 128-92, which provides that a special land reserve is established to enable the owner of any parcel of land within an agricultural district, a rural district, a conservation district and/or an urban district to dedicate his land for a specific ranching or other agricultural use, and to have his land assessed at its value in such use, also provides that the dedication can be cancelled on sixty days' notice in case of a change in major land use classification.

Comment.

Advisory opinion based on unambiguous and applicable statutory provisions 98H-5.

February 5, 1964. Opinion Memorandum on Request for a Boundary Change by party not holding any interest in the land involved.

The attorney general interpreted Section 98H-4, authorizing amendments to district boundaries as applying so that only property owners or lessees who desire to use his own land for uses other than that for which it was districted, could petition the Land Use Commission for a change in the boundary of any district.

Comment.

The provisions of Section 98H-4 is clear and unambiguous, and the attorney general's opinion is clearly supportable by the statutory interpretation. However, the question raised is an important one which might involve future amendment of the land use statute. It is conceivable that the right of requesting amendments to land use boundaries should be given also to parties who have future or equitable interest in property in the area who under the present statute would seem to have no right of application.

March 31, 1965. Opinion letter on whether the counties have the authority to increase the minimum lot size in an agricultural district in the light of Sections 98A-5(b), Revised Laws of Hawaii 1955, as amended, which provides that the county shall set the standard.

The Attorney General thought it permissible because the section merely prescribed the minimum lot size within an agricultural district existing as of May 1, 1963 as established by each county and did not restrict them from determining what the size should be.

July 24, 1968. Opinion letter on whether granting of special permit (for a resort development on the Island of Hawaii) required completion within a specified period.

Opinion cites general authority that it must be done within a reasonable time. Opinion stresses that Commission may also properly determine matter by using Rule 1.25(e) Rules of Practice and Procedure, to make a declaratory ruling to determine a controversy or to remove uncertainty.

Comment.

There is no statutory authority for the attorney general's opinion. However, it is supported by general legal authority. The opinion, however, serves to designate a provision of the Rules of Practice and Procedure issued by the Commission for a declaratory ruling by the Commission which is infrequently used but by the terms of its provisions might be a useful tool for resolving land use controversies if judiciously used.

July 25, 1968. Opinion letter on question of whether the Land Use Commission may reconsider its action denying a land use boundary petition when the motion for reconsideration is made after the statutory prescribed 90-day period within which the Commission must act.

The Attorney General concluded it could not because Section 98H-4, Revised Laws of Hawaii 1955, as amended, limits the jurisdiction of the Commission in its consideration of petitions for changes to the 90-day period after the prescribed public hearings.

Comment.

The problem raised is an important one in a slightly different context. The Commission conceivably has jurisdiction to reconsider within the 90 day period. However, there should be some degree of finality in decisions, and there should be some safeguard against land use commission members being subjected to pressure to change their minds. Reconsideration should probably be covered in the rules of procedure.

August 8, 1968. Opinion on whether the Commission was mandated by Act 187 amended by Act 205 to reclassify three acres of land owned by Mr. Gillette in Civil 1198 at Kula, Maui, for a rural to urban designation. A two-story rental duplex occupies the northwest quadrant of the land in question.

The Attorney General cites definition of "urban" like classification in Section 2 of Act 187 and Rule 2.7 of the Commission to provide general authority that decision of the Commission was not inconsistent with the law, in changing the classification from urban to rural.

Comment:

The Attorney General's opinion offers only one line of argument. 98H-2 seems to suggest that land classified as urban continues to be classified as urban, and since provision is made for urban growth, there is no need for "urban-like concentrations" at the time the land is classified. See Judge Ogata's decision in the *Allison* case.

November 4, 1968. Attorney General's opinion on question as to whether the Land Use Commission possesses the power to approve an applicant's special use permit for a Heliport within the state agricultural district for a period in excess of that approved by the County Planning Commission.

The Attorney General concludes the Commission has no power because the Legislature granted the county commissions the specific power to place restrictions upon a use permitted specifically under Section 98H-6, to the County Planning Commission, and no grant in favor of the Land Use Commission has been made.

Comment:

The Land Use Commission has the power only of approval or denial of grant by a county planning commission under Section 98H-6. It does not have the power to modify a decision. Hence, the attorney general's opinion seems to be supported by the statutory interpretation.

APPEALS INVOLVING THE LAND USE COMMISSION
FEBRUARY 17, 1969

The Land Use Commission has been in existence since 1961 with the passage of Act 187, Session Laws of Hawaii 1961. All appeals have dated since the adoption of temporary district boundaries pursuant to Act 187 in April, 1962. Generally appeals have been made by landowners because their lands were placed in land classification zones which the landowners found thwarted their intended use of land or where requests for special permits were rejected.

All the cases involving appeals from the decisions of the Land Use Commission have invloved appeals to the circuit court levels. None thus far (February, 1969) have been appealed to the Supreme Court although one current case pending which was reported *Lyman v. Land Use Commission,* Civil No. 20579, probably will be appealed to the Supreme Court if decided against the Land Use Commission. The same cases reported earlier in our report on Decisions involving the Land Use Commission, *Gillette et al. v. Land Use Commission,* Civil No. 1198; *Tamura v. Land Use Commission,* Civil No. 1261; *Ralph E. Allison et al. v. Land Use Commission,* Civil No. 1383; *Hawaiian Trust Company as Trustee v. Land Use Commission,* Civil Nos. 12980 and 12981; *Kula Development Corporation v. Land Use Commission,* Civil No. 13900; *Hawaiian Trust Company as Trustee of the Estate of John Ena and the Roman Catholic Church v. Land Use Commission,* Civil No. 17377; *Nuuanu Valley Community Association v. Land Use Commission,* Civil No. 18533; *Hawaiian Trust Company as Trustee of the Estate of John Ena v. Land Use Commission,* Civil No. 14039 and *Lyman v. Land Use Commission,* Civil Nos. 20579 and 20615, are the cases which the analysis of whether any of the results of the appeal involving the Land Use Commission have influenced findings or outcome of later appeals or may conceivably affect later appeals is based.

To some extent, this analysis is necessarily conjectural. Unless the records of litigation actually contain references to other cases as authority, one can only surmise from the sequence of time and the nature of the kind of appeal or similarity of an appeal, whether one later in time or about the same period of time was influenced by an earlier or simultaneous appeal.

Tamura, Civil No. 1261 and *Allison,* Civil No. 1383, to some extent are companion cases. They involve basically the same tract of land; the Panaewa Houselots subdivision of Waiakea, South Hilo, Hawaii. The petitioner in *Tamura,* Civil No. 1261, appealed from a 1964 decision of the Hawaii Planning Commission denying special permit to proceed with a subdivision plan after the land use classification was changed from urban to agricultural. Allison appealed for a decision of the Land Use Commission which rejected his application for a classification change from agricultural to urban or rural.

The *Allison* appeal from the decision of the Land Use Commission was made on July 20, 1966 after the earlier decision by Judge Felix in the *Tamura* case which had reversed the decision of the Hawaii Planning Commission. The Commission had turned down Tamura in his request for a special permit. Allison may have been influenced by the decision by Judge Felix in the *Tamura* case. Tamura's application to the Land Use Commission and subsequent appeal from the decision by the Land Use Commission was occurring while Allison initiated his appeal. The ultimate decision in Tamura denying the special permit was rendered by Judge Monden in January 1967. There is some evidence that the Judge Monden decision affected Allison's appeal because Judge Monden was disqualified from hearing the latter case. Later in September 1968 as was previously noted, Judge Ogata rendered a decision for all practical purposes, contrary to the decision of Judge Monden, when he held that Allison's land should be placed in an urban classification.

In *Gillette,* Civil No. 1198, an appeal was filed on March 8, 1968 prior to the decision by Judge Ogata in the *Allison* case but after the Judge oMnden decision in *Tamura.* If anything, Judge Monden's decision must have been discouraging to Gillette so it doubtlessly was not a basis for Gillette's appeal. The Judge Ogata decision in *Allison* came after Gillette had initiated his appeal so, here again, it probably had little to do with Gillette's decision as to appeal the classification of his land from urban to rural. This case however is still pending, and the similarities of *Allison* to the case might certainly influence Gillette to rely on the Ogata decision to argue that the Land Use Commission's decision to classify the area for agricultural use when it was previously urban and had been temporarily zoned urban was not based on a legitimate exercise of the police powers of the State, bore no relation to the public interest or benefited no one, and was unfair and discriminating.

Moreover, as previously noted, the Ogata decision in *Allison* is important because whatever appeals are made from the Land Use Commission's decision in the future will probably be appeals from classifications of lands such as was involved in the *Allison* case. While the petitioners in such cases may not have been influenced by the decision in *Allison,* they will certainly rely on the decision in *Allison* as precedent.

The four cases which involve the *Hawaiian Trust Company as Trustee v. the Land Use Commission,* Civil Nos. 12980, 12981, 14039 and 17377 all involve appeals from the decision of the Land Use Commission to classify lands as conservation in April 1962 rather than urban. They are difficult to analyze from the standpoint of determining whether they incluence other appeals. All of the cases were abortive, being eventually dismissed by stipulation, meaning that suits on any of them cannot be refiled. Because no decisions were ever rendered in them, it is difficult to conceive of them serving as precedent to rely on in future appeals involving zoning classifications. At least in two of the cases, however, 14039 and 17377, the pleadings reflect the grounds of the appeal as being that will commonly be encountered in zoning appeals; that there is a violation of the Constitution of the State of Hawaii and the 5th Amendment of the United States Constitution in that appellant was deprived of his property without due process of law. Generally petitioners appealing zoning decisions do so because a zoning classification by the Land Use Commission prevents them from making a more favorable economic use of their property. Thus, the argument is made that the decision of the Land Use Commission deprived them of their property without just compensation. As such, however, the cases involving the Hawaiian Trust Company should be described as illustrative of appeals rather than influencing appeals.

Kula Development Corporation v. Land Use Commission, Civil No. 13,900 is another abortive case where no decision was actually rendered which might serve as precedent for another appeal. As may be recalled the plaintiff sought declaratory relief to determine the classification of the land where the petitioner's property was located. Petitioner alleged that frequent changes by the Land Use Commission as to the proposed classification had adversely affected the petitioner. This case is rather unique for the type of remedy sought, a declaratory judgment. Most appeals from decisions of the Land Use Commission have been from zoning classification or refusal of special permits. It would be difficult to conceive of very many situations where a petitioner would seek a declaratory judgment where a zoning classification or refusal of a special permit was involved since there would normally be few grounds for confusion when that type of decision is rendered by the Land Use Commission. Generally declaratory judgments are sought only for the purpose of a rule interpretation and this remedy is provided for under Rule 1.25 under the Land Use Commission's Rules of Practice and Procedure. The case, probably has very limited significance from the standpoint of having served as an influence on future appeals. It has not served as a basis for any appeals thus far.

Another abortive case was that of *Nuuanu Valley Community Association v. Land Use Commission*, Civil No. 18533 in which petitioner appealed from the decision of Land Use Commission to amend urban boundaries in Nuuanu Valley, Oahu so as to incorporate 3.6 acres owned by Nuuanu Ventures, Inc. The case was dismissed by stipulation so here again, there is no precedent value here to rely on in the event of future appeals. As noted previously, the case is significant because of the nature of the petitioner, an indepedent organization which sought to intervene in a Land Use Commission hearing on the grounds that it was adversely affected.

There has been no other cases whether a petitioner has sought intervention to appeal a Land Use Commission to amend boundaries or grant special permits so the case has not served to influence future appeals. Although it may be narrowly legalistic to so argue, it is difficult to see how this case will serve as a basis for future appeals involving independent organizations. Generally, such organizations would face the formidable argument that they have no interest at stake unless they have real property directly affected by the decision of the Land Use Commission.

Lyman v. The Land Use Commission, Civil Nos. 20579 and 20615 considered a unique issue which was never considered by the Land Use Commission in any other case. The substantive issue was whether a body of water took on the character of surrounding lands or should be classified as conservation. The case is still being litigated, and because of the issued involved, it probably would not rely on precedent such as created in *Tamura* and *Allison* except in an incidental way. Cases such as *Tamura* and *Allison* concern the rationale for a Land Use Commission's decision. A case like *Lyman* is being litigated because of the confusion engendered by the overlapping of statutes such as 98H-3 (part of the Land Use Act) and 6C-3 of the Administrative Procedures Act, and the lack of clarity of the Land Use Commission boundaries and maps. *Lyman* illustrates problem areas which can be corrected by the Land Use Commission through changes and reforms in their rules, maps and boundary designation. It does not, except to an incidental extent, concern a policy decision of the Land Use Commission. To that end it is difficult to see where the *Lyman* case, as important as it is, being significant from the standpoint of influencing future appeals except where interpretation of maps and boundaries are concerned.

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3. Master plan for Lahaina
4. A plan for the Lahaina region
5. Appendix

Field surveys conducted for the study
by members of the Land Use
Commission, Staff and Consultants

Photography:

— Robert Wenkam

— R. M. Towill Corporation
(pages 1, 15, 52, & 173)

— H. B. Altman
(pages 16, 99, 106, 155 & 156)

— R. Regan
(pages 117 & 168)

Report Design: Tom Lee Design, Inc.

Printing: Fisher Printing Co., Inc.

ERRATA:

Page 13—first column, fourth paragraph, second and third lines should read: what extent can the tax system of Hawaii attract

Page 19—third column, second paragraph, fifth and sixth lines should read: classification be based upon Planning

Page 24—first column, third paragraph, fourth and fifth lines should read: cultural purposes (or which have a proven

Page 29—Plate 1
Blue hatching on the island of Niihau indicates proposed Conservation District by consultant (not adopted).

Page 36—second column, second paragraph, eleventh line should read: landscape frequently disected by steep

Page 38—second column, first paragraph, second and third lines should read: District are the Urban Districts of Hawi, Kohala

Page 44—Plate 10
color tint and color screen should be reversed on map

Page 49—second column, eighth and twelfth lines should read:
judicial district, the Waiawa site offered properties.
In the case of the Waiawa and Ewa

Page 53—Plate 13
Blue hatching at Waiawa (P. D. 15 & 16) indicates proposed Conservation District by consultant (not adopted).

Page 53—Plate 13
Agriculture District (green) within Urban District (ochre) at Kailua (P. D. 8) should be Existing Urban.

Page 57—Plate 17
should delete: [Coconut Hat Island]

Page 61—first column, third paragraph, third, fourth and fifth lines should read: approximately 35,000 people. Current population

Page 62—second column, first paragraph, seventh line should read: done well and maybe expected to expand.

Page 102—first column, third paragraph, twenty-fourth line should read: signed into being the first division of

Page 104—first column, third paragraph, tenth and eleventh lines should read: contend, is unequal because of the inequalities

Page 104—second column, second paragraph, seventeenth and eighteenth lines should read:
the neighbor island, by laying the foundation

Page 120—first column, first paragraph, fifth and sixth lines should read: property tax exemptions provided sufferers of

Page 120—second column, fourth paragraph, tenth line should read: cause and effect relationships is evident in

Page 141—second column, first paragraph, first and second lines should read: graded rate structure is development oriented.

Page 145—first column, third paragraph, second and third lines should read: were numerous, but none received any significant

Page 158—second column, second paragraph, fourteenth and fifteenth lines should delete:
[only a small number received a unanimous vote for denial]

Page 164—Table 41, fifth column heading should delete:
[cpc only overruled]

Page 168—first column, second paragraph, second, fourth, and seventh line subsection designations should read:
A. B. C.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAIʻI

In the Matter of the Petition of HONOIPU 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 Hawaiʻi, State of Hawaiʻi.	DOCKET NO. DR21-73 **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

The undersigned hereby certify that on this date, a copy of the foregoing document was duly served on the following persons at their last known address by depositing a copy in the U.S. mail, postage prepaid:

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State of Hawaii and Office of Planning and Sustainable Development

DATED: Honolulu, Hawai'i, December 22, 2021.

CADES SCHUTTE
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