

**COMPARISON OF THE TEXT RECORD OF THE 1969 COMMISSION REDISTRICTING HEARING**  
**REDISTRICTING TRANSCRIPTS** (Exhibits 43-45)

**WITH THE TEXT RECORD OF THE REPORT** (Exhibit 32),

**APRIL 1969 "proposed" REDISTRICTING maps H-59 (Papaaloo) and H-65 (Papaikou)**

During the **present** Commission's hearing (the "**Hearing**") for Petition DR21-72 (Church-Hildal) (the "**Petition**") , which Hearing was held on September 8, **2021**, the Commissioners expressed skepticism that the ***text record*** of the Report held a precedence authority over the ***undefined*** boundary district ***reference*** line on the **final 1969** Commission's redistricting map H-65 (the "**Map**") and/or the Commissioners held the ***text record*** of the Report's page 86 held precedence over the Report's page 36 when applied to the ***undefined*** district boundary ***reference*** line on the Commission's 1974 Official State Land Use District Map. The ***undefined reference*** Coastal district boundary line on either of the above two Commission's Maps separated the Conservation District from the Agricultural District.

That ***undefined reference*** Coastal district line on the Commission's 1969 map was redrawn in **1974** on to the Commission's Official **1974** State Land Use District ("**SLUD**") maps, *ref., Exhibit 42 and 46 maps*, which continue

to be used by the present Commission, for reference, when it interprets district boundaries. The **present** Commission variably applied the ***text record*** of the Report's page 86 when it did not apply the ***text record*** of the Report's page 36 when it denied the Petition.

The ***text record*** of the Report's page 86 **was a generalized description** of how the **1969** Commission developed "***recommended***" district lines on "***recommended***" maps. The ***text record*** of the Report's page 36 described the **1969** Commission's final redistricting ***actions***. In the case of the Coastal area between East Kohala, to the north, and the City of Hilo, to the south, (6 different map areas) the text record of the Report's page 36 Evidences that the **1969** Commission only "***partially approved***" the 6 ***recommended*** maps, which page 36 describes "***Areas in agricultural use are excluded***". The ***text records*** of the 1969 Commission's intention to exclude land that was in agricultural use from redistricting, *i.e. the Report's text record*, is further confirmed in **the transcript** of the 1969 Commission's final redistricting hearing on July 18, 1969, ref., Exhibit 43. This will be Evidenced subsequently here in this Appendix 1 with a text copy from the transcript.

The Petitioners have brought this Motion for Reconsideration back to the Commissioners asking that the Commission consider and apply either/either of two different paths of reasoning that may be applied to allow the Petition.

In the **first approach** the Petitioners will evidence that the ***undefined reference*** Coastal district line that is depicted on the LUC's **1974** State Land Use District map SLUD map H-65 generally represents an **administrative error** for the entire map. The Petitioners will evidence that the **1969** Commission intended that the **1969** Commission's ***adopted*** Map H-65, *ref., Exhibit 46 maps*, represent the Coastal district line to be located at the Coastal "***ridge top***" just like it did for the other 5 SLUD maps for the Coastal area leading northward between the City of Hilo, to the south, and east Kohala, to the North, *ref., Exhibit 43 transcript, page 8*.

In the **second approach** we will Evidence, that in the event that the Commission **first finds** that the Coastal district line that is depicted on the LUC's **1974** SLUD map H-65 is not an administrative error, that the ***undefined reference*** Coastal district line ***should be interpreted*** to lie at the Coastal "***ridge top***" in the area of the Property because the Property was in agricultural use in **1969**, *ref., Exhibit 32 Report, page 32 and Exhibit 43 hearing transcript, page 8*, and the agricultural use area portion of the Property (a cane field) extended makai to the Coastal "***ridge top***".

Following the Hearing the Petitioners have worked with the LUC's administrative staff in securing additional Hard Evidence documents that will support both the **first and second approaches** that the Petitioners described above. The Petitioners also have Evidenced two added newspaper articles. The new Evidence documents are.....

- the **1969** Commission's redistricting hearing transcripts and hearing minutes, *ref.*, *Exhibits 43-45*,
- a series of "**proposed**" and "**final**" maps that were used by the **1969** Commission during 3 public hearings on the Island of Hawaii as they dealt with community concerns regarding their redistricting considerations, *ref.*, *Exhibit 46 maps*.
- a newspaper article dated July 14, **1969**, which was published just before the Commission's final redistricting community meeting, *ref.*, *Exhibit 27*,
- a newspaper article that followed the final redistricting community meeting, *ref.*, *Exhibit 28*, and
- a **text excerpt** from a **2004 professional consultant's** study and report, *see Appendix 9, page 24*, where the consultant described that the Property had been in cane production for the past 100 years. The Consultant's study and report are already a LUC file which can be found at this link.....

[https://luc.hawaii.gov/wp-content/uploads/2019/04/exhibit-2-2005-06-23-HA-FEA-CONSERVATION-LANDS.to\\_.ag\\_.pdf](https://luc.hawaii.gov/wp-content/uploads/2019/04/exhibit-2-2005-06-23-HA-FEA-CONSERVATION-LANDS.to_.ag_.pdf)

In order not to provide repetitive repeats of quoted Evidence documents and discussion, both **first and second approaches** are intermingled throughout this Memorandum and its Appendix(s) without pointing to either **approach** specifically.

Particularly relevant to the Petition in 1969 the Commission held a number of **meetings** and **hearings** on the Island of Hawaii during an approximate 8 month period that culminated in a final redistricting hearing on July 18, 1969 in order that the Commission may redistrict a '***continuous band of land around the Island into the Conservation District***'.

This section of the Memorandum Appendix 1 will present various copies of sections of the **text record** of the 1969 hearing transcripts and hearing minutes side by side that are better understood when first considering the **text** section of the Report's page 3, which text excerpt is shown on the right. The page 3 **text** describes that Chapters 4 through 7 provide the Commission consultants "***recommended changes***" to the district boundaries and also record the "***Commission's decisions with respect to the recommendations***".

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.

Particularly the copy to the right describes two distinctly different Coastal land areas. The characteristics of the "**First Area**", that is shown in pink, **Hamakua Coastal** lands are "**Prime agricultural land**" class "**C**". In 1969 the agricultural activity on this Coastal land extended right to the "**ridge top**" above the Coastal "**pali land**". The **pali land** was very steep and was not farmed. The Property is located 14.5 miles north of Hilo in an area that is commonly known to be described as the "**Hamakua Coast**".

The characteristics of the **area** from Hilo to Kapoho (the "**Second Area**" which is shown in yellow) the land is generally classified as **class "E"**. It has little if any good agricultural land characteristics.

The term "**Partially Approved**" meant that the Commission **approved** the redistricting of the pali land in the First Area to Conservation District but not the land that was in "**Agricultural use**" mauka of the Coastal "**ridge top**".

### 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.

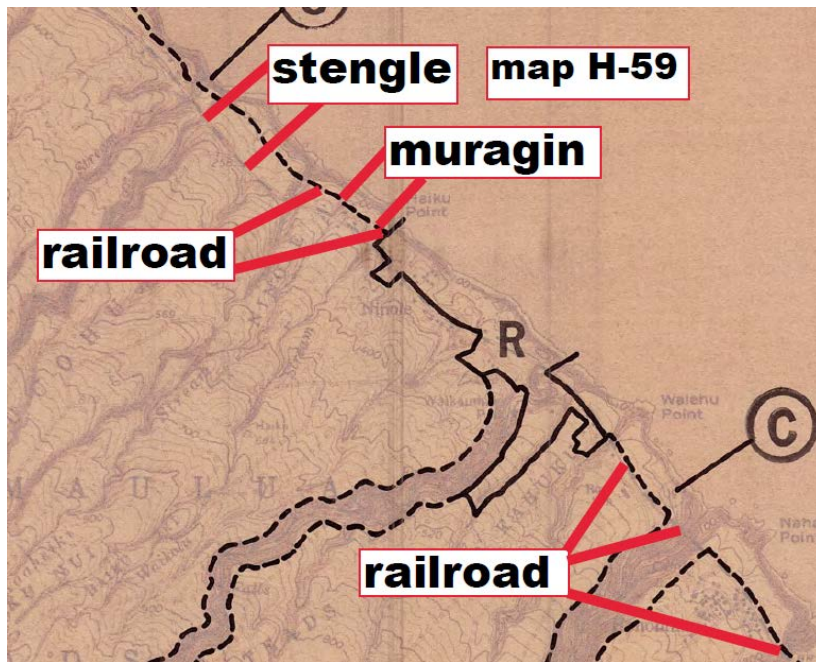
Commission Action: Approved.\*

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

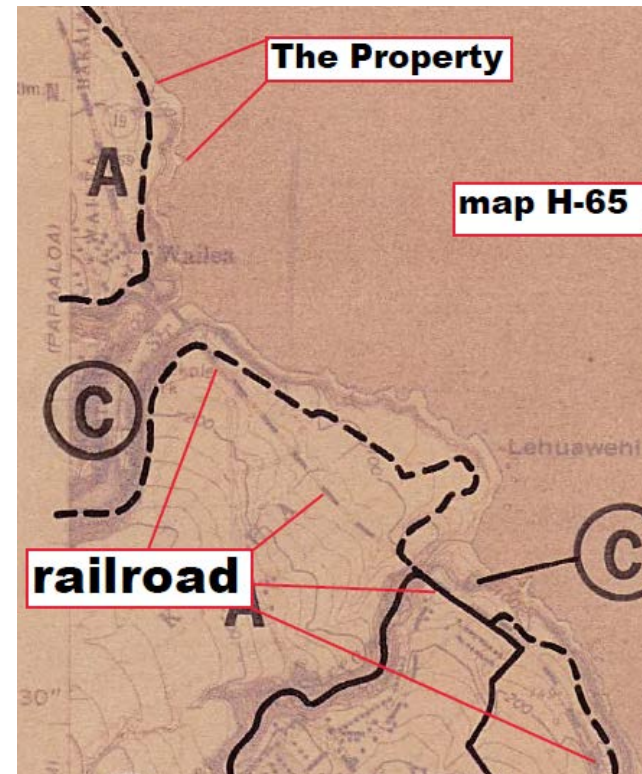
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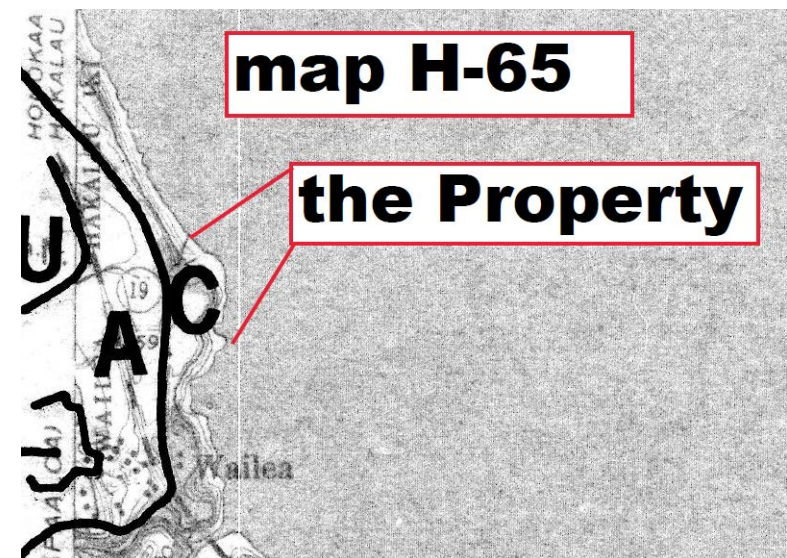
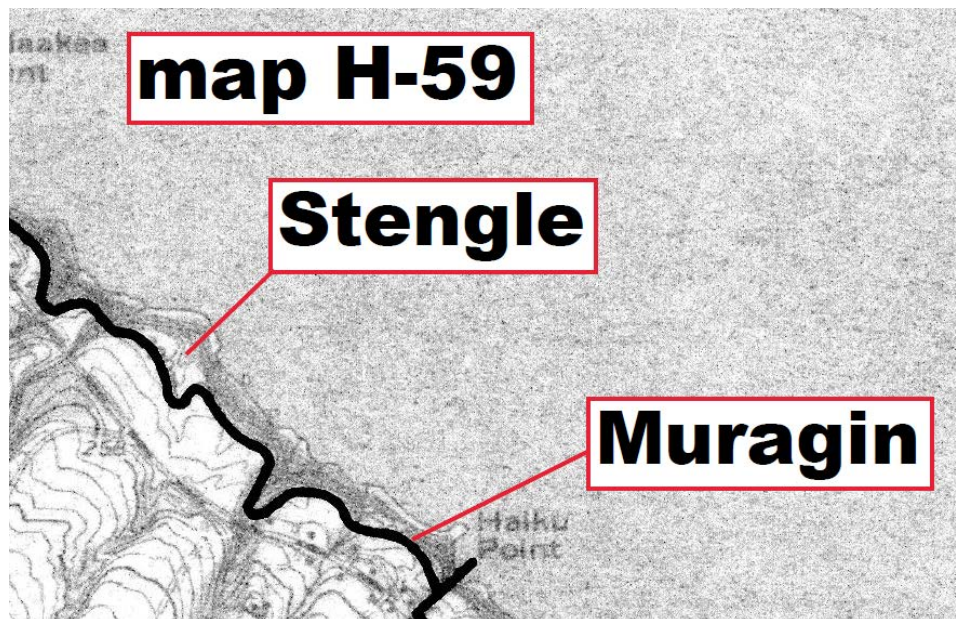
When the Commission's consultants first developed "**proposed**" redistricting maps for the Island of Hawaii they held community meetings and hearings to describe the redistricting **proposals**. Generally all of the maps first showed a dashed Coastal district line generally 300 ft. inland of the high wash of the waves, *ref., Exhibit 46 maps*. Magnified areas of the "**proposed**" map H-59 and "**proposed**" map H-65 are shown below.....



April, "proposed district line".



Unfortunately the 300 ft. "**proposed**" mauka district line on map H-65 (the **First Area**) was not amended following the **1969** Commission's April community hearings but map H-59 and the maps leading to the north along the Hamakua Coast were. The **First Area** (*the pink text area, Report page 36 copy above*) also comprises 4 other maps leading north from map H-59 along the Hamakua Coast all of the way northward to **east Kohala**. Those 4 maps were amended to reflect the district line to follow the top of the Coastal "**pali**" "**ridge top**". The **Second Area** (*the yellow text area, Report page 36 copy above*) leading south from Hilo were not amended, the 300 ft. inland line was generally applied to the final adopted map. Nothing exists in the text record of the Report or the transcript of the Commission's final redistricting hearing on July 18, 1969 explains why map H-65 was not fixed.





Next we turn to the Commission's **1969** redistricting hearings,

*ref., Exhibit 43, **July 18, 1969***, redistricting transcript,

*Exhibit 44, **April 26***, Hilo redistricting transcript, and

*Exhibit 45 **April 25***, redistricting minutes

The **following pages of hearing transcript** and minutes will show that land owners were assured over and over again that

(i) the Conservation District would **only** extend **300 ft. mauka** from the high wash of the waves in areas **where there did not exist an easily identifiable**

(ii) "**ridge top**" above a Coastal pali and "**cliff**",

(iii) a "**vegetation line**" marking an edge makai of an existing use,

(iv) a "**road**" that did not bisect an existing land use i.e. agriculture,

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.

This mirrors what the Report's page 86 described which is shown to the right and above....

Very clearly the Hamakua Coastal land owner was assured that the district line "is used only in areas where there are no physical features, i.e., the top of a pali or ridge" .....

## Exhibit 45

STATE OF HAWAII  
LAND USE COMMISSION

Five-Year District Boundaries & Regulations Review Program  
Minutes of Meeting

Hale Halawai Cultural Center  
Kailua, Kona, Hawaii

April 25, 1969 - 1:00 p.m.

Mr. Richard M. Frazier - Honokaa Sugar Company

**Page 9**

Mr. Frazier queried Mr. Williams as to his definition of the 300-foot setback for shoreline areas. In acknowledgment, Mr. Williams answered that the 300-foot setback is used only in areas where there are no physical features, i.e., the top of a pali or ridge, a road, or any other identifiable feature.

Both the Report and the 1969 Commission's redistricting transcripts and redistricting minutes and past LUC boundary interpretations repeatedly describe the Coastal district boundary line to not exceed 300 ft. mauka of the shoreline. During the Hearing for DR21-72 (Church-Hildal) Kato also described this.....

### Kato testifying on page 95, Exhibit 5, Hearing transcript

And if you look just at that, then that one says -- oh, I notice, I think, from Hilo to another location in the general overall segments, it mentions the 300 line, but in the considerations, the 300 mark is only considered if there are no other physical features that are applicable. But in the case of this property, there's the pali and there's the railway.

COMMISSIONER SCHEUER: Okay.

In the case of the Property the interpreted district line is 430 ft. inland of the "**wave action**" at its widest point, *ref., Exhibit 38*, and 330 ft. inland of the "**ridge top**".....

### Report page 86, criteria #4.

- 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.

Next we turn to the April 1969 Commission transcript of the Hilo hearing.....

**consultant, Chris Dagenhardt speaking, Exhibit 44, page 4**

Under the Agricultural Districts, a general strengthening of the definition of agricultural areas by deleting some of the modifying sections so that the Agri-cultural Districts reflect the intention of the Land Use Law and protect prime agricultural land.

Clearly consultant Williams referred to HRS 205-2 (a) (3).....

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

(emphasis added)

The word "**capacity**" refers to a characteristic of land and not a past, existing or future planned land use.

The word "**greatest**" means no other districting priority is greater than Agricultural Districting if land that has "a high capacity for intensive cultivation" **NOT EVEN CONSERVATION DISTRICTING**

Finally the word "**shall**" is a mandatory instruction to the Commission both in **1969** and also today, *i.e. DR21-72*.

The Property comprises "**prime agricultural land**", *ref., Exhibit 35, soils maps.*



**Exhibit 44, Page 10, a land owner initiates an explanation by Dagenhart to explain the 300 ft. set back in the Hamakua Coastal area down to Puna. Two distinctly different soil types.**

May I ask you a question about that map. Along the agricultural district, along the coast there, I see line along the coast.

Which coast? Along here?

All along Hamakua into Puna, is that conservation along there?

Yes, you mean here or along here?

Well, down below Hilo, between

This area here?

Yes. Is that conservation?

This is the proposed conservation district. Yes. What I would

like to do now is go through each of these areas top of

the island and describe them in more detail. We start the

top here at Holualoa Valley which has been proposed for park develop-

Dagenhardt's explanation goes on for the next page basically describing that in the Hamakua Coastal area, the **First Area**, the Coastal land is used for agriculture but, the portion of the land from the high wash of the waves up

to the top of the pali "**ridge top**" is not used and it is that portion that was **proposed** for redistricting Conservation.

In the **Second Area** from Hilo down to Puna the land is comprised of fresh lava flows with very little agricultural potential, there Dagenhardt explains the proposed district line to be 300 ft. inland of the ocean. The Report's page 36 mirrors this explanation.....

**Exhibit 44, page 11**  
**Dagenhardt**

The present conservation district comes to the

line of debris left by the highest annual wave. The high water

mark, the line of debris left by the high water mark. Typically,

agricultural uses will cease considerably mauka of that line and

what we're endeavoring to do here is to draw a line which would

more properly represent the change.

See next page below for a few more copies of Dagenhardt's explanation.....

**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.\*

**Exhibit 44, page 11, Degenhard speaking**

In nearly all cases, we have been able to indicate a line which is physically defineable in the field. By this I mean top of a ridge top, cane haul road or a farm road or a road, vegetation line. In a situation where ~~xx~~ there is not physical line which can represent these uses we have indicated a line which is 300 feet mauka of the existing conservation district. With respect to that it is not our thinking that this has to be a rigid or firm line. It is flexible in the same manner as all boundaries are upon application. We feel it is a more realistic distinction between agricultural uses and the shoreline than ~~presently~~ presently exists. The next area I'd like

Two things to note here: "***in a situation where there is not a physical line***" - All of map H-65, both ***proposed*** and ***final*** depicts the 300 ft. inland. In comparison map H-59 "***proposed***" shows it 300 ft. inland but "***final***" shows it along the "***ridge top***". Both maps have a railroad crossing them also, *ref., Exhibits 45 and 37*. Second thing to note, "***it is flexible***". Administrators must also look at the ***text records*** that describe the boundary on the map.

Consultant *Degenhardt's* reference "***It is flexible in the same manner as all boundaries are upon application.***" is further confirmed to be a standard practice of regulatory authorities, even Hawaiian authorities.

As described in the Memorandum map errors are so common that the County of Oahu has a rule in its County of Oahu, Sec. 21-3-30 Zoning maps and interpretations rule, which describes that the **text** of the ordinance is to be applied as a ***final legal authority*** rather than an Official Map, *ref., (b) (1)*.....

*"Where a discrepancy exists between a district boundary shown on the adopted zoning **map** and that which is described in the text of an ordinance establishing the boundary, **the text of the ordinance shall be the final legal authority.**"*

source County of Oahu, Sec. 21-3-30 Zoning maps and interpretations rule

Also Laura Thielen, who was the Director of the State Office of Planning in **2005**, testified to the LUC, August 11, 2005 during the McCully petition

A05-757 for an area which included  
the Property that ***many map errors***  
may exist.....

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

If the Commission **first holds** that map H-65 is correct it can still issue a boundary interpretation that the Coastal "***ridge top***" is the district boundary because there is Hard Evidence that the Property was in agricultural use in



1969, ref., Exhibits 10 (John Cross letter), 16 (field map), 22 (picture), 29 (picture and maps) and the earlier referenced **2004 professional consultant's** study and report, see Appendix 9, page 24.

Next we turn back to the transcript.....

**Exhibit 44, page 42, April 25, Hilo hearing transcript, land owner question**

Yes. I'm Ken . I wanted a little more clarification on  
this 300 foot setback in agricultural. I'd like the staff to  
explain maybe a little bit about the philosophy behind it and  
 what is the intended use for this route that ... as far as the  
 private landowners are concerned.

The following response by consultant Williams describes two distinctly different situations regarding how the district line was to be applied on maps.

In the first case Williams describes that Coastal land, that is in agricultural use, but which land also includes a portion that is a steep Coastal pali, which pali is not in agricultural use, the pali land be redistricted Conservation, i.e., the Coastal ridge top.....

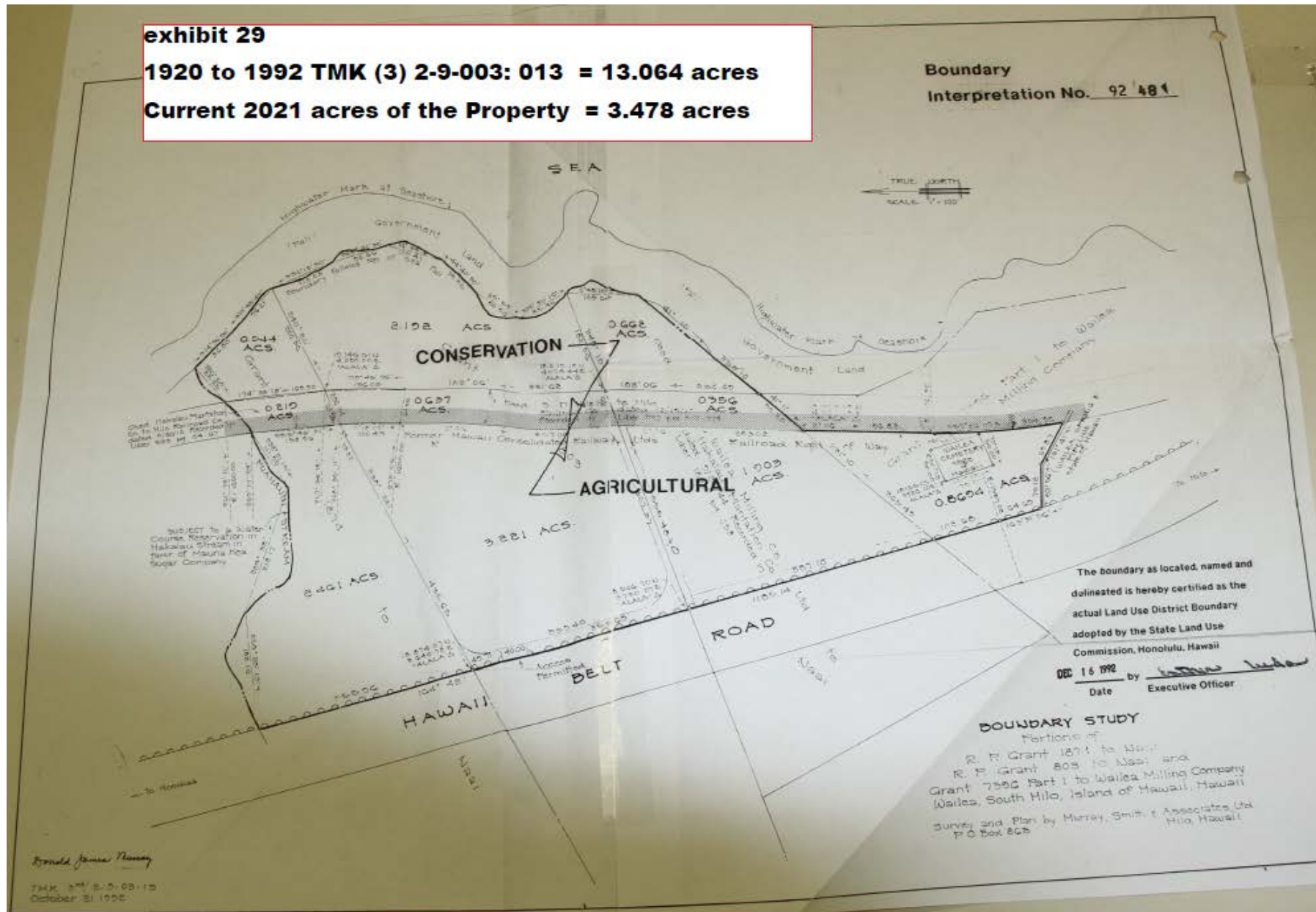
### Consultant Williams replies to land owner "Ken"

I think what we're saying is that land , shoreline land which is not in agricultural use is easier to destroy. It is better to be classified as conservation than presently to be in agriculture agricultural uses so that the intention to that from agricultural products in any way. try to indicate the variety of situations that we have run into designating the shore line district. In the one case it represents the sea, the Pali Coast and would be the point at which we would classify it, or draw lines, classify land makai of that as conservation. In the second instance we're talking

This *first case* describes the Petitioned Property. The Property was in agricultural use, a Coastal *pali* existed that was not in ag. use. Next consultant Williams describes to land owner Ken a "*second case*".....

of that as conservation. In the second instance we're talking about gentle slopes near the sea. Here possibly is a windbreak with a cane haul road here, and this would be the line we would indicate on a map that makai of that point would be for conservation. In the second instance, others would also indicate a point where a strong vegetation line would begin there also as a designation. Then if there is no vegetation we'd simply use the cane haul or agricultural roads. In the absence of any of these we have a general slope or a steeper slope with no point where you can clearly identify the shoreline. We have indicated a line 300 feet from the present conservation district boundary.

This does not apply to the Property. *Exhibit 29, page 3, 1964 photograph* shows a tree line at the Coastal "**ridge top**". The present Commission applied that the 1969 Commission intended to apply the District Line to the former railroad's mauka boundary. This was 430 ft. inland of the Ocean at its widest point, *ref., Exhibit 38*. The railroad did not lie **at the edge of the agricultural use**, the railroad **bisected** the field - see next page.





### **Exhibit 10, John Cross letter, "This area was part of me seed field"**

Specifically the 3 subject TMK parcels had a cultivated area of 3.2 acres that were used for agriculture. Specifically, this area was part of my "seed field" under my management. The

Up to **1992** the total field area comprised one TMK Lot (3) 2-9-003: 013. Today the former TMK Lot (3) 2-9-003: 013 is 7 TMK lots. The Property presently comprises Lots ; 029 and 060, *ref., Exhibit 7, County approved map, lots J-1 and J-2.*

Next we turn to Exhibit 45, the *minutes* of the Commission's hearing on April 25, 1969.....

### **Exhibit 45**

STATE OF HAWAII  
LAND USE COMMISSION

Five-Year District Boundaries & Regulations Review Program  
Minutes of Meeting

Hale Halawai Cultural Center  
Kailua, Kona, Hawaii

April 25, 1969 - 1:00 p.m.

**Exhibit 45, page 9, question from land owner to consultant Williams regarding the troublesome "proposed" maps that depicted the Coastal district boundary line 300 ft. inland, in this case for property on the Hamakua Coast where the Property is also located.**

Mr. Frazier queried Mr. Williams as to his definition of the 300-foot setback for shoreline areas. In acknowledgment, Mr. Williams answered that the 300-foot setback is used only in areas where there are no physical features, i.e., the top of a pali or ridge, a road, or any other identifiable feature.

Similar questions by land owners continued throughout the Commission's April 25th meeting.....

**Exhibit 45, page 23, concerned land owner**

Mr. Harold A. Robinson - Theo H. Davies & Co., Ltd.

Primarily concerned with the proposed 200-300 foot setback along the Hamakua Coast. Most of subject area is plantation-owned land. Although a portion of the land is not presently being utilized for agricultural pursuits, agriculture would be the highest and best use for this area as opposed to the proposed conservation districting. Much of the area is inaccessible to the public, although there are a few State and County roads leading into this area. Therefore, Mr. Robinson requested that this area remain in the Agricultural District.

And again on the next page.....

**Exhibit 45, page 23, concerned land owner**

Mr. Leon Thevenin - Hamakua Mill

Opposed the proposed 300-foot conservation setback which  
comprises approximately 7 miles of shoreline area.

27

**Exhibit 45, page 27, concerned land owner requests 8 changes to  
the recommended district boundaries that are depicted on maps**

Mr. Philip Hooton - Kohala Sugar Company

6. Conservation Setback - opposed proposed 300 foot  
conservation setback (Ainakea fields, Mookini,  
Heiau, Mahukona).

Next we turn to Exhibit 43, the "*final*" 1969 Commission redistricting hearing *transcript*.....



STATE OF HAWAII  
LAND USE COMMISSION

July 18, 1969

CHAIRMAN CHOY:

We have today for action a petition by Mr. Smart and (inaudible) for a boundary revision. After the first portion of the meeting is concluded, then we'll go into our 5-year boundary review, covering all of the island of Hawaii.

During Petition DR21-72 (Church-Hildal) the Commissioners expressed skepticism that the **text record** of the Report's page 36 held authority over the **undefined reference Coastal** district line that is depicted on the Commission's **1974** SLUD maps. The **present** Commissioners relied heavily on witness Kato's description that she found the Report vs. the **1974** SLUD maps "**confusing**" that resulted in "**uncertainty**" what the **1969** Commission's **intended** boundary location was. However in DR99-21 the **1999** Commission cited the Report as

an "**APPLICABLE LEGAL AUTHORITY**" when it determined that the Report held a higher authority than the Commission's **1974** SLUD maps.

In doing so the **present** Commission did not apply HRS 205-2 (a) (3) in order to remove "**uncertainty**".....

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

(emphasis added)

The new Evidence that is provided in Exhibits 43-45 **1969** Commission redistricting hearing minutes and hearing transcripts clearly **describe, over and over again**, that the **intention** of the **1969** Commission was not to overlay the Conservation District on to Coastal lands that were "**agricultural production**". At the final redistricting meeting, that the Commission held on July 18, **1969** the *Exhibit 43 transcript* describes that the Commission was presented with final maps to adopt. The Report describes that 73 maps were presented for approval.

It is normally the case that Commissioners rely heavily on the Commission's Executive Officer to present carefully and accurately prepared final maps for approval by the Commission. In a short afternoon hearing Commissioners cannot be expected to closely examine 73 maps to be sure that the maps have been properly prepared. Even a

one minute inspection of each map would take in excess of one hour of review while the hearing's audience waited.

The transcript of the hearing does not describe a pause and/or deliberations occurred regarding the Coastal district line on the maps. The scale of the maps would have made a detailed analysis impossible

The scale of the maps is , 1" = 2000 ft. The area of the Property on quadrangle H-65 map would have looked like.....



Source current quadrangle Map H-65 (to scale)

Again turning back to relevant sections of the hearing *transcript Exhibit 43*. First is the Commission's Executive Officer, Duran's, introduction of the final agenda item, the adoption of the redistricting maps.....

### **Exhibit 43, page 8, Duran introduces the "maps" for approval**

Mr. Chairman and Commissioners, . . . (inaudible due to echo of microphone) . . . was amended, public hearings were conducted through each town of the State on the rules of the practice and procedures in the Land Use Commission district regulations as well as the district boundaries for each of the (inaudible). Hearings were held in Kauai, April 11, 1969, and in Hawaii, April 25, 1969, and also we had meetings in Hilo on the 26th . . . (inaudible) . . . and Kalapana, 296 acres . . . (inaudible) . . . rural district must change to urban district. And near the town of Pauoa are 290 acres. Another significant proposal of these maps is the designation of the shoreline presently in the agricultural district but not in agricultural use, into the conservation district. The recognition of the

Very clearly Mr. Duran introduced final maps to the Commissioners describing to the Commissioners that the district line on the maps was intended to redistrict "***the shoreline presently in agricultural district but not in agricultural use, into the conservation district.***" It is a fact that map H-65, ref., *Exhibit 46*, did not reflect "***the***



***proposal of these maps is the designation of the shoreline presently in the agricultural district but not in agricultural use, into the conservation district".***

Either correction of the Coastal district line on map H-65 was an administrative error **or** it was intended that subsequent boundary interpretations would reflect the intention of the Commission not to overlay the Conservation District on to land that was in agricultural use.

The Petitioners believe that to overlay the Conservation District on to Prime Agricultural land that was in agricultural use would have violated the States Law HRS 205-2 (a) (3).....

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

(emphasis added)

Like all of the other 5 maps for the Hamakua Coast the State's goal to capture a band of land around the Island of Hawaii in the Conservation District map H-65 could have easily met that State goal by only overlaying the Conservation District on to the unused pali land using the Coastal "***ridge top***" as the boundary. That is what was recognized and applied by the **1999** Commission in DR99-21 (Stengle).

**NOTHING** in either the Report or the transcripts described that map H-65 be treated any differently than any of the other map areas.

The Commission would not have a provision in its administrative Rules that provides that the Commission's SLUD maps be the final authority if the *Commission provided otherwise to also.....*

***"use all applicable commission records in determining district boundaries"**, ref., HAR 15-15-22 (d).*

Map H-65 has to have some basis in a **text record** of the *Ordinance* or *other applicable commission record* (HAR 15-15-22 (d)). The only record of the *Ordinance* to redistricting the *Hamakua Coastal* land to Conservation, that the Petitioners have been able to find, is the **1969** Commission redistricting hearing transcripts and the earlier copied Report's pages 36 and 3.

The LUC's **1974** State Land Use District ("**SLUD**") map H-65 and the **2021** Commission's denial of Petition DR21-72 (Church-Hildal) is in conflict with .....

- the redistricting **approved** by the Commission on July 18, **1969** , ref., *Report page 36*,

- with the Report's map page 41, *ref., Appendix(s) 5 and 7 and exhibit 6* ,
- *the State's **Law HRS 205-2 (a) (3)** , and*
- the transcripts of the 1969 Commission's redistricting hearings.