APPENDIX 4
Discrimination

The Petitioners have received 3 communications from the Executive Officer of the Commission, Mr. Orodenker, that showed that he had a strong and negative attitude towards the Petitioners. The Petitioners believe that Mr. Orodenker is ***prejudiced*** against them. Mr. Orodenker controls the formal and informal information flow to the Commissioners.

The following email from D. Orodenker followed Petitioner Ken Church's inquiry of R. Hakoda where, in part, Church posed what he believed to be a simple question '***is the LUC a State Agency****?'* Church asked the same question twice because Hakoda's reply did not answer the question but rather Hakoda finally stated '***I think so, the State signs my paycheck***'.

Thereafter the Petitioners received 3 emails from D. Orodenker that showed a tone that he had an attitude that was negative and prejudicial to the Petitioners. Please note that the emails have been slightly modified with bold and underlined text.....

Orodenker, Daniel E <daniel.e.orodenker@hawaii.gov>
To:dockline3@yahoo.ca
Cc:Hakoda, Riley K,Derrickson, Scott A
Wed., Apr. 29, 2020 at 8:22 a.m.
Dear Mr. Church;

*Please stop **harassing staff** in this very stressful time.*

***In case you are not aware**, State operations are governed by the governor's various emergency proclamations.*

In a word NO STATE AGENCY IS OPERATING UNDER NORMAL PROCEDURES. Including the Courts.

***Arguing with staff** on whether we should be conducting regular business is insulting and fruitless. Like everyone else you will just have to wait.*

Daniel E Orodenker

Executive Officer, Land Use Commission

.....

Following D. Orodenker's above letter Church wrote back.....

.....

Ken Church <dockline3@yahoo.ca>
To:Orodenker, Daniel E,Scott A. Derrickson,Riley K. Hakoda
Wed., Apr. 29, 2020 at 1:41 p.m.
Dear Mr. Orodenker,

It is very unfortunate that you have misunderstood my inquiry. Please accept my apology for the confusion. My inquiry was not intended to seem that I was arguing with staff on whether the LUC should be conducting regular business.

I can understand your frustration that resulted from misunderstanding my inquiry. The text was not intended to prod the administrative office of the LUC along in these difficult times. While the answer to the question may be clear to you it was not clear to me.

The quotes that I sent were in no way whatsoever intended to imply that the LUC Administrative staff were obliged by the State's Constitution to assist me at this time and prod my Petition forward. *I know these are difficult times for everyone. I am developing text that may be useful for me to point to during any hearing that may result* ***in the future*** *regarding my Petition during this pause. There would be no point in developing the text for future use if it did not apply to the LUC. I was unsure whether the text described in the Constitution applied to the LUC as I was unsure textually whether it applied to the various State administrative parties to the Petition and the Commission itself.* ***My confusion*** *is that the LUC is described to be a quasi-judicial body. Simply stated I did not know whether a quasi-judicial body could also be an agency of the State, a political subdivision or simply the State? The answer may be clear to you but it is not clear to me.*

For example a boundary interpretation is provided for by various HARules which promulgate from HRS 205 and that is promulgated forward by the State's Constitution. I was simply trying to be sure that I was textually correct.

Again I apologize for the confusion.

Sincerely,
Ken Church

.....

Mr. Orodenker did not reply to the question asked in the above email nor did LUC staff. The Petition Church referred to was A18-805.

Subsequently regarding the Commission declaring a Finding of No Significant Impact (a "**FONSI**") for the rezoning of the Property to the Agricultural District, on June 26, **2020**.....

.....

Orodenker, Daniel E <daniel.e.orodenker@hawaii.gov>
To:Ken Church,Funakoshi, Rodney Y,Michael Yee,Derrickson, Scott A
Fri., Jun. 26, 2020 at 9:08 a.m.
Mr Church;
Frankly we have been more than patient with you.

If you would like a boundary determination ask for it properly.

The Commission does not hear them unless there is an appeal from my decision after significant analysis by staff has been undertaken.

Bullying will not get you anywhere.

My advice is that you contact an attorney.

Your interpretation as to what was said yesterday and how the rules and statutes read is flat out inaccurate.

I will not be harassed like this.

Daniel E Orodenker
Executive Officer, Land Use Commission

.....

Re: ***If you would like a boundary determination ask for it properly.***
Subsequently the Petitioner(s) discussed this with Commission staff person Scott Derrickson. Mr. Derickson advised that Church access the LUC's web site where a form was available to be filled out and filed on-line with the LUC asking for a boundary interpretation. Church filled

out the form and submitted it. We are presently over a year since that application was filed as Mr. Orodenker instructed that we do. The LUC never issued the requested boundary interpretation.

Re: ***Your interpretation as to what was said yesterday and how the rules and statutes read is flat out inaccurate.***

Church referred that Orodenker advised the Commissioners '***that his staff was working with the Petitioners regarding their Petition A18-805. Church emailed Orodenker advising that this statement to the Commissioners was not correct***.'

Re: *My advice is that you contact an attorney.*

The Petitioners were repeatedly advised/reminded to get a lawyer. In the case of DR99-21 (Stengle) he represented himself. He was issued a new boundary interpretation reflecting that '***the coastal ridge top***' was the District Boundary despite the fact that the Commission's **1974** Official SLUD map H-59 showed the District boundary being substantially inland.

.....

Church replied.....

.....

Ken Church <dockline3@yahoo.ca>
To:Orodenker, Daniel E
Fri., Jun. 26, 2020 at 5:20 p.m.
Like I said in my last letter to you. Put your reply into a letter, sign it, send it to me and we will take it from there.

Sincerely,
Ken Church

.....

No signed letter was ever received

.....

Orodenker, Daniel E <daniel.e.orodenker@hawaii.gov>
To:Ken Church
Cc:Derrickson, Scott A,Hakoda, Riley K
Fri., Jun. 26, 2020 at 7:14 p.m.
Mr Church;
WE are working hard on very important issues in attempt to assist in getting through the current crisis. Staff time is dedicated to that endeavor. We are understaffed and asked to handle an increased workload.

I suggest you seek professional advice and hire an attorney. You got your response at the meeting. I stand bye it and consider the matter closed.

***You may request your boundary interpretation in the proper manner**.*

*I have nothing further to add and **staff has been instructed to focus on matters that are coming up in the near term rather than wasting an inordinate amount of time on your issue simply because you refuse to seek professional advice.***

Daniel E Orodenker
Executive Officer, Land Use Commission

.....

Re: ***You may request your boundary interpretation in the proper manner**.*

Church did request and no boundary interpretation was ever issued.

Re: ***staff has been instructed to focus on matters that are coming up in the near term***

It appears that ***staff were instructed*** to not deal with A18-805 or actively engage with the Petitioners because nothing has happened in that regard since.

.....

Re: ***Bullying will not get you anywhere.***
and

I will not be harassed like this.

and from the April 29 email (above)

harassing staff

and

in case you are not aware
and

Arguing with staff

.....

The tone and content of Mr. Orodenker's emails clearly has caused the Petitioners to believe that his attitude towards the Petitioners was strongly negative. In this way the above 3 emails from Mr. Orodenker further substantiates the Petitioners' belief that they have been ***discriminated against*** in an unfair way by the Executive Officer of the Commission, Mr.

Orodenker. Mr. Orodenker controls the formal and informal information flow of LUC information, Petitions, Motions and the like to the Commissioners also. The Petitioners believe that it is not a stretch to believe that his attitude has influenced the Commissioners against the Petitioners in a ***discriminating*** way.

More recently the Petitioners registered ***a complaint*** with Commission Chair Schurer on April 28, **2021** their belief that the Commission's Executive Officer was not administering their matters before the Commission according to a reasonable time schedule or a fair way. Chair Schurer replied.....

Jonathan Likeke Scheuer <scheuerj001@hawaii.rr.com>
To:Ken Church
Mon., May 3 at 12:11 a.m.

Aloha e Ken,

I am acknowledging receipt of this letter and letting you know I will follow up.

I know that you have had a very long road in your efforts, and I also know that you know I am a volunteer and the LUC has been pretty swamped of late.

Jonathan

Subsequently the Petitioners filed DR99-21 on June 17, **2021** which was heard by the Commission on September 8, **2021**.

During the Commission's September 8, **2021** hearing regarding the Petitioners DR21-72 the Commissioner's made a subtle reference to.....

> 'o*utsiders coming to the islands and buying up **cheap** Conservation land that have no intention to use the land for agriculture and then asking the Commission to rezone it to the agricultural District, and once redistricted sell the land for a profit without ever developing the*

agricultural resources of the land'

The Petitioners did not buy cheap land. Commissioner Okuda described this as a concern on pages 73-77.....

COMMISSIONER OKUDA: Oh, okay. Well, let me ask the public policy question, then, just to help inform my decision-making a little bit.

You know, from a statewide public policy issue -- and to some extent this is somewhat a follow-up on Commissioner Cabral's initial line of question -- is it a matter of concern to the Office of Planning that some people -- and I'm not accusing the Churches of this at all, but, you know, from an

see next pages.....

overall public policy situation, that there are situations where people buy conservation-designated property because it's cheap or priced lower than urban or rural designated property, and it's the intention that, hey, I'm just going to do urban or rural activity on that property, but I got it on the cheap, and more likely than not, the government -- and many times these are the county entities -- aren't really going to enforce the restrictions?

I mean, isn't it true that's really a public policy concern among many of public policy concerns we have? In other words, people don't really deep down respect the agricultural or -- or conservation designation, that it's not -- it's, like, something that maybe we can get around later on down the road?

MS. KATO: I understand that concern and the discussion that happened on it today. At the same time, I don't think it's my place to comment on policy matters. And I think that the immediate question before the LUC on this declaratory order is a legal one. It's a legal interpretation of where that conservation district boundary should be, and I don't think it's a question of policy.

COMMISSIONER OKUDA: Well, in making a

legal determination, is the LUC precluded from taking into account what might be the underlying factual situation?

And the reason why I raise that is, you know, just a while ago, as you're probably aware, we were faced with what I would describe as a somewhat technical argument being made to allow short-term vacation rentals on agriculturally districted land -- you know, very cogent technical argument. But, you know, it -- it, in my view, required looking at what is really the reality of going on.

In making our legal determination, are we supposed to shut our eyes to the reality of what might be going on?

MS. KATO: I'm not too sure how to answer that question.

COMMISSIONER OKUDA: No, no, that's fair.

MS. KATO: I understand that you're just going to consider what you -- what you're aware of and what you hear, but in terms of this legal question, it is really a legal question as opposed to, like, a DBA, which is a policy matter.

COMMISSIONER OKUDA: Well, if we have -- and I'm just speaking for myself. If I were to have a concern that this legal question might have

factual implications -- or to put it in plain English, there might be a lot more going on than simply a legal question, would I be erroneous to the point where I get reversed on appeal if we said maybe the record's got to be fleshed out more in detail either by scheduling the matter for a hearing or maybe taking it up on some other matter that's already pending?

I mean, would -- would I be totally crazy to come to that kind of conclusion that, hey, when we're dealing with important lands like conservation or we're dealing with agricultural lands, something that the constitution has, you know, given special protection and recognition, maybe we better to make sure we have a complete factual record so that, you know, there's no question what's really going on?

In other words, maybe you don't flesh the record out. Would I be totally wrong to the point where I get reversed by the Hawai'i Supreme Court?

MS. KATO: Commissioner Okuda, I apologize. I don't think that I can necessarily answer that.

Source, Exhibit 5, Hearing transcript, pages 73-77

The Hard Evidence of Exhibits and Hearing testimony describe the ***factual situation*** that the Petitioners originally purchased the **McCully Land** in **2014**, intending to develop the **McCully Land** for agricultural production and a residence. Land costs were not discussed during the Commission's Hearing for DR21-72 (Church-Hildal) nor did a discussion of land costs exist in the Petition or its Exhibits.

The Petitioners have always believed that land cost is irrelevant to the ***factual situation*** that existed in **1969** and that is why the Petitioners did not discuss the cost of the **McCully's Land** in the record. None-the-less Commissioner Okuda and Cabral both referred to land cost relevant to a State Court subsequently applying ***deference*** favorable to the Commission's denial of DR21-72, relevant to ***land cost***. Therefore the Petitioners describe ***land costs*** herein in this Motion for Reconsideration.

It is a ***factual situation*** that the **McCully Land** was not "***cheap***" due to its apparent Conservation District zoning. It actually was more expensive than another property that the Petitioners considered purchasing at the same time as the **McCully Land**, which land lay 30% in the Conservation District and 70% in the Agricultural District , (the "**Other Land**").

The **Other** land was TMK (3) 2-8-008: 127. The **Other Land** comprised **4.8 acres** (compared to the **McCully Land** which was 4.6 acres). The **Other Land** was also on the ***Hamakua Coast***. The **Other Land** was closer to the City of Hilo by a distance of approximately 4 miles. The **Other Land** had a very large modern residence, a large swimming pool, a large horse stable and a fenced pasture area for the horses food source

and the recreational use of the horses by horse riders. The pasture could easily have been converted back to a true agricultural use.

County taxes on the **Other Land** was almost twice what the **McCully Land** taxes were. While the Petitioners dithered over the high taxes vs. the potential for offsetting agricultural income that property was sold before the Petitioners could make an offer to purchase. About 30% of that lot's makai side was in the Conservation District and the remaining portion, where the residence, stable and pool were located was in the Agricultural District. The fenced pasture area overlapped both SLUDistricts.

The **Other Land** was sold for $30,000 more than the **McCully's Land** sale to the Petitioners but again the **Other Land** already was ***fully developed***. Comparatively the Petitioners purchased the **McCully Land's** 4.6 acres of ***undeveloped land*** that appeared to be entirely in the Conservation District. Any belief that the Commissioners may have had that the Petitioners purchased comparatively ***cheap*** land because of its Conservation Districting is ***factually incorrect***.

In **2014** the real estate market was still suffering from the **2008** financial crisis. Very little land had been sold during the period. Prices were soft and sellers were willing to bargain. Both the **Other Land** with a residence and a horse stable **and** the **McCully Land** had been on the market for several years with almost no interest by potential buyers. In the end the Petitioners purchased the **McCully Land** intending to revert the regularly mowed grassy field area to meaningful agricultural use in order give the Petitioners a meaningful retirement purpose (farming woody orchard

species) which the Petitioners believed would also add to their retirement income.

Had the Commissioners read, considered and applied **all of the Hard Evidence**, the Petition DR21-72 and refreshed their memory of Petition A21-72 ***referenced*** **A18-805's EA and FONSI** , which the Commissioners approved in June of **2020**, the Commissioners would have been very aware of "***whats really going on***" (see above). Particularly the ***referenced*** EA and FONSI made a full disclosure to the Commissioners, regarding the **existing expanded** agricultural use of the Property **and** the Petitioners' **investments in agricultural use structures and equipment**, which EA and FONSI the Commissioners ***unanimously approved*** on June 25, **2020**.....

Brief Description of the Proposed Action

Applicants have petitioned the LUC to reclassify approximately 3.4 acres of land located at South Hilo, County and State of Hawai'i, from the SLU Conservation District to the SLU Agricultural District. The Applicants are pursing the DBA to allow the for the continuation of existing agricultural uses and structures previously permitted.

Determination

The LUC has determined that the Proposed Action will not likely have significant impacts on the environment and that a FONSI is warranted.

Reasons Supporting Determination

The LUC's analysis and determination of a FONSI is based upon the significance criteria set forth in HAR §11-200.1-13. In summary, the LUC determined that, given the size, nature, and scope of the Proposed Action, as well as the surrounding environment and neighboring land uses, the Proposed Action:

(a) will not impact any threatened or endangered plant or animal species;
(b) will not impact any archaeological or cultural resources, or the exercise of traditional and cultural practices;
(c) will not inhibit public access or impact public views;
(d) will not impact or otherwise degrade the natural environment or any environmental resources, including air and water quality;
(e) will not impact public health, services or facilities, or the socioeconomic welfare of the people of the State and County of Hawai'i; and
(f) will not result in secondary or cumulative impacts.

Source, LUC's FONSI letter to OEQC (emphasis added)...

link: https://luc.hawaii.gov/wp-content/uploads/2020/11/A18-805_Church_OEQC-Transmittal_Ltr_FEA-FONSI_11-12-2020.pdf

Finally before the Commission began Deliberations Commission Chair Scheuer reminded.....

> Commissioners, let me confirm that each of you are fully familiar with the record, you have reviewed the record, and are prepared to deliberate on the subject docket. After I call your name, please signify orally with either an aye or any that you are prepared to deliberate on this matter.

Source, Exhibit 5, September 8, 2021, Hearing transcript, Commission Chair quoted above....

page 118 (emphasis added)

All Commissioners unanimously subsequently voted and approved to move to the Commission's Deliberations section of the Hearing.

In the above copied testimony Kato repeatedly tried to direct Commissioner Okuda back stating her belief that DR21-72 was to be determined as "***a legal question***" referencing that Petition DR21-72 was to be considered based on the ***factual situation*** that existed in 1969.....

> *"And I think that the immediate question before the LUC on this declaratory order is a legal one. It's a legal interpretation of where that*

conservation district boundary should be, and I don't think it's a question of policy"

And in another place she repeated again.....

"*but in terms of this legal question, it is really a legal question as opposed to, like, a DBA, which is a policy matter.*"

And finally she appeared to give up and Kato stated.....

"*Commissioner Okuda, I apologize. I don't think that I can necessarily answer that.*"

The Petitioners began to see that the Commission appeared to discriminate against them also due to references such as the Petitioners thinking that '*they could buy cheap land*' and then get a favor from the Commissioners to redistrict it. Commissioner Cabral even made a comment at an earlier date that the Petitioners had a ***swimming pool*** which is incorrect. It is a fact that the Petitioners build a 2 bedroom house on the Property. Hardly luxury.

The Petitioners formally joined the local farmers market in **2020**.
The Petitioners are using the land for personal agriculture presently and once the Property is zoned Agricultural they intend to resume selling agricultural produce at the local farmers market.

Finally the Commission's September 8th, 2021 Hearing and its result appear as further examples that the Petitioners were not treated fairly.....

- the Commission's denial of DR21-72, when compared to other evidenced comparables, appears to show that the denial was **unfair**,

arbitrary and **capricious** and with **prejudice**.

- The Commission's denial of DR21-72 is in conflict with the ***text record*** of the **1969** Report, which described the Commission's Decision and Order redistricting of land, as was subsequently applied to the Property and other similar Hamakua Coastal land boundary interpretations (Stengle and Muragin and apparently all of Map H-59) in a variable way that is inconsistent with the ***text record*** of the Report and now also now the text record of the transcript and minutes of the **1969** Commission's redistricting hearings, ref., Exhibits 43-45,

- the Commission's denial of DR21-72 appears to be in conflict with the **Law**..... HRS 205-2 (a) (3) and the LUC's own **Rule** HAR 15-15-19 (1),

.....and finally Commissioners described during the Hearing that DR21-72 (Church-Hilal) lacked a "***preponderance of evidence***".....

- the Petitioners offered Hard Evidence that the Property was in agricultural use in **1969** (5 exhibits) and evidenced that the Report's page 36 specifically stated "***Areas in agricultural use were excluded***" from the **1969** redistricting of Hamakua Coastal land from the Agricultural District to the Conservation District throughout the text and exhibits of DR21-72 (Church-Hilal),

- comparatively DR99-21 (Stengle), Exhibit 1, provided no evidence that his property was in agricultural use in **1969** nor did Muragin in their Boundary Interpretation request,

- DR21-72 (Church-Hilal) had 19 Exhibits, Stengles DR99-21 had one picture and a locator map and a property survey,

- DR21-72 (Church-Hilal) had photo copies of text sections from the **1969** Report as evidence, Stengle only had a quotation and Muragin had none,

- DR96-19 (Castle Foundation), ref., Exhibit 25, does not appear to have been supported by a preponderance of evidence,

The zoning of land south of Hilo vs. north of Hilo appears starkly in conflict with HRS 205-2 (a) (3) and HAR 15-15-19 (a).

The Petitioners do not understand why they have been ***discriminated*** against in such an unfair way that also appears in conflict with the State's Law HRS 205-2 (a) (3).

There exists case law regarding zoning ordinances and the like where alleged unfair ***discrimination*** caused the Supreme Court to apply the 14th amendment in favor of the land owner.....

Village of Willowbrook v. Olech, 528 U.S. 562 (2000)

OCTOBER TERM, 1999

Syllabus

VILLAGE OF WILLOWBROOK ET AL. *v.* OLECH

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 98-1288. Argued January 10, 2000-Decided February 23, 2000

The case involved an appellant's claim that an easement of 33 ft. crossing their property was required by the city for water and sewer services when their neighbors were only required to provide a 15 ft. easement.

In that case Supreme Court Justice Bryer wrote.....

> *"The Solicitor General and the village of Willowbrook have expressed concern lest we interpret the Equal Protection Clause in this case in a way that would transform many ordinary violations of city or state law into violations of the Constitution.* ***It might be thought that a rule that looks only to an intentional difference in treatment and a lack of a rational basis for that different treatment would work such a transformation. Zoning decisions, for example, will often, perhaps almost always, treat one landowner differently from another, and one might claim that, when a city's zoning authority takes an action that fails to conform to a city zoning regulation, it lacks a "rational basis" for its action (at least if the regulation in question is reasonably clear).***
>
> *This case, however, does not directly raise the question whether the simple and common instance of a faulty zoning decision would violate the Equal Protection Clause. That is because the Court of Appeals found that in this case respond-*

566

> *ent had alleged an extra factor as well-a factor that the Court of Appeals called "vindictive action," "illegitimate animus," or "ill will." 160 F.3d 386, 388 (CA7 1998). And, in that respect,* ***the court said this case resembled Esmail v. Macrane, 53 F.3d 176 (CA71995)****, because the Esmail plaintiff had alleged that the*

municipality's differential treatment "was the result not of prosecutorial discretion honestly (even if ineptly-even if arbitrarily) exercised but of an illegitimate desire to 'get' him." 160 F. 3d, at 388.

In my view, the presence of that added factor in this case is sufficient to minimize any concern about transforming run-of-the-mill zoning cases into cases of constitutional right. For this reason, along with the others mentioned by the Court, I concur in the result "

(emphasis added) source see Exhibit 13

The Petitioners believe that the Denial of the Petition infringed on the Petitioners right of ***Equal Protection*** which is provided for in the Fourteenth Amendment to the United States Constitution. The **Equal Protection Clause** (the "**Clause**") is part of the first section of the Fourteenth Amendment to the United States Constitution. The clause, which took effect in 1868, provides "***nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws***".

The Clause mandates that individuals in ***similar situations*** be treated equally by the law and its administrators. The Commission's Denial of the Petition resulted that the Petitioners were not treated ***equally*** to land owners whose lands were very similar, from a district zoning perspective, to the Petitioners land. The Petitioners land is described by the County of Hawaii as TMK(s) (3) 2-9-003; 029 and 060 (the "**Property**").

In 1999 the Commission issued a Declaratory Order DR99-21 (the "**Stengle**" Order) and a new State Land Use District ("**SLUD**") Boundary interpretation for Stengle's land, which from a zoning perspective is very similar land to the Property. The Stengle Order cited an APPLICABLE

LEGAL AUTHORITY which should have also been applied to the Petitioner's Property.....

APPLICABLE LEGAL AUTHORITIES

1. The "State of Hawaii Land Use Districts and Regulations Review" documented the Commission's process to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized four major conditions and provided recommendations based on these conditions for the Conservation District boundaries. Of relevance here is Condition No. 3, which states:

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

2. The report further documented the Commission's actions with respect to the establishment of the Conservation District boundaries at the shoreline of the island of Hawai'i by stating:

> 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 (p. 36).

3. Petitioners' topographical survey map of the Property prepared by a registered professional land surveyor delineates the top of the ridge or pali in metes and bounds.

Source, Exhibit 1, DR99-21, page 6 & 7, (emphasis added)

Nothing in the above Commission Report's ***text record*** states that any particular ***Hamakua Coastal*** district map area be treated any different than any other of the district map areas. The Report's description is the ***Hamakua Coast*** and not map----- vs. map-------.

The **present** Commission erred by not ***equally*** applying (ref.,14th Amendment) the ***text record*** of the 1969 Commission's redistricting ***action*** which is copied above to the Property. The above cited report (the "**Report**") is just as much an "APPLICABLE LEGAL AUTHORITY" regarding the correct location of the District Boundary in the area of the Property as it is for Stengle's and Muragin's property(s).

If the present Commission does not vacate its Declaratory Order DR21-72, which denied the Petition and now allow the Petition it will now **also** have to ignore the transcripts and minutes of the 1969 Commission's final redistricting hearing, *ref., Exhibits 43-45*, and effectively further ignore the Petitioners' Equal Protection Rights.

It is a fact that in the area of the Property, Stengles land and Muragin's land the "***shoreline is bounded by steep cliffs or a pali"*** where a distinct "***ridge top***" topographical land feature exists.

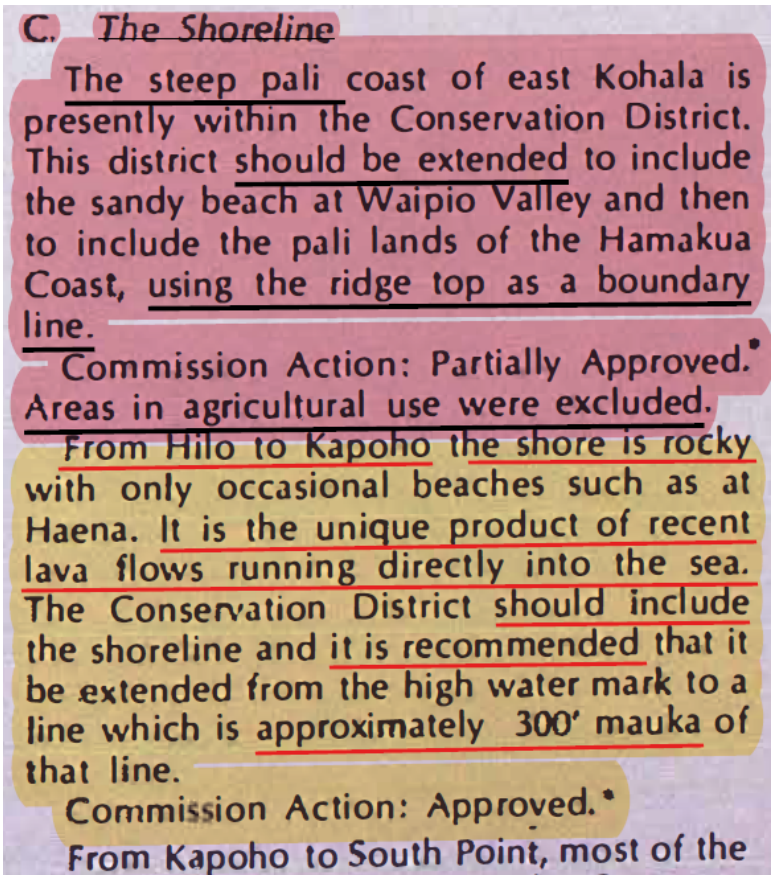
It is a fact that the Property, Stengles land and Muragin's land lies in a Coastal area that the ***text record*** of the Report described as the "***Hamakua Coast***" and that a former railroad crossed all 3 properties, *ref., map documents, Exhibits 1 (Stengle), 2 (Muragin), 3 the Property.*

It is a fact that the Property lies 14. 75 miles north of the City of Hilo and Stengles land and Muragin's land begins around 19 miles north of the City of Hilo.

It is a fact that the ***text record*** of the Report's page 36 also identified that ***Hamakua*** *Coastal* lands that were in "***agricultural use***" in 1969 were not to be redistricted from the Agricultural District into the Conservation District.

It is a fact that the Property, Stengles land and Muragin's land were all in agricultural use in 1969.

It is a fact that the present Commission applied the Coastal "***ridge top***" to be the SLUD boundary for Stengles land and Muragin's land and the present Commission applied the mauka boundary of the former railroad to be the SLUD boundary in the area of the Property.



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.

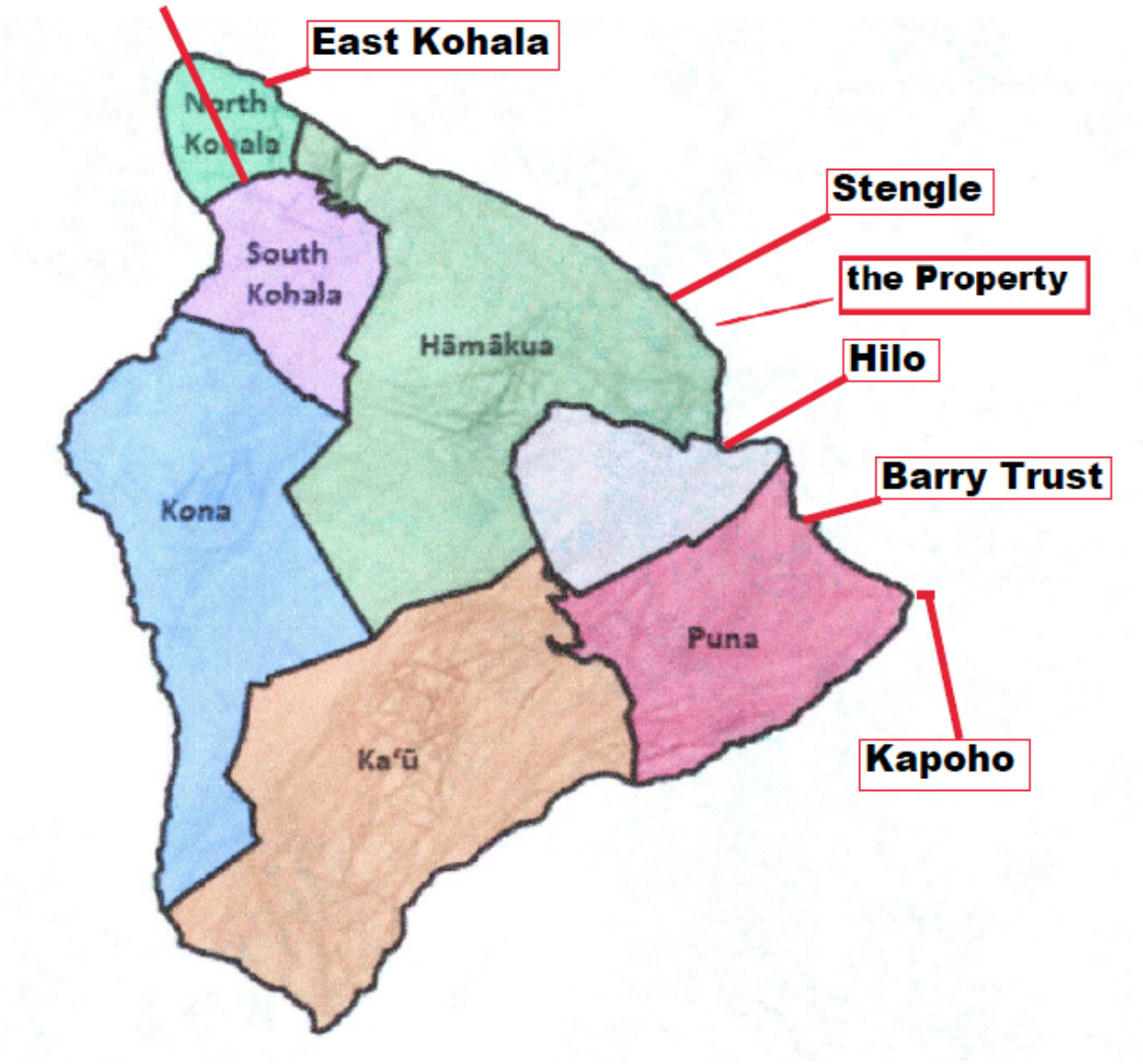
From Hilo to Kapoho the shore is rocky with only occasional beaches such as at Haena. It is the unique product of recent lava flows running directly into the sea. The Conservation District should include the shoreline and it is recommended that it be extended from the high water mark to a line which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

Commission Action: Approved.*

From Kapoho to South Point, most of the

Source, Exhibit 32, Report page 36, (emphasis added)

The Report's page 36, text reference to the "***Hamakua Coast***" is shown on the map below.



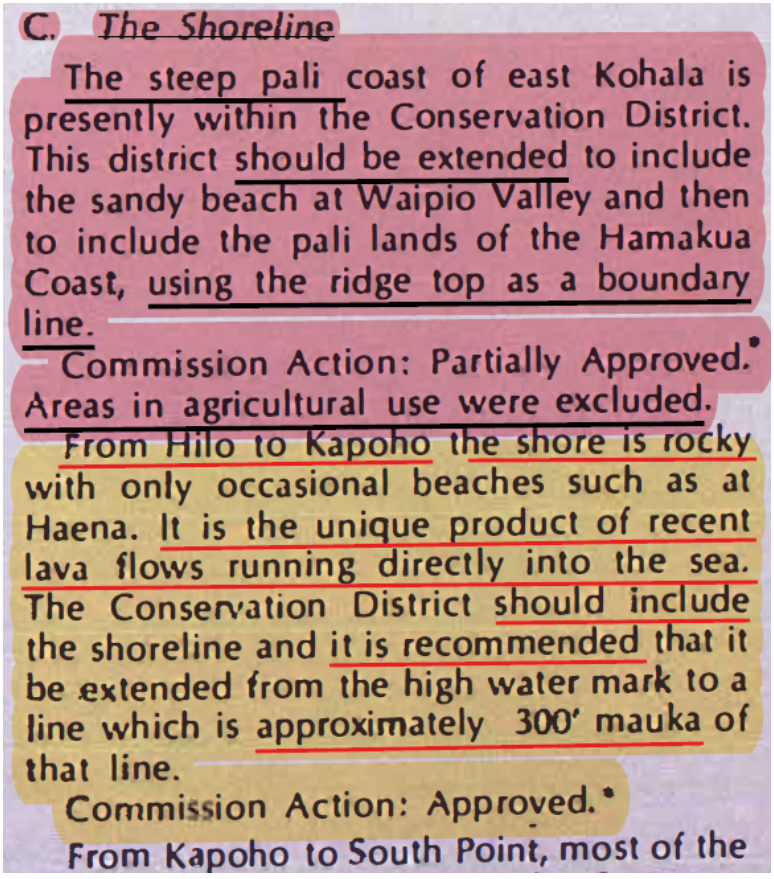
Source County maps (text boxes and lines added)

In conclusion there exists a ***preponderance of evidence*** that the Property was not rezoned into the Conservation District in **1969**.....

- case law, SCOTUS decision Exhibit 13, Jenkens, Exhibit 23,
- US Constitution's 14th ammendment, *Equal treatment under the law.*
- the State of Hawaii's laws,
- the Commission's Rules,

- the minutes and transcripts of the **1969** Commission's redistricting hearings, *Exhibits 43-45*,
- the newspaper articles *Exhibits 27-28*, and
- past Commission rulings ie DR99-21 (Stengle) *Exhibit 1*, Boundary interpretation No. 07-19 (Muragin) *Exhibit 2*, Boundary interpetation DR96-19 (Castle Foundtion) *Exhibit 25*, and Barry Trust DBA 18-806 *Exhibit 8*.

Finally the ***text record*** of the Report's page 36 also identified that ***Hamakua*** *Coastal* lands that were in "***agricultural use***" in 1969 were not to be redistricted from the Agricultural District into 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

Source, Exhibit 32, Report page 36, (emphasis added)

The Petitioners do not have any direct proof that they have been discriminated against however they believe that the LUC's decision to deny their Petition appears to be ***arbitrary*** and ***capricious*** and it goes against.....

- the facts and **preponderance** of evidence of the Petition,
- HRS 205-2 (a) (3), **the law**,
- the described comparibles of Stengle, Muragin and the Barry Trust,
- the examples of recognized map and Map irregularities,
- the ***text record*** of the Report
- and now also the 1969 Commission's redistricting hearing transcripts and minutes, *ref., Exhibits 43-45*.