

APPENDIX 7 MAPS

During the Commission's September 8, 2021 hearing (the "**Hearing**") for Petition DR21-72 (the "**Petition**") the Commissioners' questions and comments indicated that a fundamental misunderstanding may exist among some of the Commissioners regarding the *undefined pictorial* appearing district lines that are depicted on the LUC's 1974 Official State Land Use District Maps ("**SLUD**" maps).

Commissioner Cabral.....

13 But I'm extremely uncomfortable over the
 14 thought that we can, **should**, or even have the right
 15 to **be changing property lines**, as well as I'm
 16 uncomfortable with the idea that **we would change**
 17 **history.**

Source, Hearing transcript, Exhibit 5, page 120 Deliberations portion of the Hearing (emphasis added)

The Petitioners did not apply that any "*property lines*" be changed. The Petitioners provided **Hard Historical Evidence** that the Property was not rezoned into Conservation in 1969. The *undefined pictorial* district lines on the LUC's maps are not **defined** boundaries.

The *undefined pictorial* district lines on the LUC's SLUD maps are designed to be a reference source in order to guide an administrative

authority to determine a **defined** SLUD district boundary. In the case of the Petition two particular Hamakua Coastal SLUD maps were considered in detail. The two SLUD maps are located at the southern end of an area that is generally described to be the **Hamakua Coast**. A couple of pages down herein we have inserted an Island map that depicts the SLUD maps for the entire Hawaii Island with lines and text boxes overlaid on it. The lines and boxes show the location of Stengle & Muragin's land on map H-59 and the Petitioners Property on SLUD map H-65.

The Report's page 36 describes, in part, **two distinctly different land classification types i.e. suitability for agriculture**. The historic cane field area between East Kohala and Hilo, which includes the area known as the **Hamakua Coast**, is classed as **Prime Class "C"**. The area between Hilo and Kapoho is generally classed as Type "E". Type "E" land is known as marginal land. Type "C" land, where the Property is located, is the class type that is described in 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)

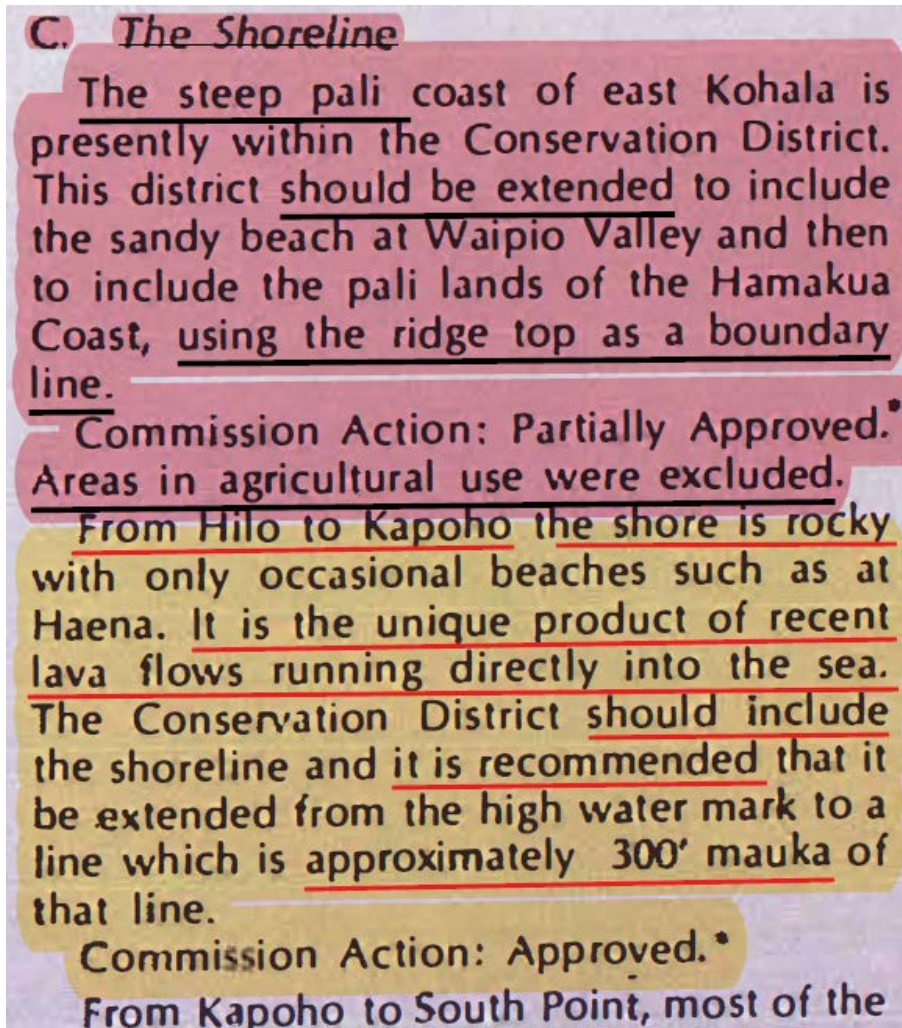
The ALISH definition of Prime Classes C is.....

*"Land which has the soil quality, growing season, and moisture supply needed to produce **sustained high yields of crops** economically when treated and managed according to modern farming methods."*

(emphasis added)

This is continued on next page with a copy of a section the Report's page

36 that describes both of these 2 **distinctly different land types**.....

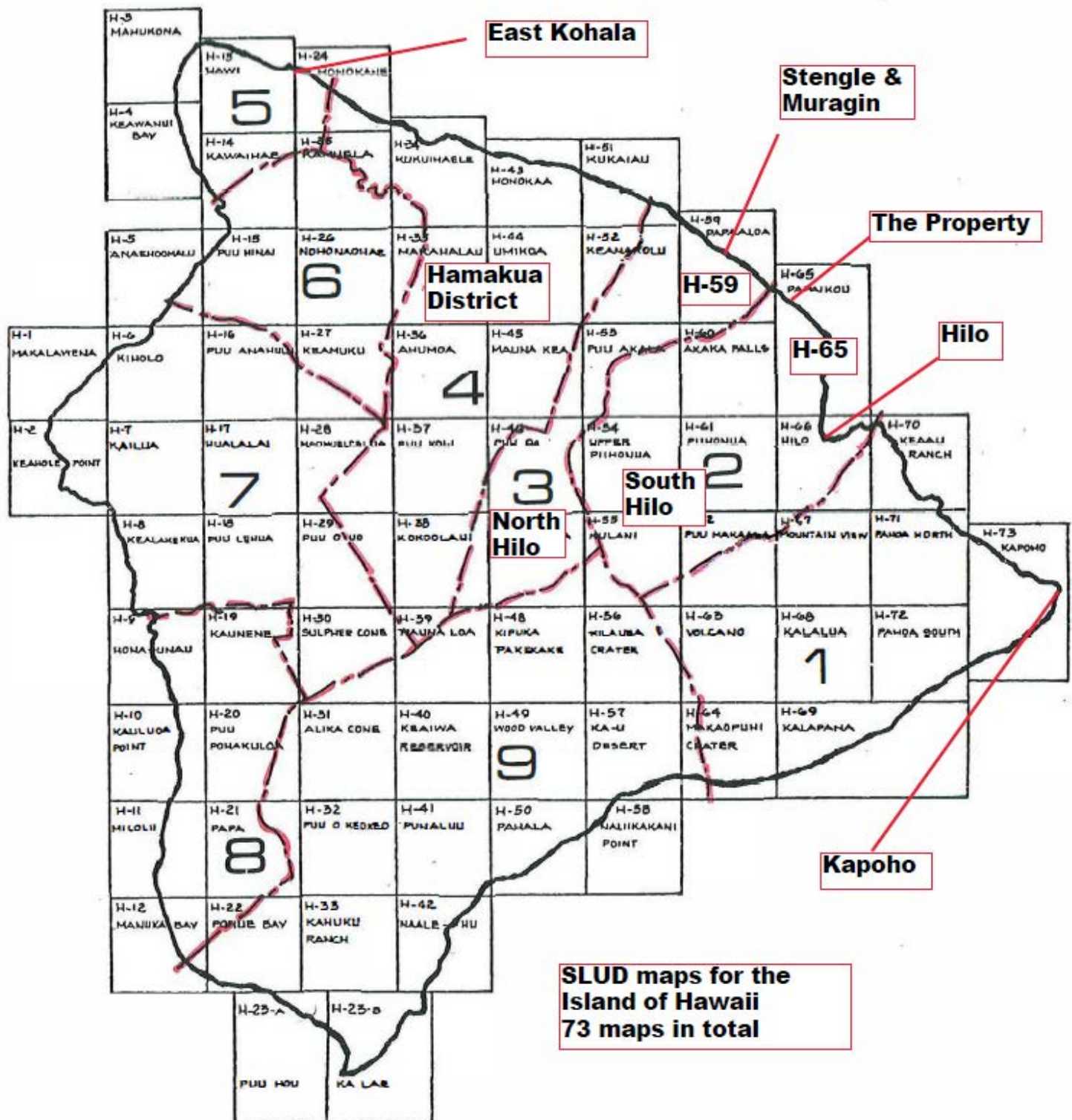


Source, Exhibit 32, Report page 36, (emphasis added)

We point particularly to the underlined text (in the pink box) "**should be**" and "**Partially Approved***" and "**Areas in agricultural use were excluded**". We also point to text (in the yellow box) "**300 ft. mauka**" and "**Approved***".

While the Property is located in the above pink area description the SLUD boundary line on Map H-65 was also generally located 300 ft. inland which effectively appeared to overlay the Conservation District on

to Prime Agricultural Coastal land. All of the other SLUD maps for the pink area description put the SLUD line at the Coastal "ridge top".



Source, LUC website (text boxes and red lines added)

The Hamakua Coast is generally known as the area from SLUD map H-43 (Honokaa) down to SLUD map H-66 (Hilo). Also noted on the above map we have highlighted the County Districts of "**Hamakua**", "**North Hilo**" and "**South Hilo**". During the Hearing Commission Chair Scheuer and Kato discussed whether the reference on the Report's page 36 regarding the "**Hamakua Coast**" referred to the County District of **Hamakua** or the area that is generally known as the **Hamakua Coast**.

We point out that neither **Stengle's** or **Maragin's** land is located in the **Hamakua District**. Rather they are in the County's **North Hilo District**. The **Property** is in the **South Hilo District**. Irrespective of what the Report's page 36 description **Hamakua Coast** was intended to cover all 3 properties i.e. **Stengle's**, **Maragin's** and the **Property** lie in the area between "**east Kohala**" and the **City of Hilo** which is the area described in the pink box on the Report's page 36. Perhaps this explanation and map clears up any uncertainty. The area that is described in the yellow box begins at the **City of Hilo** and extends south to **Kapoho**.

It appears that an administrative error occurred when the 73 final district maps were presented to the 1969 Commission's final redistricting Hearing for the Commissioners' adoption. The earlier "**proposed**" Coastal maps all showed the district line to be 300 ft. inland. The 5 maps leading north from map H-65 had all been corrected when they were presented to the Commissioners for adoption in 1969 to reflect the district line at the Coastal "**ridge top**". Map H-65 was not corrected. The Petitioners believe that an administrative error occurred. The "**proposed**" and "**final**" maps are Exhibited in Exhibit 46.

The *text record* of the Report first Evidences the administrative error. The error is further Evidenced in the *text record* of the transcript (the "Transcript") of the 1969 Commission's final redistricting hearing, *ref., Exhibit 43*.

The *Exhibit 43, Transcript* describes Commission's Executive Officer Duran explanation to the Commissioners when he introduced the final agenda item to be considered and acted upon by the Commissioners, the redistricting of lands for Hawaii Island. *Duran* referred the Commissioners to "*these maps*"

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 shoreline as a natural resource is . . . (inaudible) . . . that both the conservation and this waterfront property should be (inaudible) together. Wide use of this first priority resource can be effected toward the long range public interest in adopting this proposal.

Source, Exhibit 43, July 18, 1969, Commission hearing transcript,

page 7, (emphasis added)

Note above:

"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." (emphasis added).

In **1969** the Petitioned Property was in agricultural use but a steep coastal ***pali*** area existed **as part of** the makai side of the Property which ***pali*** area was not in agricultural use.

The Hard Evidence of both **the Report's** page 36 (pink box) and **the Transcript** of the final 1969 redistricting hearing refer to the same thing '***Lands in agricultural use were excluded*** from redistricting (***a side-by-side comparison of these two Exhibits is shown in Appendix 1***). Even if the district line that is depicted on the adopted map H-65 lies 300 ft. inland the intention of the 1969 Commission is clear, when a subsequent boundary interpretation is made, if land can be evidenced to have been in agricultural use in 1969, then the boundary interpretation for such land should reflect the ***defined*** district boundary to be the Coastal "***ridge top***".

While the Commission's 1974 SLUD maps show an ***undefined pictorial*** district line it is the final boundary interpretation, that is described on a licensed surveyor map with a meets and bounds description, that ***define*** the precise location of a district boundary.

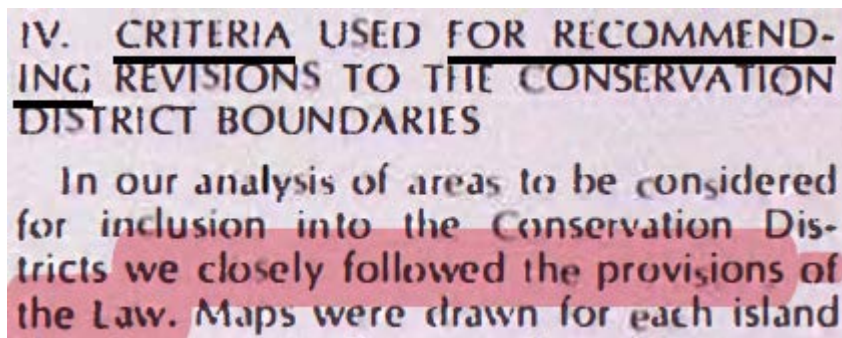
The **State's goal** to create a band of Coastal land around each of the Islands, to be Conservation, could be accomplished by the 1969

Commission without interfering with the other **State goal** which is described in the State's **Law** HRS 205-2 (a) (3).....

*(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),

We believe that it would have been illegal to overlay the Conservation District unnecessarily on to lands with a high capacity for intensive cultivation if a reasonable alternative existed. This was easily accomplished for the other 5 maps for the area between East Kohala and the City of Hilo. Map H-65 should have also shown the district line to be the Coastal "**ridge top**". The Report described that the consultants intended to follow the State's Land Use Law.....



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

Source, Report page 85 (emphasis added)

During the Hearing the Commissioners and the State Office of Planning's Attorney General representative Alison Kato had considerable discussion regarding the Report's page 86 **four criteria** that the consultants used in depicting the **undefined pictorial "recommended"** district lines on maps. The **Report** and the **Transcript** both described that Agricultural lands were excluded from redistricting irrespective of what the **undefined pictorial** district lines may have shown on the maps.

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.

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, Report, pages 36 & 86, (emphasis added)

The only criteria that describes the Property on the Report's page 86 is Criteria 3. The former railroad was not "***at the edge of the agricultural use***" it bisected the agricultural field, *ref., Exhibits 10, John Cross letter, 16, Field map F-32B, 29, 1952 aerial picture and TMK map for the Property.* Criteria #4 was generally applied to all of map H-65.

In order for the ***undescribed reference*** lines on district maps to gain ***definition*** there has to exist a ***text record*** that assists in interpretation of the ***defined*** district boundary. The above text copy from the Report, page 86 and the 1969 Commission final redistricting hearing transcript

(Exhibits 5 Report and Exhibit 43 transcript) gives further **text records** of Hard Evidence **which both describe** the same "**Areas in agricultural use were excluded**" irrespective of where the **undescribed pictorial** district reference lines on any particular map shows it to be.

Furthermore the text copy from the Report's page 86, above, only described "**recommended**" district lines. The Report's page 36 described that the "**recommended**" map was only "**Partially Approved**". "Areas in agricultural use were excluded".

Map errors are so common that the County of Oahu has a rule in its County of

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

and Thielen's testimony to the Commission in **2005** regarding an area which included the Property.....

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.

Source page 120, petition transcript testimony by Laura Thielen, the Director of the State Office of Planning, to McCully LUC petition A05 757 on August 11, 2005.

and.....

14 **MS. KATO:** I think it's a very small map,
15 so it's a little hard to tell exactly where that
16 line is drawn, but I also believe that if you
17 determine that it wasn't the intent to draw the
18 boundary there, then the map could be wrong.

19 And that has been found in other cases
20 where they've determined that the map was drawn
21 incorrectly in relation to the intent.

Source, Exhibit 5, OP testimony to DR21-72, page 96

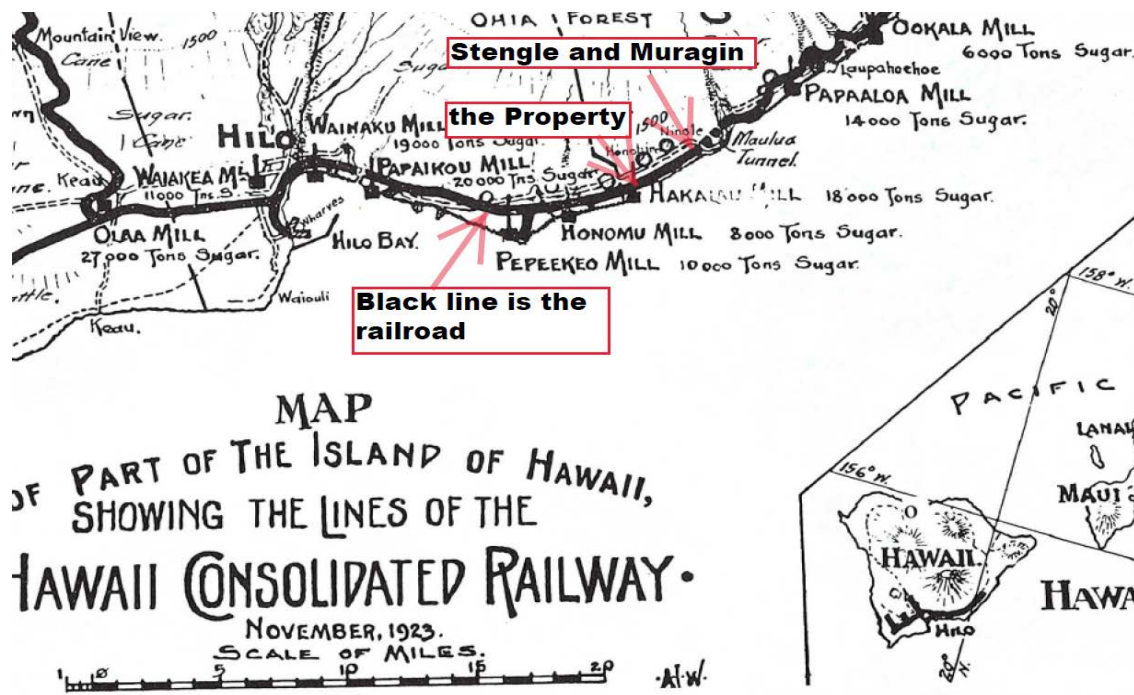
Again State Attorney General Representative, Alison Kato, testifies that ***"it has been found in other cases where they've determined that the map was drawn incorrectly in relation to the intent"***

Next we turn to another exchange of testimony between Kato and Scheuer regarding whether there exists another example of where a Hamakua Coastal property exists that had a railroad that crossed and the LUC's 1974 SLUD map also depicted the undefined district boundary reference line to also cross it in the area of the former railroad. In that case the LUC determined to not interpret the district boundary to follow the railroad but rather applied the district line to the Coastal "***ridge top***".

In this testimony Kato testified that there was not another similar case. Kato was incorrect (copy of testimony follows on subsequent pages).

The Petitioners conducted a field search of Muragin's property. It had a railroad which also crossed that property. That property had a stream on either side of it. The railroad had bridges on either side of Muragin's land. Both bridges still exist. The bridge on the northern end of Muragin's land has a large concrete bridge structure where a large year-round stream flowed through it. The bridge on the southern end was small as it only crossed a small seasonal stream.

The former owner of the Muragin property, Mr. Toledo, advised the Petitioners that the former railroad and the two bridges were used as a field road until cane production ceased. This was later also confirmed verbally, to the Petitioners, by the former field manager Mr. John Cross. The LUC's boundary interpretation #07-19 (Muragin) clearly shows the path of the railroad crossing Muragin's land, ref., Exhibit 2, Muragin boundary interpretation. Similarly Stengle's land had a railroad which crossed it. The former railroad crossed most Hamakua Coastal land between the Petitioners Property and Muragin's and Stengle's property



Source, Hilo Public Library book, "Railroads Of Hawaii", portion of page 138, book author Gerald M. Best, (text boxes and arrows in red added)

Turning here to the transcript of OP testimony (Maki and Kato) during the Hearing for the Petition, *ref., Exhibit 5 testimony*.....

15 | **COMMISSIONER SCHEUER:** So but my question
16 | is here the question is not -- if I understood the
17 | Office of Planning's argument correctly as
18 | represented by your counsel, it was, hey, you've
19 | done this before. And what I'm trying to say is I
20 | think I see a difference. When we've done it before,
21 | it's been about where the top of the pali is, not
22 | where the railway line is.
23 | **MS. MAKI:** I disagree with that.
24 | **COMMISSIONER SCHEUER:** Okay.
25 | **MS. MAKI:** But we have cited those two

Source, Exhibit 5, testimony, page 100 (emphasis added)

Maki disagreed but Commission Scheuer pressed further.....

1 cases, which are similar and -- but Stengel is --
2 okay. So Stengel was a boundary interpretation
3 first, and then they filed a DR.

4 **COMMISSIONER SCHEUER:** Yeah.

5 **MS. MAKI:** Okay? I don't think it was a
6 railroad right-of-way, but it was determined to be
7 inland of the top of the pali at first in a boundary
8 interpretation. And then during a DR petition, they
9 -- the Stengel one -- they indicated that there was
10 agriculture being done in that area, and so it was
11 reinterpreted to be the pali.

12 **COMMISSIONER SCHEUER:** I -- I understand
13 that.

14 **MS. MAKI:** Okay.

15 **COMMISSIONER SCHEUER:** But I agree with
16 you. In the Stengel case, there's no mention of a
17 railway line as being potentially the location of
18 the boundary.

19 **MS. MAKI:** Okay.

20 **COMMISSIONER SCHEUER:** Which is the point
21 I'm trying to get to.

22 **MS. KATO:** Are you asking if there's a
23 case that's exactly the same as this one?

24 **COMMISSIONER SCHEUER:** Yes. If you're
25 going to make the argument that the issue revolves

Source, Exhibit 5, testimony, page 101 (emphasis added)

1 around the map being drawn wrong.

2 **MS. KATO:** I don't believe there is a case
3 that is exactly like this one that we're aware of
4 that the LUC has determined where the -- where the
5 line was drawn inland and they decided to draw the
6 line -- that the line should have been drawn at the
7 top of the sea pali that has a railroad.

8 **COMMISSIONER SCHEUER:** Awesome. Thank you
9 so much. That's good clarification.

Source, Exhibit 5, testimony, page 101 (emphasis added)

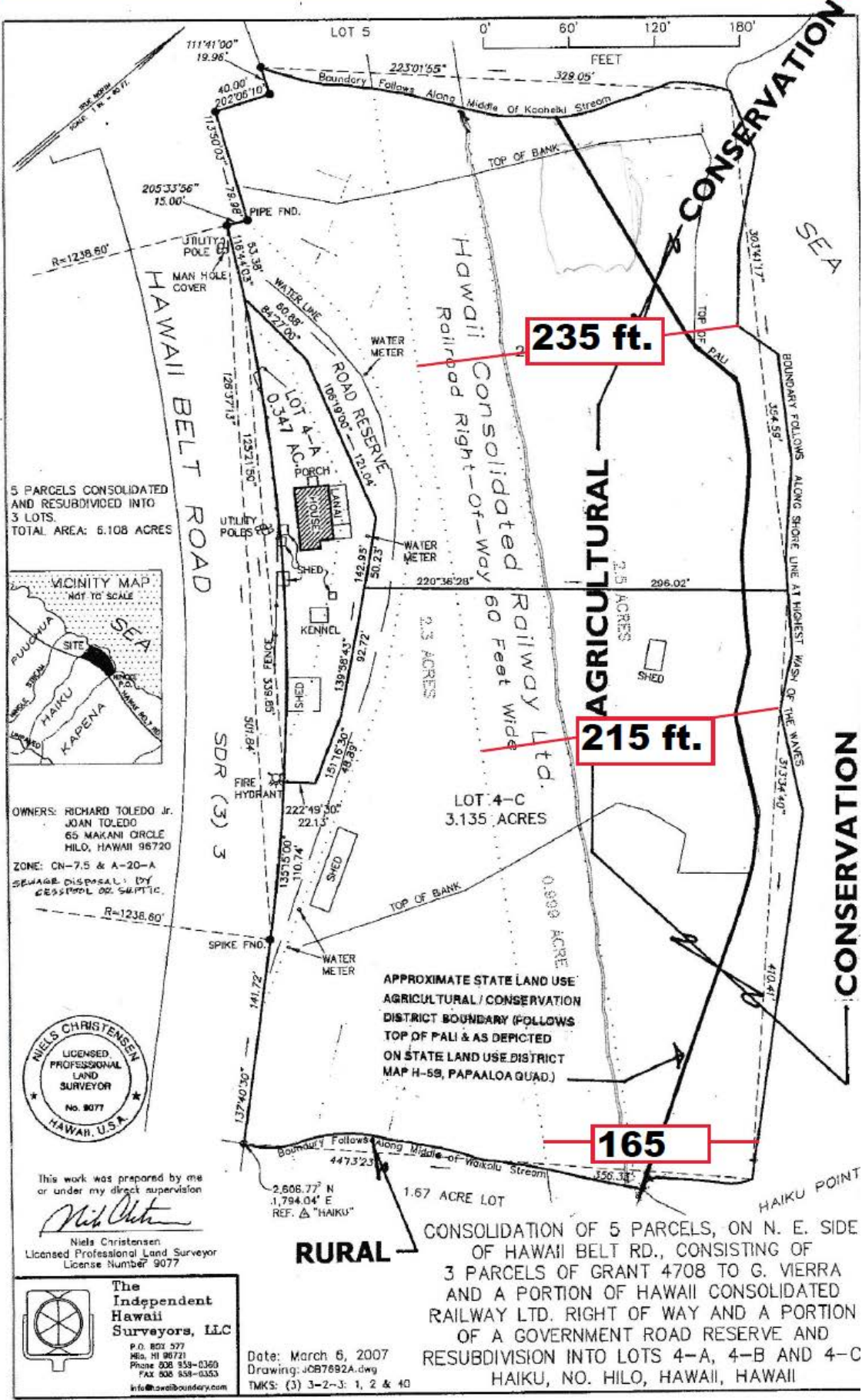
The Hard Evidence, ref., Exhibit 2, Muragin boundary interpretation map, is proof that Kato and Scheuer were incorrect.

See Exhibit- 1 Stengle maps, Exhibit 2 Muragin map, Exhibit 3 Petitioner maps. In both the case of Stengle and Muragin the undefined boundary reference line on map H-59 generally showed the line to be variably inland of the Coastal pali. In both cases of Stengle and Muragin a railroad also crossed their land in the area of the undefined boundary reference line on map H-59. The Commission applied the line to the the "**ridge top**" of the Coastal pali and not the former railroad land. In the case of the Property the Commission has applied the line to be the former railroad. This is in conflict with the text record of the Report's page 36 (Exhibit 32) and the text record of the 1969 Commission's hearing transcripts and hearing minutes (Exhibits 43-45).

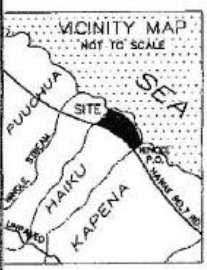
Muragin red lines and ft. text boxes added

Boundary Monument No. 07-12

actual Land Use District boundary adopted by the State Land Use Commission, Honolulu, Hawaii.
 Date: *Edward G. Avel*
 by *Edward G. Avel* Engraving Office



5 PARCELS CONSOLIDATED AND RESUBDIVIDED INTO 3 LOTS.
 TOTAL AREA: 6.108 ACRES



OWNERS: RICHARD TOLEDO JR.
 JOAN TOLEDO
 65 MAKANI CIRCLE
 HILO, HAWAII 96720
 ZONE: CN-7.5 & A-20-A
 SEWAGE DISPOSAL: BY
 CESSPOOL OR SEPTIC.

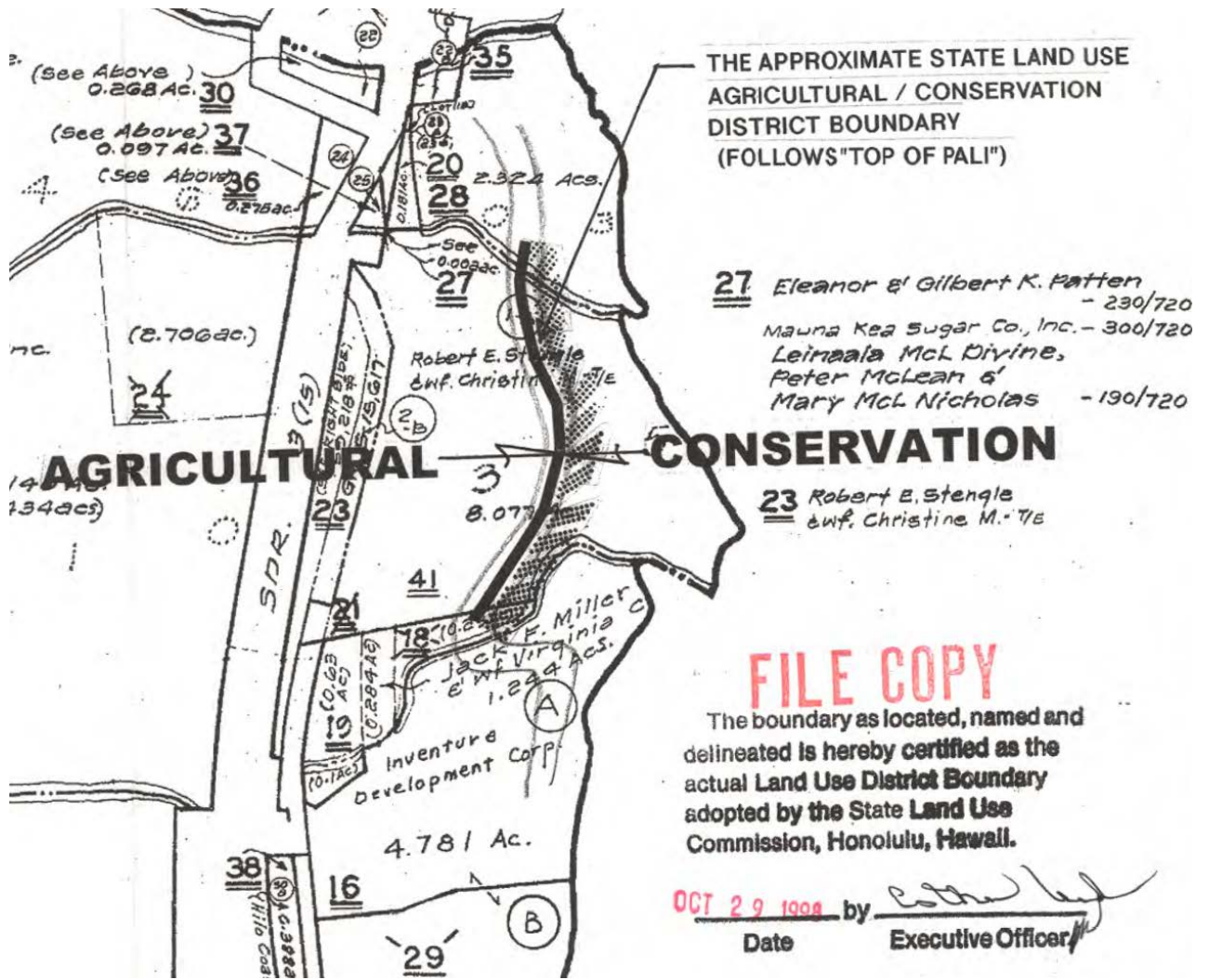


This work was prepared by me or under my direct supervision
Niels Christensen
 Niels Christensen
 Licensed Professional Land Surveyor
 License Number 9077

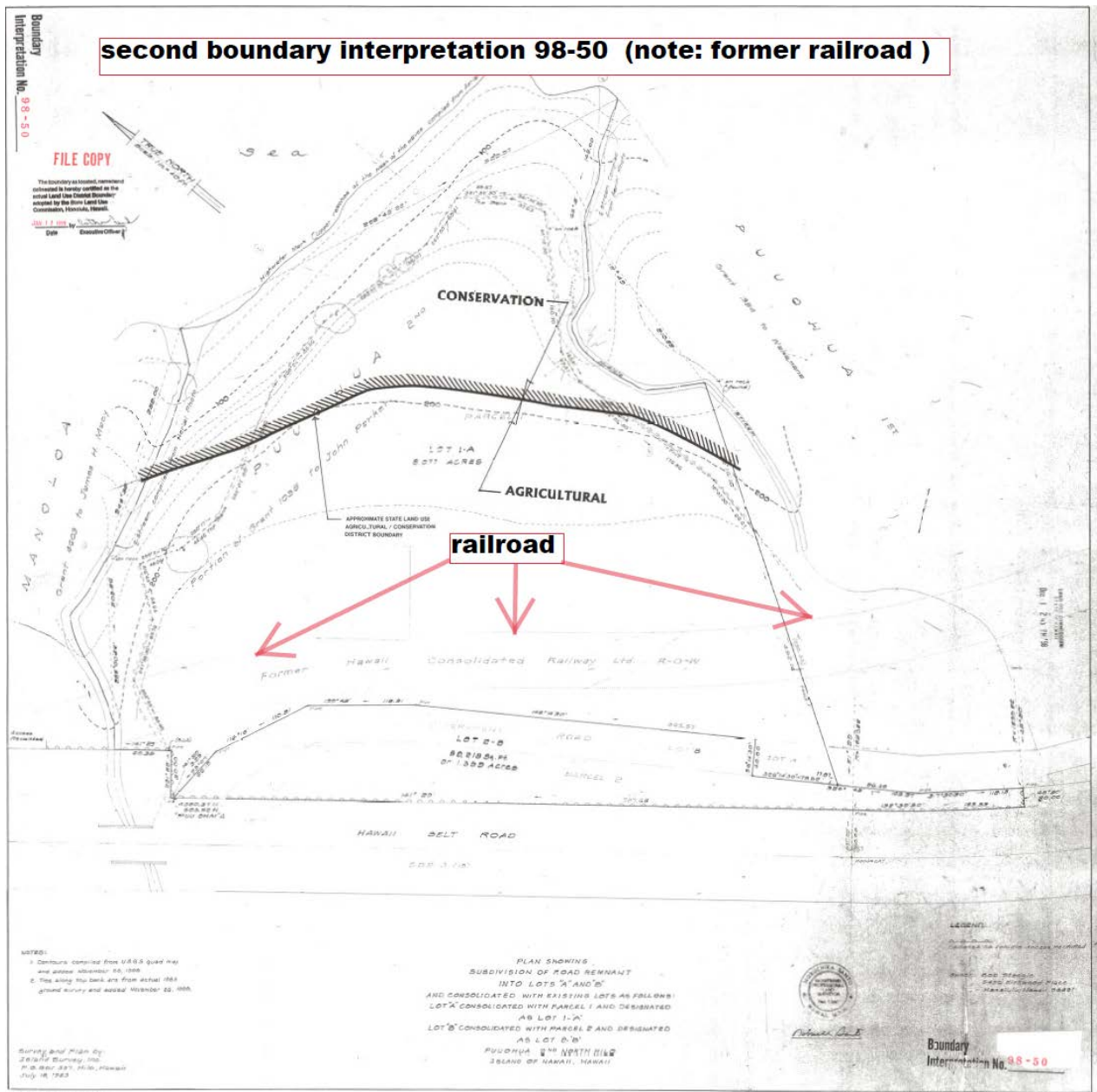
The Independent Hawaii Surveyors, LLC
 P.O. Box 577
 Hilo, HI 96721
 Phone 808 938-0360
 Fax 808 938-0353
 info@avelboundary.com

Date: March 6, 2007
 Drawing: JOB7692A.dwg
 TMKS: (3) 3-2-3; 1, 2 & 40

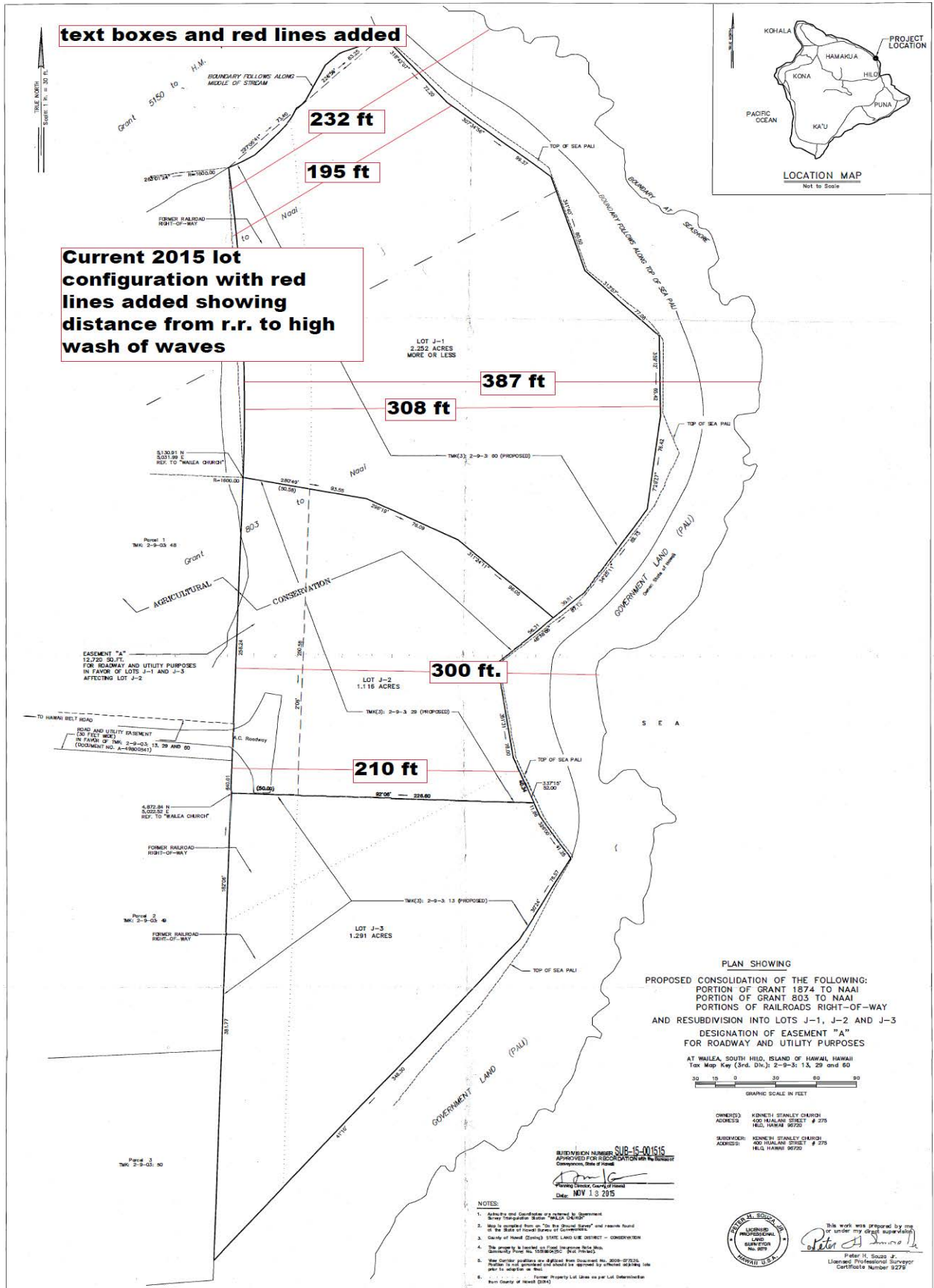
RURAL
 CONSOLIDATION OF 5 PARCELS, ON N. E. SIDE OF HAWAII BELT RD., CONSISTING OF 3 PARCELS OF GRANT 4708 TO G. VIERRA AND A PORTION OF HAWAII CONSOLIDATED RAILWAY LTD. RIGHT OF WAY AND A PORTION OF A GOVERNMENT ROAD RESERVE AND RESUBDIVISION INTO LOTS 4-A, 4-B AND 4-C HAIKU, NO. HILO, HAWAII, HAWAII



Source, Exhibit 1, Exhibit 1Stengle first boundary interpretation 98-3



Source, Exhibit 1, Exhibit 1 Stengle second boundary interpretation 98-3



Source, Exhibit 3, Current Property configuration and SLUD line

OP Kato had testified (*in the copy page 96 above*) that the LUC's District Maps "***And that has been found in other cases where they've determined that the map was drawn incorrectly in relation to the intent.***"

Page 100 above, Commission Chair Scheuer questioned OP Maki Scheuer stating..... "***When we've done it before, its been about where the top of the pali is, not where the railway line is.***"

Maki responds "***I disagree with that.***"

Commission Chair Scheuer did not accept that Maki disagreed and went on to question OP Kato in this regard..... "***Yes, if you're going to make the argument that the issue revolves around the map being drawn wrong.***"

Kato replies..... "***I don't believe there is a case that is exactly like this one that we're aware of.....***"

Commission Chair Scheuer....."***Awesome. Thank you so much. That's good clarification.***"

The Hard Evidence, *ref., Exhibit 2, Muragin boundary interpretation map*, is proof that Kato and Scheuer were incorrect. The district boundary crossed Muragin's property and so did the former railroad. The LUC interpreted the district boundary to be the Coastal "***ridge top***" and not the former railroad. OP Kato had testified (*in the copy page 96 above*) that the LUC's District Maps "***And that has been found in other cases***

where they've determined that the map was drawn incorrectly in relation to the intent." and now the Hard Evidence of Exhibit 2, Muragin boundary interpretation map should set the record straight.

OP Maki was correct when she disagreed with Commission Chair Scheuer and Kato was incorrect.

Scheuer stating to Maki..... **"When we've done it before, its been about where the top of the pali is, not where the railway line is."**

Maki responds **"I disagree with that."**

The point is that SLUD map H-59 (Stengle and Muragin) and SLUD map H-65 (Church-Hildal) both had a former Coastal railroad that crossed the Coastal agricultural use lots. In the case of SLUD map H-59 the LUC has interpreted the district boundary to follow the Coastal "" and in the case of SLUD map H-65 the LUC has interpreted the district boundary to follow the former railroad in the area of the Property. This conflicts with the text records of the Report's page 36, ref., Exhibit 32, the Report, and the text record of the 1969 Commission's hearing transcripts and hearing minutes that are described in Appendix 1.

Even the **text record** of another Review report, the LUC's **"Five Year Boundary Review"**, Volume II, March **1991** report describes that the LUC's **1974** Official maps often contain district boundary **map errors**, ref., exhibit 5, the 1992 report.....

District Review and Mapping Study Five Year Boundary Review, Volume II, March 1991

State-wide Summary

INTRODUCTION

The existing system of land use regulatory controls in Hawaii, at both State and County levels, is often criticized for being redundant or overly complicated. As indicated by the land use inconsistencies shown on the accompanying maps, many small inconsistency areas appear to be the result of mapping error or other factors not clearly identifiable by mapping techniques alone. Surprisingly, approximately half of the inconsistent areas involve parcels comprised of a land area containing less than 15 acres.

County land use maps are not always updated. If the amendment is approved by only one governmental body, the amendment is reflected on only one map. Consequently, an apparent inconsistency area is therefore created.

Generally, regulatory inconsistencies resulted primarily from: 1) mapping errors, or 2) if proposed boundary amendments had not completed the boundary amendment process and the

proposed land use change was not currently reflected on the applicable map. As reflected in the State-Wide Summary Table, approximately 238,873 acres were mapped as inconsistent with the various County General Plans. These inconsistencies represent approximately 5.7 percent of the total land area in the State.

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).

*Source the LUC's "Five Year Boundary Review",
Volume II, March 1991 report*

The **1999** Commission cited the Report's page 36 in DR99-21 (Stengle) in its Decision and Order where it found a map error existed. DR99-21 (Stengle) cited APPLICABLE LEGAL AUTHORITIES.....

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).

Source DR99-21, Exhibit 1 (emphasis added)

The 1999 Commission found that a map error existed (Stengle) and it ordered that the map be corrected.

In another case, DR96-19 (Castle Foundation), *ref., Exhibit 25, **Findings of Fact*** items 14 and 15, which are found on *Exhibit 25's page 5-6*

.....

14. In 1974, Commission Boundary Review Docket No. 074-8 proposed the reclassification of approximately 50 acres of land located at Kapa'a, island of O'ahu, from the Urban District to the Conservation District because (i) no urban development was evident on the 50 acres and (ii) portions of the area contained steep slopes which were not suitable for urban development. According to the 1974 Boundary Review Information Meeting and Public Hearing Maps for O'ahu, a portion of the Property was proposed for reclassification to the Conservation District under Docket No. 074-8.

15. By Decision and Order dated June 2, 1975, the Commission reclassified approximately 50 acres of land from the Urban District to the Conservation District in Docket No. 074-8.

The Decision and Order identified the affected lands as TMK 4-2-14: por. 2, which composed the tract of land of which the Property was originally a part and which was undeveloped and in its natural state. The Decision and Order did not include the Property, identified as TMK 4-2-14: 4, in the reclassification to the Conservation District. However, State Land Use District Boundaries Map O-14 (Mokapu), adopted by the Commission following the 1974 Boundary Review, and effective December 20, 1974, delineated the district boundary to include a portion of the Property containing the roadway for egress from the theater and the areas designedly graded for slope ramps within the Conservation District.

Source, DR96-19, exhibit 25 (emphasis added)

and finding of fact 19.....

19. Staff based the delineation of the district boundary on its review of Docket No. 074-8; the July 21, 1976, boundary interpretation; and specifically on the representation of the district boundaries on the Commission's State Land Use District Boundaries Map O-14 (Mokapu). A copy of Boundary Interpretation No. 92-40 was provided to the Department of Land and Natural Resources ("DLNR").

Source, DR96-19, exhibit 25 (emphasis added)

and the Declaratory Order corrected the Map

DECLARATORY ORDER

FOR GOOD CAUSE APPEARING, the Commission hereby rules that the boundary reclassification under Decision and Order issued on June 2, 1975, in Docket No. 074-8 and Boundary Interpretation No. 92-40 dated September 15, 1992, is clarified and corrected to reflect that the 24.059-acre Property, identified as TMK 4-2-14: 4, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated entirely within the State Land Use Urban District.

Accordingly, this Commission determines that State Land Use District Boundaries Map O-14 (Mokapu) be amended to reflect that the 24.059-acre Property is designated entirely within the State Land Use Urban District.

Source, DR96-19, exhibit 25 (emphasis added)

Exhibit 38 has a number of map H-59 and H-65 pages and magnified copies of areas of those 2 maps. The maps start in April 1969 as "**proposed**" maps, next July 18, **1969** "**adopted**" maps and end with **present** day 1974 maps.

Regarding map H-59 - cycling through the 3 dated maps it will become apparent that, while the **1974** map appears to be a **1974** map the district line on it had to have been redrawn in **1999**. This leads to confusion regarding all of the maps.

When Petitioner Church first requested copies of the April **1969** "**proposed**" map and the July 18, **1969** "**adopted**" map the LUC's administrative office provided the April 1969 "**proposed**" map and the

LUC's Official 1974 SLUD maps H-65 (not the requested July 18, 1969 "adopted" maps).

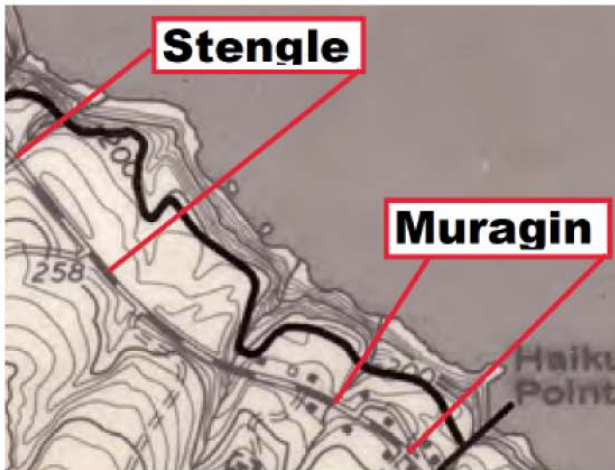
Subsequently Church again asked for the July 18, 1969 "adopted" maps. When Church followed that request up several days later LUC staff person Scott Derickson advised '*my drafter is working on it*'. This causes further uncertainty. We know dated maps subsequently have revised district lines on them *i.e. the above described LUC's Official 1974 SLUD maps H-65, which in fact has 1999 lines on it and no sign of the previous line having been erased and the new line applied.* We don't know whether the July 18, 1969 "adopted" maps are truly from that period or have been redrawn more recently.....

5 **MS. KATO:** I'm not sure what they used in
6 1969. I understand that the -- I believe the maps
7 were from a later time.
8 **COMMISSIONER SCHEUER:** Okay.
9 **MS. KATO:** The maps that were later drawn
10 based on the report.
11 **COMMISSIONER SCHEUER:** Yeah. You're
12 correct. I have nothing further.

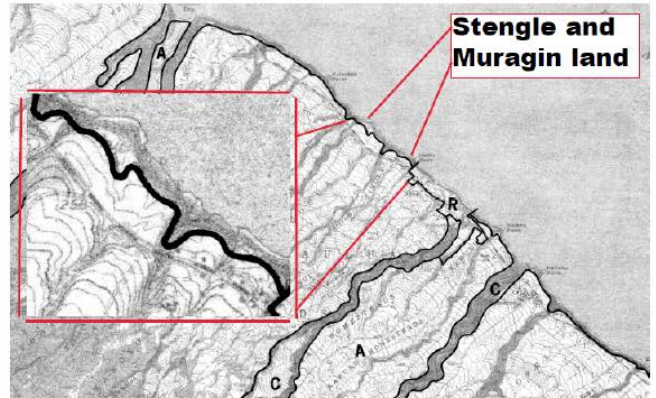
Source, Exhibit 5, Hearing transcript, page 107

Finally when one looks at the current version of the LUC's map H-59 it becomes apparent that the district line on map H-59 has been redrawn around 1990 and perhaps many other times. It appears that when the district line is redrawn there is no evidence of the change other than a

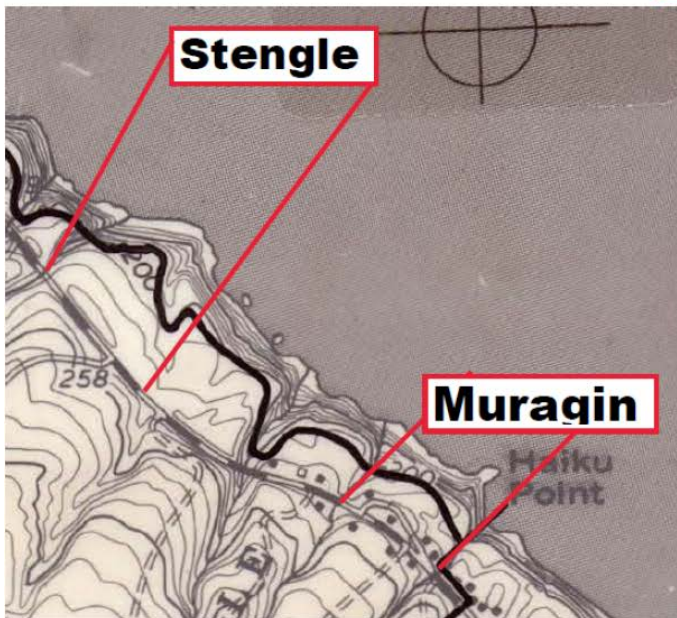
reference to map changes in the bottom left hand corner of the map. No erasure marks or any evidence of where the line used to be exists on the map. When one looks at the present version of the map it is impossible to know where the district line originally was. Below are copies of the map in the area of Stengle's land dating from 1969 to present....



1974 district line map redrawn in 1999 (full map exhibit 39)



LUC staff provided this map as "1969" map approved by the Commission on July 18, 1969



The map to the left was supplied by LUC staff also representing it to be the original 1974 map. It obviously is the same as the 1999 map after the Stengle adjustment. There is no evidence that the line ever was inland at Stengle's land. It is easy to see that lines on maps may be redrawn. We no longer can be assured that the lines on the current maps are the same as the ones that existed on the original 1974 maps or any other map for that matter.

Source, LUC web site, text boxes and lines added

The Petitioners are hopeful that the LUC will produce a witness that can remove the uncertainty, giving testimony and perhaps even cross-examination of the witness if we can't resolve the whole matter based on the fact that "***The maps that were later drawn based on the Report***" (see above text copy). Both the Report and the 1969 Commission final redistricting hearing transcript (Exhibits 5 Report and Exhibit 43 transcript) describe the same "***Areas in agricultural use were excluded***" irrespective of where the ***undescribed reference*** district line on any particular map shows it to be.

In the case of the Property both the **Report** and the **Transcript** describe that '***Areas in agricultural use were excluded***. The Petitioners believe that a Map error also exists on map H-65, either an administrative error or a scrivener's error that resulted in an incorrect boundary interpretation for the Property.

The last page of this Appendix 1 shows that **Administrative map errors** were not unique to the 1969 Commission. The Petitioners recently requested that the **current** LUC administrative office provide a copy of the 1969 Commission's "***proposed***" redistricting map H-51. The LUC's administrative office provided a web-link to the requested map but when the link was opened it was not the requested map H-51. The map that did open is the map on the next page - map H-70. A copy of the LUC's web site link is overlaid on to the map in a text box. The link clearly describes that it is to map H-51. We have overlaid another text box also that describes the the LUC's **Administrative map error**.

The Petitioners ask the Commission to issue a new boundary interpretation for the Property describing that the Coastal "***ridge top***" be the district boundary.