

exhibit 4

OFFICE OF PLANNING

Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawaii 96813
Telephone: (808) 587-2846
Facsimile: (808) 587-2824



BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. DR21-72
)	
KENNETH S. CHURCH AND JOAN E.)	OFFICE OF PLANNING AND
HILDAL)	SUSTAINABLE DEVELOPMENT'S
)	STATEMENT OF POSITION FOR
For review of Boundary Reclassification,)	PETITION FOR A DECLARATORY
Boundary Interpretation, the 1974 State)	ORDER; EXHIBITS 1, 2, 3 AND 4; AND
Land Use District Boundaries Map H-65,)	CERTIFICATE OF SERVICE
Reimbursement of Filing Fees for Petition)	
A18-805 and this Petition For a Declaratory)	
Order, Waiving of Court Reporter fees for)	
this Petition)	
)	
)	
)	

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S STATEMENT OF POSITION FOR A DECLARATORY ORDER

The Office of Planning and Sustainable Development ("OPSD") would have no objection to the Land Use Commission's granting of Kenneth S. Church's and Joan Hildal's ("Petitioners") request to the Land Use Commission ("LUC") for a Declaratory Order to clarify the December 16, 1992 Boundary Interpretation No. 92-48 for Tax Map Keys: (3) 2-9-003: 29 and 60. The petition area is comprised of two lots; parcel 29 contains 1.116 acres and parcel 60 contains 2.252 acres for a total of approximately 3.368 acres of land ("Petition Area"). The 1992 Boundary Interpretation for the Petition Area indicated that the two parcels were within the

Conservation District. TMK parcel 2-9-003: 48 which borders the Petition Area is within the State Agricultural District.

I. BACKGROUND

A. Boundary Interpretation No. 92-48 (McCully)

On November 24, 1992, Mr. James McCully, the previous owner of the Petition Area, requested a Boundary Interpretation from the LUC. The survey map and letter submitted for the interpretation indicated that the boundary between State Conservation and Agricultural Districts should be the midpoint of the railroad right-of-way, inland of the cliff edge which also delineates the petitioner's property line. By letter dated December 16, 1992, the LUC Executive Officer delineated the Conservation/Agricultural Land Use District boundary at the railroad right-of-way, as indicated on the petitioner's survey map. The LUC letter further stated that a boundary amendment to reclassify the Conservation District boundary would require LUC approval. See (OPSD Exhibit 2)

Land Use Commission ("LUC") Docket A05-757 (McCully)

The previous owner filed a petition, A05-757, with the LUC in March 2005, to reclassify these parcels and parcel 13, approximately 3.54 acres of land from the Conservation District to the Agricultural District. The petitioner at that time, James and Francine McCully, proposed to consolidate and re-subdivide the lots into three lots. The petitioner proposed to construct a 2,000 square foot greenhouse on the petition area. At the time, the Office of Planning supported the reclassification. During hearings on the docket, several Commissioners questioned the necessity of reclassification given that the proposed uses are allowed in the Conservation District under Department of Land and Natural Resources ("DLNR") rules. Further, several Commissioners expressed concern that the petitioner had no clear plans for agricultural use for the entire petition

area, other than their own plans to build a home and a greenhouse. Later in the hearings, DLNR Office of Conservation and Coastal Lands (“OCCL”) staff was asked by the LUC to testify on the Conservation District Use applications in the region and provided testimony expressing concern about the precedent of removing lands from the Conservation District in this region, due to coastal erosion and cliff collapse risks, loss of scenic resources, and other conservation resource values.

The 2005 petition was denied by the LUC in 2006 due to the lack of affirmative votes. A motion to reconsider filed by the petitioner was also denied. The petitioner had proposed to retain a 40-foot buffer from the makai edge of the petition area in the Conservation District, however, a buffer did not materially change the nature of the petition, and there had been no change in facts or circumstances to justify a change in the Commission’s prior decision.

B. Docket No. A09-783 (McCully)

In 2009, the previous petitioner filed a second petition for the same proposal to reclassify approximately 3.54 acres of land from the State Conservation District to the Agricultural District. On October 20, 2010, the Office of Planning filed testimony in opposition to the petition based on a review of the subject petition and issues raised in LUC hearings on the previous Docket No. A05-757. Subsequently, the petition was withdrawn prior to a decision by the LUC.

C. Docket No. A18-805 (Church)

On July 20, 2018, the current Petitioners filed a petition similar to A09-783 (McCully) to reclassify approximately 3.368 acres from the State Conservation District to the Agricultural District. By letter dated August 1, 2020, the LUC informed the Petitioners that the petition was incomplete and listed six concerns and issues with the petition. Item No. 5 was the need for an

accepted Environmental Impact Statement (EIS) or Finding of no Significant Impact (FONSI). This requirement was met with the Final FONSI accepted by the LUC and published in The Environmental Notice dated November 23, 2020. However, no hearing or letter confirming acceptance was conducted or issued by the LUC.

II. OTHER SIMILAR LUC ACTIONS IN THE AREA (See OPSD Exhibit 1 Map)

A. Docket No. A18-806 (Barry Trust)

The petition in Docket No. A18-806, Kevin M. Barry and Monica S. Barry, Trustees of the Barry Family Trust Dated November 15, 2006 was approved by the LUC, and the Findings of Fact, Conclusions of Law and Decision and Order was adopted on April 21, 2021 to reclassify 0.51 acre of land from the State Conservation District situated along the coastline, to the Agricultural District. This petition site is similar to the Petitioners' previous requests for the "Top of the Sea Pali" to be the boundary between the State Conservation and Agricultural Districts.

We note that the petitioner's parcel was designated as Conservation District along the coastal area as a result of the 1969 Five-Year Boundary Review report titled, *State of Hawaii Land Use Districts and Regulations Review*. The coastal parcels in the entire subdivision were reclassified into the State Conservation District for the purpose of protecting the shoreline from development. Subsequently, the subdivision in which this petitioner's lot is situated, except for a few parcels such as the Barry Trust parcel, was the subject of a multi-lot district boundary amendment that reclassified 56.82 acres of land and 110 parcels from the Conservation District to the Agricultural District. (A76-419 Paradise Hui Hanalike Association, et al.)

B. Docket No. DR99-21 (Stengle)

Robert E. & Christine M. Stengle in DR99-21 requested that the “Top of Pali” be designated as the correct boundary between the State Conservation District and the Agricultural District. The request indicated that the Boundary Interpretation No. 98-50 which removed the State Agricultural/Conservation District boundary from the “Top of Pali” to the area inland, such that approximately 46,699 square feet of land planted in macadamia nuts is within the Conservation District, was incorrect. The 1969 Boundary Review Report listed four (4) major conditions to delineating the State Conservation and Agricultural Districts in the Hamakua area. The LUC based their approval on Condition No. 3 which said that “In cases where the shoreline is bounded by steep cliffs or a pali, the top of the ridge was used.” The Office of Planning’s testimony in this matter on February 24, 1999 indicated no objection to this re-interpretation. (See OPSD Exhibit 3)

C. Boundary Interpretation No. 07-19 (Muragin)

The LUC Executive Officer issued a boundary interpretation for Lisa Muragin of Ninole, North Hilo for her coastal property. The LUC letter dated March 3, 2008 indicates that the State Land Use District Boundary was the “Top of Sea Pali.” The Conservation District was located seaward of the top of the pali, and the Agricultural District was landward of the top of the pali. As shown on the survey map this lot also contains a portion of the railroad right-of-way, similar to the Petition Area. (See OPSD Exhibit 4)

**III. 1969 ESTABLISHMENT OF THE BOUNDARY LINE BETWEEN THE
CONSERVATION AND AGRICUTURAL DISTRICTS**

The first State Land Use District Boundary Review, titled the *State of Hawaii Land Use Districts and Regulations Review*, was completed in 1969 by Eckbo, Dean, Austin and Williams (“Boundary Review Report”). (See Petitioner’s Exhibit 1 Excerpt of report). The Boundary

Review Report designated a band of coastal lands around each island in the Conservation District, for lands not already designated as Urban or Agricultural District when the first State Land Use District boundaries were established following the enactment of the State Land Use Law in 1961. This action reflected strong public sentiment and support from interviews and surveys conducted at the time for recognition of the shoreline as a precious and high priority resource for Hawaii, deserving and warranting conservation. Two studies informed the designation of shoreline resources: (1) a *Hawaii Seashore and Recreation Areas Survey* performed by the National Park Service in 1962; and (2) a general development plan, *Hawaii's Shoreline*, prepared by the State Department of Planning and Economic Development in 1964. The final boundaries were "the LUC's judgement as a result of considerable input from studies, site inspections, public hearings, talks with landowners, and the Commissioners' own personal knowledge and experience." (Eckbo, Dean, Austin and Williams, 1969, Pg. 85).

As stated in the Boundary Review Report:

Recognition that the shoreline is a zone rather than line has been the basis for recommending that the designation of the Conservation District be inland from the 'line wave of action' at varying distances related to topography and other use factors. (Pg. 86)

In discussing the shoreline areas in relation to the Conservation District, the Boundary Review Report states generally that:

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. . . . Areas in agricultural use were excluded. (Pg. 36) (emphasis added)

Additionally, four major conditions were used in preparing the new Conservation District boundaries in shoreline areas:

1. Where a plantation road, farm road, access way or public road exists at the edge of the agricultural use within reasonable proximity to the shoreline, it was used as the boundary between the Agriculture and Conservation Districts.
2. Where a vegetation line such as a windbreak or row of trees more clearly marks the edge of the agricultural practice, this was used.
3. In cases where the shoreline is bounded by steep cliffs or a pali, the top of the ridge was used.
4. Where no readily identifiable physical boundary such as any of the above could be determined, a line 300-feet inland of the line of wave action was used.
(Pg. 86) (emphasis added)

The guidelines and conditions set forth in the Boundary Review Report generally indicated where the boundary between the Agricultural and Conservation Districts should be located, but the boundary was not mapped in detail such that it was unclear where the boundary was located for any particular property. As such, the location of boundary must be identified by applying the above guidelines and conditions to the physical and historical aspects of the subject property.

The Boundary Review Report indicates in two places that the top of the ridge should be used as the boundary between the Agricultural and Conservation Districts. (See Section II.C. on Pg. 36 and Condition 3 on Pg. 86). While the general pattern was to draw the Conservation District Boundary along the pali, there was considerable deviation from this standard, which likely reflected other factors such as a road. Under Condition 1 on Pg. 86, if the land along the shoreline had a road or other access way within reasonable proximity to the shoreline that was at the makai edge of the agricultural use, then that road could be used as the boundary instead of the top of the pali. If the agricultural use went beyond the road or other access way, however, it would not be appropriate to use that road or access way as the boundary. In addition, the Boundary Review Report indicates that the Conservation District excluded those coastal areas that were in agricultural use at that time.

Here, the Petition Area is located along the Hamakua Coast and includes a railroad right-of-way. If the railroad right-of-way was considered to have been “at the edge of the agricultural use within reasonable proximity to the shoreline[,]” then it may have been utilized as the boundary line, as illustrated in the proposed Conservation District boundary and final boundary adopted in 1969 in the immediate vicinity of the Petition Area. If, however, the Petition Area was in agricultural use makai of the railroad right-of way at the time of the boundary adoption, then it is less likely that the railroad right-of-way would have been used as the boundary line under Condition 1 on Pg. 86. Petitioners’ present Petition indicates that the Petition Area may have been in agricultural use at the time the boundary was determined. If so, it is possible that the Boundary Review Report could have intended the boundary at the Petition Area to be located at the top of the sea pali rather than the railroad right-of-way.

CONCLUSION

There is a lack of clarity in the Boundary Review Report and in the subsequent establishment of the boundary line between the Conservation and Agricultural Districts for the Petition Area as to where the boundary line was intended to be drawn. However, as shown in the various dockets and boundary interpretations sharing similar circumstances and brought before the LUC at different times since the 1969 Boundary Review Report established the State Land Use District along the East Hawaii coastal areas, the Conservation District boundary has been determined in some cases to be the “top of the sea pali.” Accordingly, OPSD would have no objection to the LUC’s granting of Petitioners’ requested Boundary Interpretation.

DATED: Honolulu, Hawaii, September 1, 2021.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR

**OFFICE OF PLANNING
AND SUSTAINABLE DEVELOPMENT**

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OF THE STATE OF HAWAII**

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Interpretation, the 1974 State Land Use)	CERTIFICATE OF SERVICE
District Boundaries Map H-65,)	
Reimbursement of Filing Fees for Petition)	
A18-805 and this Petition For a Declaratory)	
Order, Waiving of Court Reporter fees for)	
this Petition)	
)	
)	
)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document
was duly served on this date on the below-named parties by U.S. Mail, postage prepaid:

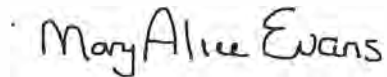
KENNETH S. CHURCH
JOAN EVELYN HILDAL
P.O. Box 100014
Hakalua, Hawaii 96710

ELIZABETH A. STRANCE
DIANA MELLON-LACEY, Esq.
Corporation Counsel
Deputy Corporation Counsel
Office of the Corporation Counsel
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, Hawaii 96720

ZENDO KERN
DIRECTOR
JEFF DARROW
DEPUTY DIRECTOR
County of Hawaii Planning Department
Aupuni Center
101 Pauahi Street Suite 3
Hilo, Hawaii 96720

Dated: Honolulu, Hawaii, September 1, 2021.

OFFICE OF PLANNING
AND SUSTAINABLE DEVELOPMENT
STATE OF HAWAII

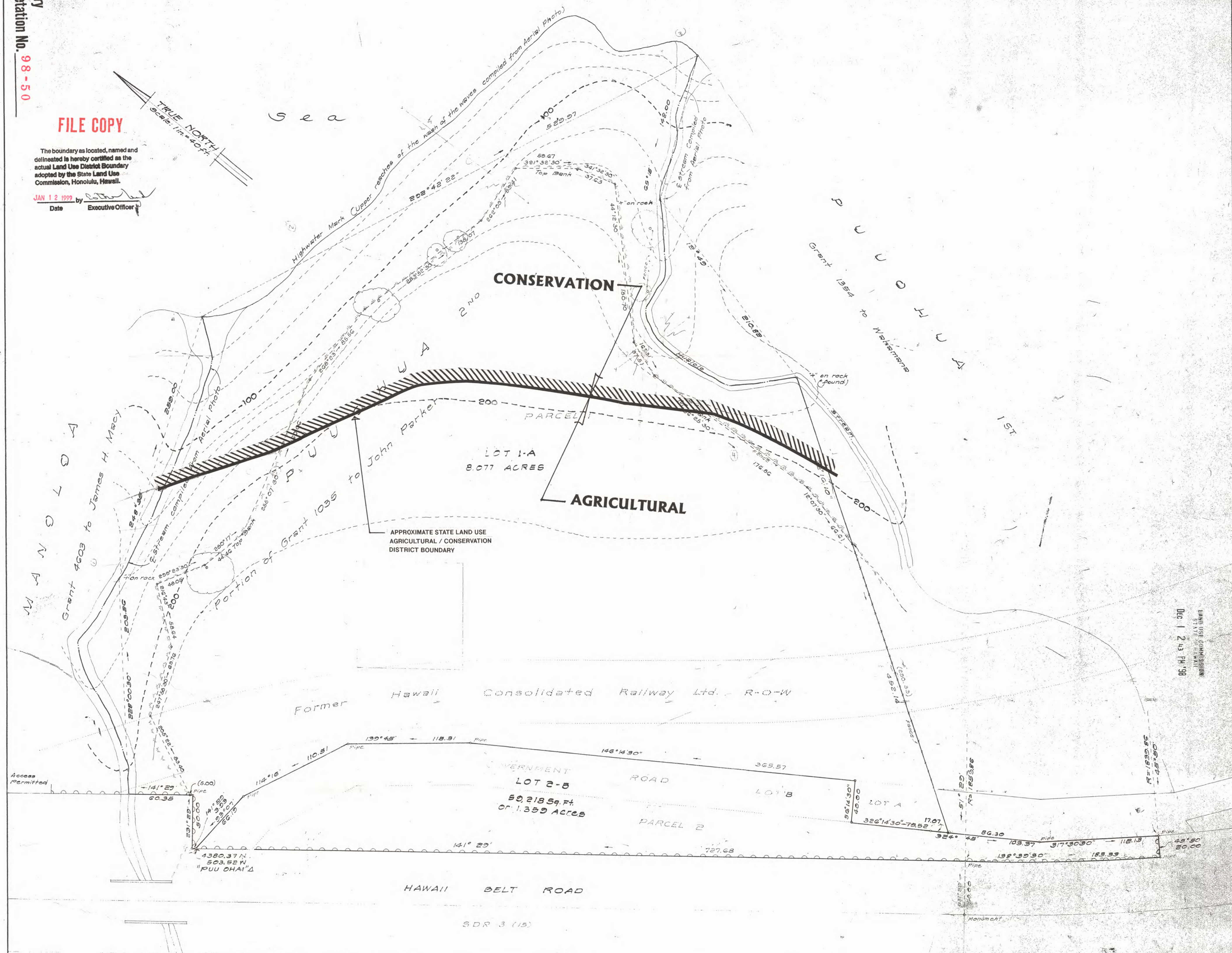
A handwritten signature in black ink that reads "Mary Alice Evans". The signature is written in a cursive, slightly informal style.

MARY ALICE EVANS
DIRECTOR

FILE COPY

The boundary as located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

JAN 12 1999 by
Date Executive Officer



NOTES:

1. Contours compiled from U.S.G.S quad map and added November 25, 1998.
2. Ties along top bank are from actual 1983 ground survey and added November 25, 1998.

Survey and Plan by:
Island Survey, Inc.
P.O. Box 337, Hilo, Hawaii
July 18, 1983

PLAN SHOWING
SUBDIVISION OF ROAD REMNANT
INTO LOTS "A" AND "B"
AND CONSOLIDATED WITH EXISTING LOTS AS FOLLOWS:
LOT "A" CONSOLIDATED WITH PARCEL 1 AND DESIGNATED
AS LOT 1-A
LOT "B" CONSOLIDATED WITH PARCEL 2 AND DESIGNATED
AS LOT 2-B
PUUOHUA 2ND, NORTH HILO
ISLAND OF HAWAII, HAWAII



Boundary
Interpretation No. 98-50

LINDA LINGLE
Governor

JAMES R. AIONA, JR.
Lieutenant Governor

THEODORE E. LIU
Director

MARK K. ANDERSON
Deputy Director

2008 MAR 6 AM 10 48

PLANNING DEPARTMENT
COUNTY OF HAWAII



LAND USE COMMISSION

Department of Business, Economic Development & Tourism
State of Hawai'i

RODNEY A. MAILE
Interim Executive Officer

SANDRA M. MATSUSHIMA
Chief Clerk

BERT K. SARUWATARI
Senior Planner

FRED A. TALON
Drafting Technician

March 3, 2008

Ms. Lisa Muragin
P.O. Box 179
Ninole, Hawaii 96773

Dear Ms. Muragin:

Subject: **BOUNDARY INTERPRETATION No. 07-19**
Tax Map Key No. (3) 3-2-03: 1, 2, & 40
Ninole, North Hilo, Hawaii

This is in response to your letter dated July 16, 2007, requesting a boundary interpretation for the subject parcels. Please accept our apologies for the lateness of this response.

Upon receipt of your request, we reviewed the Commission's records currently on file at our office and the information that you provided.

For your information, the designation of the subject parcels was established on August 4, 1969, and in accordance to Hawaii Administrative Rules Subchapter 16, 15-15-111. As depicted on the official State Land Use (SLU) District Boundaries Map H-59, Papaaloa Quadrangle, the landward portion of the subject parcels was designated SLU Agricultural, any coastal lands from the "Top of Sea Pali" was deemed SLU Conservation District. For a more precise determination, the top of pali shall be located in metes and bounds relative to subject parcels and with the additional locations of the SLU Agricultural / Conservation District as depicted on your attached boundary interpretation survey map.

As requested two (2) copies of your boundary interpretation survey map of the subject parcel is enclosed for your reference. Again, we apologize for the lateness of this response and should you require clarification or further assistance, please feel free to call Fred Talon or Bert Saruwatari at 587-3822.

Sincerely,

RODNEY A. MAILE
Executive Officer

Enclosure:

c: Samuel J. Lemmo, Administrator, Office of Conservation and Coastal Lands, Department of Land and Natural Resources (w/enclosure)

*Christopher Yuen, Planning Director, County of Hawaii Planning Department (w/enclosure)

Mike McCall Valuation Analyst, Mapping Section, Real Property Tax Division, County of Hawaii (w/enclosure)

Lisa Nahoopii, GIS Analyst, County of Hawaii (w/enclosure)

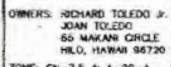
038906

235 SOUTH BERETANIA STREET • SUITE 406 • HONOLULU, HAWAII 96813 • TEL (808) 587-3822 • Fax (808) 587-3827

E-MAIL: luc@dbedt.hawaii.gov, Website: <http://luc.state.hi.us>,
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804-2359

Interpretation No.

by Anthony G. March
Executive Officer

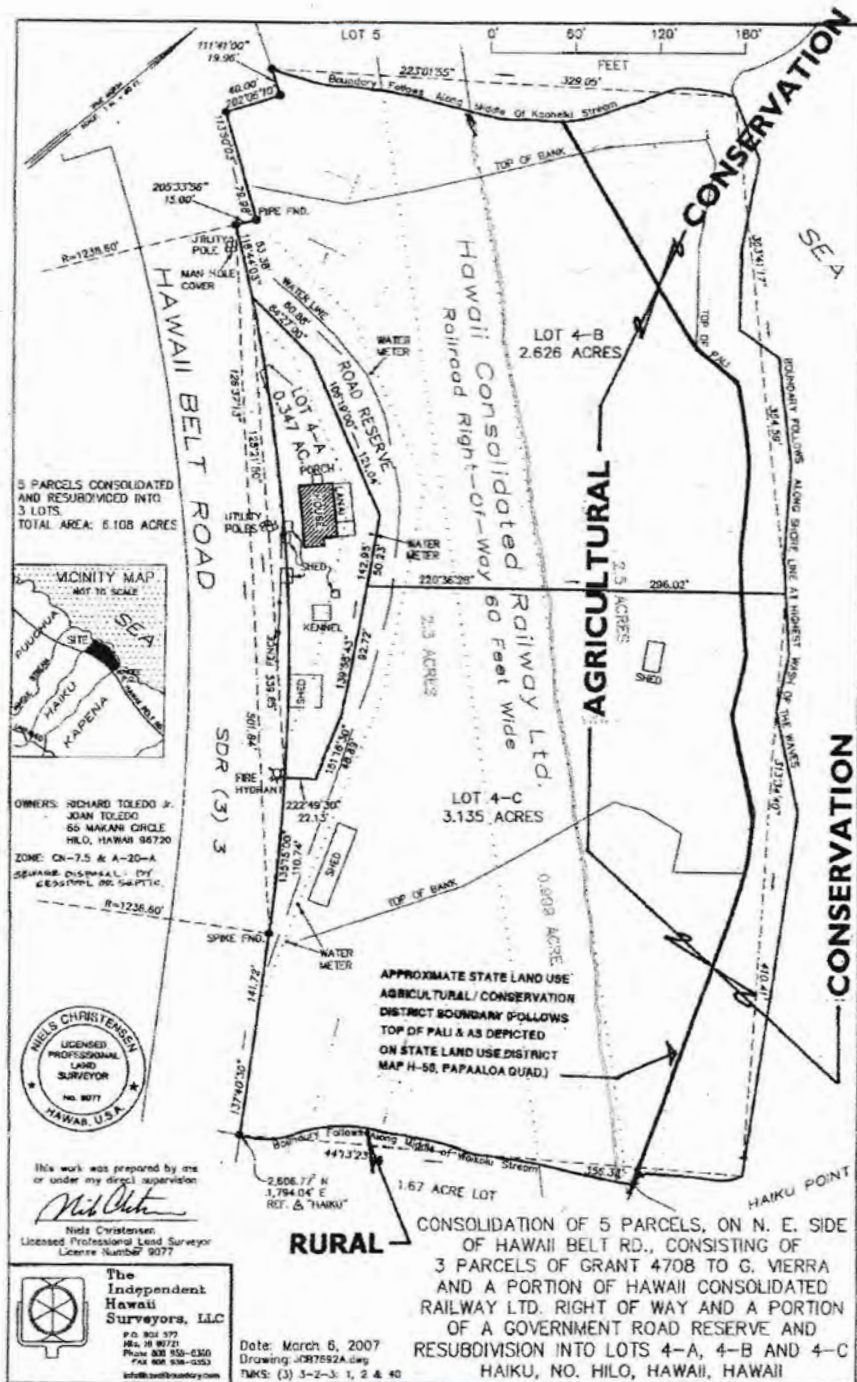


Niels Christensen
Licensed Professional Lead Surveyor
Licence Number 9077



**The
Independent
Hawaii
Surveyors, LLC**
P.O. Box 377
Hilo, HI 96721
Phone 808 938-2360
FAX 808 938-2353
info@hawaiiindependent.com

Date: March 6, 2007
Drawing: J087692A.dwg
TWS: (3) 3-2-3: 1, 2 & 40





STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
Room 104, Old Federal Building
335 Merchant Street
Honolulu, Hawaii 96813
Telephone: 587-3822

December 16, 1992

Mr. James Wm. McCully
James McCully Orchid Culture
P. O. Box 311
Mountain View, Hawaii 96771

Dear Mr. McCully:

Subject: BOUNDARY INTERPRETATION No. 92-48 for TMK No.: 2-9-03: 13,
Wailea, South Hilo, Hawaii

Pursuant to your November 23, 1992 letter, please be advised that the subject parcel is designated within the Conservation / Agricultural Districts.

A blueline print of your map with the State Land Use Conservation / Agricultural District boundary delineated in metes & bounds is enclosed for your reference.

With respect to your desire to seek a boundary amendment to amend the Conservation District boundary of the subject parcel, please be advised that inasmuch as such an amendment would involve the reclassification of lands out of the Conservation District, you would need the approval of the State Land Use Commission.

If you have any questions, please call Fred Talon or Bert Saruwatari of my staff at 587-3822.

Sincerely,

A handwritten signature in cursive script, appearing to read "Esther Ueda".

ESTHER UEDA
Executive Officer

EU:f1

encl: Boundary Interpretation Map dated December 16, 1992

cc: William Paty, BLNR Chairperson,
Attn: Conservation Affairs Office
Virginia Goldstein, County of Hawaii Planning Director
Glenn Y. Sato, Tax Maps & Records Supervisor,
C&C of Honolulu, Department of Finance

James McCully

ORCHID CULTURE

November 23, 1992

Post Office Box 311
Mountain View, Hawaii 96771
Telephone 808 968-6317
Fax 808 968-6934

RECEIVED

NOV 24 1992

Land Use Commission
Ms. Esther Ueda, Executive Officer
Old Federal Building
335 Merchant St. Rm. 104
Honolulu, Hi. 96813

State of Hawaii
LAND USE COMMISSION

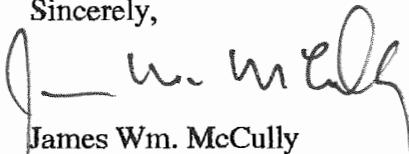
Dear Ms. Ueda,

This letter is to request a determination of the boundary line for TMK 3rd 2-9-03:13, a portion of which is within the Conservation district. I have already sent a vellum of a survey map done on the property this past October 21, 1992. Please note the location of the waters edge, quite a distance from my property boundary.

Under your rules published as Title 15, Subtitle 3, Chapter 15, Subchapter 2, 15-15-22, b,1, "Whenever a district line falls within...a street, alley...it may be deemed to be in the midpoint of the foregoing." This would suggest that the conservation line should currently be located at the middle of the railroad grade.

I do intend to request a boundary change to 40' from the top of the pali. This seems to me to be in keeping with the conservation district function, as well as allowing my use of the majority of my property. Since the property comprises approximately 13.064 acres I understand I would deal with the County of Hawaii Planning Department in this matter. Is this correct? Thank you for your time and consideration on this request,

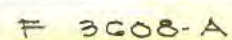
Sincerely,

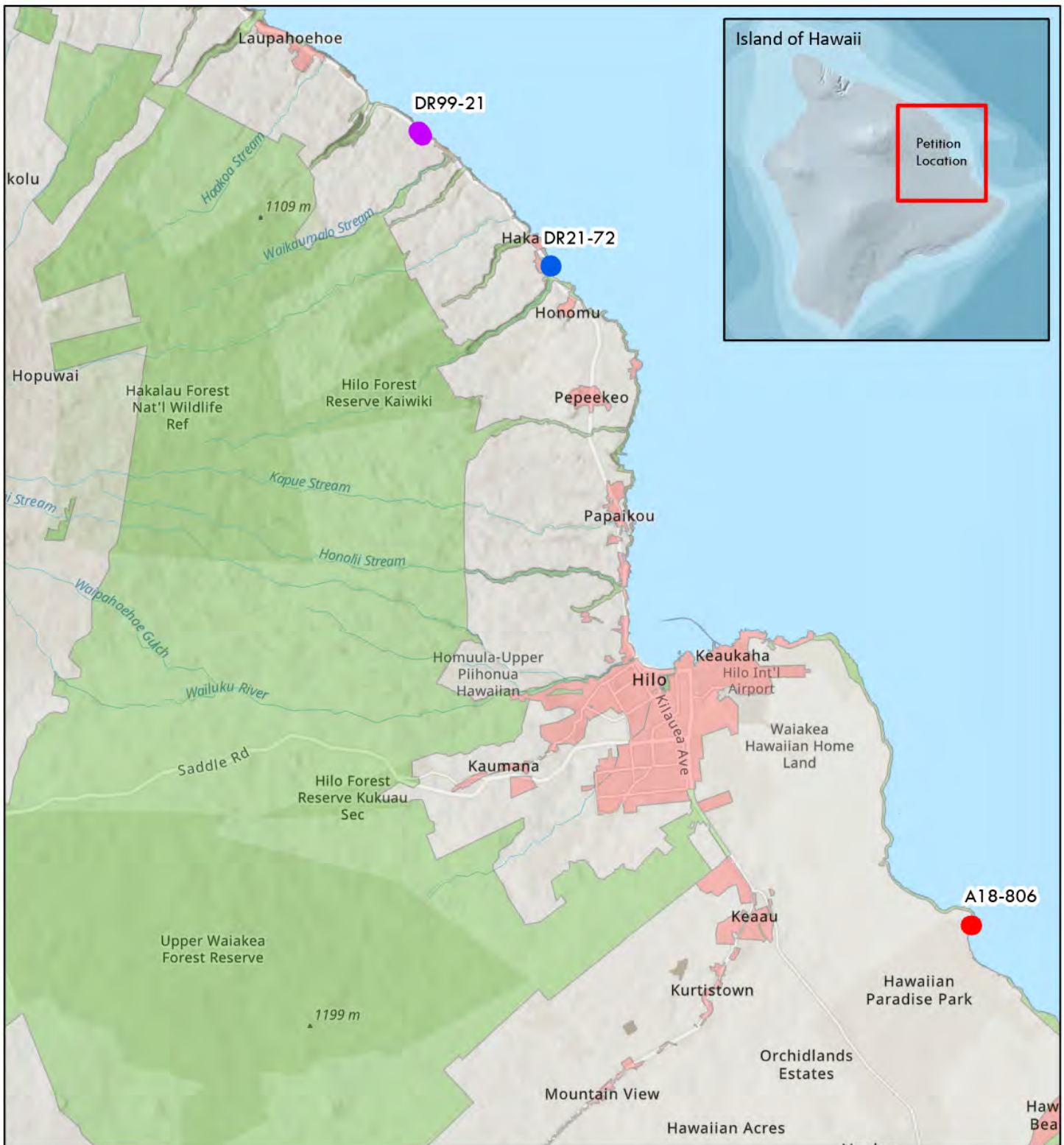


James Wm. McCully

Boundary
Interpretation No. 92 48

Interpretation No: 92 48





Legend

Petition

- Stengle: DR99-21, TMK 3-2-003:023 & 041
- Church: DR21-72, TMK 2-9-003:029 & 060
- Barry Trust: A18-806, TMK 1-5-059:059

Land Use District

- Agriculture
- Conservation
- Rural
- Urban



OPSD EXHIBIT NO. 1



This map was produced by the Office of Planning & Sustainable Development (OPSD) for planning purposes only. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from OPSD.
 Map No: 20210819-01-CC SR2022-008
 Map Date: 8/19/2021
 Sources: SLUD: State Land Use Commission (2020), DLNR Division of Aquatic Resources (2013)