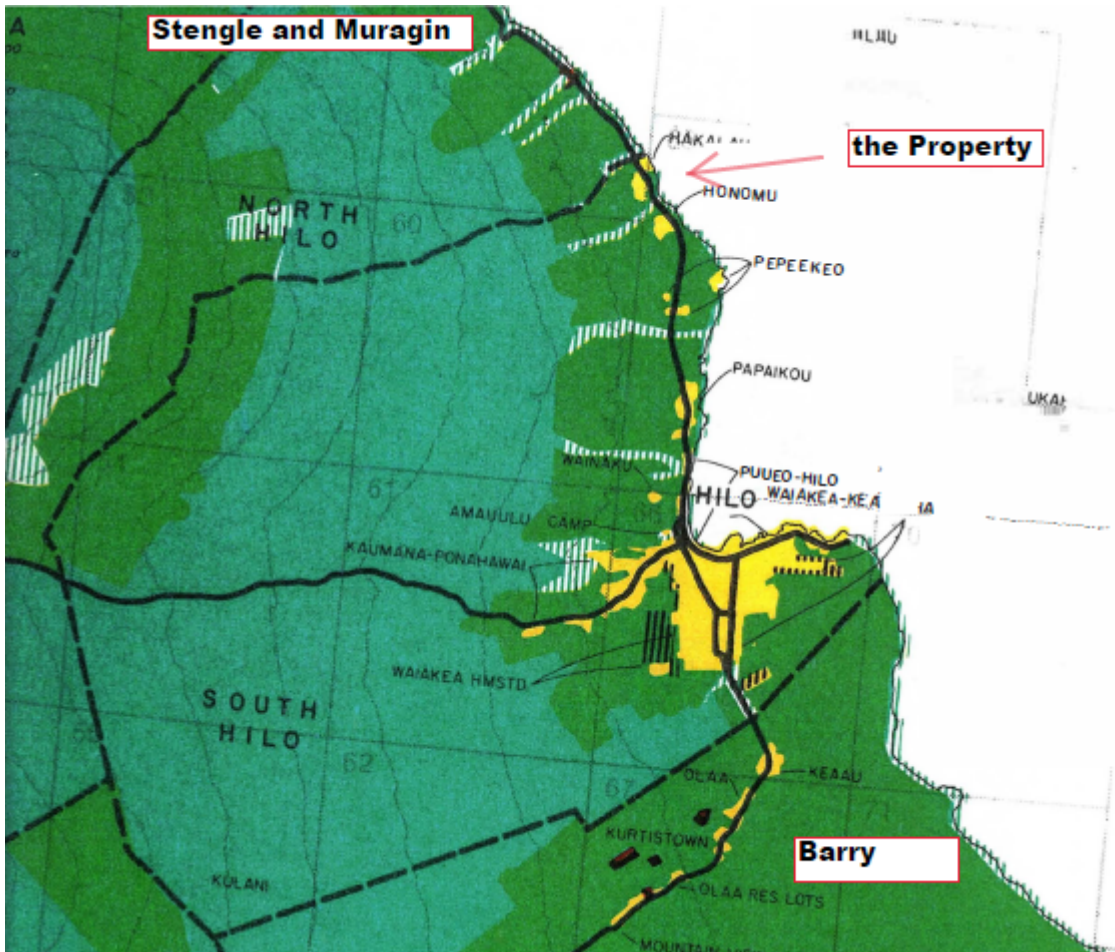


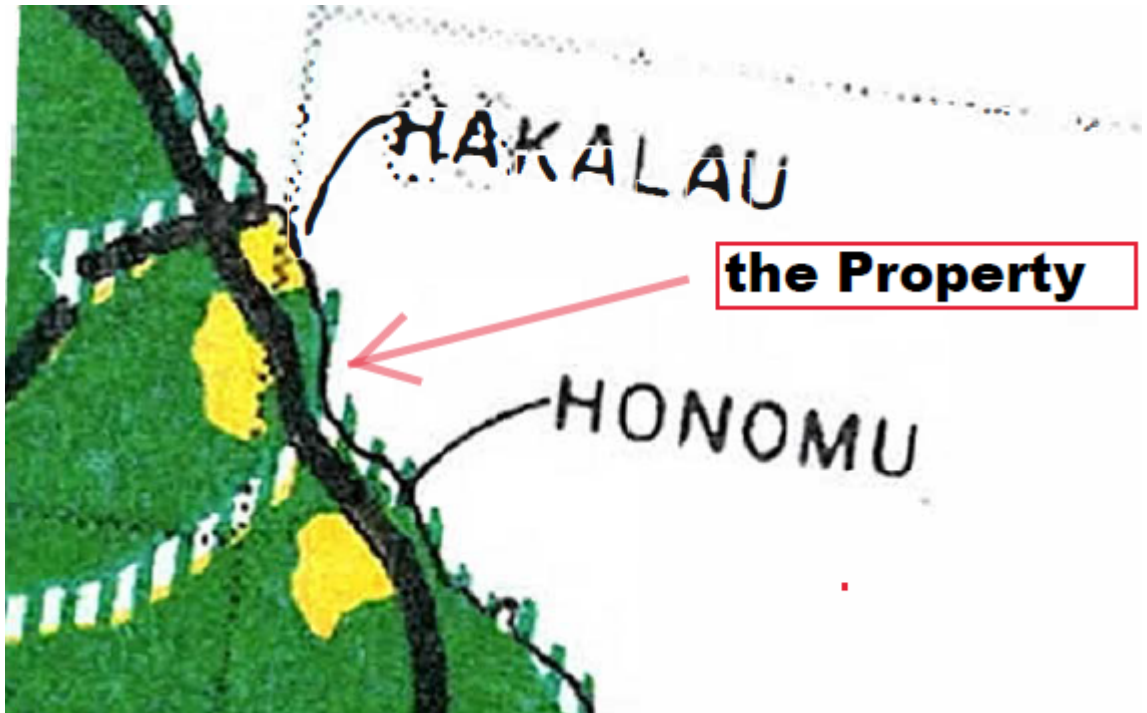
Source, Exhibit 6, Report page 41, (emphasis added)

The next magnification of the Report's page 41 map shows the location on the map of various properties that the State Office of Planning's written testimony to DR21-72 described to the Commission as "OTHER SIMILAR LUC ACTIONS IN THE AREA", (i) the petitioned Property (**Church-Hildal**), (ii) the **Stengle** property (ref., *Petition DR21-72, OP*

written testimony), (iii) the **Muragin** property (ref., Petition DR21-72, OP written testimony), and (iv) the **Barry Property** (ref., Barry Property (ref., Petition DR21-72, OP written testimony)



The next image of the page 41 map shows a further magnification of the area where the Property is located.....



Source, Report page 41, (emphasis added)

and again the map legend.....

LAND USE DISTRICT BOUNDARIES

	Existing	Proposed & Adopted	Proposed	Adopted
Urban	Yellow square	Vertical lines	Green square	Black dot
Rural	Red square			
Agriculture	Green square			
Conservation	Teal square	Vertical lines		
Judicial District Boundary				

The **1969 Report's page 41** map enlargements show that the area north of Hakalau and south of Kolekole Gulch, which northern area is also shown on the LUC's **1974 quadrangle map H-59** and southern area, which is shown on the LUC's **1974 quadrangle map H-65**, **depicted a wide band of coastal land** that was "**recommended and approved**" for rezoning to the Conservation District (ie. *dashed green line area that is shown on the Report's first page 41 above map legend*).

The area where the Property is located is depicted in solid green color (*which the legend showed the Property to be in the Agricultural District in 1969 and it further showed that the Property was neither **proposed nor adopted** by the Commission to be rezoned in 1969 according to the **text record** of the Report's pages 3 and 36 and the **page 41 map**). A very narrow band of land was shown as a single green line along the Oceanside pali in the area of the Property which may have depicted the narrow pali and not the land inland of the **ridge top**.*

Generally the district line's mauka boundary on all versions of SLUD map H-65 appears that **it is located inland a distance that is greater than 300 ft.** . The Report's Criteria #4 appears to have only been applied to be the maximum distance inland "**of the line of wave action**" that was **proposed and adopted** by the Commission to be redistricted in 1969 when none of the other 3 criteria existed.

In the area between Hakalau and Kolekole gulch(s), which comprised 2 TMK Lots which were both owned by a single land owner, C. Brewer and Company Ltd., and which, in 1969, **comprised 2 field areas F31A and F31B**, which 2 fields comprised a total of **18.05 acres of field area**, beginning first at Hakalau the district line on map H-65 is **800 ft. inland** of the "**wave action**" at the Coastal "**pali**", *ref., exhibit 31 map page*.

In the case of the Property the district line is **430 ft. inland** of the "**wave action**" at its widest point, *ref., criteria #4, Report page 86 (shown above)*, and 330 ft. inland of the "**ridge top**", this area between Hakalau and Kolekole gulch(s) very strongly conflicts with the criteria listed on the Report's page 36, which Report's page 86, *criteria #4.*, if applied, also

described that the district line, at its widest point from the "**wave action**" be under 300 ft.,

Effectively the district line in the area between Hakalau and Kolekole gulch(s) overlaid a total of 18.05 acres of existing field areas that were in intensive agricultural use in **1969** which the **Hard Evidence** of the Report's page 36 described that the **1969** Commission and the local community and land owners believed/intended that.....

"Areas in agricultural use were excluded"

In the case of DR99-21 Stengle did not agree with earlier Boundary Interpretations that were issued by the Commission's Executive Officer. Stengle applied for a Declaratory Order by the Commission in order to remove "**uncertainty**", which petition included **his statement**, which was not supported by any **Hard Evidence**, that his land was in **agricultural use** in **1969** and that a coastal "**ridge top**" existed along the makai boundary of his property. He further referenced the text record of the Report's page 36.....

The 1969 report State Of Hawaii Land Use Districts and Regulations Review, page 36, discusses Urban, Agriculture and Conservation District boundary changes for Hawaii County. Section II. Conservation Districts; Subsection C. The Shoreline; states "The steep pali coast east of Kohala is presently within the Conservation District. This District should be extended to include the sandy beach at Waipio and then to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line". This interpretation was then drawn on U. S. Geographical Survey maps and adopted as the Official Maps. U. S. Geographical Survey Map H-59 titled "Papaalooa, Hawaii" pertains to the Property and was used in Boundary Interpretations 98-36 and 98-50.

Source, DR99-21 (Stengle), (emphasis added)

Upon the 1999 Commission's consideration of very little evidence (a picture, a map and a survey map appear to be all that was filed by Mr. Stengle) the Commission approved DR99-21 (Stengle). The Commission applied that the Report was of a higher authority than the Commission's 1974 SLUD map simply because Stengle's land was located on the ***Hamakua Coast***, a coastal ***ridge top*** existed and citing ***the Report*** as an APPLICABLE LEGAL AUTHORITY of greater authority than SLUD map H-59.

In this way the 1999 Commission maintained the boundary interpretation in compliance with the State's Laws HRS 205-2 (a) (3) and HRS 205-4 (h) and the Commission's HAR 15-15-19 (1). Comparatively the Petitioners submitted 19 **Hard Evidence** documents in their Petition, and now 46 with this Motion. The Commission denied the Petition and allowed DR99-21 Stengle under very similar circumstances and for land with very similar physical and use characteristics.

The Petitioners believe that the Commission is wrong to speculate that

'there must be some other reason that District Map H-65 showed the District Line variably and therefore a different boundary was intended'.

The original 1974 SLUD map H-59 also showed the district line to sometimes follow the former railroad, *ref., Exhibit 38*. The present Commission's ***speculation*** is in conflict with the *preponderance of* Hard Evidence, the described States Laws and the Commission's Rules. The

Hard Evidence is that the Commission's **1974** SLUD Map was supposed to reflect the **text record** of the Commission's **1969** Report.....

1 But that's, I think, different than what
 2 the Churches have argued, which is they actually
 3 used the -- they used the cliff boundary here, and
 4 past interpretations have been incorrect.
 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 (emphasis added)

Upon the **1999** Commission's consideration of very little evidence (*a picture, a map and a survey map, ref., exhibit 1*) appear to be all that was presented by Mr. Stengle. The Commission **granted** DR99-21 based on the Report being of a higher authority than the Commission's **1974** SLUD map. Comparatively the Petitioners submitted 19 **Hard Evidence** documents that were of both equal and substantially greater **Hard Evidence** value in quantity and substance. Stengle said he intended to sell his property. The Commission allowed Stengle's petition.

The following describes the Petitioners investments in the agricultural use of the Property.....the Petitioners built a 720 sq. ft. agricultural use storage and processing structure that is accessory to the agricultural use of the Property in **2015**. The structure cost in excess of \$70,000.00. The Petitioners have also invested heavily towards their planned agricultural use of the Property which investments also include a \$40,000.00 farm tractor with a front end loader, a back-hoe and a rototiller attachment and miscellaneous tools etc.. The Petitioners began selling agricultural produce in **2020** but suspended sales when they realized that the commercial agricultural use of the Property may be illegal due the Property's apparent Conservation District zoning. The Petitioners have demonstrated a substantial commitment to the continued agricultural use of the Property, *see Appendix 9 which describes the Petitioners commitment to the agricultural use of the Property.*

While the Commission allowed Stengle's petition the Commission denied the Petitioners Petition. Again Stengle was not committed to the agricultural use of his property, he intended to sell it.

Petitioner Church was quite surprised to over-hear, during DR21-73's very similar hearing, a Commissioner's comment that went similar to the Petition like this.....

'the commissioner said they didn't want to approve DR21-73 because it would create many people asking for similar things and they didn't want to work that much'

It is clear that the Commission sees its role (now twice similarly expressed) as rather than determining a ***factual situation***

and

instead of applying the **Laws** of the State but rather denying a petition because the Commission believes, in part, "**that it may increase its workload**" does increase the likelihood that the Commissioners, the LUC and the State may be placed in a **litigious** situation.

In the case of the Petition, Commissioner Okuda even went further by describing his belief that, if challenged in court, the Court would apply "**deference**" to the benefit of the Commission, *ref., Appendix 8*.

Commission Okuda stated the basis of his belief was because the Office Of Planning's A.G. representative Kato believed that the **1969** Commission's redistricting **actions**, for the area of the **Hamakua Coast** Report, is not perfectly '**clear**' so the Commission need not be too concerned with the likelihood of such a petition being overturned in a Court.....

14 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
15 Questions for the Office of Planning, and anyone
16 from the Office of Planning can answer this
17 question. What is the standard of review that would
18 be applied to our decision if we granted the
19 petition or denied the petition? What would be the
20 standard of review on appeal?

21 **MS. KATO:** On appeal to the court?

22 **COMMISSIONER OKUDA:** Yes. Let's say if
23 somebody, an aggrieved party, decided to appeal the
24 decision that we make today, either granting the
25 petition or denying the petition, what would be the

Exhibit 5, page 72, Transcript of the Hearing for
DR21-72 (Church-Hildal) (emphasis added).....

directly continuing on the next page of this Memorandum.....

1 standard of review that the appellant court would
2 apply?

3 MS. KATO: Offhand, I'm not sure what the
4 standard of review is. I believe, generally,
5 deference is given to the LUC's decision, but I
6 would need to look up the specific standard of
7 review. I've not been involved in an appeal yet.

8 COMMISSIONER OKUDA: If -- is this a case
9 where it's clear that we would be reversed on appeal
10 if we made a decision one way or the other?

11 I mean, there are some cases where you
12 look at the factual record and the evidentiary
13 record and the pleadings, and, you know, even though
14 nothing is guaranteed in the legal system, you
15 pretty much can predict, hey, if the decision went
16 this way, odds are the appellant court would
17 reverse.

18 Is this the type of case where, when you
19 look at the record that's being presented, we are
20 compelled to rule one way or the other based on the
21 penalty of we're going to be reversed?

22 MS. KATO: Well, as I mentioned in my
23 testimony, the Office of Planning and Sustainable
24 Development does not believe that the answer is
25 clear. We don't think that the 1969 report is clear

1 as to where this boundary is located.
2 So I think it is up to the LUC's best
3 determination as to where the boundary of the
4 conservation district was intended to be, based on
5 the information before you. So, no, I don't think
6 it's clear.
7 COMMISSIONER OKUDA: Okay. And so we have
8 the discretion or deference to make the decision; is
9 that correct?
.0 MS. KATO: I believe that's correct. Yes.

Exhibit 5, pages 72-4, Transcript of the Hearing for
DR21-72 (Church-Hildal) (emphasis added).....

The Petition and this Motion and all of the Exhibits make it clear that Kato and the Commissioners were incorrect.

The **present** Commission generally applied that the **1969** Commission's Report did not hold a higher authority than the **1969** Commission's adopted Maps. This Motion and its Memorandum now provide the additional Hard Evidence **text record** of the three **1969** Commission hearing transcripts (*Exhibits 43-45*). These transcripts further confirm the **text record** of the Report to be correct. All of the **text records** evidence that the **1969** Commission's redistricting **actions** never intended that Coastal land, **that was in agricultural use**, was to be redistricted. It is

normal practice that administrative authorities rely more heavily on **text records** than undefined pictorial district lines on SLUD maps.....

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

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

The Petitioners have now presented the additional **Hard Evidence** transcripts (Exhibits 43-45) that now adds to the Commission's required **preponderance of evidence** that the area of the Property mauka of the Coastal "**ridge top**" was not redistricted in **1969**.

Any determination otherwise appears to the Petitioners to be **speculative, arbitrary and capricious** and an **error in Law** because also, in part, the **1999** Commission already determined that the Report was **clear** (ie. **not confusing**) and that, in the land area of "**the Hamakua Coast**", the "**ridge top**" was to be the district boundary **and** the Commission applied the Report as an **APPLICBLE LEGAL AUTHORITY** in DR99-21 (Stengle).

HAR §15-15-98 Who may petition for a Declaratory Order states.....

*(a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific **factual situation**.*
(emphasis added)

and.....

HAR §15-15-84 Reconsideration of decision (b) states.....

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**" (emphasis added)*

and.....

§15-15-104 Applicability of declaratory order. *An order disposing of a petition shall apply only to the **factual situation** described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued by the commission.*

Source HAR 15-15, emphasis added to the above 3 quotes

The Petitioners believe that it is grossly unfair to force them through the very time consuming and expensive Court system for a decision that is so plainly obvious and that is supported by a ***preponderance of Hard Evidence*** in order that the Commission's work load not likely increase regarding other similar situations. It is unlikely that a Court would rule against the Petitioners. It is likely that forcing the Petitioners through the Court system will increase the Commission's work load and not decrease it.

The Petitioners believe that, in light of

- the **Hard Evidence** of the Petition and its Exhibits,
- the State's Laws HRS 205-2 (a) (3), HRS 205-4 (h),
- the Commission's HAR 15-15-19 (1),
- the Report's pages 3, 36 and 41,
- the **1969** Commission's hearing transcripts and hearing minutes,

the Commission substantially increases *the State, the commission, or any of the officers or employees* of the LUC exposure to **litigation** if it denies the Petition. The Commission's belief that it may save the State from **litigation** is incorrect. This is further obvious when the State made it part of the Commissioner's **Oath of Office** that the Commission uphold the State's Laws. The State's Law HRS 205-2 (a) (3) clearly states that.....

"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)

which is further confirmed in HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

At a minimum, if the Commission believes that **uncertainty** exists, the Commission should apply the Law when it reconsiders this Motion for Reconsideration for DR 21-72 (Church-Hildal).

During the Commission's September 8, **2021** Hearing for the Petition the Commissioners expressed concern that people purchase Conservation districted lands at a discount and then ask the Commission to redistrict such lands Agricultural. The following describes this which is found in *Exhibit 5, Hearing transcript, pages 73-77*.....

8 **COMMISSIONER OKUDA:** If -- is this a case
9 where it's clear that we would be reversed on appeal
10 if we made a decision one way or the other?

11 I mean, there are some cases where you
12 look at the factual record and the evidentiary
13 record and the pleadings, and, you know, even though
14 nothing is guaranteed in the legal system, you
15 pretty much can predict, hey, if the decision went
16 this way, odds are the appellant court would
17 reverse.

18 Is this the type of case where, when you
19 look at the record that's being presented, we are
20 compelled to rule one way or the other based on the
21 penalty of we're going to be reversed?

22 **MS. KATO:** Well, as I mentioned in my
23 testimony, the Office of Planning and Sustainable
24 Development does not believe that the answer is
25 clear. We don't think that the 1969 report is clear

continued on next page.....

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

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

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

25 **COMMISSIONER OKUDA:** Well, in making a

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

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

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

15 | **MS. KATO:** I'm not too sure how to answer
16 | that question.

17 | **COMMISSIONER OKUDA:** No, no, that's fair.

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

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

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

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

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

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

Source, Exhibit 5, Hearing transcript, pages 73-77 (emphasis added)

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. Therefore the Petitioners describe ***land costs*** herein in this Motion for Reconsideration but we believe that the Commissioners were profoundly incorrect to consider and/or apply such "***public policy***" matters to what was Petitioned to be their determination of a "***factual situation***" that existed in 1969.

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 horse 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. While that property had been developed for recreational, horses use, it could have been easily converted to commercial agricultural use. 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*. Similarly there is no evidence that Conservation Districted land is comparatively cheap.

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 and refreshed their memory of the Petitioners previous other Petition 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 above 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 pursuing 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 the Commissioners (which is sort of like a Judge's instruction to the jury).....

20 Commissioners, let me confirm that each of
 21 you are fully familiar with the record, you have
 22 reviewed the record, and are prepared to deliberate
 23 on the subject docket. After I call your name,
 24 please signify orally with either an aye or any that
 25 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 Petition DR21-72 was
 to be determined as "**a legal question**" referencing that the Petition 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" (emphasis added)*

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." (emphasis added)*

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

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

Like Commissioner Okuda the other Commissioners' questions and comments throughout the Hearing, including Deliberations, the Commissioners questions focused heavily on written and verbal testimony that had nothing to do with the ***factual situation*** that existed in **1969** which was what the Petition asked the Commissioners to determine. Similarly, throughout the Hearing, Kato repeatedly pointed the Commissioners back to the ***legal*** question that the Petition asked..... What was the ***factual situation*** that existed in **1969** ? Kato reminded the Commissioners that the Petition was not a District Boundary Amendment. (a DBA is a discretionary order by the Commission, the Petition asked the Commissioners to determine a ***factual situation***).....

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

While the Petitioners also believe, that the Commission was supposed to determine the ***factual situation*** that existed in **1969** it was clear throughout the hearing that the Commissioners believed that the Petitioners had bought ***cheap land*** (which it was not) and that their approval of the Petition was a discretionary authority that the Commission may apply. The Commissioners also appeared to be distracted in a believe that the Property's apparent Conservation District zoning somehow made it a '***cheap purchase***'. The Commissioners were incorrect.

COMPARABLE LUC BOUNDARY INTERPRETATIONS AND REDISTRICTING ACTIONS THAT WERE CITED BY THE STATE OFFICE OF PLANNING (*ref., exhibit 4*)

Turning now to the **present** Commission's rezoning of the **Barry Trust** land from Conservation to Agriculture for comparison against the Commission's denial of the Petition, *ref., map, Exhibit 6*,

- the Barry Trust land was around 1/2 acre in size,
- the Barry Trust land is a low lying coastal property that is located in a tsunami zone,
- the Barry Trust land comprised a very narrow band of coastal land,
- the Barry Trust land had very little top soil but was rather bare lava flow rock LSB Class E,
- the Barry Trust land did not have a high capacity for intensive cultivation due to the poor soil conditions and the effect of salt spay, *ref., HAR 15-15-19 (1)*,
- the Barry Trust petition was amended to provide for a very modest bee/honey farm due to the lack of agricultural values of the land,
- the Barry Trust land's use for a residence necessitated that a substantial area of the land would be overlaid by a residence and driveway leaving a very small area for agricultural use,

The Commission approved that the Barry Trust property be rezoned from the Conservation District to the Agricultural District providing that if the **bee farm** did not work out the Barry's may try something else.....

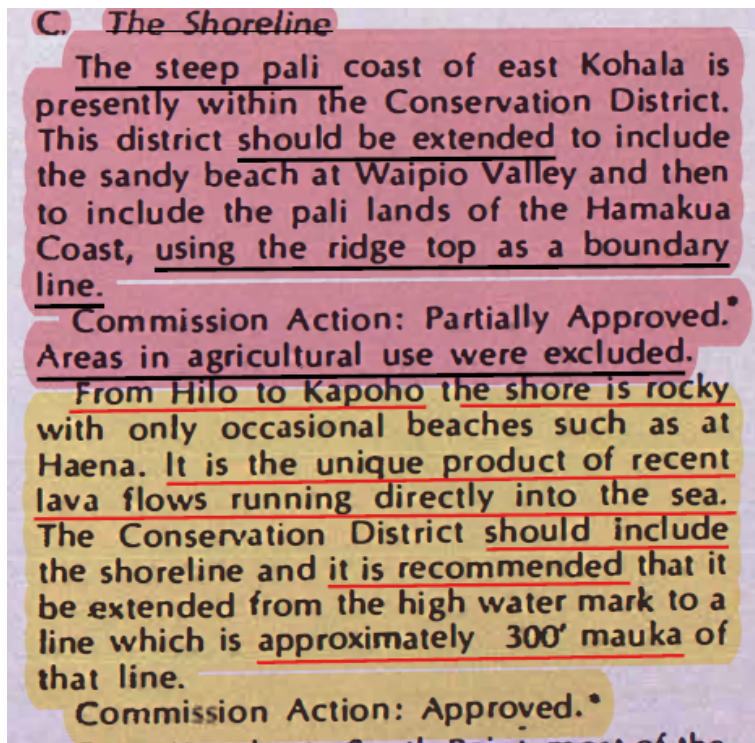
43. In the event that Petitioners' apiary proves unsuited for the Petition Area or unsuccessful for any reason, Petitioners will implement an alternative agricultural use appropriate for the Petition Area in conformance with Chapter 205, HRS, the Commission's Rules found at Chapter 15-15, HAR, and the Hawai'i County Code. [2/24/21 Hr. Trans. at 41:10-21]

Source, Exhibit 8, Barry Trust, petition A18-806, page 9

Of equal significance is a comparison of historical zoning for the coastal areas south of the City of Hilo - *Hawaii Paradise Park ("HPP")* - Barry Trust area **vs.** the Property (Church-Hildal). The area was first districted Agriculture around **1963**. The Coastal area was then redistricted Conservation in **1969** as part of the Commission's first 5 year State-wide boundary review.

The Petitioners land fits into the area shown in pink to the right.....

The Barry Trust land fits into the area shown in yellow to the right.....



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

Then in **1974** the area where the Barry Trust land is located generally was districted back to the Agricultural District.

The following comparison offers descriptions of overwhelming LUC zoning contradiction of zoning of lands. It is worth first looking again at the State's Law HRS 205-2 (a) (3) regarding the Commission's **Legal** obligation when considering zoning matters which requires that the Commission first apply the State's **Laws**.....

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)

and HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

The above **Law** text.... **the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation** does not describe a land use but rather a characteristic of land and that maintaining **agricultural zoning for land is required by State Law to be given the greatest possible protection** by the Commission.

The LUC's Rule HAR 15-15-19 (1).....

*"It **shall** include lands with a high capacity for agricultural production;" (emphasis added)*

further emphasizes this as a **mandatory** obligation of the Commissioners.

The Transcript of the Commission's September 8, **2021** Hearing (Church-Hildal), *ref., exhibit 5*, clearly evidences that the Commissioners believed that **the current use of the Property,**

ie. whether it was for "agricultural use" as defined by the Commission being the commercial production of agricultural crops

was a pivotal consideration of their denial of DR21-72.

Commissioner Okuda questioned whether the Petitioners' intended or existing use of the Property was for agriculture, *see Exhibit 5, beginning on page 42*. Commissioner Okuda's questioning clearly shows his belief that the Petitioners current or intended use of the Property would qualify as an agricultural use according to the Commission's definition of agriculture. This had nothing to do with the **factual situation** that existed in **1969** which is what the Petition was to be determined based on.

This also had nothing to do with the Law HRS 205-2 (which is quoted above). The word **capacity**, which is found in HRS 205-2 (a) (3) **does not describe a past, present or future land use but rather a physical characteristic of land.**

Turning back here to a comparison of past Commissioning districting of land Declaratory Orders and Petitions for rezoning.....

- HPP **Coastal lots** like the Barry Trust land, HPP Coastal land and Coastal land immediately to the south of HPP, *ie. Leilani Estates*, and large areas mauka of both Coastal areas are zoned in the Agricultural District ("These Lots") *ie. Coastal Lots*,
- These Lots do not have land characteristics that require Agricultural District zoning that is specified in the Law HRS 205-2 (a) (3) nor the LUC's HAR 15-15-19 (1),
- These Lots are very small, often as small as 1/2 acre in size,
- These Lots are low lying, generally only 10-15 ft. above the high wash of the waves and therefore lie in a tsunami inundation zone,
- These Lots are generally all located on repeated, recent lava flows, *ie. recent eruption of fisher eight which destroyed hundreds of homes immediately to the south of HPP in the Leilani (including coastal lots that were zoned in the Agricultural District*,
- These Lots are generally composed of basalt lava flow with very little, if any, top soil,
- These Lots are not suitable for the *intense production of agricultural crops* due to the poor soil conditions **and** the effect of salt spay on These Coastal lots,

- These Lots have very little agricultural use as their small size is further compromised by large residences, paved driveways, accessory structures etc.,
- due to the high population density of the areas mauka lots shoreline access is provided in many locations including areas for long coastal walks in several locations,
- These Lots have very little area or soil conditions suitable for sewage leaching,
- These Lots have had a variable zoning history having been first in the Agricultural District, then the Conservation District and finally back in the Agricultural District.

Comparatively ***Hamakua Coastal Land*** leading north from the City of Hilo, which is shown on SLUD map H-65, where the Property is located.....

- Hamakua Coastal Land **appears on SLUD map H-65** to generally be the Conservation District ("The Hamakua Lots"),
- The Hamakua Lots generally conform to HRS 205-2 (a) (3) and HAR 15-15-19 (1),
- The Hamakua Lots generally range from 1 acre to 20 acres in size,

- The Hamakua Lots are generally makai of high coastal cliffs ranging to over 200 ft and therefore do not lie in a tsunami inundation zone,
- The Hamakua Lots have no history of recent lava flows,
- The Hamakua Lots are located on Prime Agricultural land,
- The Hamakua Lots have deep, rich soils,
- The Hamakua Lots receive adequate rainfall to sustain '**high yields of agricultural production**',
- The Hamakua Lots are not particularly susceptible to the effect of salt spay,
- The Hamakua Lots have a history of intense agricultural use, however more recent use has been severely compromised due to their apparent Conservation District zoning,
- The Hamakua Lots agricultural potential is not severely compromised by residences, accessory structures, roadways and the like due to the lots larger size,
- in the area of The Property, between Hakalau and Kolekole Gulch(s), shoreline access is neither available nor is it desirable due to the steep, high cliff and lack of access to the wave washed boulder fields at the high wash of the waves ie. there is no where to even safely

stand on the boulder fields below the cliff due to the likelihood that a high wave may wash a person out to sea, *ref., exhibits 19 and 20,*

- The Hamakua Lots have a zoning history having been first in the Agricultural District, then the Conservation District appears on the LUC's **1974** SLUD maps to have been overlaid on them - however it appears that the Commission has applied the "**ridge top**" to be the boundary for all of the northern quadrangle maps and the **2021** Commission has **speculatively** held quadrangle map area H-65 to be different,
- The Hamakua Lots have large areas and soil conditions suitable for sewage leaching.

For all of the above reasons and more the Petitioners believe that Commission's denial of DR21-72 on September 8, **2021** is **speculative, arbitrary** and **capricious, discriminate against the Petitioners** and it is also an error in the Commission's duty to apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 (h) in the event that **uncertainty** exists regarding the **1969** Commission's redistricting **action**.

The **present** Commission made an error in **law** by not applying the State's **Law**, HRS 205-2 (a) (3), HRS 205-4 (h) and the LUC's HAR 15-15-19 (1) **and the preponderance of Hard Evidence**, cited in the Petition's references to other Commission **actions** and Evidence regarding.....

- Stengle,
- Muragin,

- SLUD map H-59
- Castle Foundation,
- Thielen testimony, and DR21-72's cited references to an area which included the Property,
- the **1991** Commission's report *Introduction Section*, and
- the County of Oahu's zoning ordinance.

The above referenced **actions** etc. exhibit that the Commission's Official **1974** SLUD Maps are not always applied as a higher authority than "**other applicable commission records**", ref., HAR 15-15-22 (d).....

*"the executive officer may use **all applicable commission records** in determining district boundaries,"*

(emphasis added)

The "**text record**" of the Reports page 36, ref., *Exhibit 5*, further describes the "*Commission Action*", at the Commission's July 18, **1969** '*final community meeting*' in the County of Hawaii, recorded that the Commission "**partially approved**" the Report's **recommended** boundary amendment map which was further described to the Hearing's attendees that the coastal pali lands leading from East Kohala southward to Hilo, an area which included the Hamakua Coastal Area, were to be rezoned into the Conservation District **using the ridge top as a boundary line**. "Areas" that were "**in agricultural use were excluded**" from being rezoned into the Conservation District.

Kato described that the Report and map H-65 may be **confusing**. The Petitioners point out that the Report uses key words like "**recommended**"

and "**approved**" in order that the 1969 Commission's redistricting not be "**confusing**". The text record of the Report vs. the map H-65 are confusing because an administrative error occurred when that map was presented to the 1969 Commission to adopt. The transcript of the Commission's Hearing for DR21-72 (Church-Hildal) exhibits that the Commissioners believed it necessary that the district line, in the area of the Property, had to be determined based on any of the 4 criteria listed on the Report's page 86.

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.

Source, Report page 86, (emphasis added)

The Report's page's 86 lists 4 criteria for "**recommended**" district lines (lines on maps) was simply the Report's "**recommended**" maps to the Commission.

The Report's page 36 described the Commission's "**approved**" the redistricting district line to be the Hamakua Coastal "**ridge top**" and further described that "**Lands in agricultural use were excluded**" from the Commission's redistricting actions. It is map H-65 that is confusing. The Petitioners do not agree that the Report is **confusing** when it is read comprehensively in a textual and purposivist way. The **1969** Commission's Report page 86's four criteria are irrelevant to the Commission's subsequent **approved** redistricting **action** that is described on the Report's page 36.

The **1969** Commission's Report's page 36 reflects the purpose of the redistricting of *shoreline "pali" land*, that was first described on the Report's pages 85 and 86, as being a "**recommended**" map and the **text record** of pages 85 and 86 described that it was the State's intention to create a band of coastal land around the 4 Islands of Hawaii in order to.....

'to protect the "shoreline" as a valuable resource for the people of Hawaii'.

Subsequently the **text record** of the **1969** Commission's Report's page 36 describes that the purpose that the Commission only '**partially approved**' the Report's "**recommended**" boundary amendment and map to '*extend the Conservation District leading southward from East Kohala along the pali land of the Hamakua Coastal Area to Hilo*' was to

specifically require that the 1969 redistricting '***exclude areas that were in agricultural production***' leading mauka from '***the top of the coastal ridge and pali***' and at least two valley/gulch floor areas where agricultural use existed. To do otherwise would have placed the 1969 Commission's redistricting actions in violation of the State's Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1). Finally the Report's page 41 map adds further clarification.

The Petitioners believe that the **textual interpretation** of the Report's pages 3 and 36 and its **purposivist interpretation** can only be interpreted to be the same. Similarly the **textual interpretation** of the **text record** of the transcript and minutes of the Commission's 1969 redistricting hearings and its **purposivist interpretation** can only be interpreted to be the same **and** the same as the **text record** of the Report. The Property was not rezoned from the State's Agricultural District to the State's Conservation District in 1969.

Finally the LUC's boundary interpretation No. 92-48 (McCully), which included the area of the Property, showed the district boundary to be on the mauka boundary of the former railroad, two lots inland (330 ft.) of the **cliff top** and 430 ft. inland of **the high wash of the waves**. **If** the 1969 Commission intended that the former railroad be the mauka boundary the Commission's HAR 15-15-22 (e) would require that the boundary be at the **midpoint** of the roadway.....

(e) The following shall apply whenever uncertainty exists with respect to the boundaries of the various districts:

*(1) Whenever a district line falls within or abuts a street, alley, canal, navigable or non-navigable stream or river, it may be deemed to be in the **midpoint** of the foregoing. If the actual*

location of the street, alley, canal, navigable or non-navigable stream or river varies slightly from the location as shown on the district map, then the actual location shall be controlling;

The Commission's boundary interpretation No. 92-48 depicted the **defined** district boundary to run along the mauka boundary of the former railroad, not the former railroad's **midpoint**, which district line is depicted to be a full 2 lots and 330 ft. inland of the Coastal **ridge top** and 430 ft. inland of **the high wash of the waves**.

It is clear that the **undefined pictorial** district line that is depicted on SLUD map H-59 was intended by the **1969** Commission to be a reference point from which other **applicable** commission records be applied, ref., HAR 15-15-22 (d). The **1999** Commission applied the line to be the Coastal pali "**ridge top**" in DR99-21 Stengle. If the present Commission **first holds** that the **undefined pictorial** district line that is depicted on SLUD map H-65 is correct it must similarly find that the **defined** district boundary in the area of the Property is similarly the Coastal pali "**ridge top**" because the Property was in agricultural production in **1969**.

The Commission's representative consultants testified that the lines that were depicted on the maps were not intended to be "**a rigid or firm**" district boundary line but rather than such lines be subsequently interpreted based on physical land characteristics and existing **land uses**

.....

or a farm road or a road, vegetation line. In a situation
where ~~it~~ there is not physical line which can represent these uses
we have indicated a line which is 300 feet mauka of the existing
conservation district. With respect to that it is not our thinking
that this has to be a rigid or firm line. It is flexible in the
same manner as all boundaries are upon application. We feel it is

Source, Exhibit 44, hearing transcript, page 11, testimony of Mr.
 Degenhardt, consultant, Ekbo.....

Confusingly the Hard Evidence of testimony during the Commission's
 September 8, 2021 hearing transcript described that the district maps
 were drawn at a later time "***based on the report***". It is clear that neither
 of the Commission's 1974 SLUD maps H-59 or H-65 were drawn later
 "***based on the report***"

1 But that's, I think, different than what
2 the Churches have argued, which is they actually
3 used the -- they used the cliff boundary here, and
4 past interpretations have been incorrect.

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.

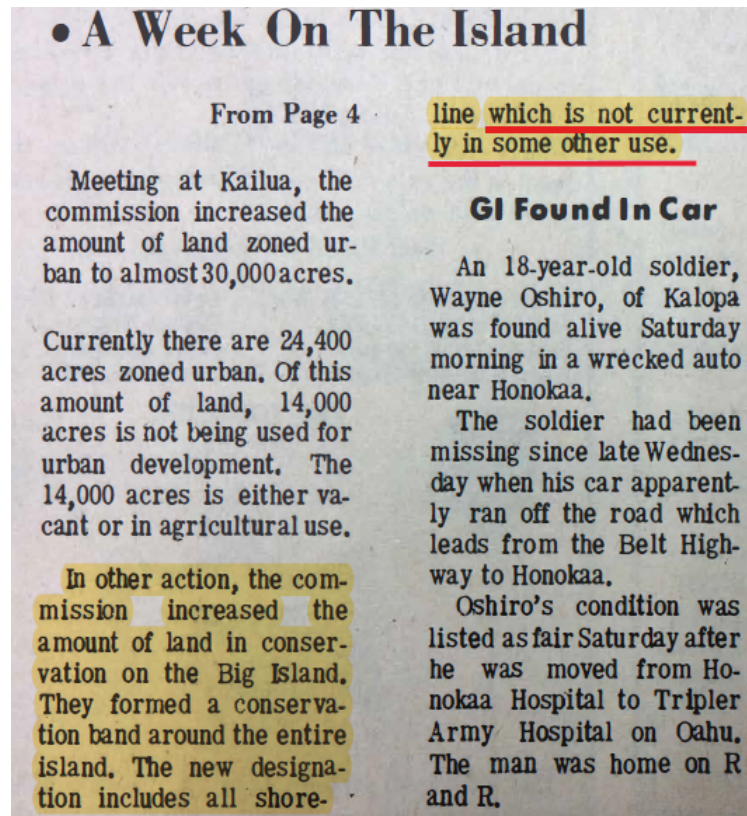
8 **COMMISSIONER SCHEUER:** Okay.

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 (emphasis added)

Again following the **1969** Commission's final Community Hearing on **July 18, 1969**, the *Hawaii Tribune-Herald* published an article which described the Commission's final ***approved*** redistricting ***actions*** regarding coastal lands in Hawaii County describing "*The new designation includes **all shoreline which s not currently in some other use.***"



Source, *Hawaii Tribune Herald* article, exhibit 28, (emphasis added)

This Memorandum and its Appendix(s) and Exhibits give examples where the Commission and County authorities have recognized that SLUD maps are to be used as an initial guiding tool when considering the **defined location** of District SLUD lines which is different than an **undefined pictorial** SLUD line on an official Commission SLUD 1974 map.

Subsequently "**text records**" of documents like the Report, County zoning (*the Property is zoned A-20a by the County*) and County Ordinances, and HRS 205-2 (a) (3), and HAR 15-15-19 (1) and **Hard Evidence** submitted with a Petition may be considered as a higher

authority than an **undefined**, hand drawn, District line on a map, *ref.*, HAR 15-15-22 (a), (a)(1), (d) and (f).....

§15-15-22 Interpretation of district boundaries.

(a) **Except as otherwise provided** in this chapter:

(a) (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;

(d) The executive officer may use **all applicable commission records** in determining district boundaries.

(f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines.

§15-15-98 HAR... Who may petition states.....

(a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific **factual situation**.

(emphasis added)

APPLICABLE COMMISSION RECORDS

In effect the Petition requested that the Commissioners consider and apply the ***factual situation*** that existed in **1969** and the following ***applicable commission records*** to a new boundary interpretation for the Property and now the Petitioners request that the Commission consider and apply the following to this Motion for Reconsideration of DR21-72.....

- (i) the LUC, **1969** SLUD Maps and maps H-65 and H-59 which exist in several sequentially dated versions beginning in April of **1969** and ending in their current form, *ref., Exhibit 46,*
- (ii) the legal survey map of the Property, *ref., Exhibit 7,*
- (iii) '*all applicable commission records*', *ref., HAR 15-15-22 (d),*
- (iv) HRS 205-2 (a) (1), HRS 205-2 (a) (3), HRS 205-4 (h) and HAR 15-15-19 (1),
- (v) the **text record** of the Report, *ref., Exhibit 32, the Report,*
- (vi) DR99-21 (Stengle) and Boundary Interpretation No. 07-19 (Muragin), *ref., Exhibits 1 (Stengle) and 2 (Muragin),*
- (vii) Petition A18-806 (Barry Trust), *ref., Appendix 3 and Exhibit 8,*
- (viii) Thielen testimony to LUC McCully petition A05 757, (*that is referenced and copied in this Memorandum*)
- (ix) the "INTRODUCTION" paragraph from the Commission's **1991**, 5 year SLUD boundary review, (*that is referenced and copied in this Memorandum*)
- (x) the 19 Exhibits that were filed with DR21-72, particularly *Exhibit 10 (John Cross letter) and Exhibit 16 (field map)*

(xi) the Commission's June 25, 2020 FONSI for the redistricting of the Property from the Conservation District to the Agricultural District, *ref.*,

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

(xii) DR96-19 (Castle Foundation), which applied the Commission's text record of its 2nd 5 year boundary and amendment report, *Exhibit 1*,

(xiii) the 1969 Commission hearing minutes and transcripts, *Exhibits 43-45*,

and now the Petitioners also request that the Commission apply the Exhibits to this Motion (many of which are repeats of exhibits to DR21-72) as provided for in.....

HAR §15-15-84 Reconsideration of decision.

*(a) A motion for reconsideration shall be filed with the commission within seven calendar days after issuance of the commission's written decision and order. The motion for reconsideration shall **clearly specify** that the motion is for reconsideration.*

(emphasis added)

The Petitioners confirm, and **clearly specify**, that this Motion is for reconsideration of the LUC's Decision and Order which Denied the Petition

HAR §15-15-84 Reconsideration of decision (b) requires that the Petitioners motion for reconsideration

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**" (emphasis added)*

in order to remove **uncertainty** (ref., "uncertainty" HAR 15-15-22(f)) regarding the correct the SLUD Boundary for the area of the Property.

Case law and the Commission's past **actions**, where the Commission found its SLUD maps to not be authoritative over "**applicable commission records**", further supports that the **undefined pictorial** district lines that are shown on the Commission's Official **1974** SLUD maps are not always to be held authoritative over the other **applicable commission records**, ref., HAR 15-15-22 (a), (a) (1), (d) and (f).....

§15-15-22 Interpretation of district boundaries.

(a) **Except as otherwise provided** in this chapter:

(a) (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;

(d) The executive officer may use all **applicable commission records** in determining district boundaries.

(f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines.

(emphasis added)

Again if it was the Commission's intention that the *undefined pictorial* boundary lines, that are shown on the Commissions **1974 SLUD Maps, were highly authoritative it would not be provided in the Commission's Rules that the Commission may determine otherwise and there would not exist several examples of such Commission**

"defined" boundary interpretations that appear to be different than the *undefined pictorial* boundary lines, that are shown on the Commissions 1974 SLUD Maps.

There does exist '***other applicable Commission records***', ref., HAR 15-15-22 (f).

During the Commission Hearing, Kato, gave verbal testimony in support of OP's written testimony which written and subsequent verbal testimony did not oppose that the Commission ***approve*** DR21-72 (Church-Hildal).

OP's written testimony is attached to this Motion for Reconsideration as *Exhibit 4*. OP's written testimony provided an analysis of the Report. In both of OP's written and oral testimony OP did not oppose that the Petition be ***allowed*** as the Report described that the Property was not rezoned into the Conservation District in **1969**.

Particularly, when OP Rep. Kato was pressed by the Commission's Chair Scheuer, Kato testified that the Report and map H-65 may be found to be ***confusing***. Chair Scheuer and the Commissioners appeared to have taken Kato's description "***confusing***" to mean that the LUC's **1974** SLUD map H-65 could be held to be a higher authority when determining a ***defined*** District Boundary than the ***text record*** of the Report.

Petitioner Church requested permission of Chair Scheuer that he be allowed to call up screen shots of DR21-72's supporting exhibits, *ref., Exhibit 5, transcript, page 116*. Chair Scheuer did not allow the request. Chair Scheuer closed further testimony by Church, following Kato's

additional testimony, and quickly moved the proceedings to the final "**decision making**" portion of the Hearing. The Commission's effective denial of Church's request to show screen shots of Exhibits is

unreasonable, unlawful, and erroneous, ref., HAR §15-15-84

Reconsideration of decision.....

*"(b) The motion for reconsideration shall state specifically the grounds on which **the movant** considers the decision or order **unreasonable, unlawful, or erroneous.**" (emphasis added)*

The Petitioner's testimony throughout the Hearing echoed Kato's testimony in most ways, however, the Petition described in its text and Exhibits that Petitioners did not fully agree that the **1969** Commission's Report was "**confusing**" as Kato described. The Commissioners did not ask questions of Petitioner Church in regards to his Evidence or his belief that the Report was clear and not confusing nor relevant field map and letter Exhibits. Instead all such questions were pressed repeatedly towards Kato by the Commissioners even though Church had supplied the **Hard Evidence** documents that showed the Property was in agricultural production in **1969** and the former railroad bisected the existing 10.65, **1969** cane field area of TMK LOT (3) 2-9-003: 013.

HAR §15-15-84 Reconsideration of decision (b)

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**" (emphasis added)*

Particularly, in part therefore, the Petitioners state that the Commission's decision to...

- (i) allow the Barry's Petition A18-806 which was considered and approved by the Commission during the same general time period, *ref., Memorandum Appendix 3,*
- (ii) approve a Finding of No Significant Impact for both the Barry's and Petitioners' (Church-Hildal) planned redistricting to the agricultural district,
- (iii) approved DR 99-21 (Stengle), *ref., Exhibit 1 and Memorandum Appendix 3,*
- (iv) corrected all of LUC map H-59 to reflect that the top of the coastal pali be the district boundary, *ref., Memorandum Appendix 3 and 7, and Memorandum Exhibit 1,*
- (v) issued Boundary Interpretation No. 07-19 (Muragin) , *ref., Memorandum Appendix 3 and 7, and Memorandum Exhibit 2,*
- (vi) allow the Castle Foundation petition DR96-19, *ref., Exhibit 25,*
- (vii) deny the Petitioners that they be allowed to show screen shots of exhibits to the Commissioners, *ref., Exhibit 5, transcript,*
- (viii) ignore the State's Law HRS 205-2 (a) (3) and HRS 205-4 (h) as applicable to the Petition,
- (ix) not research, consider and apply the Commission's own records of its **1969** hearing transcripts and hearing minutes, *ref., Exhibits 43-45 and*

(ix) deny the Petition.....

is ***speculative, unreasonable, unlawful, or erroneous***, ref., HAR §15-15-84 *Reconsideration of decision (b)*.

It is an established ***factual situation*** that the SLUD Maps commonly reflect ***mapping errors***, ref., *Memorandum Appendix 7*.

Memorandum Appendix 3 and 8 gives a comparison of the physical characteristics of the properties of Stengle, Muragin, Barry Trust and Church-Hildal in considerable more detail than is provided in this Memorandum.

The Petition and now this Motion request that the Commission determine the ***legal*** and ***factual situation*** of the Commission's **1969** Report, the applicability of the **1969** Commission's hearing transcripts and hearing minutes and the final redistricting motion and maps that was/were passed by the **1969** Commission on July 18, **1969** and DR21-72 (Church-Hildal) petitioned request that the LUC issue a new boundary interpretation for the Property, ref., ***HAR §15-15-98 Who may petition*** states.....

*"(a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific **factual situation**"*
(emphasis added)

and §15-15-22 HAR, Interpretation of district boundaries clauses (d) and (f) state.....

*"(d) The executive officer may use all ***applicable commission records*** in determining district boundaries.*

*(f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an **uncertainty** concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines." (emphasis added)*

Appendix 5 describes that when the Report is considered in both a **textual** and a **purposivist** way the **text record** of the Report, in all of the chapters of the Report, removes the potential for **confusion** by using words like "**recommended**" vs. "**approved**". Effectively the "**recommended**" district lines on the **Commission's redistricting and redistricted maps** are subordinated to the '**text record of the Report**' as described in this *Memorandum's Exhibit 32* and now also in the 1969 Commission's redistricting hearing transcripts and minutes *Exhibits 43-45*.

A read through of the *transcript* of the Commission's Hearing for DR21-72 (Church-Hildal), *ref., Exhibit 5*, which was held on September 8, **2021**, appears to indicate that the Commission confused its **decision making criteria and authority** for a **District Boundary Amendment** ("DBA") with the criteria and **legal** authority for a **Declaratory Order** ("DR") as many of the Commissioners' questions and comments had nothing to do with the **factual situation** that existed in **1969** and more generally could apply to a discretionary decision that would normally be applied to a DBA. Finally in this regard the Commissioners identified a concern that allowing the Petition **may increase its workload** which is not listed in the Commission's Rules as a decision making authority for a Declaratory Order.

COMMISSION DELIBERATIONS, ref., Exhibit 5, beginning on page 120

HAR §15-15-98 Who may petition for a Declaratory Order describes.....

*(a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific **factual situation**.*

(emphasis added)

Throughout the Hearing the Commissioner's questions and in the end during the Commission's Deliberations, the Commissioners appeared to also apply the current situation vs. **factual situation** in **1969** which is what the Petitioners had Petitioned for in DR21-72. The Petitioners had described the **factual situation** in **Hard Evidence** that the Property was not rezoned into the Conservation District in **1969**. The Petitioners asked the Commission to consider the Law and the **factual situation** that existed in **1969** and apply that to a corrected boundary interpretation for the Property. Several text copies from the Hearing transcript are shown below that appear to show that the Commission erred in Evidence and the Law in this regard.....

COMMISSION DELIBERATIONS

(beginning on next page.....)

Commissioner Aczon.....

9 **COMMISSIONER ACZON:** It's all right. Okay.
10 Thank you, Commissioner Okuda. You know, I can -- I
11 can feel the uneasiness among the commissioners
12 regarding this petition. Me, myself, too, is kind of
13 uneasy or uncomfortable to the fact that, you know,
14 it will set a dangerous precedent on many of the
15 decisions made by the prior commissioners.
16 And I'm not really convinced to the Church
17 petitioner's arguments, and I kind of go back to
18 that the official LUC Map H65 of Papaikou accurately
19 reflects the commission's intent in the 1969
20 boundary review for properties locating -- located
21 along the Hilo Papaikou coastline.
22 So I'll -- I'll be voting for, in favor of
23 the motion, Mr. Chair.

Source, Hearing transcript, Exhibit 5, page 130 (emphasis added)

Re: "*it will be setting a dangerous precedent*". The Petition asked the Commission to determine the **factual situation** that existed in **1969**. "***Precedent***" is not listed in the Commissions decision making criteria. Precedent is not a Commission making authority for a Declaratory Order.

Re: "I'm not really convinced to the Church petitioner's arguments,". In the very similar case of DR99-21 (Stengle) very little **proof**, in fact no Hard Evidence was provided by Stengle. In that case the Commission approved that a new boundary interpretation be issued for Stengle showing the "**ridge top**" to be the district boundary. The Petitioners did not just present "**arguments**" to the Commission, the Petitioners also provided 19 Hard Evidence Exhibits "*that the Land Use Commission Map H-65 was erroneous*". Commissioner Aczon's stated reasoning to deny DR21-72 is incorrect.

Throughout the Hearing the Commissioners referred that the Report was unclear resulting in **uncertainty**. The **1969**, the **1999** and the **current** Commissioners took an **oath of office** to uphold the State's Laws. Therefore the Petitioners believe that the Commissioners must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the Commission's own HAR 15-15-19 (1) in order to remove the described **uncertain** district boundary in the area of the Property.....

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)

and HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and*

205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.

The above **Law** text.... **the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation** does not describe a land use but rather a characteristic of land and that maintaining **agricultural zoning for land is required by State Law to be given the greatest possible protection** by the Commission.

The term "***greatest possible protection***" means that no other zoning priority is of a greater importance than agricultural districting of lands **not even Conservation** if land had **a high capacity for intensive cultivation**. The LUC's Rule HAR 15-15-19 (1) mirrors the language of the Statutes....

*"It **shall** include lands with a high capacity for agricultural production;"*
(emphasis added)

The word **shall** has always been a mandatory instruction to the Commissioners.

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

While the extension of the Conservation District, through the ***Hamakua Coastal Area*** overlaying the Conservation District on Coastal "**pali**" land, was identified by the **1969** Commission to be a ***high priority***, that priority could easily be met without disregard of the State's Constitution and its Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1) **by not** overlaying the Conservation District on lands mauka of the "***ridge***

top" that had a high capacity for intensive cultivation and that **'were in agricultural use in 1969'**.

It is a **factual situation** that the 1999 Commission recognized that the 1969 Commission never intended that Hamakua Coastal lands, that were located inland of the Coastal "**ridge top**" and in "**agricultural use**", be redistricted into the Conservation District. The 1969 Commission further emphasized that **Hamakua Coastal "Areas in agricultural production"** were to be excluded from redistricting.

Various Commissioners described granting the petition now would bring uncertainty onto maps that have been relied on by previous Commissions. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. This is also inconsistent with past Commission's actions.....

In the case of DR99-21 (Stengle) - the Commission's 1974 SLUD map H-59 had been relied on for 30 years by the time the 1999 Commission corrected the error on the District map.

HAR 15-15-101 *Declaratory orders; dismissal of petition* provides guidance to the Commissioners '*decision making authorities*'. Just like in the case of Stengle the Petition (Church-Hildal) asked the Commission to determine and apply the **factual situation** that existed in 1969 whether an error was made on the Commission's 1974 SLUD map H-65 in the area of the Property and apply that to a new boundary interpretation for the Property.

It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition may result in similar Petition's which would increase the Commission's workload. These are not described in the Commission's HARules as a decision making authority for a Declaratory Order.

Continuing the Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the **interest of the State** that such an error continue.

HAR §15-15-84 Reconsideration of decision (b) states.....

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**"*

During the September 8, **2021** Hearing the Commissioners cited §15-15-100 (c) HAR as a reason to deny DR21-72.....

§15-15-100 Consideration of petition for declaratory order. (a) *The commission, within ninety days after submission of a petition for declaratory order, shall:*

(1) Deny.....(a)....(b).....

(c) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or

The State's Constitution section 11.3, Agricultural lands, and the State's **Laws** HRS 205-2 (a) (3) and HRS 205-4 (h) **clearly describe the interest of the State.**

The Commission's HARules provide that the Commission's Executive Officer issue a boundary interpretation based on the Commission's official SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules provide a method that a land owner may petition for ***reconsideration by the Commission to remove uncertainty.*** **If the Commission then incorrectly applies** the final ***defined*** boundary ***without proper regard for Hard Evidence*** and ***the State's Laws*** **it is then that litigation may reasonably be expected to arise.**

SUMMARY

At this point in the Hearing Commission Chair Scheuer is about to close witness testimony and go to Deliberations.

For all of the above reasons the Petitioners believe that Commissioner Aczon's stated reasoning to deny DR21-72 is "***unreasonable, unlawful, or erroneous.***" .

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 (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 pictoral** district lines on the LUC's maps are not **defined** boundaries.

Commissioner Cabral stated her reasoning for denying the Petition. Again Commissioner Cabral's concern regarding the **2021 factual situation** has nothing to do with the **factual situation** that existed in **1969**. The Petition asked the Commissioners to determine and apply the **factual situation** that existed in **1969** to a new boundary interpretation for the Property.

Throughout the Hearing the Commissioners referred that the Report was unclear resulting in **uncertainty**. The **1969**, the **1999** and the **current** Commissioners took an **oath of office** to uphold the State's Laws. Therefore the Petitioners believe that the Commission must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the

Commission's own HAR 15-15-19 (1) in order to remove the described *uncertain* district boundary in the area of the Property.....

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)

and HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

The above **Law** text.... **the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation** does not describe a land use but rather a characteristic of land and that maintaining **agricultural zoning for land is required by State Law to be given the greatest possible protection** by the Commission.

The term "**greatest possible protection**" means that no other zoning priority is of a greater importance than agricultural districting of lands **not even Conservation** if land had **a high capacity for intensive cultivation**. The LUC's Rule HAR 15-15-19 (1) mirrors the language of the Statutes....

*"It **shall** include lands with a high capacity for agricultural production;"*
(emphasis added)

The word **shall** has always been a mandatory instruction to the Commissioners.

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

While the extension of the Conservation District, through the ***Hamakua Coastal Area*** overlaying the Conservation District on Coastal "**pali**" land, was identified by the **1969** Commission to be a ***high priority***, that priority could easily be met without disregard of the State's Constitution and its Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1) **by not** overlaying the Conservation District on lands mauka of the "***ridge top***" that had **a high capacity for intensive cultivation** and that ***'were in agricultural use in 1969'***.

It is a fact that the **1999** Commission recognized that the **1969** Commission never intended that Hamakua Coastal lands that were located mauka of the Coastal "***ridge top***" be redistricted into the Conservation District. The **1969** Commission further emphasized that ***Hamakua Coastal "Areas in agricultural production"*** were to be excluded from redistricting.

Commissioner Cabral described granting the petition now would bring uncertainty onto maps that have been relied on. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. This is inconsistent with past Commission's actions.....

In the case of DR99-21 (Stengle) - the Commission's **SLUD Map H-59** **had been relied on for 30 years** by the time the **1999** Commission corrected the error on the District map.

HAR 15-15-101 *Declaratory orders; dismissal of petition* provides guidance to the Commissioners '*decision making authorities*'. Just like in the case of Stengle the Petition (Church-Hildal) asked the Commission to determine and apply the **factual situation** that existed in **1969** whether an error was made on Map H-65 in the area of the Property and apply that to a new boundary interpretation for the Property.

It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition may result in similar Petition's which would increase the Commission's workload. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. Continuing the Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the ***interest of the State*** that such an error continue.

HAR §15-15-84 Reconsideration of decision (b) states.....

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**"*

During the September 8, 2021 Hearing the Commissioners cited §15-15-100 (c) HAR as a reason to deny DR21-72.....

§15-15-100 Consideration of petition for declaratory order. (a) *The commission, within ninety days after submission of a petition for declaratory order, shall:*

(1) *Deny.....(a)....(b).....*

(c) *The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or*

The State's Constitution section 11.3, Agricultural lands, and the State's **Laws** HRS 205-2 (a) (3) **and** HRS 205-4 (h) clearly describe ***the interest of the State.***

The Commission's HARules provide that the Commission's Executive Officer issue a boundary interpretation based on the Commission's official SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules provide a method that a land owner may petition for ***reconsideration by the Commission to remove uncertainty. If the Commission then incorrectly applies the final **defined** boundary *without proper regard for Hard Evidence* and ***the State's Laws* it is then that litigation may reasonably be expected to arise.*****

For all of the above reasons the Petitioners believe that Commissioner Cabral's stated reasoning to deny DR21-72 is "***unreasonable, unlawful, or erroneous.***" .

Commissioner Chang.....

10 **COMMISSIONER CHANG:** Thank you, Mr. Chair.
11 I am going to be voting in favor of the motion for
12 several reasons. One, I, too, am not convinced that
13 there was a mistake made in the map. I believe both
14 Office of Planning concurs that it is a -- that
15 there is no -- while she's raised some other
16 examples, there is no situation she is aware of that
17 is factually the same as this one.

18 Three, in my view, based upon the
19 Churches' testimony -- and, you know, they have been
20 extremely committed, and they've done a lot of work
21 -- but this appears to be essentially a DBA. And if
22 it was a DBA, there would be notice provided to all
23 of other interested parties.

24 And in my view, the results of what
25 they're asking is to change this, their property,

Source, Exhibit 5, Hearing transcript, page 127-8 (emphasis added)

Re: "*there is no **situation** she is aware of that is factually the same as this one.*" This Memorandum provides Hard Evidence that the district line on Map H-59 often appeared to follow the railroad.

Re: "*this appears to be essentially a DBA. And if it was a DBA, there would be notice provided to all of other interested parties.*" The Petitioners first applied for a DBA, A18-805, believing that their Property was in the Conservation District. The Petitioners submitted an EA for consideration by the community and the Commission. No public comments were received.

The Petitioners then submitted a draft FONSI to the Commission. The Commission, included with Commissioner Chang's vote of approval, issued a FONSI. Particularly also no comments from the Community or the State's Agencies were received. Commissioner Chang's referenced comment appears to show either her lack of knowledge of the matters set before her or otherwise her comment is unclear to the Petitioners.

Throughout the Hearing the Commissioners referred that the Report was unclear resulting in ***uncertainty***. The **1969**, the **1999** and the **current** Commissioners took an ***oath of office*** to uphold the State's Laws. Therefore the Petitioners believe that the Commission must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the Commission's own HAR 15-15-19 (1) in order to remove the described ***uncertain*** district boundary in the area of the Property.....

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)

and HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

The above **Law** text.... **the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation** does not describe a land use but rather a characteristic of land and that maintaining **agricultural zoning for land is required by State Law to be given the greatest possible protection** by the Commission.

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While the extension of the Conservation District, through the ***Hamakua Coastal Area*** overlaying the Conservation District on Coastal "**pali**"

land, was identified by the 1969 Commission to be a **high priority**, that priority could easily be met without disregard of the State's Constitution and its Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1) **by not** overlaying the Conservation District on lands mauka of the "**ridge top**" that had a high capacity for intensive cultivation and that **'were in agricultural use in 1969'**.

It is a **factual situation** that the 1999 Commission recognized that the 1969 Commission never intended that Hamakua Coastal lands, that were located inland of the Coastal "**ridge top**" and in "**agricultural use**", be redistricted into the Conservation District. The 1969 Commission further emphasized that **Hamakua Coastal "Areas in agricultural production"** were to be excluded from redistricting.

Various Commissioners described granting the petition now would bring uncertainty onto maps that have been relied on. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. This is inconsistent with past Commission's actions.....

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an error was made on the Commission's 1974 SLUD map H-65 in the area of the Property and apply that to a new boundary interpretation for the Property.

It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition may result in similar Petition's which would increase the Commission's workload. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order.

Continuing the Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the **interest of the State** that such an error continue.

HAR §15-15-84 Reconsideration of decision (b) states.....

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**"*

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(c) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or

employees in any litigation which is pending or may be reasonably be expected to arise; or

The State's Constitution section 11.3, Agricultural lands, and the State's **Laws HRS 205-2 (a) (3) and HRS 205-4 (h) clearly describe the interest of the State.**

The Commission's HARules provide that the Commission's Executive Officer issue a boundary interpretation based on the Commission's official SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules provide a method that a land owner may petition for ***reconsideration by the Commission to remove uncertainty. If the Commission then incorrectly applies the final *defined* boundary *without proper regard for Hard Evidence* and *the State's Laws* it is then that litigation may reasonably be expected to arise.***

For all of the above reasons the Petitioners believe that Commissioner Chang's stated reasoning to deny DR21-72 is "***unreasonable, unlawful, or erroneous.***" .

Commissioner Giovanni.....

2 **COMMISSIONER GIOVANNI:** Thank you, Chair.
 3 I will also be joining my fellow commissioners
 4 who've already spoken in support of the motion as
 5 amended for many of the same reasons that have been
 6 given.

.....

17 me personally that the Churches entered into their
 18 real estate purchase with their eyes wide open,
 19 quote-unquote, meaning they knew it was conservation
 20 land and districted as such. And they expected --

Source, Exhibit 5, Hearing transcript, page 130 (emphasis added)

Re: "*many of the same reasons that have been given*" The Petitioners have already described how "*many of the same reasons*" are incorrect.

Re: "*they knew it was conservation land*" The **factual situation** when the Petitioners purchased the Property in **2014** has nothing to do with the **factual situation** that existed in **1969** which is what the Petition requested the Commission to determine. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. Therefore Commissioner Giovanni's stated reasoning is irrelevant to DR21-72.

Throughout the Hearing the Commissioners and Kato referred that the Report was unclear resulting in *uncertainty*. The 1969, the 1999 and the current Commissioners took an ***oath of office*** to uphold the State's Laws. Therefore the Petitioners believe that the Commission must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the Commission's own HAR 15-15-19 (1) in order to remove the described *uncertain* district boundary in the area of the Property.....

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The above Law text.... the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation does not describe a land use but rather a characteristic of land and that maintaining agricultural zoning for land is required by State Law to be given the greatest possible protection by the Commission.

The term "***greatest possible protection***" means that no other zoning priority is of a greater importance than agricultural districting of lands not even Conservation if land had a high capacity for intensive

cultivation. The LUC's Rule HAR 15-15-19 (1) mirrors the language of the Statutes....

"It **shall** include lands with a high capacity for agricultural production;"
(emphasis added)

The word **shall** has always been a mandatory instruction to the Commissioners.

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

While the extension of the Conservation District, through the ***Hamakua Coastal Area*** overlaying the Conservation District on Coastal "**pali**" land, was identified by the **1969** Commission to be a ***high priority***, that priority could easily be met without disregard of the State's Constitution and its Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1) **by not** overlaying the Conservation District on lands mauka of the "***ridge top***" that had **a high capacity for intensive cultivation** and that ***'were in agricultural use in 1969'***.

It is a ***factual situation*** that the **1999** Commission recognized that the **1969** Commission never intended that Hamakua Coastal lands, that were located inland of the Coastal "***ridge top***" and in "***agricultural use***", be redistricted into the Conservation District. The **1969** Commission further emphasized that ***Hamakua Coastal "Areas in agricultural production"*** were to be excluded from redistricting.

Various Commissioners described granting the petition now would bring uncertainty onto maps that have been relied on by previous Commissions. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. This is inconsistent with past Commission's actions.....

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It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition may result in similar Petition(s) which would increase the Commission's workload. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order.

Continuing the Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the ***interest of the State*** that such an error continue.

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The State's Constitution section 11.3, Agricultural lands, and the State's **Laws HRS 205-2 (a) (3) and HRS 205-4 (h) clearly describe the interest of the State.**

The Commission's HARules provide that the Commission's Executive Officer issue a boundary interpretation based on the Commission's official SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules provide a method that a land owner may petition for ***reconsideration by the Commission to remove uncertainty. If the Commission then incorrectly applies the final *defined* boundary *without proper regard****

for Hard Evidence and the State's Laws it is then that litigation may reasonably be expected to arise.

For all of the above reasons the Petitioners believe that Commissioner Giovanni's stated reasoning to deny DR21-72 is "***unreasonable, unlawful, or erroneous.***" .

Commissioner Ohigashi

15 **COMMISSIONER OHIGASHI:** I'll be supporting
16 the motion to deny, and one of the reasons why is I
17 think that petitioner had to provide evidence that
18 the Land Use Commission Map H65 was erroneous or
19 clearly got wrong or that the interpretations that
20 were done was clearly done incorrectly. And I'm not
21 convinced that it was.

22 Second thing is that I want to include in
23 that is that an affirmative denial of the petition
24 to recover appropriate hearing costs and fees. I --
25 I don't think that he established any basis for

1 that, nor is there any reason to believe that they
2 should be entitled to such fees. I don't believe
3 that there's been presented any evidence of that
4 request.

5 So it's -- my understanding if Mr. Okuda's
6 motion would include that, I'm going to have to make
7 a separate amendment to it. That's all I have.

In the very similar case of DR99-21 (Stengle) very little "**proof**", in fact no Hard Evidence was provided by Stengle that the Commission's **1974** map H-59 was incorrect. In that case the Commission approved that a new boundary interpretation be issued for Stengle showing the "**ridge top**" to

be the district boundary. The Petitioners provided Hard Evidence that the Commission's 1974 map H-65 was inconsistent with the 1969 Commission's redistricting *action* as is described in the Commission's 1969 Report and now also the Commission's 1969 redistricting hearing transcripts and hearing minutes. Therefore Commissioner Ohigashi is incorrect.

The Commission's Decision Making authority for a Declaratory Order is limited to the *factual situation* that existed in 1969, the State's Laws, the Commission's HARules, the Hard Exhibited Evidence and the Commissioner's Oath of Office to uphold the States Laws. Precedence of past Commission's Findings of Fact and Conclusions of Law and their application to other district line locations on SLUD Maps and boundary interpretations are also applicable.

The Petitioners believe that all of the Commissioners stated reasoning to deny Petition DR21-72 has to reflect the *factual situation* that existed in 1969, the **Hard Evidence** of DR21-72, the State's Laws HRS 205-2 (a) (3), HRS 205-4 (h), the Commission's HAR 15-15-19 (1) and the Report's pages 3, 36 and 41, the Commission substantially increases *the State, the commission, or any of the officers or employees* of the LUC exposure to litigation if it denies the Petition. The Commission's belief that it may save the State from litigation is incorrect. Denying DR21-72 actually sets the State, the Commissioners and the LUC's administrative staff to be liable today and regarding the Commission's future boundary interpretations if it ignores the Hard Evidence of the Petition's Exhibits and now also this Motion's new Hard Evidenced Exhibits.

This is further obvious that when the State required in the Commissioner's **Oath of Office** that the Commissioners apply the State's Laws, ie. HRS 205-2 (a) (3) that.....

"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)

and HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

At a minimum, if the Commission believes that uncertainty exists regarding the 1969 Commission's intended redistricting actions were, the Commission should apply the Law to remove uncertainty.

Throughout the Hearing the Commissioners and Kato referred that the Report was unclear resulting in **uncertainty**. The 1969, the 1999 and the current Commissioners took an **oath of office** to uphold the State's Laws. Therefore the Petitioners believe that the Commission must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the Commission's own HAR 15-15-19 (1) in order to remove the described **uncertain** district boundary in the area of the Property.....

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The word **shall** has always been a mandatory instruction to the Commissioners.

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

While the extension of the Conservation District, through the ***Hamakua Coastal Area*** overlaying the Conservation District on Coastal "**pali**" land, was identified by the **1969** Commission to be a ***high priority***, that priority could easily be met without disregard of the State's Constitution and its Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1) **by not** overlaying the Conservation District on lands mauka of the "***ridge top***" that had **a high capacity for intensive cultivation** and that ***'were in agricultural use in 1969'***.

It is a ***factual situation*** that the **1999** Commission recognized that the **1969** Commission never intended that Hamakua Coastal lands, that were located inland of the Coastal "***ridge top***" and in "***agricultural use***", be redistricted into the Conservation District. The **1969** Commission further emphasized that ***Hamakua Coastal "Areas in agricultural production"*** were to be excluded from redistricting.

Various Commissioners described granting the petition now would bring uncertainty onto maps that have been relied on by previous Commissions. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. This is inconsistent with past Commission's actions.....

In the case of DR99-21 (Stengle) - the Commission's **1974 SLUD map H-59 had been relied on for 30 years** by the time the **1999** Commission corrected the error on the District map.

HAR 15-15-101 *Declaratory orders; dismissal of petition* provides guidance to the Commissioners '*decision making authorities*'. Just like in the case of Stengle the Petition (Church-Hildal) asked the Commission to determine and apply the ***factual situation*** that existed in **1969** whether an error was made on the Commission's **1974** SLUD map H-65 in the area of the Property and apply that to a new boundary interpretation for the Property.

It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition may result in similar Petition(s) which would increase the Commission's workload. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order.

Continuing the Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the ***interest of the State*** that such an error continue.

HAR §15-15-84 Reconsideration of decision (b) states.....

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**"*

During the September 8, 2021 Hearing the Commissioners cited §15-15-100 (c) HAR as a reason to deny DR21-72.....

§15-15-100 Consideration of petition for declaratory order. (a) *The commission, within ninety days after submission of a petition for declaratory order, shall:*

(1) *Deny.....(a)....(b).....*

(c) *The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or*

The State's Constitution section 11.3, Agricultural lands, and the State's **Laws** HRS 205-2 (a) (3) **and** HRS 205-4 (h) **clearly describe the interest of the State.**

The Commission's HARules provide that the Commission's Executive Officer issue a boundary interpretation based on the Commission's official SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules provide a method that a land owner may petition for ***reconsideration by the Commission to remove uncertainty.*** **If the Commission then incorrectly applies** the final ***defined*** boundary ***without proper regard for Hard Evidence*** and ***the State's Laws*** **it is then that litigation may reasonably be expected to arise.**

Commissioner Ohigashi described that the Petitioners did not provide evidence in support that fees be refunded. The errors that are established in DR21-72 and this Motion for Reconsideration describe that the errors are Commission errors and therefore the refund of fees is properly requested by the Petitioners.

For all of the above reasons the Petitioners believe that Commissioner Ohigashi's stated reasoning to deny DR21-72 is "***unreasonable, unlawful, or erroneous.***" .

Commissioner Okuda.....

20 **COMMISSIONER OKUDA:** Mr. Chair, I make a
21 motion to deny the petition.

22 **COMMISSIONER SCHEUER:** Would you please
23 detail that motion, Commissioner?

24 **COMMISSIONER OKUDA:** Mr. Chair, you want
25 me to state the reasons for that?

Source, Exhibit 5, Hearing transcript, page 122 (emphasis added)
Commissioner Okuda continued on the next page.....

6 **COMMISSIONER OKUDA:** Okay. Can -- can you
7 hear me? I'm sorry. Okay. HR Section 91-1 either
8 itself or by implication makes it clear that the
9 party that's initiating the proceeding has the
10 burden of proof, including the burden of producing
11 evidence as well as the burden of persuasion. Okay?

12 And the burden of -- of proof, according
13 to the statute or by implication, is the
14 preponderance of the evidence.

15 In this case, I believe the record that
16 has been presented to us, it indicates that the
17 petitioners have not met the burden of proof. That
18 is demonstrated by the statement by the Office of
19 Planning itself that this could go either way.

20 And because of the fact that reasonable
21 people like the Office of Planning, which has the
22 charge of protecting the public interest and the
23 public trust, itself has made the statements that
24 it's made (inaudible).

Source, Hearing transcript, page 124 (emphasis added)

In the very similar case of DR99-21 (Stengle) very little "**proof**", in fact no Hard Evidence was provided by Stengle. In that case the Commission

approved that a new boundary interpretation be issued for Stengle showing the "*ridge top*" to be the district boundary.....

2 **COMMISSIONER OKUDA:** The statements it has
3 made, although I understand and recognize the other
4 arguments or statements the Office of Planning have
5 made, is indication that the burden of proof has not
6 been met here.

7 There's also a question in my mind about
8 whether or not this issue is speculative in the
9 sense or because of the fact that there is not, in
10 my mind, by a preponderance of the evidence,
11 indication that there will be bona fide agriculture
12 that would really take place.

13 If there is no bona fide agriculture that,
14 in fact, will take place -- and by the word "bona
15 fide agriculture", I mean agriculture that under the
16 statute and the LUC decisions will show that the
17 dwellings are, in fact, a farm dwelling producing
18 income, not simply personal consumption of
19 agricultural products -- if we don't have bona fide
20 agriculture, then it's a speculative, theoretical
21 discussion here.

Source, Hearing transcript, page 125 (emphasis added)

The redistricting in the area of the Property occurred in 1969. The Hard Evidence that was provided with the Petition is that the factual situation in 1969 is that the Property was in agricultural production before, during and after 1969. The Report's page 36 described that *land that was in agricultural production in 1969 was not to be redistricted* into the Conservation District. Commissioner Okuda's stated reasoning for denying the Petition, copied above, was based in part on his belief that the Property's current use would have to be "*bona fide agriculture*" in the current 2021 year in order that the Commission approve DR21-72.

22 | I join in Commissioner Cabral's
23 | description of the fact that granting the petition
24 | now would bring actually uncertainty onto maps that
25 | have been relied on. I believe that there is a
1 | serious issue where parties have entered into a
2 | transaction, believing and understanding they were
3 | buying conservation districted property with all the
4 | burdens that come along with such property, and then
5 | for whatever reason attempt to do something else.
6 | So for those reasons and the other reasons
7 | that were brought out in the questioning, I would
8 | ask that my motion to deny the petition would be
9 | granted. It, of course, does not preclude the
10 | petitioners from moving forward with their district
11 | boundary amendment, provided they meet the burden of
12 | proof on that petition. Thank you.

Source, Hearing transcript, page 125-6 (emphasis added)

Commissioner Okuda stated his reasoning for denying the Petition. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. Again Commissioner Okuda's concern regarding the **2021 factual situation** has nothing to do with the **factual situation** that existed in **1969**. The Petition asked the Commissioners to determine and apply the **factual situation** that existed in **1969** to a new boundary interpretation for the Property.

Throughout the Hearing the Commissioners referred that the Report was unclear resulting in ***uncertainty***. The **1969**, the **1999** and the **current** Commissioners took an ***oath of office*** to uphold the State's Laws. Therefore the Petitioners believe that the Commission must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the Commission's own HAR 15-15-19 (1) in order to remove the described ***uncertain*** district boundary in the area of the Property.....

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)

and HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

The above **Law** text.... **the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation** does not describe a land use but rather a characteristic of land and that maintaining **agricultural zoning for land is required by State Law to be given the greatest possible protection** by the Commission.

The term "***greatest possible protection***" means that no other zoning priority is of a greater importance than agricultural districting of lands **not even Conservation** if land had **a high capacity for intensive cultivation**. The LUC's Rule HAR 15-15-19 (1) mirrors the language of the Statutes....

"It **shall** include lands with a high capacity for agricultural production;"
(emphasis added)

The word **shall** has always been a mandatory instruction to the Commissioners.

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

While the extension of the Conservation District, through the ***Hamakua Coastal Area*** overlaying the Conservation District on Coastal "**pali**" land, was identified by the **1969** Commission to be a ***high priority***, that priority could easily be met without disregard of the State's Constitution and its Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1) **by not** overlaying the Conservation District on lands mauka of the "***ridge top***" that had **a high capacity for intensive cultivation** **and** that '***were in agricultural use in 1969***'.

It is a fact that the 1999 Commission recognized that the 1969 Commission never intended that Hamakua Coastal lands that were located inland of the Coastal "*ridge top*" be redistricted into the Conservation District. The 1969 Commission further emphasized that ***Hamakua Coastal "Areas in agricultural production"*** were to be excluded from redistricting.

Commissioner Okuda described granting the petition now would bring uncertainty onto maps that have been relied on. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. This is inconsistent with past Commission's actions and Orders.....

In the case of DR99-21 (Stengle) - the Commission's SLUD Map H-59 **had been relied on for 30 years** by the time the 1999 Commission corrected the error on the District map.

HAR 15-15-101 *Declaratory orders; dismissal of petition* provides guidance to the Commissioners '*decision making authorities*'. Just like in the case of Stengle the Petition (Church-Hildal) asked the Commission to determine and apply the **factual situation** that existed in 1969 whether an error was made on Map H-65 in the area of the Property and apply that to a new boundary interpretation for the Property.

It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition may result in similar Petition's which would increase the Commission's workload. This is not described in the Commission's HARules as a

decision making authority for a Declaratory Order. Continuing the Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the ***interest of the State*** that such an error continue.

HAR §15-15-84 Reconsideration of decision (b) states.....

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**"*

During the **September 8, 2021** Hearing the Commissioners cited §15-15-100 (c) HAR as a reason to deny DR21-72.....

§15-15-100 Consideration of petition for declaratory order. (a) The commission, within ninety days after submission of a petition for declaratory order, shall:

(1) Deny.....(a)....(b).....

(c) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or

The State's Constitution section 11.3, Agricultural lands, and the State's **Laws HRS 205-2 (a) (3) and HRS 205-4 (h) clearly describe the interest of the State.**

The Commission's HARules provide that the Commission's Executive Officer issue a boundary interpretation based on the Commission's official SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules

provide a method that a land owner may petition for *reconsideration by the Commission to remove uncertainty*. If the Commission then incorrectly applies the final *defined* boundary *without proper regard for Hard Evidence* and *the State's Laws* it is then that litigation may reasonably be expected to arise.

For all of the above reasons the Petitioners believe that Commissioner Okuda's stated reasoning to deny DR21-72 is "*unreasonable, unlawful, or erroneous*."

Commission Chair Scheuer.....

16 | **COMMISSIONER SCHEUER:** Seeing no further
17 | statements from the commissioners, I will add to my
18 | original comments.

19 | I'm going to vote in favor of the motion
20 | as well. I agree with Commissioner Okuda's statement
21 | regarding the applicable standard that there has to
22 | be a preponderance of the evidence.

23 | And while Mr. Church and Ms. Hildal have
24 | certainly laid out some very interesting points, I
25 | believe in his oral presentation, towards the end of
 Source, Hearing transcript, page 132 (emphasis added)

In the very similar case of DR99-21 (Stengle) very little "**proof**", in fact no Hard Evidence was provided by Stengle. In that case the Commission approved that a new boundary interpretation be issued for Stengle showing the "**ridge top**" to be the district boundary.

.....

8 | more which came up during our deliberations, I'm
9 | actually fairly confident that if we ruled in favor
10 | in this case, we would end up in litigation. We
11 | would be dramatically affecting the location of the
12 | conservation district versus agricultural district
13 | boundary line along this section of coast.
14 | I believe there would be a rush of people
15 | who would come to us seeking reinterpretations.
16 | There could be theoretically -- well, people could
17 | potentially be taking these arguments against former
18 | -- the commission based on former actions as a
19 | commission, were we to rule in favor of the
20 | Churches' motion. I'm not saying those would
21 | prevail, but the standard that we have to look at on
22 | DRs is there a likelihood of litigation.

Source, Exhibit 5, Hearing transcript, page 133 (emphasis added)

The Commission's Decision Making authority for a Declaratory Order is limited to the **factual situation** that existed in **1969**, the State's Laws, the Commission's HARules, the Hard Exhibited Evidence and the Commissioner's Oath of Office to uphold the States Laws. Precedence of past Commission's Findings of Fact and Conclusions of Law and their application to other district line locations on SLUD Maps and boundary interpretations are also applicable.

The Petitioners believe that all of the Commissioners stated reasoning to deny Petition DR21-72 has to reflect the **factual situation** that existed in **1969**, the **Hard Evidence** of DR21-72, the State's Laws HRS 205-2 (a) (3), HRS 205-4 (h), the Commission's HAR 15-15-19 (1) and the Report's pages 3, 36 and 41, the Commission substantially increases *the State, the commission, or any of the officers or employees* of the LUC exposure to litigation if it denies the Petition. The Commission's belief that it may save the State from litigation is incorrect. **Denying DR21-72 actually sets the State, the Commissioners and the LUC's administrative staff to be liable today and regarding the Commission's future boundary interpretations if it ignores the Hard Evidence of the Petition's Exhibits and now also this Motion's new Hard Evidenced Exhibits.**

This is further obvious when the State required in the Commissioner's ***Oath of Office*** that the Commissioners apply the State's Laws, ie. HRS 205-2 (a) (3) that.....

"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)

and HRS 204-4 (h)....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

At a minimum, if the Commission believes that uncertainty exists regarding the 1969 Commission's intended redistricting actions were, the Commission should apply the Law to remove uncertainty.

Throughout the Hearing the Commissioners and Kato referred that the Report was unclear resulting in *uncertainty*. The 1969, the 1999 and the current Commissioners took an ***oath of office*** to uphold the State's Laws. Therefore the Petitioners believe that the Commission must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the Commission's own HAR 15-15-19 (1) in order to remove the described *uncertain* district boundary in the area of the Property.....

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)

and HRS 204-4 (h)....

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The above Law text.... *the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation* does not describe a land use but rather a characteristic of land and that

maintaining **agricultural zoning for land is required by State Law to be given the greatest possible protection** by the Commission.

The term "***greatest possible protection***" means that no other zoning priority is of a greater importance than agricultural districting of lands **not even Conservation** if land had ***a high capacity for intensive cultivation***. The LUC's Rule HAR 15-15-19 (1) mirrors the language of the Statutes....

*"It **shall** include lands with a high capacity for agricultural production;"*
(emphasis added)

The word **shall** has always been a mandatory instruction to the Commissioners.

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

While the extension of the Conservation District, through the ***Hamakua Coastal Area*** overlaying the Conservation District on Coastal "**pali**" land, was identified by the **1969** Commission to be a ***high priority***, that priority could easily be met without disregard of the State's Constitution and its Law HRS 205-2 (a) (3) and the Commission's HAR 15-15-19 (1) **by not** overlaying the Conservation District on lands mauka of the "***ridge top***" that had ***a high capacity for intensive cultivation*** **and** that ***'were in agricultural use in 1969'***.

It is a ***factual situation*** that the **1999** Commission recognized that the **1969** Commission never intended that Hamakua Coastal lands, that were

located inland of the Coastal "**ridge top**" and in "**agricultural use**", be redistricted into the Conservation District. The **1969** Commission further emphasized that **Hamakua Coastal "Areas in agricultural production"** were to be excluded from redistricting.

Various Commissioners described granting the petition now would bring uncertainty onto maps that have been relied on by previous Commissions. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. This is inconsistent with past Commission's actions.....

In the case of DR99-21 (Stengle) - the Commission's **1974 SLUD map H-59 had been relied on for 30 years** by the time the **1999** Commission corrected the error on the District map.

HAR 15-15-101 *Declaratory orders; dismissal of petition* provides guidance to the Commissioners '*decision making authorities*'. Just like in the case of Stengle the Petition (Church-Hildal) asked the Commission to determine and apply the ***factual situation*** that existed in **1969** whether an error was made on the Commission's **1974** SLUD map H-65 in the area of the Property and apply that to a new boundary interpretation for the Property.

It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition may result in similar Petition(s) which would increase the Commission's workload. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. Continuing the

Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the **interest of the State** that such an error continue.

HAR §15-15-84 Reconsideration of decision (b) states.....

*"(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order **unreasonable, unlawful, or erroneous.**"*

During the September 8, 2021 Hearing the Commissioners cited §15-15-100 (c) HAR as a reason to deny DR21-72.....

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(1) Deny.....(a)....(b).....

(c) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or

The State's Constitution section 11.3, Agricultural lands, and the State's **Laws HRS 205-2 (a) (3) and HRS 205-4 (h) clearly describe the interest of the State.**

The Commission's HARules provide that the Commission's Executive Officer issue a boundary interpretation based on the Commission's official SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules provide a method that a land owner may petition for **reconsideration by**

the Commission to remove uncertainty. If the Commission then incorrectly applies the final *defined* boundary *without proper regard for Hard Evidence* and *the State's Laws* it is then that litigation may reasonably be expected to arise.

For all of the above reasons the Petitioners believe that Commission Chair Scheuer's stated reasoning to deny DR21-72 is "***unreasonable, unlawful, or erroneous.***" .

Commissioner Wong.....

13 | **COMMISSIONER WONG:** No, Chair. Other
 14 | commissioners were eloquent enough. I'll just say
 15 | I'm going to support the motion.

Source, Hearing transcript, page 132 (emphasis added)

Throughout the Hearing the Commissioners and Kato referred that the Report was unclear resulting in ***uncertainty***. The **1969**, the **1999** and the **current** Commissioners took an ***oath of office*** to uphold the State's Laws. Therefore the Petitioners believe that the Commission must also consider and apply the State's Laws HRS 205-2 (a) (3) and HRS 205-4 and the Commission's own HAR 15-15-19 (1) in order to remove the described ***uncertain*** district boundary in the area of the Property.....

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;*

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and HRS 204-4 (h)....

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It is a ***factual situation*** that the 1999 Commission recognized that the 1969 Commission never intended that Hamakua Coastal lands, that were located inland of the Coastal "***ridge top***" and in "***agricultural use***", be redistricted into the Conservation District. The 1969 Commission further emphasized that ***Hamakua Coastal "Areas in agricultural production"*** were to be excluded from redistricting.

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It is irrelevant that the Commission apply a high level of consideration regarding the Petitioners current situation or that granting the Petition

may result in similar Petition(s) which would increase the Commission's workload. This is not described in the Commission's HARules as a decision making authority for a Declaratory Order. Continuing the Commission's mapping error by denying DR21-72 goes against the Hard Evidence, the State's Laws and the Commission's Rules and therefore it does not serve the ***interest of the State*** that such an error continue.

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The State's Constitution section 11.3, Agricultural lands, and the State's **Laws HRS 205-2 (a) (3) and HRS 205-4 (h) clearly describe the interest of the State.**

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SLUD Map. In the event that the LUC issues a boundary interpretation that appears to a land owner to be incorrect the Commission's HARules provide a method that a land owner may petition for ***reconsideration by the Commission to remove uncertainty***. **If the Commission then incorrectly applies** the final ***defined*** boundary ***without proper regard for Hard Evidence*** and ***the State's Laws*** **it is then that litigation** ***may reasonably be expected to arise***.

For all of the above reasons the Petitioners believe that Commissioner Wong's stated reasoning to deny DR21-72 is "***unreasonable, unlawful, or erroneous.***" .

Returning here to other matters

On **June 17, 2021** the Petitioner(s) filed the Petition with the Commission for a Declaratory Order ("DO").....

- for review and correction of the **1969** District Map H-65 in the area of the Property, which map showed coastal land including the area of the Property and which area is also described in ***text*** on pages 36 and 41 of the Report (*ref., Exhibit 32*) and on the **subsequent** SLUD Map H-65 and,
- for issuing a new Boundary Interpretation for the area of the Property,
- a reimbursement of Filing Fees for Petition A18-805 and the Petition,
- waving of Court Reporter fees for the Petition .

The LUC conducted a Hearing (the "**Hearing**") for the Petition on September 8, **2021** which began at 9:00 a.m. via. the Internets ZOOM format which included computerized audio and visual electronic format.

The Hearing did not appear to have been properly constituted according to the State's Act 193 as a "***quasi-judicial***" hearing.....

1975

ACT 193

H.B. NO. 1870

A Bill for an Act Relating to the Land Use Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature finds that although the purposes of Hawaii's land use law remain as valid today as they were at the time of its enactment in 1961, the procedures through which these purposes must be realized have proved inadequate and unworkable. Under existing procedures the land use commission has been unable to reconcile in an orderly and rational manner the increasingly hostile and conflicting points of view which surround land use decisions. This Act sets forth reforms intended to insure the effective application for an established land use policy through an adversary process in which all interests will have the opportunity to compete in an open and orderly manner. The commission is constituted as a quasi-judicial body and mandated to make impartial decisions based on proven facts and established policies.

Source, State Law Library, 1975, Act 193, (emphasis added)

It does not appear to the Petitioners that the Commission conducted DR21-72 "***through an adversary process***" (see above).

If the Commission is truly a quasi-judicial administrative body the Commission's proceedings have to have authority that is founded in law and the Commission has to be **open minded** and the Commission should be interested in hearing.....

Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence, ref., §91-10 (3), HRS, Rules of evidence (also quoted earlier here in).

Commissioner Okuda pointed to §91-10 (5), HRS, Rules of evidence as applicable to the Petition. If §91-10 (5), HRS, Rules of evidence applies then §91-10 (3) has to also apply. The Petitioners should have been

given the opportunity to "*conduct such cross-examination as may be required for a full and true disclosure of the facts*".....

When Commissioner Okuda introduced his Motion to Deny DR21-72 he cited "**HR 91-1**" as an authority.....

6 COMMISSIONER OKUDA: Okay. Can -- can you
7 hear me? I'm sorry. Okay. HR Section 91-1 either
8 itself or by implication makes it clear that the
9 party that's initiating the proceeding has the
10 burden of proof, including the burden of producing
11 evidence as well as the burden of persuasion. Okay?

12 And the burden of -- of proof, according
13 to the statute or by implication, is the
14 preponderance of the evidence.

15 In this case, I believe the record that
16 has been presented to us, it indicates that the
17 petitioners have not met the burden of proof. That
18 is demonstrated by the statement by the Office of
19 Planning itself that this could go either way.

20 And because of the fact that reasonable
21 people like the Office of Planning, which has the
22 charge of protecting the public interest and the
23 public trust, itself has made the statements that
24 it's made (inaudible).

continued on next page.....

1 statements that it has made".

2 **COMMISSIONER OKUDA:** The statements it has
3 made, although I understand and recognize the other
4 arguments or statements the Office of Planning have
5 made, is indication that the burden of proof has not
6 been met here.

7 There's also a question in my mind about
8 whether or not this issue is speculative in the
9 sense or because of the fact that there is not, in
10 my mind, by a preponderance of the evidence,
11 indication that there will be bona fide agriculture
12 that would really take place.

13 If there is no bona fide agriculture that,
14 in fact, will take place -- and by the word "bona
15 fide agriculture", I mean agriculture that under the
16 statute and the LUC decisions will show that the
17 dwellings are, in fact, a farm dwelling producing
18 income, not simply personal consumption of
19 agricultural products -- if we don't have bona fide
20 agriculture, then it's a speculative, theoretical
21 discussion here.

22 I join in Commissioner Cabral's
23 description of the fact that granting the petition
24 now would bring actually uncertainty onto maps that
25 have been relied on. I believe that there is a

1 | serious issue where parties have entered into a
2 | transaction, believing and understanding they were
3 | buying conservation districted property with all the
4 | burdens that come along with such property, and then
5 | for whatever reason attempt to do something else.
6 | So for those reasons and the other reasons
7 | that were brought out in the questioning, I would
8 | ask that my motion to deny the petition would be
9 | granted. It, of course, does not preclude the
10 | petitioners from moving forward with their district
11 | boundary amendment, provided they meet the burden of
12 | proof on that petition. Thank you.

Source, Exhibit 5, Hearing transcript pages 124-126 (emphasis added)

Clearly Commissioner Okuda was referring to HRS 91-10 (5) Rules of Evidence,

(5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

Commissioner Okuda's reliance on HRS 91-10 Rules of Evidence clause (5) in support of his Motion to Deny DR21-72 appears to be an error in law if the Petitioners were not also allowed cross examination of

witnesses, referring back here to the Commission's Executive Officer Orodener's opening comments (see Exhibit 5, transcript page 18)

The authority for the Commission to hear a Petition for a Declaratory Order is described in the Commission's **§15-15-100 HAR, Consideration of petition for declaratory order.**

(a) The commission, within ninety days after submission of a petition for declaratory order, shall:

(1) Deny the petition where:

*(A) The question is speculative or purely hypothetical and does not involve an **existing situation** or one which may reasonably be expected to occur in the near future; or*

(B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; or

(C) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or

(D) The petitioner requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission; or

(2) Issue a declaratory order on the matters contained in the petition; or

(3) Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable .

(b) If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing or, if post hearing briefs are filed, forty- five days after the last brief is filed, unless a different time period is stated at the hearing.

(emphasis added)

The above *§15-15-100 HAR, Consideration of petition for declaratory order* was quoted generally by Commission Chair Scheuer to the Commissioners before the Commission closed the open part of the Hearing and began Deliberations.....

16 | **Exhibit 5, page 117-118, Hearing transcript Commissioner**
17 | **Scheuer instruction to the Commissioners entering deliberations**
18 | **(emphasis added)**

18 | In addition, Section 15-15-102 of the
19 | commission rules provides that the commission for
20 | good cause may refuse to issue a declaratory order
21 | by giving specific reasons. The commission may so
22 | refuse under the following circumstances.

23 | One, where the question is speculative or
24 | purely hypothetical and does not involve the
25 | existing facts or facts which could be expected to

continued on next page

1 exist in the near future.

2 Two, the petitioner's interest is not of
3 the type that would give the petitioner standing to
4 maintain an action if the petitioner were to seek
5 judicial relief.

6 Three, the issuance of the declaratory
7 order may affect the interest of the commission in a
8 litigation that is pending or may reasonably be
9 expected to arise.

10 Or, four, the matter is not within the
11 jurisdiction of the commission.

12 The commission will now conduct formal
13 deliberations on this matter, and I would note for
14 the parties and the public that during our
15 deliberations, I will not entertain any additional
16 input from the parties or the public unless those
17 individuals are specifically requested to do so by
18 the chair. And if called upon, I would require that
19 all comments be limited to the question at hand.

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

Source, Exhibit 5, Hearing transcript, pages 117-118

It was the Commission's Executive Officer that issued Boundary Interpretation No. 92-48 (McCully). If an "**adversary process**" was allowed by the Commission, which is what ACT 193 describes as required, it would have the Commission's Executive Officer defending the boundary interpretation on one side and the Petitioners on the other side and the Commission sitting independent and open minded hearing the evidence. Witness testimony would have been provided and cross examination of witnesses would have been allowed.

The Commission did not allow the Petitioners to cross examine State Office of Planning testifier Kato, the Commission's Executive Officer nor added witnesses Funakoshi or Maki.. Furthermore the Commission did not appear to the Petitioners that the Commission was **open minded** and its denial of Petition DR21-72 did not appear to be an "**impartial decision based on proven facts**".

The **adversarial process** that is described in **ACT 193** and HRS 91-10 (3) Rules of Evidence appeared, instead, to be the Petitioners against the Commission. The Commission's Declaratory Order process is flawed and it does not conform to ACT 193 nor to HRS 91-10 (3) Rules of Evidence. The Commission's Declaratory Order hearing process is flawed and therefore is an Error in Law.

The Petitioners attended the Hearing electronically via ZOOM from their home on their home's computer, which home is located on their Property, which lies along the **Hamakua Coast**, Island of Hawai'i.

The State Office of Planning ("OP") submitted written testimony to Petition A21-72 which testimony was supported by 4 exhibits, the record of which written testimony and exhibits are found in *Exhibit 4 to this Motion*.

OP also attended the Hearing via ZOOM through its Attorney General representative Alison Kato (the "OP Rep.") who was accompanied by two other legal representatives and the Director of the Office of Planning in the Hearing's audience.

The Petitioner(s) only have a Wi-Fi connection to the internet at their home and they do not have a direct or high speed internet connection.

The Petitioners had participated in a LUC hearing several months earlier via ZOOM, from their home, using their existing Wi-Fi connection to the hearing which facilitated their full and clear hearing participation with both audio and video during that earlier hearing.

Shortly after the Hearing began on **Sept 8, 2021** Chair Scheuer, stated that the Petitioner(s) audio and video connection was poor resulting that the audio portion of the Petitioners' presentation could not be clearly heard and understood by the Commissioners.

Chair Scheuer advised that the Petitioners turn off their computer's video feed in order to reduce the volume of data being shared by ZOOM in order to improve the audio quality of the Petitioners' presentation to the Commissioners.

The Petitioners turned off their computer's video feed.

Chair Scheuer noted that the Commissioners could then clearly hear the Petitioners' audio presentation.

As a result of the low Wi-Fi data transfer rate and the disconnected video feed the Petitioners believe that they were not able to present their Petition in the video format that they had prepared for the Hearing. Particularly a slide by slide, on screen, video presentation was no longer possible as some of the files were digitally large and the low transmission rate would similarly interfere with the Commissioners' and the Petitioners' exchange of information.

The Petitioners believe that had they been able/allowed to support their Petition with their screen shot video presentation the Commissioners may have become more familiar with the Petition , its Memorandum, supporting exhibits etc. that may have resulted in a more favorable ruling by the Commissioners.

At the conclusion of the Hearing the Commission denied Petition A21-72 in its entirety with a unanimous vote of 7- 0.

For all of the stated reasons in the Motion and its Memorandum for Reconsideration of DR21-72 the Petitioners submit this Motion for Reconsideration of the Petition according to §15-15-84 HAR and HRS 205-2 (a) (3) and HRS 205-4 (h).

Not all of the Petition's **referenced** exhibits were included in the Petition nor its Memorandum.

The Petition Memorandum to the Petition referenced HAR 15-15-63 which describes evidenciary requirements of the Commission.....

(j) If any matter contained in the petition or in a document filed as a public record with the commission is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of the document are specifically identified and are otherwise competent, relevant, and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

The Petitioners cited 7 exhibits (the "Exhibits") that were not attached directly to the memorandum to the Petition but rather, when referencing them in the Petition, the Petitioners cited HAR 15-15-63 (j).

The Petitioners are not aware that the Commission has received the Exhibits in evidence by reference and added them to the Official Record of the Petition. Therefore the Petitioners have included the following Exhibits to this request for Reconsideration.

The Petitioner(s) also referenced the following Exhibits in the Petition and its Memorandum but the Petitioners have not attached them directly to this Motion for Reconsideration due to the enormous volume of these referenced exhibits. None-the-less the Petitioners request that the Commission accept them by reference according to HAR 15-15-63 (j) into the Official Record of the Petition,

- the entire text of the Report (Exhibit 32 contains 7 of the 200+ pages of the Report)
- Petition A05 757 (McCully), and its EA and the Commission's denial of the former Property owner, McCully's petition to rezone the land from the Conservation District to Agricultural District (these comprise really big documents that the Petitioners pointed to by reference as background information for the Commissioners to consider without specific reference to page(s) etc.)
- Petitioners' Petition A18-805 and its EA and FONSI to rezone the Property land that the McCullys did in 2005. These comprise really big documents that the Petitioners pointed to by reference as background information for the Commissioners without specific reference to page numbers etc.
- the Petitioners submitted a "*Request for boundary interpretation*" for the Property before filing the Petition for same and subsequent DR21-72. These are posted on the LUC's web site. These comprised big documents that the Petitioners pointed to by reference as background information for the Commissioners to consider without specific reference to page numbers etc.
- the Petitioners also cited a submitted informal Motion and amended Motion for a boundary interpretation by the Commission. They are posted on the LUC web site. These comprised big documents that the Petitioners pointed to by reference as background information for the Commissioners without specific reference to page numbers etc.

The Commissioners cited concern regarding the **precedence** that Petition A21-72 would set *ie., precedence would apply resulting from A21-72 (Church-Hildal) but past Commission precedence does not apply ie. Stengle and Muragin?* This is very confusing to the Petitioners.

In denying the Petition it appears to the Petitioners that the Commissioners have not only ignored.....

- the **legal** authority of the **text record of the Report** and **the cited legal** authority of the **text record** of the Report, which is found in DR99-21 (Stengle), and
- the **precedent legal** authority of **text record of the Report** which is referenced by description in Boundary Interpretation No. 07-19 (Muragin),

but the Commission has also ignored its Oath of Office obligations to uphold the Law as described in the cascading order below.....

- in the State's Constitution's section 11.3 Agricultural lands.....

"The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of Agriculturally suitable lands.",

and

- in the **mandatory stipulation** found in HRS §205-2 Districting and classification of lands. (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; and"*

and HRS §205-4 (h).....

*No amendment of a land use district boundary shall be **approved** unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, **not violative of section 205-2** and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.*

- in the **mandatory Rule** found in HAR 15-15-19 *Standards for determining "A" agricultural district boundaries. (1).....*

"(1) It shall include lands with a high capacity for agricultural production;"

The Petitioners repeat that the word "**capacity**", which is found in HRS 205-2 (a) (3) does not refer to land use but rather the physical characteristic of land. None-the-less the Petitioner(s) have extensive areas of food crops planted on the Property. The Petitioners repeat that the word "**greatest**", which is found in HRS 205-2 (a) (3) requires that Agricultural districting of suitable land be a higher priority than Conservation districting, *ref., Appendix 9*. This is particularly applicable when **uncertainty** or **confusion** exists regarding the **1969** Commission's redistricting **actions**.

Petition A21-72 (Church-Hildal) only applied that the Property's zoning be corrected to reflect what the Commission **approved** in **1969**, as is described in the Report, that **'the top of the coastal ridge'** be the **defined** SLUD boundary line. The Petitioners provided **Hard Evidence** that their Property was in agricultural use before, during and after **1969**

and that the Property was not rezoned in **1969** and now this Motion provides additional **Hard Evidence** that the Property was not rezoned in **1969** in the form of the **1969** Commission's redistricting hearing transcripts and hearing minutes, *ref. Exhibits 33, 34 and 35.*

The Petitioners believe that the Report's **text** and **references** and the Report's page 41 map, which are cited in this Motion, and the **text record** of the Petition and its Memorandum and Exhibits and referenced Exhibits and the State's Laws that are reflected in HRS 205-2 (a) (3) and HRS 205-4 (h) and the Commissioners apparent twice stated belief that *'allowing such a petition as DR21-72 and DR21-73 would likely result in an increased work load of the Commission'* reasonably establish that the Commissions denial of Petition A21-72 is **unreasonable, illegal erroneous** and **prejudicial** and the Commission **speculated** that *the 1969 Commission's adoption of some version of District map H-65 must have had some other reason* when all of the **Hard Evidence** submitted by the Petitioners Evidenced otherwise. Therefore the Petitioner(s) request that the Commission.....

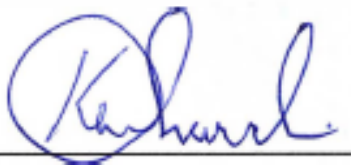
- issue a Boundary Interpretation for the area of the Property that identifies that the *'ridge top of the coastal pali'* be the District Line,
- amend the Commission's **1974** Official District map H-65, in the area of the Property, accordingly,
- reimburse the Filing Fees for Petition A18-805 and the Petition DR21-72 transcript fees.

The Commission's denial of DR21-72 increases the State, the Commissioners and the administrative office of the LUC's liability exposure.

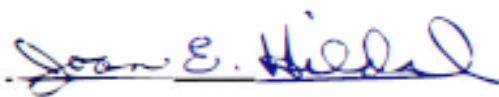
APPLICABLE LEGAL AUTHORITIES are described in the Petition and this Motion for Reconsideration but HRS 205-4 (h) has been added in this Memorandum.

By applying their signatures below the Petitioners certify that their statements herein are true to the best of their ability and that the Exhibits that are supplied herein also are true and reasonable representations of the original documents, however text boxes underlining and lines and notes etc. have been sometimes added which are displayed in a very obvious way. Such additions are not intended to mislead the Commissioners.

DATED: Hakalau, Hawaii, March 9, 2022



Kenneth S. Church



Joan E. Hildal

EXHIBIT LIST

- Exhibit 1 DR99-21 (Stengle)
- Exhibit 2 Boundary Interpretation No. 07-19 (Muragin)
- Exhibit 3 McCully Boundary Interpretation No. 92-48
- Exhibit 4 Office of Planning written testimony to DR21-72
- Exhibit 5 DR21-72 September 8, 2021 Hearing transcript
- Exhibit 6 Report page 41, map plate
- Exhibit 7 2015 County signed subdivision map
- Exhibit 8 Barry Trust DBA A18-806
- Exhibit 9 Property locator and island quadrangle maps
- Exhibit 10 John Cross letter
- Exhibit 11 SLUD map H65, Papaikou
- Exhibit 12 SLUD map H59, Papaaloa
- Exhibit 13 SCOTUS Decision, 14th amendment, discrimination
- Exhibit 14 Meets and bounds description. of the Property
- Exhibit 15 1953 aerial picture of cane fields on the Property
- Exhibit 16 Field map F31B
- Exhibit 17 County letter and Property map
- Exhibit 18 TMK map of the Property
- Exhibit 19 1920's picture of steep cliff at the Property

Exhibit 20	Current picture of shoreline
Exhibit 21	County letter SMA OK
Exhibit 22	1905 field map
Exhibit 23	Jenkins v. Town of Pepperell
Exhibit 24	D. Orodener email communications
Exhibit 25	DR96-19 Castle Foundation
Exhibit 26	AG Opinion 71-2
Exhibit 27	Hawaii Tribune-Herald article July 14, 1969
Exhibit 28	Hawaii Tribune-Herald article
Exhibit 29	TMK map Lot 013 and 1952 field picture
Exhibit 30	County map
Exhibit 31	1969 TMK Map (3) 2-9-003: 013
Exhibit 32	The Report
Exhibit 33	deleted
Exhibit 34	deleted
Exhibit 35	Soils maps
Exhibit 36	Historical document
Exhibit 37	Proposed and final maps, Muragin & Stengle
Exhibit 38	1969 proposed and final map Papaaloa
Exhibit 39	1974 SLUD Map Papaaloa
Exhibit 40	1974 SLUD Map Papaaloa

Exhibit 41	Fruiting plant list
Exhibit 42	OP's 2009 written testimony to McCully A09-783
Exhibit 43	July 18, 1969 Commission Hearing Transcript
Exhibit 44	April 26, 1969 Commission Hearing Transcript
Exhibit 45	April 25, 1969 Commission Hearing minutes
Exhibit 46	recommended and approved Maps

Appendix List

List of Appendix(s) to the Motion of Reconsideration for DR21-72

Appendix 1 the side by side comparison of the Report and the 1969 Commission's redistricting hearing transcripts and minutes (Note: these are presented in landscape format)

Appendix 2 Case law

Appendix 3 OP's exhibited comparables

Appendix 4 Discrimination

Appendix 5 THE 1969 REPORT BOOK

Appendix 6 has been deleted

Appendix 7 MAPS AND MAP ERRORS

Appendix 8 Deference

Appendix 9 Agriculture

Appendix 10 Map H-65 coastal zone snapshots with notes