

From: [Ken Church](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] Fw: testimony for LUC meeting Oct. 4, 2023
Date: Friday, September 29, 2023 11:18:33 AM
Attachments: [Exhibit 1 LUS slide presentation.pdf](#)
[Exhibit 2 Thielen with notes.pdf](#)
[Exhibit 3 \[044\] Dkt 8 Staff Report0149-0162.pdf](#)
[signed testimony for Oct 4 LUC meeting.pdf](#)



----- Forwarded Message -----

From: Ken Church <dockline3@yahoo.ca>
To: dbedt.luc.web@hawaii.gov <dbedt.luc.web@hawaii.gov>
Sent: Friday, September 29, 2023 at 11:14:58 a.m. HST
Subject: testimony for LUC meeting Oct. 4, 2023

Please find attached a signed and sworn testimony and 3 attached exhibits. I sent an unsigned version earlier today requesting a reply to confirm receipt. As I did not get a reply and the first emailed version was not signed and affirmed I am re-sending a signed version here.

Please confirm receipt of this testimony by return email

Ken Church



September 28, 2023

WRITTEN TESTIMONY by Kenneth Church to Commission October 4, 2023 meeting.
(see also attached exhibits 1, 2 and 3.)

In regards to the LUC's scheduled meeting, Oct. 4, 2023 I wish to submit the following as my written testimony. You should already be aware that we are listed in the LUC's records as Petition DR21-72 ("**Petition**") Church & Hildal ("**Petitioners**"), for a new boundary interpretation, which you denied.

I will first remind the Commissioners that the 1969 Commissioners fully embraced §HRS 205-2 (a) (3) when it redistricted the State's *shoreline land* to Conservation but the present Commission did not embrace/apply that same law when it denied our Petition.....

*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;*

The law described that there would be 4 SLU Districts but preserving the States ag. lands was to get the **greatest possible protection**. Not just the *greatest* but the *greatest possible protection*. The Conservation District was not to be given a greater or even equal priority in 1969. **The law is the same today as it was in 1969.**

All of the cane fields from the *Waipio Valley* to the North, leading southward to the *Wailuku River at the City of Hilo* (the *Hamakua Coast*), comprised some of the Islands best agricultural lands. The cane fields extended to the edge of the oceanside pali. The land leading southward from the *City of Hilo* was rocky and *the product of recent lava flows* and not well suited for cane production. It was redistricted Conservation for a considerable distance inland.

The LUC's §HA Rules for Petitions for boundary interpretations are to be fact based and not discretionary. The transcript for our hearing clearly shows the Commissioners erroneously believed they could apply their discretion at a greater authority than fact and evidence.

The agenda for today's meeting describes that you intend considering, in an Executive Session.....

*The Commission anticipates going into executive session pursuant to HRS § 92-5 to consult with the Commission's Attorney regarding issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pertaining to (1) **The Status of Outstanding Litigations Involving the Land Use Commission**.....*

I am aware that you have at least the following **Outstanding Litigations**.....

DR21-72 Church & Hildal,
DR21-72 Honoipu Hideaway LLC
DR20-70 Rosehill
City and County of Honolulu (for which I do not have the DR#)

The Commission's continuous and very strong resistance to the appeal of the above cases, which have been all been appealed to the Court, indicates

- the past and current Commission is driven more by a win motive rather than a fair administration of justice as provided for in law,
- the past and current Commission is arrogant of its responsibility.

The law provides for the appeal of the Commission's Decisions and Orders. **The LUC's AG representative is very obviously using procedural tedium, in the above cases, to not allow the Commission's decisions to be reviewed in Court.** That is what the AG is scheduled to report to you today. If the AG's continuing tedium of arguments to delay or prevent the review of the Commission's decisions by a court at the continuing instruction of the present Commissioners this is shameful and very clearly a breach of each of the Law, the Commission's HA Rules, the Commissioners duties and their Oath's of Office. You all are responsible for the actions of your AG representative.

I have attached to this testimony a copy of the **LUC staff's** 2020 orientation slide presentation (**Exhibit 1**) which presents to the Commissioners how boundary interpretations are **supposed to be made**. You will note that on the right hand of each slide is a paragraph where the LUC **staff presenter** describes the slide. It is only a **15 slide long** presentation. I first ask that you review the slide presentation and then read my testimony here. While, at a first read, you may not find a contrast between the present administration of boundary interpretations I direct you to the following slides and presenters notes.

The slide presentation and the LUC's '**presenter notes**' describes how SLUD boundaries are supposed to be interpreted. The file is a **pdf** file. When opened in pdf format the staff's verbal presentation i.e. '**presenter notes**', which accompanied the slides, can be seen on the right hand side of each slide.

I first point out that **slides 4&5** show 2 documents of relevance here to the LUC's 1969 redistricting. Slide 4 first shows an OPSD document on its left hand side and the middle document is the LUC's own historical document.

Staff presenter **note #5** has been interpreted, in at least one of the Case Hearings described above as *Outstanding Litigations*, to misrepresent that the ***State Of Hawaii Land Use Districts And Regulations Review ("Report")*** is a OPSD document according to the State Office of Plannings ("**OPSD**") own record of file (See DR99-22) and **Exhibit 2**. In Exhibit 2, ***Laura H. Thielen, Director, State Office of Planning***, describes that the Consultants authored the 1969 redistricting Report **acting as the LUC's representatives** to the community... (see **Exhibit 2**, page 3).....

In accordance with the provisions of Chapter 205-18 HRS, the Office of State Planning provided a five year review Reviewed Hawaii State Plan Counties General Plans Counties Development and/or Community Plans.

The results of the review were then transmitted to the Land Use Commission for assessment and evaluation.

The LUC's staff **note to slide 5** describes that the ... (Note we have added emphasis to text selectively throughout the quotes here)

The first 5-Year Boundary Review was conducted in 1969 by the LUC with the assistance of consultants Eckbo, Dean, Austin & Williams.

This further confirms that the Report is the LUC's official record of its redistricting activities and actions in 1969 and not just a report that does not bear the weight of a historical **LUC document**. The LUC's **staff notes** go on to describe, specifically for reference here, including.....

- the SLUD boundary lines on the maps are not intended to represent the precise location of a boundary but rather are to be interpreted as reference lines that are subject to interpretations based on historical commission records as well as physical land use records, see **Presenter note for page 7**.....

Land Use Boundaries were then approximately depicted on the respective quadrangle

this contrasts with various statements made by the Commissioners during the various **Outstanding Litigations** wherein the Commissioners state a belief that the SLUD **lines** on maps represent **boundaries** and not the **approximately depicted** location of SLUD **lines** on maps, (**just referencing an undefined line on a map as a boundary does not make it a defined boundary**)

- see next - **Presenter note for page 8**.....

LUC Shall Provide Additional Information

*State Land Use Boundaries, Historical State Land Use, Historical Tax Map Key,
Previously Prepared Determinations, SLU Documentation*

All information shall have bearing on the SLU District Boundaries Determination

The Commission has mistakenly interpreted that the SLUD lines on maps were intended to represent a higher interpreting authority of representation of the precise location of SLUD lines than **All information**.....

Additional Information

State Land Use Boundaries,

Historical State Land Use, Historical Tax Map Key,

Previously Prepared Determinations,

SLU Documentation

All information shall have bearing on the SLU District Boundaries Determination

Specifically I point out here that there also exists historical LUC 1969 redistricting hearing transcripts and minutes which will be discussed later in this testimony.

- see next **Presenter note for page 11**.....

Basis for SLU District Boundaries Location.....

*Official SLU District Boundaries Map
 SLU District Boundary in Metes and Bounds,
 Files Currently in Land Use Commission's Office,
 Previously Prepared Determinations,
 Land Use Commission's Historical References,
 Any Pertinent Evidence Per Subject Parcel*

very clearly the SLUD maps are not to be interpreted to have a greater authority than...

*Files Currently in Land Use Commission's Office,
 Previously Prepared Determinations,
 Land Use Commission's Historical References,
 Any Pertinent Evidence Per Subject Parcel (i.e. ag. use and suitability for ag.)*

In the case of DR21-72 and DR21-73 the Commission repeatedly asserted that the apparent location of the undefined SLUD lines on LUC Maps were of a higher referencing authority than other LUC historical records, County ag. zoning, and land owners exhibits and proof of ag. use.

The Petitioners submitted a petition for a Declaratory Order ("**DO**") DR21-72 ("**Petition**") on June 17, 2021. Petitioners requested a DO from the State of Hawai'i Land Use Commission ("**LUC**" and/or "**Commission**") seeking clarification and correction to a Commission Boundary Interpretation and reimbursement and waiver of fees. The Commission first denied the Petition and when Petitioners filed a Request For Reconsideration ("**Request**") and added substantially more highly relevant documents in evidence the Commission denied the Request for various reasons including that such evidence should have been provided with the Petition and therefore not applicable for reconsideration.

The Commission erred in a number of substantial and meaningful ways in its administration and hearing of the Petition and the Request.....

1. The Petition stated that it was filed, including, according to HAR 15-15-103, which Rule was believed by the Petitioners to be for a contested case hearing,
2. The DO's Finding Of Fact ("**FOF**") 9. stated.....
Petitioners did not request a hearing on the Petition as provided for in HAR § 15-15-103.

This incorrect statement was repeated in the DO's FOF 53. and Conclusion Of Law ("**COL**") 4. The opening paragraphs of the Petition stated that the requested authority included HAR § 15-15-103.

3. The Commission's Order Denying the Petition DO 21-72, COL section, recited that the Petitioners did not meet the "*preponderance of evidence*" standard, citing §HRS 91-10(5) as an authority. **All of §HRS 91-10 Law is stated to be in regard to contested case hearings, not just §HRS 91-10(5).**

§HRS 91-10(3) Law also states that cross examination of witnesses is to be provided,

4. Petitioners stated, at the beginning of the hearing their expectation to be allowed to examine witnesses to the hearing,
 - (a) Chair Scheuer stated his belief *that would be allowed*,
 - (b) Mr. Orodener then corrected the Chair stating that *there were no witnesses and the hearing was not that sort of a hearing*,
 - (c) subsequently, later in the hearing, Chair Scheuer swore in 2 witnesses, OPSD representatives Macki and Funakoshi,
 - (d) Chair Scheuer did not provide the Petitioners with an opportunity to cross examine the witnesses that he swore in at the hearing,
5. Chair Scheuer first erred by not recessing the hearing for the Law stipulated 30 minutes (re: §HRS 92 (c)) which provides that the Petitioners may have secured a better wifi connection in order that they may present their evidence with audio reference to visual evidence on screen before everyone at the hearing, instead the Petitioners were instructed to turn off their visual presentation in order that, at least, their audio could be heard and the hearing could proceed without the stipulated 30 minute recess which is provided for as a legal requirement in §HRS 92 (c),
6. In the Request For Reconsideration of the Commission's denial of the Petition Chair **Dan Giovanni** did not rule on Petitioners verbal Objection during the Request hearing,
7. The Commission also did not rule on the Petitioners subsequently filed written Objection which we filed subsequent to the Request hearing and before the written denial of the Request was issued by the Commission,
8. The Commissioner's questions, during the Petition hearing, and the DO betrayed that the Commissioners were **mistakenly** of the impression that.....
 - (a) the Commission's **DO was discretionary** when, in fact it was not, rather **it was to be strictly evidence based**,
 - (b) that the SLUD lines on the Commission's maps substantially represented the defined **boundary** in the area of the Petitioners' property to follow a **roadway**, which was described on the Report's page 86 as one possible criteria, when in fact the SLUD line, which crossed the Property, **was not a roadway**, the evidence described that the line followed the mauka boundary of a former railroad which had previously crossed the Property, the r.r. no longer existed because **it had been removed 20 years earlier** before the property was considered for redistricting in 1969 and the land had subsequently become part of the cane field farming operation existing in 1969,
 - (c) allowing the Petition would require that the undefined SLUD reference lines on its Map H-65 would have to be adjusted,
 - (d) set the State up for liability,

(e) set a precedent,

(f) represent a change of a SLUD boundary rather than just an undefined reference line on a SLUD Map.

All of the above (a) - (f) described Commissioners assumptions **are not evidence based** and **were not relevant** to the Commission's denial of the Petition.

9. The DO hearing process did not follow the proper administration of the Petition, **see Staff Report** (Exhibit 3) list of 3 **Alternative "Options" / "Actions" ("Options")**, which text of the 3 begins on the **Staff Report's** page 8 (which is reflective of HAR 15-15), beginning on **Staff Report** Page 7

*The Commission has three options in a Petition for Declaratory Ruling: HAR §15-15-100(a), provides the alternative actions required of the Commission for processing a petition for declaratory order. Paraphrasing that subsection: The Commission, within **ninety days** after submission of a petition for declaratory order, shall deny the petition in writing, or issue a declaratory order on the matters contained in the petition, **or set the matter for hearing**, as provided in §15-15-103, HAR, **provided that if the matter is set for hearing, the Commission shall render its findings and decision within one hundred twenty days after the close of the hearing.***

The Commission is required to decide at this time:

(1) whether it will deny the Petition; (2) issue a declaratory order; or (3) set the matter for hearing.

Note here: the Staff Report described that option (1), cited 4 possible reasons to deny the petition outright **without a hearing** did not apply.

NOTE: (in part (3) of (4) of **Option 1** here)

*3) The issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise. **At this time, the Commission is not involved in any pending docket or litigation involving this particular issue.***

Further note here the DO cited

FOF 53.

The Commission finds that the issuance of a declaratory order in this matter may affect the interest of the State, or the Commission in a litigation that is pending or may reasonably be expected to arise.

This directly conflicts with the Staff report paragraph (3), above, without any evidence supporting the unsupported belief of **Fact** and in direct conflict with its own Staff's Report.

and the same again in **COL 8**.

8. HAR §15-15-100(a)(1)(C) provides that the Commission can deny the petition where "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 expected to arise ... "

The DO's **COL 8** is also in contradiction to the Staff Report's, paragraph (3), shown above, AND its **COL 8** is not supported by any evidence.

Resuming again here the Staff Report.....

Alternative Action 2: Issue a Declaratory Ruling

*On July 17, 2021, Church filed a petition for declaratory order. Within the 90-day time period, the Commission must render a decision; then an order needs to be prepared and adopted by the Commission at a second meeting before October 15, 2021. HAR §15-15-100(a)(2) **does not require a hearing** before the Commission issues a declaratory order.*

It is required that a DO has to be issued within 90 days or the Petition has to be set for a hearing.

HAR §15-15-100(a), provides the alternative actions required of the Commission for processing a petition for declaratory order. Paraphrasing that subsection:

*The Commission, within ninety days after submission of a petition for declaratory order, shall deny the petition in writing, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in §15-15-103, HAR, provided that if the matter is set for hearing, the Commission shall render its findings and decision within **one hundred twenty days after the close of the hearing**.*

The Commission did set the matter for a hearing within the stipulated 90 days.

The LUC heard the Petition on Sept. 8, 2021 . The LUC issued the DO on March 15, 2022, a period of **188 days later**.

10. The Commission's administrative conduct of both hearings and resulting orders were in violation of several different sections of §HRS 91, §HRS 92, §HRS 205 and in violation of the Appellants rights as provided for in the State's Constitution.

The Petitioner believes **and requests** that the Commission revoke, cancel, withdraw its DO OR hold a contested case hearing for the Petition.

The LUC staff report to the Commission described the specified process for administration of the Petition wherein the Staff Report described **Alternative Actions 1-4**, which are provided for in the LUC's §HA Rules for the administration of the Petition. The Staff Report stated the following in regards to Alternative Action 1.....

Pursuant to HAR §15-15-100(a), the Commission, for good cause, may also deny the Petition and refuse to issue a declaratory order under four circumstances. Based on review of the Petition for Declaratory Order, staff has made the following assessment of the relevant criteria:

1) *The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future.*

Church's filings refer to and incorporate existing documents and records from the 1969 and 1974 State Land Use District Boundary Review, a district boundary interpretation issued by the Commission (No. 92-48), HRS §§205-2(a), 205-3, 205-3.1(a), 205-4(a), 205-4.1, 205-7, 205-8; and, the land use district boundary interpretation process under HAR §15-15-22.

Therefore, the question is not speculative or purely hypothetical, and does involve facts that exist on the record.

2) *The Petitioner's interest is not of the type that would give the Petitioner standing to maintain an action if the Petitioner were to seek judicial relief.*

Based on Petitioner's declarations and information contained in their petition;

Petitioner's would appear to have standing in the event they sought judicial relief.

This directly conflicts with the LUC's AG representative's attempts to block the Petitioners from their day in Court on appeal, which is one of the subjects of today's hearing's Executive Session.

3) *The issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise.*

*At this time, **the Commission is not involved in any pending docket or litigation involving this particular issue.***

4) *The matter is not within the jurisdiction of the Commission.*

The matter requests interpretation of statutory and administrative rules related to the setting of State land use district boundaries and the waiver of fees associated with filing and hearing expenses under HRS 205. The authority to set and interpret State land use district boundaries and waive associated filing and hearing fees is within the Commission's statutory jurisdiction.

Therefore, the Commission does not have good cause to deny the declaratory ruling request due to a lack of jurisdiction.

The Petitioners point here to **3)**, above. The Commission cited **3)** in the DO's COL, **Jurisdiction, paragraph 8** as applicable which appears to conflict with its Staff's interpretation of HAR §15-15-100(a) wherein the Staff report states **Therefore, the Commission does not have good cause to deny the declaratory ruling request due to HAR §15-15-100(a)**, yet that was cited in the DO's COL, Jurisdiction, paragraph 8 as applicable.

Alternative Action 2: Issue a Declaratory Ruling

*On July 17, 2021, Church filed a petition for declaratory order. Within the 90-day time period, the Commission must render a decision; **then an order needs to be prepared and***

adopted by the Commission at a second meeting before October 15, 2021. HAR §15-15-100(a)(2) does not require a hearing before the Commission issues a declaratory order.

The Commission should make a determination on the request for declaratory order.

Instead the Commission appears to have administered the Petition according to....

Alternative Action 3: *Schedule the Matter for a Hearing*
HAR §§15-15-100(a)(3) and 15-15-103 allow the Commission discretion to conduct a contested case hearing on a petition for declaratory order.....

*The Petitioner has not indicated that the petition can't be disposed of in a fair (nonprejudicial) and expedient manner. The Commission should exercise its discretion not to schedule the matter for a hearing pursuant to HAR §§15-15-100(a)(3) **and 15-15-103.***

The Commission did schedule a hearing according to HAR §§15-15-100(a)(3) but it did not allow the hearing according to **15-15-103**, as a contested case hearing, even though the Petition identified that it was filed, in part, citing HAR **15-15-103**, as an applicable authority and the Petitioner made it clear at the beginning of the hearing that it was their expectation that cross examination of witnesses would be allowed.

Highly relevant here the DO also cited in its Finding Of Fact ("FOF") 44.....

*On July 18, 1969, the Commission held a hearing in Kona, Hawai'i to consider and adopt maps pursuant to the 1969 district boundary review. **The minutes of this hearing** state:*

" ... move that the district boundary maps for the County of Hawaii shown on the maps now before this Commission and dated July 18, 1969, be adopted with the rezoning of lands as shown by the revised district (inaudible) maps to be effective concurrently with and subject to the rules and regulations of this Commission, adopted July 8, 1969 ."

What the DO omitted in the above quote, which is found on page 10 of the DO's cited **minutes** (actually a transcript)

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

"The minutes of" the Commission's July 18, 1969 "**hearing**" were not described or evidenced in the Petition, they were not described in the Staff Report and they were not discussed during the Petition hearing by anyone. **Yet the DO'S FOF 40. clearly refers to the 1969 hearings.**

The DO seems to have improperly cited such as a supporting fact that resulted in the printed Order Denying the Petition **188 days** after the Petition hearing, not within 120 days as required in the LUC's HA Rules.

The **Staff Report** appears to have described that the DO had to be issued **within 120 days**.

The Petitioners were not aware that the above quoted **1969** LUC redistricting hearing transcripts and minutes ("**Transcripts**") existed. Following **FOFact(s) 40 and 44's** discovery, in the DO, the Petitioners requested that the minutes and transcripts of the Commission's 1969 redistricting hearings for Hawai'i Island be provided. The LUC's staff subsequently provided copies of the **1969** hearings Transcripts to the Petitioners.

After reviewing the Transcripts the Petitioners found substantially more "**preponderance of evidence**" that the 1969 Commission never intended to redistrict the Petitioners property ("**Property**") into the Conservation District in 1969 (while the following 3 quotes do not reflect all of the confirming evidence from the Transcripts the following is copied from the 1969 April 26 hearing)....

Page 11.....

*The present conservation district comes to the line of Bebris left by the highest annual wave. The high water mark, the line of debris left by the high water mark. **Typically, agricultural uses will cease considerably mauka of that line and what we're endeavoring to do here is to draw a line which would more properly represent the change.***

and again on page 11

*With respect to that **it is not our thinking that this has to be a rigid or firm line.** It is flexible in the same manner as all boundaries are upon application. We feel it is a more realistic distinction between agricultural uses and the shoreline than what presently exists.*

and then on pages 42-43

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

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

The Petitioners then filed a Motion for Reconsideration ("**Motion**") of the denial of the Petition citing quotes from and exhibiting **3 Transcripts** of the 1969 Commission's redistricting hearings on Hawai'i Island. The Commission denied the Motion despite the **preponderance of evidence** provided in the Petition and added to in the Motion.

Specifically, relevant to the Request, one of the transcripts described a citizen's spoken concern that the proposed SLUD **lines** on maps appeared to overlay *shoreline* cane fields between the northerly Waipio Valley all of the way to Puna, southerly (effectively including all of the *Hamakua Coast* and extending even further past the City of Hilo and not terminating at the "*Hilo District*" or the "*South Hilo Judicial District*" (see DO's COL'S FOF(s) 41-43.)

The **1969** Commission representative consultant described that the subsequent interpretation of the precise location of the district boundary would apply that lands that were in agricultural use in 1969 had not been redistricted if a land owner presented such evidence on application for a boundary interpretation. This was further confirmed in the July 18, 1969 redistricting hearing, evidenced in the Transcript, when the Commission's Executive Officer introduced the proposed SLUD maps to the Commission for their adoption wherein he stated 'lands in agricultural use are excluded'.

In many ways the Petition hearing and the DO were not administrated according to §HRS 92, §HRS 91, HAR §15-15 and the State's Constitution.

Under the previous Chair the Commission has issued at least 3 DO(s) that appear to conflict with §HRS 92, §HRS 91, HAR §15-15 and the State's Constitution (referenced earlier here as Outstanding Litigation(s)). In all 3 cases this has forced all of the petitioners into a long, expensive process of court appeals all of the way up to HSC. **This represents an abuse of the LUC's administrative authority and an the Commission's enormous waste of the Government's resources** which appears to have more to do with the an apparent present day political agenda than an impartial review and an Order supported by the comprehensive LUC's historical records of 1969 facts. **Effectively land cannot be redistricted by boundary interpretation.**

It appears that the LUC, rather than exercising its authority properly, is attempting to exhaust petitioners time line and \$ to effect the denial of petitioners' rights. As also described earlier herein this directly conflicts with the Commissioners Oath Of Office.

These matters are not about changing lines on maps. As the Exhibit 1, Staff Slide presentation clearly describes that the lines on maps do not represent the precise location of SLUDistrict boundaries. Rather other factors are to be taken into consideration including the other LUC historical records and actual land use evidence. It is clear that the 1969 Commission intended that the lines on maps are reference lines that are subject to interpretation.

The **Executive Session for the Commission's Oct. 4, 2023** meeting provides this Commission another opportunity to recognize its errors and fix them and that is what this testimony directly requests in regards to DR21-72.

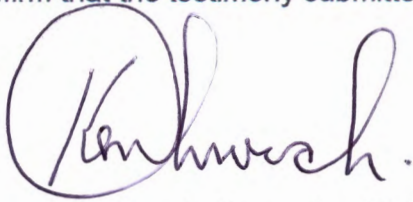
The Commission needs to consider that not withdrawing (or by whatever form it may choose) its DO21-72 and forcing the Petitioners appeal through the courts will undoubtedly set a precedent likely resulting in a substantial adjustment of the precise location of shoreline SLUD boundaries Statewide and not just the Petitioners' Property.

Simply and alternatively the Commission, *by its own motion*, see HAR 15-15-22(f), may simply issue a new boundary interpretation for the Property without an adjustment to the line on its SLUD Map H-65. This is entirely within the Commission's authority OR the Commission may also schedule a contested case hearing. That would be a very public event just like the appeal before the Court already is. This will likely and increasingly provoke a number of requests for new boundary interpretations Statewide.

The Commission should not be concerned about winning litigation for the sake of winning. It should be concerned about doing what is right. In 1999 the Commission did what is right, in 2022 it did not. That is what happened in DR99-21 Stengle and DR99-22.

Thank you for considering this testimony.

I affirm that the testimony submitted is the truth.

A handwritten signature in purple ink, appearing to read "K Church", enclosed within a circular purple ink stamp.

Kenneth S. Church, September 28, 2023
P.O Box 100014
Hakalau, Hi, 96710

email: dockline3@yahoo.ca

ph. 808 2382417

Attachments Exhibits 1 & 2

From: [Ken Church](#)
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- the past and current Commission is driven more by a win motive rather than a fair administration of justice as provided for in law,
- the past and current Commission is arrogant of its responsibility.

The law provides for the appeal of the Commission's Decisions and Orders. **The LUC's AG representative is very obviously using procedural tedium, in the above cases, to not allow the Commission's decisions to be reviewed in Court.** That is what the AG is scheduled to report to you today. If the AG's continuing tedium of arguments to delay or prevent the review of the Commission's decisions by a court at the continuing instruction of the present Commissioners this is shameful and very clearly a breach of each of the Law, the Commission's HA Rules, the Commissioners duties and their Oath's of Office. You all are responsible for the actions of your AG representative.

I have attached to this testimony a copy of the LUC staff's 2020 orientation slide presentation (**Exhibit 1**) which presents to the Commissioners how boundary interpretations are **supposed to be made**. You will note that on the right hand of each slide is a paragraph where the LUC **staff presenter** describes the slide. It is only a **15 slide long** presentation. I first ask that you review the slide presentation and then read my testimony here. While, at a first read, you may not find a contrast between the present administration of boundary interpretations I direct you to the following slides and presenters notes.

The slide presentation and the LUC's '**presenter notes**' describes how SLUD boundaries are supposed to be interpreted. The file is a *pdf* file. When opened in pdf format the staff's verbal presentation i.e. '**presenter notes**', which accompanied the slides, can be seen on the right hand side of each slide.

I first point out that **slides 4&5** show 2 documents of relevance here to the LUC's 1969 redistricting. Slide 4 first shows an OPSD document on its left hand side and the middle document is the LUC's own historical document.

Staff presenter **note #5** has been interpreted, in at least one of the Case Hearings described above as *Outstanding Litigations*, to misrepresent that the ***State Of Hawaii Land Use Districts And Regulations Review ("Report")*** is a OPSD document according to the State Office of Plannings ("**OPSD**") own record of file (See DR99-22) and **Exhibit 2**. In Exhibit 2, ***Laura H. Thielen, Director, State Office of Planning***, describes that the Consultants authored the 1969 redistricting Report **acting as the LUC's representatives** to the community... (see **Exhibit 2**, page 3).....

In accordance with the provisions of Chapter 205-18 HRS, the Office of State Planning provided a five year review Reviewed Hawaii State Plan Counties General Plans Counties Development and/or Community Plans.

The results of the review were then transmitted to the Land Use Commission for assessment and evaluation.

The LUC's staff **note to slide 5** describes that the ... (Note we have added emphasis to text selectively throughout the quotes here)

The first 5-Year Boundary Review was conducted in 1969 by the LUC with the assistance of consultants Eckbo, Dean, Austin & Williams.

This further confirms that the Report is the LUC's official record of its redistricting activities and actions in 1969 and not just a report that does not bear the weight of a historical **LUC document**. The LUC's **staff notes** go on to describe, specifically for reference here, including.....

- the SLUD boundary lines on the maps are not intended to represent the precise location of a boundary but rather are to be interpreted as reference lines that are subject to interpretations based on historical commission records as well as physical land use records, **see Presenter note for page 7.....**

Land Use Boundaries were then approximately depicted on the respective quadrangle

this contrasts with various statements made by the Commissioners during the various **Outstanding Litigations** wherein the Commissioners state a belief that the SLUD lines on maps represent **boundaries** and not the approximately depicted location of SLUD lines on maps, (**just referencing an undefined line on a map as a boundary does not make it a defined boundary**)

- **see next - Presenter note for page 8.....**

*LUC Shall Provide Additional Information
State Land Use Boundaries, Historical State Land Use, Historical Tax Map Key,
Previously Prepared Determinations, SLU Documentation
All information shall have bearing on the SLU District Boundaries Determination*

The Commission has mistakenly interpreted that the SLUD lines on maps were intended to represent a higher interpreting authority of representation of the precise location of SLUD lines than All information.....

*Additional Information
State Land Use Boundaries,
Historical State Land Use, Historical Tax Map Key,
Previously Prepared Determinations,
SLU Documentation
All information shall have bearing on the SLU District Boundaries Determination*

Specifically I point out here that there also exists historical LUC 1969 redistricting hearing transcripts and minutes which will be discussed later in this testimony.

- **see next Presenter note for page 11.....**

*Basis for SLU District Boundaries Location.....
Official SLU District Boundaries Map
SLU District Boundary in Metes and Bounds,
Files Currently in Land Use Commission's Office,
Previously Prepared Determinations,
Land Use Commission's Historical References,*

Any Pertinent Evidence Per Subject Parcel

very clearly the SLUD maps are not to be interpreted to have a greater authority than...

*Files Currently in Land Use Commission's Office,
Previously Prepared Determinations,
Land Use Commission's Historical References,
Any Pertinent Evidence Per Subject Parcel (i.e. ag. use and suitability for ag.)*

In the case of DR21-72 and DR21-73 the Commission repeatedly asserted that the apparent location of the undefined SLUD lines on LUC Maps were of a higher referencing authority than other LUC historical records, County ag. zoning, and land owners exhibits and proof of ag. use.

The Petitioners submitted a petition for a Declaratory Order ("DO") DR21-72 ("**Petition**") on June 17, 2021. Petitioners requested a DO from the State of Hawai'i Land Use Commission ("LUC" and/or "**Commission**") seeking clarification and correction to a Commission Boundary Interpretation and reimbursement and waiver of fees. The Commission first denied the Petition and when Petitioners filed a Request For Reconsideration ("**Request**") and added substantially more highly relevant documents in evidence the Commission denied the Request for various reasons including that such evidence should have been provided with the Petition and therefore not applicable for reconsideration.

The Commission erred in a number of substantial and meaningful ways in its administration and hearing of the Petition and the Request.....

1. The Petition stated that it was filed, including, according to HAR 15-15-103, which Rule was believed by the Petitioners to be for a contested case hearing,
2. The DO's Finding Of Fact ("**FOF**") 9. stated.....
Petitioners did not request a hearing on the Petition as provided for in HAR § 15-15-103.

This incorrect statement was repeated in the DO's FOF 53. and Conclusion Of Law ("**COL**") 4. The opening paragraphs of the Petition stated that the requested authority included *HAR § 15-15-103*.

3. The Commission's Order Denying the Petition DO 21-72, COL section, recited that the Petitioners did not meet the "*preponderance of evidence*" standard, citing §HRS 91-10(5) as an authority. **All of §HRS 91-10 Law is stated to be in regard to contested case hearings, not just §HRS 91-10(5).**

§HRS 91-10(3) Law also states that cross examination of witnesses is to be provided,

4. Petitioners stated, at the beginning of the hearing their expectation to be allowed to examine witnesses to the hearing,

(a) Chair Scheuer stated his belief *that would be allowed*,

(b) Mr. Orodener then corrected the Chair stating that *there were no witnesses and the hearing was not that sort of a hearing*,

- (c) subsequently, later in the hearing, **Chair Scheuer swore in 2 witnesses**, OPSD representatives Macki and Funakoshi,
 - (d) Chair Scheuer did not provide the Petitioners with an opportunity to cross examine the witnesses that he swore in at the hearing,
5. Chair Scheuer first erred by not recessing the hearing for the **Law stipulated 30 minutes** (re: §HRS 92 (c)) which provides that the Petitioners may have secured a better wifi connection in order that they may present their evidence with audio reference to visual evidence on screen before everyone at the hearing, instead the Petitioners were instructed to turn off their visual presentation in order that, at least, their audio could be heard and the hearing could proceed without the stipulated 30 minute recess which is provided for as a legal requirement in §HRS 92 (c),
 6. In the Request For Reconsideration of the Commission's denial of the Petition Chair **Dan Giovanni** did not rule on Petitioners verbal Objection during the Request hearing,
 7. The Commission also did not rule on the Petitioners subsequently filed written Objection which we filed subsequent to the Request hearing and before the written denial of the Request was issued by the Commission,
 8. The Commissioner's questions, during the Petition hearing, and the DO betrayed that the Commissioners were **mistakenly** of the impression that.....
 - (a) the Commission's **DO was discretionary** when, in fact it was not, rather **it was to be strictly evidence based**,
 - (b) that the SLUD **lines** on the Commission's maps substantially represented the defined **boundary** in the area of the Petitioners' property to follow a **roadway**, which was described on the Report's page 86 as one possible criteria, when in fact the SLUD **line**, which crossed the Property, **was not a roadway**, the evidence described that the **line** followed the mauka boundary of a **former railroad** which had previously crossed the Property, the r.r. no longer existed because **it had been removed 20 years earlier** before the property was considered for redistricting in 1969 and the land had subsequently become part of the cane field farming operation existing in 1969,
 - (c) allowing the Petition would require that the undefined SLUD reference **lines** on its Map H-65 would have to be adjusted,
 - (d) set the State up for liability,
 - (e) set a precedent,
 - (f) represent a change of a SLUD boundary rather than just an undefined reference **line** on a SLUD Map.

All of the above (a) - (f) described Commissioners assumptions **are not evidence based** and **were not relevant** to the Commission's denial of the Petition.

9. The DO hearing process did not follow the proper administration of the Petition, **see Staff Report** (Exhibit 3) list of 3 **Alternative "Options" / "Actions"** ("**Options**"), which text of the 3 begins on the **Staff Report's** page 8 (which is reflective of HAR 15-15), beginning on **Staff Report** Page 7

*The Commission has **three options** in a Petition for Declaratory Ruling: HAR §15-15-100(a), provides the alternative actions required of the Commission for processing a petition for declaratory order. Paraphrasing that subsection: The Commission, within **ninety days** after submission of a petition for declaratory order, shall deny the petition in writing, or issue a declaratory order on the matters contained in the petition, **or set the matter for hearing**, as provided in §15-15-103, HAR, **provided that if the matter is set for hearing, the Commission shall render its findings and decision within one hundred twenty days after the close of the hearing.***

The Commission is required to decide at this time:

(1) whether it will deny the Petition; (2) issue a declaratory order; or (3) set the matter for hearing.

Note here: the Staff Report described that option (1), cited 4 possible reasons to deny the petition outright **without a hearing** did not apply.

NOTE: (in part (3) of (4) of **Option 1** here)

*3) The issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise. **At this time, the Commission is not involved in any pending docket or litigation involving this particular issue.***

Further note here the DO cited

FOF 53.

The Commission finds that the issuance of a declaratory order in this matter may affect the interest of the State, or the Commission in a litigation that is pending or may reasonably be expected to arise.

This directly conflicts with the Staff report paragraph (3), above, without any evidence supporting the unsupported belief of **Fact** and in direct conflict with its own Staff's Report.

and the same again in **COL 8.**

8. HAR §15-15-100(a)(1)(C) provides that the Commission can deny the petition where "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 expected to arise ... "

The DO's **COL 8** is also in contradiction to the Staff Report's, paragraph (3), shown above, AND its **COL 8** is not supported by any evidence.

Resuming again here the Staff Report.....

Alternative Action 2: Issue a Declaratory Ruling

*On July 17, 2021, Church filed a petition for declaratory order. Within the 90-day time period, the Commission must render a decision; then an order needs to be prepared and adopted by the Commission at a second meeting before October 15, 2021. HAR §15-15-100(a)(2) **does not require a hearing** before the Commission issues a declaratory order.*

It is required that a DO has to be issued within 90 days or the Petition has to be set for a hearing.

HAR §15-15-100(a), provides the alternative actions required of the Commission for processing a petition for declaratory order. Paraphrasing that subsection:

*The Commission, within ninety days after submission of a petition for declaratory order, shall deny the petition in writing, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in §15-15-103, HAR, provided that if the matter is set for hearing, the Commission shall render its findings and decision within **one hundred twenty days after the close of the hearing**.*

The Commission did set the matter for a hearing within the stipulated 90 days.

The LUC heard the Petition on Sept. 8, 2021 . The LUC issued the DO on March 15, 2022, a period of **188 days later**.

10. The Commission's administrative conduct of both hearings and resulting orders were in violation of several different sections of §HRS 91, §HRS 92, §HRS 205 and in violation of the Appellants rights as provided for in the State's Constitution.

The Petitioner believes **and requests** that the Commission revoke, cancel, withdraw its DO OR hold a contested case hearing for the Petition.

The LUC staff report to the Commission described the specified process for administration of the Petition wherein the Staff Report described **Alternative Actions 1-4**, which are provided for in the LUC's §HA Rules for the administration of the Petition. The Staff Report stated the following in regards to Alternative Action 1.....

Pursuant to HAR §15-15-100(a), the Commission, for good cause, may also deny the Petition and refuse to issue a declaratory order under four circumstances. Based on review of the Petition for Declaratory Order, staff has made the following assessment of the relevant criteria:

1) *The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future.*

Church's filings refer to and incorporate existing documents and records from the 1969 and 1974 State Land Use District Boundary Review, a district boundary interpretation issued by the Commission (No. 92-48), HRS §§205-2(a), 205-3, 205-3.1(a), 205-4(a), 205-4.1, 205-7, 205-8; and, the land use district boundary interpretation process under HAR §15-15-22.

Therefore, the question is not speculative or purely hypothetical, and does involve facts that exist on the record.

2) *The Petitioner's interest is not of the type that would give the Petitioner standing to maintain an action if the Petitioner were to seek judicial relief. Based on Petitioner's declarations and information contained in their petition; Petitioner's would appear to have standing in the event they sought judicial relief.*

This directly conflicts with the LUC's AG representative's attempts to block the Petitioners from their day in Court on appeal, which is one of the subjects of today's hearing's Executive Session.

3) *The issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise. At this time, **the Commission is not involved in any pending docket or litigation involving this particular issue.***

4) The matter is not within the jurisdiction of the Commission. The matter requests interpretation of statutory and administrative rules related to the setting of State land use district boundaries and the waiver of fees associated with filing and hearing expenses under HRS 205. The authority to set and interpret State land use district boundaries and waive associated filing and hearing fees is within the Commission's statutory jurisdiction.

Therefore, the Commission does not have good cause to deny the declaratory ruling request due to a lack of jurisdiction.

The Petitioners point here to **3)**, above. The Commission cited **3)** in the DO's COL, **Jurisdiction, paragraph 8** as applicable which appears to conflict with its Staff's interpretation of HAR §15-15-100(a) wherein the Staff report states **Therefore, the Commission does not have good cause to deny the declaratory ruling request due to HAR §15-15-100(a)**, yet that was cited in the DO's COL, Jurisdiction, paragraph 8 as applicable.

Alternative Action 2: Issue a Declaratory Ruling

*On July 17, 2021, Church filed a petition for declaratory order. Within the 90-day time period, the Commission must render a decision; **then an order needs to be prepared and adopted by the Commission at a second meeting before October 15, 2021.** HAR §15-15-100(a)(2) does not require a hearing before the Commission issues a declaratory order.*

The Commission should make a determination on the request for declaratory order.

Instead the Commission appears to have administered the Petition according to....

Alternative Action 3: Schedule the Matter for a Hearing

*HAR §§15-15-100(a)(3) and 15-15-103 allow the Commission discretion **to conduct a contested case hearing** on a petition for declaratory order.....*

*The Petitioner has not indicated that the petition can't be disposed of in a fair (nonprejudicial) and expedient manner. The Commission should exercise its discretion not to schedule the matter for a hearing pursuant to HAR §§15-15-100(a)(3) **and 15-15-103.***

The Commission did schedule a hearing according to *HAR §§15-15-100(a)(3)* but it did not allow the hearing according to *15-15-103*, as a contested case hearing, even though the Petition identified that it was filed, in part, citing *HAR 15-15-103*, as an applicable authority and the Petitioner made it clear at the beginning of the hearing that it was their expectation that cross examination of witnesses would be allowed.

Highly relevant here the DO also cited in its Finding Of Fact ("FOF") 44.....

*On July 18, 1969, the Commission held a hearing in Kona, Hawai'i to consider and adopt maps pursuant to the 1969 district boundary review. **The minutes of this hearing** state:*

" ... move that the district boundary maps for the County of Hawaii shown on the maps now before this Commission and dated July 18, 1969, be adopted with the rezoning of lands as shown by the revised district (inaudible) maps to be effective concurrently with and subject to the rules and regulations of this Commission, adopted July 8, 1969 ."

What the DO omitted in the above quote, which is found on page 10 of the DO's cited *minutes* (actually a transcript)

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

"**The minutes of**" the Commission's July 18, 1969 "**hearing**" were not described or evidenced in the Petition, they were not described in the Staff Report and they were not discussed during the Petition hearing by anyone. **Yet the DO'S FOF 40. clearly refers to the 1969 hearings.**

The DO seems to have improperly cited such as a supporting fact that resulted in the printed Order Denying the Petition **188 days** after the Petition hearing, not within 120 days as required in the LUC's HA Rules.

The **Staff Report** appears to have described that the DO had to be issued **within 120 days**.

The Petitioners were not aware that the above quoted **1969** LUC redistricting hearing transcripts and minutes ("**Transcripts**") existed. Following **FOFact(s) 40 and 44's** discovery, in the DO, the Petitioners requested that the minutes and transcripts of the Commission's 1969 redistricting hearings for Hawai'i Island be provided. The LUC's staff subsequently provided copies of the **1969** hearings Transcripts to the Petitioners.

After reviewing the Transcripts the Petitioners found substantially more "***preponderance of evidence***" that the 1969 Commission never intended to redistrict the Petitioners property ("**Property**") into the Conservation District in 1969 (while the following 3 quotes do not reflect all of the confirming evidence from the Transcripts the following is copied from the 1969 April 26 hearing)....

Page 11.....

*The present conservation district comes to the line of debris left by the highest annual wave. The high water mark, the line of debris left by the high water mark. **Typically, agricultural uses will cease considerably mauka of that line and what we're***

endeavoring to do here is to draw a line which would more properly represent the change.

and again on page 11

*With respect to that **it is not our thinking that this has to be a rigid or firm line.** It is flexible in the same manner as all boundaries are upon application. We feel it is a more realistic distinction between agricultural uses and the shoreline than what presently exists.*

and then on pages 42-43

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

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

The Petitioners then filed a Motion for Reconsideration ("**Motion**") of the denial of the Petition citing quotes from and exhibiting **3 Transcripts** of the 1969 Commission's redistricting hearings on Hawai'i Island. The Commission denied the Motion despite the **preponderance of evidence** provided in the Petition and added to in the Motion.

Specifically, relevant to the Request, one of the transcripts described a citizen's spoken concern that the proposed SLUD **lines** on maps appeared to overlay **shoreline** cane fields between the northerly Waipio Valley all of the way to Puna, southerly (effectively including all of the **Hamakua Coast** and extending even further past the **City of Hilo** and not terminating at the "**Hilo District**" or the "**South Hilo Judicial District**" (see DO's COL'S FOF(s) 41-43.)

The **1969** Commission representative consultant described that the subsequent interpretation of the precise location of the district boundary would apply that lands that were in agricultural use in 1969 had not been redistricted if a land owner presented such evidence on application for a boundary interpretation. This was further confirmed in the July 18, 1969 redistricting hearing, evidenced in the Transcript, when the Commission's Executive Officer introduced the proposed SLUD maps to the Commission for their adoption wherein he stated **'lands in agricultural use are excluded'**.

In many ways the Petition hearing and the DO were not administrated according to §HRS 92, §HRS 91, HAR §15-15 and the State's Constitution.

Under the previous Chair the Commission has issued at least 3 DO(s) that appear to conflict with §HRS 92, §HRS 91, HAR §15-15 and the State's Constitution (referenced earlier here as Outstanding Litigation(s)). In all 3 cases this has forced all of the petitioners into a long, expensive process of court appeals all of the way up to HSC. **This represents an abuse of the LUC's administrative authority and an the Commission's enormous waste of the**

Government's resources which appears to have more to do with the an apparent present day political agenda than an impartial review and an Order supported by the comprehensive LUC's historical records of 1969 facts. **Effectively land cannot be redistricted by boundary interpretation.**

It appears that the LUC, rather than exercising its authority properly, is attempting to exhaust petitioners time line and \$ to effect the denial of petitioners' rights. As also described earlier herein this directly conflicts with the Commissioners Oath Of Office.

These matters are not about changing lines on maps. As the Exhibit 1, Staff Slide presentation clearly describes that the lines on maps do not represent the precise location of SLUDistrict boundaries. Rather other factors are to be taken into consideration including the other LUC historical records and actual land use evidence. It is clear that the 1969 Commission intended that the lines on maps are reference lines that are subject to interpretation.

The **Executive Session for the Commission's Oct. 4, 2023** meeting provides this Commission another opportunity to recognize its errors and fix them and that is what this testimony directly requests in regards to DR21-72.

The Commission needs to consider that not withdrawing (or by whatever form it may choose) its DO21-72 and forcing the Petitioners appeal through the courts **will undoubtedly set a precedent likely resulting in a substantial adjustment of the precise location of shoreline SLUD boundaries Statewide** and not just the Petitioners' Property.

Simply and alternatively the Commission, ***by its own motion***, see HAR 15-15-22(f), may simply issue a new boundary interpretation for the Property without an adjustment to the line on its SLUD Map H-65. This is entirely within the Commission's authority OR the Commission may also schedule a contested case hearing. That would be a very public event just like the appeal before the Court already is. This will likely and increasingly provoke a number of requests for new boundary interpretations Statewide.

The Commission should not be concerned about winning litigation for the sake of winning. It should be concerned about doing what is right. In 1999 the Commission did what is right, in 2022 it did not. That is what happened in DR99-21 Stengle and DR99-22.

Thank you for considering this testimony.

Kenneth S. Church, September 28, 2023

Attachments Exhibits 1 & 2 AND sent by email and USPS

Exhibit 1, LUC Oct. 4, 2023 meeting



State of Hawai`i Land Use District Boundaries

https://files.hawaii.gov/luc/presentations/slud_per_hlsa_higicc_2020_slidesandnotes_presentation.pdf

Where is that boundary located
and what is the acreage?



Hawai`i Revised Statutes:

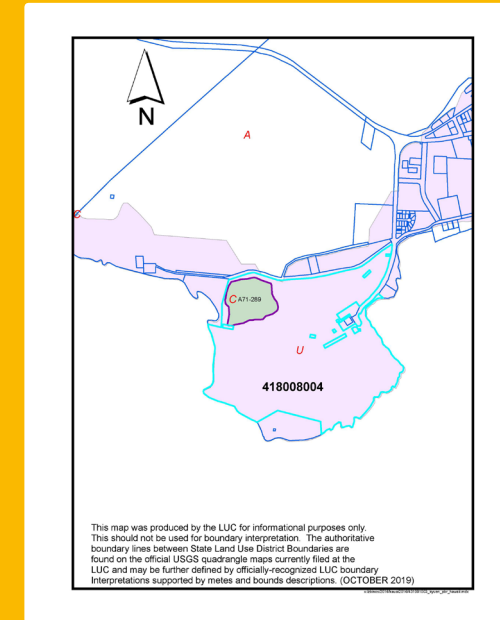
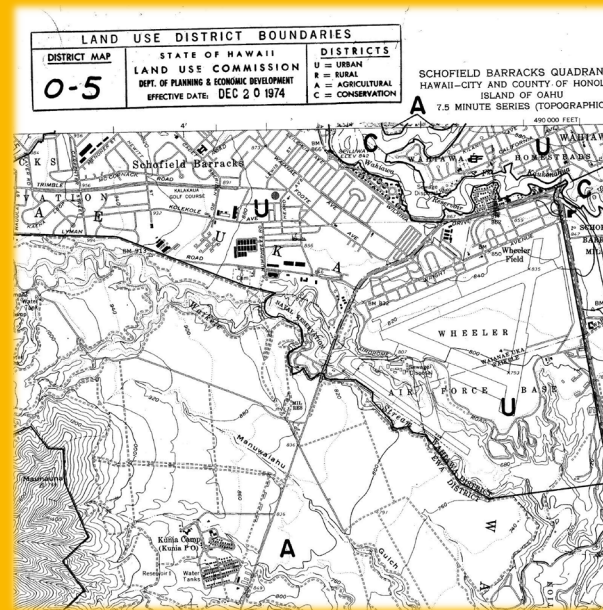
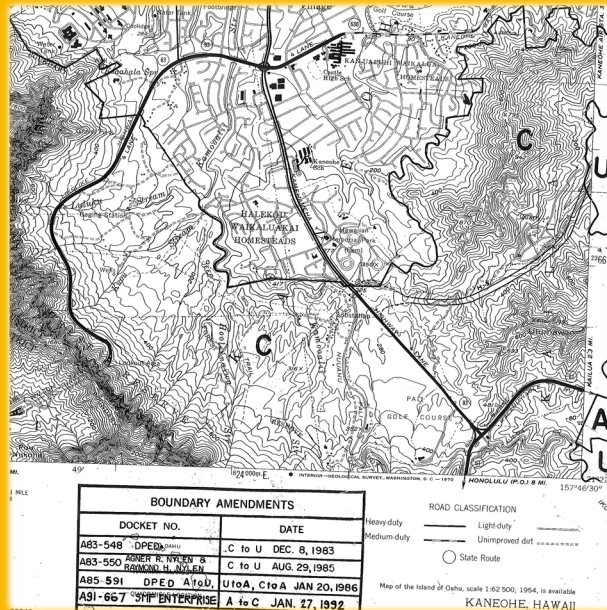
HRS §205, Districting and Classification of Lands

There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation.



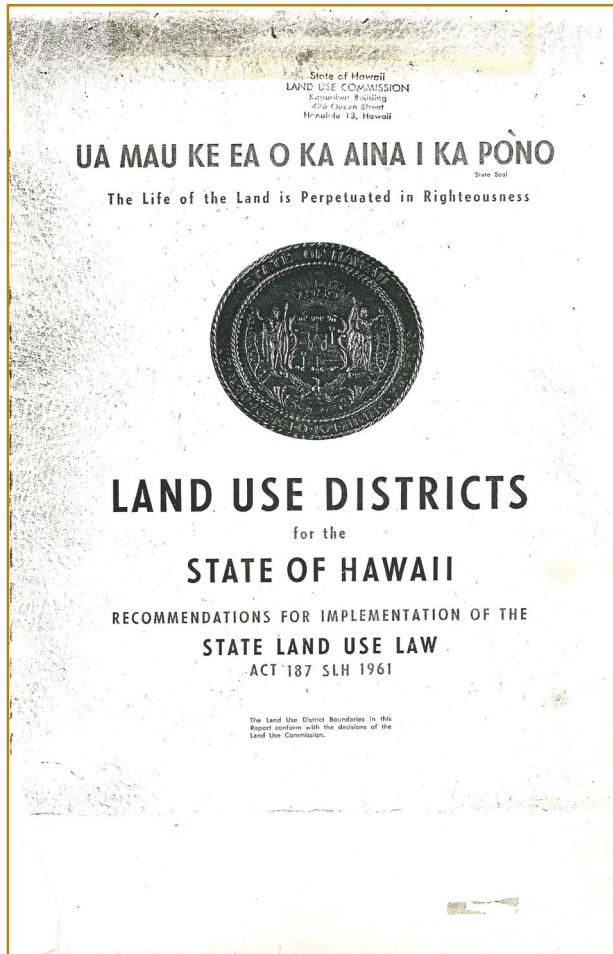
Hawai`i Administrative Rules

Subchapter 2 - Establishment of State Land Use Districts, §15-15-17 Districts; District Maps, The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, effective dated December 20, 1974," as amended, maintained and under the custody of the commission.

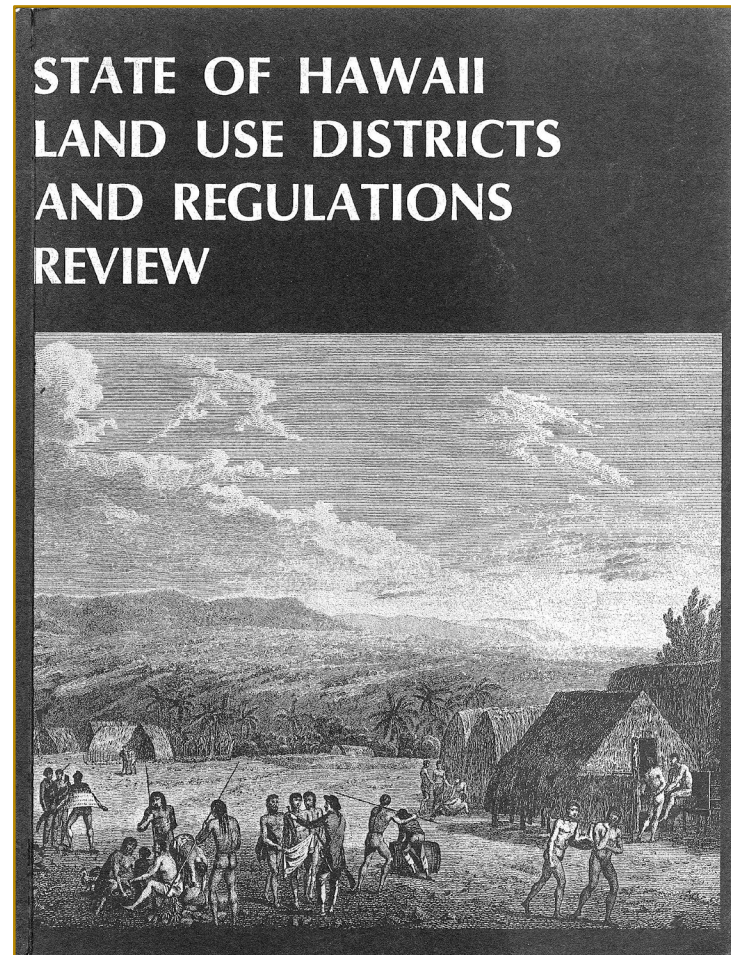


STATE LAND USE BOUNDARY REVIEW RECOMMENDATIONS

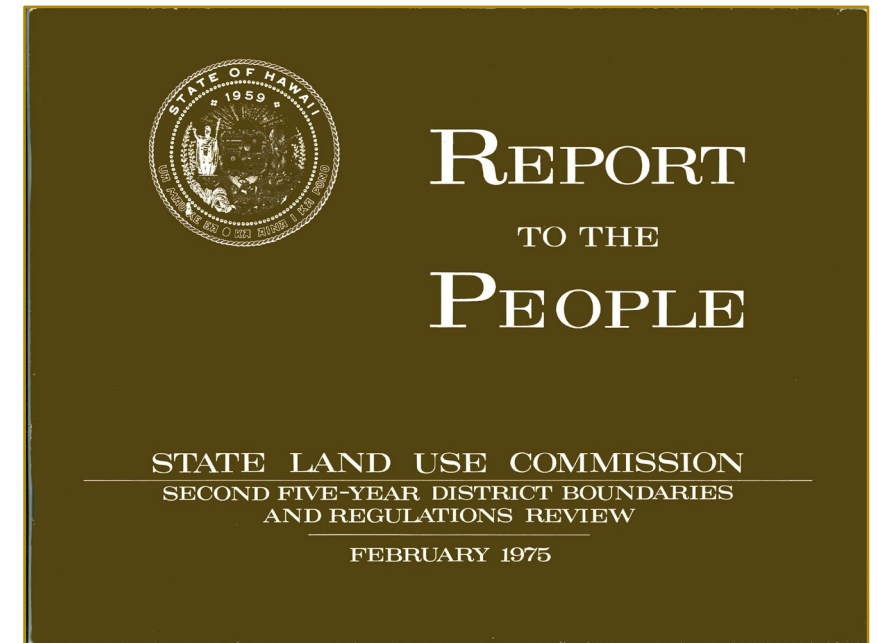
- Original 1964 Boundary Review



- 1969 Boundary Review

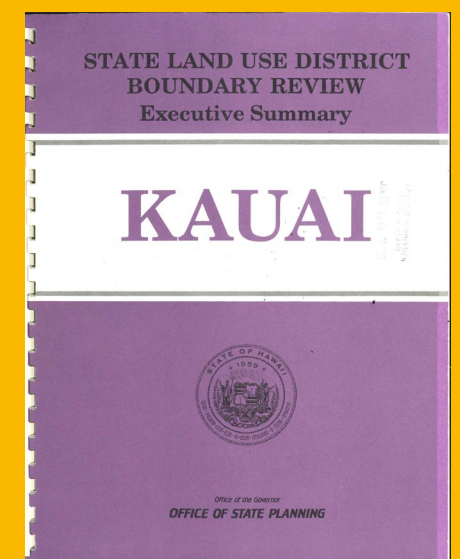
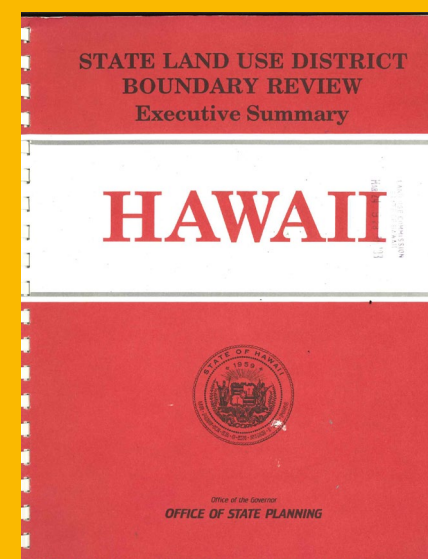
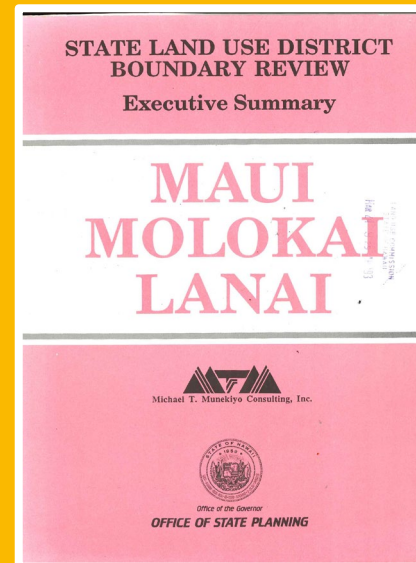
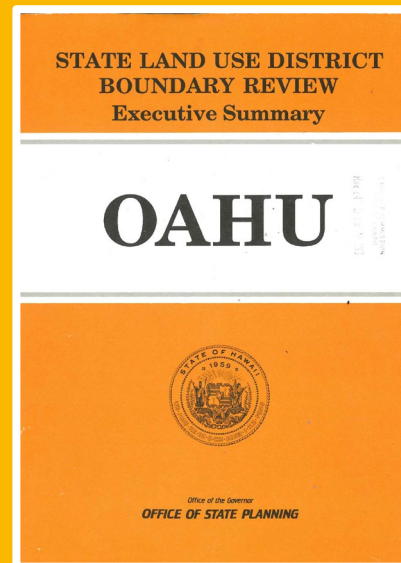
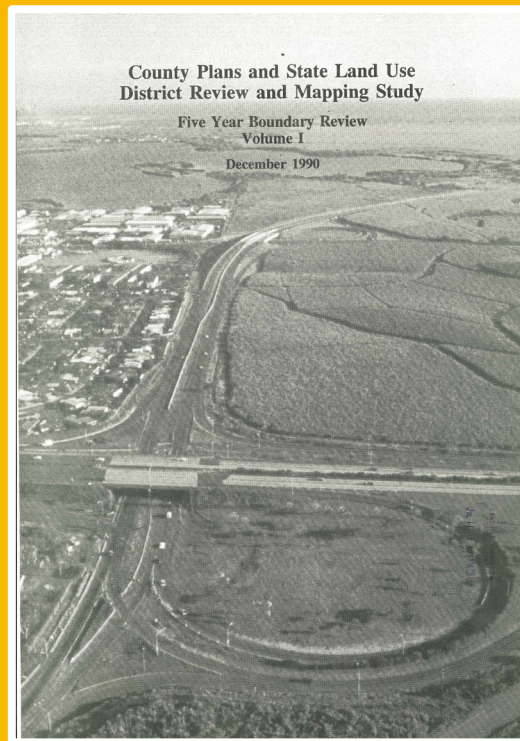


- 1974 Boundary Review

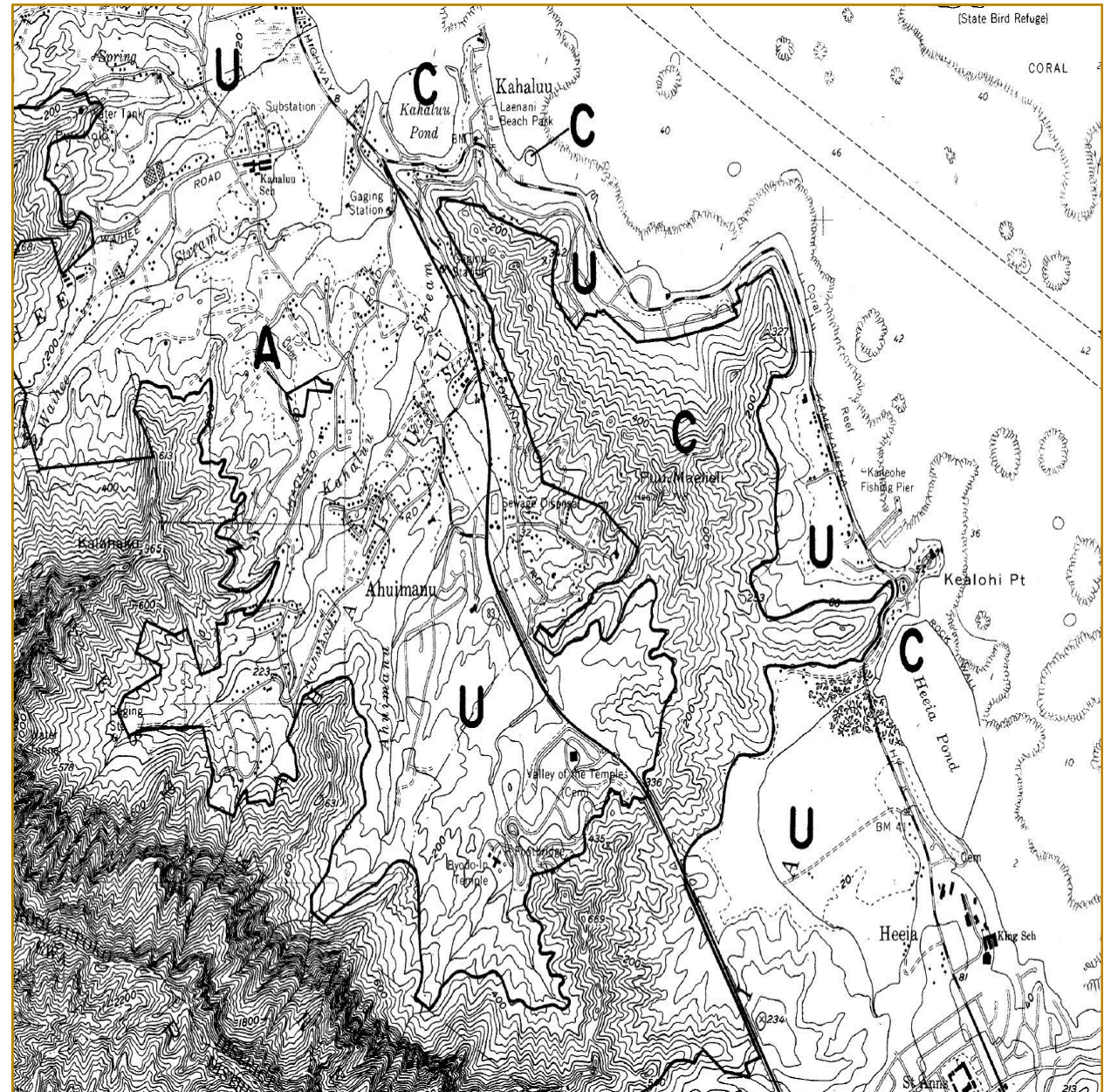


STATE LAND USE BOUNDARY REVIEW RECOMMENDATIONS

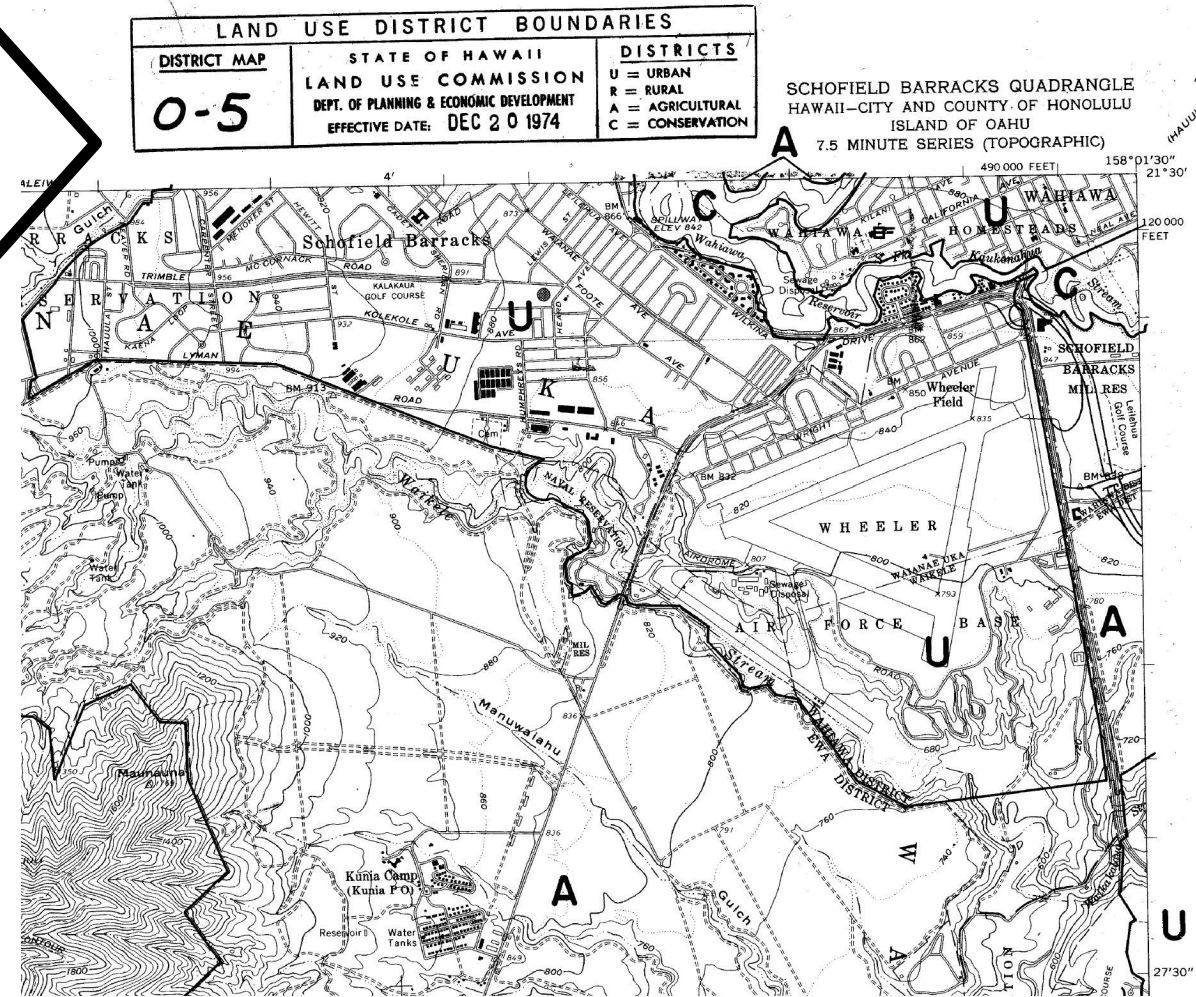
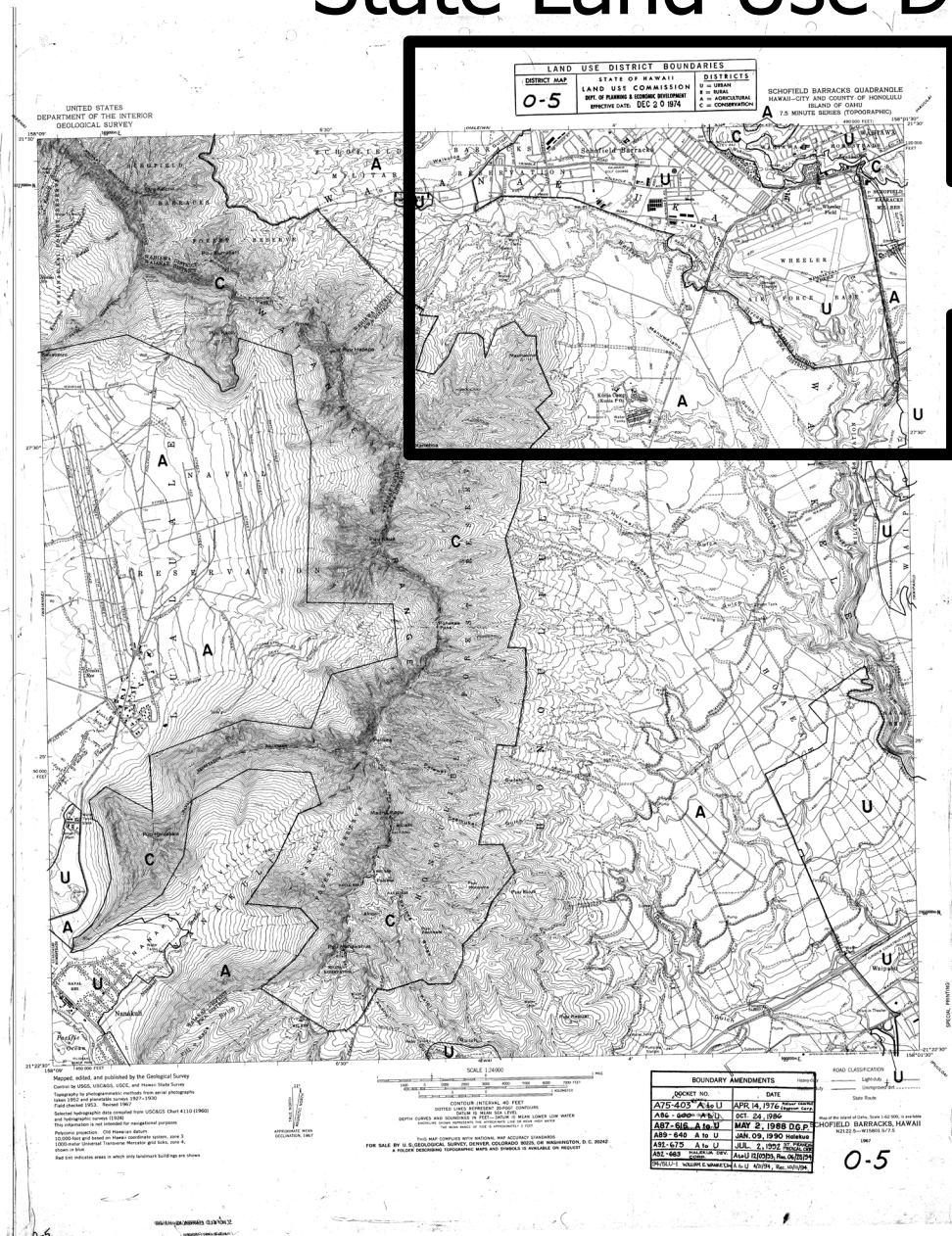
1992 State Land Use District Boundary Review



STATE LAND USE BOUNDARY REVIEW RECOMMENDATIONS CHANGED LAND USES



State Land Use District Boundaries Map

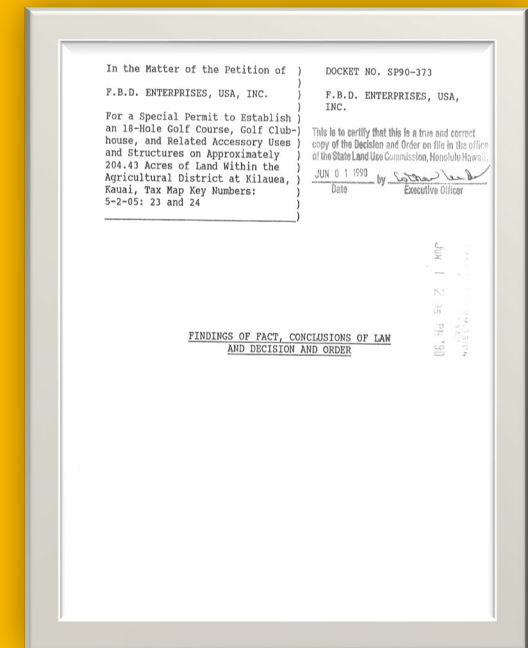
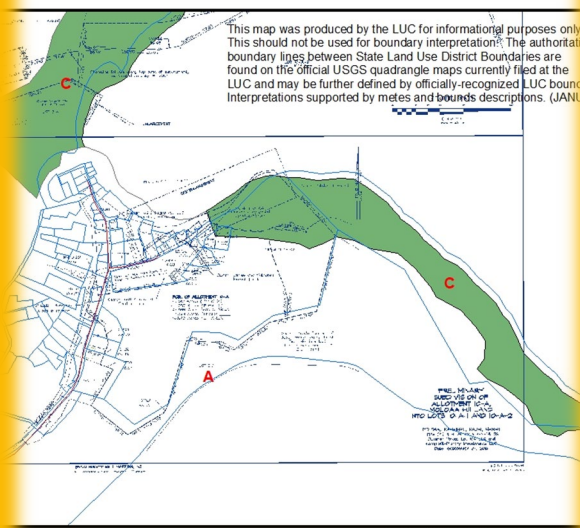
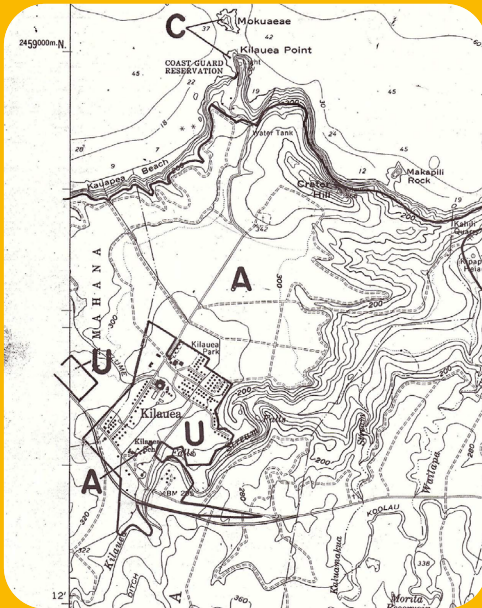


BOUNDARY AMENDMENTS		History of
DOCKET NO.	DATE	
A75-403 A to U	APR 14, 1976	Revised 10/14/76
A86-600 A to U	OCT 24, 1986	Original Copy
A87-616 A to U	MAY 2, 1988	6 P
A89-640 A to U	JAN. 09, 1990	Holekuk
A92-675 A to U	JUL 2, 1992	37 PAGES
A92-683 HALEKUK DEV. CO.	ALL U 12/19/93	10/19/94
PHILLIPS-1 WILLIAM E. WILKINSON	A to U 4/19/94	Revised

0-5

LUC Shall Provide Additional Information

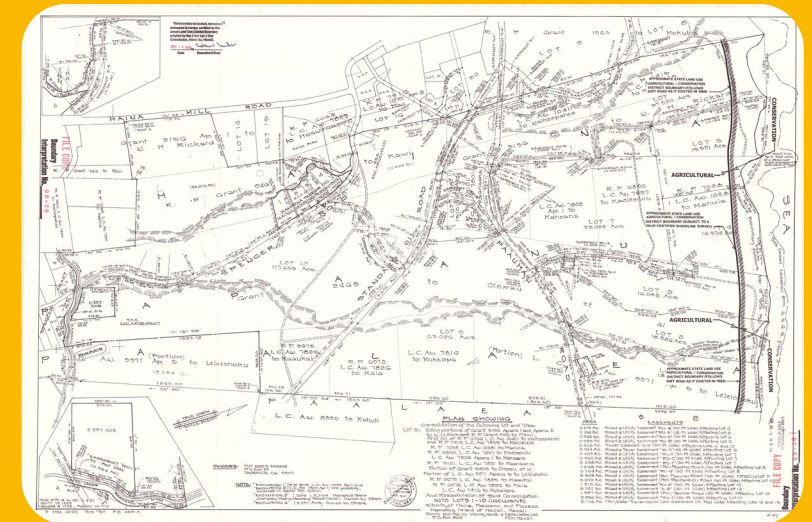
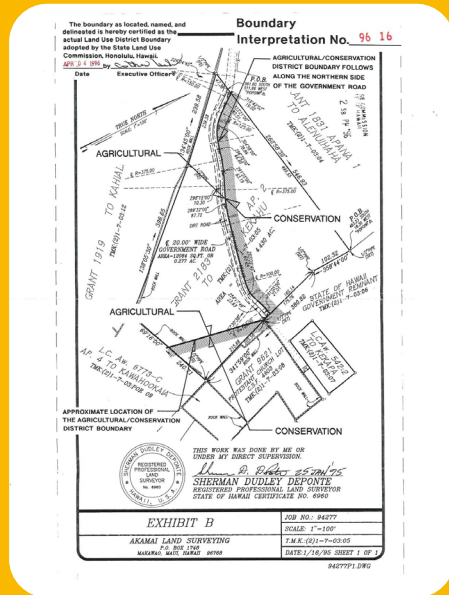
State Land Use Boundaries, Historical State Land Use, Historical Tax Map Key, Previously Prepared Determinations, SLU Documentation



Determinations from the Past

For determinations without State Land Use Boundaries depicted in metes and bounds shall have

"No Accurate Location and Acreage for Planning"



Basis for SLU District Boundaries Location

- Official SLU District Boundaries Map
- SLU District Boundary in Metes and Bounds
- Files Currently in Land Use Commission's Office
- Previously Prepared Determinations
- Land Use Commission's Historical References
- Any Pertinent Evidence Per Subject Parcel
- Reference §15-15-22, HAR – Interpretation of district boundaries





Property at Shoreline Submittal

§ 205 A-42, HRS
§ 15-15-22 (b),
HAR

- Current Certified Shoreline Survey and documentation
- Calculations of erosion and accretions located on survey
- Appropriate Land Court Applications required

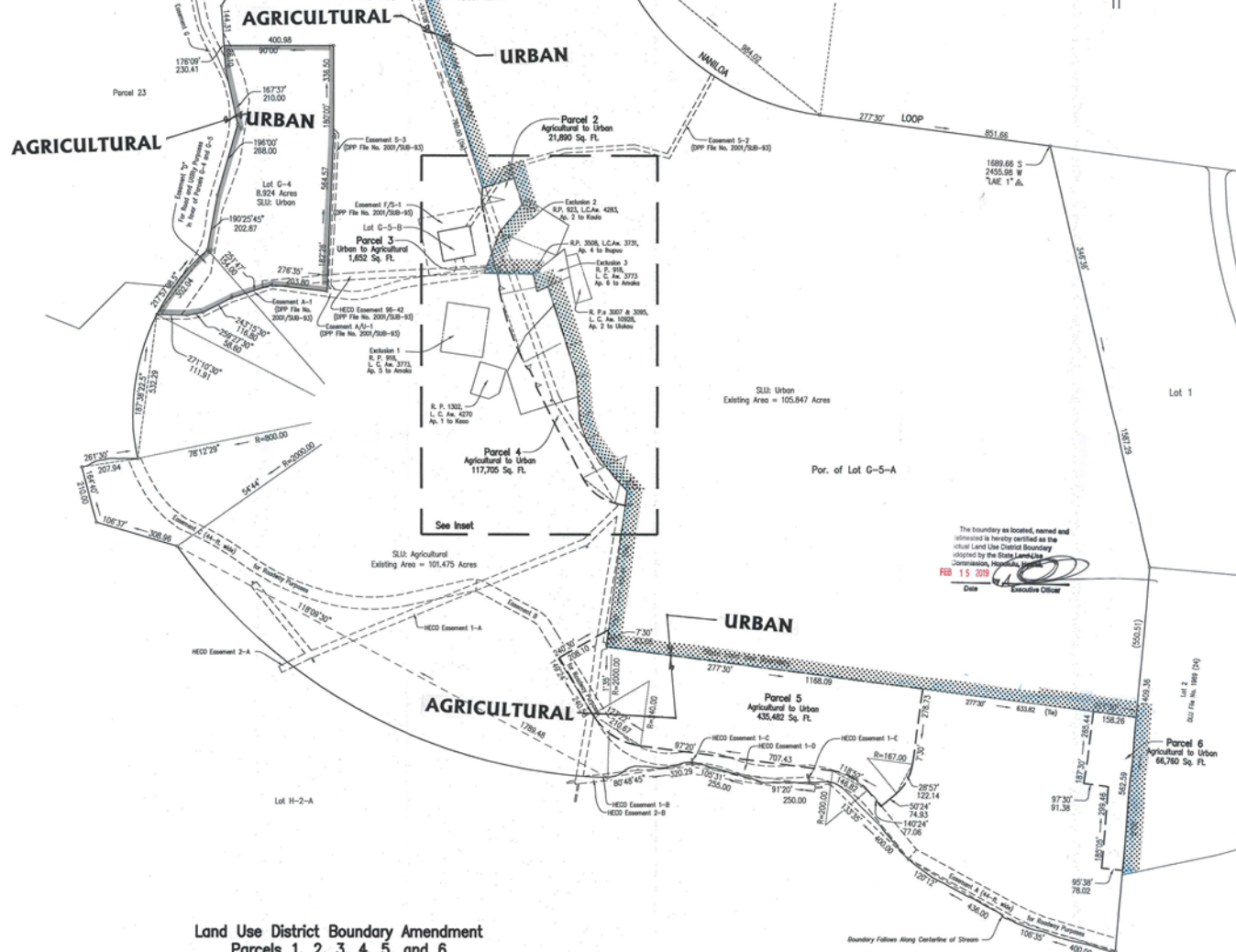


- Note: Due to the proximity to the coastal areas, the subject property may contain fish ponds and tidepools. These features are in the Conservation District unless otherwise designated

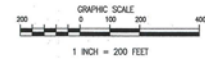


Notes:
Coordinates and azimuths referred to "T.M.E. 1" Δ.

RECEIVED
DEC - 5 2018
STATE OF HAWAII
LAND USE COMMISSION



Land Use District Boundary Amendment
Parcels 1, 2, 3, 4, 5, and 6
Being Portions of Lot G-5-A
As Shown on DPP File No. 2001/SUB-93
At Laie, Koolauloa, Oahu, Hawaii
Tax Map Key: (1) 5-5-006: 005



R. M. TOWELL CORPORATION
Don L.H. Aho
Don L.H. Aho
Licensed Professional Land Surveyor
Certificate Number 12749

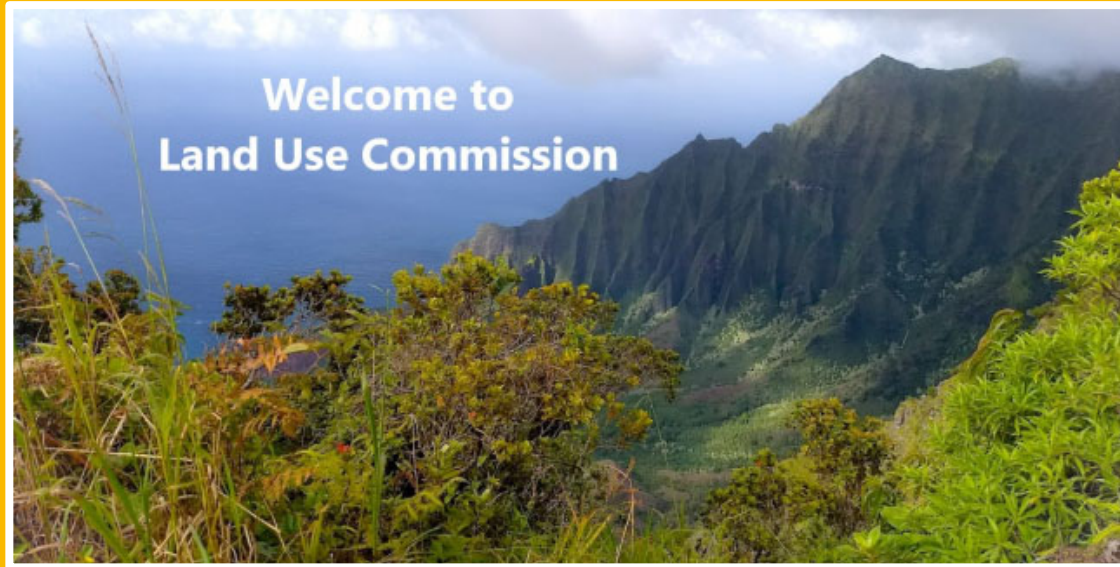
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LAND USE COMMISSION

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Submittals To State Land Use Commission

Website at **luc.hawaii.gov**, E-Mail, U.S. Postal Service





[Home](#) » [Boundary Interpretations](#)

BOUNDARY INTERPRETATIONS

BOUNDARY INTERPRETATIONS

Formal boundary interpretations are usually processed and completed within a time frame of 60 working days based upon the timeliness and adequacy of the material submitted by the requestor as of the submittal date. If you have any questions or concerns please contact our office at [\(808\) 587-3822](tel:8085873822) or dbedt.luc.web@hawaii.gov.

Submittal Date *

MM DD YYYY

Requestor's Full Name: *

First

Last

Mailing Address *

Street Address

Address Line 2

City

State / Province / Region

ZIP / Postal Code

E-Mail Address *

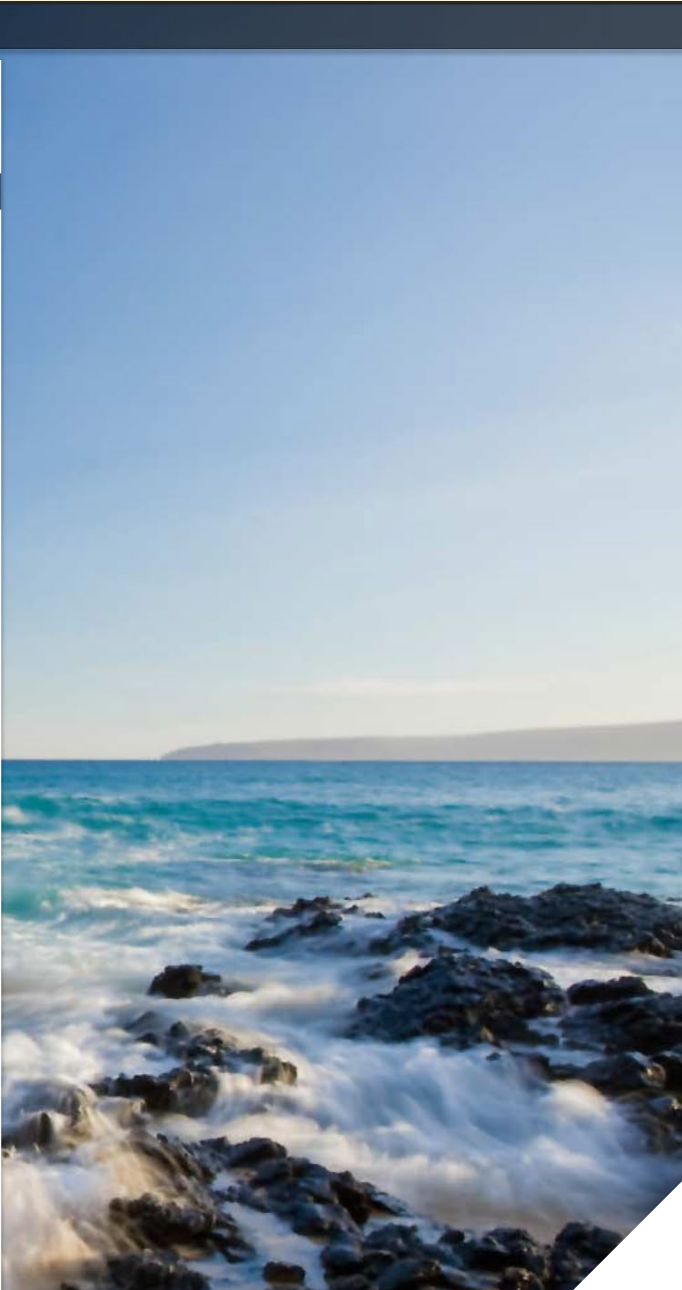
Phone Number *

Island and Area of Property *

Tax Map Key Number(s) of Property *

Acreage of Property *|

Upload Files (Maximum allowed on this server: 220MB) *





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Exhibit 2, Oct. 4, 2023
LUC meeting



A Short History of the State Land Use District 5-Year Boundary Reviews

July 2006

State Office of Planning
Department of Business, Economic Development & Tourism

Introduction

Hawai'i was the first state to pass a comprehensive land use law in 1961. The State Land Use Law is a "broad-brush" zoning measure exercised at the State level of government. The 1961 law required a complete review of the State land use district boundaries be conducted every five years to recommend needed changes that would address changes and trends in population and economic conditions.

This 5-Year Boundary Review process was intended to institutionalize regular comprehensive evaluations of the State land use district classification system. The scope of the 5-Year Boundary Review is broad and encompasses: the process used for reclassifications; district regulations; and the opportunity for the State Land Use Commission (LUC) to reclassify lands pursuant to the 5-Year Boundary Review.

Only three 5-Year Boundary Reviews have been conducted in the 42 years since the State officially adopted the initial land use district boundaries, primarily due to changes in the law detailed in this report. The current law directs the State Office of Planning to conduct a comprehensive boundary review every five years.

The 5-Year Boundary Review process is different and distinct from the process under which individual landowners (public or private) undertake individual petitions to reclassify lands. Individual petitions are project specific, involve limited land areas, and are considered on a case-by-case basis by the LUC. In contrast, reclassifications proposed as part of the 5-Year Boundary Review reflect a broad-based look at Statewide, county-centered, and regional economic, environmental, and socio-cultural needs and constraints. 5-Year Boundary Review proposals are intended to identify regional land use requirements rather than project-specific or individual landowner needs.

This report summarizes how the law relating to boundary reviews has changed over the past 42 years, and identifies the changes which currently limit the effectiveness of state-sponsored, proactive, comprehensive 5-Year Boundary Reviews. This report also provides data comparing boundary amendments sponsored by the 5-Year Boundary Review with the cumulative land reclassification changes resulting from individual petitions for boundary amendments. Finally, the report concludes that the State must reexamine the 5-Year Boundary Review process in order to successfully implement regular, comprehensive boundary reviews to plan for and address our State's environmental and socio-cultural regional land use requirements.

Laura H. Thielen
Director
State Office of Planning

Establishment of Hawai'i Land Use Law and 5-Year Boundary Review Process

In the early 1960s, the Hawaii State Legislature determined that the development of scattered subdivisions created problems of expensive yet reduced public services, as well as the conversion of agricultural lands for residential use were key reasons for establishing a statewide zoning system.

The State Land Use Law (Act 187, SLH 1961) established an overall framework for land use management where all lands in the State were classified into one of three Districts: Urban, Agricultural, or Conservation. The law also established the State Land Use Commission (LUC) and charged them with setting standards for determining the boundaries of each district; reviewing and acting upon proposed amendments to those boundaries; adopting regulations relating to matters within its jurisdiction; and conducting periodic, comprehensive reviews of the classification and districting of all lands. Temporary, interim boundaries were established in June of 1963. Amendments to the law in 1963 established guidelines for a fourth district called Rural and required that the official statewide district boundaries be established by a quasi-legislative process by the end of July 1964. With the establishment of official boundaries, the original law tasked the LUC itself with conducting the 5-Year Boundary Reviews and set the date for the first 5-Year Boundary Review to commence in 1969.

The First 5-Year Boundary Review and Amendments: 1969

The first 5-Year Boundary Review was conducted in 1969 by the LUC with the assistance of consultants Eckbo, Dean, Austin & Williams. The review was premised on the philosophy that "...elements of land, air, and sea are resources to be managed for the welfare of present and future generations."

The original State Land Use Law instructed the LUC to follow a quasi-legislative process for all individual boundary amendment petitions, amendments to rules of practice and procedure, and for any amendments proposed as part of a 5-Year Boundary Review.

During the period 1963 – 1974, the LUC conducted hearings and made decisions under "quasi-legislative" procedures. The quasi-legislative process meant the LUC provided public notice of their hearings, held public hearings, and afforded interested parties, including

Note: "the LUC conducted hearings with their consultant representatives replying to Hawai'i citizens questions in regards to proposed district SLUD lines on maps

Findings & Boundary Amendments of the 1969 5-Year Boundary Review

The Review found:

- ❖ sufficient vacant urban landse available to accommodate projected population growth on O'ahu and Maui counties;
- ❖ Hawai'i County had a significant surplus of urban lands; and,
- ❖ Kaua'i had sufficient urban lands but not in certain anticipated growth areas that resulted in the addition of urban lands at Princeville in Hanalei.

The Review also examined shorelines, river valleys, steep slopes, and scenic resources, resulting in addition of lands to the Conservation District.

Following a series of public hearings and action meetings on various islands in July, the LUC adopted boundary amendment changes that went into effect in August 1969.

landowners, an opportunity to present testimony. Anyone was allowed the opportunity to provide input on petitions regardless of whether they were legally affected by a decision.

This quasi-legislative process is currently used by all administrative agencies for their rule-making and is governed by the Hawai'i Administrative Procedures Act (HAPA).

The Second 5-Year Boundary Review and Amendments: 1974

The second boundary review was conducted in 1974 by the LUC with the assistance of consultants Marshall Kaplan, Gans, Kahn and Yamamoto, planners, and Daniel Mandelker, professor of law at Washington University in St. Louis, Missouri. Although the consultants were not tasked with recommending specific boundary amendments, recommendations for such amendments were requested by the LUC via public notices. Subsequent recommendations came from public agencies, landowners, and members of the general public. The consultants delivered their report to the Commission in February 1974 and the LUC held public hearings and made decisions by December 1974.

The second 5-Year Boundary Review was initiated using the quasi-legislative process. However, a legal challenge and a change in the law occurred in the midst of the review and subsequent amendment proceedings. This meant the 1974 5-Year Boundary Review was conducted during a major transition period.

Findings & Boundary Amendments of the 1974 5-Year Boundary Review

The Review resulted in:

- ❖ new urban lands reclassified on O'ahu (Waip'io, Ewa Town, and One'ula);e Hawai'i (Waikoloa, Ka'upulehu, and Kealahou); Maui (Wailuku, Wailuku Heights); and Kaua'i (Kapa'a, Nukoli'i);e
- ❖ new Agricultural District lands added on Hawai'i (Keauhou) and Moloka'i (Kaluako'i); and,
- ❖ new Conservation District lands added on Hawai'i (Kapapala, Hapuna, and Ke'e) and O'ahu (Kahaluu, He'eia Fishpond, and Hawai'i Kai).e

Transition Period: 1974 - 1985

The quasi-legislative process utilized by the LUC to issue boundary amendments was challenged in the summer of 1974. In the case of Town v. Land Use Commission, the Hawai'i Supreme Court ruled that an adjoining landowner having property interests in a proposed land use boundary change and who challenges that proposed change should be afforded the rights of parties to contested cases ("quasi-judicial" hearing) as identified in Chapter 91, HRS. The Court specifically indicated that comprehensive land use redistricting (pursuant to a 5-Year Boundary Review) as well as interim permits and redistricting were "quasi-judicial" functions in that redistricting "...is adjudicative of legal rights of property interests..."

The Town decision occurred after the LUC had initiated the quasi-legislative 1974 5-Year Boundary Review. The LUC had already held two rounds of quasi-legislative public hearings to gather information and examine proposed reclassifications pursuant to the 5-Year Boundary Review. Consequently, the LUC altered its procedures and subsequently conducted "quasi-judicial" (court-like) hearings.

In an effort to address the understandable public confusion stemming from the Town decision, the LUC issued on August 30, 1974, Special Order No. 74-1. Clarification of Procedure to be Observed during the Periodic Review of 1974. The Order specifically provided that "...all parties shall (1) be afforded opportunity to present evidence and argument on all issues involved; (2) have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts; and (3) have the right to submit rebuttal evidence." The Order created a split process where parties with property interests were accorded the contested case protection from HAPA while other interested persons had procedural rights as outlined in the State Land Use Law. Proceedings were both trial-like contested-cases and legislative (public) hearings. This Order began the shift from a "quasi-legislative" boundary amendment process to a "quasi-judicial" one based on contested-case guidelines contained in Chapter 91, HRS. However, the Order was designed to expire upon conclusion of the 1974 5-Year Boundary Review.

During the 1975 session, the Legislature amended the law to mandate the LUC to eliminate the quasi-legislative process used for boundary amendments (Act 193, 1975) - "...the commission is constituted as a quasi-judicial body and mandated to make impartial decisions based on proven facts and established policies." Additional substantive amendments to Chapter 205, HRS, made it clear that the LUC would handle all subsequent boundary petitions under a contested-case, quasi-judicial process as described in Chapter 91, HRS.

Interestingly, the Legislature simultaneously eliminated the requirement to conduct 5-Year Boundary Reviews. Accordingly, the question of which process, quasi-legislative or quasi-judicial was most appropriate for boundary amendments sought as a result of a 5-Year Boundary Review, was never addressed.

In 1985, the Legislature reinstated the requirement for a 5-Year Boundary Review of land use classifications (Act 230, 1985). The Legislature shifted the responsibility to conduct the 5-Year Boundary Review from the LUC to the State Department of Planning and Economic Development (DPED). DPED was required to deliver a report of recommendations for boundary changes to the LUC and given the authority to initiate any boundary amendment petitions necessary to implement recommendations within the report. In 1988, the planning function of DPED was transferred to the Office of State Planning (Act 352, 1988), later renamed the Office of Planning. However, this legislative action never addressed the legal process by which the LUC would review boundary amendments resulting from the 5-Year Boundary Review. By default, 5-Year Boundary Review amendments must follow the same quasi-judicial, contested-case hearings process as individual petitions for reclassification.

The Elimination of the 5-Year Boundary Review Process

The legislative act eliminating the quasi-legislative process and mandating a quasi-judicial process for all LUC boundary amendments also eliminated the requirement for a comprehensive 5-Year Boundary Review.

Consequently, there was no discussion before the Legislature whether a comprehensive petition for boundary amendments based on a 5-Year Boundary Review should be conducted in the same manner as a petition by an individual landowner for a proposed project on a specific piece of property.

Nor was this question raised ten years later in 1985 when the Legislature reinstated the 5-Year Boundary Review. Therefore, State-initiated, regional, comprehensive reclassification requests stemming from 5-Year Boundary Reviews must follow identical procedures as an individual petition for an individual development.

The Third 5-Year Boundary Review and Amendments: 1990

The State Office of Planning (OP) initiated a boundary review process five years after the process was reinstated and two years after it was vested with the responsibility (Act 352, 1988). However, this was nearly sixteen years after the last comprehensive 5-Year Boundary Review. OP conducted the 1990 5-Year Boundary Review with the assistance of a number of consultants including Wilson Okamoto & Associates, and John Ford. This review was based on a philosophy expressed in the first 5-Year Boundary Review and in Article XI, Section 1, of the Hawai'i State Constitution "...for the benefit of present and future generations, the State...shall conserve and protect Hawai'i's natural beauty and all natural resources..."

In 1992, the Office of Planning requested and submitted procedural, administrative rule changes to the LUC for petitions initiated under Section 205-18, HRS (5-Year Boundary Review). The proposed rules suggested changes in the form and content of such petitions to more efficiently handle the types of broad, comprehensive reclassifications proposed under the 5-Year Boundary Review process e.g., where specific projects are not being proposed and, therefore, lack detailed information usually provided in other petitions. Changes requested by OP involved: the ability to initiate boundary amendments with or without landowner authorization; less stringent informational standards for petitions; and a waiver of required metes and bounds descriptions for all parcels. In June 1993, the LUC, considered but denied OP's request, citing insufficient reasons to implement rules authorizing a streamlined process to initiate boundary amendments pursuant to the 5-Year Boundary Review.

The entire process took approximately six years from the initiation of background studies; two rounds of State-wide public informational meetings; and subsequent boundary amendment petitions (1992-1995). OP did not initiate boundary reclassification requests for all the recommendations contained within its report to the LUC. A determination was made that OP did not have sufficient resources to adequately present all the petitions under the existing procedural requirements of the contested-case hearing process. Instead OP focused on reclassifications of State lands and those on private lands in partnership with landowners.

Findings & Boundary Amendments of the 1990 5-Year Boundary Review

The Review found or recommended that:

- ❖ sufficient land in the State Agricultural District to meet anticipated agricultural production goals as well as considerable lands within the current Agricultural District that contained significant natural and conservation resource value;
- ❖ new areas be placed within the Conservation District were on O'ahu (Diamond Head, Olomana, and Ka'ena Coastline); on Maui (East Maui Watershed, 'Alelele Stream and Gulch); on Kaua'i (Donkey Beach, Hanamā'ulu Coastline); and one Hawai'i (Kona and Ka'ū Forests, Puae 'Ākala - Hakalau Forest);
- ❖ areas be reclassified from the Agricultural District to the Urban District suitable to meet population and economic development requirements. These new Urban District lands were on O'ahu (Mililani Mauka, Kapolei, and Makāiwa Hills); Maui (Pukoli'i); Hawai'i (Keāhole, Kea'au); and Kaua'i (Hanamā'ulu, Kukui'ula, Kaua'i Lagoons).

Conclusions:

The 5-Year Boundary Review process provides a comprehensive analysis by which government agencies and private individuals can propose and determine appropriate regional land classification changes necessary to meet projected changes in socio-economic, natural resource, and cultural factors. The process has more in common with a county's general or development plan changes than the specific project-driven requests for State Land Use District reclassifications requested by public agencies or the private sector.

Current legal requirements for reclassification petitions that are part of the existing 5-Year Boundary Review process are cumbersome, time-consuming, and expensive. The level of due process protections of the current quasi-judicial process make sense when considering project-specific petitions that may directly affect the property rights of identifiable individuals. However, the reclassifications proposed during a 5-Year Boundary Review relate to statewide and regional needs as identified in broad-based studies and county plans as opposed to individual projects.

Existing statutory requirements serve to frustrate legitimate efforts by the State to implement current and future regional land use planning trends and needs. Modifications to the quasi-legislative process utilized during the first two 5-Year Boundary Reviews could provide a more efficient method to effect regional reclassifications while preserving the due process rights of both government agencies and private individuals.

The Office of Planning recommends that the State reexamine the process currently required for boundary amendment petitions proposed as part of the State's 5-Year Boundary Review efforts. Such a reexamination would entail both statutory and administrative rule changes which would affect only the process by which 5-Year Boundary Review petitions would be considered by the LUC. The present, quasi-judicial process by which individual petitions are considered would remain in place.

Supporting Data Tables:

The following data tables are intended to illustrate the magnitude of changes to the State Land Use District boundaries due to individual petition requests (Table 1); changes as a result of 5-Year Boundary Review-initiated reclassifications (Table 2); types of reclassifications approved during 5-Year Boundary Reviews (Table 3); and, cost estimates for most recent 5-Year Boundary Review process (Table 4).

**Table 1: Changes in State Land Use District Acreage as a Result of
Individual Reclassification Petitions 1964 – 2006
(Private landowners and some Government agencies)**

	State Land Use Districts (change in acres)			
	Conservation	Agricultural	Rural	Urban
Initial boundaries established – 1964 ¹	1,862,600	2,124,400	6,700	117,800
Between 1964- 1969 ²	- 1,709	- 9,476	+ 585	+ 10,599
Between 1969 - 1974 ¹	- 22,658	+ 12,852	+ 2,497	+ 7,309
Between 1974 - 1990 ²	- 47,120	- 56,460	+ 1,304	+ 26,364
Between 1990 - 2006 ³	- 2,407	- 8,163	+ 861	+ 10,140

1/ State Land Use Commission (LUC), April 11, 1974. Changes between 1964 and 1968 due only to individual petitions, not from boundary review reclassifications. Changes after 1969 boundary review due to reclassifications pursuant to the 5-year boundary review.

2/ State of Hawai'i Data Book 2004. Table 6.03 – Estimated Acreage of Land Use Districts: 1964-2000, p. 196. Changes due only to individual petitions, not from boundary review reclassifications.

3/ Based on State of Hawai'i, Data Book 2004, Table 6.04 Estimated Acreage of Land Use Districts, by Islands: December 31, 2004; and, current data from the State LUC completed boundary amendment dockets from January 2005 to January 2006. Totals may not add up to same number as sum of individual districts due to differences in the sources of and year of data.

**Table 2: Changes in State Land Use District Acreage as a Result of
5-Year Boundary Review Amendments ¹ 1969, 1974, and 1990**

	State Land Use Districts (change in acres)			
	Conservation	Agricultural	Rural	Urban
1969 Review	+ 148,196	- 159,049	- 910	+ 11,763
1974 Review	- 9,433	+ 8,036	+ 15	+ 1,382
1990 Review	+ 14,499	- 22,650	0	+ 8,151

1/ Represents summary statistics from Table 3.

**Table 3: Types of Boundary Amendments and Acreage Reclassifications
During 5-Year Boundary Reviews**

Type of Reclassification	5-Year Boundary Review Changes (acres)		
	1969 ¹	1974 ²	1990 ³
Conservation to Agricultural	0	33,278	0
Conservation to Rural	0	0	0
Conservation to Urban	0	705	1,433
Agricultural to Conservation	148,196	23,871	15,908
Agricultural to Rural	0	22	0
Agricultural to Urban	10,853	4,731	6,762
Rural to Conservation	0	0	0
Rural to Agricultural	0	5	0
Rural to Urban	910	2	0
Urban to Conservation	0	679	24
Urban to Agricultural	0	3,377	0
Urban to Rural	0	0	0

- 1/ Data for the first 5-Year Review not readily available. Additional research into archival files will be necessary to determine figures from specific reclassification petitions. Figures presented have been determined from differences between pre- and post-1969 figures.
- 2/ Report to the People: State Land Use Commission, Second Five-Year District Boundaries and Regulations Review, February 1975 (p.25)
- 3/ State Land Use District Boundary Review, 1992, State Office of Planning.

Table 4: Estimated Cost/Time Figures for 1990 5-Year Boundary Review

	1990 5-Year Boundary Review	
	# of Staff	Costs (\$ est.) ¹
OP Staff	5	347,106
Consultant Services	14	802,448
Miscellaneous	n.a.	112,959
AG Staff	2	n.a.
Total	7 (+ consultants)	1,262,513

- 1/ Estimates derived from internal budget documents (1996). Miscellaneous expenses include travel, printing, postage, meeting hall rentals, etc.

Chronology of State Land Use District Boundary Review & Boundary Amendment Procedures

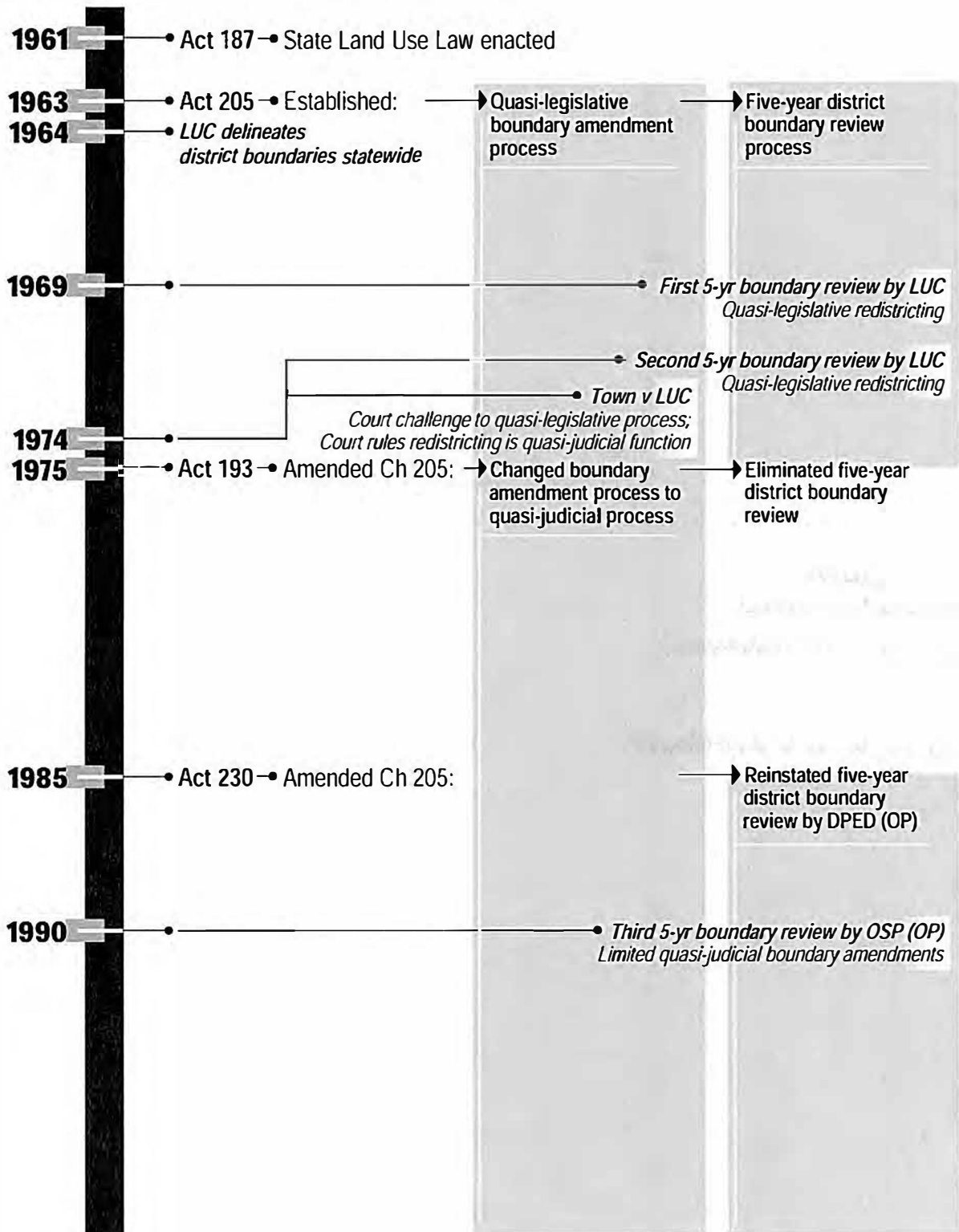




Exhibit 3, LUC, OCT. 4, 2023 meeting

DOCKET NO. DR21-72

Church and Hildal

PETITION FOR DECLARATORY ORDER

STAFF REPORT

Hearing
September 8, 2021

A handwritten signature in black ink, consisting of several loops and a trailing line.

Daniel E. Orodener
Executive Officer

Submitted: September 4, 2021

SOH00149

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SOH00150

PREFACE

The Petition for declaratory order before the Commission, DR21-72 Church and Hildal (“Petitioners” or “Church”) seeks to clarify and correct LUC Boundary Interpretation No. 92-48 to reflect that the Property lies in the State Agricultural (“Ag.”) District and that the Official Map H-65 be amended to reflect that, based on their interpretation of information from the 1969 and 1974 State Land Use District Boundary Reviews.

The Petitioners also seek the refund of filing fees of \$5,000.00 for DBA Petition A18-805 and the filing fee of \$1,000.00 for this Petition for a Declaratory Order and that any Court Reporter fees, for this proceeding, be waived.

The substance of the Petition asks the Commission to render an interpretation of Hawai‘i Revised Statutes (“HRS”) Chapter 205: specifically, §§205-2(a), 205-3, 205-3.1(a), 205-4(a), 205-4.1, 205-7, 205-8; the 1969¹ and 1974 State Land Use District Boundary Reviews; and, the land use district boundary interpretation process under HAR §15-15-22. Therefore, the Commission clearly has jurisdiction in the matter.

The issue for the Commission is whether the staff has correctly and appropriately applied the criteria in issuing a land use boundary interpretation under HAR §15-15-22; which includes the use of any pertinent historical information, in particularly the 1969 and 1974 Boundary Reviews. Some questions to focus on with regard to interpreting HRS Chapter 205 and HAR §15-15-22 are:

1. Whether or not, there is a lack of clarity with respect to the State Land Use District Boundary as identified in LUC boundary interpretation No. 92-48;
2. Whether the properties in question are located within the Hamakua District or Hilo District of the island of Hawai‘i; or,
3. Whether the landowner at the time of redistricting in 1969 or 1974 filed objections to the reclassification of those properties from the State Agricultural to the State Conservation District.

¹ State of Hawai‘i Land Use Districts and Regulations Review: Prepared for the State of Hawai‘i Land Use Commission by Eckbo, Dean, Austin and Williams; August 15, 1969. Referred to as the “1969 Report” or “Eckbo, et.al.”

1. BACKGROUND

Chapter 205 establishes LUC, provides for districting and classification of lands, sets initial Conservation District boundaries pursuant to section 205-2(a)(4) as of July 11, 1961.

Original, permanent boundaries set by LUC on August 23, 1964. At that time, the properties in question were placed in the State Agricultural District. Reference to official LUC 1964 maps, USGS 1:62,500 scale map H-H.

During the 1969 Five Year District Boundary Review process, the properties in question were reclassified into the State Conservation District. The LUC approved the reclassification at a scheduled hearing on July 18, 1969 on the island of Hawai'i. There was no registered opposition by the landowner at that time. The reclassification was delineated on official LUC 1969 maps, USGS 1:24,000 scale map, H-65.

During the 1974 Five Year District Boundary Review there were no district boundary changes to the properties in question. Chapter 205 was amended to include section 205-3 that provided an opportunity for landowners to challenge the classification of lands that were part of the 1974 periodic boundary review; after that the classification would become permanent as of June 2, 1975.

In November 1992, Mr. McCully requests a boundary interpretation as part of completing a petition for reclassification. Staff based its determination of the parcels' land use designation on an enlargement of the Commission's State Land Use District Boundaries Map, HH and H-65 (Papaikou quadrangle), which represented the Agricultural and Conservation District boundary as following the railroad ROW, and upon review of the "State of Hawaii Land Use Districts and Regulations Review" prepared by Eckbo, Dean, Austin and Williams to document the recommendations and actions in the 1969 Five-Year Boundary Review. The Executive Officer issued a boundary interpretation in December 1992 (No. 92-48) based on a metes and bounds survey and a review of historical information. The landowner accepted the LUC determination and used it as part of his subsequent district boundary amendment request in 2005. The mauka boundary between the State Agricultural and State Conservation Districts was set along the makai edge of an existing railroad right-of-way that was surveyed and described. The County of Hawai'i used these boundaries in processing a subdivision application by McCully.

In 2005, the landowner at that time, Mr. McCully, petitioned to reclassify the properties in question². The petition acknowledges that the subject properties are in the State Conservation District. The LUC considered and ultimately denied McCully's petition in 2006, due to a lack of sufficient information provided on planned agricultural uses for the entire petition area. The Petitioner filed a motion to reconsider that was also denied.

In 2009, McCully brought a second petition for district boundary amendment³. At that time, OP filed testimony in opposition. In 2010, the Petitioner withdrew that request prior to hearings being scheduled.

² A05-757 McCully

³ A09-783 McCully

Church purchased the properties of concern in this petition, from McCully. Church filed for and received permits from DLNR acknowledging the properties are within the State Conservation District.

Church filed with Hawai'i County for consolidation and resubdivision of properties based on a new metes and bounds surveys. The County accepted these metes and bounds descriptions strictly for the purpose of subdivision.⁴

In July 2018, Church sought a district boundary amendment similar in nature to the 2009 McCully petition, augmented by voluminous documents related to his disputes with the State Department of Land and Natural Resources ("DLNR"). Church requested a boundary interpretation from the LUC and was provided with LUC Boundary Interpretation No. 92-48 previously done for McCully.

In August 2020, the LUC issued a letter deeming the petition incomplete based on several factors that included the need to satisfy HRS Chapter 343 requirements and provide accurate acreage figures reflecting the consolidation and resubdivision of previous parcels in relation to State Land Use District boundaries.

Church disputes the existing McCully boundary interpretation (No. 92-48). Church wanted the LUC to use his subdivision metes and bounds description that differed from those used in the LUC boundary interpretation of metes and bounds. Church's surveyor appeared to utilize different control points. The LUC requested an explanation by letter from Church for the deviation of survey metes and bounds from those in the existing official LUC boundary interpretation. No response with explanation has been received to date.

In November 2020, the LUC accepted Petitioner's Final Environmental Assessment and issued a Finding of No Significant Impact ("FONSI").

On June 17, 2021, Church filed a Motion for Declaratory Ruling requesting to resolve his dispute of official LUC district boundaries.

On September 1, 2021, The State Office of Planning and Sustainable Development ("OP") filed OP's Statement of Position for Petition for Declaratory Order and Exhibits 1-4 ("OP Position").

2. PROCEDURE FOR DECLARATORY ORDER ANALYSIS

Pursuant to HAR §15-15-98(a), the Land Use Commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the LUC to a specific factual situation on petition of an interested person.

⁴ The LUC district boundaries are based on the official maps and as augmented by LUC-approved metes and bounds descriptions when available. The County of Hawai'i property tax map key ("TMK") boundaries are determined by surveyed metes and bounds descriptions. However, such boundaries are not dependent on LUC district boundaries; at the same time LUC district boundaries are not dependent upon TMK boundaries. There are times when those boundaries do coincide: such as when boundaries are tied to specific features like an existing roadway boundary.

The Commission has three options in a Petition for Declaratory Ruling:

HAR §15-15-100(a), provides the alternative actions required of the Commission for processing a petition for declaratory order. Paraphrasing that subsection:

*The Commission, within ninety days after submission of a petition for declaratory order, shall **deny the petition in writing, or issue a declaratory order** on the matters contained in the petition, **or set the matter for hearing**, as provided in §15-15-103, HAR, provided that if the matter is set for hearing, the Commission shall render its findings and decision within one hundred twenty days after the close of the hearing.*

The Commission is required to decide at this time: (1) whether it will deny the Petition; (2) issue a declaratory order; or (3) set the matter for hearing.

The issue before the commission is the applicability of §§205-2(a), 205-3, 205-3.1(a), 205-4(a), 205-4.1, 205-7, 205-8; the 1969 and 1974 State Land Use District Boundary Reviews; and, the land use district boundary interpretation process under HAR §15-15-22.

Alternative Action 1: Dismiss or Deny Declaratory Ruling request

Pursuant to HAR §15-15-101, the Commission may dismiss the DR Petition, without notice or hearing, if it deems that the Petition fails in material respect to comply with the declaratory order requirements of HAR subchapter 14.

Pursuant to HAR §15-15-100(a), the Commission, for good cause, may also deny the Petition and refuse to issue a declaratory order under four circumstances. Based on review of the Petition for Declaratory Order, staff has made the following assessment of the relevant criteria:

1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future.

Church's filings refer to and incorporate existing documents and records from the 1969 and 1974 State Land Use District Boundary Review, a district boundary interpretation issued by the Commission (No. 92-48), HRS §§205-2(a), 205-3, 205-3.1(a), 205-4(a), 205-4.1, 205-7, 205-8; and, the land use district boundary interpretation process under HAR §15-15-22.

Therefore, the question is not speculative or purely hypothetical, and does involve facts that exist on the record.

2) The Petitioner's interest is not of the type that would give the Petitioner standing to maintain an action if the Petitioner were to seek judicial relief.

Based on Petitioner's declarations and information contained in their petition; Petitioner's would appear to have standing in the event they sought judicial relief.⁵

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⁵ We note also that Hawai'i courts have been generous in allowing persons having standing to bring suit.

- 3) **The issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise.**

At this time, the Commission is not involved in any pending docket or litigation involving this particular issue.

- 4) **The matter is not within the jurisdiction of the Commission.**

The matter requests interpretation of statutory and administrative rules related to the setting of State land use district boundaries and the waiver of fees associated with filing and hearing expenses under HRS 205. The authority to set and interpret State land use district boundaries and waive associated filing and hearing fees is within the Commission's statutory jurisdiction.

Therefore, the Commission does not have good cause to deny the declaratory ruling request due to a lack of jurisdiction.

Alternative Action 2: Issue a Declaratory Ruling

On July 17, 2021, Church filed a petition for declaratory order.⁶ Within the 90-day time period, the Commission must render a decision; then an order needs to be prepared and adopted by the Commission at a second meeting before October 15, 2021. HAR §15-15-100(a)(2) does not require a hearing before the Commission issues a declaratory order.

The Commission should make a determination on the request for declaratory order.

Alternative Action 3: Schedule the Matter for a Hearing

HAR §§15-15-100(a)(3) and 15-15-103 allow the Commission discretion to conduct a contested case hearing on a petition for declaratory order. A petitioner or party in interest must set forth in detail why the matters alleged in the petition can't be disposed of in a fair and expeditious manner.

The Petitioner has not indicated that the petition can't be disposed of in a fair (non-prejudicial) and expedient manner. The Commission should exercise its discretion not to schedule the matter for a hearing pursuant to HAR §§15-15-100(a)(3) and 15-15-103.

3. POSITION OF PETITIONER ("Church")

Petitioner seeks to clarify and correct LUC Boundary Interpretation 92-48 to reflect that the Property lies in the State Agricultural ("Ag.") District and that the Official Map H-65 be amended to reflect that the TOP OF SEA PALI, as shown on Petitioner's Exhibit 6 be the SLUD line separating the State Conservation and Agricultural Districts on LUC Map H-65. Additionally, the Petitioner requests the refund of filing fees of \$5,000.00 for Petition A18-805

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⁶ The 90-day time period for the Commission to take action would therefore end on October 15, 2021.

and \$1,000.00 for this Petition for a Declaratory Order and that Court Reporter fees, for this proceeding, be waived.

Church argues that uncertainty exists with respect to the official boundary interpretation done by LUC staff in 1992 (No. 92-48) and that pursuant to LUC administrative rules a declaratory order is the avenue by which the Commission can remove that uncertainty. Church has provided argument and interpretation of official documents that he believes favors his interpretation and request. The following are some of the points raised by Church in his petition:

- The Commission has jurisdiction under HAR §15-15-22(f) HAR to issue a boundary determination if "uncertainty remains" to correct the LUC Executive Officer's previous boundary interpretation No. 92-48 (McCully).
- The Property was historically planted in sugar cane during the period beginning before 1905 through 1992
- The Property is contiguous to State Agriculturally zoned land which is located mauka of the Property and makai of the Hawai'i Belt Road
- The entire area of the Property appears on the 1974 Land Use District Boundaries Map H-65, Papaikou Quadrangle, to lie in the State Conservation District
- During a one-year period ending in August of 1969 (the "Review Period") the Land Use Commission (variably the "LUC" or the "Commission") commissioned the firm of Eckbo, Dean, Austin & Williams that a "Review of Land Use Regulations and District Boundaries" be conducted (the Review"), with recommendations to the LUC for consideration and adoption by the LUC during the Review Period
- The Review included USGS maps on to which State Land Use District ("SLUD") lines were to be drawn on incrementally "proposed" USGS Quadrangle maps separating Rural, Urban, Agriculture and Conservation Districts for progressive review, during the Review Period in consultation with the LUC, landowners and the communities of Hawai'i over the one-year Review Period and subsequent adoption by the LUC as State Land Use District ("SLUD") Maps
- The Review is described in a book, titled "STATE OF HAWAII LAND USE DISTRICTS AND REGULATIONS REVIEW" (the "Report"), which was published on August 15, 1969, and is authored by Eckbo, Dean, Austin & Williams, which is an Official LUC document and record of its "Actions", which recommendations and LUC findings and boundary amendment changes that were "Adopted" were recorded in the Report and also were to be recorded on the incrementally submitted SLUD Maps, particularly the final SLUD Maps were to reflect what was finally "Approved" by the Commission
- The LUC held an "Action" meeting in the County of Hawaii on July 18, 1969 to consider a State District Boundary Amendment for an area, which included the Property.
- The July 18, 1969, Report's proposed SLUD Line shown on USGS Quadrangle Map H-65, in the coastal area of Papaikou Quadrangle, where the Property is located, generally did not show the 'top of the coastal cliff' to be the SLUD line separating the Conservation and Ag. Districts, rather the line generally followed a former railroad right of way's mauka boundary in the area of the Property
- Page 36, section C, of the Report, describes proposed zoning for coastal areas from Kohala down to Hilo, at that meeting the LUC approved a Boundary Amendment at that meeting which is described on page 36 of the Report; "The steep pali coast of east Kohala is presently within the Conservation District. This district should be extended to include

the sandy beach at Waipio Valley and then to include the pali land of the Hamakua Coast, using the ridge top as a boundary line" and "Areas in agricultural use were excluded".

- The SLUD line on the August 15th, 1969, Report's final USGS Quadrangle Map H-65, in the coastal area of Papaikou Quadrangle, generally remained unchanged from the Report's July 18, 1969 recommended SLUD Line location and thus does not reflect what the Commission "Approved" at its meeting in the County of Hawai'i on July 18, 1969, to show the 'top of the coastal cliff' to be the SLUD line separating the Conservation and Ag. Districts, rather the line generally followed a former railroad right of way's mauka boundary in the area of the Property as it also did on the Report's proposed July 18, 1969 USGS Quadrangle Map. The Petitioner's interpretation of §15-15-22 (a) and (a) (1) HAR is that the "land use district map" is not the final interpretive authority in determining a district line in the area of the Property.
 - The Property lays on the Hamakua Coast.
 - The Property lays mauka of the coastal pali ridge top and it was in agricultural production at that time
 - The area of the Property was not rezoned into the State's Conservation District by the LUC at its July 18, 1969 meeting in the County of Hawai'i.
 - The Official Map H-65 for the Papaikou quadrangle, wherein the Property is located, shows the Property to lie entirely within the State's Conservation District.
 - No further boundary amendment for the area of the Property was approved by the LUC during the period between July of 1969 until the adoption of the Official Map H-65.
 - The Official Map H-65 conflicts with what was "approved" by the LUC at the July 18, 1969 meeting in the County of Hawaii
- In 1992 the Executive Officer of the LUC issued Boundary Interpretation No. 92-48 which interpretation showed the entire area of the Property to lie in the State Conservation District
- The Petitioner(s) believe that Boundary Interpretation No. 92-48 is incorrect resulting that "uncertainty remains" Petitioner(s) believe that the Report records, in print, on its page 36, what is correct and what was "Approved" by the LUC and that the 1969 USGS Papaikou Quadrangle Map H-65, which is referenced in an appendix to the Report, was not subsequently amended to reflect what was "Approved" by the LUC at its meeting in Hawai'i County on July 18, 1969
- The Petitioner(s) believe that the "uncertainty" regarding the correct SLUD zoning of the Property is the result of no fault of the Petitioner(s) but rather an error of the LUC
- The Executive Officer of the LUC relied on the Official Map H-65 for the Papaikou quadrangle for Boundary Interpretation 92-48 and the Executive Officer did not consider the Report which is another "Official Commission Record" as is provided for in §15-15-22 (d), HAR, "The executive officer may use all applicable commission records in determining district boundaries."
- The Commission has jurisdiction under 15-15-22(f) HAR to issue a boundary determination if "uncertainty remains" to correct the LUC's Executive Officer's previous boundary interpretation No. 92-48.
- The Commission has asserted its jurisdiction under a similar question in the past. LUC DR 99-21 is a very similar jurisdictional example.
- In 1999 the LUC considered Petition A99-21 for very similar land in the Papaaloa Quadrangle that lies approximately 5 miles to the north of the Petitioner(s) Property,

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which Quadrangle map area is contiguous to the Papaikou Quadrangle map area where the Property is located

- Section 15-15-34(b), HAR provides that "[f]or good cause shown the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission."
- The no refund schedule requirement in Section 15-15-45.2 HAR is not jurisdictional. Therefore, the Commission is authorized to refund fees.
- The applicability of the Official Map H-65, Papaikou Quadrangle, as applied in 15-15-22(a) (1) HAR, is not jurisdictional. Therefore, the Commission is authorized to not apply the Official Map H-65, to a boundary interpretation and the LUC is authorized to correct errors on Official Map H-65.
- To be clear the Petitioner(s) were aware of the apparent Conservation District zoning when they purchased the land but they were also aware that a historic cane agribusiness had continued to use the land for agriculture following its apparent Conservation District zoning.

4. SUMMARY OF POSITION OF THE OFFICE OF PLANNING

OP Statement of Position ("OP Position") Regarding Docket No. DR21-72

OP has no objection to the Commission granting Petitioner's request that the LUC issue a declaratory order to clarify LUC boundary interpretation No. 92-48.

OP has provided three examples of previous/similar LUC actions in the area based on the particular facts and circumstances. [OP Position, pg. 4-5; Exhibits 1, 3 and 4]

1. Docket No. A18-806 (Barry Trust) reclassification of coastal property from Conservation to Agricultural District;
2. DR99-21 (Stengle) request to correct boundary interpretation No. 98-50 to comport with 1969 "Top of Pali" guidance; and,
3. LUC Boundary Interpretation No. 07-19 (Muragin) that set the Conservation District to the "Top of Pali" for a property in Ninole, North Hilo. OP indicates the survey shows the railroad right-of-way.

OP's points of argument

- The final boundaries from the 1969 State Land Use District Boundary Review "...were the LUC's judgement as a result of considerable input from studies, site inspections, public hearings, talks with landowners, and the Commissioners' own personal knowledge and experience". [OP Position, pg. 6; Eckbo, Dean, Austin and Williams, 1969 pg. 85]
- The 1969 Review generally states that the pali lands of the Hamakua Coast should be included in the Conservation District using the ridge top as a boundary line and exclude areas in agricultural use. [OP Position, pgs. 6; Eckbo, et.al. pg. 36]
- The 1969 Review puts forward four major conditions used in identifying shoreline Conservation District boundaries. [OP Position, pg. 6-7; Eckbo, et.al. pg. 86]

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- The guidelines and conditions from the 1969 Review generally indicated where the boundary should be located but the boundary was not mapped in detail so individual property boundaries are unclear. [OP Position, pg. 7]
- The Petition Area is located along the Hamakua Coast, includes a railroad right-of-way, and may have been in agricultural use at the time. [OP Position, pg. 8]

5. COUNTY OF HAWAII POSITION: The County has no position on the matter.

6. STAFF ANALYSIS

Statutory and Administrative Rules that may be pertinent to this request for declaratory ruling. References are followed by staff comments highlighted in blue.

- HRS §205-1 requires six affirmative votes for any boundary amendment.
- The existing land use district boundaries for the properties that are the subject of this request were voted on and approved at a meeting by the Commission on July 18, 1969⁷.
- Petitioner's Exhibit 17 SMA Letter from the County (2018) indicates that the property is located in South Hilo not the Hamakua District. Therefore, the language from the 1969 Report that applies is the description of the proposed/approved boundary amendments for the Hilo coastline rather than Hamakua. The Hawai'i County of Planning's General Plan and community plan maps also show the property to be in the South Hilo District rather than Hamakua District.
- The appropriate section of the Eckbo, et.al. report is found on page 36 as quoted below.
 - "From Hilo to Kapoho the shore is rocky with only occasional beaches such as at Haena. It is the unique product of recent lava flows running directly into the sea. The Conservation District should include the shoreline and it is recommended that it be extended from the high water mark to a line which is approximately 300' mauka of that line. Commission Action: Approved."
- LUC official map H-65 Papaikou clearly shows the district boundary line at this location following the railroad right-of-way as the demarcation line between the State Conservation and State Agricultural District.
- HRS §205-2(a) the LUC is authorized to place all lands in the state into one of the four state land use districts Conservation, Agricultural, Rural, and Urban; and set standards for determining the boundaries and districts.
- This provides the LUC with the statutory jurisdiction to establish the initial land use districts and to provide the standards and method for changing them.
- HRS §205-3 states that "...land use district boundaries established as of June 2, 1975 shall continue in full force and effect subject to amendment as provided in this chapter or order of court of competent jurisdiction based upon any litigation filed prior to July 1, 1975, or filed within thirty days after service of a certified copy of any final decision and order made as part of the commission's 1974 periodic boundary review, whichever occurs later."

⁷ Eckbo, et.al. pg. 36 and footnote showing approved.

- This section was added to allow a process for landowners affected by any changes due to the 1974 State Land Use District Boundary Review to object or challenge such changes. Absent a challenge the boundaries as of June 2, 1975 continued in full force and effect.
- The Commission has no documents showing any objection or litigation filed by the landowner in 1969 when the properties that are the subject of this declaratory ruling were placed into the State Conservation District. There also is no evidence in the record showing any objection or litigation filed by the landowner in 1975 contesting the inclusion of the subject properties within the State Conservation District.
- HRS §205-3.1(a) “District boundary amendments involving lands in the conservation district...shall be processed by the land use commission pursuant to section 205-4.”
- Records show that the owner of the properties in 2005 (McCully) filed a district boundary amendment request with the LUC recognizing the properties involved were in the State Conservation District and the LUC had jurisdiction for making changes to such boundaries.
- Records show that the owner of the properties in 2018 filed a district boundary amendment request with the LUC recognizing the properties involved were in the State Conservation District and the LUC had jurisdiction for making changes to such boundaries.
- HRS §205-4(a) provides that “...any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. This section applies to all petitions for changes in district boundaries of lands within the conservation districts...”
- This is the statutory process provided for a landowner to reclassify lands, including lands within the State Conservation District. Both the current and former owner of the subject properties have recognized and availed themselves of this process.
- HRS §205-4.1 authorizes the LUC to establish and assess reasonable fees for the filing of boundary amendment petitions...to recover the costs of processing them and require reimbursement be made for court reporter and any other hearing expenses as determined by the LUC.
- The jurisdiction for establishing and setting fees for filing and processing petitions, including hearing and court reporter expenses is clear. This is a jurisdictional issue. The petitioner seeks a waiver of such fees with the argument that such fees are not jurisdictional. The Petitioner has also not given any reason that waiver of the fees is appropriate and warranted. There is no good cause shown to waive fees.
- HAR section 15-15-22 provides for the method of determining the location of district boundaries and how to address uncertainty where it exists. HAR section 15-15-22(e)(2) provides that “Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling;...”
- The boundary interpretation done by LUC staff in 1992 at the request of the landowner (No. 92-48 McCully) was done using official LUC quadrangle map H-65 Papaikou, the information contained in the 1969 and 1974 State Land Use District Boundary Reviews, and all information provided by the landowner; including the metes and bounds survey of property and district boundaries.
- The district boundary line in this instance was set along the mauka boundary of an existing railroad right-of-way (“ROW”). This ROW boundary was surveyed as part of the currently recognized boundary interpretation (No. 92-48 McCully) using metes and

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bounds by the previous landowner. This accurate method was accepted by both the landowner (McCully) and the LUC.

- This officially recognized boundary interpretation was provided to the current owner and petitioner (Church) upon request. Church had a survey done to support a consolidation and resubdivision process under the County of Hawai'i⁸. Those metes and bounds for the location of the former railroad right-of-way do not correspond with the surveyed boundary by McCully as recognized by the LUC (No. 92-48). Church has not provided any explanation for the discrepancy in the metes and bounds description for the mauka property line. As previously noted, subdivision maps are not determinative of district boundaries. This is the crux of the issue.

Additional Staff Comments

The Commission can resolve this issue in several ways:

1. Accept Church's argument and change the map boundaries showing the location of the State Conservation District and State Agricultural District on official map H-65 Papaikou.
 - The basis for this would be that, although Church's property is within the South Hilo District, the Commission believes that the 1969 Commission intended the property to be treated in a similar fashion to the Hamakua Coast when setting the coastal boundary for the State Conservation District.
 - This would place all of Church's properties within the State Agricultural District and eliminate the need for a district boundary amendment.
 - However, the Commission should be aware that this is dangerous precedent and may open the door to reversal of many prior decisions by the Commission. Also, in taking this path to resolving the request it would potentially be changing the district boundary affecting other properties not part of the Church request and their property rights.
 - This would also potentially set a precedent by which other landowners would request similar changes to the official maps in order to effect a district boundary amendment rather than through the process established under HRS §205-4.
2. Deny Church's request
 - The basis for denying Church's arguments: that the official LUC map H-65 Papaikou accurately reflects the Commission's intent in the 1969 Boundary Review for properties located along the Hilo to Kapoho coastline; that the LUC's boundary interpretation No. 92-48 accurately reflects that boundary; and, the LUC does not see any reason or good cause to waive fees for the petition and recovery of appropriate hearing costs.

⁸ The LUC district boundaries are based on the official maps and reports, and as augmented by LUC-approved metes and bounds descriptions when available. The County of Hawai'i property tax map key ("TMK") boundaries are determined by surveyed metes and bounds descriptions. However, such boundaries are not dependent on LUC district boundaries; at the same time LUC district boundaries are not dependent upon TMK boundaries. There are times when those boundaries do coincide: such as when boundaries are tied to specific features like an existing roadway boundary.

- The Commission should point out to Mr. Church that he has a boundary amendment petition that is ready to go except for resolving the boundary interpretation issue. The easy way forward would be for Church to accept the LUC's official boundary interpretation (No. 92-48) which places all his property in the State Conservation District. This makes acceptance of his petition for processing (hearing) straightforward in that all his property acreages are being requested to be reclassified. Church's current subdivision property boundaries do not coincide with the State Land Use District boundaries due to metes and bounds surveying differences. This potentially creates slivers of property that could be considered to be in the State Agricultural District and would have to be accounted for in his petition.
- Staff sees no outstanding issues, other than this boundary dispute, that would stand in the way of the Commission approving the Church petition for boundary amendment if it gets a hearing.

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