

STATEMENT OF  
R. A. BARNHART  
FEDERAL HIGHWAY ADMINISTRATOR  
U. S. DEPARTMENT OF TRANSPORTATION  
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION OF THE  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
REGARDING A LEGISLATIVE SOLUTION TO THE PROBLEMS OF H-3 IN HAWAII

NOVEMBER 6, 1985

Mr. Chairman and Members of the Subcommittee, thank you for inviting me here today to discuss the problems facing the H-3 highway project, a vital transportation link in the State of Hawaii. Adverse court decisions have delayed this important project to the point where the State is on the brink of losing Federal funding for this important highway. It will be almost impossible to complete the highway in a timely fashion. A recent court decision may require the State to select an alternative which is operationally substandard and environmentally unacceptable. In fact, at the end of this fiscal year, the State will have to decide if it should proceed with this project or lose the opportunity to withdraw it pursuant to 23 U.S.C. § 103(e)(4).

H-3 is proposed as a 16.1 mile Interstate highway on the island of Oahu in the State of Hawaii. It is planned to run between H-1, near Pearl Harbor, to the Kaneohe Marine Corps Air Station on the other side of the island. A 2.2 mile segment on the northeastern end of the route is complete and open to traffic. An adjacent 2.1 mile segment is almost complete, but not yet opened to traffic. At present there are only two largely outdated highways which connect the major population centers of Oahu.

The H-3 highway project has been in litigation since the early 1970's. Major project changes have been made to accommodate the court decisions which have resulted from this litigation. However, a decision last year by the U.S. Court of Appeals for the Ninth Circuit would seem to mandate additional project changes which we believe are contrary to the public interest and, indeed, harmful to the very resources sought to be protected by the laws which the Court of Appeals invoked.

A brief history of the development of the H-3 project and the litigation is in order so that you may see the nature of the problem now confronting Hawaii.

The original alignment for H-3 was from H-1 (near Pearl Harbor) up the Moanalua Valley, a tunnel through the Koolau Mountains, a descent through the Haiku Valley and around the area that later became Ho'omaluhia Park, and on to the Kaneohe Marine Corps Air Station. A six-volume environmental impact statement (EIS) was approved in 1974. In 1976 the U.S. Court of Appeals decided that § 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303; 23 U.S.C. § 138) applied to the entire Moanalua Valley. The alignment was then shifted to the North Halawa Valley, despite an estimated increase in cost of over \$250 million.

In the 1960's, after the H-3 project had already been conceived, and prior to the above actions being taken, the Corps of Engineers undertook the construction of a flood control project on the windward side of the Island of Oahu. Ho'omaluhia Park was developed by the Corps and the City and County of Honolulu using land from this flood control project. City park officials were concerned that the ongoing urban development in the Kanehoe area could eventually threaten Ho'omaluhia Park. Thus, the boundaries of Ho'omaluhia Park were expanded in 1974 so as to be contiguous to the already established highway alignment. This was viewed by park authorities as an excellent joint development opportunity, whereby the Park could take advantage of the highway as a barrier both to future urbanization as well as to other undesirable development at the Park's edge.

In 1978, while the studies on the shift to the North Halawa Valley were going on, the U.S. District Court ruled that §4(f) applied to the project because of its common boundary with the Park, despite the fact that (1) the highway would use no land from the park, (2) the park had expanded its boundaries to take advantage of being contiguous to the established highway alignment, and (3) there were no adverse impacts to the park. In 1980, the State and Federal governments approved a revised seven volume supplemental EIS, and asked the District Court to permit the project to proceed on the North Halawa Valley alignment. After a long trial in 1981, the U.S. District Court ruled in April 1982, that the Secretary of Transportation properly rejected makai

(ocean side) alternatives to the "Common Boundary" alignment as not feasible and prudent. The Court ruled, however, that a second supplemental EIS/Section 4(f) evaluation was needed to address certain studies undertaken between 1976 and 1980 and to further document why some mauka (mountain side) alternatives were not feasible and prudent. In September 1982, this latest supplemental EIS/Section 4(f) evaluation was approved.

In spite of the exhaustive and thoughtful analysis of the District Court, the U.S. Court of Appeals enjoined much of the project in November 1983, and in August 1984, rejected the §4(f) evaluation saying that the Makai Alternative and the "no build" alternative were not properly dismissed as imprudent alternatives. The Court rejected the § 4(f) evaluation despite the fact that the need for the project had been clearly demonstrated in previous environmental documents and that the makai alignment would increase the cost of the segment between the Kaneohe and the Halekou interchanges from \$53 million to \$95 million; take 31 homes, 4 businesses, and 1 church; create an undesirable highway project because of geometric, operational, and safety problems; and be totally out of character with the area. It must be remembered that this decision was based on a statute whose purpose is to "protect" a park whose boundary was expanded to take advantage of protection provided by the highway.

The ultimate result of the Ninth Circuit's decision is to make construction of H-3 near Ho'omaluhia Park virtually

impossible. The problems associated with alternatives to the one approved by the Secretary in 1982 are so great that it may well be impossible for the State to build any of them.

A final note is in order. The Department has, over the years been a strong protector of § 4(f). Our policies have done much to further the park protection goals established by the Congress in 1966. However, we do not believe that the Congress ever intended to elevate the protection of parkland over all other environmental concerns. Nor was it envisioned that the statute would be used to prevent a highway from being built which would protect the Ho'omaluhia Park by creating a barrier to urbanization or undesirable development. In the decision, the Court ignored the protection provided by the highway to Ho'omaluhia Park and the extensive environmental work already done. Instead, the Court insisted on documentation which will provide no benefit to either the park or the environment.

It is important to note that, except for its overreaching application of § 4(f), the Court of Appeals recognized that the State and Federal Governments demonstrated compliance with all applicable environmental laws. Further, this project has been fully tested in the state court system in Hawaii and found to be in full compliance with State law.

We are, therefore, confronted with a project which is important to sound transportation service in Hawaii, but cannot proceed without much additional delay and modifications which

would be very harmful to the environment, all in the name of environmental protection. I look forward to working with the Subcommittee in resolving this important issue.

This concludes my prepared statement. I will now answer any questions you may have.

BACKGROUND INFORMATION

AND

KEY ISSUES ON H-3

FOR

TESTIMONY OF

FEDERAL HIGHWAY ADMINISTRATOR

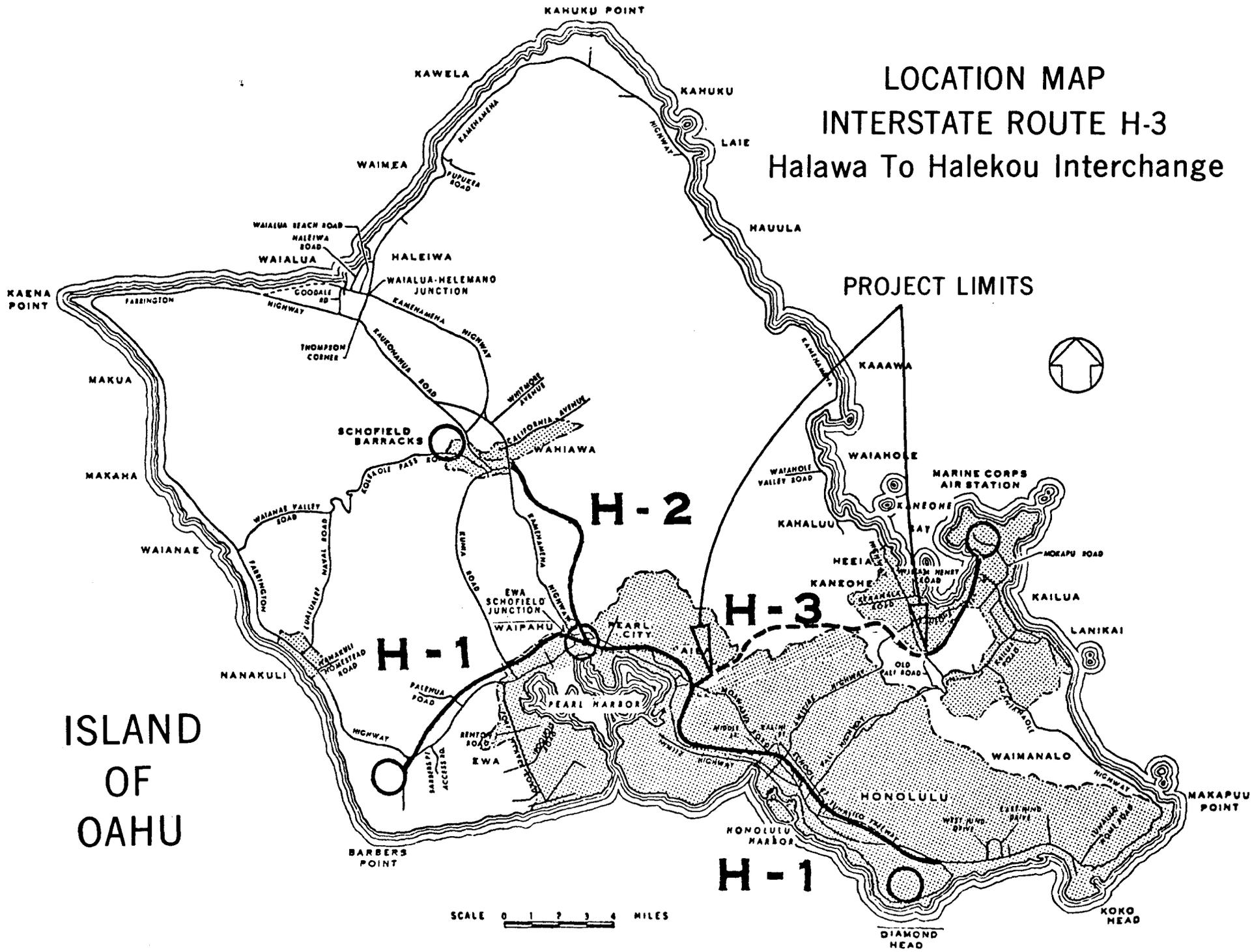
RAY A. BARNHART

TO

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

NOVEMBER 6, 1985

# LOCATION MAP INTERSTATE ROUTE H-3 Halawa To Halekou Interchange



ISLAND  
OF  
OAHU

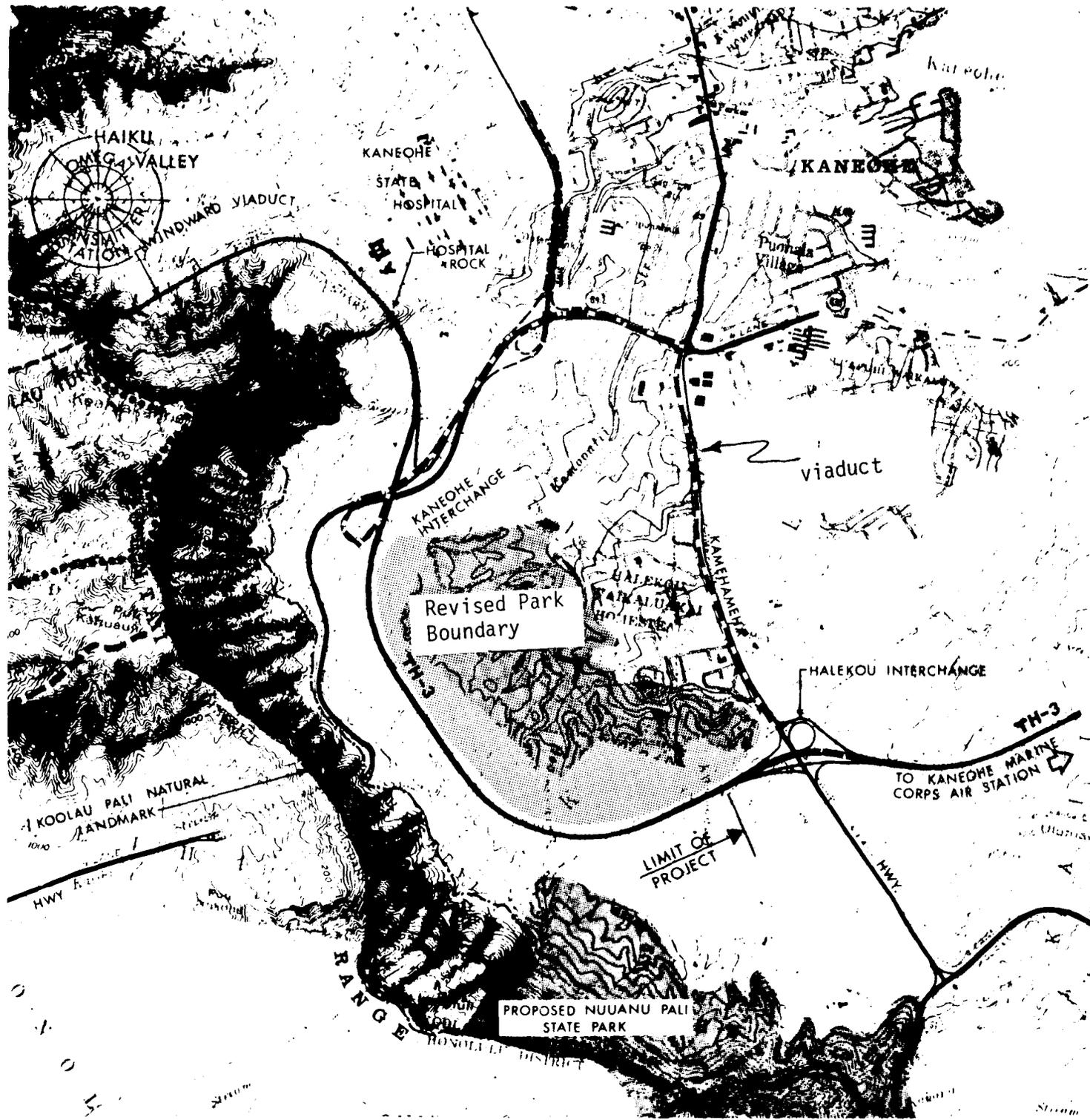
SCALE 0 1 2 3 4 MILES

DIAMOND  
HEAD



FIGURE 40

NORTH HALAMA VALLEY CORRIDOR



HAIKU VALLEY  
WINDWARD VIADUCT  
SMITH

KANEHOE  
STATE HOSPITAL  
HOSPITAL ROCK

KANEHOE

Halekou Village

KANEHOE INTERCHANGE

viaduct

Revised Park Boundary

HALEKOU INTERCHANGE

KOOLAU PALI NATURAL LANDMARK

TH-3  
TO KANEHOE MARINE CORPS AIR STATION

LIMIT OF PROJECT

PROPOSED NUUANU PALI STATE PARK

# **H - 3 HISTORY**

**Early 1960's — Planning Begins**

**1974 — Final EIS Approved**

**1975 — Section 4(f) Issue on Moanalua Valley Taken to U.S. Court of Appeals**

**1976 — U.S. Court of Appeals Reverses U.S. District Court (Section 4(f) Applies to Moanalua Valley)**

**1976 — State Begins Preparation of New EIS for North Halawa Valley Alignment**

**1978 — U.S. District Court Ruled that Section 4(f) Applies to Project because of Boundary with Park**

**1980 — First Supplement to the H - 3 EIS Approved**

**April 1982 — U.S. District Court Ruled that Another Supplemental EIS is Needed**

**Sept. 1982 — Supplemental EIS/Section 4(f) Evaluation Approved**

**1983 — U.S. Court of Appeals Enjoins Project**

**1984 — U.S. Court of Appeals Rejects Section 4(f) Evaluation; All Project Activities Enjoined Pending a New Section 4(f) Evaluation**

# **SECTION 4(f), DOT ACT**

- **Same Requirement in 23 USC 138**
- **Enacted in 1966**
- **Applies When Project Would Take Land from:**
  - **Publicly Owned Parks**
  - **Publicly Owned Recreation Areas**
  - **Publicly Owned Wildlife Refuge**
  - **Publicly Owned Waterfowl Refuge**
  - **Historic Sites, if Significant**

## **REQUIREMENTS:**

- **Cannot Take Section 4(f) Land unless Secretary of Transportation Finds No Feasible and Prudent Alternative Exists**
- **If Section 4(f) Land is Taken, All Possible Planning Required to Minimize Harm**

# **U.S. SUPREME COURT OVERTON PARK DECISION**

- **“Truly Unusual Factors Present”**
- **“Presents Unique Problems”**

**NOTE: Very Important City Park with  
Major Impacts**

# **HO'OMALUHIA PARK**

- **No Taking of Park Land**
- **No Adverse Impacts**
- **Park Boundary Expanded to  
Take Advantage of Highway**

# **CONSEQUENCES OF COURT RULING**

## **A. Build Alternative Which:**

- **Increases Cost of Section from \$53 Million to \$95 Million**
- **Takes 31 Homes, 4 Businesses, and 1 Church**
- **Is an Undesirable Highway Project**
  - **Safety Problems**
  - **Out-of-Scale with Area**
  - **Visually Obtrusive**

**OR**

## **B. Do Additional Study to Show the Above is not Prudent**