

A83-550 - AGNER R. NYLEN & RAYMOND H. NYLEN

Decision and Order Errata Sheet

"Docket No. A84-550," on page 18 of the Decision
and Order should be "Docket No. A83-550,".

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A83-550
)
AGNER R. NYLEN & RAYMOND H. NYLEN) AGNER R. NYLEN &
) RAYMOND H. NYLEN
To Amend the Conservation Land Use)
District Boundary to Reclassify)
Approximately 19 Acres, Tax Map)
Key: 4-7-49: Portion 17, at)
Kahaluu, Koolaupoko, Oahu, Hawaii)
into the Urban Land Use District)
.....)

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DECISION

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, in Part VI, Rule 6-1, of the Land Use Commission's ("the Commission") Rules of Practice and Procedure and District Regulations by Agner R. and Raymond H. Nylén to amend the designation of the property comprising approximately 19 acres of land, situate at Kahaluu, Koolaupoko, Oahu, State of Hawaii, identified as Oahu Tax Map Key No. 4-7-49: Portion 17 ("the Property") from Conservation to the Urban Land Use District.

PURPOSE OF THE PETITION

The Petitioner requests the reclassification of the Property from Conservation to Urban in order to construct five additional single-family detached dwellings along with driveways and other appurtenances on the Property. Petitioner also intends to construct two additional single-family detached dwellings on the adjoining Urban District property which Petitioner also owns. Petitioner intends to utilize the additional dwellings for their children and descendants and to rent out the additional units not needed by the family to obtain rental income.

THE PROCEDURAL HISTORY

The Petition was filed with the Land Use Commission on June 6, 1983. The Commission conducted the hearing on December 1, 1983, June 12, 1984 and July 25, 1984, pursuant to notice published on October 21, 1983 and May 11, 1984, in the Honolulu Star Bulletin. The Commission's hearing officer concluded the hearing on October 11, 1984 and October 15, 1984, pursuant to notice published on September 11, 1984, in the Honolulu Star Bulletin.

The Commission allowed Edwin B. Stevens to testify as a public witness on December 1, 1983. No timely application to intervene as a party was received by the Land Use Commission.

Petitioner filed its draft environmental impact statement with the Commission on May 22, 1984. The Commission approved the final environmental impact statement on September 20, 1984.

THE HEARING

Petitioner was represented by Eric Maehara, Esq.; The Department of General Planning, City and County of Honolulu was represented by Gary M. Yokoyama - Deputy Corporation Counsel; The Department of Planning and Economic Development was represented by Daniel Yasui. The witnesses who appeared and testified during the hearings were as follows:

Public Witness:

Edwin B. Stevens, Kahaluu Neighborhood Board No. 29

Petitioner

Raymond H. Nysten - Petitioner

Wilbert O. F. Chee - Urban Planner

Lawrence Shinsato - Soils Engineer

City and County of Honolulu

Randy Hara - Planner, Department of General Planning, City and County of Honolulu.

The Department of Planning & Economic Development

Daniel Yasui - Staff Planner

POSITION OF THE PARTIES

The Department of General Planning, City and County

of Honolulu - Denial. The Department of Planning and Economic Development - Partial Approval of the Petition up to the 300 foot elevation contour line on the Property.

APPLICABLE REGULATIONS

Standards for determining the establishment of an Urban District are found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Those regulation provides in pertinent part that:

- (1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:
 - (a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.
 - (b) It shall take into consideration the following factors:
 1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
 2. Substantiation of economic feasibility by the petitioner.
 3. Proximity to basic services such as sewers, water, sanitation, schools parks, and police and fire protection.
 4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.
 - (c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects.

- (d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on State or County General Plans.
- (e) It shall include lands in appropriate locations for new urban concentrations and shall give considerations to areas of urban growth as shown on the State and County General Plans.
- (f) Lands which do not conform to the existing standards may be included within this District:
 - 1. When surrounded by or adjacent to existing urban development; and
 - 2. Only when such lands represent a minor portion of this District.
- (g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment, in public supportive services.
- (h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

FINDINGS OF FACT

The Commission, having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein, makes the following findings of fact:

1. The Property, which is owned in fee simple by the Petitioner, is located at Kahaluu, Koolaupoko, Oahu, State of Hawaii, consists of approximately 19 acres of a 26-acre parcel identified as Tax Map Key No. 4-7-49: 17. The Property is located in the Mauka portion of Kahaluu at the end of Ahaolelo Road at the base of the Koolau Range. The lower portion of the 26-acre parcel, comprising approximately seven acres near Ahaolelo Road, is classified in the State Land Use Urban District. The remaining 19 acres of the 26-acre parcel is within the State Land Use Conservation District. There are currently three dwelling units on the 26-acre parcel. Two of the existing dwellings are within the Urban Land Use District while the third dwelling is in the Conservation District and on the property involved in this Petition. The Property begins at the 200-foot elevation mark and rises to an elevation of approximately 775 feet at its highest point.

2. The demarcation between Urban and Conservation lands is the 200-foot elevation contour line. Lands above the 200-foot elevation contour line are classified Conservation while lands below are classified Urban. The Urban classified lands within the 26-acre parcel were classified Agricultural by the Land Use Commission prior to 1969. The Conservation lands, which are the subject of this Petition, have been classified Conservation since the

original State Land Use district boundaries were established in 1964. The City and County of Honolulu's Koolaupoko Development Plan designates the Property as Preservation. The County zoning for the Property is Preservation (P-1). The abutting Urban classified lands are classified Agriculture on the Koolaupoko Development Plan and are zoned in the Agriculture (AG-1) District. The Property is not situated in the County's Special Management Area.

3. The on-site slope for the Property in the previously graded areas ranges from 5 to 20 percent and upwards to 40 percent in the higher elevations. The Property is not situated in any known regulatory flood plain but rather in an area of undetermined but possible flood hazards of Zone D designation. Under the National Flood Insurance Program, floodproofing or flood insurance is not mandatory for structures in Zone D areas. The Property is not classified according to the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii classification system. The United States Department of Agriculture Soil Conservation Service Soil Survey, classifies the soils of the Property as Lolekaa silty clay, 40 to 70 percent slopes (LoF) and Waikane silty clay, 40 to 70 percent slopes (WpF). The Lolekaa soil series consists of well-drained soils on fans and terraces on the windward side of the island of Oahu. These soils are

gently sloping to very steep with elevation ranging from sea level to 500 feet and an annual rainfall ranging between 20 to 90 inches. The Lolekaa silty clay, 40 to 70 percent slopes occurs along drainageways and on fans adjacent to the Koolau Range. The soils exhibit rapid runoff and severe erosion hazard. The Waikane soil series consist of well-drained soils on a alluvial fans and terraces on the island of Oahu. These soils are nearly level to very steep and ranges in elevation from 200 to 1000 feet. The annual rainfall is between 50 and 70 inches. The Waikane silty clay, 40 to 70 percent slopes exhibit rapid to very rapid runoff and severe erosion hazard.

4. The Petitioner proposes to construct seven additional single-family dwellings on the Property and the abutting Urban portion of the parcel. Five of the additional dwellings will be on the Property while the remaining two residences will be built on the existing Urban property. The costs of developing the seven units has been estimated by the Petitioner to be approximately \$210,000, with an additional \$40,000 anticipated for roadway and utility improvements. Petitioner indicates that development would begin as soon as all government approvals are received. Petitioner intends to utilize the constructed single-family dwellings for family use with the additional extra dwellings utilized for rental purposes. Petitioner indicates they

Conservation to the Urban District. Both of these petitions involved lands above the 200-foot elevation contour. The City and County of Honolulu has also utilized the Conservation District boundary established by the Commission for its planning purposes. Lands above the 200-foot contour are now designated for Preservation use on the Koolaupoko Development Plan while lands below are designated for Agriculture use.

6. Prior Commission actions involving properties in the surrounding area include the Petition of Bulldozing Services, Inc. (Docket No. A68-204) and the Petition of Nicholas F. Greener (Docket No. A70-251). In 1969 the Commission granted Petition of Bulldozing Services, Inc. to reclassify approximately 2.7 acres of land above the 200-foot elevation contour, situated to the South of the Nylen property at the end Nenehiwa Place (TMK: 4-7-46: 37) from the Conservation District to the Urban District for single-family residential development. A portion of the project had been built without the approval of the State Board of Land and Natural Resources.

In 1970, the Commission granted the Petition of Nicholas F. Greener to reclassify lands situated adjacent and to the North of the Petitioner's 26-acre property at the end of Mapele Road, Mauka of Country Gentlemen Estates subdivision from the Conservation District to the Urban

District to permit a two-lot subdivision. The site included areas above the 200-foot elevation contour.

7. Reclassification of the Property is not anticipated to have any impact upon the archaeological, environmental and visual resources in the area.

Furthermore, there are no known endangered flora or fauna present on the Property. The project site is covered by a variety of shrubs, grasses and trees common to the Windward Oahu region.

8. The reclassification of the Property will not unreasonably burden public agencies to provide necessary amenities, services and facilities to the Property because:

- a) Roadway and Highway Services and Facilities: The proposed development is not expected to significantly affect State highway facilities in the area. The City Department of Transportation Services has indicated that they have no objections to the request provided that adequate access is provided and that development of the Property be limited to ten single-family units.
- b) Water Service: The City Board of Water Supply has indicated that the water service limit for the Property is at the 165-foot elevation. The reservoir servicing this area is situated at approximately the 265-foot elevation. The City

Board of Water Supply has indicated that water service above the 165-foot elevation may not be obtained through a water service agreement. The Board's water service agreement is only applicable to the construction of one single-family dwelling on an existing vacant lot. Since the Petitioner already has three single-family dwellings on the property, the water service agreement would not be applicable to this project. Petitioner has indicated that they should be able to secure water for the project from another reservoir situated to the South of the Property. The adjacent reservoir is situated at approximately the 500-foot elevation. Petitioner, however, must apply to the City Board of Water Supply for use of this water and meet the Board's requirements.

- c) Drainage: The City Department of Public Works has stated that a drainage report should be submitted to their department for approval.
- d) Police and Fire Protection: The City Fire Department has reviewed the Petition and recommends that the following conditions be complied with should the project be approved:
 - (1) Provide an access roadway to within 150 feet of the most remote structure. Such

access roadway shall be composed of an all-weather driving surface capable of supporting the imposed loads of fire apparatus and shall not be less than 20 feet in unobstructed width with a minimum vertical clearance of 13 feet, 6 inches.

- (2) To accommodate our fire apparatus, the slope of such access roadway shall not exceed a grade of 20 percent.
- (3) Petitioner proposes to provide a fire service line of 8 inches in diameter with hydrants spaced no further than 350 feet apart from each other. The minimum hydrant residual pressure shall be 20 pounds per square inch capable of flowing 1,000 gallons per minute for a period of at least one hour. In addition, the farthest hydrant within the development from Ahaolelo Road must be installed within 150 feet of the most remote structure.

The City Police Department has reviewed the Petition and has indicated that the project will not adversely impact the demand for police services.

- e) Sewage Treatment and Disposal: Petitioner has proposed the use of cesspools to accommodate sewage generated by single-family dwellings. The City Department of Public Works has no objections to the proposed reclassification and has indicated that there are no plans to provide sewer service to the Property. The State Department of Health has no objections to the request provided that: 1) cesspools are constructed on high grounds and not in valleys; 2) all weather roads be constructed for servicing cesspools; 3) there be no increase in the density of residential development. The Department of Health has further indicated that studies be conducted by soils engineers to determine the best site for placing individual wastewater systems. Petitioner's soils engineer has indicated that cesspools should be able to accommodate the needs of the area.
- f) Schools: The State Department of Education has indicated that the proposed development of seven residential units will have negligible enrollment affect upon public schools in the area.

9. The State Department of Land and Natural Resources ("the DLNR") did not object to a partial reclassification of the Property. The DLNR's position is based upon an on-site assessment of the resource values present at the Property as well as the impact of the proposed development upon those resources. The DLNR confirms that the major grading work at the Property has already been completed. The house pads and internal roadways have already been established. A partial reclassification is not expected to adversely impact any known resources in the area. The City Board of Water Supply has also indicated that the Property's potential for development of appreciable amounts of ground water is limited. Although the area receives approximately 75 inches of annual rainfall, the area has closely spaced dikes which decreases its potential for development of appreciable amounts of groundwater.

10. The Petitioner began to develop the Property prior to the establishment of the Conservation district boundary in 1964. Petitioner had obtained permits in 1959 and 1961 to grade the seven building sites. As a result of the prior authorized grading, much of the site has already been altered and any adverse effects are no longer apparent.

Based upon the existing site conditions, the use of a portion of the Property as proposed by Petitioner should have minimal adverse impacts upon natural resources of the area. The Petitioner's current development plan for the site can be accommodated upon lands below the 300-foot elevation contour. All of the previous grading for roadways and building sites were undertaken upon lands below the 300-foot elevation contour. The area below the 300-foot contour contain the most moderate slopes on the Property and the DLNR has indicated that the reclassifications of lands below the 300-foot elevation would recognize the Petitioner's development plan while at the same time preserving a large portion of the existing Conservation district which lies above the 300-foot elevation. Reclassification of the Property below the 300-foot elevation contour would also limit development to areas below the Board of Water Supply's No-Pass line.

11. The Commission rejects validity of City and County of Honolulu's position that the Petition should not be approved because the Koolaupoko Development Plan discourages urban development in the Kahaluu area.

CONCLUSION OF LAW

Reclassification of the Property below the 300-foot elevation contour line, consisting of approximately 7.9

acres situated at Kahaluu, Koolaupoko, Oahu, State of Hawaii, from Conservation to the Urban District and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes and is consistent with the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes, as amended. Reclassification of the Property above the 300-foot elevation contour line, consisting approximately 11.1 acres situated at Kahaluu, Koolaupoko, Oahu, State of Hawaii, from Conservation to the Urban District has not been shown to be reasonably necessary, would not conform to the standards established by the State Land Use District Regulation, and would be violative of Section 205-2, Hawaii Revised Statutes.

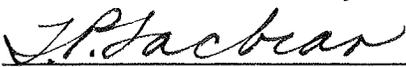
ORDER

IT IS HEREBY ORDERED:

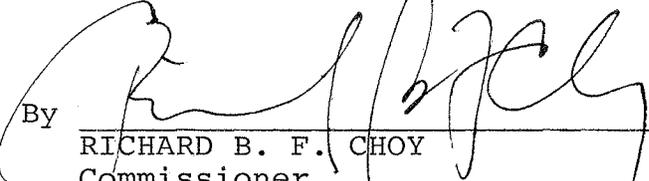
That a portion of the Property which is the subject of this Petition in Docket No. A84-550, below the 300-foot elevation contour line consisting of approximately 7.9 acres as illustrated on the map attached hereto as Exhibit "A", situated at Kahaluu, Koolaupoko, Oahu, State of Hawaii identified as Oahu Tax Map Key No. 4-7-49: Portion of 17, shall be and hereby is reclassified from the Conservation District to the Urban District and the district boundaries are amended accordingly.

Done at Honolulu, Hawaii, this 29th day of August
1985, per motions on March 19, 1985 and July 24, 1985.

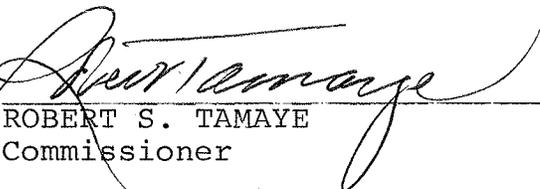
LAND USE COMMISSION
STATE OF HAWAII

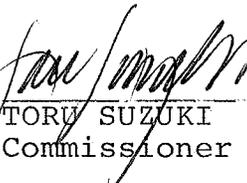
By 
TEOFILO PHIL TACBIAN
Chairman and Commissioner

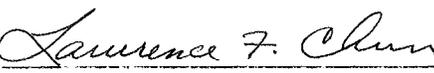
By 
FREDERICK WHITTEMORE
Vice Chairman and Commissioner

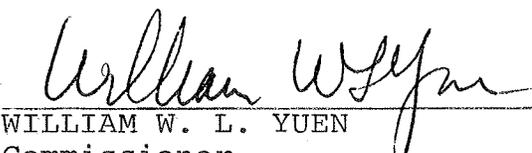
By 
RICHARD B. F. CHOY
Commissioner

By 
WINONA E. RUBIN
Commissioner

By 
ROBERT S. TAMAYE
Commissioner

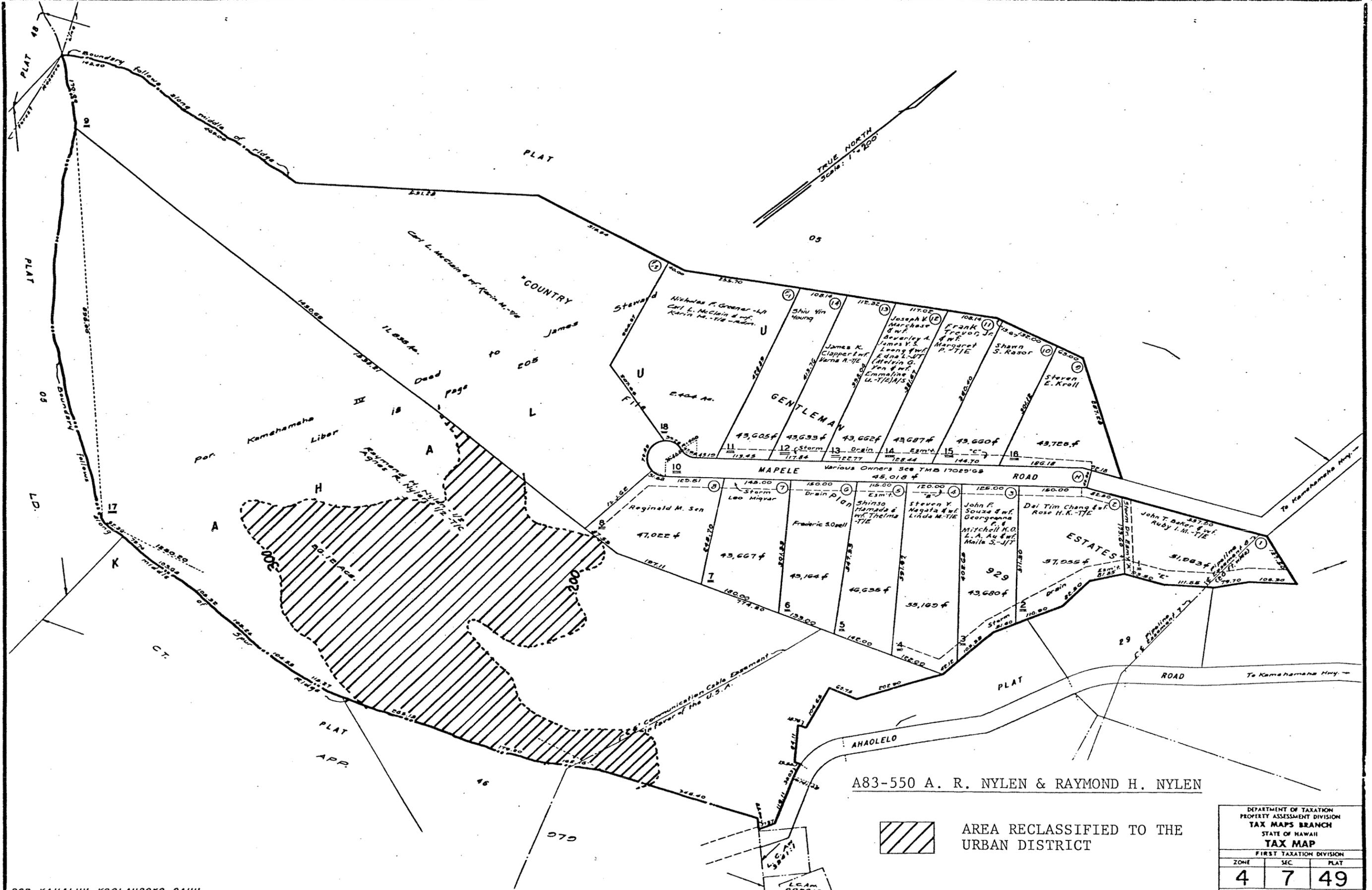
By 
TORU SUZUKI
Commissioner

By 
LAWRENCE F. CHUN
Commissioner

By 
WILLIAM W. L. YUEN
Commissioner

SEP 13 1963

DWG. NO. 5519
SOURCE: TAXATION MAPS BRANCH
BY: A.Y./J.L.S. DATE: JUNE 5, 1964



A83-550 A. R. NYLEN & RAYMOND H. NYLEN

 AREA RECLASSIFIED TO THE URBAN DISTRICT

DEPARTMENT OF TAXATION PROPERTY ASSESSMENT DIVISION TAX MAPS BRANCH STATE OF HAWAII TAX MAP		
FIRST TAXATION DIVISION		
ZONE	SEC	PLAT
4	7	49
SCALE 1 IN. = 200 FT.		

EXHIBIT A

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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) RAYMOND H. NYLEN
To Amend the Conservation Land Use)
District Boundary into the Urban)
Land Use District for approximately)
19 acres at Kahaluu, Koolaupoko,)
Oahu, Hawaii, Tax Map Key: 4-7-49:)
Portion of 17)
_____)

CERTIFICATE OF SERVICE

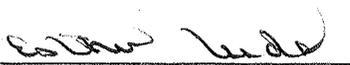
I hereby certify that a copy of the Land Use Commission Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

DONALD A. CLEGG, Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

ERIC T. MAEHARA
Attorney for Petitioner
Foley, Maehara, Judge, Choi, Nip and Okamura
2700 Grosvenor Center
737 Bishop Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 29th day of August 1985.



ESTHER UEDA
Executive Officer

DOCKET NO. A83-550 - AGNER R. NYLEN & RAYMOND H. NYLEN

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on August 29, 1985.

EVERETT KANESHIGE, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

RICHARD D. WURDEMAN, Corporation Counsel
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JOHN P. WHALEN, Director
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650 South King Street
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