

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
CITY AND COUNTY OF HONOLULU)
For a Declaratory Order Clarifying)
and Correcting the Boundary)
Reclassification of the Land Use)
Commission under its 1969 Five-Year)
Boundary Review Dated August 14,)
1969, and Boundary Interpretation)
No. 99-12 Dated July 30, 1999)
_____)

DOCKET NO. DR99-22
DECLARATORY ORDER

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

NOV 09 1999 by *Catherine [Signature]*
Date Executive Officer

DECLARATORY ORDER

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LAND USE COMMISSION
STATE OF HAWAII

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PETITIONER'S INTEREST

The City and County of Honolulu through its Department of Design and Construction ("Petitioner") filed a Petition for Declaratory Order, pursuant to sections 15-15-98 and 15-15-22(f), Hawai'i Administrative Rules ("HAR"). Petitioner is the owner in fee simple of TMK 9-3-02: 9 situated at Kapakahi in the northwestern part of the Waipio Peninsula, Waipahu, O'ahu, Hawai'i. TMK 9-3-02: 9 includes an approximately 1.927-acre portion of the Waipahu Depot Street right-of-way ("Property").

Petitioner filed the instant Petition for Declaratory Order "for a declaratory order clarifying and correcting the boundary reclassification of the Land Use Commission under its 1969 five-year boundary review dated August 14, 1969 and boundary interpretation dated July 30, 1999 in Boundary Interpretation No. 99-12."

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On September 1, 1999, Petitioner filed its Petition for Declaratory Order.
2. On October 15, 1999, the Office of Planning ("OP") filed its Testimony of the Office of Planning. OP commented that based on its review of the information provided, it had no objections to the Petition for Declaratory Order. However, OP expressed concern regarding the impact of planned improvements within the Property, street improvements, and future use of Waipahu Depot Street on Kapakahi Stream and the Pouhala Bird Sanctuary. OP further stated that all potential impacts should be mitigated and monitored during construction and over the operational life of the Waipahu Depot Street and associated infrastructure. Finally, OP raised concerns that the existing and planned uses for much of the north-central peninsula were no longer agricultural. OP noted that if the predominant land use pattern for this area was to be urban, then it would be more appropriate to reclassify these parcels to the State Land Use Urban District for urban use.
3. On October 15, 1999, the Department of Land and Natural Resources ("DLNR") filed a Statement in Support of Docket No. 99-22, stating that it had no objection to the removal of the Property from the State Land Use Conservation District. DLNR noted that as an actively utilized roadway, the Property has no limited resource value and that its inclusion within the State Land Use Agricultural District was not expected to adversely

impact the adjoining Conservation District resources. On October 21, 1999, DLNR filed written testimony reiterating its support for the Petition for Declaratory Order.

4. On October 18, 1999, the City and County of Honolulu Department of Planning and Permitting filed a letter in support of the Petition for Declaratory Order, stating that i) the Agricultural District designation of the Property would be consistent with its actual historical use and with the intent of the Land Use Commission's ("Commission") 1969 Five-Year Boundary Review; ii) proposed improvements to Waipahu Depot Street were significantly linked to the development of the Waipio Peninsula Recreation Complex that was approved by Ordinance No. 97-27 on June 12, 1997; iii) development of the Recreation Complex was consistent with the preferred plan of the Waipahu Town Plan which called for a Recreation Anchor on the Waipio Peninsula; iv) the Review Draft of the Central O'ahu Sustainable Communities Plan further supported the development of the Recreation Complex; and v) the granting of the Petition for Declaratory Order would enable the City and County of Honolulu to proceed in a timely and cost effective manner with infrastructural improvements required for the Recreation Complex. On October 21, 1999, the City and County of Honolulu filed a letter reiterating its support for the Petition for Declaratory Order.

POSITION OF PETITIONER

5. Petitioner contends that this Commission should interpret the boundary between the State Land Use Conservation District and the State Land Use Agricultural District in such a

manner that the Property is designated within the State Land Use Agricultural District. Petitioner argues that such an interpretation would be consistent with the overall purpose of Chapter 205, Hawai'i Revised Statutes, and more particularly with the basis and intent of this Commission upon which the reclassification was determined in the 1969 Five-Year Boundary Review.

6. Petitioner states that a declaratory order clarifying that the Property is designated within the Agricultural District is necessary to enable Petitioner to proceed with proposed infrastructural improvements required for the Recreation Complex in a timely and cost effective manner.

DESCRIPTION AND BACKGROUND OF THE PROPERTY

7. The Property in question is an approximately 1.927-acre portion of the Waipahu Depot Street right-of-way. The Property is currently designated within the State Land Use Conservation District, as represented by the State Land Use District Boundaries Map, O-9 (Waipahu). The Agricultural and Conservation District boundaries relative to the Property were established in the 1969 Five-Year Boundary Review as part of this Commission's reclassification of approximately 87 acres of wetland and partially submerged lands at Kapakahi situated on the western edge of the Waipio Peninsula to the Conservation District in light of the area's significant wildlife resource values. This Commission adopted the State Land Use District Boundaries Map on August 14, 1969, as the then official maps of this Commission.

8. The Property, as part of Waipahu Depot Street, was historically used by Oahu Sugar Company as an access route to transport its employees and equipment from the Waipahu Sugar Mill to its agricultural operations at the Waipio Peninsula. Waipahu Depot Street was also the principal access route for the City and County of Honolulu's refuse vehicles destined for the Waipahu Incinerator and/or the Waipahu Landfill.

9. By letter dated May 25, 1999, Mr. Lee Sichter on behalf of Petitioner requested a boundary interpretation pursuant to section 15-15-22, HAR, to determine the location of the Agricultural District and Conservation District boundary relative to the Property with this Commission. Boundary Interpretation No. 99-12 dated July 30, 1999, was subsequently prepared on Petitioner's map entitled "Waipio Peninsula Soccer Park Off-Site Infrastructure." The boundary of the Agricultural District and Conservation District was determined to follow the eastern side of Waipahu Depot Street, placing said street within the Conservation District.

10. Staff based its determination of the location of the Agricultural District and Conservation District boundary on this Commission's official map, State Land Use District Boundaries Map, O-9 (Waipahu), which represented the district boundary on the eastern side of Waipahu Depot Street.

11. In early 1999, Petitioner began construction of a 300-acre soccer park as part of the Recreation Complex in the central portion of the Waipio Peninsula on lands owned by

Petitioner and on lands leased from the United States of America ("USA"). A condition of the lease between Petitioner and the USA requires that non-potable irrigation water be provided by Petitioner to the soccer park as well as to agricultural lands on the southern portion of the Waipio Peninsula. Petitioner plans to address this requirement with the construction of a 20-inch irrigation pipeline. The development of the soccer park will also require the construction of a 6-inch sewer force main and a 4-inch potable water line. Widening of the existing pavement and the possible addition of curbs, gutters, and sidewalks are also planned. These infrastructure improvements are planned to be constructed on the Property.

12. Waipahu Depot Street currently serves four existing facilities owned by the City and County of Honolulu: the Honolulu Fire Department's Waipahu Maintenance Facility, the Waipahu Refuse Convenience Center, the Waipahu Sewer Pump Station, and the Ke Kula Maka'i Police Academy.

13. Waipahu Depot Street is planned to be used as an alternate access route to the soccer park.

14. Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

JURISDICTION

1. Jurisdiction of this Commission to consider the request of Petitioner is authorized under sections 15-15-98 and 15-15-22(f), HAR.

REMEDY

1. Petitioner is requesting this Commission to issue a declaratory order clarifying and correcting the boundary reclassification of this Commission under its 1969 Five-Year Boundary Review dated August 14, 1969, and Boundary Interpretation dated July 30, 1999, in Boundary Interpretation No. 99-12.

APPLICABLE LEGAL AUTHORITIES

1. The "State of Hawaii Land Use Districts and Regulations Review" documented the Commission's process in establishing the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized four major standards for shoreline conservation areas and provided recommendations based on these standards. Of relevance here is Standard No. 1, which states:

Where a plantation road, farm road, access way or public road exists at the edge of the agricultural use within reasonable proximity to the shoreline, it was used as the boundary between the Agriculture and Conservation Districts (p. 86).

2. The report further documented this Commission's actions with respect to the establishment of the Conservation District boundaries at Kapakahi by stating:

[A]t Kapakahi on the west loch of Pearl Harbor there are major wildlife resources which should be included within the Conservation District (p. 48).

3. The Property, as part of Waipahu Depot Street, was actively used for agricultural and other purposes at the time of the 1969 Five-Year Boundary Review.

A. DECLARATORY ORDER

FOR GOOD CAUSE APPEARING, this Commission hereby rules that the boundary reclassification of this Commission under its 1969 Five-Year Boundary Review dated August 14, 1969, and Boundary Interpretation dated July 30, 1999, in Boundary Interpretation No. 99-12 are clarified and corrected to reflect that the Property, consisting of approximately 1.927 acres of land, approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated within the State Land Use Agricultural District.

Accordingly, this Commission determines that State Land Use District Boundaries Map, O-9 (Waipahu), be amended to reflect that the Property is designated within the State Land Use Agricultural District.

IT IS FURTHER ORDERED that Petitioner shall mitigate and monitor all potential impacts of the planned improvements within the Property, street improvements, and future use of Waipahu Depot Street upon Kapakahi Stream and the Pouhala Bird Sanctuary during construction and over the operational life of Waipahu Depot Street and associated infrastructure.

Done at Honolulu, Hawai'i, this 9th day of November 1999,
per motions on October 21, 1999 and November 4, 1999

LAND USE COMMISSION
STATE OF HAWAII

By M. Kelai
MERLE A. K. KELAI
Chairperson and Commissioner

By L.N.C. Ing
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

By P. Roy Catalani
P. ROY CATALANI
Commissioner

By B. A. Coppa
BRUCE A. COPPA
Commissioner

By (absent)
PRAVIN DESAI
Commissioner

By Isaac Fiesta, Jr.
ISAAC FIESTA, JR.
Commissioner

By M. Casey Jarman
M. CASEY JARMAN
Commissioner

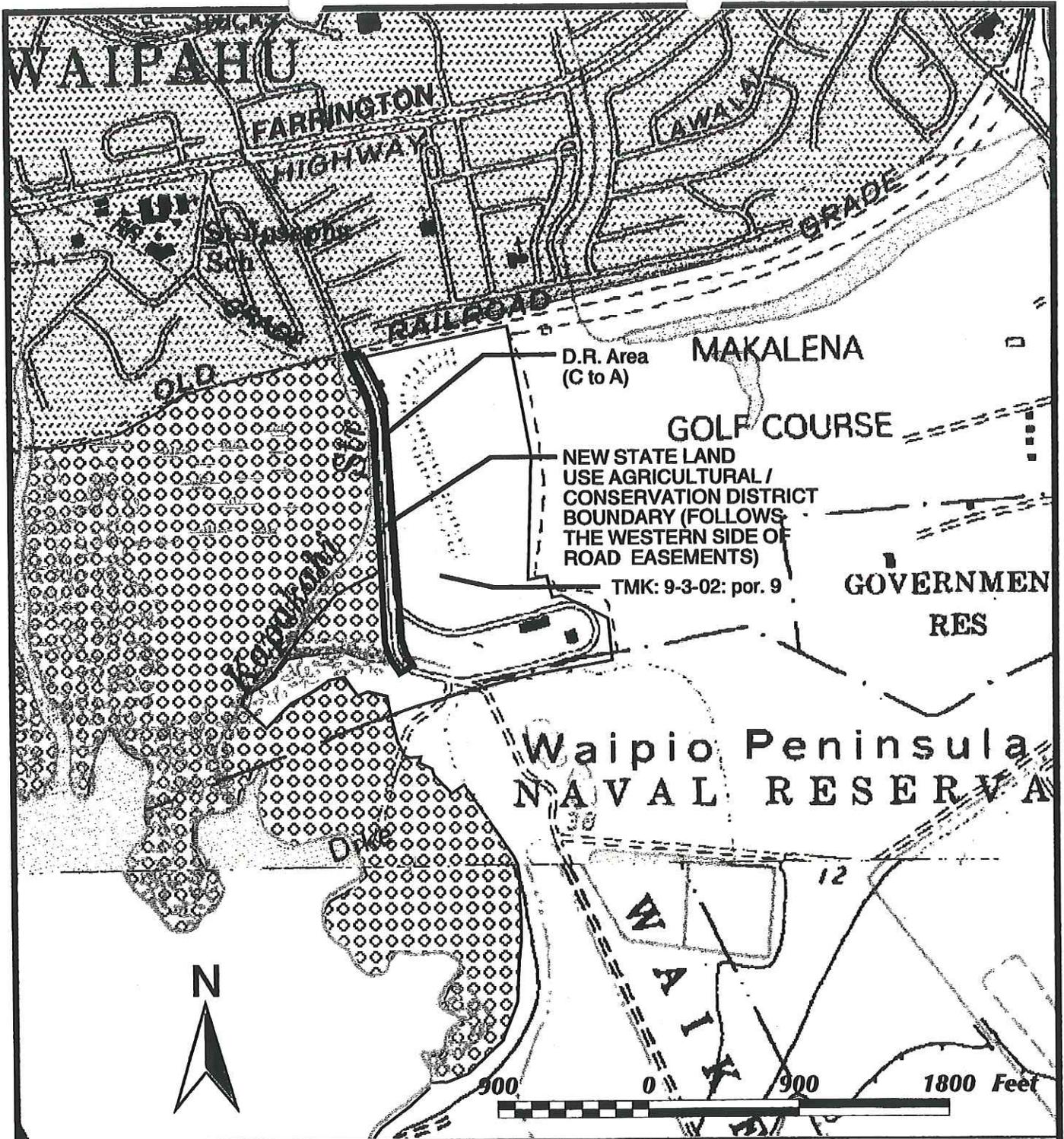
By Stanley Roehrig
STANLEY ROHRIG
Commissioner

By (absent)
PETER YUKIMURA
Commissioner

Filed and effective on
November 9, 1999

Certified by:

Catherine [Signature]
Executive Officer



DR99-22 CITY AND COUNTY OF HONOLULU

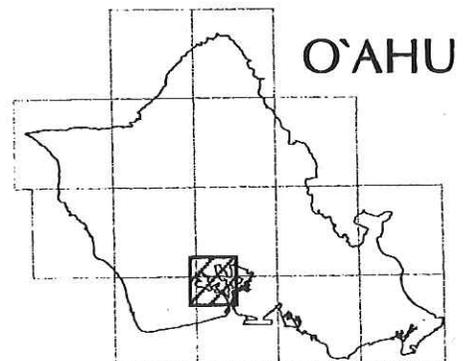
LOCATION MAP

TMK: 9-3-02: por. 9
 Waipio Peninsula, Waipahu, O'ahu, Hawai'i

Exhibit "A"

LEGEND:

-  URBAN
-  CONSERVATION
-  AGRICULTURAL



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_____)

DOCKET NO. DR99-22
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

CERT. RANDALL FUJIKI, Director
Department of Design and Construction
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

CERT. LEE WILLIAM SICHTER
Belt Collins Hawaii
680 Ala Moana Boulevard, Suite 100
Honolulu, Hawaii 96813

CERT. JAN NAOE SULLIVAN, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

DEL. DAVID W. BLANE, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

CERT. ROBERT SMITH
Pacific Islands Manager
U.S. Fish and Wildlife Service
300 Ala Moana Blvd., Room 3-122
Honolulu, Hawaii 96850

CERT. TIMOTHY E. JOHNS, Chairperson
 Department of Land & Natural Resources
 P. O. Box 621
 Honolulu, Hawaii 96809

DATED: Honolulu, Hawaii, this 9th day of November 1999.



ESTHER UEDA
Executive Officer