

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
)
JOAN BEVERLY S. ASHFORD AND)
CLINTON R. ASHFORD)
)
To Amend the Conservation Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
9,350 Square Feet of Land at)
Halekou Place, Kane'ohē, O'ahu,)
Hawai'i, TMK 4-5-69: por. 1)
_____)

DOCKET NO. A99-727
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
1999 AUG 16 A 11:08

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CLINTON R. ASHFORD)	CONCLUSIONS OF LAW, AND
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FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

JOAN BEVERLY S. ASHFORD and CLINTON R. ASHFORD (hereinafter "Petitioners") submitted a Petition for District Boundary Amendment dated March 5, 1999, a First Amendment to Petition for District Boundary Amendment dated March 8, 1999, and a Second Amendment to Petition for District Boundary Amendment dated March 11, 1999, pursuant to Chapter 205, Hawaii Revised Statutes (hereinafter "HRS"), and Chapter 15-15, Hawaii Administrative Rules (hereinafter "H.A.R."), to amend the State land use district boundary by reclassifying approximately 9,350 square feet of land situated at Halekou Place, Kane'ohe, O'ahu, City and County of Honolulu, State of Hawai'i, identified as Tax Map Key No.: 4-5-69: portion of 1 (hereinafter "Petition Area"), from the Conservation Land Use District to the Urban Land Use District to conform with the current use of the Petition Area for single-family residential purposes.

The Land Use Commission (hereinafter "Commission" or "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioners submitted a Petition for District Boundary Amendment dated March 5, 1999, a First Amendment to Petition for District Boundary Amendment dated March 8, 1999, and a Second Amendment to Petition for District Boundary Amendment dated March 11, 1999. Petitioners also filed a motion for Order Waiving Requirement of HAR §15-15-50(c)(8) for Financial Statements and Order.

2. Petitioners are JOAN BEVERLY S. ASHFORD and CLINTON R. ASHFORD, husband and wife, whose mailing and residence address is 45-628 Halekou Place, Kane'ohe, Hawai'i 96744.

3. On May 11, 1999, the LUC served an Order Waiving Requirement of HAR §15-15-50(c)(8) for Financial Statements and Order, and served an Order of Preliminary Determination for a Negative Declaration of an Environmental Assessment with respect to Petitioner's draft EA.

4. On June 8, 1999, the LUC served its Findings of Fact, Conclusions of Law, and Decision and Order Determining a Negative Declaration for a State Land Use District Boundary Amendment.

5. On July 16, 1999, a prehearing conference was held in the conference room of the State Office Tower, Room 405, 235

S. Beretania Street, Honolulu, Hawai'i, which was attended by all parties.

6. The Office of Planning (hereinafter "OP") recommended approval of the Petition with no conditions other than those customarily imposed by the LUC.

7. The Department of Planning and Permitting of the City and County of Honolulu (hereinafter "DPP") recommended approval of the Petition.

8. On August 5, 1999, the LUC conducted a hearing on the Petition pursuant to a notice published on June 7, 1999, in the Hawaii State and County Public Notices.

9. There were no requests for intervention nor any public witnesses testifying on the Petition.

DESCRIPTION OF THE PETITION AREA

10. The Petition Area consists of 9,350 square feet of the 18,286 square foot lot located at 45-628 Halekou Place, Kane'ohe, Hawai'i, and is identified by Tax Map Key No.: 4-5-69: portion of 1. The remaining 8,936 square feet of the lot not addressed by the Petition consist of lands already in the Urban District. This area is zoned R-5 Residential District by the DPP.

11. The Petition Area is located in proximity to existing centers of trading and employment. The closest commercial area is in Kane'ohe, about one mile north of the Property.

12. The Petition Area was a State-owned remnant which the Petitioners acquired from the State in 1965 and consolidated

with an adjacent 8,936 square foot urban lot also acquired by Petitioners in 1965. The Petition Area was classified Conservation and with permission from the Department of Land and Natural Resources in 1965, the Petitioners built a single family residence straddling the boundary between the two areas on the parcel, such that the residence is partly on land classified Conservation and partly on land classified Urban. Petitioners have lived in that residence since 1965 and continue to do so.

13. Petitioners' residential lot adjoins residential lots on all sides except for the south side, which is land in the Conservation District.

14. Elevations for the Petition Area range from approximately 389 feet above mean sea level (hereinafter "msl") at the southwest corner to approximately 412 feet above msl at the northeast corner of the Petition Area, a distance of approximately 132 feet, for an average slope of 17.5%. Terracing has steepened some of the slope. The topography in the vicinity of the three-level, single-family dwelling ranges from 407 to 412 feet above msl.

15. A three-level single-family dwelling, which has an equilateral triangle floor plan and was built in 1965, is partially located on the Petition Area.

16. The portion of the Petition Area not within the footprint of the existing residence has been landscaped and is included within Petitioners' lawn and garden. There are no structures other than the residence and connected patios and driveway on the Petition Area.

17. The United States Department of Agricultural Soil Conservation Service Soil Survey classifies the soils on the Petition Area as Kaneohe Series, silty clay loam. None of the Petition Area is identified as, or is adjacent to Prime, Unique or Other Important Agricultural Land under the Agricultural Lands of Importance to the State of Hawaii land classification system. The Land Study Bureau's Detailed Land Classification—Island of Oahu classifies most of the Petition Area as in urban use, with a small portion classified with the lowest productivity rating of "E".

18. The Flood Insurance Rate Map (Community Panel No. 150001 0090 C, September 28, 1990) published by the Federal Emergency Management Agency shows the Petition Area as in Zone D, which denotes areas in which flood hazards are undetermined. There are no known adverse flood or drainage conditions.

PROPOSAL FOR RECLASSIFICATION

19. Petitioners desire to have the State Land Use District Boundary amended to reflect the existing residential use of the Petition Area.

20. Petitioners do not propose any development of the Petition Area other than, if any, additional improvements which would be allowed under R-5 Residential District zoning on the existing residence lot.

PETITIONERS' FINANCIAL ABILITY

21. Since the Petitioners do not intend to further develop the Petition Area, the requirement of Section 15-15-50(c)(8), H.A.R. for Financial Statements was waived without

objection by the OP and the DPP, pursuant to Sections 15-15-34 and 15-15-70 H.A.R., by LUC Order served May 11, 1999.

STATE AND COUNTY PLANS AND PROGRAMS

22. The Petition Area has a Parks and Recreation designation under the City and County of Honolulu Koolaupoko Development Plan.

23. According to the City and County of Honolulu Land Use Ordinance and Zoning Maps, the Petition Area is zoned P-1 Restricted Preservation.

24. Because no change in use of the Petition Area is contemplated, it will maintain the same conformity with the Hawaii State Plan and the State Functional Plans as the Petition Area's current use. Similarly, the proposed action will not impact the State Coastal Zone Management Area since it will not result in a land use or population density change.

25. The DPP advised the Petitioners and the LUC that since no development or change in land use of the Petition Area is contemplated, the proposed action does not present a conflict with the City and County of Honolulu General Plan nor with the Koolaupoko Development Plan (hereinafter "DP") and that the Petition Area is not subject to Special Management Area requirements of Chapter 25, Revised Ordinances of Honolulu.

26. Petitioners have filed a zone change application with the DPP to change the zoning from P-1 Preservation to R-5 Residential. That application is now pending.

NEED FOR THE PROPOSED RECLASSIFICATION

27. Petitioners seek the reclassification of the Petition Area to accurately reflect a situation that has existed since 1965. The reclassification would conform the land use classification of the Petition Area to its actual long-time use as a single-family residence and facilitate a change of zoning from P-1 Preservation to R-5 Residential.

ECONOMIC AND SOCIAL IMPACTS

28. The reclassification will not generate direct or indirect employment changes, but the reclassification may impose higher real property taxes when subsequent City and County rezoning to higher residential use designation is approved.

29. No commitment of State funds or resources will result from the reclassification. Upon rezoning of the Petition Area to the R-5 Residential District, it will be subjected to a higher real property tax rate, but will have no other economic impact.

IMPACTS UPON RESOURCES OF THE AREA

30. The Petition Area is not identified as, or adjacent to Prime, Unique or Other Important Agricultural Land, and thus, the proposed action will not affect the availability of agricultural lands.

31. The reclassification will not impact native or endangered flora or fauna, or other biological or botanical resources.

32. The Historic Preservation Division of the State Department of Land and Natural Resources performed a Chapter 6E

Historic Preservation Review, and advised that there are no known historic sites on the Petition Area and the boundary amendment will have no effect on significant historic sites.

33. The Petition Area is a government remnant which the Petitioners have fully developed and used for residential purposes since 1965. There are no known Hawaiian customary or traditional rights or practices associated with the Petition Area.

34. The reclassification of the Petition Area will not impact groundwater resources, as no change in land use is proposed.

35. The reclassification of the Petition Area will have no effect on recreational or scenic resources.

36. The reclassification of the Petition Area will not impact coastal or aquatic resources.

ENVIRONMENTAL QUALITY

37. Since the Petition Area has been in continuous use as a single-family residence since 1965, the proposed reclassification will have no effect on the existing noise environment.

38. Since the Petition Area has been in continuous use as a single-family residence since 1965, the proposed reclassification of the Petition Area will not impact existing air quality in and around the Petition Area.

39. Since the Petition Area has been in continuous use as a single-family residence since 1965, the proposed

reclassification of the Petition Area will not impact the quality of existing water resources.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

40. Reclassification of the Petition Area will not add additional population or traffic to the community because the single-family dwelling is already occupied, and the Petitioners will not increase their vehicle trips because of the reclassification.

41. The Petition Area is connected to water, electric, telephone, sewer and cable utilities. There are no municipal drainage facilities serving the Petition Area. It is similar to the residential lots which adjoin or are near it.

42. Since the Petition Area has been in continuous use as a single-family residence since 1965, the availability of schools, sanitation, and police and fire protection, and other services and facilities for the Petition Area will not be additionally affected, nor shall the public agencies providing these services and facilities be additionally burdened, as a result of the reclassification.

COMMITMENT OF STATE FUNDS AND RESOURCES

43. No commitment of State funds or resources will result from the reclassification.

CONFORMANCE TO URBAN DISTRICT STANDARDS

44. The Petition Area meets the standards applicable in establishing boundaries of the Urban District as set forth in Section 15-15-18, H.A.R. as follows:

a. The Petition Area is located immediately adjacent to and is contiguous with lands which are located in the Urban District and which are zoned and used for urban uses.

b. The Petition Area itself has been effectively in urban use since 1965, continues to be an appropriate and reasonable use of the Petition Area, and is located in proximity to existing centers of trading and employment.

c. Economic feasibility is not an issue with respect to the Petition Area since, aside from customary residential improvements, the Petitioners do not intend to further develop the Petition Area.

d. Basic services such as sewers, transportation systems, water, sanitation, schools, parks, and police and fire protection are already provided to the Petition Area. No unreasonable investment in public infrastructure or support services will be necessary for the Petition Area.

e. The Petition Area includes lands with satisfactory topography and drainage conditions and is reasonably free from the danger of floods, tsunami, unstable soil conditions and other adverse environmental effects.

f. Although the Petition Area is designated as Preservation under the City and County of Honolulu's DP Land Use Map, the Petitioners have filed a Zone Change Application with the DPP, to change the zoning designation to Residential. If the Application is granted, the DP Land Use Map designation of the Petition Area will automatically change to Residential.

g. Given the 9,350 square foot area of the Petition Area, it represents a minor portion of the surrounding Urban District.

45. The Petition Area is presently in residential use and is required to have a Conservation District Use Permit as provided for in the rules of the state department of land and natural resources, title 13, and chapter 183C, HRS. Petitioners received permission for existing residential use from the state department of land and natural resources on August 27, 1965.

46. The Petition Area is not necessary for watershed protection. It is not susceptible to floods or soil erosion. It is not undergoing erosion damage and requires no corrective attention by government agencies.

47. The Petition Area is not necessary for the protection of health and welfare of the public caused by flooding, tsunami, or volcanic activity.

48. The Petition Area has no unique physiographic or ecological significance. Due to the existing development and landscaping of the Petition Area, it has no significant conservation or preservation values or known archaeological sites. These lands are not necessary for the conservation of natural ecosystems.

49. The Petition Area includes some lands with a slope in excess of 20 percent which has been landscaped. Due to the Petition Area's location, configuration, and existing development, it does not have significant natural open space amenities or scenic values.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP TO APPLICABLE PRIORITY GUIDELINES OF THE HAWAII STATE PLAN AND FUNCTIONAL PLANS

50. The reclassification of the Petition Area is in conformance with the Hawaii State Plan, priority guidelines and functional plan policies, including the following:

a. State Objectives: The State objectives set forth in Sections 226-5, 226-7, 226-13, 226-19, and 226-104, HRS.

b. State Policies: The following State policies set forth in Chapter 226, HRS:

Section 226-12(b)(3): "Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features."

Section 226-13(b)(7): "Encourage urban development in close proximity to existing services and facilities."

Section 226-19(a)(2): "The orderly development of residential areas sensitive to community needs and other land uses."

Section 226-19(b)(4): "Section 226-19(b)(4): "Promote appropriate improvement, rehabilitation, and maintenance of existing housing units and residential areas."

c. State Functional Plans: The proposed reclassification of the Petition Area is in conformance with the following implementing action of the State Housing Functional Plan:

Objective D: "Preservation of existing public and private housing stock."

52. The proposed reclassification of the Petition Area is in conformance with the following priority guideline contained in Section 226-104, HRS:

Section 226-104(b)(1): "Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles."

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

Although the Petition Area is within the Coastal Zone Management Area, it is not located within the Special Management Area; therefore, no Special Management Area permit is required. The Petition is in general compliance with Chapter 205A, HRS.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioners and the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law, any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSION OF LAW

Pursuant to Chapter 205, HRS, and the Hawaii Land Use Commission Rules under Chapter 15-15, H.A.R., and upon consideration of the Land Use Commission decision-making criteria

under Section 205-17, HRS, this Commission finds and concludes upon the clear preponderance of the evidence that the reclassification of the Petition Area consisting of approximately 9,350 square feet of land situated at Halekou, Kane`ohe, O`ahu, City and County of Honolulu, State of Hawai`i and identified as Tax Map Key No.: 4-5-69: portion of 1, from the Conservation Land Use District to the Urban Land use District subject to the conditions hereinafter stated in the Order, is reasonable, conforms to the standards for establishing the urban district boundaries, non-violative of Section 205-2, HRS, and is consistent with the policies and criteria established pursuant to Sections 205-16, 205-17 and 205-A2, HRS; and Section 15-15-18, HAR. Any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, being the subject of Docket No. A99-727, filed by Joan Beverly S. Ashford and Clinton R. Ashford, consisting of approximately 9,350 square feet of land situated at Halekou, Kane`ohe, O`ahu, City and County of Honolulu, State of Hawai`i, Tax Map Key No.: 4-5-69: portion of 1, and identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the Conservation Land Use District to the Urban Land Use District and the State Land Use Boundaries are amended accordingly, subject to the following conditions:

1. Petitioners shall develop the Petition Area in substantial compliance with the representations made to the Commission; that is, for continued existing single-family residential use consistent with residential zoning. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

2. Petitioners shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.

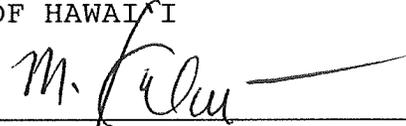
3. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

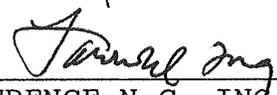
4. Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, the Petitioners shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.

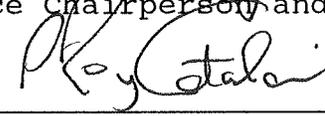
5. Petitioners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

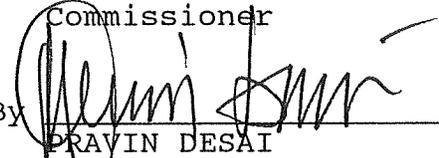
Done at Honolulu, Hawai'i, this 16th day of August 1999,
per motion on August 5, 1999.

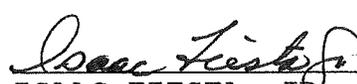
LAND USE COMMISSION
STATE OF HAWAII

By 
MERLE A. K. KELAI
Chairperson and Commissioner

By 
LAWRENCE N.C. INC
Vice Chairperson and Commissioner

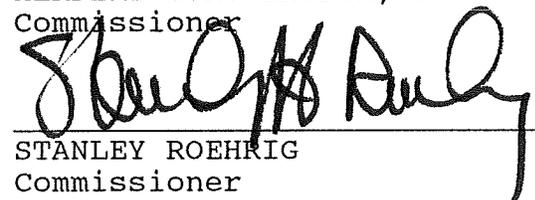
By 
P. ROY CATALANI
Commissioner

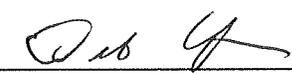
By 
PRAVIN DESAI
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

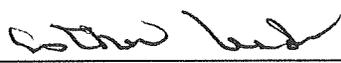
By (absent)
M. CASEY JARMAN
Commissioner

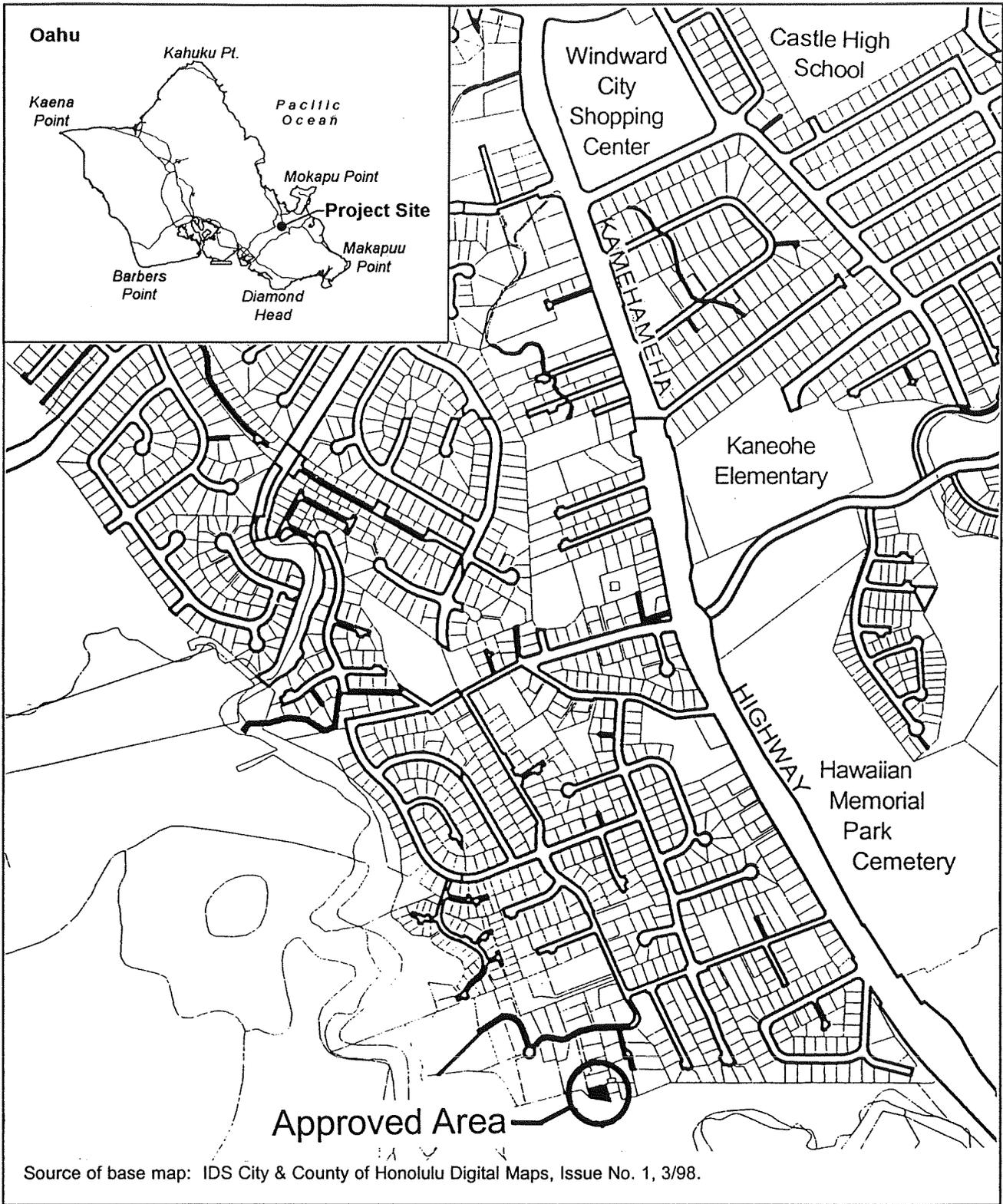
By (resigned)
HERBERT S.K. KAOPUA, SR.
Commissioner

By 
STANLEY ROHRIG
Commissioner

By 
PETER YUKIMURA
Commissioner

Filed and effective on
August 16, 1999

Certified by:

Executive Officer



Docket No. A99-727/Joan B. Ashford and Clinton R. Ashford

Location Map

Tax Map Key 4-5-69:por. 01
Halekou, Kaneohe, Oahu



Exhibit

A

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CERTIFICATE OF SERVICE

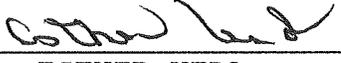
I hereby certify that a copy of the Findings Of Fact, Conclusions Of Law, And Decision And Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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

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

CERT. CLINTON R. ASHFORD, ESQ.
Ashford & Wriston
P. O. Box 131
Honolulu, Hawaii 96810

DATED: Honolulu, Hawaii, this 16th day of August 1999.



ESTHER UEDA
Executive Officer