

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
LAND USE COMMISSION, STATE OF HAWAII,) DOCKET NO. A79-453
)
to Amend the Agricultural Land Use) LAND USE COMMISSION,
District Boundary to Reclassify) STATE OF HAWAII
Approximately 4.2 Acres, TMK:)
5-2-12: portion of 18; TMK 5-2-12:)
portion of 16, at Kilauea, Island)
and County of Kauai, into the Urban)
Land Use District.)
_____)

DECISION AND ORDER

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and County of Kauai, into the Urban)
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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, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations, by the LAND USE COMMISSION, STATE OF HAWAII, who is requesting that the designation of the subject property be amended from the Agricultural to the Urban district. The requested change consists of two parcels of property consisting of approximately 2.9 acres of land and 1.3 acres of land, situated at Kilauea, Hanalei, Island and County of Kauai. The parcel of property comprising 2.9 acres is more specifically identified as Tax Map Key No. 5-2-12: portion of 18, and the parcel comprising 1.3 acres of land is more specifically identified as Tax Map Key No. 5-2-12: portion of 16.

PURPOSE OF PETITION

According to the Petition, REX FINANCIAL CORPORATION, which owns the parcel consisting of 2.9

acres, intends to develop said property as part of the Puu Lani Subdivision, Phase III, which consists of 35 residential lots covering a total land area of approximately 7.7 acres. The other parcel consisting of 1.3 acres will be developed by the fee owners of the property in the future as a residential subdivision.

THE PROCEDURAL HISTORY

The Petition was filed with the Land Use Commission on March 13, 1979. Notice of the hearing on this Petition was published on July 20, 1979, in the Garden Island and the Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties on July 19, 1979. A timely request to appear and testify as a public witness in this matter was received from Ms. Elizabeth Stone on August 14, 1979.

PRE-HEARING PROCEDURE

Prior to the taking of testimony and evidence in regard to the subject Petition, the Hearing Officer considered the request of Elizabeth Stone to appear and testify as a witness in this proceeding. Since Ms. Stone did not appear personally at the proceeding, the Hearing Officer, without objection from the parties, accepted her written submittal as a statement of a public witness in regard to the subject Petition. Walton Hong, Esq., attorney for the landowners also appeared and requested leave to intervene as a party to this proceeding. For good cause shown, and no objections being raised by the other parties to the proceeding, the landowners were permitted to intervene as parties.

THE HEARING

The hearing on this Petition was held on August 24, 1979, in Lihue, Kauai. The Land Use Commission, State of Hawaii, the Petitioner herein, was represented by Deputy Attorney General Allan Kawada; the County of Kauai was represented by Deputy County Attorney Michael Belles; the Department of Planning and Economic Development was represented by Deputy Attorney General Annette Chock; and the landowners were represented by Walton Hong, Esq.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Jack Bennington

County of Kauai:

Tom Shigemoto

Rodney Yadao

Jo Ann Yukimura

Gail Smith

Department of Planning and Economic Development:

Tatsuo Fujimoto

POSITION OF THE PARTIES

County of Kauai - Approval of the 2.9 acre parcel; disapproval of the 1.3 acre parcel.

Department of Planning and Economic Development - Approval for both parcels.

Landowner - Approval of both parcels.

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District is found under Part II, Section 2-2(1) of the

State Land Use Commission's District Regulations. Said regulation provides in pertinent part:

- "(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 specific 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 consideration to areas of urban growth as shown on the State and County General Plans.
 - (f) Lands which do not conform to the above 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 panel of the Land Use Commission, after having duly considered the record in this Docket and Docket No. A76-425, the testimony of the witnesses and the evidence introduced herein, makes the following findings of fact:

1. The parcel of property comprising approximately 2.9 acres, which shall hereinafter be referred to as "Parcel A", is crescent in shape and situated on the Northerly side of Kuhio Highway and Kauai Belt Road, at Kilauea and Kahili, Hanalei, Kauai, Hawaii, and is more specifically identified as Tax Map Key No. 5-2-12: portion of 18. Parcel A is owned in fee simple by Rex Financial Corporation. The parcel of land comprising approximately 1.3 acres, hereinafter referred to as "Parcel B", is located on the Northerly side of Kuhio Highway and Kauai Belt Road at Kilauea and Kahili, Hanalei, Kauai, Hawaii, and is more specifically identified as Tax Map Key No. 5-2-12: portion of 16. Roger Taniguchi, as nominee, is the present owner of Parcel B.

2. The existing State Land Use classification of the subject property since 1964 has been Agricultural.

3. The Kauai County Zoning designation for Parcel A is Agriculture District (A) and Parcel B is zoned Open District (O). The General Plan designation for Parcel A is Single-Family Residential and Open for Parcel B.

4. The subject parcels are presently vacant and overgrown. The subject property had formerly been used for sugarcane cultivation by Kilauea Sugar Company until it closed in 1970. Metcalf Farms subsequently utilized the property for sorghum cultivation and was successful in taking out one crop in 1972. The subject parcels were taken out of agricultural use in 1973.

5. Parcel A is surrounded on all sides by lands of the Kilauea Urban district. Parcel B is situated adjacent to Urban designated lands on its Northern and Western borders.

6. The subject properties are located at the 300 foot elevation and contain a slope which runs from a West to Easterly direction from a nearly level plane to less than 10° toward the bluff line overlooking Kilauea Stream. Annual rainfall for the subject parcels averages 75 inches. The subject properties drain naturally in an Easterly direction into Kilauea Stream which flows to the ocean approximately 2 miles to the North. The properties are not within any known flood plain or tsunami hazard area.

7. The soils in the subject properties are classified by the U. S. Department of Agriculture, Soil Conservation Service, as Makapili Series. According to the Soil Conservation Service, Soil Survey of Islands of Kauai, Oahu, Molokai and Lanai, State of Hawaii (August, 1972), Makapili

soils are silty clay and clay loam, have a depth to bedrock greater than five feet, have a seasonal high water table greater than five feet, are moderately to highly permeable, have a low shrink-swell potential, and are highly corrosive. Makapili soils also have fair suitability for topsoil and good suitability for roadfill, low fertility, and slight limitations for septic tank filter fields on slopes up to 8%, with moderate limitations up to 15%. The agricultural capability classification of Makapili soils is under Pasture Group 10, for which potential yields of 8,000 to 10,000 pounds of air-dry forage per acre per year on well-managed improved pasture is possible; 3,000 to 5,000 pounds are possible on unimproved pasture. Makapili soils also fall under Woodland Group 9, for which the estimated annual productivity is 400 to 800 board feet per acre. The Capability Grouping Classification for the Makapili soils is IIe. The Capability Grouping provides an indication of the general suitability of soils for most kinds of crops. Class II soils have moderate limitations that reduces the choice of plants or that require moderate conservation practices. Subclass IIe soils are subject to moderate erosion if they are cultivated and not protected.

8. The Land Study Bureau of the University of Hawaii identifies the soils of the subject properties to be of the Kapaa and Makapili series, which are dark brown to dark yellowish-brown, deep, well-drained and generally non-stony. The land type classification assigned to the subject site by the Land Study Bureau is C.29. The overall productivity rating of the subject properties for agricultural use is Class "C" in a five class rating of

"A" through "E", with "A" representing the highest productivity rating and "E" the lowest.

9. Agricultural activities undertaken by other parties and the results therefrom indicate that the subject properties are not feasible for farming. Kilauea Sugar Company ceased utilizing the subject properties for sugar cultivation in 1970 with the closing of their sugar operations. Metcalf Farms subsequently attempted to farm the subject properties for grain cultivation, but was successful in taking only one crop out in 1972, at which time it was decided to consolidate its operations to more productive and conveniently located lands. Agricultural pursuits by Metcalf Farms on the subject sites and surrounding area were not successful due to the use of large farm equipment in a small area, the need for heavy irrigation, dust and noise problems, and the wind carrying dust, noise, herbicide and pesticide to the surrounding urban residential areas. The development of the adjacent surrounding lands and the topographic and physical constraints posed by the Kilauea Stream makes it unlikely that feasible agricultural operations can be conducted in the future on the subject sites.

10. In Docket No. A76-425, Rex Financial Corporation was granted a Petition for Boundary Amendment on November 14, 1977, by the State Land Use Commission for certain properties situated adjacent to Parcels A and B at Kilauea. The reclassification in said Docket involved the adjacent property identified as Tax Map Key No. 5-2-4: portion of 8, which encompasses approximately 35.72 acres from the Agricultural district into the Urban district.

Due to a technical error relating to the location of the Land Use District boundary at that time, Parcel A and a 3,750 square foot parcel identified as Titcomb cemetery lot (Tax Map Key No. 5-2-12: 17) were inadvertently excluded from Docket No. A76-425. Consequently, at both the Hearing on A76-425 (May 18, 1977 Transcript, pp. 6-8) and the Action Meeting (November 14, 1977 Transcript, pp. 10-13), it was stipulated to by the parties that the State Land Use Commission, should A76-425 be granted, would initiate a petition to similarly reclassify Parcel A from the Agricultural district to the Urban district. According to Petitioner, landowner Rex Financial Corporation intends to develop Parcel A as part of the Puu Lani Subdivision, Phase III, which will consist of 35 residential lots covering a total of approximately 7.7 acres, inclusive of Parcel A. The average lot size will be approximately 7,500 square feet with a range of 6,000 to 9,000 square feet. The overall density of the subdivision will be 4.5 lots per acre. The landowner has indicated that approximately 20% of the total area of the development will be used for roadways and other offsite improvements. Puu Lani Subdivision encompasses a portion of the 35.72 acres which the Land Use Commission reclassified from the Agricultural to the Urban district under Docket No. A76-425. Presently, Puu Lani Subdivision, Phase III is pending before the County of Kauai Planning Department for processing and approval.

11. That prior to filing its Petition for district boundary amendment in Docket No. A76-425, Rex Financial Corporation was in the process of negotiating with the County of Kauai to convey a 7 acre area known as the "Kilauea Slippery Slides" to Kauai County as a public park. Parcel B was

included within that 7 acre area which was contemplated to be transferred to the County. However, subsequent to receiving the reclassification in Docket No. A76-425, Rex Financial Corporation learned that the Kauai County Counsel had voted not to accept the 7 acre Slippery Slides area. Parcel B, according to representations made by the present landowner, is intended to be developed for residential use and designed according to the needs of the community and the owner at the time of development.

12. That according to the Petitioner, the landowner anticipates that the Puu Lani Subdivision, Phase III will be offered for sale only in the Kauai market and that the Honolulu and mainland markets will not be resorted to until and unless the lots cannot be sold locally. The landowner, however, does not expect any difficulties in selling the residential lots to local residents of Kauai seeking moderately priced house lots based on the fact that sales of residential lots in the Kilauea area for earlier residential subdivisions have indicated that 70% of the purchasers are residents at the Northshore, 15% are residents of Kauai, and the remaining 15% are from the rest of the State of Hawaii and elsewhere. Rex Financial Corporation also has a waiting list of more than a hundred Kauai residents desiring to purchase residential homesites which the landowner intends to develop. The projected selling prices for the lots based on today's prices will range from \$14,500.00 to \$25,000.00, depending on the size and location of the individual lot. The projected cost for all onsite and offsite improvements for the subdivision including roads, drainage facilities, grading, water and other utilities is estimated to be between \$5,000.00 to \$6,000.00 per lot with an approximate total development cost

of \$192,500.00. The landowner, Rex Financial Corporation, will fund all onsite and offsite development costs and no governmental funding is expected for the project. Petitioner's justification for this boundary amendment is based upon the belief that the development of Parcel A will aid in fulfilling the growing need for moderately priced residential homesites in Kilauea. Kilauea town is rapidly becoming the bedroom community for Kauai's Northshore and is consequently feeling the growth pressure. The Petitioner attributes the growth pressure to the following factors:

- a. Increased employment opportunities resulting from the Princeville at Hanalei resort complex;
- b. Increased cost of residential homesites in the Hanalei-Haena area as well as the Kapaa area; and
- c. The growing unavailability of moderately priced homesites elsewhere in the Northshore.

Parcel B is slated for development in the future as a residential subdivision in conjunction with the development of the Slippery Slides Park abutting said parcel. The landowner intends to develop Parcel B in the form and manner compatible to the intended development of the Slippery Slides Park which will be in the best interests of the surrounding community. Since Parcel B is situated adjacent to Urban land on its Northern and Western borders, its development for residential purposes would be a logical extension of the proposed residential development on the adjoining Urban designated lands.

13. Public services and facilities available to the subject properties are as follows:

- a. Schools: The subject property is located in the existing Kilauea Elementary School and Kapaa High and Intermediate School districts which are capable of servicing the needs generated by the development of the subject property.
- b. Sewer: Sewage disposal will be through the use of cesspools. Solid waste disposal will be through the use of the Hanalei Sanitary Landfill. The landowners have represented that all Board of Health requirements with respect to waste disposal will be observed and met.
- c. Parks: Kilauea Park is located in close proximity to the subject property and will be available for the resident's use. Landowner Rex Financial has also indicated that they will comply with all County Park dedication requirements.
- d. Water: The Kauai County Department of Water has indicated that the present system's source, storage and transmission facilities are adequate to serve the proposed subdivision. Rex Financial Corporation has indicated its willingness to extend the water line from the existing Kolo Road water line to the subdivision at their sole cost.
- e. Other Urban Amenities: Urban amenities such as electricity, gas, telephone service, police and fire protection, can and will be provided to the subject properties without unreasonably burdening the public agencies or quasi-public agencies such as Kauai Electric, Gasco and Hawaiian Telephone.

14. There are no known agricultural, archaeological, historical, recreational or natural resources which will be affected by the reclassification of the subject properties.

15. Based on a review of the Petition, the evidence adduced at the hearing and the policies and criteria of the Interim Statewide Land Use Guidance Policy, the County of Kauai has recommended that the reclassification of Parcel A be approved. County of Kauai, however, is opposed to the reclassification of Parcel B on the grounds that:

- a. The Petitioner has not presented justifications supporting the appropriateness of the reclassification.
- b. If park-type use is desired on Parcel B, the use is already permissible under the present district classification.
- c. If residential use is desired adjacent to the Slippery Slides area, such a request should be considered as part of the development of the Kilauea Community Development Plan currently underway for the area.

16. Based on a review of the Petition, the evidence adduced at the hearing and the policies and criteria of the Interim Statewide Land Use Guidance Policy, the Department of Planning and Economic Development has recommended that the reclassification be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 4.2 acres of land, situated at Kilauea, Island and County of Kauai, State of Hawaii, from Agricultural to Urban and an amendment to the district boundaries accordingly is reasonable, non-violative of Section 205-2 of the Hawaii Revised


Statutes, and is consistent with the Interim Statewide Land Use Guidance Policy established pursuant to Section 205-16.1 of the Hawaii Revised Statutes.


ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A79-453, consisting of approximately 4.2 acres, situated at Kilauea, Island and County of Kauai, State of Hawaii, identified as Tax Map Key Nos. 5-2-12: portion of 18 and 5-2-12: portion of 16, shall be and the same is hereby reclassified from the "Agricultural" district to the "Urban" district classification, and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 14th day of February, 1980, per Motion on January 31, 1980.


LAND USE COMMISSION
STATE OF HAWAII

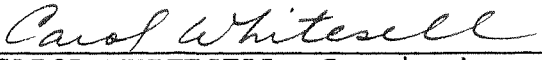
By 
C. W. DUKE, Chairman and
Commissioner


By 
SHINICHI NAKAGAWA, Vice
Chairman and Commissioner

By 
SHINSEI MIYASATO, Commissioner

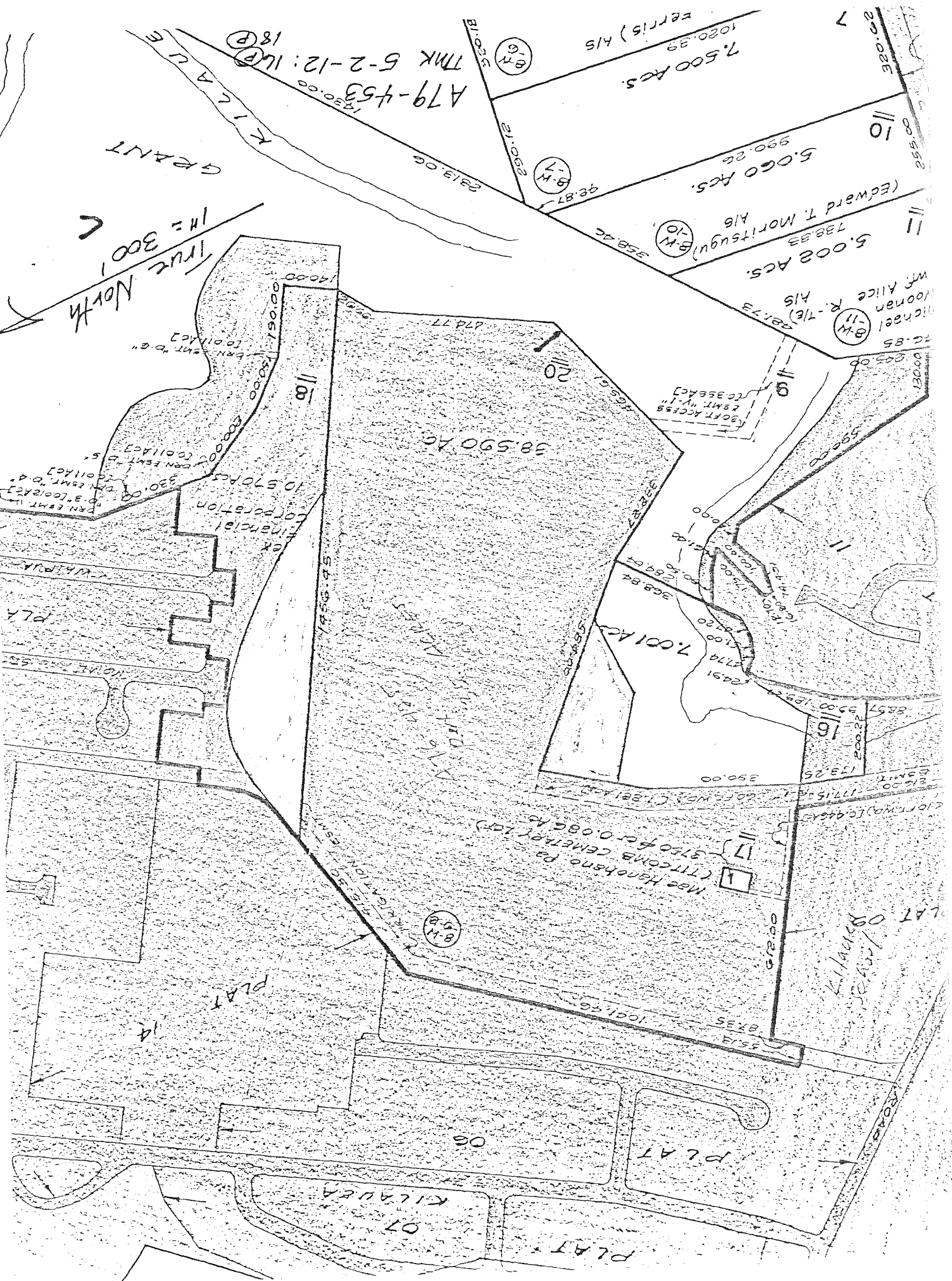
By 
MITSUO OURA, Commissioner

By 
GEORGE PASCUA, Commissioner

By 
CAROL WHITESELL, Commissioner

By 
EDWARD YANAI, Commissioner

By 
WILLIAM YUEN, Commissioner



A79-453
TMK 5-2-12: 11(P)
18(P)

GRANT

1/2" = 300'
TRUE NORTH

38.590 AC

7.500 ACS

5.060 ACS

5.002 ACS

(Edward T. Moritsugu)
Michael Moonan
Alice R. Moonan

7.001 ACS

Mae Hanohano Pa
(TTTCOMB GENERAL CORP)

KILAUHA SCHOOL

KILAUHA

PLAT

PLAT

PLAT

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06

07

16

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B-7

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approximately 4.2 acres at Kilauea,)
Island of Kauai into the Urban Land)
Use District.)
_____)

CERTIFICATE OF SERVICE

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

HIDETO KONO, Director
Department of Planning & Economic Development
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250 South King Street
Honolulu, Hawaii 96813

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Capital Investment Building
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

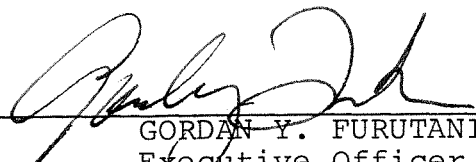
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Masuoka & Hong
P. O. Box 1727
Lihue, Kauai 96766

DATED: Honolulu, Hawaii, this 19th day of February, 1980.



GORDAN Y. FURUTANI
Executive Officer