HAW'N TRUST-ROMAN CATHOLIC CHURCH A(T)63-40

DRAFT

LAND USE COMMISSION
STATE OF HAWAII

IN THE MATTER OF THE PETITION BY)
MARTIN ANDERSON AND CHRISTOPHER COBB)
FOR HAWAIIAN TRUST COMPANY, LIMITED, AND)
THE ROMAN CATHOLIC CHURCH IN THE STATE)
OF HAWAII, A(T)63-40)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

A public hearing in the matter of the petition by Martin Anderson and Christopher Cobb for Hawaiian Trust Company, Limited and the Roman Catholic Church in the State of Hawaii, A(T)63-40, for amendment of the temporary Land Use District boundaries at Manoa Valley, Oahu, was held before the Land Use Commission on January 18, 1964. Notice of the hearing was published in the Honolulu Star-Bulletin on December 28, 1963.

FINDINGS OF FACT

On the basis of the record of said hearing and on the record developed pursuant to rules and policies of the Land Use Commission, the majority of the Land Use Commission makes the following findings of facts:

1. Hawaiian Trust Company, Ltd. and the Roman Catholic Church in the State of Hawaii, are the petitioners and are represented by Martin Anderson and Christopher Cobb in this petition.
2. Petitioners represent that they are owners of five parcels in the inner reaches of Manoa Valley identifiable by Oahu tax map keys 2-9-54: 7, 2-9-54: 13, 2-9-54: 18, 2-9-55: 5 and 2-9-55: 10.
3. The five parcels are located in a Conservation District established by the Land Use Commission pursuant to Section 5, Act 187, Session Laws of Hawaii 1961.

4. The temporary district boundary line between the Conservation District and the Urban District in Manoa Valley was adopted by the Land Use Commission in April 1962 based on information transmitted by memorandum dated March 17, 1962 by the Department of Land and Natural Resources.

5. Petitioners deny that the five parcels lie in the Honolulu Watershed Forest Reserve.

6. The temporary district boundary line is different from the "forest reserve" line established in 1926.

7. Parcel TMK (tax map key) 2-9-54: 7 containing about 35 acres and parcel TMK 2-9-55: 5 containing about 33 acres lie on the western side of Manoa Valley above Manoa Road.

8. Parcel TMK 2-9-54: 18 containing about 12 acres also lies on the western side of the valley below Manoa Road.

9. Parcel TMK 2-9-54: 13 containing about 27 acres and parcel TMK 2-9-55: 10 containing about 48 acres lie at the head (north) of the valley.

10. (a) In July 1963 petitioners originally requested that the temporary Land Use District boundaries be amended so that all five parcels would fall into an Urban District.

    (b) At the public hearing on January 18, 1964, petitioners subsequently amended their request to seek Urban classification for about sixty acres:

north parcel TMK 2-9-54:	13	27 acres
west parcel TMK 2-9-54:	18	12 acres
west parcel TMK 2-9-54:	7	portion of 35 acres

11. Petitioners represent that the lands under petition are needed for immediate urban development.

12. In February 1961 the Planning Department of the City and County of Honolulu granted preliminary approval for a subdivision containing about 30 acres and 87 lots in the area defined by parcels TMK 2-9-54: 7 and TMK 2-9-54: 18.

13. Approval of the subdivision was allowed to lapse a year after approval.

14. A substantial portion of parcels TMK 2-9-54: 7 and TMK 2-9-54: 18 is in slopes of less than 20% and is developable if provision is made for drainage ways, grading and grubbing to clear the area of dense tropical growth.

15. A substantial portion of parcel TMK 2-9-54: 13 is developable but is broken up by portions of steep land and natural drainage ways.

16. Parcels TMK 2-9-55: 5 and TMK 2-9-55: 10 are primarily steep.

17. Annual rainfall in the vicinity of the five parcels averages 150 inches a year or more.

18. The Manoa Watershed mauka of the Conservation District boundary contains about 1,260 acres.

19. Various estimates of the ground water recharge resulting from rainfall in this watershed range between 4,200 gallons per acre per day[1/] and 6,000 gallons per acre per day.[2/]

20. A small number of families now occupy the parcels in question.

21. The occupants of these parcels are primarily engaged in full or part-time farming.

1/ Cf. letter to Anderson, Wrenn and Jenks from R. M. Towill Corporation dated February 26, 1964. Copy received by Land Use Commission March 6, 1964.

2/ Cf. letter to Land Use Commission by Board of Water Supply dated January 29, 1964.

22. The western parcels are contiguous to a large, partially completed, residential subdivision.

23. North of the western parcels is an arboretum.

24. The lower western parcels are easily accessible.

25. The uppermost, western parcel and the northern parcels are not easily accessible.

26. The northern parcels are covered by dense vegetation.

27. The five parcels are located close to the City of Honolulu.

28. The development of the five parcels would basically not contribute to scattered development.

29. Pressure for urbanization in Manoa Valley exists.

30. The development is not consistent with the General Plan of the County.

31. Increased urbanization could precipitate the need for additional watershed areas.

32. The upper reaches of Manoa has always been a significant part of Honolulu's watershed.

33. Actions of the Board of Agriculture and Forestry in 1944, the Department of Agriculture and Conservation in 1950, the Board of Agriculture and Conservation in 1960, the Board of Land and Natural Resources and the Land Use Commission in 1962, and recently the Honolulu Board of Water Supply and the City Planning Commission indicate the importance of the upper reaches of Manoa Valley to the Honolulu watershed.

CONCLUSIONS OF LAW

1. It is the conclusion of the Land Use Commission that on the effective date of Act 187, Session Laws of Hawaii 1961, the boundaries of the Conservation District in Manoa were identical and coterminous with

the forest and water reserve zones established pursuant to Act 234, Session Laws of Hawaii 1957.3/

2. It is the conclusion of the Land Use Commission that subsequent to the effective date of Act 187, Session Laws of Hawaii 1961, "the power to determine the boundaries of the conservation districts" rests with the Land Use Commission.

3. It is the conclusion of the Land Use Commission that all five of the parcels covered by the original petition fall within the temporary Conservation District boundaries established by the Land Use Commission in April 1962, pursuant to Section 5, Act 187, Session Laws of Hawaii 1961.

4. It is the conclusion of the Land Use Commission that the temporary district boundaries established in April 1962 need not be the same as that established by Section 3, Act 187, Session Laws of Hawaii 1961 on the effective date of that Act (July 11, 1961).

5. It is the conclusion of the Land Use Commission that the temporary district boundaries were established and mapped as soon as possible, pursuant to the provisions of Section 4, Act 187, Session Laws of Hawaii 1961 and were adopted by the Land Use Commission on April 4, 1962.

6. It is the conclusion of the Land Use Commission that pursuant to Section 5, Act 187, Session Laws of Hawaii 1961, the temporary Conservation District in Manoa was practicably and reasonably determined to maintain existing uses and only permitted changes in use that were already in progress.

3/ Cf. Section 3, Act 187, SLH 1961.

7. On the basis of the record, it is the conclusion of the Land Use Commission that the existing uses of the parcels under petition include vacant and undeveloped raw land and a small number of small full-time and part-time farms.

8. On the basis of the record, it is the conclusion of the Land Use Commission that at the time the temporary district boundaries were determined changes in use were in progress for only thirty acres of the lands under petition.

9. On the basis of the record, it is the conclusion of the Land Use Commission that the preparation subdivision plans for the thirty acres and preliminary approval of those plans by the City Planning Department are virtually all that comprise the change in progress.

10. On the basis of the record, it is the conclusion of the Land Use Commission that the lands under petition are essential watershed areas.

11. It is the conclusion of the Land Use Commission that Section 1 (b), Act 187, Session Laws of Hawaii 1961 defines the term "Conservation" to include "protecting watersheds and water supplies; preserving scenic areas; providing parkland, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry; and other related activities."

DECISION AND ORDER

It is the decision of the Land Use Commission that the temporary district boundaries in the upper reaches of Manoa Valley have been determined so far as practicable and reasonable to maintain existing uses.

It is the decision of the Land Use Commission that the temporary Conservation District boundaries are properly drawn to embrace essential watersheds, scenic areas, and open land.

It is the decision of the Land Use Commission that the progress of changes in the use of the lands under petition can be demonstrated for only thirty acres.

It is further the decision of the Land Use Commission that the amount of progress made in changing the use of the thirty acres is a doubtful justification for district reclassification in the face of stronger reasons for retaining the area in a Conservation District.

Accordingly, it is the decision of the Land Use Commission that the petition for amendment of the temporary district boundaries in the upper sections of Manoa Valley be denied.

It is hereby ordered that a copy of this decision together with the findings offact and conclusions of law be sent to the petitioners or their appointed representatives.

Dated at Honolulu, Hawaii this _____ day of June, 1965.

LAND USE COMMISSION
STATE OF HAWAII

By _____
Chairman
Land Use Commission

OUTGOING

	Date Sent	To	Subject	Ref #
1.	3/10/64	Christopher Cobb Anderson, Wrenn & Jenks Haw'n Trust Co.	Action taken 3/6/64 - LUC voted to deny Roman Catholic Church	170
2.	2/10/64	Christopher Cobb	Re: request to delay action on Roman Catholic petition	95
3.	1/28/64	Frederick K. F. Lee Planning Director City Planning Dept.	Amendment to reduce area of Roman Catholic. Further comments requested. Req. comments on Amendment of ACT 63-40	67
4.	10/16/63 by/C. Hodge	Frederick K. F. Lee	Petition for amendment of temp. dist. boundaries forwarded to Commission	687
5.	10/10/63 by/C. Hodge	Christopher Cobb	Acknowledge receipt of petition in behalf of Haw'n Trust for amendment of temp. dist. bndries	671
6.	7/30/63 by/W.M. Mullahey	George S. Siu, Director Dept. of Land & Nat. Res.	Petition for change of temp. dist. boundaries. Comments and recommendations requested	625
7.	3/2/64	Christopher Cobb	Corrected notice of meeting to consider Roman Catholic and Mabel K. Ena petitions	137
8.	2/20/64	Christopher Cobb	Notice of meeting regarding Roman and Ena's petition	127
9.	12/27/63	Christopher Cobb	Notice of public hearing - Roman Catholic & Mabel K. Ena	792
10.	10/22/63	All petitioners concerned from Mr. Thompson	Status of petition	

Letter from _____, dated _____ relating to

INCOMING

	Date	Date Rec'd	From	Subject
1.		4/6/64	Christopher Cobb Anderson, Wrenn & Jenks Haw'n Trust Co.	Notice of Appeal to Circuit Court + Boundary of Land on Appeal
2.	2/5/64	2/7/64	Christopher Cobb	Requiesting the Commission to delay action on Roman Catholic Church
3.	3/5/64	3/5/64	Frederick K. F. Lee Planning Director City Planning Dept.	Amendment for a boundary change by Hawaiian Trust for properties in Manoa by Roman Catholic Church Rec: That boundary be in Conn.
4.	12/27/63	12/31/63	Frederick K. F. Lee Concur: Victor K. Givan Acting Managing Director Mr. Ellis (Robert) Acting Mayor	Roman Catholic Church Planning Comm. met 12/19/63 Board of Water Supply for comments - Conservation District Rec that boundary not be changed.
5.	7/29/63	7/29/63	Christopher Cobb	Petition of Hawaiian Trust and Roman Catholic Church with Enc. Check for $50
		7/29/63	Petition and attachments received (3)	
6.	1/29/64	1/29/64	E. J. Morgan Manager & Chief Eng. Board of Water Supply	Roman Catholic Church, re: Manoa lands - Watershed Ground water supply - Supplement data to that of 1/16/64 hearing
7.	1/13/64	1/14/64	E. J. Morgan	Reply of R. Mar's request whether subject land should be in Conservation stating position
			enclosures	
		1/14/64	Letter to Wayne Collins dated 3/4/60 & 10/5/60 by Morgan attached.	
			Letter to E. J. Morgan dated 3/7/60, 10/13/60 and 11/2/60 by Collins attached.	from Collins
			Letter to K. R. Nurse dated 10/5/60 by Morgan	Hawaii Trust Co.
			Letter to E. H. Cook dated 12/27/60 by Holt	Walter
			Letter to L.S.C. Louis dated 2/21/61 by Chung-Hoon	Gordon C.
			Letter to Morgan dated 12/19/61 by Holt	Edward Walter
8.	10/24/63	10/26/63	E. J. Morgan	Amendment of Temp. Dist. Boundary by Hawaiian Trust & Roman Catholic be denied
9.	2/28/64	3/4/64	Christopher Cobb	Acknowledge receipt of 2/10/64 & 2/20/64 letters. Preparing additional argument for submission
10.	3/6/64	3/6/64	Christopher Cobb	Re: Roman Catholic Attch. letter from E. W. Broadbent of R. M. Towill analyzing staff report Encl. Ltr from Conn. Ltr
11.	2/3/64	2/4/64	Christopher Cobb	Requested amendment of Roman would change classification in Manoa from conservation to urban Added comments & information re: Petition A64-63-40
12.	2/12/64	2/17/64	Donald G. Aten 1104 Hamalii St	Protest letter - against petition

Letter to Jess H. Walters from Wayne Collins, 11/2/60, re: Proposed Manoa Subdiv.

26- maps submitted from 7/29/63 to 1/15/64
re A(T)63-40 Petition as exhibits & purely
for information (4 maps marked as Exhibit in
black; & 4 maps marked
Luc in red.)

27- ~~3/6/64~~ 3/6/64 Extracts from
USGA Library Volume
D.C. Lyon Papers
1901-1940

Presented
by Leslie
J. Watson
of Board
of Water
Supply

13.	1/29/64	2/3/64	David C. Sanford Haw'n Trail & Mountain Club	Petition should be denied. Protest - against
14.	1/29/64	1/30/64	Ted M. Damron Conservation Council for Hawaii	Report on zoning of lands in upper Manoa Valley. Attachment
15.	1/17/64	1/18/64	Mrs. Jack Marnie President Outdoor Circle	Request for land Use Change - Met 1/7/64 No Urban
16.	1/18/64	1/18/64	Mrs. Reuel Denney City Beautification Comm. Chamber of Commerce	Comments regarding Manoa Valley - Against
17.	1/17/64	1/18/64	Thomas H. Hamilton President - U of H	Comments - Against
18.	1/18/64	1/18/64	Laurence F. Blodgett President Manoa Valley Comm. Assn.	Comments - Against
			This statement was made at the public hearing	
19.	3/17/62 by/E.H. Cook	3/21/62	Ralph Ajifu LUC Chairman	Approval of Proposed change in Conservation District Boundary - Hon. Watershed Forest Reserve

20- 1/18/64 *

Staff Report
Boundary Amd
A(T)63-40-
Roman Catholic Church

Granting denial

21- 3/6/64 **

Vote Record

6 ayes 1 no 2 absent

22- 1/16/64 ***

Minutes of Public Hearing

State Office Bldg.

23- 12/26/63 ****
Published date

Notice of (Legal Ad) of Public Hearing

24- 2/20/64 3/6/64 *cc

E. W. Broadbent
R. M. Towill Corp.
40 Anderson, Wrenn + Spencer, Attn: P. Cobb.

Comments and LUC Staff report + encl. Ref 3

25. 11/8/61 1/16/62 Petitioners Brown Trust + Anderson, Wrenn + Jones (Cobbey)

Exhibits 1-8

~~Exhibit I-DSS~~

Exhibit I - DSS Plat 2134-E

Exhibit 2 - Map showing Honolulu ~~water-shed~~ estate + the boundaries

Exhibit 3 - Notice of Public Hearing on Honolulu Water-shed

Exhibit 4 - Ltr. to George I. Brown from Russell Anderson, Wrenn + Jones, dated 5/3/61 and Proposed Watershed boundaries

Exhibit 5 - map showing Preliminary Subdivision Per. of Grant 204.

Exhibit 6 - Ltr. to Leighton Lonis from K.E. Nunes dated 2/10/61

Confirming ~~postponement~~ ~~Extension~~ of action now proposed subdivision

Exhibit 7 - Ltr. to Leighton Lonis from Gordon E. Cunningham, dated 2/21/61 on notice of hearing on Honolulu watershed Forest Reserve boundary.

exhibit 8 - Ltr. from Leighton Lonis to Brown Trust Attn: E.E. Nunes dated 2/24/61 advising of tentative approval granted on 2/22/61.

CHRONOLOGY OF EVENTS

1913 Forest Reserve established by proclamation and order — DLNR 3/17/62

1926 Reserves enlarged by proclamation — DLNR 3/17/62

1926 Forest Reserve boundary line established (excludes church property)

1926 By proclamation. — DAC 11/2/60; DLNR 3/17/62

1944 (1) Board of Agriculture and Forestry approves ~~an Act~~ boundary relocation plan. No hearings held as required by law. — DAC 11/2/60

1944-50 Survey of adjustment to boundary made by Survey. — DLNR 3/17/62

1950 Hearings held ~~Oct 15~~ May 1950 — DLNR 3/17/62

1950 Hearings held on relocating Forest Reserve boundary.

1950 (2) Hearings held on 5/31/50 — DAC 11/2/60

1950 Adoption of forest reserve line relocation by Department of Agriculture and Conservation — " DAC 12/27/60

1950 (2) Board of Ag. and Forestry approved most of boundary without change with exceptions to be determined after study and acquisitions negotiated. — BLNS 3/4/1960; DLNR 3/17/62

1957 Act 234/SLH 1957 takes effect 7/1/57

1958 Property withdrawn from watershed — Protest 4/11/63

1950-60 Study and acquisitions made — DLNR 3/17/62

1960 Hawn. Trust submits subdivision plat for preliminary approval.

1960 Plat submitted by R.M. Towill Aug 1960 — BLNS 10/5/1960; Protest 4/11/63

1960 Board of Agriculture and Conservation on 10/21/60 approved relocated boundary line. — DAC 11/2/60

1960 (3) BAC date ~~found~~ of approval set as 12/16/60 vice 10/21/60. — DAC 12/27/60

1960 AG advises no further hearings needed - only proclamation

1960 AG ~~advises~~ hearings needed — DAC 12/27/60; DLNR 3/17/62

1961 Tentative subdivision approval given 2/24/61 — Protest 4/11/63

1961 Hearing held 4/14/61 — DLNR 3/17/62

1961 Public hearing ~~scheduled~~ for 4/21/61 by BAC Board on 2/17/61 for whole watershed. — DAC 2/21/61

1961 Protest filed 5/3/1961 — Protest 4/11/63

1961 Watershed boundary approved by BAC on 6/22/61 — DAC 12/19/61; DLNR 3/17/62

1961 Adjustments made and approved; survey ordered — DLNR 3/17/62

Petitioner claims no decision reached — Protest 4/11/63

1961 BAC loses boundary appeal to DLNR due to Act 132/SLH 1961 on 7/1/61
Protest 4/11/63

1961 Act 187/SLH 1961 takes effect 7/11/61

1961 Map completed 12/5/61 DLNR 3/17/62

1962 Approved by BLNR 1/26/62 and forwarded to LUC DLNR 3/17/62

1962 LUC classifies land Conservation in April 1962
Protest 4/11/63

1962 Petitioner protest April 1962
Protest 4/11/63

1963 LUC hearing on trial boundary on 3/27/63. Anderson argues against.
Protest 4/11/63

1963 Act 205/SLH 1963 takes effect 6/17/63

1963 Petitioner ~~files for amendment of temporary~~ boundary on 8/15/63
Docket A(T) 63-94

1963 Petitioner brings complaint against LUC on 10/1/63 Adv. 11/7/63

1963 City Planning advises that at mtg. 12/9/63 votes boundary not be changed from Conservation. CPC 12/27/63

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1964 APR 17 AM 9 01
W. C. Ing
CLERK

CERTIFIED RECORD ON APPEAL

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

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CERTIFIED RECORD ON APPEAL

I, MYRON B. THOMPSON, Chairman of the State Land Use Commission, hereby certify that all of the letters, maps, transcripts, minutes and documents listed below are the designation of certified record on appeal in the above-entitled-matter:

1. Letter from Christopher Cobb, Anderson, Wrenn & Jenks, dated 4/3/64, relating to Notice of Appeal to Circuit Court & Designation of Record on Appeal.

2. Letter to Christopher Cobb, dated 3/10/64, relating to Action taken by Land Use Commission on 3/6/64.

3. Staff Report, dated 1/18/64.

4. Vote Record, dated 3/6/64.

5. Minutes of Public Hearing, dated 1/18/64.

6. Letter to Christopher Cobb, dated 2/10/64, relating to letter of 2/5/64 requesting the Commission to delay action on petition.

7. Letter from Christopher Cobb, dated 2/5/64, requesting the Commission to delay action on petition.

8. Letter from Frederick K. F. Lee, Planning Director, City Planning Department, dated 3/5/64, transmitting County's recommendations on amended petition.

9. Letter to Frederick K. F. Lee, dated 1/28/64, requesting County's comments and recommendations on amended petition.

10. Letter from Frederick K. F. Lee, dated 12/27/63, transmitting County's recommendations and comments on original petition.

11. Letter to Frederick K. F. Lee, dated 10/16/63, requesting County's recommendations and comments on original petition.

12. Letter to Christopher Cobb, dated 10/10/63, acknowledging receipt of petition for boundary change.

13. Letter to George Siu, Director of Land & Natural Resources, dated 7/30/63, requesting department's comments and recommendations on original petition.

14. Letter from Christopher Cobb, dated 7/29/63, transmitting petition of Hawaiian Trust Company, Ltd., and the Roman Catholic Church for amendment of the temporary district boundary.

15. Petition for Amendment of Temporary District Boundary, dated 7/29/63.

16. Enclosures to Petition - Attachment 1 to 3, dated 7/29/63.

17. Letter from E. J. Morgan, Board of Water Supply, dated 1/29/64, supplementing letter of 1/13/64 and oral presentation at public hearing.

18. Letter from E. J. Morgan, dated 1/13/64, relating to Board's position concerning petition before the Commission and enclosing letters substantiating position from:

a. E. J. Morgan to Wayne L. Collins, dated 3/4/60
b. Wayne L. Collins to E. J. Morgan, dated 3/7/60
c. E. J. Morgan to Wayne L. Collins, dated 10/5/60
d. E. J. Morgan to Hawaiian Trust Company, dated 10/5/60
e. Wayne L. Collins to E. J. Morgan, dated 10/13/60
f. Wayne L. Collins to Jess H. Walters, dated 11/2/60
g. Walter W. Holt to E. H. Cook, dated 12/27/60
h. Gordon P.Chung-Hoon to Leighton S.C. Louis, dated 2/21/61
i. Walter W. Holt to Edward J. Morgan, dated 12/19/61

19. Letter from E. J. Morgan, dated 10/24/63, requesting Commission to deny petition.

20. Letter to Christopher Cobb, dated 3/2/64, relating to Land Use Commission meeting and possible action on petition.

21. Letter from Christopher Cobb, dated 2/28/64, acknowledging letters dated 2/10/64 and 2/20/64 relating to Land Use Commission meeting.

22. Letter to Christopher Cobb, dated 2/20/64, relating to Land Use Commission meeting scheduled for 3/6/64.

23. Letter to Christopher Cobb, dated 12/27/63, relating to Land Use Commission public hearing scheduled for 1/18/64.

24. Legal Notice of Public Hearing, published 12/28/63.

25. Letter from Christopher Cobb, dated 3/6/64, relating to 60 acres of land in Manoa Valley, and enclosing letter from E. W. Broadbent of R. M. Towill Corp., with references, dated 2/26/64, relating to analysis of Staff Report.

26. Letter from Christopher Cobb, dated 2/3/64, relating to summary of Petition A(T)63-40.

27. Exhibits 1 to 8, submitted by petitioner on 1/18/64, consisting of 3 exhibit maps, and 5 letters.

28. Letters protesting petition from:

a. Donald G. Aten, dated 2/12/64
b. David C. Sanford, dated 1/29/64
c. Ted M. Damron, dated 1/29/64
d. Mrs. Jack Marnie, dated 1/17/64
e. Mrs. Reuel Denney, dated 1/18/64
f. Thomas H. Hamilton, dated 1/17/64
g. Laurence F. Blodgett, dated 1/18/64

29. Eight maps submitted from 7/29/63 to 1/18/64 for exhibit and information relating to A(T)63-40 Petition (4 maps marked Exhibit; and 4 maps marked LUC).

30. Memo from Myron B. Thompson, Chairman, Land Use Commission, dated 10/22/63, notifying petitioners of the status of the Commission and their petition pending before the Commission.

31. Letter from E. H. Cook, Director, Land & Natural Resources, dated 3/17/62, relating to Approval of Proposed Change in Conservation District Boundary - (Honolulu Watershed Forest Reserve).

32. Extracts from HSPA Library Volume H. L. Lyon Papers - 1901 - 1940, submitted by Leslie J. Watson, Board of Water Supply, on March 6, 1964, relating to Petition A(T)63-40.

IN WITNESS WHEREOF I have hereunto set my hand at Honolulu, Hawaii, this 16th day of April, 1964.

Myron B. Thompson
MYRON B. THOMPSON, Chairman
State Land Use Commission

Subscribed and sworn to before
me this 16th day of April, 1964.
/s/ Helen M. Mau (SEAL)

Helen M. Mau, Notary Public
First Judicial Circuit
State of Hawaii

My commission expires 2/15/65

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

Clerk, Circuit Court, First Judicial Circuit, State of Hawaii

RYT:hmm 4/14/64

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CERTIFIED RECORD ON APPEAL

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

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MYRON B. THOMPSON, Chairman
State Land Use Commission

MATERIALS BEING FILED

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    g. Walter W. Holt to E. H. Cook, dated 12/27/60
    h. Gordon P. Chung-Hoon to Leighton S.C. Louis, dated 2/21/61
    i. Walter W. Holt to Edward J. Morgan, dated 12/19/61

19. Letter from E. J. Morgan, dated 10/24/63, requesting Commission to deny petition

20. Letter to Christopher Cobb, dated 3/2/64, relating to Land Use Commission meeting and possible action on petition

21. Letter from Christopher Cobb, dated 2/28/64, acknowledging letters dated 2/10/64 and 2/20/64 relating to Land Use Commission meeting

22. Letter to Christopher Cobb, dated 2/20/64, relating to Land Use Commission meeting scheduled for 3/6/64

23. Letter to Christopher Cobb, dated 12/27/63, relating to Land Use Commission public hearing scheduled for 1/18/64

24. Legal Notice of Public Hearing, published 12/28/63

25. Letter from Christopher Cobb, dated 3/6/64, relating to 60 acres of land in Manoa Valley, and enclosing letter from E. W. Broadbent of R.M. Towill Corp., with references, dated 2/26/64, relating to analysis of Staff Report

26. Letter from Christopher Cobb, dated 2/3/64, relating to summary of Petition A(T)63-40

27. Exhibits 1 to 8, submitted by petitioners on 1/18/64, consisting of 3 exhibit maps, and 5 letters

28. Letters protesting petition from:

    a. Donald G. Aten, dated 2/12/64
    b. David C. Sanford, Hawaiian Trail and Mountain Club, dated 1/29/64
    c. Ted M. Damron, The Conservation Council for Hawaii, dated 1/29/64
    d. Mrs. Jack Marnie, The Outdoor Circle, dated 1/17/64
    e. Mrs. Reuel Denney, Chamber of Commerce of Honolulu, dated 1/18/64
    f. Thomas H. Hamilton, University of Hawaii, dated 1/17/64
    g. Laurence F. Blodgett, Manoa Valley Community Association, dated 1/18/64

29. Eight maps submitted from 7/29/63 to 1/18/64 for exhibit and information relating to A(T)63-40 Petition (4 maps marked exhibit and 4 maps marked LUC)

30. Memo from Myron B. Thompson, Chairman, Land Use Commission, dated 10/22/63, notifying petitioners of the status of the Commission and their petition pending before the Commission

31. Letter from E. H. Cook, Director, Land & Natural Resources, dated 3/17/62, relating to Approval of Proposed Change in Conservation District Boundary - (Honolulu Watershed Forest Reserve)

32. Extracts from HSPA Library Volume H.L. Lyon Papers - 1901-1940, submitted by Leslie J. Watson, Board of Water Supply, on March 6, 1964, relating to Petition A(T)63-40

file

July 13, 1965

Mr. Christopher Cobb
Anderson, Wrenn and Jenks
Bank of Hawaii Building
1002 Bishop Street
Honolulu, Hawaii

Dear Mr. Cobb:

Transmitted herewith are copies of the findings, conclusions and decision of the Land Use Commission in the matter of the petition by Hawaiian Trust Company, Ltd., and the Roman Catholic Church in the State of Hawaii, A(T)63-40. Additional copies are enclosed for the petitioners.

Sincerely,

RAYMOND S. YAMASHITA
Executive Officer

Encl.

cc: Chairman Myron Thompson
Roy Takeyama

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

SUPPLEMENT

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

SUPPLEMENT

I, MYRON B. THOMPSON, Chairman of the State Land Use Commission, hereby certify that the attached findings of fact, conclusions of law and decision supplement the certified record on appeal in the above-entitled-matter.

IN WITNESS WHEREOF I have hereunto set my hand at Honolulu, Hawaii, this ____ day of July, 1965.

MYRON B. THOMPSON, Chairman
State Land Use Commission

Subscribed and sworn to
before me this ____ day of July 1965.

Notary Public, First Judicial Circuit
State of Hawaii

My commission expires _____.

July 13, 1965

Mr. Christopher Cobb
Anderson, Wrenn and Jenks
Bank of Hawaii Building
1002 Bishop Street
Honolulu, Hawaii

Dear Mr. Cobb:

Transmitted herewith are copies of the findings, conclusions and decision of the Land Use Commission in the matter of the petition by Hawaiian Trust Company, Ltd., and the Roman Catholic Church in the State of Hawaii, A(T)63-40. Additional copies are enclosed for the petitioners.

Sincerely,

RAYMOND S. YAMASHITA
Executive Officer

Encl.

cc: Chairman Myron Thompson
Roy Takeyama

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

SUPPLEMENT

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

SUPPLEMENT

I, MYRON B. THOMPSON, Chairman of the State Land Use Commission, hereby certify that the attached findings of fact, conclusions of law and decision supplement the certified record on appeal in the above-entitled-matter.

IN WITNESS WHEREOF I have hereunto set my hand at Honolulu, Hawaii, this ____ day of July, 1965.

MYRON B. THOMPSON, Chairman
State Land Use Commission

Subscribed and sworn to
before me this ____ day of July 1965.

Notary Public, First Judicial Circuit
State of Hawaii

My commission expires _____.

cc
1/6/64
9:30

Cy:

Call Cris Cobb

at 502-924-

called 1/6/64 Jay

Would like to have

copy of County's

recom. on the Eva

Peters + Roman

Catholic Church-

(Found was out + stuid

out + didn't know whether

I could release this to him

Ref. No. LUC 329

May 22, 1964

Mr. Christopher Cobb
Anderson, Wrenn & Jenks
Attorneys at Law
Bank of Hawaii Building
Honolulu, Hawaii

Dear Mr. Cobb:

Your request for a hearing, as expressed in your protest of April 23, 1964, was considered and denied by the Land Use Commission at their meeting on May 13, 1964.

Commissioner Wenkam moved that "Due to the lack of time in granting a hearing to all landowners who have submitted protests and based upon advice of counsel that Section 9 of the Administrative Procedure Act is not applicable in the instant situation, I move that the request of Hawaiian Trust Company, Limited for a special hearing be denied." The motion was seconded by Commissioner Burns.

Upon being polled, Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura and Chairman Thompson voted yes. Commissioners Mark and Ferry were absent. The motion was carried by a unanimous vote of the Commissioners that were present.

However, please be assured that the Land Use Commission will consider your protests (dated 4/23/64 and 5/11/64) prior to adoption of the final district boundaries. Should you have further questions, please feel free to contact us.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

cc: Myron Thompson
Roy Takeyama

STATE OF HAWAII

LAND USE COMMISSION

Land Use Commission meeting on 5/15/64 copies to appropriate files

VOTE RECORD

ITEM See Below

DATE 5/15/64

PLACE LUC Hearing Room

TIME 2:05 pm x 4:40 pm

NAMES	YES	NO	ABSTAIN	ABSENT
WUNG, L.	x ✓			
INABA, G.	x ✓			
OTA, C.	x ✓			
WENKAM, R.	x ✓			
BURNS, C.E.S.	x ✓			
NISHIMURA, S.	x ✓			
MARK, S.				x ✓
FERRY, J.				x ✓
THOMPSON, M.	x ✓			

COMMENTS:

x Motion by Wenkam to deny request to Cobb
see by Burns

✓ Motion to approve withdrawal of Kawamura
Waiver for 4 Sec.
Nishimura

MT

1215

RECEIVED
MAY 11 1964
State of Hawaii
LAND USE COMMISSION

STATE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of

The Classification of Certain Land in Manoa Valley on the Island of Oahu.

PROTEST

CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII and HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena

Of Counsel:

ANDERSON, WRENN & JENKS

STATE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of

The Classification of Certain Land in Manoa Valley on the Island of Oahu.

RECEIVED
MAY 11 1964
State of Hawaii
LAND USE COMMISSION

PROTEST

This Protest is concerned with five parcels of land located in Upper Manoa Valley, Honolulu, Hawaii. The five parcels are designated by Tax Map Key Nos. 2-9-54-07, (Portion amended 1/14/64) 2-9-54-13, 2-9-54-18, ~~2-9-55-05~~, and ~~2-9-55-10~~ on the tax maps of the First Taxation Division, State of Hawaii. The five parcels are owned in fee simple by the Roman Catholic Church in the State of Hawaii and are leased to Hawaiian Trust Company, Limited, trustee of the trust estate of John Ena, deceased, hereafter referred to as the "owner" and "lessee" respectfully.

The subject land was included within a conservation district on the proposed final district classification maps announced by the State Land Use Commission pursuant to Section 98H-3, R.L.H. 1955, as amended by Act 205, S.L.H. 1963. On or before April 27, 1964, the owner and lessee protested the

proposed action of the State Land Use Commission and demanded an opportunity for hearing after reasonable notice prior to such action.

The owner and lessee again protest the proposed inclusion of the subject land within the conservation district boundaries to be adopted by the Land Use Commission pursuant to said Section 98H-3, for the following reasons:

1. The proceedings of the State Land Use Commission pursuant to Section 98H-3 aforesaid with respect to the subject land constitute a contested case as defined by Section 6C-1 of the Revised Laws of Hawaii 1955, as amended. Despite timely demand therefor by the owner and lessee, the State Land Use Commission has failed and refused to afford the owner and lessee an opportunity for hearing after reasonable notice as required by Section 6C-9 of said laws.

2. Whether or not Section 6C-9 aforesaid is applicable to proceedings of the State Land Use Commission pursuant to Section 98H-3 aforesaid, Section 4 of the Constitution of the State of Hawaii and the Fifth and Fourteenth Amendments to the United States Constitution require that the owner and lessee be given notice and a hearing prior to inclusion of the subject land within a conservation district. Such notice and hearing have not been afforded, and are hereby demanded.

3. The State Land Use Commission cannot lawfully adopt district boundaries pursuant to Section 98H-3 aforesaid until after it has set standards for determining the boundaries, pursuant to Section 98H-2 of said laws and in compliance with the procedure set forth in Section 6C-3 of said laws. Such standards have not been set in compliance with said procedure.

4. Inclusion of the subject land within a conservation district will deprive the owner and the lessee of their property without due process of law and will take their property for a public use without just compensation, in violation of Sections 4 and 18 of the Constitution of the State of Hawaii and the Fifth and Fourteenth Amendments to the United States Constitution.

DATED: Honolulu, Hawaii, May 11, 1964.

THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII and
HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena

By Christopher Cobb
CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Their Attorney

Of Counsel:

ANDERSON, WRENN & JENKS

.148

STATE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of

The Classification of Certain Land in Manoa Valley on the Island of Oahu.

RECEIVED
APR 27 1964
State of Hawaii
LAND USE COMMISSION

PROTEST

CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII and HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena

Of Counsel:

ANDERSON, WRENN & JENKS

STATE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of

The Classification of Certain Land in Manoa Valley on the Island of Oahu.

PROTEST

This Protest is concerned with five parcels of land located in Upper Manoa Valley, Honolulu, Hawaii. The five parcels are designated by Tax Map Key Nos. 2-9-54-07, 2-9-54-13, 2-9-54-18, 2-9-55-05, and 2-9-55-10 on the tax maps of the First Taxation Division, State of Hawaii. The five parcels are owned in fee simple by the Roman Catholic Church in the State of Hawaii and are leased to Hawaiian Trust Company, Limited, trustee of the trust estate of John Ena, deceased, hereafter referred to as the "owner" and "lessee" respectfully. On April 11, 1963 the owner and lessee filed a protest with the State Land Use Commission with respect to the five parcels. The five parcels are further identified in said protest.

The subject land was included within a conservation district on the proposed final district classification maps announced by the State Land Use Commission pursuant to Section 98H-3, R. L. H. 1955, as amended by Act 205, S. L. H. 1963.

The owner and lessee protest the proposed inclusion of the subject land within the conservation district boundaries to be adopted by the Land Use Commission pursuant to said Section 98H-3.

DEMAND FOR NOTICE AND HEARING

The owner and lessee hereby demand an opportunity for hearing after reasonable notice pursuant to Section 6C-9, R. L. H. 1955, as amended, on the issues involved in and the facts alleged by the Land Use Commission in support of its proposed classification of the above described land, prior to final classification of such land within a conservation district pursuant to Section 98H-3 as aforesaid.

DATED: Honolulu, Hawaii, April 23, 1964.

THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII and
HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena

By Christopher Cobb
CHRISTOPHER COBB

Their Attorney

RECEIVED
APR 22 1964
State of Hawaii
LAND USE COMMISSION

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CIRCUIT COURT
STATE OF HAWAII
FILED
1964 APR 21 PM 3 30
W. C. Ing
CLERK

ANSWER TO STATEMENT OF CASE

BERT T. KOBAYASHI
Attorney General
State of Hawaii

ROY Y. TAKEYAMA
Deputy Attorney General

Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

ANSWER TO STATEMENT OF CASE

Comes now the Appellee, STATE LAND USE COMMISSION, by Bert T. Kobayashi, Attorney General of the State of Hawaii, and Roy T. Takeyama, Deputy Attorney General, its attorneys, and in answer to Appellant's Statement of Case, alleges as follows:

FIRST DEFENSE

The Statement of Case fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. Appellee admits the allegations stated in paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11.

2. Appellee denies the allegations contained in paragraph 4, but admits that the Temporary District Boundaries were adopted on or around April 1962 pursuant to Section 5 of Act 187, Session Laws of Hawaii 1961.

3. Appellee denies the allegations contained in paragraphs 12 and 13.

WHEREFORE, the Appellee prays that upon hearing the case the appeal be dismissed.

DATED: Honolulu, Hawaii, April 21, 1964.

STATE LAND USE COMMISSION,
Appellee

By BERT T. KOBAYASHI
Attorney General

By /s/ ROY Y. TAKEYAMA
ROY Y. TAKEYAMA
Deputy Attorney General

1026

RECEIVED
APR 6 1964
State of Hawaii
LAND USE COMMISSION

CIVIL NO. 14C 39

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased - Appellant

vs.

STATE LAND USE COMMISSION - Appellee

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1964 APR 3 PM 3 27
CLERK

I do hereby certify that the attached folio of

NOTICE OF APPEAL TO CIRCUIT COURT

DESIGNATION OF RECORD ON APPEAL

ORDER

and

STATEMENT OF THE CASE

are true and correct copies of the originals on file in this office.

Clerk, Circuit Court, First Circuit,
State of Hawaii

MARTIN ANDERSON
CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorneys for Appellant

Of Counsel:

ANDERSON, WRENN & JENKS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased - Appellant

vs.

STATE LAND USE COMMISSION, Appellee.

NOTICE OF APPEAL TO CIRCUIT COURT

Notice is hereby given that Hawaiian Trust Company, Limited, trustee of the Trust Estate of John Ena, deceased, appellant above named, pursuant to Section 6C-14, R.L.H. 1955, as amended, hereby appeals to the Circuit Court of the First Circuit from the decision of the State Land Use Commission, appellee above named, made on March 6, 1964, denying appellant's Petition for Amendment of Temporary District Boundary, petition A(T)63-40 in appellee's files

DATED: Honolulu, Hawaii, April 3, 1964.

Christopher Cobb

CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased - Appellant.

Of Counsel:

ANDERSON, WRENN & JENKS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased - Appellant

vs.

STATE LAND USE COMMISSION - Appellee.

DESIGNATION OF RECORD ON APPEAL

Appellant Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased, hereinafter called "appellant" designates the following as the record on appeal herein:

1. Petition for amendment of temporary district boundary filed by appellant with appellee State Land Use Commission, hereinafter called "appellee", on July 29, 1963, said petition being petition A(T)-63-40 in the files of appellee.

2. All staff memoranda submitted to members of appellee in connection with their consideration of the aforesaid petition.

3. All evidence received or considered by appellee in connection with the aforesaid petition, including a transcript of oral proceedings, exhibits, and a statement of all matters officially noticed by appellee.

4. A transcript of every motion and intermediate ruling made in connection with the aforesaid petition.

5. The decision of the commission on the aforesaid petition, if in writing, or a transcript thereof is stated in the record, together with all findings of fact and conclusions of law.

6. All records in appellee's files on this matter which were taken into consideration by members of appellee in connection with this matter and which are not designated hereinabove.

DATED: Honolulu, Hawaii, April 3, 1964.

Christopher Cobb

CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for Hawaiian Trust Company, Limited - Trustee of the Trust Estate of John Ena, deceased - Appellant

Of Counsel:
ANDERSON, WRENN & JENKS

ORDER

TO: STATE LAND USE COMMISSION:

In accordance with Rule 72(d)(2) of the Hawaii Rules of Civil Procedure, you are hereby commanded to certify and transmit the papers, transcripts, minutes and

exhibits designated in the above Designation of Record on Appeal to the Circuit Court of the First Circuit within 15 days of the date of this order, or within such further time as may be allowed by said Court.

DATED: Honolulu, Hawaii, April 3, 1964.

BY THE COURT

W. C. Ing

Clerk

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased - Appellant,

vs.

STATE LAND USE COMMISSION - Appellee.

STATEMENT OF THE CASE

1. Appellant Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased, hereinafter called "appellant", is a Hawaii corporation and is the duly qualified and acting trustee of the trust estate of John Ena, deceased.

2. Appellee State Land Use Commission, hereinafter called "appellee" is an agency of the State of Hawaii.

3. This Court has jurisdiction of this appeal pursuant to Section 6C-14, R.L.H. 1955, as amended.

4. In April, 1961 appellee established Temporary District Boundaries pursuant to Section 2 of Act 187, S.L.H. 1961.

5. Appellant is and at all relevant times was the lessee of certain land located in Manoa Valley, City of Honolulu, State of Hawaii.

6. Said land was and is in a conservation district of the aforesaid Temporary District Boundaries.

7. On July 29, 1963 appellant filed with appellee a Petition for Amendment of Temporary District Boundary pursuant to Section 98H-4, R.L.H. 1955, as amended, wherein appellant requested an amendment of the aforementioned Temporary District Boundary.

8. The requested amendment would, if granted, remove part of the aforesaid land from the conservation district and would place such part in the urban district established by Section 98H-2, R.L.H. 1955, as amended.

9. On January 18, 1964 and March 6, 1964 hearings on the said petition were held by appellee, and on March 6, 1964 appellee made a decision denying said petition.

10. The aforementioned proceedings constituted a contested case within the meaning of Section 6C-1(e), R.L.H. 1955, as amended, and the aforesaid decision constituted a final decision and order rendered by appellee in such contested case.

11. This is an appeal from the aforesaid decision.

12. The aforesaid decision violates Sections 4 and 18 of the Constitution of the State of Hawaii and the Fifth Amendment to the United States Constitution in that it deprives appellant of its

property without due process of law and takes appellant's property for a public use without just compensation.

13. The aforesaid decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

WHEREFORE appellant demands judgement reversing the decision of appellee in petition A(T)63-40 and ordering that said petition be granted.

DATED: Honolulu, Hawaii, April 3, 1964.

Christopher Cobb

CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased - Appellant.

Of Counsel:

ANDERSON, WRENN & JENKS

Ref. No. LUC 339

May 22, 1964

Mr. Christopher Cobb
Anderson, Wrenn & Jenks
Attorneys at Law
Bank of Hawaii Building
Honolulu, Hawaii

Dear Mr. Cobb:

Your request for a hearing, as expressed in your protest of April 23, 1964, was considered and denied by the Land Use Commission at their meeting on May 15, 1964.

Commissioner Wenkam moved that "Due to the lack of time in granting a hearing to all landowners who have submitted protests and based upon advice of counsel that Section 9 of the Administrative Procedure Act is not applicable in the instant situation, I move that the request of Hawaiian Trust Company, Limited for a special hearing be denied." The motion was seconded by Commissioner Burns.

Upon being polled, Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura and Chairman Thompson voted yes. Commissioners Mark and Ferry were absent. The motion was carried by a unanimous vote of the Commissioners that were present.

However, please be assured that the Land Use Commission will consider your protests (dated 4/23/64 and 5/11/64) prior to adoption of the final district boundaries. Should you have further questions, please feel free to contact us.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

cc: Myron Thompson
Roy Takeyama

1158

STATE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of

The Classification of Certain Land in Manoa Valley on the Island of Oahu.

RECEIVED
APR 27 1964
State of Hawaii
LAND USE COMMISSION

PROTEST

CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII and HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena

Of Counsel:

ANDERSON, WRENN & JENKS

STATE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of

The Classification of Certain Land in Manoa Valley on the Island of Oahu.

PROTEST

This Protest is concerned with five parcels of land located in Upper Manoa Valley, Honolulu, Hawaii. The five parcels are designated by Tax Map Key Nos. 2-9-54-07, 2-9-54-13, 2-9-54-18, 2-9-55-05, and 2-9-55-10 on the tax maps of the First Taxation Division, State of Hawaii. The five parcels are owned in fee simple by the Roman Catholic Church in the State of Hawaii and are leased to Hawaiian Trust Company, Limited, trustee of the trust estate of John Ena, deceased, hereafter referred to as the "owner" and "lessee" respectfully. On April 11, 1963 the owner and lessee filed a protest with the State Land Use Commission with respect to the five parcels. The five parcels are further identified in said protest.

The subject land was included within a conservation district on the proposed final district classification maps announced by the State Land Use Commission pursuant to Section 98H-3, R. L. H. 1955, as amended by Act 205, S. L. H. 1963.

The owner and lessee protest the proposed inclusion of the subject land within the conservation district boundaries to be adopted by the Land Use Commission pursuant to said Section 98H-3.

DEMAND FOR NOTICE AND HEARING

The owner and lessee hereby demand an opportunity for hearing after reasonable notice pursuant to Section 6C-9, R. L. H. 1955, as amended, on the issues involved in and the facts alleged by the Land Use Commission in support of its proposed classification of the above described land, prior to final classification of such land within a conservation district pursuant to Section 98H-3 as aforesaid.

DATED: Honolulu, Hawaii, April 23, 1964.

THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII and
HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena

By Christopher Cobb
CHRISTOPHER COBB

Their Attorney

25713

REGISTERED NO. _____

Value $ 100 Spec. del'y fee $ _____

Fee $ 60 Ret. receipt fee $ 10

Surcharge $ _____ Rest. del'y fee $ _____

Postage $ 10 ☐ Airmail

RETURN RECEIPT REQUESTED

HONOLULU HAWAII JUL 14 1965 POSTMARK

Postmaster, By _____

From Dept. of Planning & Economic Develop — 426 Queen St. Hon.

To Christopher Cobb Anderson Wrenn & Jenks 1001 Bishop St. Hon

POD Form 3806—May 1964 c48—16—70493-6

SAVE THIS RECEIPT. Present it when making inquiry or claim.

Claim must be filed within 1 year from the date of mailing.

Consult postmaster as to fee chargeable on registered parcel post packages addressed to foreign countries.

U.S GOVERNMENT PRINTING OFFICE c48—16—70493-4

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. COAST GUARD

1790 — 1965

ALWAYS READY

POSTMARK OF DELIVERING OFFICE

HONOLULU HAWAII
PM
5 JUL
1965

INSTRUCTIONS: Fill in items below and complete instructions on other side, if applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article RETURN RECEIPT REQUESTED.

RETURN TO

REGISTERED NO.	NAME OF SENDER
25713	Land Use Commission
CERTIFIED NO.	STREET AND NO. OR P. O. BOX
	426 Queen St
INSURED NO.	CITY, STATE, AND ZIP CODE
	Honolulu, Hawaii

HONOLULU, HAWAII

POD Form 3811 Sep. 1963

C55—16—71548-6—F

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver *ONLY* to addressee

☐ Show address where delivered

(Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE *(must always be filled in)*

Christopher Cobb

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

JUL 15 1965

SHOW WHERE DELIVERED *(only if requested)*

C55—16—71548-5—F GPO

July 13, 1965

Registered Mail

Mr. Christopher Cobb
Anderson, Wrenn and Jenks
Bank of Hawaii Building
1002 Bishop Street
Honolulu, Hawaii

Dear Mr. Cobb:

Transmitted herewith are copies of the findings, conclusions and decision of the Land Use Commission in the matter of the petition by Hawaiian Trust Company, Ltd., and the Roman Catholic Church in the State of Hawaii, A(T)63-40. Additional copies are enclosed for the petitioners.

Sincerely,

RAYMOND S. YAMASHITA
Executive Officer

Encl.

cc: Chairman Myron Thompson
Roy Takeyama

LAND USE COMMISSION
STATE OF HAWAII

IN THE MATTER OF THE PETITION BY)
MARTIN ANDERSON AND CHRISTOPHER COBB)
FOR HAWAIIAN TRUST COMPANY, LIMITED, AND)
THE ROMAN CATHOLIC CHURCH IN THE STATE)
OF HAWAII, A(T)63-40)

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

The above Petition to amend the Temporary Land Use District boundaries from Conservation to Urban having come on for hearing, and the Land Use Commission having duly considered the evidence now finds and concludes as follows:

FINDINGS OF FACT

1. That the Petition encompasses approximately 60 acres of land, which is in the Conservation District, situated in Manoa Valley, Honolulu, Oahu (TMK: 2-9-54: 13 and 18, and portions of 7).

2. That the Petitioners propose to subdivide and develop said lands for residential use.

3. That on or around February 1961, the Planning Department of the City and County of Honolulu granted preliminary approval to subdivide 30 acres of land included in parcels 7 and 18 of TMK 2-9-54 for residential uses, but that the preliminary approval lapsed when Petitioners failed to proceed with their subdivision plans.

4. That the annual rainfall in the general area is approximately 150 inches, amounting to approximately 11,160 gallons per day per acre; that the ground water recharge is approximately 6,000 gallons per acre per day; that recharging basal

supplies rather than utilizing surface water is more practical and preferred.

5. That the northern parcel is not easily accessible, whereas the lower western parcels are more easily accessible.

6. That the lands generally are covered with dense vegetation.

7. That the proposed land use from Conservation to Urban is not consistent with the General Plan of the City and County of Honolulu.

8. That subdividing said lands for urban uses would remove valuable watershed lands reducing the water supply and at the same time increase the demand for more water for residential uses.

9. That the upper reaches of Manoa Valley have always been a significant part of Honolulu's watershed and that water from this area flows and converges upon said lands.

10. That the topography of portions of said land is steep.

11. That rainfall in the area is heavier than the American Factors development immediately adjacent thereto.

CONCLUSIONS OF LAW

1. That the Petitioners have failed to prove that the land is needed for a use other than that for which it is classified. While there is evidence that said lands could be developed for urban uses, there is overriding evidence that continued watershed use is the proper classification in the interest and welfare of the public.

2. That sufficient reserve areas for foreseeable urban growth in close proximity to the lands under consideration have already been placed in the Urban District.

3. That other lands equal or superior in topography and drainage, situated reasonably close to the lands under consideration, have already been placed in the Urban District.

4. That conditions and trends of development have not changed materially since the adoption of the present classification so as to justify amending the present boundary to permit urban uses of the lands under consideration.

5. That the Land Use Commission, upon evidence submitted, properly placed said lands in the Conservation District primarily for the preservation of watershed and water resources and also for preserving wilderness, conserving endemic plants, wildlife, and forestry and preventing floods and erosion.

6. That the highest and best use of the lands under consideration is Conservation.

DECISION

Based on the evidence presented and the findings of fact and conclusions of law, it is the decision of the Land Use Commission that the petition be denied and that said lands be retained in the Conservation District.

STATE LAND USE COMMISSION

By Myron Thompson
Myron Thompson

Authentication:

Done in the City and County
of Honolulu, State of Hawaii,
the 12th day of July, 1965.

Raymond Yamashita
Raymond Yamashita
Executive Officer
Land Use Commission

Approved as to form and legality:

Roy Y Takeyama
Roy Takeyama
Deputy Attorney General

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

SUPPLEMENT

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

SUPPLEMENT

I, MYRON B. THOMPSON, Chairman of the State Land Use Commission, hereby certify that the attached findings of fact, conclusions of law and decision supplement the certified record on appeal in the above-entitled-matter.

IN WITNESS WHEREOF I have hereunto set my hand at Honolulu, Hawaii, this 14th day of July, 1965.

Myron B. Thompson
MYRON B. THOMPSON, Chairman
State Land Use Commission

Subscribed and sworn to
before me this 14th day of July 1965.

Mary Moy
Notary Public, First Judicial Circuit
State of Hawaii

My commission expires Dec 14, 1965

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing and Meeting

LUC Hearing Room

Honolulu, Hawaii

9:00 A. M. - March 6, 1964

Commissioners Present:	C.E.S. Burns James P. Ferry Charles S. Ota Shiro Nishimura Robert G. Wenkam Leslie E. L. Wung Myron B. Thompson Shelley Mark
Absent:	Goro Inaba
Staff Present:	Raymond S. Yamashita, Executive Officer Roy Takeyama, Legal Counsel Richard Mar, Field Officer Amy Namihira, Stenographer

The public hearing was called to order by Chairman Thompson who said a short opening prayer. The introduction of the commissioners and staff members, and the procedures to be followed throughout the hearing were given by the Chairman. All persons who were entering testimonies in this hearing were sworn in.

PETITION OF CENTEX TROUSDALE COMPANY BY H.W.B. WHITE (A(T)62-29) FOR CHANGE OF TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL TO URBAN DISTRICT CLASSIFICATION OF ABOUT 800 ACRES OF KAWAINUI SWAMP FOR PURPOSE OF RESIDENTIAL AND PARK DEVELOPMENT: Described as TMK 4-2-16: 01 and 4-2-13: 22

Chairman Thompson informed the Commissioners that there was a request before them to defer action on the above petition.

Mr. Tom Peterson, representative of Centex Trousdale, informed the Commissioners that they were asking for a deferment because the City and County of Honolulu was making an appraisal of their property, which should be completed by March 27, 1964. Mr. Peterson stated that this delay was related to apparent illnesses on the part of the City's appraisers.

Mr. Frederick K. F. Lee, Planning Director of City Planning Department (who was sworn in), and Mr. Richard Au, City and County Attorney, confirmed these statements made by Mr. Peterson.

Commissioner Nishimura moved to defer action on this matter for a week following March 27, 1964 or thereafter. Commissioner Burns seconded the motion. The Executive Officer polled the Commissioners as follows:

Approval: Commissioners Wung, Burns, Nishimura, and Chairman Thompson.

Disapproval: Commissioners Wenkam and Mark.

The motion was not carried due to insufficient votes.

The Chairman asked Mr. Peterson whether he was ready to present his case. Mr. Peterson requested that he be advised of his rights in the event they should wish to withdraw, and the opportunities that are afforded them in relation to the proposed final district boundaries.

The legal counsel informed Mr. Peterson that this Commission's actions are limited by Law. Should the petitioner withdraw, then later wishes to be reheard, he must initiate a new petition and wait for a period of approximately 100 days (minimum) to 200 days (maximum) before a public hearing is set. By Law this Commission is required to set permanent district boundaries by July 1, 1964. Therefore, the petitioner has an opportunity to voice his objections or approval of the proposed final district boundaries prior to, at, or within 15 days following the public hearing.

Mr. Peterson stated that they would go on with their presentation.

The Executive Officer gave the background of the petition and outlined the area involved on a map. He stated that the City Planning Commission in recommending denial of the petition also recommended that the district designation be changed to a Conservation district because of the important flood control and flooding basin factor of the area. He stated that on the Land Use Commission's proposed final district boundary maps, the Commission has designated Kawainui Swamp as Conservation.

Mr. George Houghtailing, developer, stated that the Corps of Engineers had no intention of improving the 470 acres of ponding area; and that the State Hawaii Water Authority indicated to the Corps of Engineers that the swamp was no longer needed as an irrigation water source. He stated that on the basis of their study, they felt that they could meet the requirement of providing a flood basin, and clearing out the ponding area to provide this urban development. They recommended that 100 acres would be given to the City for park use, and the remaining acres to be developed into apartments. He stated that the land owners were willing to spend 1½ million to 2 million dollars with no cost to the City to develop this area; but the City, however, did have an agreement with the Corps of Engineers to develop the 732 acres for a flood control plain. Mr. Houghtailing stated that in view of the Mayor and City Council's desire to have the area as a flood control plain, the owners stated that they would be willing to negotiate with the City and have them take over the land at the price that they had purchased it. Presently this negotiation is being held between the City and the petitioner, and this is the reason why the petitioner has asked that this public hearing be deferred.

The Executive Officer proceeded with the staff's analysis and recommendation. The recommendation by the staff was for denial of the petition to place about 686 acres, which generally include the limits of the existing swamp, now in the Temporary Agricultural District into the Temporary Urban District.

The following agencies presented their testimonies against the petition (written statements are on file):

1. The Outdoor Circle
2. The Garden Club of Honolulu
3. The Hawaiian Botanical Foundation
4. The Windward Oahu Community Association
5. The City Planning Commission

The Windward Chamber of Commerce supported the petitioner's request for a change in classification (statement on file).

Mr. Houghtailing in summarizing his presentation stated that there is need for a flood control plain and that they were not against this, but he emphasized that there was also the need for urban expansion in the area.

The Chairman announced that the Commission will receive additional written comments and protests within 15 days following this hearing, and will take action 45 to 90 days from this hearing.

The public hearing was closed.

PETITIONS PENDING ACTION

PETITION OF THE ROMAN CATHOLIC CHURCH (A(T)63-40) FOR AMENDMENT OF THE TEMPORARY DISTRICT BOUNDARY FROM A CONSERVATION DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN MANOA VALLEY. Described as TMK 2-9-54: 7, 13 & 18; and 2-9-55: 5 & 10 deleted

Mr. Christopher Cobb read into the record a letter which was transmitted to the Commission earlier. His presentation continued with a brief summary of the petitioner's request. He stated that the question concerning this petition and the reason for its denial is the need for this area as a watershed. In his opinion Mr. Cobb did not feel that the area was needed for a watershed. He felt that there were other areas available. He pointed out that the population in the area was increasing, and that an urban expansion of the area was needed to meet this demand.

Mr. Mink of the Board of Water Supply explained the importance the ground water in the area to the State. He stated that if this development is permitted, there would definitely be damage to the watershed in the area and a shortage in the State's water resources.

Mr. Ramon Duran of the City Planning Department stated that the petition should simply be denied. He stated that the City and County of Honolulu and the Board of

Water Supply agree that the natural water resources in the area should be preserved, and the area left in Conservation.

The Executive Officer stated that the staff's recommendation was for denial, and that the staff concurs with the testimonies presented by the Board of Water Supply.

Commissioner Wenkam moved to deny the petition on the staff's recommendation and testimonies given by the Board of Water Supply. Commissioner Nishimura seconded the motion. The Executive Officer polled the Commissioners as follows:

Approved: Commissioners Wung, Wenkam, Burns, Nishimura, Ferry and Chairman Thompson.

Disapproved: Commissioner Ota.

The motion was carried.

PETITION OF MABEL K. ENA (A(T)63-44) FOR AMENDMENT OF THE TEMPORARY DISTRICT BOUNDARY FROM A CONSERVATION DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN MANOA VALLEY, OAHU: Described as TMK 2-9-54: 05

A brief background of the petition was given by the Executive Officer. The analysis and recommendation of the staff followed this presentation. Staff recommended that the petition be approved.

Mr. Duran of the City Planning Department stated that the City Planning Commission accepted the petition because of the fact that the area was small.

In reply to Legal Counsel's question, Mr. Watson of the Board of Water Supply stated that the Board's position is the same concerning this area. The Board wishes to include this area as a watershed.

A motion by Commissioner Burns and seconded by Commissioner Nishimura to accept the petition was not carried.

A motion to reopen the petition for discussion was made by Commissioner Wung and seconded by Commissioner Ferry, and was carried.

As a result of this discussion a motion to approve the petition was made by Commissioner Burns, and seconded by Commissioner Nishimura. The Executive Officer polled the Commissioners as follows:

Approval: Commissioners Wung, Ota, Burns, Nishimura, Ferry, and Chairman Thompson.

Disapproval: Commissioner Wenkam.

The motion was carried.

PETITION OF CHARLES YANG, ET AL (A(T)63-45) FOR AMENDMENT OF THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN WAIAWA, PEARL CITY: Described as TMK 9-6-02: 6, 7, 17, 18, 19, 20, 23 & 24

The Field Officer, Richard Mar, gave a background summary on the petition, and the staff's recommendation for approval on the basis that the subject parcels are within a limited area in which urban uses now exist. The Executive Officer amended the staff's recommendation from approval to denial (due to an unfortunate technicality) on the basis that if the petition were granted for only subject parcels, it would constitute spot zoning.

Mr. Yang who was sworn in stated that the City Planning Commission has designated this area on their General Plan as Urban. Mr. Duran of the City Planning Department confirmed Mr. Yang's statement.

The staff's recommendation as amended (for denial) was deliberated upon by the Commission. It was the consensus of the Commission that since the area was surrounded by urban uses, and was of urban character, the best and highest use of the land would be for urbanization.

Commissioner Burns moved to approve the petition based on the highest and best use of the area which is already in urban character. Commissioner Wung seconded the motion. The Executive Officer polled the Commissioners as follows:

Approval: Commissioners Wung, Wenkam, Burns, Nishimura, Ferry and Chairman Thompson.

Disapproval: Commissioner Ota.

The motion was carried.

The meeting was adjourned at 1:00 p.m.

CIVIL NO. 17377

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased, THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII,	)
Appellants,	)
vs.	)
STATE LAND USE COMMISSION,	)
Appellee.	)

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1965 AUG 25 PM 4 07
W. C. Ing
CLERK

CERTIFIED RECORD ON APPEAL

2 cc to Mr. Christopher Cobb
Anderson, Wiesen & Jenks

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii 96813

Attorneys for Appellee

CIVIL NO. 17377

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased, THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII,	)
Appellants,	)
vs.	)
STATE LAND USE COMMISSION,	)
Appellee.	)

CERTIFIED RECORD ON APPEAL

I, MYRON B. THOMPSON, Chairman of the State Land Use Commission, hereby certify that all of the letters, maps, transcripts, minutes and documents listed in the Certified Record on Appeal in Civil No. 14039, Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, Deceased, Appellant, vs. State Land Use Commission, Appellee, filed on April 17, 1964, and supplementary Certified Record on Appeal filed on July 14, 1965, and the following constitute the Certified Record on Appeal in the above-entitled matter:

Land Use Commission minutes, dated February 28, 1964, March 6,

1964, and May 15, 1964 (relevant portions outlined in red).

IN WITNESS WHEREOF, I have hereunto set my hand at Honolulu, Hawaii, this 25th day of August, 1965.

Myron B. Thompson

MYRON B. THOMPSON, Chairman
State Land Use Commission

Subscribed and sworn to before me this 25th day of August, 1965.

Daniel E. McGregor, Jr.

Notary Public, First Judicial Circuit, State of Hawaii

My Commission expires: 10/29/65

CIVIL NO. 17377

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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Appellants,	)
vs.	)
STATE LAND USE COMMISSION,	)
Appellee.	)

CERTIFIED RECORD ON APPEAL

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii 96813

Attorneys for Appellee

CIVIL NO. 17377

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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Appellants,	)
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State Land Use Commission

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Daniel Mcgregor, Jr.

Notary Public, First Judicial Circuit, State of Hawaii

My Commission expires: 10/29/65

RECEIVED
AUG 13 1965
State of Hawaii
LAND USE COMMISSION

CIVIL NO. 17377

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased, THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1965 AUG 12 PM 2 36
R. V. Cockett
CLERK

Take and replied.

I do hereby certify that the attached folio of

NOTICE OF APPEAL TO CIRCUIT COURT

DESIGNATION OF RECORD ON APPEAL

ORDER

and

STATEMENT OF THE CASE

are true and correct copies of the originals on file in this office.

Clerk, Circuit Court, First Circuit,
State of Hawaii

CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for Appellants

Of Counsel:

ANDERSON, WRENN & JENKS

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased, THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

NOTICE OF APPEAL TO CIRCUIT COURT

Notice is hereby given that Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased, and The Roman Catholic Church in the State of Hawaii, appellants above named, pursuant to Section 6C-14, R.L.H. 1955, as amended, hereby appeal to the Circuit Court of the First Circuit from the decision of the State Land Use Commission, appellee above named, dated July 12, 1965, denying said appellants' Petition for Amendment of Temporary District Boundary, petition A(T)63-40 in appellee's files.

DATED: Honolulu, Hawaii, August 12, 1965.

/s/ Christopher Cobb
CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased, and for The Roman Catholic Church in the State of Hawaii - Appellants

Of Counsel:

ANDERSON, WRENN & JENKS

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased, THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

DESIGNATION OF RECORD ON APPEAL

Appellants Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased, and The Roman Catholic Church in the State of Hawaii, hereinafter called "appellants", designate the following as the record on appeal herein:

1. Petition for amendment of temporary district boundary filed by appellants with appellee State Land Use Commission, hereinafter called "appellee", on July 29, 1963, said petition being petition A(T)-63-40 in the files of appellee.

2. All staff memoranda submitted to members of appellee in connection with their consideration of the aforesaid petition.

3. All evidence received or considered by appellee in connection with the aforesaid petition, including a transcript of oral proceedings, exhibits, and a statement of all matters officially noticed by appellee.

4. A transcript of every motion and intermediate ruling made in connection with the aforesaid petition.

5. The findings of fact, conclusions of law and Decision of appellee on the aforesaid petition.

6. All records in appellee's files on this matter which were taken into consideration by members of appellee in connection with this matter and which are not designated hereinabove.

DATED: Honolulu, Hawaii, August 12, 1965.

/s/ Christopher Cobb
CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Of Counsel:

ANDERSON, WRENN & JENKS

Attorney for Appellants

ORDER

TO: STATE LAND USE COMMISSION:

In accordance with Rule 72(d)(2) of the Hawaii Rules of Civil Procedure, you are hereby commanded to certify and transmit the papers, transcripts, minutes and exhibits designated in the above Designation of Record on Appeal to the Circuit Court of the First Circuit within 15

days of the date of this order, or within such further time as may be allowed by said Court.

DATED: Honolulu, Hawaii, August 12th, 1965.

BY THE COURT

R. V. Cockett

Clerk

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, deceased, THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

STATEMENT OF THE CASE

1. Appellant Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, deceased, is a Hawaii corporation and is the duly qualified and acting Trustee of the Trust Estate of John Ena, deceased. Appellant The Roman Catholic Church in the State of Hawaii is a Hawaii corporation.

2. Appellee State Land Use Commission, hereinafter called "appellee", is an agency of the State of Hawaii.

3. This Court has jurisdiction of this appeal pursuant to Section 6C-14, R.L.H. 1955, as amended.

4. In April, 1961 appellee established Temporary District Boundaries pursuant to Section 2 of Act 187, S.L.H. 1961.

5. Appellant Hawaiian Trust Company, Limited, as Trustee as aforesaid, is and at all relevant times was the lessee of certain land located in Manoa Valley, City and County of Honolulu, State of Hawaii. Appellant The Roman Catholic Church in the State of Hawaii is and at all relevant times was the fee simple owner of said land.

6. Said land was and is in a conservation district of the aforesaid Temporary District Boundaries.

7. On July 29, 1963 appellants above named filed with appellee a Petition for Amendment of Temporary District Boundary pursuant to Section 98H-4, R.L.H. 1955, as amended, wherein said appellants requested an amendment of the aforementioned Temporary District Boundary. Said petition is designated at petition A(T) 63-40 in appellee's file.

8. The requested amendment would, if granted, remove the aforesaid land from the conservation district and would place such land in the urban district established by Section 98H-2, R.L.H. 1955, as amended.

9. On January 18, 1964 and March 6, 1964 hearings on the said petition were held by appellee, and on or after July 14, 1965, appellee served upon appellants above named appellee's findings of fact, conclusions of law and decision denying said petition.

10. The aforementioned proceedings constituted a contested case within the meaning of Section 6C-1(e), R.L.H. 1955, as amended, and the aforesaid decision constituted a final decision and order rendered by appellee in such contested case.

11. This is an appeal from the aforesaid decision.

12. The aforesaid decision violates Sections 4 and 18 of the Constitution of the State of Hawaii and the Fifth Amendment to the United States Constitution in that it deprives appellants above named of their property without due process of law and takes said appellants' property for a public use without just compensation.

13. The aforesaid decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

14. The aforesaid decision was made upon unlawful procedure in that appellee unlawfully considered matters outside the record in the aforesaid proceedings in making its decision.

WHEREFORE, appellants demand judgment reversing the aforesaid decision of appellee and ordering that said petition A(T) 63-40 be granted.

DATED: Honolulu, Hawaii, August 12, 1965.

/s/ Christopher Cobb
CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorney for Appellants

Of Counsel:

ANDERSON, WRENN & JENKS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 14039

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of John Ena, Deceased - Appellant, vs. STATE LAND USE COMMISSION - Appellee	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

CERTIFIED RECORD ON APPEAL

I, MYRON B. THOMPSON, Chairman of the State Land Use Commission, hereby certify that all of the letters, maps, transcripts, minutes and documents listed below are the designation of certified record on appeal in the above-entitled-matter:

1. Letter from Christopher Cobb, Anderson, Wrenn & Jenks, dated 4/3/64, relating to Notice of Appeal to Circuit Court & Designation of Record on Appeal.

2. Letter to Christopher Cobb, dated 3/10/64, relating to Action taken by Land Use Commission on 3/6/64.

3. Staff Report, dated 1/18/64.

4. Vote Record, dated 3/6/64.

5. Minutes of Public Hearing, dated 1/18/64.

6. Letter to Christopher Cobb, dated 2/10/64, relating to letter of 2/5/64 requesting the Commission to delay action on petition.

7. Letter from Christopher Cobb, dated 2/5/64, requesting the Commission to delay action on petition.

8. Letter from Frederick K. F. Lee, Planning Director, City Planning Department, dated 3/5/64, transmitting County's recommendations on amended petition.

9. Letter to Frederick K. F. Lee, dated 1/28/64, requesting County's comments and recommendations on amended petition.

10. Letter from Frederick K. F. Lee, dated 12/27/63, transmitting County's recommendations and comments on original petition.

11. Letter to Frederick K. F. Lee, dated 10/16/63, requesting County's recommendations and comments on original petition.

12. Letter to Christopher Cobb, dated 10/10/63, acknowledging receipt of petition for boundary change.

13. Letter to George Siu, Director of Land & Natural Resources, dated 7/30/63, requesting department's comments and recommendations on original petition.

14. Letter from Christopher Cobb, dated 7/29/63, transmitting petition of Hawaiian Trust Company, Ltd., and the Roman Catholic Church for amendment of the temporary district boundary.

15. Petition for Amendment of Temporary District Boundary, dated 7/29/63.

16. Enclosures to Petition - Attachment 1 to 3, dated 7/29/63.

17. Letter from E. J. Morgan, Board of Water Supply, dated 1/29/64, supplementing letter of 1/13/64 and oral presentation at public hearing.

18. Letter from E. J. Morgan, dated 1/13/64, relating to Board's position concerning petition before the Commission and enclosing letters substantiating position from:

a. E. J. Morgan to Wayne L. Collins, dated 3/4/60
b. Wayne L. Collins to E. J. Morgan, dated 3/7/60
c. E. J. Morgan to Wayne L. Collins, dated 10/5/60
d. E. J. Morgan to Hawaiian Trust Company, dated 10/5/60
e. Wayne L. Collins to E. J. Morgan, dated 10/13/60
f. Wayne L. Collins to Jess H. Walters, dated 11/2/60
g. Walter W. Holt to E. H. Cook, dated 12/27/60
h. Gordon P.Chung-Hoon to Leighton S.C. Louis, dated 2/21/61
i. Walter W. Holt to Edward J. Morgan, dated 12/19/61

19. Letter from E. J. Morgan, dated 10/24/63, requesting Commission to deny petition.

20. Letter to Christopher Cobb, dated 3/2/64, relating to Land Use Commission meeting and possible action on petition.

21. Letter from Christopher Cobb, dated 2/28/64, acknowledging letters dated 2/10/64 and 2/20/64 relating to Land Use Commission meeting.

22. Letter to Christopher Cobb, dated 2/20/64, relating to Land Use Commission meeting scheduled for 3/6/64.

23. Letter to Christopher Cobb, dated 12/27/63, relating to Land Use Commission public hearing scheduled for 1/18/64.

24. Legal Notice of Public Hearing, published 12/28/63.

25. Letter from Christopher Cobb, dated 3/6/64, relating to 60 acres of land in Manoa Valley, and enclosing letter from E. W. Broadbent of R. M. Towill Corp., with references, dated 2/26/64, relating to analysis of Staff Report.

26. Letter from Christopher Cobb, dated 2/3/64, relating to summary of Petition A(T)63-40.

27. Exhibits 1 to 8, submitted by petitioner on 1/18/64, consisting of 3 exhibit maps, and 5 letters.

28. Letters protesting petition from:

a. Donald G. Aten, dated 2/12/64
b. David C. Sanford, dated 1/29/64
c. Ted M. Damron, dated 1/29/64
d. Mrs. Jack Marnie, dated 1/17/64
e. Mrs. Reuel Denney, dated 1/18/64
f. Thomas H. Hamilton, dated 1/17/64
g. Laurence F. Blodgett, dated 1/18/64

29. Eight maps submitted from 7/29/63 to 1/18/64 for exhibit and information relating to A(T)63-40 Petition (4 maps marked Exhibit; and 4 maps marked LUC).

30. Memo from Myron B. Thompson, Chairman, Land Use Commission, dated 10/22/63, notifying petitioners of the status of the Commission and their petition pending before the Commission.

31. Letter from E. H. Cook, Director, Land & Natural Resources, dated 3/17/62, relating to Approval of Proposed Change in Conservation District Boundary - (Honolulu Watershed Forest Reserve).

32. Extracts from HSPA Library Volume H. L. Lyon Papers - 1901 - 1940, submitted by Leslie J. Watson, Board of Water Supply, on March 6, 1964, relating to Petition A(T)63-40.

IN WITNESS WHEREOF I have hereunto set my hand at Honolulu, Hawaii, this 16th day of April, 1964.

Myron B. Thompson
MYRON B. THOMPSON, Chairman
State Land Use Commission

Subscribed and sworn to before
me this 16th day of April, 1964.

/s/ Helen M. Maui (SEAL)
Helen M. Maui, Notary Public
First Judicial Circuit
State of Hawaii

My commission expires 2/15/65

Manoa Land Rezoning Is Refused

Hawaiian Trust Co.'s petition to change the zoning of a 60-acre tract in Manoa Valley from conservation to urban use has been denied by the State Land Use Commission, which ruled the land is an important watershed area.

The trust company wanted the change for a residential subdivision. It holds the lease to the land, which is owned by the Catholic Church.

THE BOARD OF WATER Supply argued against the rezoning request at a public hearing Jan. 18 before the commission, which issued the rejection March 6.

Raymond Yamashita, executive secretary of the commission, said the commission did approve rezoning from conservation to urban on a three-acre tract in the same area, which is owned by the Mable K. Ena Estate. Hawaiian Trust is guardian of that land also.

Manoa Area Rezoning Denied

The State Land Use Commission has denied a request to change the zoning of 60 acres of land deep in Manoa Valley from conservation to urban.

The staff of the Commission had recommended against the change on January 18, and the Commission had decided to go along with the recommendation two weeks ago. But the action was not announced at the time.

Hawaiian Trust Company, which holds the lease to the lands owned by the Catholic Church had wanted the change for a residential subdivision.

The parcel is too important a watershed area, so the Commission turned it down, said Raymond Yamashita, executive secretary of the Commission.

The Commission, however, granted a zone change from conservation to urban for three acres of land in the same area, Yamashita said.

The small parcel is owned by the Mabel K. Ena Estate, with Hawaiian Trust Company being the guardian.

LAND USE COMMISSION
STATE OF HAWAII

Minutes of Public Hearing

Lobby of State Office Building

Honolulu, Hawaii

1:00 P. M. - January 18, 1964

Commissioners Present:	C.E.S. Burns James P. Ferry Goro Inaba Shelley Mark Shiro Nishimura Charles S. Ota Myron B. Thompson Robert G. Wenkam Leslie E. L. Wung
Staff Present:	Raymond Yamashita, Executive Officer Roy Takeyama, Legal Counsel Gordon Soh, Planning & Economic Development Richard Mar, Field Officer Amy Namihira, Stenographer Alberta L. Kai, Stenographer

Having called the public hearing to order, Chairman Thompson said an opening prayer. The Chairman introduced each commissioner and outlined the procedures to be followed throughout the public hearing.

PETITIONS OF MABEL K. ENA AND THE ROMAN CATHOLIC CHURCH (A(T)63-44 and A(T)63-40) FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARIES FROM A CONSERVATION DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN MANOA VALLEY: Described as First Division, TMK 2-9-54: 5; 2-9-54: 7, 13, 18 and 2-9-55: 5 and 10.

Mr. Gordon Soh, who was sworn in, gave a background description on the area and request involved, and pointed out the location of the area in question on a map.

Mr. Christopher Cobb introduced himself and Mr. Morten Anderson as counsels for the petitioners; and Mr. Kenneth Nurse, officer and manager of Hawaiian Trust real estate activities, who was sworn in.

In an answer and question session Mr. Nurse acknowledged that Hawaiian Trust Company, Ltd. was the duly appointed and acting trustee of the John Ena and Mabel Ena estates; and that Hawaiian Trust, as trustee, is guardian of parcel

described as 2-9-54: 5 and owns a lease on parcels consisting of 2-9-54: 7, 13, 18 and 2-9-55: 5 and 10. Mr. Nurse stated that he and his staff have made numerous calls to developers to interest them in developing these lands. He stated many (developers) have shown interest in these lands for a potential subdivision as many (developers) have felt that certain portions were suitable. Mr. Nurse stated that, however, their (developers') interest extended to only a point - largely to the extent as the situation is today - basically, because they were afraid of being binded by a possible law suit or possible condemnation. Mr. Nurse stated that R. M. Towill has prepared subdivision plans for these lands which plans were submitted to the City Planning Commission in July 1960 and got tentative approval from the Planning Commission on February 24, 1961. (Material on this is on file.) Mr. Nurse stated that they couldn't proceed with the subdivision of their lands even with the given tentative approval by the City Planning Commission because of certain conditions stated in the letter of approval, and the Trust was in no position to develop the lands itself, as no private developer was interested because of the law suit. Mr. Nurse stated that there was discussion of condemnation prior to the approval of the subdivision by the Department of Forestry and Agriculture and the Board of Water Supply. (Material on this is on file.)

Mr. Cobb informed the Commission that there has been a great deal of confusion on whether these lands in question had been at any time an official part of the forest reserve. Mr. Cobb stated that it has been the position of the petitioners that these lands were never in the forest reserve. He stated that, however, there have been many state agencies stating that these lands were in the forest reserve, and therefore, it is the contention of the petitioners that these lands were put in the conservation district because the first Land Use Commission erroneously believed that these lands were in the forest reserve. (Letter dated March 17, 1962 from the Department of Land and Natural Resources to Ralph K. Ajifu, Chairman, Land Use Commission, was read; letter in file.) Mr. Cobb stated that he has personally reviewed the records of the Board of Forestry and that in the official transcript of the hearing which was held in 1961 concerning these lands, it states that the hearing was held pursuant to the provisions of section 19-21 and 19-22 of the Revised Laws of Hawaii, 1955. Mr. Cobb stated that these two sections (19-21 and 19-22) provide for the classification of land as a watershed, not as a forest reserve but a watershed, and provide for the condemnation of land that have been classified by the State. Mr. Nurse acknowledged Mr. Cobb questions when asked if he attended these hearings and protested against the classification of these lands as a watershed because he was afraid of the condemnation threat. Mr. Nurse replied in the negative when asked whether he knew of any other hearings held prior to 1961 in respect to this property.

Mr. Cobb stated that there are only two ways that these lands could have gotten into a forest reserve. (1) A voluntary submission of the land to the forest reserve by the owners; and (2) pursuant to a hearing and opportunity for the landowner to protest this classification. Mr. Cobb was fairly sure that these lands were never placed in the forest reserve, as he made a thorough investigation of the two only possibilities. Mr. Cobb stated that in 1961 the Land Use Law became effective and the jurisdiction of what used to be called the forest and water reserve zones was placed in the Land Use Commission and remained in the conservation district. Mr. Cobb stated that the impression

letters and newspaper clippings (Honolulu Star-Bulletin, Friday, 1/17/64) has erroneously implied that these lands are in the forest reserve, has posed a threat for condemnation and prevention of a development for a subdivision from proceeding.

Mr. Nurse stated that the subdivision map was allowed to lapse for one year after tentative approval and there was no current subdivision map during the summer of 1962. He stated that they wanted to develop the lands for urban use and were in favor of actually changing the use of the land to urban and were taking actual steps of getting tentative preliminary subdivision map approval.

Mr. Cobb submitted that there was a change in use of these lands in progress in the summer of 1962 and that under the Land Use Law (as it was written) the Commission was required to put lands in the urban district if the change of the use of the land to urban uses was actually in progress. Mr. Cobb stated that though this may be ancient history, he felt that if this Commission considered the actions of the first Commission, it would find that it was erroneous in this respect. He stated, however, this Commission's decision should be based on whether or not these parcels should be changed to an urban use at this time.

Mr. Nurse stated that these parcels of lands are abutting and in the path of urban development. He stated that they have a new subdivision map which was prepared (and displayed on the wall).

Mr. Cobb (at this point) introduced Mr. Bryan Grey, project engineer of R. M. Towill Corporation, who was sworn in. Mr. Grey who was familiar with the subdivision as shown on the map verified that the subdivision could develop accordingly as prepared and that the growth rate would not change the city standards. Mr. Grey gave a detail description of the area as it exists: the availability of sewer lines, water, sewage disposal, drainage and flood problems, roads; subdivisions in existence, under construction, proposed which were contiguous and adjacent to the parcels; the topography of the land as being rather steep but in general, the average slope for the entire parcels were below 20%. He also stated that parcels 5 and 10 of tax map key 2-9-55, and portion of 7 of 2-9-54 mauka of the proposed subdivision were not suitable for subdivision, to which Mr. Nurse was of the same opinion. Mr. Cobb requested that their petition be amended to drop parcels designated by tax map key 2-9-55: 5; 2-9-55: 10, and that portion of 2-9-54: 7 which is mauka of the proposed subdivision which Mr. Grey has established, from their request. The amendment to the petition was accepted and granted.

Mr. Nurse, being familiar with the Manoa Valley area, confirmed that there were shcools, fire station, bus service and other urban like facilities in the vicinity, when asked by his counsel.

Mr. Cobb, having been advised to confine his remarks to general statements and a more summarized fashion by Commissioner Ota, summarized his presentation. He stated that he felt that he and his clients have shown that they have definitely fulfilled the condition which is precedent for granting this amendment, that the land is needed for urban use. With the population pressure

in Manoa Valley and the need for additional urban land, Mr. Cobb felt that this area in question would be an ideal place which is close to the city of Honolulu.

Mr. Cobb pointed out the following basic minimum standards and requirements of the Commission which they met:

1. The petition be consistent with the objectives of the Land Use Law.

   Section 1 of Act 187, one of the objectives is to prevent scattered subdivisions with expansive yet reduced public services. Answer: This land clearly would prevent any such waste.

2. Preserve, protect and encourage the orderly development of lands in the State for those uses to which they are best suited for the public health and welfare. (Objective in the Commissioner's proposed regulation)

   This would be an orderly development of the State and obviously of Manoa Valley. There is just need for this land which would be in the public interest for classification into urban. The petitioners have dropped those parcels which project up into the ridges, which they recognize are not now useful for subdivision, from their petition. The remaining parcels consist of less than 70 acres of land, but there would still be a significant and useful number of houses that would be built on that land.

3. Consider proximity to centers of trading and employment facilities. (Proposed regulation)

   The area is right in the district of Honolulu and proximity to and economically feasible to provide sewers, water, sanitation, school, playground facilities, police and fire protection. Testimonies have verified this.

4. Land shall have satisfactory topography and drainage, and be reasonably free from the danger of floods.

   Those conditions are fulfilled by these lands. The topography is suitable and Mr. Grey has testified to this and has prepared a subdivision map showing this.

5. Consider the General Plan of the County.

   This plan is not shown in the urban district on the General Plan of the County. The reason is that all agencies have been treating this erroneously as being in the forest reserve, and therefore is placed on the County General Plan other than urban.

6. Urban district shall include a sufficient reserve for foreseeable urban growth based on ten year projection. Land contiguous to existing urban areas shall be given preference.

There are urban development houses, and people living contiguous to these lands. All of the areas immediately contiguous to this land is planned for immediate development.

Mr. Cobb submitted that they have shown by the purposes of the law and the standards of this Commission, that their petition should be granted.

Mr. Gordon Soh proceeded with the staff's analysis and recommendations which was prepared according to the original petition as submitted. The staff recommended approval of the Mabel K. Ena request and denied the request of the Roman Catholic Church which petitions were submitted on their behalf by Hawaiian Trust Company.

Mr. Leslie J. Watson representing the Board of Water Supply was sworn in. He stated that the Board of Water Supply's stand remains the same even though the amendment has drastically changed the petitioners' request.

Mr. Watson stated that he was head of the Water Resources Division of the Board of Water Supply and that he, Mr. Ray Hefty of the Land and Contract Division, and Mr. John Mink, geologist and hydraulogist were asked by Mr. Edward J. Morgan, Manager of the Board of Water Supply, to represent the Board. He stated that the question before this Commission (and an important one) is not whether the land is physically feasible for subdivision but rather, what is the proper classification for this land in the interest and justice of the Island as a whole. He stated that the parcels fall above the revised forest lines which was approved by the Board of Water Supply and the Board of Agriculture and Forestry on December 30, 1944, but which has never become official because of circumstances. Mr. Watson stated that the important point is that since 1944 it has been widely known that the Board of Water Supply and the Board of Agriculture and Forestry have held that these lands should be protected in its natural state forever. Mr. Watson cautioned that without control or intelligent management of our water resources there would be a water deficiency, and an island that was once a civilization. He stated that it would be physically possible to build houses and entail most of the areas now classified as conservation, but if highest and best use of lands are to be classified and determined and resolved for residential subdivision by immediate dollar return, what would the general situation be on Oahu in a 100 years. Mr. Watson stated that if the vitally important lands at the end of Manoa are needed (as stated in the original petition, all of the 160 acres) for residential development, this information would be a comfort to the many promoters of many stalled subdivisions all over this island. He stated that it is difficult to understand how the petitioners can state that a subdivision of 160 acres (of the original petition) is necessary to provide residences at this time and at the same time to add that this vitally important infiltration area that supports central Honolulu be withdrawn. Where does the petitioner proposes that the necessary water for the future is to come? The Honolulu Board of Water Supply and the State Department of Land and Natural Resources, to which the State Division of Forestry was transferred in the Statehood Reorganization, and this Commission have a tremendous responsibility to the people of this State, and as long as life is here, it is their responsibility to protect the ground water resources which the land itself constitutes the basis of our economy. About 20 years ago the Board

of Water Supply and the Board of Agriculture and Forestry, after long studies, decided that a revised forest reserve boundary was necessary. Acting upon the Board of Water Supply's recommendation, the Board of Agriculture and Forestry at its meeting of November 30, 1944 approved the revised lines. (Copy of the minutes available at Board of Water Supply). Mr. Watson stated that although there was large publicity of the actions of the governmental agencies, holding primary responsibility, (petitioners and interested landowners were informed) the necessary procedural detail required by pertinent statutes to establish these forest lines was delayed because of deaths, illnesses and etc. The survey description was finally available in 1950 and was discussed by the Board of Agriculture in its hearing of March 31, 1950. On December 16, 1960, the final description on metes and bounds was adopted for the forest and water line reserves by the Board of Agriculture at its meeting. The next obstacle that followed was the ruling by the Attorney General that too much time had lapsed between the hearings and the 1960 action to make it reasonable for the Governor to proclaim the line. On April 20, 1961, Director, Admiral Chun Hoon informed his Board of Agriculture that he would proceed with the processing of the necessary executive order. Here the record along these lines ended because of the legislation which created this Commission.

Mr. Watson stated that the petitioner states that the subject land is directly in the path of urban development in Manoa Valley. Mr. Watson remarked that all of the forest and watershed, and infiltration area on this island are in the path of development. Mr. Watson stated that it has been explained that the tentative approval referred to in the petition went dead. Mr. Watson stated that the petition states that on February 24, 1961 tentative approval of the proposed subdivision was granted by the Planning Department. Parenthetically this would be false because of failure of following through on the part of the petitioners. References are made to the erroneous impression of the earlier personnel of this Commission that the subject lands was part of the forest and water reserve zone. Mr. Watson stated that Mr. Anderson made this charge at a meeting in the Transportation Department auditorium and he challenged him at that time. Mr. Anderson stated that the Board of Water Supply people have misled people into believing that this lower line (which I have described) was the official line. Mr. Watson stated that parenthetically it would have been more correct if they had inserted something to the effect that the line is not officially fixed, but the Board of Water Supply has been trying since 1944 to have it fixed. Mr. Watson stated that the Board of Water Supply urged that this Commission deny this petition. He stated that it is not extravagant to say that on this small island you must protect the grounds through which rain water filtrates to give us our priceless ground water resource.

The Chairman requested that all questions be dispensed with at this point and requested that all people who are interested in presenting materials for or against this petition at this time proceed accordingly in the interest of time:

1. Individuals representing organizations to be called first.

2. Those who wish to speak on their own behalf would be given the opportunity if time permits.

A letter from Dr. Thomas Hamilton, President of the University of Hawaii dated 1/17/64, was read and made part of the record, informing the Commission of the University's stand opposing the proposed change by the owners.

Mr. Frederick K. F. Lee, Planning Director, City Planning Department, was sworn in. He stated that the Survey Division of the Department of Accounting and General Services has a map on file entitled, "Honolulu Watershed Forest Reserves", its HSS Plate 2134-A, dated December 5, 1961, that this plate indicates that the properties that are in question are in the forest reserve area as delineated by this map. The City Planning Commission has also asked the Board of Water Supply to appear before the Planning Commission, and it was upon their recommendation that the Planning Commission decided that this area should be retained as a watershed area. He stated that another point which he wishes to clear is the question concerning the line dipping down the two stream beds. Mr. Lee stated that it is best to have the lines such as this follow the natural boundaries, and the reason why the lines is deviated along the streams is because it is economically very expensive to bridge across these streams to develop such a small parcel of land.

Mr. Laurence F. Blodgett, President of Manoa Valley Community Association, was sworn in. Mr. Blodgett presented the stand of the Manoa Valley Community Association supporting the position of the Board of Water Supply. (Presentation in writing was submitted for the record.)

Mrs. Jack Marnie, President of the Outdoor Circle, supported the stand of the Board of Water Supply and submitted her written comments for the record.

Mr. W.W.G. Moir, President of the Hawaii Botanical Gardens Foundation, was sworn in. He statedthat the Foundation has been involved with a great deal of study in this area for many years, and after thorough study and knowing all of the difficulties connected with taking over the water supply and endangering the future of the whole island, the Foundation has given up the idea and strongly supports the point of view of the Board of Water Supply in maintaining this area as Conservation.

Mr. Robert M. Warner, Horticulturist and teacher at the University of Hawaii, and Vice President of the Hawaii Botanical Society, was sworn in. He stated that the Hawaii Botanical Society was opposed to the granting of this petition. He stated that as a teacher at the University he uses the arboretum as a source for plant material. He stated that there are over 6,000 identified kinds of plants in the arboretum. It is one of the accumulations of work over many years. It is something that must be preserved because it is something that is disappearing rapidly. He stated that the increased density of population in the area has caused many to be concerned and the proposed subdivision adjacent to this area will create a great problem in soil erosion, water shortage, disappearing of all the greeneries in the area, etc. Mr. Warner speaking in behalf of the Hawaii Botanical Society and a teacher at the University of Hawaii humbly requested that this Commission consider seriously before granting what seems to be unnecessary expansion to urbanization.

Mr. Cobb stated that there have been several reasons presented against this petition and he cited the gentlemen from Manoa Valley (representing the Manoa

Community Association) for example who has build his house on the ti-leaf slide and has gotten his house, which Mr. Cobb felt that he had little reason to say that somebody else shouldn't live farther up the valley.

Mr. Cobb pointed out that the staff report states that 12 6/10th% of the entire watershed is in this area, which of course is before the amendment of this petition. Mr. Cobb stated that the percentage of the watershed is now quite small and hoped that the staff would reconsider its recommendation on the basis of the amendment.

Mr. Cobb pointed out that the staff notes the building of apartments in Waikiki, across the Ala Wai Golf Course, in Makiki as reasons why there would be the need for more water. He stated that this Commission should take into consideration the fact that that argument basically is that the petitioners should be required to give their land to public use for the benefit of developers who want to build an apartment in Waikiki. Mr. Cobb stated that this is not fair. If this is the basis for it than this land should be condemned and purchased. Why should the petitioner give up all the benefit of his land for the developer in Waikiki? He stated that this stresses the public interest a little too far in this case, because under the present regulations of the Department of Land & Natural Resources there will be no essential use if the land is in the conservation district.

Mr. Cobb made reference to the map referred to by Mr. Lee showing that the area in question was in the Honolulu Watershed Forest Reserve. Mr. Cobb stated that these lands were never in the Honolulu Watershed Forest Reserve. He stated that they have seen this map and this map shows that the area is in the Watershed Forest Reserve and that that map was submitted to the Land Use Commission in 1962 and was the very basis for the classification of these lands in the conservation district. Mr. Cobb stated that map is wrong. He stated that the lands mauka of the lands in question are publicly owned, so that urbanizing of the lands in question will be the last encroachment in the area. He stated that this district is within the City of Honolulu and therefore makes it a different situation, a situation which orderly development favors development of this land as urban land. He stated that there has been mentioned of stalled subdivisions. Mr. Cobb stated that those subdivisions are stalled because they are not as well located as this one is. He stated that this subdivision would not be stalled, it would go through fast because the land is really needed for urban uses.

Commissioner Ferry stated that evidently the petitioner is basing his whole case on the fact that this area is needed for urbanization, and asked if this were correct? Mr. Cobb replied, "As we read the proposed standards of the Commission for the classification of lands (I know that these are not official yet but they are all that we have to go on), these regulations lay down standards for the Urban districts and it states that the land shall be in the Urban district if those standards are fulfilled - these standards have been fulfilled by the petitioner. Under the Conservation district there are standards that says that land which is essential as a watershed shall be in the Conservation district, unless otherwise provided in these regulations. We submit that (1) it is otherwise provided, because the other part of the regulation says that this land shall be in the Urban district; (2) basically

you simply must weigh these two. The petitioner has shown that the weight is on the side of the Urban classification for these small parcels of land."

Commissioner Ferry stated, "So in effect you concur that your case is based on the need for urbanization in the area." Mr. Cobb replied in the affirmative stating as compared to the need for watershed.

Commissioner Ferry asked Mr. Grey whether he would consider the development of those areas other than pink to be costly? Mr. Grey replied that he would consider the existing areas not to be costly. He stated that he was not qualified to give any phases on the economic possibilities, but could only insert that it is physically possible to subdivide. Commissioner Ferry asked, "You couldn't quote as to what the per lot development cost might be?" Mr. Grey replied that they have not made that kind of a study. Commissioner Ferry asked whether Mr. Nurse would be in the position to know? Mr. Nurse replied that he could only guess and he would assume, having been out on the land, that the land surrounding it undoubtedly the cost would exeed. The development cost would exceed in all probability some of the surrounding land which is either now in subdivision or being cleared for subdivision. Commissioner Ferry stated that it would not exceed that cost. Mr. Nurse replied in the affirmative.

Commissioner Ota remarked that the Counsel for the petitioner has repeatedly mentioned that the Board of Agriculture and the Board of Water Supply were in error in establishing the inclusion of the parcels in question in the Honolulu Watershed Forest Reserve. Commissioner Ota stated that Mr. Lee has shown a map to this effect that these parcels are included in the Honolulu Watershed Forest Reserve. Has the petitioners, or Hawaiian Trust being the trustees, ever called this to the attention of the Board of Agriculture and the Board of Water Supply that they were in error?

Mr. Cobb replied, "I have investigated those maps, and I believe those maps which Mr. Lee has mentioned is dated 1961. However, we have found maps that go back as far as 1944 which shows this land as being in the forest reserve or the Honolulu Watershed Forest Reserve. I have searched diligently to find any legal basis for that map and there simply is no basis for that map. We have brought this to the attention of the Commission in 1962, 1963 and are doing it again. I have mentioned this to the Territorial Survey Office and their reply is that they don't know, they just keep the metes and bounds description from the Department. The Department says that we have held hearings but nothing was ever done. Hearings were held but no actions were ever taken. The maps were based on the hearings and not on any legal action."

Commissioner Ota stated that if he owned a piece of property and somebody encroached upon him he certainly would holler to whomever is on his property. Mr. Cobb stated that of course they have done this and have complained frequently. He stated that when the preliminary subdivision maps were approved in 1961 that alone proved that this land was not in the forest reserve. Mr. Cobb stated that lands in the forest reserves cannot be subdivided. He stated that they went through the city and state agencies to make their complaints at the time the map was approved.

Mr. Takeyama asked Mr. Nurse, "You concur with your counsel that the change in use of land was already in progress prior to the adoption of the Land Use Commission interim boundaries?" Mr. Nurse replied, "We got the City Planning Commission's approval on that map on the basis of that map."

Mr. Takeyama asked, "How far would you say that you were already in progress; did you go in and plow up the land?" Mr. Nurse replied in the negative, stating that R. M. Towill in behalf of Hawaiian Trust submitted that map for approval.

Mr. Takeyama asked, "No work was actually done, except in planning, was there?" Mr. Nurse replied in the negative, stating that the Company does not develop lands itself. He stated that if they could have found somebody to sell or purchase the piece of the Roman Catholic Church property together with the lease the Company has on it, it could have then gone ahead.

Mr. Takeyama stated, "By your statements, in other words, the development was already in progress mainly because tentative approval was granted by Mr. Leighton Louis (then director of City Planning Department)." Mr. Nurse replied in the affirmative.

Mr. Takeyama asked Mr. Watson if he could elaborate on what he meant that the socalled tentative approval granted by Mr. Louis (then director of City Planning) was defaulted. Mr. Watson stated that he believed that within one year it is required that the application be perfected by more detailed plans. Mr. Lee (director of City Planning Department) confirmed this statement. He stated that final action within one year of time after tentative approval must be had by the applicant, otherwise the subdivision is "wiped off".

Mr. Takeyama stated that the petitioner did not follow up on this, to which Mr. Lee replied that he did not.

Mr. Nurse added that his testimony included these same statements. He stated that his further statements stated that government which meant the Land Use Commission, the Board of Agriculture, Board of Water Supply, etc., prevented the Company from getting anyone who would be willing to go in on the basis of the tentative approval that they had, faithfully realizing that they would be faced with a law suit.

Commissioner Wenkam asked what were the conditions posed in the 1961 tentative approval? Mr. Nurse replied it included the standard clauses for tentative approval.

With no other comments and additional testimonies, the Chairman announced that this Commission will receive additional comments and protests within the next 15 days from this hearing and will take action 45 to 90 days from this hearing.

The public hearing was closed in the matters of Mabel K. Ena and the Roman Catholic Church.

PETITION OF OCEANIC PROPERTIES, INC. AND DOLE CORPORATION (A(T)63-38), FOR AMENDMENT OF THE TEMPORARY DISTRICT BOUNDARIES FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN WAIPIO: Described as First Division, TMK 9-4 and 9-5.

A description and background of the area and request was given by Mr. Gordon Soh, who pointed out and outlined the location of the area involved on the map.

Mr. Harold Suenaga introduced himself and Mr. Kidwell as counsels for the petitioners; and Mr. Frederick Simpich, Jr. President of Oceanic Properties, Inc., who was sworn in.

Mr. Suenaga stated that they were appearing before this Commission to ask that certain interim boundaries be amended to permit them to use a portion of their lands in the Waipio area for urban purposes in accordance with the General Plan of the City & County of Honolulu. He stated that their petition requests that the interim boundaries be amended pursuant to Act 205, Session Laws of Hawaii 1963 which provides among other things that "in establishing the boundaries of the districts in each County, the Land Use Commission shall give consideration to the master plan or the general plan of the County." In Section 98H-4 of the Act, Amendment of District Boundaries, the petitioner must convince the Commission that "the area is needed for a use other than that for which the district in which it is situated is classified, and that the land is useable and adaptable for the use it is proposed to be classified."

Mr. Suenaga stated that he felt that everyone would agree that the land in question is clearly useable and adaptable for the use it is proposed to be classified within the meaning of the statute. He stated that 90% of the land has a slope of 5%, that it is well drained and inexpensive to develop. He stated that the only evidence which remains for them to show is that the area is needed for the use for which they propose to use it--the construction of a self contained satellite city which will be called "Waipio New Town." Mr. Suenaga stated that the petitioners will undertake to show their plans in establishing this need.

Mr. Simpich gave a brief history of their project and stated that one of the urgent urban needs of Oahu is a development that provides adequately sized houses for income people between $5,000 and $10,000 per year. He contended that there is no urban land available on Oahu today that meets the urgent need for fee simple housing for people of this income bracket. He stated that they were confident that they could produce such a development at Waipio New Town for as little as $15,000 including the land in fee which would meet this urgent urban need. He concluded his presentation (which was submitted in writing for the record) that they are convinced that if Waipio New Town is not authorized, 2,000 acres of Hawaii's land would be idled and would have no foreseeable economic use.

Mr. Suenaga stated that technically this hearing is only concerned with their petition for amending the interim boundaries which was adopted by this Commission's predecessors in 1962. He requested that the Commission grant their

petition because the use for which they propose to put this land to adequately meets the present urban needs on Oahu for low priced home available in fee simple in the green open and beautiful environment. He stated that no other lands that have been designated urban or other proposed housing development can satisfy the need adequately as the New Waipio Town. He asked that the Commission's decision include: (1) amendment to the temporary district boundary as soon as practicable, after the statutory waiting period of 45 days, to include all of the 2,000 acre Waipio town adopted as part of the City and County General Plan for Oahu; and (2) an immediate designation of 2,000 acres of land as urban on the proposed permanent boundaries in conformance with the City and County General Plan for Oahu.

The following communications were presented by Mr. Suenaga for the record and read into the record by the Executive Officer:

1. Letter from Stanley S. Yanagi, Business Representative, United Brotherhood of Carpenters and Joiners of America, dated January 17, 1964, favoring the request of the petitioner.

2. Letter from Mayor Neal S. Blaisdell, City and County of Honolulu, dated January 13, 1964, urging favorable consideration by the Commission for the petitioner's request.

3. Letter from Mr. Frederick K. F. Lee, Planning Director, City Planning Department dated January 17, 1964 recommending that the petitioner's request be granted.

4. Letter from J. C. Reynolds, Business Representative of the Honolulu Building & Construction Trades Council, AFL-CIO, dated January 15, 1964, supporting the petition and requesting favorable consideration by the Commission.

The staff proceeded with the staff's analysis and recommendation. The recommendation of the staff was for denial of the request.

Mr. Frederick K. F. Lee, Planning Director of the City Planning Department, stated that the City has never had the opportunity to present their arguments to this Commission as a whole which they had utilized in their presentation to the Planning Commission. Mr. Lee stated that in their analysis, the first thing they considered was the pineapple operation--whether or not the use of this property as indicated would affect the pineapple industry locally. Mr. Lee stated that they found that Hawaiian pineapple had decreased from 72% to 55% of the world market. He stated, however, the Hawaiian pineapple juice has not decreased but has steadily increased through more effective means of agriculture. They have managed to increase production per acre in that way to get more proof per acre. This, he stated, resulted in a vacancy ratio of approximately 1,000 acres on the Island of Oahu. Oceanic has lands up and beyond the Wahiawa area totaling 12,000 acres. The City contend that 2,000 out of the 12,000 acres for urban purpose is a reasonable amount. The second thing they investigated was the availability of lands. He stated that they found (as the Land Use Commission staff found) that on the entire island

of Oahu there are only 21,000 acres of developable lands. Mr. Lee stated that these lands, however, are not clustered in one spot; it threads all around Kailua, Kaneohe, parts of Honolulu, Ewa, Kaena, Makaha, Haleiwa. Of the 21,000 acres, 10,000 acres would be available in the next few years.

Mr. Lee asked whther the staff in their review of the vacancy ratio of lands around the island, considered the vacancy ratio in Wahiawa? Mr. Lee stated that Wahiawa has the lowest vacancy ratio of any reasonable community area which proves that Wahiawa (the town) is crowded and has to expand in some direction. Mr. Lee stated that the staff has mentioned that there is a demand for urban developable lands within the area on the ewa side of Honolulu. Mr. Lee stated that this urban area has crept along the shoreline into a strip development to what is known as urban sprawl. Mr. Lee stated that the economy of a satellite city is obvious, everything is centered, and service is readily available. Concentration of population would be within this area to prevent scatteration and urban sprawl.

Mr. Lee stated that there is a great demand for housing in the area. He stated that Waiphau just recently asked for 100 somewhat acres for an apartment development. He stated that there is a need for housing below the $20,000 level and felt that Oceanic can provide this development. Mr. Lee stated that in regard to agriculture truck crops are cheaper to import than to produce. He stated that Oahu produces 50% of truck crops and consumes 80%. He stated that there are 1,300 somewhat acres of land in truck crops and of this 750 acres are on the other islands and 550 acres are on Oahu. Mr. Lee stated that presently there are 550 acres in the Waimanalo Valley agricultural development and 500 acres to be allocated by the Stat for a new program; also in the Kipapa Gulch upper area, some lands have been released for agricultural use. Mr. Lee stated that this shows that the need for truck crops is being met. Mr. Lee stated that the agricultural uses proposed by the staff such as continued pineapple or converting to irrigation of sugar cane are impractical. Mr. Lee pointed out that one of the impracticalities of expanding this operation is the lack of water in this area. Waihole ditch flows into the area but every water will have to be utilized from this ditch for irrigation. Wells can't be drilled in this elevation without great expense. Mr. Lee stated that these are the bases why the City felt that Waipio should be urbanized. The restriction that the City placed on this was that the highland of Kipapa Gulch was to remain in Agricultural and the land mauka would remain in Agricultural, so that the 2,000 acres would be contained within this area, leaving the balance in agricultural. The purpose of this was to retain most of the beautiful view that is in existence now along the highway, when the new highway is built. Mr. Lee stated that the esthetics of this New Town is considered well planned, and to which the Land Use Commission staff has no criticism of this planning concept. Mr. Lee stated that Oceanic Properties will be doing most of the development cost of this city, so that the cost of the City government will be on a minimum basis. Mr. Lee stated that with the cost of government today, this is a very important point, and no one is a better judge than the people at the City level.

Mr. Sandy Parker, Realtor, Security Finance Company, Ltd. was sworn in. Mr. Parker stated his opposition to a separate new city outside of Wahiawa and submitted his written comments as part of the record.

Mrs. Centeio, representing Mr. Chinn Ho, Managing Trustee of Mark A. Robinson Trust, was sworn in. She stated that the Trust is against the urban zoning by Oceanic Properties, and submitted the Trust's written comments for the record.

Mr. Masanobu Arakaki, representing the Hawaii Farm Bureau Federation, was sworn in. He expressed the Bureau's support of the petition and submitted its written comments for the record.

Mr. Max Velasco, speaking as a resident of the area, was sworn in. The following statement was given by Mr. Velasco:

"There is no one more affected by this project than I am, as I am living in the community. I have lived in the area for the last 15 years. There were just 53 students in the school--up to the present time there are over 1,000 students. In other words I have experienced the growth of the community and that is a wonderful feeling. I know this project here will help us tremendously in the growth and expansion of our community in the right direction. You have not experienced this as yet, but I have as I have grown with it. If there is any selfish motive it would be on my part--I would be the first one to oppose it. If this goes through I would be evicted from my house because I rent a home, but I am going along with this project. I am not speaking on behalf of Oceanic Properties and the people involved, because business wise they are my enemies. I am speaking for this project because I know what it will do not only for my community, for Wahiawa or Kipapa district, but for the whole State of Hawaii. I can understand those speaking against it as they are speaking to protect their interest and I feel that these are selfish motives.

"I made some notes on the report of the staff. The staff stated that there are many pieces of land for urban use available but failed to mention the ability of people to pay for this abundant. There are many lands available for sale but try to find out who can buy these lands for these exorbitant prices that they are asking for. This is why I am still renting a house because I cannot afford to buy one. Now this Kennedy development in Wahiawa that they talk about is asking for $32,000 and a person whose income range averages between $5,000 to $10,000 cannot afford to buy one. I could afford a down payment but I would be paying all of my wages for the mortgage and what would be left for me and my family to live on, nothing. There was mentioned the matter concerning residences of the army people in Schofield who might be using some of the houses available in this development. This is to be expected. There are two important features of this project: (1) job opportunities it lends and affords to the people of the State. I have seen these lands and they have been lying idle for the last 4 years, it is not producing. If the pineapple company did produce and continue pineapple planting in this area, there is no doubt that there would never be a job opportunity for anybody because the company could still use their present working force to continue the job in planting. In other words there would be no new job available for anyone. But if this project is to go on, there will be thousands of jobs available to the people. There will be thousands and thousands of dollars that will be paid to these people for circulation for the economy of our State as well as for the people of Hawaii. I feel

the Commission should consider this. (2) The greatest feature of this project is the opportunity that it gives and offers to the people who have been yearning, hoping and dreaming to own their own home. You Commission members own your own home, you know the feeling, the pride and the satisfaction of owning your own home. There are thousands and thousands of people who would like to have the same feeling, too, including myself. It is impossible for these people to own a home at the exorbitant prices that are being offered on all of the houses and leases that are available for sale. There is no secret about that. You pay over $20,000 for a lease land which is really not your own, but here at $15,000 a person can own a home, fee simple, where else can you get that. I don't think that this 2,000 acres will badly affect the agricultural projects of the island. There are lots of land and I invite the Commissioners to come to the country and see some of these lands for agricultural that are not being used, because people are holding it back for speculation. I request that this Commission approve this plan, just like your predecessors did, the City & County, the Mayor and you will not regret your decision as far as the people in the community is concerned."

A letter presented for the record, dated January 18, 1964, from Richard H. Rodby, Kemoo Farm, Wahiawa, Oahu, recommending favorable consideration by the Commission on this request was read into the record by the Executive Officer.

Miss Gertrude Humphries was sworn in. Miss Humphries posed the following questions to be considered by the Commission and staff:

1. Would the tax be quite low if it stayed in agricultural even if the land was idle? Wouldn't the land being idle, if you say it had no economic use, wouldn't that lower the taxes?

2. Can the plans for this town be saved for some future time, 20 years or so? Does it necessarily mean that it will need to be changed? (Miss Humphries realized that Oceanic wants their plan now, and not 20 years) If it is later decided it is not needed for agriculture, way in the future, can this plan still be used?

3. In a book by Mr. Udall, Secretary of Interior, population growth is one of the problems facing the United States and eventually some control will be made. The City and County of Honolulu faces this problem in this respect that they can't do anything about it, and they simply go on providing lands for people indefinitely. Lands will eventually disappear for houses and the City people will be forced to say no. Why do they feel that economic pressure requires them to keep on providing homes?

4. Mr. Simpich mentioned that the agricultural uses of this land is for the next 10 to 15 years which does not seem like a long range. The Commission should think way ahead for the next 100 years when taking something into consideration--if you put a town in, it would be pretty permanent for a 100 years.

5. This plan is related to the plan for the whole island. Has the Commission made public its proposed boundaries, where it would put the urban areas?

Chairman Thompson stated that the Land Use Commission has adopted the proposed boundaries, but that the proposed boundaries are in the working stage and have not been drawn or made public as yet.

Open for Question and Answer Session

Commissioner Ferry asked whether Oceanic Properties had any projections as to time schedule for development, and stated that evidently the basic presentation has been for the need of a low cost housing in the State (and as a Commissioner recognizes this). In relation to your time for development, when do you propose to offer the $15,000 package?

Mr. Simpich replied within one year after this Commission grants the urban approval and the City & County has approved the zoning request on the first increment that theywould be able to offer the house that they describe.

Commissioner Ferry asked whether there will be approximately 4,000 residences? Mr. Simpich replied that it will vary with the demand and density that the demand generates, but based on the research and experience Oceanic has had, there have been about 5,000 to 6,000 units built a year since 1960 on Oahu. Based on this research there will be a demand in 1970 for 5,600 homes under $20,000 a year. Oceanic has assumed that it should be able to capture 10% of this market in this location, so that Oceanic concept will be to advance after building 500 to 600 houses a year which is what the first increment is based on. However, Oceanic will consider its roads, water system, sewage disposal system, schools for a community which would over 10 years have 5,000 to 6,000 dwelling units in it.

Commissioner Ferry asked how many of these $15,000 packages are proposed in the first increment? Mr. Simpich replied that this would have to be a test of the market. He stated that their architects have designed some 12 to 16 different type houses in the price range being discussed, and in the plan these houses will be set up as model and from then on the market will dictate.

Commissioner Ferry asked whether the first increment will include this $15,000 package? Mr. Simpich replied in the affirmative, stating as much as the market demands of our models and requires of itself. This was their commitment.

Commissioner Mark asked for the description of the $15,000 package. Mr. Simpich stated that this is in our memorandum but briefly it is a 1100 foot house which will have three bedrooms, bath and a half, and in addition a two car port encompassing 475 feet and a wall storage area.

Commissioner Mark asked what is the size of the lot? Mr. Simpich replied that the average size of the lot that is in question is 6,000 ft. which would apply to the $15,000 house described.

Commissioner Mark asked what price range is being discussed in terms of the other units? Mr. Simpich replied that the houses that Oceanic is preparing

to deliver are the $15,000 to $20,000 range. From knowledge of market technique Oceanic will not be the only builder in this area. Oceanic will build to the market as discussed but there will also be areas available for others. From experience on the mainland it has definitely been shown that it is well to have competition in situation of this sort and therefore, Oceanic builders will be confine to what Oceanic has committed itself to this Commission and the City to deliver. There will also be a place for an occasional person who may want to start a $5,000 home with his own architects, but Oceanic will deliver the $15,000 to $20,000 houses.

Commissioner Ferry stated, "Do I understand you to say that you may not offer a total package on a lot?" Mr. Simpich replied in the negative. Commissioner Ferry stated, "In other words a person can buy a lot himself." Mr. Simpich replied in the affirmative, stating that there will be areas to do that but under control by the plan and architectural development. Commissioner Ferry asked, "Do you propose to sell a block of lot to a developer?" Mr. Simpich replied that they probably would have to do that to help finance the project. They (Oceanic) could not possibly handle the development alone since there are millions of dollars in this. But where they do it will be subject to architectural control and compliance with the plans.

Commissioner Mark asked, "Architectural control by whom?" Mr. Simpich replied by the standards that Oceanic is establishing and guaranteeing to provide.

Chairman Thompson asked if this is a firm plan? Mr. Simpich replied that it is firm in terms of what they have said they will do. There is yet to be a detail engineering of a subdivision plan for submission to the City, but there will be no departure from this concept as it is here. In fact the only thing that will make it go and the reason for it, is the Plan and the fee land.

Commissioner Wenkam asked whether the houses described were fee simple drawings? Mr. Simpich replied in the affirmative stating that this is something that can be built under current City and County regulations.

Commissioner Burns asked whether the City is prepared to take over the parks and operate them or will Oceanic be doing it? Mr. Simpich replied that they have told the City that if they take them over and develop it they will give them the land. If the City declines to accept this then Oceanic will develop them and insure their perpetual maintenance through a community association which this type of a development will have to do any way.

Commissioner Wenkam stated that in a report by the Land Study Bureau of the University of Hawaii there are considerable references to the fact that bulk employment opportunities are in the general built up Honolulu area and will remain so. It also comments that developers in the central portion of Oahu may be disappointed in their anticipated market because of the feelings especially for those who wish low cost housing will wish to live near their place of work, and that the expansion of the Campbell Industrial Park will be by people who live in the Makakilo area and the Robinson Estate area who will be working locally. Commissioner Wenkam stated that these statements seem contrary to your (Mr. Simpich) statements with respect to the demand of need for houses in the central area. Could you discuss this further?

Mr. Simpich stated that they would be submitting a detail study of their research people who have been employed by the State and the City and other public agencies on market for real estate in Hawaii which would answer most of this. He stated, briefly, the employment center and population center of the island are here (Honolulu). But because the low price housing is available only on the windward side, every morning there is a steady stream of cars, clearly military, destined for Pearl Harbor and leeward direction. This housing is even in a much higher bracket then what is being discussed. But even in this price bracket, Pacific Palisades is doing very well. Mr. Simpich stated that they may be wrong but they have the best research people, and all the logic of market analysis that have been made to us state that there will be a tremendous market for demand.

Commissioner Wenkam mentioned that the Department of Transportation in justifying their H-3 route over the windward side states that the center employment is more in the area where downtown Honolulu is now. Commissioner Wenkam stated that there seems to be several opinions with respect to this and the demand for low cost home.

Mr. Simpich stated that the work that their people have done is quite thorough and while they propose to only give the 1964 study which was just completed on Wednesday, January 15, 1964, if there is any doubt on any part of the Commissioners, Mr. Simpich stated that he would be glad to include the 1960, 1961, 1962 study. (It was the consensus of the Commissioners that the current one would be more sufficient.)

Commissioner Wenkam requested that an abstract of a significant portion covering the need for low cost housing in this particular area and where the people are to work would he helpful. Commissioner Wenkam stated that there has been a great deal of comment with respect to job opportunities in this proposed satellite city. If Waipio did not go ahead according to the existing population demand, would it not cause equal opportunities for construction jobs in other existing urban zoned areas? This would not mean an increase in job opportunities but rather just moving them around.

Mr. Simpich replied in the negative. The Hawaii Housing Authority research found that there was one house on December 29 for sale under $20,000 which had two bedrooms. Therefore the people being talked about are living today in Kaimuki, in a guest house or an extra bedroom who cannot afford a home. So it is Oceanic's feeling that they will be generating construction which will not be created. Mr. Simpich stated that the land reduces offsite improvement cost to about 40¢ a foot as compared to $1.50 and $2.50 on the ridges that is being offered today.

Commissioner Wenkam stated that Oceanic will be taking people out of low cost housing projects, apartments, rental units in other areas and creating a brand new market. Do you feel that in spite of this remote location, opportunities for low cost housing will go up?

Mr. Simpich stated that this is remote to me, but it is not remote to what our figures indicate in a central employment.

Chairman Thompson stated that isn't there a confusion concerning the term of employment in the matter of waiting rather than the actual location. Mr. Simpich replied that people are trying to feel that everybody is working in Honolulu and overlooking all the agricultural labor, people working for the military, industry which locates the employment center to that direction. Chairman Thompson stated that this is the waiting focal point.

Commissioner Nishimura asked whether Oceanic had a contract with the Farm Bureau and making available 2,000 acres to the Bureau? Mr. Simpich replied that in the summer of last year, they negotiated a lease with the Farm Bureau which was much easier to negotiate and under the lease the Bureau is subleasing to farmers in the area. Mr. Simpich stated that Oceanic has made available 470 acres for lease and have stated that if there is a demand for more they will provide it.

Commissioner Ota asked that Mr. Simpich clarify the question concerning the lands in question being prime agricultural land. Mr. Simpich replied that the lands are prime agriculture for growing pineapple or sugar cane but, to make this land produce, the necessary heavy applications of fertilizer and water are quite expensive. Also the matter of transportation must be considered.

Commissioner Mark asked whether Mr. Simpich personally agreed to the statement by Professor Mullet that the future of agriculture seem to be pessimistic, at least on the island, if not in the State? Mr. Simpich replied that he was surprised that the College of Agriculture would be as pessimistic. Mr. Simpich stated that he believes that there is an opportunity for citrus here. He stated, however, that the future is extremely limited for its new export agricultural crops and in publications like Diversified Crop Parade of 30 Years Ago, it is the same problems. Oceanic's experience in these various products are not shallow. Oceanic has experimented, planted about every crop in the State and were not successful.

Commissioner Ferry asked how does Oceanic propose to deliver this $15,000 to $20,000 package with the developers in the picture? Mr. Simpich stated that Oceanic will be the developers who will meet this guarantee. Commissioner Ferry asked whether the developers will come in for anything over and above, or come in and compete at the same level; and Oceanic will fulfill the commitments it has made. Mr. Simpich stated that Oceanic makes no commitments to developers, but they have told everyone that besides meeting all of the other standards, Oceanic will be building in here too because they are on the line with the City and the State and are going to do it.

Commissioner Mark asked, "What percentage or portion of the total amount of housing available will Oceanic's commitment represent?; Do you have an estimate?" Mr. Simpich replied, "We will meet the market. I don't know what the market demand will be." Commissioner Mark asked, "Will you meet the market at 5%, 10% or 20%?" Mr. Simpich replied, "We can't tell you until we have had the necessary proof, because we have not been able to see or talk to people, advertise or anything else."

Commissioner Ferry stated, "Mr. Simpich, that is a very broad statement--you will meet the market--because if you put out $5,000, $15,000 packages,

you have met the market." Mr. Simpich replied, "But not according to our research." Commissioner Ferry replied, "I'm sure you will find buyers that is what I am trying to say." Mr. Simpich replied, "We will see."

Mr. Simpich stated that their only qualification on this is that this is on today's circumstance. This is in relation to the new contract the construction industries had to sign, but what happens three or four years from now they did not know what the outlook would be.

Commissioner Ferry asked whether this will exist for at least three years, to which Mr. Simpich replied in the affirmative, stating that it is a three year contract.

Mr. Simpich in closing stated that a number of questions have been raised by staff (which is the first time that they have known what the staff's views were) in terms of specifics. (Chairman Thompson clarified this point and stated that this was the first time that the Commission has known the staff's position, that this was the procedure.) Mr. Simpich stated that they would like to submit a memorandum in reply to the questions that the staff has raised. He stated, however, that the fundamental problems are clear and the first being, whether or not this land can be profitable under agriculture, under all of the circumstances; and the second is, whether or not the need which we know exists of the 5,000 to 10,000 year man for a good house and a nice environment is more compelling, to which Mr. Simpich submitted that the staff failed to address itself to this question.

The Chairman announced that the Commission will receive additional comments and protests within the next 15 days from this hearing and will take action 45 to 90 days from this hearing.

The public hearing was closed at 5:00 p.m.

STATE OF HAWAII
LAND USE COMMISSION

LUC Hearing Room
426 Queen Street, Honolulu, Hawaii

1:00 P.M. to 4:00 P.M.
January 18, 1964

STAFF REPORT

A(T)63-40 - HAWAIIAN TRUST CO., LTD. AND THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII

Temporary District Classification: AGRICULTURE

Background

Hawaiian Trust Co., Ltd. and the Roman Catholic Church in the State of Hawaii have petitioned the Land Use Commission for amendment of the temporary district boundaries so that the properties described by Oahu tax map keys 2-9-54: 7, 13 and 18, and 2-9-55: 5 and 10 would be placed instead in an urban district.

The present boundary line was adopted by the Land Use Commission in April, 1962 based on information transmitted by memorandum dated March 17, 1962 by the Department of Land and Natural Resources. The line thus established is different from the "forest reserve" line established in 1926 in that additional acreages have been added to the 1926 "forest reserve" to form the conservation district.

The legality of the Commission's doing so has been questioned by the petitioners but because this is another action, the staff prefers not to offer comment at this time. The present boundary is presumed to be valid, and the petition at hand will be examined on this basis.

Petitioners have three parcels of land on the western slope near the inner reaches of the valley. The highest of the three (33 acre) is steep - over 22% slope. The lower parcels (47.46 acres) are divided by Manoa road; the larger lies above the road. Over half the lower parcels is under 20%

slope and is developable if provision is made for drainage ways, grading and grubbing to clear the area of dense tropical growth. Petitioners have expressed interest in developing these parcels and in another action before the Commission have represented that preliminary approval was given to a subdivision plan for this area in February 1961. The plan calls for a 30 acre subdivision of 87 lots.

At the head of the valley petitioners have two more parcels. The higher one is basically steep and contains about 48 acres; the lower is developable but broken up by strings of steep land and natural drainage ways.

Average annual rainfall for all five parcels is about 150 inches a year or more.

A handful of families engated in full and part time farming now live on the parcels to the west. North of these is an arboretum operated by the University of Hawaii. South is large residential development not yet entirely completed.

The northern parcels are covered with dense vegetation and contain perhaps one or two families, at least one of which engages in farming.

Except for lands belonging to petitioners, the B. P. Bishop Estate and the Mabel K. Ena, all the lands mauka of the present district boundary belong to some governmental agency. One in particular (TMK 2-9-54: 1) was transferred to the Board of Water Supply by executive order dated November 8, 1954 for development and protection of water resources.

The staff calculates that the Manoa watershed above the boundary contains about 1260 acres. It estimates that 150 inches of rain a year produces

on the average about 11,160 gallons per day per acre. Staff has read that service areas P and M of the eastern half of area one contained in 1960-61 about 31,500 people served by the Board of Water Supply.[1/] (See outline of areas on USGS quad). Gauging stations located on Hukulu and Naniuapo streams near the district boundary have average discharges of 2.46 mgd and 3.17 mgd respectively.[2/]

Analysis

The staff reasons that the mauka parcels of both the western and northern groups of petitioners lands are properly within the conservation district because of the steepness of lands, its scenic values and water shed uses.

Staff further reasons that the lower parcel of the northern group might conceivably be retained in the conservation district for water shed purposes. in the absence of any immediate pressure for urbanization. It is noted, however, that increased urbanization might precipitate need for additional water shed areas.

The parcels to be sriously considered are the 47 acres located in the lower portion of the western group, 30 acres of which are proposed for subdivision. These lands are immediately adjacent to the "AMFAC-PAO"

1/ A Study of Population and Water Services on Oahu, Survey and Marketing Services, May 1960.

2/ Surface Water Supply of Hawaii 1959-60, U. S. Geological Survey, 1962.

development. On the other side is the University's arboretum, which includes among other things a row of about seven dwelling units, chiefly occupied. The lower, western parcels are easily accessible, which is not true of virtually all the other parcels. While the remaining 17 acres might properly be kept in a conservation district because of steep slopes, no such reason can be applied to the 30 acres; and it is doubtful if the 30 acres can be kept in "conservation" for reasons of aesthetics alone. Because of urban pressures apparent in the valley, some concrete reason must be given for continuing the 30 acres in conservation. Almost substantial reason, the staff believes, is the preservation of the water shed.

For all the acreage under consideration, including the 30 acres, the staff feels that water shed needs are real enough. Assuming that all rainfall over 150 inches a year is equal to losses due to evaporation and transpiration, then rainfall for the 1260 acres of Manoa water shed would yield on the average 14.08 mgd (11,159 gal/ac/da x 1261.7 ac). Recharge would be on the average of 8.45 mgd (14.08-2.46-3.17). At 150 gpd per person the recharge supply would be enough for 56,300 people if recovery were perfectly achieved. Perhaps 12% of the Manoa water shed production would begin on petitioner's lands.

The staff reasons that recharging basal supplies rather than utilizing surface water is preferred for economic reasons since the latter involves filtration by man-made storage facilities.

The staff has asked itself if the temporary district boundary line rationally drawn? Elevation-wise, the lower parcels of petitioner's lands are comparable

to the AMFAC development. Rainfall-wise, the rainfall of petitioner's lands is heavier. In considering ownership, the city has under its control parcels of land suggesting the direction of a boundary straight across the valley. Area-wise, petitioner's lands comprise about 12.6% of the water shed above the boundary. In terms of watercourses, the primary systems converge at precisely the nether reach of the boundary.

As far as the staff can determine, the effort to establish the present conservation district boundary as a watershed area dates back as early as 1944. Apparently, the boundary has had the approval in one form or another of the Board of Agriculture and Forestry in 1944, by the Department of Agriculture and Conservation in 1950, of the Board of Agriculture and Conservation in 1960, of the Board of Land and Natural Resources in January 1962 and of the Land Use Commission in April 1962. The present boundary line is also favored by the Honolulu Board of Water Supply and the City Planning Commission.

The staff notes the building of apartments in Waikiki, across the Ala Wai golf course, and in Makiki; it notes the construction of student and faculty housing at the University, the development of the AMFAC subdivision and the development of the Manoa War Homes area and concludes that these developments will tend to increase watershed needs.

Were the present conservation boundary maintained, not only could these developments be sustained more easily by water supplies, but the areas might additionally be advantaged by open space close to the urban center.

In accordance with the mandate of Act 205 that "No change shall be made unless the petitioner has submitted proof that the area is needed for a

use other than that for which the district in which it is situated is classified....", petitioner has submitted the following statement: "The subject land was included in a 'conservation' district in the Temporary District Boundaries adopted by the Commission in April of 1962. The subject land is directly in the path of urban development in Manoa Valley and is adaptable to and needed for immediate urban development. Urban uses are prohibited in the district in which the subject land is now classified."

The low number of vacant land as established by actual field survey of Manoa, the high land prices and the rapid expansion of residential uses into the upper reaches of the valley in recent years attest to the fact that petitioner's statement is correct. It is also correct that agricultural uses have been supplanted by residential over a period of years to a point that only a small remnant of agricultural persists in the most upper reaches of the valley and on parts of the subject parcels. It is also correct that the remaining upper reaches of Manoa has <u>always</u> <u>been</u> a most significant part of the watershed of Honolulu's most unique water source for as long as we have been concerned with the protection of the source of the Public's water supplies.

This period of concern over one of the most vital and fundamental prerequisite for urbanization extends for decades into the past. It is indeed a strange quirk of fate that urbanization now threatens that which is vital and necessary to its own existence and continued growth. The basic problem in this issue, as the staff sees it, is a problem of competitive land uses.

The paramount basis of a decision on such issues, especially a governmental agency, must be in the public interest. An adequate and safe water supply is

one of the greatest, if not the single most important, requirement for urbanization and its continued growth. The economic welfare of this island and that of the State is also dependant upon irrigation water from the basal water supply to which this area makes a substantial contribution. The health and welfare of the public depends upon a safe and adequate water supply. The staff knows of no other area in the world which can boast a better natural resource in this respect. In the public interest there is no doubt that the watershed use is more important than urban use. On this basis, the staff contends that the "proof" required of the petitioner by law for boundary change is not acceptable.

Recommendations

The staff recommends denial of the petition on the following bases:

1. Petitioner has not submitted adequate proof, as mandated by law, that the area is needed for a use other than that for which the district in which it is situated is classified. While there is evidence that the land is needed for urban use, there is overriding evidence that the continued watershed use is more needed in the public interest.
2. Conservation designation is in conformance with the proposed County General Plan and meets the mandate of the legislation that conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic areas; providing park lands, wilderness and beach reserves; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept.
3. Further, the preservation of open space and esthetic values, where it can reasonably be considered, is deemed to be a part of the State's

interest within the purview of Act 187, as amended. It has been demonstrated that virtually all of the urban developments within the Honolulu District lie on lands with generalized slopes of less than 20%. In view of the intense urban pressures in the City, the resulting developments up to the 20% slope limit, the general acknowledgement of the necessity for preservation of open space and scenic values as it contributes to the well being of communities, the staff contends that these are added bases for denial of this petition in applicable portions of the subject areas.

NEAL S. BLAISDELL
MAYOR

PLANNING COMMISSION
THOMAS N. YAMABE, II, CHAIRMAN
GEORGE F. CENTEIO
FRANK W. HUSTACE, JR.
KINJI KANAZAWA
CYRIL W. LEMMON
STANLEY T. HIMENO
ALFRED A. YEE
BUDGET DIRECTOR, EX-OFFICIO
MANAGING DIRECTOR, EX-OFFICIO
ZONING BOARD OF APPEALS
HENRY C. H. CHUN-HOON, CHAIRMAN
HAROLD K. KOMETANI, VICE-CHAIRMAN
R. GIBSON RIETOW
PLANNING DIRECTOR
FREDERICK K. F. LEE

CITY AND COUNTY OF HONOLULU

PLANNING DEPARTMENT
HONOLULU HALE ANNEX
HONOLULU 13, HAWAII

March 5, 1964

RECEIVED
MAR 5 19[illegible]
State of Hawaii
LAND USE COM[illegible]

Mr. Raymond S. Yamashita
Executive Officer
Department of Planning
and Economic Development
426 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Yamashita:

This is to acknowledge your letter of January 28, 1964 concerning an amendment to the petition for a boundary change by Hawaiian Trust Company for properties owned in Manoa by the Roman Catholic Church.

We have reviewed this 60-acre area with the Board of Water Supply staff and find that this area is very important to Honolulu's water resources.

We therefore recommend that the temporary boundaries not be amended and just these parcels remain in the State's Conservation District.

Sincerely yours,

PLANNING DEPARTMENT

Frederick K. F. Lee

Frederick K. F. Lee
Planning Director

NEAL S. BLAISDELL
Mayor

837

PLANNING COMMISSION
THOMAS H. YAMABE, II, CHAIRMAN
GEORGE F. CENTENO
FRANK W. HUSTACE, JR.
KINJI KAMAZAWA
CYRIL W. LEMMON
STANLEY T. NIMENO
ALFRED A. YEE

BUDGET DIRECTOR, EX-OFFICIO
MANAGING DIRECTOR, EX-OFFICIO

ZONING BOARD OF APPEALS
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R. GIBSON RIETOW

PLANNING DIRECTOR
FREDERICK K. F. LEE

CITY AND COUNTY OF HONOLULU

PLANNING DEPARTMENT
HONOLULU HALE ANNEX
HONOLULU 13, HAWAII

December 27, 1963

RECEIVED
DEC 31 1963
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii
426 Queen Street
Honolulu 13, Hawaii

Gentlemen:

SUBJECT: Petition for Change of Temporary District Boundary
Manoa - Upper Manoa Valley
Tax Map Key: 2-9-54: Parcels 07, 13 & 18
2-9-55: Parcels 05 & 10
Applicant: The Roman Catholic Church and
Hawaiian Trust Co., Ltd.

This is in reference to a petition by the Roman Catholic Church and Hawaiian Trust Co., Ltd., trustee of the Trust Estate of John Ena, for change of Temporary District Boundary from Conservation District to Urban District for parcels of land totalling approximately 157 acres, situated in Upper Manoa Valley, Honolulu (0-13), Oahu.

The Planning Commission at its meeting on Thursday, December 19, 1963, called upon the Board of Water Supply for its comments and recommendations inasmuch as the subject parcels are located within the Forest Reserve area. The representative of the Board of Water Supply, in his presentation, recommended that the properties be retained for Conservation because of its importance to the Honolulu water shed. The Commission, after considering all of the facts, voted to recommend that the Temporary District Boundary not be changed and the subject properties be retained in the Conservation District.

Very truly yours,
PLANNING COMMISSION

By Frederick K. F. Lee
Frederick K. F. Lee
Planning Director

CONCUR:

Victor K. Goran
ACTING Managing Director

Thomas D. Ellis
ACTING Mayor

RT:da

cc: City Council

ANDERSON, WRENN & JENKS

ATTORNEYS AT LAW

BANK OF HAWAII BUILDING
HONOLULU HAWAII 96801

HEATON L. WRENN
LIVINGSTON JENKS
JOHN P. RUSSELL
H. BAIRD KIDDELL
JAMES M. RICHMOND
MARSHALL B. GOODSELL
WALTER E. BLISS
RICHARD E. STIFEL
PAGE M. ANDERSON
MARY M. ANDERSON
HUGH SHEARER

TOBIAS C. TOLEMAN
GEORGE L. DYER, JR.
CHRISTOPHER COBB
JOSEPH J. SCHNEIDER
C. JEPSON GARLAND

ROBBINS B. ANDERSON
DUNSE

CABLE & WIRELESS ADDRESS
"DELTA"
P. O. BOX 3196

February 28, 1964

RECEIVED
MAR 4 1964
State of Hawaii
LAND USE COMMISSION

Mr. Raymond S. Yamashita
Executive Officer
Land Use Commission
State of Hawaii

Dear Mr. Yamashita:

We would like to acknowledge receipt of your letters of February 10, 1964 and February 20, 1964 with respect to the petition of the Roman Catholic Church and Hawaiian Trust Company, Limited for a change in the temporary district boundary.

Since the commission will decide whether or not to grant that petition prior to the public hearings on the final district boundaries, we intend to submit, on behalf of the petitioners, an additional argument with respect to the need for this land as a watershed. We are preparing that argument and will forward it to the commission as soon as possible.

Very truly yours,

ANDERSON, WRENN & JENKS

Christopher Cobb

Christopher Cobb

CC/sr

RECEIVED
MAR 4 1964
State of Hawaii
LAND USE COMMISSION

Ref. No. LUC 95

February 10, 1964

Mr. Christopher Cobb
Anderson, Wrenn & Jenks
Attorneys At Law
Bank of Hawaii Building
Honolulu, Hawaii 96801

Dear Mr. Cobb:

Your letter of February 5, 1964, requesting the Land Use Commission to delay action on your petition, A(T)63-40, has been received. We appreciate your thoughtfulness in sending a sufficient number of copies which will now be forwarded to all the Commissioners.

We have set March 6 as the tentative date upon which the Land Use Commission will meet to take action on your petition. Although not required by law, the Land Use Commission has made it a practice to inform all petitioners of the meeting in which action may be taken on the related petition. The intent is to provide the petitioner every opportunity to present his case and to afford the petitioner the opportunity to present any additional information that may have come up subsequent to the public hearing. This opportunity will be afforded you, also, and you may further rebut the Land Use Commission staff's report at that time.

In reference to staff reports, we would like to inform you that the Land Use Commission's policy is not to discuss staff reports prior to the public hearing. Therefore, the Land Use Commission has no knowledge of the contents of the staff report until it is presented at the public hearing.

Further, the public hearing on the final district boundaries which involves the subject area will not be held until about April 4, 1964. (There will be about 4 public hearings on Oahu.) Were action to be deferred until after that date, there would be difficulty in working out a suitable schedule to take action on your petition.

Within the time limits and the various locations for conduct of business as mandated by law, it is most difficult to work out a practical schedule of the Land Use Commission's activities. The scheduling problem is compounded by the number of issues confronting the Land Use Commission and the seemingly untimely submittals of the petitions as it affects scheduling.

Unless there may be more extenuating circumstances, the Land Use Commission will proceed on your petition as outlined above. Should you have further comments or questions, please feel free to contact us.

Very truly yours,

RAYMOND S. YAMASHIDA
Executive Officer

cc: All Commissioners
Mr. Roy Takeyama

(902)

ANDERSON, WRENN & JENKS

ATTORNEYS AT LAW

HEATON L. WRENN
LIVINGSTON JENKS
JOHN P. RUSSELL
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JAMES M. RICHMOND
MARSHALL M. GOODSILL
WALTER E. BLISS
RICHARD E. STIFEL
PAGE M. ANDERSON
MARTIN ANDERSON
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TOBIAS C. TOLZMANN
GEORGE L. DYER, JR.
CHRISTOPHER COBB
JOSEPH J. SCHNEIDER
C. JEPSON GARLAND

BANK OF HAWAII BUILDING
HONOLULU, HAWAII 96801

ROBBINS B. ANDERSON
COUNSEL

CABLE & WIRELESS ADDRESS
"DELTA"
P. O. BOX 3196

February 5, 1964

RECEIVED
FEB 7 1964
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii
Honolulu, Hawaii

Re: Petition A (T)-63-40

Gentlemen:

Hawaiian Trust Company, Limited and the Roman Catholic Church in the State of Hawaii petitioned for an amendment of the temporary district boundary to change the classification of some 60 acres of land in Upper Manoa Valley from conservation to urban. A public hearing on the petition was held on January 18, 1964. Therefore, the Commission will act upon the petition between March 3 and April 17, 1964 (i.e. 45 to 90 days after the hearing).

We are writing on behalf of the petitioners to request the Commission to delay action on the petition until after the public hearing on the proposed final district boundaries for Oahu which will be held in March. We are making this request for the following reason:

The staff of the Commission has recommended against granting the petition. The staff's recommendation is based largely on the finding of the staff that the subject land is needed as a watershed. The staff report was not furnished to the petitioners until a few minutes before the hearing. Therefore, the petitioners could not present rebuttal evidence at the hearing.

The petitioners intend to present rebuttal evidence at the public hearings on the proposed final district boundaries for the island of Oahu. They anticipate that their rebuttal evidence and argument on that evidence will be presented in 20 minutes or less. The petitioners also intend to submit a written statement within 5 days after that public hearing.

The petitioners feel that the basic issues involved in the petition are identical to the issues which will be involved in the classification of the land in the final district boundary. Therefore, the petitioners feel that the evidence they will present at the public hearing on the final district boundaries should be considered by the Commission before it acts upon the petition.

Very truly yours,

ANDERSON, WRENN & JENKS

Christopher Cobb

Attorneys for Hawaiian Trust Company, Limited & The Roman Catholic Church in the State of Hawaii

CC/sr

HEATON L. WRENN
LIVINGSTON JENKS
JOHN F. RUSSELL
H. BAIRD KIDWELL
JAMES M. RICHMOND
MARSHALL M. GOODSILL
WALTER E. BLISS
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TOBIAS C. TOLEMANN
GEORGE L. DYER, JR.
CHRISTOPHER COBB

ANDERSON, WRENN & JENKS
ATTORNEYS AT LAW
BANK OF HAWAII BUILDING
HONOLULU 1, HAWAII

ROBBINS B. ANDERSON
COUNSEL

CABLE & WIRELESS ADDRESS
"DELTA"
P.O. BOX 3196

Copy of Aloha sent to County - petitioner 7/29/63

July 29, 1963

RECEIVED
JUL 29 1963
State of Hawaii
LAND USE COMMISSION

State of Hawaii
Land Use Commission
426 Queen Street
Honolulu, Hawaii

Re: Petition of Hawaiian Trust Company, Limited, and The Roman Catholic Church in the State of Hawaii for an amendment of temporary district boundary

Gentlemen:

We transmit herewith the petition of Hawaiian Trust Company, Limited, and The Roman Catholic Church in the State of Hawaii for an amendment of temporary district boundary pursuant to Section 98H-4 Revised Laws of Hawaii 1955, as amended by Act 205 Session Laws of Hawaii 1963.

We also transmit herewith a check for $50.00 in payment of the fee required by regulations of the Land Use Commission upon filing of the petition.

It is requested that a hearing upon the enclosed petition be conducted as soon as practicable in accordance with said Section 98H-4, and that note of the time and place of the hearing be given to the undersigned.

We have enclosed the original and ten copies of the petition and request that you return one file-stamped copy to the undersigned.

Very truly yours,

ANDERSON, WRENN & JENKS

Christopher Cobb

Christopher Cobb

Attorneys for
Hawaiian Trust Company, Limited,
and The Roman Catholic Church in
the State of Hawaii

CC/ma
Enclosures

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

This space for LUC use

Date Petition and Fee received by LUC _____

Date forwarded to County for recommendation 7/29/63

Date Petition, and County recommendation received by LUC _____

PETITION FOR AMENDMENT OF TEMPORARY DISTRICT BOUNDARY

(I) (We) hereby request an amendment of Land Use Commission Temporary District Boundary respecting the County of Honolulu, Island of Oahu, map number and/or name Honolulu (O-13) to change the district designation of the following described property from its present classification in a(n) Conservation district into a(n) Urban district.

Description of property: Tax Map Key Numbers 2-9-54-07, 2-9-54-13, 2-9-54-18, 2-9-55-05 and 2-9-55-10. See Attachment 1

Petitioner's interest in subject property: Petitioners own the subject property. See Attachment 2

Petitioner's reason(s) for requesting boundary change:

See Attachment 3 and see the Protest filed by these Petitioners with the Land Use Commission on April 11, 1963.

(1) The petitioner will attach evidence in support of the following statement:

The subject property is needed for a use other than that for which the district in which it is located is classified. See Attachment 3

(2) The petitioner will attach evidence in support of either of the following statements (cross out one):

(a) The land is usable and adaptable for the use it is proposed to be classified. See Attachment 3

(b) Conditions and trends of development have so changed since adoption of the present classification, that the proposed classification is reasonable. See Attachment 3

DATED: Honolulu, Hawaii, July 29, 1963.

HAWAIIAN TRUST COMPANY, LIMITED and
THE ROMAN CATHOLIC CHURCH
IN THE STATE OF HAWAII
Petitioners

By Martin Anderson
MARTIN ANDERSON

By Christopher Cobb
CHRISTOPHER COBB

OF COUNSEL:

ANDERSON, WRENN & JENKS

Bank of Hawaii Building
Honolulu, Hawaii
Phone Number 502-92[illegible]
Attorneys for Petitioners.

ATTACHMENT 1

Description of Property

The land which is the subject of this petition is located in upper Manoa Valley, Honolulu, Hawaii. It consists of five parcels identified by the Tax Map Key Numbers stated in the petition. These petitioners filed a Protest on April 11, 1963 with the Land Use Commission with respect to the proposed final district boundaries for the Island of Oahu which were then under consideration by the Commission. That Protest is hereby incorporated by reference into this petition. Attached to that Protest as Exhibits 1 and 2 are maps showing the location and boundaries of the subject land.

ATTACHMENT 2

Petitioners' Interest in Subject Property

Petitioner The Roman Catholic Church in the State of Hawaii is the fee simple owner of the subject property. Petitioner Hawaiian Trust Company, Limited, trustee of the Trust Estate of John Ena, owns a leasehold interest in the subject property.

ATTACHMENT 3

Petitioners' Reasons for Requesting Boundary Change

This petition is filed pursuant to Section 98H-4 Revised Laws of Hawaii 1955, as amended by Act 205, Session Laws of Hawaii 1963 and is based upon the following:

(a) The subject land is needed for a use other than that for which the district in which it is situated is classified. The subject land was included in a "conservation" district in the Temporary District Boundaries adopted by the Commission in April of 1962. The subject land is directly in the path of urban development in Manoa Valley and is adaptable to and needed for immediate urban development. Urban uses are prohibited in the district in which the subject land is now classified.

(b) The subject land is useable and adaptable for the use to which it is proposed to be classified. In 1960 a subdivision map was prepared for part of this land and was submitted to the Planning Department of the City and County of Honolulu for preliminary approval. On February 24, 1961, tentative approval of the proposed subdivision was granted by the Planning Department of the City and County of Honolulu. A large portion of the subject land falls below the 600 foot contour in Manoa Valley, and according to regulations of the Board of Water Supply of the City and County of Honolulu, land so situated is eligible for water service. In addition, large parts of this land are below the 20% slope.

(c) Conditions and trends of development have so changed since the adoption of the present classification that the proposed classification is reasonable. The present classification of the subject land was adopted in April of 1962. Since that time the need for additional land in Manoa Valley for urban purposes has substantially increased.

(d) The Protest filed by these petitioners on April 11, 1963 as aforesaid presented evidence supporting these petitioners' Protest against the inclusion of the subject land in a conservation district, and in favor of the inclusion of it in an urban district, in the final district boundaries then under consideration by the Commission. That evidence is relevant hereto and is incorporated herein in support hereof.

(e) In addition, it appears from the files of the Land Use Commission that the inclusion of the subject land in a conservation district in the Temporary District Boundaries adopted by the Commission on April 11, 1962 was based upon the erroneous impression that the subject land was part of a Forest and Water Reserve Zone as established by § 19-70 of the Revised Laws of Hawaii 1955, as amended. With respect to this, see the aforesaid Protest.

(f) Additional evidence in support of the foregoing will be presented at the request of the Land Use Commission and, in any event, at the public hearing to be held on this petition, which hearing is hereby requested.

(g) Failure to grant petitioners' request will deprive petitioners of their rights under the Constitution of the United States of America and under the constitution and statutes of the State of Hawaii.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 S. BERETANIA STREET
P. O. BOX 3410
HONOLULU, HAWAII 96801

EDWARD J. MORGAN
MANAGER AND CHIEF ENGINEER

MEMBERS
RALPH E. CLARK, CHAIRMAN
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JAMES B. WILSON, SECRETARY
HARRY S. ALBRIGHT
YOSHIO KUNIMOTO
FUJIO MATSUDA
ROBERT Y. SATO

883

January 29, 1964

RECEIVED
JAN 29 1964
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii 96813

Attention: Mr. Myron Thompson
Chairman

Gentlemen:

Subject: Roman Catholic Church Manoa Lands
Tax Keys: 2-9-54-5; 7; 13; 18
2-9-55; 10

This is to supplement our letter of January 13, 1964 and our oral presentation made at the public hearing of January 18, 1964, in order to present in detail the importance of the Manoa Watershed to the ground water supply of Honolulu.

The city of Honolulu depends almost exclusively on ground water as the source of its water supply. Ground water occurs in the Honolulu district as the result of infiltration of rain water in the watersheds behind the city. Without such infiltration the rock mass that now forms the fresh water aquifer would become saturated with sea water.

Current rates of pumping within the city limits withdraw an average of 45 million gallons of water per day. The region from which the largest fraction of the total pumpage is obtained is called Area II, which extends from Nuuanu Valley to Manoa Valley. From this region an average of 17.5 million gallons is pumped daily. The Board of Water Supply accounts for 14.5 mgd (million gallons per day) while private wells pump the remaining 3 mgd. The Board's portion is obtained from two pumping stations, one on Beretania Street by its main office and the other on Wilder Avenue near the Bole Street intersection. The Beretania Station has been in operation since early in the century and currently pumps an average of 11 mgd; the Wilder Station was placed in service last summer and has been averaging 3.5 mgd.

Other pumping stations operated by the Board within the city limits include 2 in Kaimuki and 2 in Kalihi. A small quantity of water is also developed in the mountains by means of tunnels and a much smaller quantity from surface sources. Water is also transmitted to the city from the Pearl Harbor region since water development within the city is unable to accommodate the total demand. Studies indicate that new large water developments in addition to those currently being used cannot be undertaken within the city limits. Current draft is in delicate equilibrium with recharge to the ground water body, and changes either by increased draft or reduced rain water infiltration will be reflected in diminishing water levels and increasing salinization.

The upper reaches of Manoa Valley are tributary to Area II and provide most of the watershed on which the Area depends for infiltration. In planning for the growth of Honolulu, the Board of Water Supply has had to make the assumption that the watershed areas would not change in the years to come. The Wilder Station was constructed under the presumption of such status quo conditions. The recently published Oahu Water Plan, which outlines the Board's plans for meeting water demands through 1980, assumes a fixed watershed area, intelligent planning would be impossible otherwise.

The Manoa watershed above the confluence of West Manoa and East Manoa Streams amounts to 1,410 acres. Geologically, it consists of Koolau Series basalt, talus derived from the basalt, and Honolulu Series pyroclastics, all of which are mantled by soil. The lands being petitioned for removal from this watershed contain 158 acres, or 11 per cent of the total. An average of about 160 inches of rain falls each year in the area (e.g., at the U.H. arboretum the average is 161 inches per year). In terms of volume, 160 inches of rain on 158 acres of land amounts to 1.85 million gallons per day. Analysis of stream flow on East Manoa and West Manoa Streams indicates that one-third of the rain leaves the area as surface flow. Recent studies of evaporation and transpiration in the wet mountains of Oahu suggest that where the average annual rainfall is 160 inches, the average annual combined loss by evaporation and transpiration is about 24 inches. Thus, a hydrologic budget for the 158 acres would approximate the following:

	Average rainfall	1.85 mgd
(-)	Average runoff	.62 mgd
(-)	Average evapo-transpiration	.28 mgd
	Infiltration remainder	.95 mgd

In general, an acre of subdivision development consumes 2,500 gallons per day. The 950,000 gallons per day infiltrating the subject lands therefore provides water for 380 acres of houses in the Honolulu region. If the 158 acres are withdrawn from watershed protection and developed for housing, the watershed area required to serve the new development alone would be 66 acres. The net loss to the watershed would be 158 acres plus 66 acres, or 224 acres. Even if all of the subject land were not subdivided, its infiltration capacity would be seriously endangered by any use not consistent with the natural equilibrium.

The watershed area now serving Honolulu is one of the smallest in the world for the number of people depending upon it. The incremental destruction of this watershed, no matter how small the increments, will eventually create water supply problems of enormous magnitude for the city.

Very truly yours,

E. J. Morgan
Manager and Chief Engineer

BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU
630 S BERETANIA STREET
P O BOX 3410
HONOLULU, HAWAII 96801

EDWARD J. MORGAN
MANAGER AND CHIEF ENGINEER

MEMBERS
RALPH E. CLARK, CHAIRMAN
LEROY C. BUSH, VICE-CHAIRMAN
JAMES B. WILSON, SECRETARY
HARRY G. ALBRIGHT
YOSHIO KUNIMOTO
FUJIO MATSUDA
ROBERT Y. SATO

January 13, 1964

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii 96813

Attention: Mr. Raymond Yamashita
Executive Officer

Gentlemen:

Subject: Roman Catholic Church Manoa Lands
Tax Keys: 2-9-54-5; 7; 13; 18
2-9-55-5; 10

At the request of Mr. Mar of your staff, we are stating our position in the matter of whether the subject lands should continue to be included in the "Conservation District."

Both we and the former Board of Agriculture and Forestry, after long and careful study, have always felt that the subject lands are vital to the watershed zone for the Honolulu area. Our records clearly show that both agencies have for years taken the position that this land must be so preserved. (Copies of pertinent correspondences are attached).

Oahu, like the other Hawaiian islands, is noted for the great range of variation of its rainfall; at the most leeward coasts the annual average amounts to about 20 inches, while near the summits of the central Koolau Mountains it reaches nearly 300 inches. Because of the high rainfall in the mountain and intervening valley areas, substantial ground water bodies underlie the Honolulu Plain. Most of the water consumed in Honolulu is derived from these ground water bodies. These ground water reservoirs receive all of their water as a result of infiltration in the mountains and the wet portions of the valleys. No recharge occurs on the impervious coastal plain where most of the population of Honolulu lives.

The subject land receives an average of 160 inches of rain per year, which is equivalent to about 12,000 gallons per day per acre. The area of the lands in question total 157 acres and, accordingly, it receives a daily average of about 2 million gallons of rainfall.

The Board of Water Supply is already straining to obtain as much water as is feasible within limits of safe development from the Honolulu District, and all of its projected development is predicated on the assumption that the infiltration areas (watersheds) will remain at least as large as they now are. As the population increases the demand for water rises proportionately, and any diminution in those areas that have in the past served so effectively as watersheds will unquestionably induce critical water supply problems.

In order to supply the burgeoning population and industrial growth within Honolulu, the Board of Water Supply has had to significantly increase draft from its city stations over the past several years. Within the past year, several wells near the mouth of Manoa Valley (Wilder Avenue Station) were added to the system. These wells draw ground water from the underground reservoir that receives its recharge from the Manoa to Nuuanu Watershed. One of the principal Honolulu stations (Beretania) also derives its supply from this same underground source. The total production of these two stations amount to 15 million gallons per day. The successful combination of the two well fields requires that recharge from the watershed continue to be at least as great as it now is.

In summary, water supply for the City of Honolulu is a continuing long-range problem and to successfully meet the challenge of the problem the Board must rely upon its long experience and outlook in projecting water development plans. Experience has shown that as long as sufficient high rainfall area is maintained as a protected watershed, the supply needed for Honolulu is assured. The incremental destruction of the watershed can only lead to problems vastly more critical than they are today. We, therefore, urge that the subject property be retained in a "Conservation District" category as shown on your temporary district boundary maps.

Very truly yours,

E. J. Morgan
Manager and Chief Engineer

Attach.

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

March 4, 1960

Mr. Wayne L. Collins, Director
Department of Agriculture & Conservation
State of Hawaii
P. O. Box 5425
Pawaa Station
Honolulu 14, Hawaii

Dear Mr. Collins:

Recently there has been great pressure on the part of developers to subdivide land lying above the Manoa Forest Reserve line established in 1950.

In recognition of this serious situation, the Board of Water Supply, at a meeting held February 18, 1960, took the following action:

(1) That the Department of Agriculture & Conservation reaffirm the relocation of the forest reserve line which was adopted in 1950.

(2) That the Department of Agriculture & Conservation take the necessary steps to secure the Governor's Proclamation legally establishing this line at the earliest possible moment.

(3) That the Manager petition the appropriate agency to zone all areas within the Honolulu Forest Reserve line in Manoa Valley as established in 1950.

As you know, it is of vital importance that no further encroachment be permitted in the Honolulu Forest Reserve.

The Board of Water Supply has acquired all of the land within the Manoa Forest Reserve with the exception of the land owned by a single private owner.

Our future plans call for the development of the water resources within this area and I cannot be too emphatic in stressing the importance of preserving this area for Honolulu's water requirements.

Very truly yours,

E. J. Morgan
Manager and Chief Engineer

cc: Mr. Leighton S. C. Louis
Planning Director
City and County of Honolulu

ENTOMOLOGY AND MARKETING
FORESTRY

ANIMAL INDUSTRY
FISH AND GAME

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

STATE OF HAWAII

DEPARTMENT OF AGRICULTURE AND CONSERVATION

HONOLULU 14, HAWAII

March 7, 1960

Mr. E. J. Morgan
Manager and Chief Engineer
Board of Water Supply
P. O. Box 3410
Honolulu 1, Hawaii

Dear Ed:

This is in reference to your letter of March 4 regarding the reestablishment of the Manoa Forest Reserve line.

We are in complete agreement with you on all aspects of this urgent matter. We are prepared to take the steps you have outlined to reaffirm the relocation of this line and by gubernatorial proclamation establish it legally at the earliest possible opportunity. We are highly concerned, as you know, with the preventing of any further encroachment upon the Honolulu Watershed Forest Reservation.

Our Department has, however, a unique problem.

At the moment, as you know, we have no Board of Agriculture and Conservation This is one of the few executive Boards in the State government, which means that our Department is, at the moment, an organization without an executive. It is possible for us to maintain day to day housekeeping operations but beyond that we cannot go.

As it will be necessary for the Board to initiate and complete this matter you are concerned with, our Department can do nothing until such time as a new and legal Board is appointed.

Regards,

Wayne D. Collins,
Director of Agriculture and Conservation

WLC:jtg

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 S. BERETANIA STREET
P. O. BOX 3410
HONOLULU 1, HAWAII

EDWARD J. MORGAN
MANAGER AND CHIEF ENGINEER

MEMBERS
RALPH E. CLARK, CHAIRMAN
SIMES T. HOYT, VICE-CHAIRMAN
LEROY C. BUSH, SECRETARY
TIM HO
YOSHIO KUNIMOTO
ROBERT Y. SATO
JAMES B. WILSON

October 5, 1960

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

Mr. Wayne L. Collins, Director
Dept. of Agriculture & Conservation
State of Hawaii
P. O. Box 5425
Pawaa Station
Honolulu 14, Hawaii

Dear Mr. Collins:

The Hawaiian Trust Co., Ltd. has recently submitted a subdivision of its upper Manoa property to the City Planning Commission for preliminary approval. A sketch of the area involved is enclosed for your information.

This property is situated within the forest reserve established by the Department of Agriculture many years ago after thorough studies by that Department and the Board of Water Supply. There only remains the matter of a public hearing and a proclamation by the Governor in order to make existing statutes relating to forest reserve effective.

We are deeply concerned about the great pressure being brought by subdividers to develop these important forest and watershed lands, especially in the Honolulu area. I am sure that such subdividers are aware of the importance of the preservation of our water resources - so important to the public interest.

As you know, the Board of Water Supply has acquired all of the privately-owned land in the Manoa forest reserve area with the exception of a few parcels. Our planning calls for the development of all surface water and of equal importance is the vital role this infiltration area plays in recharging the Beretania artesian system. If we are to continue to meet the water demands of this fast-growing community such forest reserve areas must be preserved in perpetuity.

Entirely aside from the value of the area in relation to the protection of water sources, it is a matter of common knowledge to engineers and contractors of long familiarity with our weathered talus slopes that it would be against the public interest to permit this land to be subdivided and those purchasing the very steep lots would probably suffer great damage during years of above-normal rainfall when the entire weathered slopes will be saturated. As we see it, subdivision of the area may well invite a duplication of the Waiamao situation.

I cannot urge too strongly that the following action be taken:

(1) That the Department of Agriculture and Conservation take the earliest possible action in holding the necessary public hearings on the upper Manoa Valley area to the end that it be zoned as forest and water reserve; and

(2) Look into the possibility of having the State effect a land exchange with the Hawaiian Trust Co., Ltd. and with the Catholic Church, the latter being the owner of the land, or acquire the same under Act 274, SLH 1949.

The record clearly indicates that both the Department of Agriculture and Conservation and the Board of Water Supply have for many years gone on record that this land must be preserved.

We will appreciate your early consideration of this matter.

Very truly yours,

E. J. Morgan
Manager and Chief Engineer

Enc.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 S. BERETANIA STREET
P. O. BOX 3410
HONOLULU 1, HAWAII

EDWARD J. MORGAN
MANAGER AND CHIEF ENGINEER

MEMBERS
RALPH E. CLARK, CHAIRMAN
SIMEON T. HOYT, VICE-CHAIRMAN
LEROY C. BUSH, SECRETARY
TIN HO
YOSHIO KUNIMOTO
ROBERT V. SATO
JAMES B. WILSON

October 5, 1960

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

Hawaiian Trust Co., Ltd.
1010 Richards Street
Honolulu 13, Hawaii

Attention: Mr. K. R. Murse
Vice President

Gentlemen:

We acknowledge receipt of your letter of September 26 regarding your proposed subdivision of property situated in Manoa Valley and identified by Tax Key 2-9-54-70.

Attached is a letter of even date to the Department of Agriculture and Conservation which outlines the position we must take in this matter.

Very truly yours,

E. J. Morgan
Manager and Chief Engineer

Attach.

cc: Bishop James J. Sweeney

Pure Water Many Precious Need

COPY

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE AND CONSERVATION
HONOLULU 14, HAWAII

October 13, 1960

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

Mr. E. J. Morgan, Mgr.-Chief Engineer
Board of Water Supply
P. O. Box 3410
Honolulu 1, Hawaii

Dear Mr. Morgan:

This will acknowledge receipt of your letter dated October 5, 1960.

In discussing this matter of the Catholic Mission land in Upper Manoa with the staff of our Division of Forestry, they assure me that they are in full accord with your thinking and agree that steps should be taken to retain this area within the Honolulu Watershed framework.

This matter is to be presented to our Board at their regular monthly meeting here in Honolulu on October 21. Perhaps, you or your representative would like to be present when this matter comes up for discussion.

Very truly yours,

(S) WAYNE L. COLLINS

WAYNE L. COLLINS, Director of
Agriculture and Conservation

cc Division of Forestry

COPY

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE AND CONSERVATION
HONOLULU 14, HAWAII

November 2, 1960

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

MEMORANDUM

TO: Jess H. Walters, Legislative Assistant

FROM: Wayne L. Collins, Director of Agriculture and Conservation

SUBJECT: Proposed Manoa Subdivision

This is a hairy one.

Hawaiian Trust Company is proposing to subdivide forest lands in Upper Manoa leased to the John Ena Estate by the Roman Catholic Church. The property in question is not within the legal Forest Reserve boundary line as established in 1926 for that segment of the watershed forest.

In 1944 our old Board approved a plan which would have relocated the Forest Reserve boundary line to include the church property. No public hearing was held (as required by law) until 1950. One further step was then necessary. The communication of this action to the Governor and a proclamation by him establishing a new boundary. This final step was never taken. Therefore, the proposed or "1944" line was never legally established.

The Board of Water Supply and our Division of Forestry believe this church property is essential to the watershed, that the forest cover should not be removed, and, therefore, that the subdivision should not be approved.

Our present Board, at its meeting of October 21, 1960, went on record to approve the proposed "1944" boundary line, and asked the Deputy Attorney General assigned to our Department to investigate this matter in relation to Act 234 and other laws, and advise the Board on how to proceed in the acquisition and/or zoning of this property.

That's where the matter stands today. We have not heard as yet from our Deputy Attorney General. He is sick.

Regards,

(S) WAYNE L. COLLINS

Wayne L. Collins
Director of Agriculture and
Conservation

COPY

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE AND CONSERVATION
HONOLULU 14, HAWAII

December 27,1960

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

Mr. E. H. Cook, Director
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Dear Sir:

The Board of Agriculture and Conservation at their meeting held on December 16, 1960 unanimously approved the adoption of the 1950 forest boundary line of the Honolulu Watershed Forest Reserve. Public hearing on the setting of this forest reserve line was held on May 31, 1950. However, for some reason, an executive order was never issued by the Governor proclaiming this boundary line. Much time has elapsed since, but we were advised by the Attorney General's office on December 14, 1960 that no further hearings on the matter are necessary excepting that an executive order be prepared for the Governor's signature officially proclaiming the 1950 Honolulu Watershed Forest Reserve boundary line. The State Surveyor's office in 1950 made a description of this area by metes and bounds.

We would appreciate everything you can to expedite this matter.

Very truly yours,

(S) WALTER W. HOLT

WALTER W. HOLT
State Forester

MFL:ln

cc State Surveyor
Board of Water Supply

COPY

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE AND CONSERVATION
HONOLULU 14, HAWAII

February 21, 1961

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

Mr. Leighton S. C. Louis
Planning Director
City and County of Honolulu
Honolulu Hale Annex
Honolulu 13, Hawaii

RE: PROPOSED SUBDIVISION - MANOA TAX MAP KEY: 2-9-54:7
OWNER: ROMAN CATHOLIC CHURCH LESSEE: JOHN ENA TRUST ESTATE

Dear Sir:

Your letter of February 13, 1961 pertaining to the above subject is acknowledged.

In regard to this matter, please be advised that the Board of Agriculture and Conservation at its meeting on February 17, 1961 has scheduled a public hearing on the Honolulu Watershed Forest Reserve Boundary on Friday, April 21, 1961 at the Board Office, 1428 S. King Street, Honolulu. The Board will consider the entire boundary line extending from Palolo Valley to Kalihi Valley. This is being brought to your attention to keep you advised on developments in this department relative to the forest reserve boundary.

I appreciate the position you are placed in regarding your February 22, 1961 commitment, which I view as a tentative approval for the subdivision. I wish to thank you for calling my attention to the fact that after February 22nd the owner will allow an additional 60 days to permit this Board to take the necessary legal steps for condemnation of the property.

I assure you this Board is most anxious to finalize this problem to the satisfaction of all concerned.

Yours very truly,

GORDON P. CHUNG-HOON, Director
of Agriculture and Conservation

cc: Board of Water Supply

STATE OF HAWAII
DEPARTMENT OF LAND
AND NATURAL RESOURCES
HONOLULU 8 HAWAII

RECEIVED
JAN 14 1964
State of Hawaii
LAND USE COMMISSION

December 19, 1961

Mr. Edward J. Morgan, Manager-Chief Engineer
Board of Water Supply
City and County of Honolulu
Honolulu, Hawaii

Dear Mr. Morgan:

Enclosed are three copies of the new boundary description for the Honolulu Watershed as approved by the Board of Agriculture and Conservation at its June 22, 1961 meeting.

It still must be passed on by the State Land Use Commission before it can be regarded as final. As you doubtless know, Act 187 provides that any changes in conservation district boundaries, after that Act was signed into law, are to be made by the State Land Use Commission created by that Act. It may require several more months for that to be done.

Very truly yours,

WALTER W. HOLT
State Forester

Encls. 3

Enclosure: State of Hawaii, Survey Division
Dept. of Accounting & General Services, Honolulu
C.S.F. No. 13,594 (Revised Dec. 1961)
December 5, 1961
Honolulu Watershed Forest Reserve
Honolulu, Oahu, Hawaii

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 S BERETANIA STREET
P. O. BOX 3410
HONOLULU 1, HAWAII

EDWARD J. MORGAN
MANAGER AND CHIEF ENGINEER

MEMBERS
RALPH E. CLARK, CHAIRMAN
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JAMES B. WILSON, SECRETARY
HARRY G. ALBRIGHT
YOSHIO KUNIMOTO
FUJIO MATSUDA
ROBERT Y. SATO

October 24, 1963

RECEIVED
OCT 2 4 1963
State of Hawaii
LAND USE COMMISSION

Land Use Commission
Department of Planning and
Economic Development
State of Hawaii
Honolulu, Hawaii

Attention: Mr. Raymond Yamashita
Executive Secretary

Gentlemen:

Subject: Petition of Hawaiian Trust Co., Ltd., and The Roman Catholic Church in the State of Hawaii for an Amendment of Temporary District Boundary

As a result of our consideration of the subject petition which was received by your Commission July 29, 1963, we urge that the petition be denied.

The action of your Commission and your predecessors in including the subject property in a "Conservation" district was consistent with the most important use to which the area could possibly be placed--that is to say, as an area of vital importance having a direct function in connection with the Board of Water Supply's well-known project for the conservation of the important perennial flow of Manoa Stream.

We ask for the opportunity to be heard in all hearings held in this matter.

Very truly yours,

E. J. Morgan
Manager and Chief Engineer

ANDERSON, WRENN & JENKS

ATTORNEYS AT LAW

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BANK OF HAWAII BUILDING
HONOLULU, HAWAII 96801

ROBBINS B. ANDERSON
COUNSEL

CABLE & WIRELESS ADDRESS
"DELTA"
P. O. BOX 3196

March 6, 1964

RECEIVED
MAR 6 1964
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii
Honolulu, Hawaii

Re: Petition A (T)-63-40

Gentlemen:

Attached is a letter which we received from Mr. E. W. Broadbent of R. M. Towill Corporation concerning the 60 acres of land in Manoa Valley which is the subject of the petition of Hawaiian Trust Company, Limited and the Roman Catholic Church of the State of Hawaii for a change in temporary district boundaries. Mr. Broadbent analyzed the staff report on the subject petition at our request.

We have noticed that our letter to the Commission dated February 3, 1964 contained an error. We stated in that letter that the staff report had concluded that the 160 acres covered by the unamended petition would supply water for 56,300 persons. In fact the staff report had concluded that 1,260 acres of watershed land would supply that many persons. If the 60 acres were average land, it would then supply 2,681 persons (60/1,260 x 56,300).

Very truly yours,

ANDERSON, WRENN & JENKS

Christopher Cobb

Christopher Cobb

CC:jk

Enc.

R. M. TOWILL CORPORATION
233 MERCHANT ST. • TELEPHONE 53-351
HONOLULU, HAWAII 96813

February 26, 1964

RECEIVED
MAR 6 1964
State of Hawaii
LAND USE COMMISSION

Anderson, Wrenn & Jenks
Attorneys at Law
Bank of Hawaii Building
Honolulu, Hawaii 96813

Attention: Mr. Christopher Cobb

Gentlemen:

SUBJECT: Ground Water Recharge Estimate for Roman Catholic Church Properties in Upper Manoa Valley

You have asked us to comment on the State Land Use Commission Staff Report of January 18, 1964 covering their estimates of the ground water recharge capabilities of 60 acres of the subject properties. Our report follows:

Two stream gauges maintained by the U. S. Geological Survey, called "West Branch Manoa Stream" and "East Branch Manoa Stream" measure the surface discharge from the drainage basin that includes most of the subject properties and extends to the main ridge of the Koolau Range. The total drainage area of these two gauging stations is approximately 1,400 acres and the average discharge is 5.6 million gallons per day, both according to the U. S. Geological Survey.[1] Our independent measurement of the drainage basin area results in a figure almost exactly that given by the U.S.G.S. The resulting average daily flow per average acre in this drainage basin is thereby 4,000 gallons.

According to information compiled by the State of Hawaii[2] and Board of Water Supply[3], the property concerned and the drainage area referred to above receives an average rainfall of approximately 150 inches per year, about the highest in the metropolitan Honolulu area. Not all of this rainfall of course is absorbed into the ground to provide recharge for the basal water table. Losses due to direct evaporation from plants and the ground surface and losses due to plant transpiration must be deducted from total rainfall to derive the rainfall contributing to runoff and recharge.

The Hawaii Sugar Industry[4] recently established that the combined direct evaporation and transpiration losses or "consumptive use" of mature sugar cane are approximately equal to the direct evaporation from a free water surface at ground level.

For lack of any better information known to the writer, it will be assumed that the same relationship will hold in the mountain areas in upper Manoa Valley, which are covered by a low, brushy type of vegetation. Pan evaporation data compiled by the State of Hawaii[5] in the most comparable areas will be extrapolated for use here. The end result is an estimate of 40 inches per year of "consumptive use", leaving an average annual contribution to runoff and recharge, or "effective rainfall", of 110 inches per year.

It is further estimated that the subject property is equal to the average of the entire drainage basin in terms of its ability to absorb "effective rainfall". The thirty acres concerned has a flatter topography compared to the average of the whole drainage basin, and according to the Geological Survey[6] is underlined with permeable firefountain deposits from geologically recent Tantalus eruptions; we believe our estimate of absorption ability to be conservative. In terms of per acre per day figures, therefore, we estimate that the effective rainfall (available for surface runoff and ground water recharge) amounts to 8,200 gallons per acre per day. Deduction of the 4,000 gallons per acre per day of average surface runoff leaves an average recharge rate to the ground water table of 4,200 gallons per acre per day, or of some 250,000 gallons per day for the 60 acres.

The Land Use Commission staff estimated a population carrying capacity on the basis of 100% recovery of ground water recharge and a per capita consumption of 150 gallons per person per day. We doubt the reality of 100% recovery of this recharge, but will assume that value for purposes of arriving at population carrying ability comparable to those estimated by the staff. The 60 acres concerned would thus be able to support an average population of some 1700 people.

We finally estimate that conversion of this 60 acres to urban use would reduce its recharge ability to about one quarter of its present capacity, due to compaction of the soil, turfing, grading for rapid drainage, and the installation of large impervious surfaces. Hence, with urbanization, we estimate an average loss of recharge in the amount of 190,000 gallons per day for the 60 acres. In terms of 100% recovery population, this loss would be some 1300 people.

We attach a copy of reference 3 for your study as you requested. As it is our only copy, we would appreciate its return when you find it convenient.

Very truly yours,

R. M. TOWILL CORPORATION

E. W. Broadbent

EWB:dl
Attachment

References:

1. "Surface Water Records of Hawaii and Other Pacific Areas"

U. S. Dept. of the Interior - Geological Survey, 1962

2. "Rainfall of the Hawaiian Islands"

Hawaii Water Authority, 1959

3. "Oahu Water Plan"

Board of Water Supply, City and County of Honolulu, 1963

4. "Evapotranspiration of Sugar Cane in Hawaii as Measured by In-Field Lysimeters in Relation to Climate"

Experiment Station, H.S.P.A., 1959

5. "Pan Evaporation Data, State of Hawaii"

State Department of Land and Natural Resources, 1961

6. "Geologic Map and Guide of Oahu"

U. S. Geological Survey, 1939

896

ANDERSON, WRENN & JENKS

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ROBBINS B. ANDERSON
COUNSEL

CABLE & WIRELESS ADDRESS
"DELTA"
P. O. BOX 3196

February 3, 1964

RECEIVED
FEB 3 1964
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii
Honolulu, Hawaii

Re: Petition A(T)-63-40

Gentlemen:

Hawaiian Trust Company, Limited and the Roman Catholic Church in the State of Hawaii have petitioned the Commission for an amendment of the temporary district boundaries for the Island of Oahu. The requested amendment would change the classification of certain land in Manoa Valley from conservation to urban.

The land which is the subject of the petition is located in Upper Manoa Valley. It consists of two parcels separated by a parcel which is not owned by the petitioners. The total area of the land involved is about 60 acres. 1/ One of the parcels, located on the western side of the Valley, contains about 30 acres and consists of all of the land designated by Oahu Tax Map Key 2-9-54:18, and the makai half of the land designated by Oahu Tax Map Key 2-9-54:07. The other parcel is located on the eastern side of the Valley, contains about 27 acres, and consists of all of the land designated by Oahu Tax Map Key 2-9-54:13.

A public hearing on the petition was held before the Commission on January 18, 1964. At the hearing the petitioners presented evidence and argument in support of the petition. Others, including the staff of the Commission

---

1/ The petition as originally filed covered some 160 acres of land. The petition was amended on January 18, 1964 to delete two mauka parcels, comprising some 100 acres, from the petition.

and the Board of Water Supply, argued against the petition. This is a summary of what the petitioners believe to be the facts and issues upon which the Commission should base its decision, and the reasons why the petitioners believe that the Commission should approve the petition.

On the basis of the undisputed testimony at the public hearing, the following facts are true of the western parcel:

1. The land has satisfactory topography for residential subdivision, and the standards set by the City and County for subdivision of land can be met and will result in satisfactory drainage and freedom from the danger of floods.

2. The land has a general slope of about 20%, with the makai portion having a slope of less than 20% and the mauka portion having a slope of slightly in excess of 20%.

3. There are present or planned residential subdivisions along the entire southern boundary of the land, except at the Board of Water Supply reservoir site.

4. The land is close to water and sewer mains, and it will be economically feasible to provide sewers, water and sanitation.

5. There are schools and playground facilities in Manoa Valley close to the land, and police and fire protection will be readily available.

6. A preliminary subdivision map of this land was submitted to the City and County of Honolulu in 1960, and was approved (subject to the usual conditions) in 1961.

The petitioners have also established that all of the above facts are true of the second, or eastern, parcel, except that no preliminary subdivision map was submitted for that parcel, and except that although there are present and planned subdivisions near to that parcel, none are contiguous to it.

In light of the above facts, it appears that the petitioners have met the minimum requirements of the Land Use Law for the granting of the petition:

1. The land is needed for a use other than conservation use (§ 98H-4, R.L.H. 1955, as amended).

2. The land is useable and adaptable for urban use (§ 98H-4, R.L.H. 1955, as amended).

In addition to the above minimum requirements for the granting of a petition, the draft of the Proposed Regulations of the Commission also requires that the requested amendment must not "be contrary to the objectives sought to be accomplished by the Land Use Laws and Regulation" (§ 6.1). A review of the objectives of the Land Use Law and of the draft of the Proposed Regulations shows that the proposed amendment not only would not be contrary to those objectives, but would further them.

Thus, the land is either contiguous to or very close to present and planned subdivisions, so that the extension of public services to this land will be simple and economical, and scattered subdivisions will not result (see Section 1, Act 187, S.L.H. 1961). According to the draft of the Proposed Regulations, a major objective of the law is to:

> "preserve, protect and encourage the orderly development of lands in the state for those uses to which they are best suited for the public health and welfare." (§ 1.1)

The subdivision of the subject land would constitute a logical and orderly development of a present residential area. The staff report notes the urban pressures apparent in Manoa Valley (page 4 of the report). It therefore appears that unless some legitimate argument against the petition exists, the use to which this land is best suited for the public health and welfare is urban. The arguments against the petition will be discussed below, and we will show that they are invalid.

Thus, the requested amendment not only complies with the minimum requirements of the Land Use Law and of the Proposed Regulations, and not only meets the additional requirement that the proposed amendment not be contrary to the objectives sought to be accomplished thereby, but also would positively promote those objectives.

Further confirmation of the above statement is found in the Commission's draft of proposed standards for determining district boundaries. Thus, § 2.2 states that:

> "In determining the boundaries for the 'U' Urban District, the following standards shall apply:
>
> . . .
>
> "(b) It shall take into consideration the following specific factors:
>
> "(1) Proximity to centers of trading and employment facilities.
>
> "(2) Economic feasibility and proximity to basic services such as sewers, water, sanitation, schools and playground and police and fire protection.
>
> . . .
>
> "(d) It shall include adequate lands and suitable areas for urban growth based on 10 years projection.
>
> "(e) The land shall have satisfactory topography and drainage and be reasonably free from the danger of floods. Lands with satisfactory topography include areas that have a general slope of land with 20% slope or less.

"(f) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more favorable consideration than noncontiguous lands.

"(g) It shall include lands appropriately located for new urban concentrations and shall give consideration to areas of urban growth as shown on the General Plans of the Counties and of the State of Hawaii.

. . ."

Except for the fact that the subject land is not in an urban area on the General Plan, or on the proposed new General Plan, of the City and County of Honolulu, the subject land meets all of the above quoted standards for inclusion in an urban district. It is respectfully submitted that the failure of the General Plan to include this land in an urban area is no ground for denying the petition, and should be given little weight in comparison to the other standards proposed by the Commission. This is particularly so in light of the near certainty that the General Plans are based upon maps prepared by the Territorial Survey Office which erroneously show the subject land as being within the Forest Reserve. (These maps date back to 1946, and are designated as HSS Plats 2134-A through 2134-E.)

In summary, it is the contention of the petitioners that they have proved that the minimum requirements for granting the petition have been more than adequately met; that the objectives sought to be accomplished by the Land Use Law and the Regulations will be actively promoted by granting the petition; and that the land fits the draft of the Commission's Proposed Standards for urban district boundaries. We turn now to a discussion of the arguments presented at the hearing in opposition to the petition.

At the hearing, Dr. Hamilton objected to the petition on the ground that it would increase a pest problem and might lead to erosion, to the injury of the University of Hawaii Arboretum (which is mauka of the western parcel). Dr. Hamilton also mentioned the seismograph located at the Arboretum, and objected to the petition on the ground that vehicular traffic might reduce the utility of the seismograph, or make it useless. A representative of a Manoa Valley residents' association objected to the petition, apparently on the ground that subdivision of the subject land would make the Valley less attractive for the present residents. It is respectfully submitted that the Land Use Commission cannot give consideration to those objections, inasmuch as they amount in substance to a contention that the petitioners' use of their land should be limited for the benefit of adjoining and nearby land owners, without any reciprocal benefit to the petitioners. This constitutes a mere selfish desire on the part of the adjacent and nearby land owners, and not a public interest. To deny the petition on these grounds would be equivalent to the City and County zoning one owner's land as a park for the benefit of adjacent land owners.

A more serious argument against the petition was presented by the Board of Water Supply, represented by Mr. Watson, at the public hearing. Substantially the same argument was made by the staff of the Land Use Commission in its report. This argument is summarized on page 7 of the staff report, in numbered paragraph 1:

> "1. . . While there is evidence that the land is needed for urban use, there is overriding evidence that the continued watershed use is more needed in the public interest."

In substance, it appears that the position of the staff in recommending against the petition, as well as the position of the Board of Water Supply in opposing the petition, is that if the land is left in its present state, the rain falling on it will percolate, recharge the basal

water supply, be recovered by Board of Water Supply pumping stations, and thus be available to serve the needs of customers of the Board of Water Supply.

On page 4 of its report, the staff analyzes the effect of the subject land on water supplies. The petitioners do not admit the validity of that analysis or the accuracy of the numbers used, but do admit that if the analysis were valid and the numbers accurate, the results would be applicable, with appropriate reductions, to the land covered by the amended petition. 2/ The net result of the analysis is the conclusion that the recharge supply provided by the entire 160 acre land area would supply the water needs of 56,300 people. If the method of analysis were valid and the numbers accurate, the land covered by the amended petition would supply enough water for some 21,000 people.

It therefore appears that the staff's argument is as follows:

1. If this land is left in its present state, it will supply water for 21,000 customers of the Board of Water Supply.

2. The increasing urban population in certain areas of Honolulu will increase the number of customers of the Board of Water Supply.

3. Therefore, the Commission should deny the petition, so that those customers can be satisfied.

2/ The staff's analysis was based on the original petition, which covered 160 acres. The amended petition covers 60 acres. Thus, the petition as amended covers only 3/8ths of the land area covered by the original petition.

The above argument contains a flaw. It contains an unexpressed basic assumption: that the customers of the Board of Water Supply cannot be served unless the Commission classifies this land as conservation. It is true that if the land is classified as conservation it will remain a wilderness area with some marginal agricultural use and will be useful as a watershed. However, if the Commission grants the petition it does not follow that the land will inevitably be lost as a watershed. There is an alternative: The Board of Water Supply has the power of eminent domain, and can acquire the land by an exercise of that power. Presumably, if the land is necessary as a watershed, the Board will acquire it in the event it is classified as urban.

Thus, the very basis of the staff's argument - that the Commission must classify this land as conservation in order to protect the water supply of 21,000 potential customers of the Board of Water Supply - is untenable. If the Board acquires the land, it can recoup the cost of acquisition from its customers by what would surely be a very small increase in water rates. Each customer would then have to bear a very small part of the cost of the land. We fail to see the logic behind the contention, which is inherent in the staff's argument, that the loss should be borne by the petitioners, who would get nothing in return, rather than by the customers, who would get the water.

In its recommendation against granting the petition, the staff has stated that the use of the land as a watershed is more needed in the "public interest" than is urban use of the land. It adds nothing to the staff's argument to phrase it in terms of "public interest". The basic fact is that the competing use for this land which is presented as the major reason for denying the petition is its use as a watershed. The "public interest" is no more nor less than the difference between the cost of water if this land is purchased by the Board of Water Supply and the cost of water if the petitioners are required to leave the land in its present state.

In making the above argument, we have ignored the fact that classification of the land as conservation does not

deprive the owners of all possible use of the land. However, classification of the land as conservation will radically reduce its value in comparison to its value as the site for a residential subdivision. There appears to be no better justification for taking half, or 4/5, or 9/10, of the value of the land than there is for taking all of it.

We have taken note of a subsidiary argument presented by the Board of Water Supply at the public hearing: that if the petition is granted, there will in all likelihood be other encroachments on the watershed area by other subdivisions. In respect to this, we call the attention of the Commission to the statement contained on page 2 of the staff report to the effect that the subject land, certain Bishop Estate Land, and the land owned by Mabel K. Ena (approximately 3 acres) is the only land mauka of the present conservation district boundary which does not belong to some governmental agency. Therefore, it would appear that the encroachments mauka of the present boundary cannot be extensive. Moreover, we suggest that if the owner of other land petitions the Commission for a change in the temporary district boundary, his petition should be considered on its merits and should be granted if it is meritorious. The possibility that such a petition may be meritorious is not a reason for denying this petition.

We respectfully submit that the issue before the Commission is a simple one. The petitioners have established that this land is suitable for and needed for urban use. The petitioners have established that the Land Use Law and the draft of the Proposed Regulations of the Commission show that this land should be in an urban district. The only serious argument against such classification is the argument that the land must be left in the conservation district so that it will remain in its present state as a free source of water for customers of the Board of Water Supply, at the expense of the petitioners, and with no benefit to the petitioners in return.

The Board of Water Supply, although it is an agency of the City and County, performs the functions of a public utility. We submit that there is no more justification for benefiting the Board, or its customers, at the

expense of the petitioners, than there would be justification for benefiting a privately owned water company, or its customers, at their expense. We respectfully submit that the Commission should grant the petition.

Very truly yours,

ANDERSON, WRENN & JENKS

By Christopher Cobb
Christopher Cobb
Attorneys for Hawaiian Trust Company, Limited and the Roman Catholic Church of the State of Hawaii, petitioners

NOTICE OF PUBLIC HEARING

Pursuant to the provisions of Sections 19-21 and 19-22, Revised Laws of Hawaii, 1955, the Board of Agriculture and Conservation will hold a public hearing on Friday, April 21, 1961, commencing at 9:30 a. m., at the office of the said Board, 1428 South King Street, Honolulu, Hawaii, at which time the following subject matter will be taken up for consideration:

FIXING OF BOUNDARY LINES OF THE HONOLULU WATERSHED FOREST RESERVE TO (1) ESTABLISH EXACT BOUNDARY LINES ALONG CERTAIN SEGMENTS WHERE FLEXIBLE BOUNDARY LINES WERE HERETOFORE APPROVED, AND (2) RE-ESTABLISH THE BOUNDARY LINES ALONG CERTAIN OTHER SEGMENTS WHERE CHANGES HAVE OCCURRED FROM THE LAST FIXED BOUNDARIES

1. From the slope east of Kului Gulch westward around a part of the Wailupe drainage to the top of Wiliwilinui Ridge.
2. From Wilhelmina Rise Reservoir around parts of Waiomao and Palolo drainages and westward to St. Louis Heights.
3. From Puu Pia Triangulation Station on the east slope of Manoa Valley, westward across Manoa Valley.
4. A short portion of [redacted]oundary on the west side of Manoa Valley, near the Salvation Army Children's Home.

EXHIBIT 3

5. From the present boundary at Makiki Stream a short distance northward along that stream and thence northeastward to the lower switchback on Round Top Drive.

6. A short section of the boundary on the east slope of Pauoa Valley.

7. A portion of the boundary along the east slope of Nuuanu Valley.

8. A short part of the boundary bordering the Pali Highway extending from the Oahu Country Club toward the Pali Tunnel.

9. Entire boundary in Kalihi Valley from Kalihi Elementary School north-eastward along Kamehameha Highway, crossing Kalihi Stream above the Burmeister Overpass and extending eastward and southward to a point on the present boundary approximately south of the aforementioned overpass.

10. A short section of the boundary crossing Moanalua Stream.

11. Transfer of North and South Halawa drainages from the Ewa Forest Reserve to the Honolulu Watershed Forest Reserve.

Maps showing exact locations of the proposed boundary lines are available for public inspection at the Forestry Division, of the above address, between the hours of 8:00 a. m. to 4:30 p. m. daily, except Saturdays and Sundays.

Interested persons are urged to inspect same and if modifications are desired to present supporting evidence at the Public Hearing.

BOARD OF AGRICULTURE AND CONSERVATION

George I. Brown, Chairman

ANDERSON, WRENN & JENKS

ATTORNEYS AT LAW

HEATON L. WRENN
LIVINGSTON JENKS
JOHN P. RUSSELL
H. BAIRD KIDWELL
JAMES M. RICHMOND
MARSHALL M. GOODSILL
WALTER E. BLISS
RICHARD E. STIFEL
PAGE M. ANDERSON
MARTIN ANDERSON
HUGH SHEARER

TOBIAS C. TOLZMANN
WILLIAM F. RAFF

BANK OF HAWAII BUILDING
HONOLULU 1, HAWAII

ROBBINS B. ANDERSON
COUNSEL

CABLE & WIRELESS ADDRESS
"DELTA"
P.O. BOX 3199

May 3, 1961

Mr. George Ii Brown, Chairman
Board of Agriculture and Conservation
Honolulu, Hawaii

Re: Proposed Watershed Boundaries

Dear Sir:

This firm represents certain individuals and estates whose properties are adversely affected by the proposed establishment of watershed boundaries as presented at a public hearing on April 21, 1961. They are as follows:

Name	Tax Key
Laura A. Morgan Estate	2-2-55-01
Alexander S. Atherton	2-2-55-02
Ruth R. Midkiff Eleanor S. Atherton	2-2-55-03
Juliette M. Guard	2-2-55-05
Ruth R. Midkiff	2-2-55-04
Carl B. Andrews	2-5-12-01
Dr. Charles Judd (Rental)	2-5-15-02
Scott B. Pratt III	2-5-18-13
Elspeth P. Sterling	2-5-15-02 2-5-15-19
Charles W. Lucas Trust	3-7-04-01
John Ena Estate, Lessee from The Roman Catholic Church in the State of Hawaii	2-9-54-07 2-9-54-13 2-9-54-18 2-9-55-05 2-9-55-10
Mabel Ena (Hawaiian Trust Co., Ltd., Guardian)	2-9-54-05

The proposed watershed boundary, in several instances, takes in a considerably larger area than previously

EXHIBIT 4

was established in 1926. In some instances, and particularly in the case of the lands belonging to Mabel Ena, and in the case of the Roman Catholic Church lands, leased to the John Ena Estate, the lands sought to be included within the watershed are lands suitable in every respect for fee simple subdivision development. (The Church-Ena lands will be referred to herein, for brevity, as the Ena Estate lands.) A petition for subdivision of the Ena Estate lands creating 87 fee simple lots has been processed by the City Planning Commission and preliminary approval was granted on February 24, 1961. This land lies in an elevation of approximately 450 to 500 feet and is well below the limit established by the Board of Water Supply in its Resolution No. 11 providing for water service connections in Manoa below the 600-foot contour line.

To anyone who has followed the maneuvers of the Board of Water Supply, it is readily apparent that the purpose of the relocation of the watershed boundary is to lay the foundation for action under Act 234 of the Session Laws of 1957 whereby the Board of Water Supply will seek to zone the lands affected in such manner as to prevent the development of a residential area.

It is submitted that the attempted enlargement of the watershed area with a view to precluding residential development within the enlarged boundaries is diametrically opposed to the policy voiced in several enactments of the current Legislature seeking to make available to the public additional fee simple residential areas. See, for example, Senate Bill 278, now awaiting signature by the Governor authorizing the State to condemn undeveloped lands for the purpose of opening up fee simple residential subdivisions.

In light of this announced policy of the Legislature and in view of the fact that the inclusion of a private owner's property within a watershed boundary creates a serious blight on the value of the property, it is submitted that the Board of Agriculture and Conservation should approach this matter with considerable caution, a full awareness of the effect on the landowners concerned, and a full inquiry as to the necessity for such expansion of the watershed area.

Although there is nothing in Sections 19-20 through 19-26 which, considered alone, precludes the use of land by the landowner for any purposes he desires until such time as the lands are condemned in fee simple or forest reserve easements are condemned, there can be no doubt but that the inclusion of any private lands, suitable for residential purposes, within the watershed boundaries is injurious to the value of the lands. Such inclusion puts the public on notice that the lands are considered essential for watershed purposes and if not condemned immediately will either be condemned at a later date or will be zoned under Act 234 of the Session Laws of 1957 so as to preclude using the lands for their highest and best use. This can only operate to reduce the value of the lands concerned.

It is submitted that the clear intent of the Sections in question is that areas shall not be included within the watershed unless immediate acquisition is contemplated.

There is a serious question as to the validity of Sections 19-20 through 19-26 unless the action taken is in connection with immediate acquisition by the Board of Water Supply or by the Board of Agriculture and Conservation for watershed purposes or unless a forest reserve easement is immediately condemned.

At the public hearing no factual showing was made by the Board of Water Supply in so far as the Mabel Ena and John Ena Estate lands are concerned demonstrating that the inclusion of these lands within the watershed area is necessary. The only evidence submitted consisted of broad generalizations as to the need for preserving infiltration areas in areas of high rainfall. No evidence was produced and no claim was made that tests had been made of the lands in question to determine the rate of infiltration nor, as far as the record shows, has it been established that the inclusion of the private lands in question within the watershed areas will make any substantial difference in the storage or flow of underground waters.

Mr. Hefty, appearing on behalf of the Board of Water Supply, stated that with respect to the Ena Estate

lands in upper Manoa, the Board of Water Supply had in mind at some distant date constructing a reservoir to impound stream waters in close proximity to the Ena lands and a filtration plant so as to augment city water supplies. It is submitted that this statement establishes (1) that the Board of Water Supply is not at the present time doing everything within its means to augment the water supply by collection of surface waters, and (2) that no immediate need has been shown for the Ena Estate lands. In other words, this testimony demonstrates that contrary to the intent of Sections 19-21 and 19-22 of the Revised Laws of Hawaii 1955, the Board of Water Supply does not have in mind any immediate acquisition by condemnation or purchase of the Mabel Ena and Ena Estate lands included within the watershed area or a forest reserve easement over the same. In view of the apparent need for fee simple residential property centrally located, is it not proper to inquire whether there are not better means of augmenting and preserving existing water supplies than by depriving property owners of their right to develop their lands for fee simple residential subdivisions?

As was stated at the public hearing, none of the landowners represented by this firm would actively oppose the acquisition of their lands for public purposes if a definite need is established. If, for example, the Board of Water Supply or the Board of Agriculture and Conservation should announce that it is including the lands in question within the forest reserve area as a preliminary step to immediate acquisition by purchase or condemnation and should establish by competent evidence that such acquisition is necessary for the public good, very little objection would be made. What these parties do object to is the indiscriminate inclusion of their properties within the watershed area merely by the drawing of a line which, in the opinion of a few persons, is advisable but with no actual intent to acquire the properties, with the result that their land is blighted without compensation.

Naturally, the Board of Water Supply would like to see all undeveloped lands in mauka areas within the watershed area; however, its wants must be tempered by what

is reasonably necessary. No circumstances have been shown establishing that the Ena lands now sought to be included in the watershed area are any more necessary for that purpose than they were when the existing watershed boundary was established in 1926 considerably mauka of the line now proposed.

With respect to certain improved residential properties owned by certain of the individuals above named, such as Ruth Midkiff, Juliette Guard, Dr. Judd, Scott Pratt, etc., the law, Section 19-22, now provides that they are not subject to condemnation. It would appear therefore that the inclusion of such areas within the watershed is of no assistance to the Board of Water Supply and serves only to depreciate the value of the properties concerned. For this reason, these parties object to the inclusion of their lands.

The immediate objective of the Roman Catholic Church and the John Ena Estate is to be permitted to proceed with subdivision plans for portions of the two parcels in question without further interference from the Board of Water Supply. Certain portions of the two parcels leased by the John Ena Estate are more readily subdividable than the remainder. In the interests of putting an end to further controversy, the Roman Catholic Church, as owner, and the Trustee of the John Ena Estate, as lessee, are willing to withdraw further opposition to the inclusion of the remainder of the two parcels within the proposed watershed if certain portions of the lands lying below the 1926 watershed boundary can be deleted from the watershed and made available for subdivision. Attached hereto is a tax map of the property in question. If those portions of the Church-Ena property outlined in red, blue and yellow can be deleted from the proposed watershed area, the Roman Catholic Church and the John Ena Estate will withdraw further objections to the inclusion of their remaining lands within the watershed. The suggested watershed line is shown as a broken red line on the map.

Attached is a letter from the Roman Catholic Church stating the concurrence of that corporation in the above proposal.

Yours very truly,

ANDERSON, WRENN & JENKS

By

May 3, 1961

Mr. George Ii Brown, Chairman
Board of Agriculture and Conservation
Honolulu, Hawaii

Re: Proposed Watershed Boundaries

Dear Sir:

The Roman Catholic Church is the owner of certain parcels of land proposed to be included within the new watershed boundaries presented at a public hearing on April 21, 1961. The lands in question are Tax Keys 2-9-54-07, 2-9-54-13, 2-9-54-18, 2-9-55-05 and 2-9-55-10. These lands are under lease to the John Ena Estate.

Please be advised that the Roman Catholic Church joins in the protest of the John Ena Estate, Lessee, to which this letter is attached, and concurs in the proposal of the Ena Estate for modification of the proposed watershed boundaries.

Yours very truly,

ROMAN CATHOLIC CHURCH

By _____

February 10, 1961

Mr Leighton S. C. Louis
City Planning Director
City Planning Department
City and County of Honolulu
Honolulu 13, Hawaii

Re: Proposed Subdivision: Manoa
Tax Key: 2-9-54: 7
Owner: Roman Catholic Church
Lessee: John Ena Trust Estate
Surveyor: R. M. Towill Corporation

Dear Mr Louis:

Thank you for your letter of February 6, 1961, together with enclosures.

We appreciate the personal efforts you are making to speedily resolve the problems of our application for a subdivision with various governmental agencies.

This letter will confirm the agreement reached between you and our attorney, Martin Anderson, to the effect that action on the above-captioned subdivision may be postponed until February 22, 1961 in order to permit the Board of Water Supply and the Board of Agriculture to resolve the question of whether or not they are to condemn the property for purposes of watershed lands. We understand we have your assurance that you will act on our subdivision immediately thereafter, that is at your regular Thursday meeting February 23, 1961.

Assuming the subdivision will tentatively be approved at your February 23, 1961 meeting, we wish to assure you that no further action will be taken by us with respect to the subdivision for 60 days thereafter to permit the Board of Water Supply and the Board of Agriculture to take the necessary legal steps for a condemnation of the property. I think you will agree that this commitment on our part to withhold further action until the time indicated clearly demonstrates our desires to cooperate with governmental agencies insofar

Exhibit 5 map (w/original file)

EXHIBIT 6

WILLIAM F. QUINN
Governor

ENTOMOLOGY AND MARKETING
FORESTRY

RECEIVED
... PLANNING CO... ANIMAL INDUSTRY
... FISH AND GAME

1961 FEB 21 PM 4 15

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE AND CONSERVATION
HONOLULU 14, HAWAII

February 21, 1961

Mr. Leighton S. C. Louis
Planning Director
City and County of Honolulu
Honolulu Hale Annex
Honolulu 13, Hawaii

RE: PROPOSED SUBDIVISION - MANOA TAX MAP KEY: 2-9-54:7
OWNER: ROMAN CATHOLIC CHURCH LESSEE: JOHN ENA TRUST ESTATE

Dear Sir:

Your letter of February 13, 1961 pertaining to the above subject is acknowledged.

In regard to this matter, please be advised that the Board of Agriculture and Conservation at its meeting on February 17, 1961 has scheduled a public hearing on the Honolulu Watershed Forest Reserve Boundary on Friday, April 21, 1961 at the Board Office, 1428 S. King Street, Honolulu. The Board will consider the entire boundary line extending from Palolo Valley to Kalihi Valley. This is being brought to your attention to keep you advised on developments in this department relative to the forest reserve boundary.

I appreciate the position you are placed in regarding your February 22, 1961 commitment, which I view as a tentative approval for the subdivision. I wish to thank you for calling my attention to the fact that after February 22nd the owner will allow an additional 60 days to permit this Board to [illegible] the necessary legal steps for condemnation of the property.

I assure you this Board is most anxious to finalize this problem to the satisfaction of all concerned.

Yours very truly,

GORDON P. CHUNG-HOON, Director
of Agriculture and Conservation

CC: Board of Water Supply

RECEIPT

February 10, 1961

as we are able to do so consistent with our Trustee obligations to beneficiaries of the properties we manage.

Very truly yours,

K. R. Nurse
Vice President

KRN:jo

cc: Mr Martin Anderson,
Anderson, Wrenn & Jenks

CITY AND COUNTY OF HONOLULU

February 24, 1961

Hawaiian Trust Company, Ltd.
1010 Richards Street
Honolulu 13, Hawaii

Attention: Mr. K. R. Nurse

Gentlemen:

Proposed Subdivision: Manoa
Tax Key: 2-9-54: 7
Owner: Roman Catholic Church
Lessee: John Ena Trust Estate
Surveyor: R. M. Towill Corporation

Tentative approval was granted by the Planning Director on February 23, 1961 to the proposed subdivision of a portion of Grant 204 to P. Kanoa and Kahiwalani at Manoa into 87 lots with areas ranging from 7,800$^{\square}$ to 22,400$^{\square}$, a remainder lot of 55.35+ acres, and 24, 32 and 44-foot rights-of-way, together with lot width modification for Lots 3 to 6, 23 to 26, 48, 49, 51, 52, 77 and 78.

The Director granted tentative approval on the basis that there are no grounds for disapproval of the preliminary map and that the applicant cannot agree to deferring the decision until May 27, 1961. Therefore, approval of this subdivision will be subject to compliance with the requirements of the Division of Engineering (stream data), Department of Agriculture and Conservation, and Building Department; construction of all street improvements, utilities and drainage facilities, including an adequate and potable water system; construction of the access road to meet a public street; certification by the Chief Engineer as to suitability of the land for residential use; and filing of final survey maps designating a playground site as recommended by the staff and showing proposed Lots 10 and 50 with a rounded entrance.

Very truly yours,

PLANNING DEPARTMENT

Leighton S. C. Louis
Planning Director

KY:ef

EXHIBIT 8

File

Petition Copy

9-7

RECEIVED
FEB 17 1964
State of Hawaii
LAND USE COMMISSION

12 February 1964

State Land Use Commission
465 South King Street
Honolulu, Hawaii 96813

Dear Sirs:

The purpose of this letter is to protest the conversion of approximately one-hundred sixty acres in Manoa valley from watershed forest reserve to residential as petitioned by the Hawaiian Trust Company and the Catholic Church.

If the contention of the Board of Water Supply is valid--and I am not competent to evaluate their position-- then it would be not only short-sighted but fool-hardy to permit the proposed conversion.

If it is assumed, for the sake of discussion, that the argument of the Board of Water Supply is not valid, it is still my view that it would be unwise to convert this portion of the valley to a residential area. One has but to observe the ugly scar left by Mr. Pao's bulldozers on the side of a once beautiful mountain--a wound which will take decades to heal--to be thoroughly convinced that the terrain is wholly unsuitable for conversion into a residential area from the aesthetic standpoint.

In view of the foregoing, then, it is my unalterable view that it would be injudicious to endorse the proposed conversion.

Sincerely,

Donald G Aten

Donald G Aten
1104 Nanialii Street
Kailua, Hawaii 96734

Hawaiian Trail and Mountain Club
Box 2238 Honolulu 4, Hawaii

Jan. 29, 1964

RECEIVED
FEB 3 1964
State of Hawaii
LAND USE COMMISSION

The Land Use Commission
State of Hawaii
Honolulu, Hawaii

Gentlemen:

Because of time limitations the Hawaiian Trail and Mountain Club did not speak at the January 18 hearing. We submit the following comments on the petitions heard concerning a request for Urban classification of part of Manoa Valley:

1. The petitions should be denied.

2. The primary consideration is water supply. We agree with the position of the Board of Water Supply that since the areas in question are vital to the maintenance of adequate water supply no uses should be permitted that would endanger this purpose, as urbanization certainly would. Particularly in view of the nearby residential project already in progress, the impact of which is not yet known, it would be senseless to abandon any of our present water supply. The Board of Water Supply says that there is enough water for the forseeable future <u>if the supply is carefully managed</u>, and this surely does not mean urbanizing vital watershed areas.

3. We feel, with the Manoa Residents' Association, that there has been enough scarring of the head of this beautiful valley. We feel, furthermore, that aesthetics is worth much in the community and is something for which we are ready to stand up and be counted.

4. The argument that the water reserve lines had not been properly assumed has no real relavence to the present case. Why try to bury the previous Commission again? The task of the Commission now is to decide the proper usage and the proper usage boundaries, regardless of how the lines previously were assumed.

5. The statement that the area is "in the path of urbanization" is meaningless wind. As Les Watson says, all of Oahu is in the path of urbanization. But we still decide and set limits.

6. The danger to proper and economical maintenance of Lyons Arboretum is a substantial consideration. This type of botanic area is a fortunate feature in the community and should not be jeopardized. The necessary favorable conditions for the University's seismic studies should be maintained also.

7. We do not subscribe to the argument that if it is possible to develop an urban area, then it should be so developed. The opinion is often voiced that in real estate a developer can get just about whatever he wants. It is to be hoped that by wise planning this feeling can be eliminated.

8. Contrary to what the petitioners seem to be implying in their oral presentation, we do not see any wording in Act 187 or Act 205 that compels Urban classification for an area such as those in question. An interpretation such as this certainly would not be in accord with the intent of the Law, which is to foster wise action after reasoned decision.

Very truly yours,

David C. Sanford

David C. Sanford, Vice President
Hawaiian Trail and Mountain Club

THE CONSERVATION COUNCIL FOR HAWAII

FOUNDED IN
1950

BISHOP MUSEUM
HONOLULU 17, HAWAII

January 29, 1964

RECEIVED
JAN 30 1964
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii
426 South Queen Street
Honolulu, Hawaii

Attention: Mr. Raymond Yamashita,
Executive Officer

Gentlemen:

I am pleased to attach five copies of a report concerning the zoning of lands in upper Manoa Valley, Island of Oahu. This report has been prepared by our Water Committee, chaired by Dr. Noel Hanson and comprised of Messrs. Robert T. Chuck, Richard Cox, Doak Cox, Fred C. Gross, Frank E. Midkiff, John Mink, Bernard J. McMorrow, Bessel van't Woudt and Mat Whiton.

The recommendations contained therein have been endorsed by the Executive Board of the Conservation Council, and are submitted for your consideration. We will be pleased to furnish additional comments or data which you may require.

Respectfully submitted,

Ted M Damron

TED M. DAMRON
President

TMD:lkt

Attch.

The Conservation Council for Hawaii, organized as part of a world conservation movement, is composed of over sixty local government and private agencies and organizations, as well as individuals concerned with all aspects of conserving the natural resources of the Hawaiian Islands.

January 27, 1964

TO: State Land-Use Commission

FROM: Conservation Council for Hawaii

SUBJECT: Conservation Lands in Upper Manoa Valley

Reference is made to a recent request for change in zoning from Conservation to Urban classification of certain lands in upper Manoa Valley. These are lands that have been included under water reserves classification prior to and under Conservation Classification since July 11, 1961, covered by provision of Chapter 98H Revised Laws of Hawaii 1955 (1961 supplement).

The Conservation Council for Hawaii respectfully urges that the above lands which should also include those known as the Mabel K. Ena estate TMK 2-9-54:5 remain under Conservation classification in perpetuity under the State of Hawaii for the following reasons:

1. Based on data developed by the Board of Water Supply of the City and County of Honolulu, there is urgent need for all of the area in question to be retained for use as water reserve to supply the rapidly growing demands of this city for water.

2. Preservation of the above area with regard to a number of endemic and exotic plants, which comprise part of the natural ground cover, is highly important. A large portion of this land is situated adjacent to the Arboretum of the University of Hawaii. Destruction of existing ground cover will lead to severe erosion, spread of introduced species of plants, as well as the encroachment of insects and, very likely, infestation by African Snails. These areas, as well as the Arboretum, are frequently used by teachers of Biology in the University of Hawaii, and by schools and outdoor-oriented organizations of Honolulu for educational purposes.

3. Preservation of the forest mantle as a background for the residential areas of Manoa Valley. Also for recreational use, particularly hiking trails, as may be permitted in a water-reserve area.

em

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UNIVERSITY OF HAWAII • HONOLULU, HAWAII 96822

THE PRESIDENT

January 17, 1964

RECEIVED
JAN 1[illegible]
State of Hawaii
LAND USE COMMISSION

State Land Use Commission
426 Queen Street
Honolulu, Hawaii

Gentlemen:

We wish to submit herewith for your consideration our comments on the petitions submitted by the owners for change in temporary land use district classification from "conservation" to "urban" for the following six parcels located in Manoa Valley, Honolulu, for which public hearings will be held on January 18, 1964.

1. TMK 2-9-54:07
2. TMK 2-9-54:13
3. TMK 2-9-54:18
4. TMK 2-9-55:05
5. TMK 2-9-55:10
6. TMK 2-9-54:05

All of these parcels are in proximity to the H. L. Lyon Arboretum which is under the control of the University of Hawaii. Parcels identified by TMK 2-9-55:05 and TMK 2-9-54:07 abut the Arboretum property. We are of the opinion that the proposed change in the land use district classification as petitioned by the land owners would adversely affect the University of Hawaii's interest, and hence, would not be in the public interest. Our reasons for reaching this conclusion are as follows:

1. Further encroachment of the urban area toward the Arboretum would increase the problems of pest control and vandalism at the Arboretum. The relative remoteness of the Arboretum helps us in keeping these problems under control at the present time.

2. We are very seriously concerned about the problem of erosion which may result in the Arboretum lands due to intensive grading and earthwork which will very probably be required to develop the two properties which abut the

Arboretum. The heavy rainfall which normally occurs in this area makes this a very serious problem in our opinion.

3. We have recently completed the installation of a seismic facility within the Arboretum property for our research program. The relative remoteness of the Arboretum from traffic and other sources of seismic noise was a very instrumental factor in the selection of this site for the seismic facility. Of particular concern in this respect is that in our opinion there is no other comparable site within proximity of the Manoa Campus which could replace our present installation.

In view of the forgoing, we must reluctantly object to the proposed change in the district classification as petitioned by the owners. We recognize the complex problems which the Commission must evaluate on this matter. Your consideration of our comments will be most appreciated.

Sincerely yours,

Thomas H. Hamilton
President

cc: Board of Water Supply

This statement was made to the Land Use Committee Hearing on Saturday, January 18th, 1:00 P.M., Land Use Commission's Office by Laurence F. Blodgett, President of the Manoa Valley Community Association.

RECEIVED
JAN 1
State of Hawaii
LAND USE COMMISSION

Two years ago this problem was discussed with the Board of Water Supply and several interested people in the Manoa Valley Community Association. At that time the Association took the stand that it would support the position of the Board of Water Supply. Nothing in the intervening two years has appeared to alter this decision. But, this opportunity to speak to the Land Use Committee on a small segment of the State that comes under their planning jurisdiction is a welcome one.

I won't bore you with statistics and I do not represent a group that is against development but a group that is actively seeking the way to develop through active and intelligent planning. The people of Manoa are against the further desecration of the greenness at the top of their Valley, for so muchhas been lost to the people of Hawaii already. It will only be a short time before the residents of Hawaii will have forgotten that there ever was a PUU PIA, one of the natural beauty areas on the Island of Oahu. A mountain located in the middle of the Valley surrounded by flower growers and small truck farms. The pastureland stabled several hundred horses for the use of the children of the Valley. All of this is gone now.

There may be only a few left in this room that remember that the finest ti-leaf slide and the most accessible ti-leaf slide came from three quarters of the way up WAAHILA RIDGE down to Woodlawn Drive. If those in this room do not remember, I can assure you

that the Hawaii Tourist Bureau has a very long memory as they are still sending tourists up to this wonderful ti-leaf slide that no longer exists. I know that for a fact because I happen to own a house right in the middle of it. We weren't planning and so now it is gone.

Even now the last of the open land that could have been made into a very lovely natural park for the people of Honolulu is being sub-divided and no longer will the stabling or pasturing of horses be available to the children in this area.

Now these points are only a few of the really important things that are frequently forgotten, ~~in the interest of brevity~~. I remember 23 years ago, when as a student at the University of Hawaii, how we discussed the possibility of having a natural park along the banks of Manoa stream forming a corridor from the University's arboretum to the University campus. What a wonderful idea this would have been. Today, I still think that this is a wonderful idea and I think that the University and the State and the City and County and the residents of the Valley should have an opportunity to study this from the aesthetic standpoint of having a park promenade along side a stream that could be continued down to the Ala Wai, where people could promenade along a natural stream bed or ride bicycles unencumbered by traffic.

At least we should have time to know whether or not the State or the University or the Board of Water Supply does not require the additional land now marked in the natural resource boundary, for

parks, water or arboretum. These plans should be well known and stated before any land is designated urban and therefore available for subdivision.

We have seen a great deal of beauty in our neighborhood, in the Valley, thoughtlessly taken away. And that is why the 20,000 residents of the Valley will support me when I say, "Allow us to assist in planning the last of the natural resources that we have in our particular area. We believe this should remain as designated natural resource and for the residents it indicates that this is the highest and the best use of this particular area."

(61)

January 18, 1964

RECEIVED
JAN 18 1964
State of Hawaii
LAND USE COMMISSION

Land Use Commission
State of Hawaii

Gentlemen:

The Chamber of Commerce of Honolulu is on record as supporting the State Land Use Law and believes that the proper implementation of this law provides a valuable and necessary guidance for the development of our State.

The 1964 Objective of the City Beautification Committee is: "To work for the conservation and development of Oahu's physical beauty with emphasis on objects and places of historic, scenic, recreational, cultural and visitor interest." Further, a major program item is: "Work for the preservation of historic and scenic sites within the Land Use program and the Oahu General Plan".

We are concerned over the application to change an important segment of the Conservation District in Upper Manoa Valley from conservation to urban. The land in question provides an important green open space in densely settled Manoa Valley and serves as a scenic background for this urban area.

In addition to creating more desirable environments in which to live, our scenic assets are important for the economic development of our State; therefore, we strongly feel that esthetics should be given due consideration when making land use determinations.

We wish to point out that the available open space in Manoa Valley has been encroached upon in recent years. We appreciate that this urbanization was caused by population growth, but we feel that retention of this area in conservation would give at least the feeling of open space in Manoa Valley.

Additional area may be needed in the future for expansion of the arboretum abutting this land and could perhaps, in time, be connected with the University of Hawaii by a park system along Manoa Stream.

The Board of Water Supply recommends that the land be retained as an important watershed area and we feel that their findings, based on technical knowledge, should be given fullest consideration by your Commission.

Thank you very much for giving us an opportunity to express our views.

Very truly yours,

Mrs. Reuel Denney
City Beautification Committee

RD:hjp

THE OUTDOOR CIRCLE
1839 ANAPUNI STREET
HONOLULU 14, HAWAII

December 26, 1963

RECEIVED
DEC 28 1963
State of Hawaii
LAND USE COMMISSION

Mr. Robert Wenkam, Member
State Land Use Commission
426 Queen Street
Honolulu, Hawaii

Dear Mr. Wenkam:

Thank you for your letter of December 12. The Outdoor Circle very much appreciates your keeping us informed on the pregress of the new State Land Use Commission, and particularly for alerting us to forthcoming public hearings.

Concerning the proposed General Plan for Oahu, The Outdoor Circle will continue to speak out concerning these proposals in the Plan which we believe do not provide adequate protection for our scenic areas.

Specifically, we believe the entire area of Kawainui Swamp to and including the Pali foothills should be put in the Conservation Classification, as designated by the previous State Land Use Commission in March, 1963.

Concerning the request for a land use change in upper Manoa Valley, please be assured, when this is considered by the Commission, The Outdoor Circle will strongly support the Board of Water Supply in their stand that this water reserve area be retained in the Conservation Classification.

With our Best Wishes for the coming year.

Sincerely,

Mrs. Jack Marnie
President

April 10, 1962

Mr. Roland J. Darnells
Executive Officer
Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii

Re: Account #44900-John Ena Trust Estate, Mabel Ena, Guardianship, #44930 Manoa Lands

Dear Mr. Darnells:

The Hawaiian Trust Company, Limited, as designated agent for John and Mabel Ena, hereby protests the classification by the Land Use Commission of the following described property as "Conservation". The Hawaiian Trust Company, Limited, requests that the following described be designated urban:

A. John Ena Trust Estate (Lessee from Roman Catholic Church)

1. T.M.K. 2-9-54-7 containing 35.164 acres

2. T.M.K. 2-9-54-13 containing 27.100 acres

3. T.M.K. 2-9-54-18 containing 12.300 acres

4. T.M.K. 2-9-55-05 containing 33.000 acres

5. T.M.K. 2-9-55-10 containing 48.000 acres

B. Mabel Ena, Guardianship

T.M.K. 2-9-54-05 containing 122,900 square feet

The aforementioned Trust has expended substantial funds in the preparation and submission of subdivision plans for 35 acres, more or less, located and described as a portion of 2-9-54-7. This subdivision was submitted for approval before the City Planning Commission of Honolulu, and it was subsequently granted

tentative approval; however, the Board of Water Supply and Board of Agriculture have withheld their approval because they wish to extend the Honolulu Watershed Forest Reserve Boundary and include the subject lands. Official designation has not been made declaring the subject lands to be conservation.

Enclosed please find a map setting out the area herein under consideration. Thank you very much for your consideration of this matter.

Very truly yours,

HAWAIIAN TRUST COMPANY, LTD.

Charles M. Holland, Jr.

Charles M. Holland, Jr.
Property Management Dept.

CMH:eh

Encl.

16.664 AC
46.5 AC
KAMOA
PLAT 55
PLAT 53
PLAT 52
LOT
2
9

STATE OF HAWAII

DEPARTMENT OF LAND
AND NATURAL RESOURCES
HONOLULU 9, HAWAII

March 17, 1962

MEMORANDUM

To: Mr. Ralph K. Ajifu, Chairman
State Land Use Commission

From: E. H. Cook, Director
Department of Land and Natural Resources

Subject: Approval of Proposed Change in Conservation District Boundary - (Honolulu Watershed Forest Reserve).

Statement pertaining to hearing held in Honolulu March 15, 1962 By State Land Use Commission.

A. Reference Exhibits.

(1) Map showing:

a. Green line. Last officially proclaimed boundary of the Honolulu Watershed Forest Reserve and the Halawa-Aiea segment of the Ewa Forest Reserve. (Proclamation of 1926).

b. Solid red line. Revised boundary; approved by Board of Agriculture and Conservation on June 22, 1961 following the required public hearing held on April 14, 1961; surveyed and map completed Dec. 5, 1961; approved by the Board of Land and Natural Resources Jan. 26, 1962 and ordered to be presented to the State Land Use Commission for final approval.

c. Broken red line. This line represents the proposed legal makai boundary of the Halawa-Aiea portion of the Ewa Forest Reserve transferred to the Honolulu Watershed by resolution of the Board of Agriculture and Forestry in 1950 and reconfirmed by the Board of Agriculture and Conservation on June 22, 1961.

(2) Map showing Halawa-Aiea segment metes and bounds.

B. Brief History of Actions to Enlarge the Honolulu Watershed.

The Honolulu Watershed Forest Reserve was established by Governor's Proclamation and Executive Order in 1913. It consisted of approximately 5,000 acres of government land and 1,950 acres of private land. It soon thereafter became evident that the area was entirely too small

provide sufficient water for the growing metropolitan area of Honolulu. Actions to enlarge the watershed led to the proclamation of a revised boundary in 1926, represented on the makai side by the solid green line on the exhibit map. The 1926 proclamation and Executive order extended the area to 14,808 acres, including 5,456 acres of government land and 304 acres of federal land. The balance was private land.

During the Second World War a serious problem of water supply arose. In order to meet the situation new tunnels and pumping facilities, drawing on the waters of Halawa and Aiea streams, were installed. At that time it because further evident that the Honolulu Watershed should again be expanded. In 1944 the then Board of Agriculture and Forestry voted to transfer the N. and S. Halawa and Aiea stream drainages from the Ewa Forest Reserve to the Honolulu Watershed Forest Reserve.

At the same time a study was started to ascertain what adjustments were needed in the makai boundary of the Honolulu Watershed Forest Reserve. Following this study a survey was made of the new proposed boundary and a map prepared by the State Survey Department. A public hearing was held in May 1950 on this proposed boundary. At a meeting of the Board following the public hearing most of the proposed boundary was approved without change. However, certain short segments were approved as to general location with the exact fixed boundary to be determined after certain acquisitions then being negotiated were completed and certain additional studies were made. These actions were not completed until 1960. So much time had elapsed since the 1950 public hearing the Attorney General advised that a new public hearing be held. That hearing was the one held on April 14, 1961.

Following the said 1961 hearing certain minor adjustments were approved by the Board of Agriculture and Conservation and the survey made fixing the boundary as ordered by the Board. That boundary is the one represented by the solid red line on the attached official survey map of Dec. 5, 1961, designated HSS Plat 2134-E. It is the boundary shown on the map considered at the Land Use Commission Hearing in Honolulu on March 15, 1962.

The 1961 hearing concerned the fixing of the Honolulu Watershed from its eastern end to the divide west of Moanalua Stream. It also concerned the transfer of North and South Halawa and Aiea Stream drainages from the Ewa Forest Reserve to the Honolulu Watershed Forest Reserve, with the proposed adjustment in the makai boundary of that portion to be considered at a later hearing. There was no opposition to this transfer and it was approved by the Board.

In the meantime Act 187 became a law and the power to change the conservation district boundaries now rests in the State Land Use Commission.

March 17, 1962

Action Requested:

1. Approval of the boundary represented by the solid red line on the exhibit map and the makai boundary of the Halawa-Aiea sector represented by the broken red line. A hearing for the latter had not previously been held. It also was in accord with boundary on the map considered at the March 15 Land Use Commission hearing.

   Exhibit map #2 shows the metes and bounds description of the Halawa-Aiea sector.

The proposed makai boundary of the Halawa-Aiea portion has been considered as the correct boundary since 1950. It resulted from a careful study for the purpose of better defining the essential watershed lands and excluding those bound best adapted to other purposes. Unfortunately the action to proclaim this new boundary at that time was not carried thru and the old boundary of 1926 (shown in green) is still the legal boundary. Hence, the present request.

E. H. COOK, Director

Attach.

cc: Forestry

Hawaiian Trust Sues Land Unit

The Hawaiian Trust Co. has sued the State Land Use Commission, charging it took away several square miles of privately owned land in Upper Manoa Valley "without due process of law."

The trust company filed the suit in Circuit Court on behalf of the estate of the late John Ena, who owned the property. The company also represents Mr. Ena's widow, Mabel K. Ena, who has been declared an incompetent person.

The suit is against both the Land Use Commission and Shelley M. Mark, a member of the commission.

* * *

ACCORDING TO the suit, the commission, on April 4, 1962, adopted temporary district boundaries for conservation, agriculture, and urban districts for the City and County of Honolulu. Included within the boundaries is the property owned by the Ena Estate.

The suit contends the boundaries were adopted in violation of State law inasmuch as a change in the Ena land to urban use was already in progress.

The suit says that the setting of the boundaries violates both the Hawaii and U.S. Constitutions because the inclusion of the Ena land in the conservation district "constitutes taking the property without just compensation."

Advertiser
11/7/63

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. _____

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of JOHN ENA, deceased,

Plaintiff,

vs.

STATE LAND USE COMMISSION OF THE STATE OF HAWAII and SHELLEY M. MARK,

Defendants.

COMPLAINT
FOR DECLARATORY JUDGMENT

COUNT I

1. Plaintiff Hawaiian Trust Company, Limited is a Hawaii corporation, and is the duly qualified and acting trustee of the Trust Estate created by the will of John Ena, deceased, having been appointed such by the said will as admitted to probate in proceedings entitled "In the Matter of the Estateof John Ena, deceased", and bearing Probate No. 3927 in the files of this court. Defendant STATE LAND USE COMMISSION OF THE STATE OF HAWAII is an agency of the State of Hawaii created by § 98H-1 of the Revised Laws of Hawaii 1955, and will be referred to hereinafter as the "Agency". Defendant SHELLEY M. MARK is the only member of the Agency. This is an action for a declaratory judgment brought pursuant to § 6C-7, R.L.H. 1955.

Duplicate Ref

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 17480

HAWAIIAN TRUST COMPANY, LIMITED,
Trustee of the Trust Estate of
JOHN ENA, deceased,

Plaintiff,

vs.

STATE LAND USE COMMISSION
OF THE STATE OF HAWAII and
SHELLEY M. MARK,

Defendants.

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1963 OCT 1 PM 3 32
P. J. O'Sullivan, Jr.
CLERK

I do hereby certify that the attached folio of

COMPLAINT
FOR DECLARATORY JUDGMENT

and

SUMMONS

Are true and correct copies of the originals on file in this office.

Clerk, Circuit Court, First Circuit,
State of Hawaii

Of Counsel:

ANDERSON, WRENN & JENKS

MARTIN ANDERSON
CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorneys for Hawaiian
Trust Company, Limited

2. On April 4, 1962 the Agency adopted temporary district boundaries for the conservation, agriculture and urban districts for the City and County of Honolulu, as provided by § 98H-5, R.L.H. 1955, prior to the amendment of Chapter 98H, R.L.H. 1955, by Act 205 of the Second State Legislature, 1963 Regular Session. The said temporary district boundaries were filed with the Lieutenant Governor of the State of Hawaii on April 11, 1962, and will be referred to hereinafter as the "boundaries".

3. The boundaries were adopted by the Agency as a rule, as defined by § 6C-1(d), R.L.H. 1955.

4. Plaintiff, as trustee as aforesaid, is the owner of a leasehold interest in certain real property located in the City and County of Honolulu and bearing Tax Map Key Nos. 2-9-54-07, 2-9-54-13, 2-9-54-18, 2-9-55-05 and 2-9-55-10. Said real property, referred to hereinafter as the "subject land", is located within a conservation district of the boundaries.

5. The boundaries were adopted in violation of § 98H-5, R.L.H. 1955, prior to the amendment of said section by said Act 205, in that the inclusion of the subject land in a conservation district was unreasonable, impracticable, and due to the mistaken belief of the Agency that the subject land was in a "forest and water reserve zone" provided in § 19-70, R.L.H. 1955, and in that a change in the use of the subject land to urban use was already in progress when the boundaries were adopted.

6. The boundaries violate the Constitutions of Hawaii and the United States in that the inclusion of the

subject land in a conservation district constitutes a taking of Plaintiff's property for a public use without just compensation and deprives Plaintiff of Plaintiff's property without due process of law.

7. The boundaries were adopted without compliance with the requirement of § 6C-3(a), R.L.H. 1955, for notice for a public hearing prior to the adoption of any rule.

COUNT II

8. Paragraphs 1, 2, 3 and 4 are repeated.

9. The boundaries were adopted pursuant to the rule making procedure provided by §§ 6C-3 and 6C-4, R.L.H. 1955.

10. Chapters 98H and 6C R.L.H. 1955 prohibited and prohibit the adoption of the boundaries pursuant to the aforesaid rule making procedure, and the Constitutions of the United States and Hawaii, as well as the said Chapters, required and require notice and a hearing pursuant to §§ 6C-9 through 6C-13, R.L.H. 1955, prior to the inclusion of the subject land in a conservation district boundary.

11. Plaintiff was not given notice or a hearing pursuant to said §§ 6C-9 through 6C-13 prior to the inclusion of the subject land in a conservation district boundary.

WHEREFORE, Plaintiff demands that the boundaries be declared invalid.

DATED: October 1, 1963.

Of Counsel:

ANDERSON, WRENN & JENKS

/s/ Martin Anderson
MARTIN ANDERSON

/s/ Christopher Cobb
CHRISTOPHER COBB
Bank of Hawaii Building
Honolulu, Hawaii

Attorneys for Hawaiian Trust Company, Limited

In the Circuit Court of the First Circuit

STATE OF HAWAII

CIVIL NO.....

HAWAIIAN TRUST COMPANY, LIMITED, Trustee of the Trust Estate of JOHN ENA, deceased,

Plaintiff

v.

STATE LAND USE COMMISSION OF THE STATE OF HAWAII and SHELLEY M. MARK,

Defendants

SUMMONS

State of Hawaii

To the above-named Defendant:

You are hereby summoned and required to serve upon .....

MARTIN ANDERSON of Anderson, Wrenn & Jenks, plaintiff's attorney,

whose address is Bank of Hawaii Building, Honolulu, Hawaii,
an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

P. J. O'Sullivan, Jr.
Clerk of Court

Dated OCT - 1 1963

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

RETURN ON SERVICE OF SUMMONS

I HEREBY CERTIFY and return that on the ..... day of ....., 19....,

I served the within summons on .....

.....

at ....., by delivering to ..... a certified copy

hereof and of the complaint hereto annexed.

Dated .....

.....

☐ Police Officer
☐ Person specially appointed by the Court

SUBSCRIBED and sworn to before me

this ..... day of ....., 19....

.....

NOTE: This summons is issued pursuant to Rule 4 of the Hawaii Rules of Civil Procedure. AFFIDAVIT required only if service is made by a person specially appointed by the court.

JD—044.21 (10 '10 '62)

RECEIVED
OCT 14 1963
State of Hawaii
LAND USE COMMISSION

Oahu protests

I sent to Comm.

ANDERSON, WRENN & JENKS

ATTORNEYS AT LAW
502-924
BANK OF HAWAII BUILDING
HONOLULU 1, HAWAII

HEATON L. WRENN
LIVINGSTON JENKS
JOHN P. RUSSELL
H. BAIRD KIDWELL
JAMES N. RICHMOND
MARSHALL H. GOODSILL
WALTER E. BLISS
RICHARD E. STIFEL
PAGE M. ANDERSON
MARTIN ANDERSON
HUGH SHEARER

TOBIAS C. TOLZMANN
GEORGE L. DYER, JR.
CHRISTOPHER COBB

ROBBINS B. ANDERSON
COUNSEL

CABLE & WIRELESS ADDRESS
"DELTA"
P.O. BOX 3196

March 21, 1963

RECEIVED
MAR 22 19[illegible]
State of Hawaii
LAND USE COMMISSION

Land Use Commission
~~Department of Land and Natural Resources~~
426 Queen Street
Honolulu, Hawaii

Gentlemen:

We are writing this to protest the inclusion of certain land located in Manoa Valley, Honolulu, in a conservation district. This land includes five parcels bearing Tax Map Key Nos. 2-9-54-07, 2-9-54-13, 2-9-54-18, 2-9-55-05 and 2-9-55-10. We represent Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, lessee of this land, and the Roman Catholic Church, the fee owner and lessor, in making this protest.

This land was included in a conservation district in the temporary district boundaries adopted by the Land Use Commission in April of 1962, despite a written protest by the Hawaiian Trust Company, Limited opposing such inclusion. We refer you to that protest, which is in your files. The proposed final district boundaries adopted by the Commission in January of 1963 also include this land in a conservation district.

This land was not within the boundaries of the old forest and water reserve zones, provided in §19-70 of the Revised Laws of Hawaii 1955, when the Land Use Law went into effect on July 11, 1961. Thus this land was not automatically converted into a conservation district by §98H-3. We have therefore assumed that the Commission proposes to add this land to the conservation district pursuant to its general power to determine the boundaries of that district from and after July 11, 1961.

Cir Cobb

We have been aware that public hearings will be held by the Land Use Commission on Oahu next week, with respect to the proposed final boundaries and regulations. We had planned to appear at one of those hearings to present evidence and arguments which we feel would convince the Commission that this land should be classified as urban under the Land Use Law, and to present evidence and arguments to counter the evidence and arguments relied upon by the Land Use Commission in support of its proposed classification of "conservation". We therefore have attempted to find out why the Land Use Commission classified this land as "conservation" on the temporary district maps, and why it proposes to do so on the final maps. We have contacted Mr. Mullahey and he has shown us a map, entitled "Honolulu Watershed Forest Reserve", revised December 5, 1961, which showed a boundary, marked on it with a colored pencil, within which this land was situated. Mr. Mullahey has informed us that the temporary boundaries and the proposed final boundaries were both taken from this boundary.

According to Mr. Mullahey, this map was received by the Land Use Commission from the Department of Land and Natural Resources, together with a recommendation by the Department and by the Board of Water Supply that the boundary marked on it should be adopted as the boundary of the conservation district. Apparently, this recommendation was acted upon favorably by the Commission. We have been unable to discover the terms of the recommendation by the Board and the Department, and have been unable to determine what facts and arguments the Board, the Department and the Commission relied upon in their determination.

Because of the stringent limitations on the use of land classified "conservation", the proposed action of the Commission will have a drastic effect on the value of this land. Therefore, we should be given an opportunity to present our case before the Commission. However, unless we know the issues and facts upon which the Commission relies in proposing to classify this land as "conservation", we cannot do so. It has, of course, been impossible for us to prepare for the hearings scheduled by the Commission for next week, since we have received no indication of the basis for the proposed action.

We respectfully demand that we be given an explicit statement in plain language of the facts alleged by the Land Use Commission in support of its proposed classification of this land, that we be given a fair opportunity to prepare for a hearing on the facts and issues involved, and that we be afforded a hearing on these facts and issues in accord with Chapter 6C, R.L.H. 1955.

Since the hearings scheduled for next week will be held in any event, we plan to appear at the Honolulu hearing to present the facts we know, and the arguments we have prepared, in support of our contention that the Land Use Law requires an urban classification of this land. We will do so, however, only to provide the Commission with some of the facts about this land, and with a statement of what we feel are the issues involved and the reasons in support of our contentions. We cannot prepare counter-arguments, or present rebuttal evidence, since we do not know the basis for the proposed action by the Commission.

If the Commission would prefer that we wait until after we have received the requested bill of particulars, and have had a chance to prepare our defensive case, before we present this affirmative case, we will be happy to oblige.

We understand that it is customary for the Commission to seek the recommendations and arguments of other agencies after initial public hearings have been held. Since the recommendations upon which the proposed action, with respect to this land, appears to be based reportedly came from the Department of Land and Natural Resources and from the Board of Water Supply, the Commission may feel that these agencies should be consulted after we have presented our affirmative case next week. If they are consulted, then we respectfully demand that we be fully informed of such consultation and of the replies received, and that we be given an opportunity to be heard on any issues of fact or law raised by them.

We would like to take this opportunity to thank you

for your consideration of this matter.

Very truly yours,

ANDERSON, WRENN & JENKS

Christopher Cobb

Christopher Cobb

CC/mf

94

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the classification of certain land in Manoa Valley on the Island of Oahu

PROTEST OF THE OWNER AND LESSEE

This protest is concerned with five parcels of land located in Upper Manoa Valley, Honolulu, Hawaii. The five parcels are identified by Tax Map Key Nos. 2-9-54-07, 2-9-54-13, 2-9-54-18, 2-9-55-05 and 2-9-55-10. These five parcels are owned in fee simple by The Roman Catholic Church in the State of Hawaii and are leased to Hawaiian Trust Company, Limited, Trustee of the Trust Estate of John Ena, hereafter referred to as the "owner" and "lessee," respectively. Attached hereto as Exhibit 1 is a map entitled "Honolulu Watershed Forest Reserve." The five parcels with which this protest is concerned are located within the red circle drawn on this map. The red circle contains other land in addition to these five parcels, and is intended only to indicate the general area in which this land is located. Attached hereto as Exhibit 2 is a more detailed map, which shows the subject land shaded in blue and identified by Tax Map Key numbers.

This land was included in a conservation district in the temporary district boundaries adopted by the Land Use Commission in April of 1962, despite a written protest by

Hawaiian Trust Company, Limited opposing such inclusion. We refer you to that protest, contained in a letter sent to the Commission in April of 1962, which is in your files.

The proposed final district boundaries adopted by the Commission in January of 1963 also showed this land as being in a conservation district. By a letter dated March 21, 1963 to the Land Use Commission the owner and lessee protested this proposed classification. Martin Anderson, Esq., appeared at a public hearing held by the Land Use Commission in Honolulu on March 27, 1963, on behalf of Hawaiian Trust Company, Limited, and argued against the proposed classification.

At that hearing it was pointed out to the Commission that there were two possible reasons why the subject land might have been included in the conservation district on the proposed final district boundary maps. The first of these derived from the fact that the Land Use Law had the effect of requiring that the old "Forest and Water Reserve Zones," provided by § 19-70, R.L.H. 1955, be designated as "conservation districts," effective July 11, 1961, the effective date of the Land Use Law. (See § 98H-3.) On the other hand, this land might have been included in a conservation district by an exercise of the discretion of the Land Use Commission, pursuant to the power given to it by § 98H-3, to alter or amend the boundary of the conservation district after the effective date of the Land Use Act. Thus, the Land Use Commission might have exercised its discretion by enlarging the conservation district, when it adopted the

temporary district boundaries in April of 1962, and might have exercised the same discretion in adopting the proposed final district boundaries in January of 1963.

As was pointed out at the hearing before the Land Use Commission, the land with which this protest is concerned was not within the "Forest and Water Reserve Zones" on July 11, 1961. The three parcels identified by Tax Map Key Nos. 2-9-54-07, 2-9-54-13 and 2-9-54-18 were never at any time in the Forest and Water Reserve Zones, or in the "Forest Reserve" which was the predecessor of the Forest and Water Reserve Zones. These three parcels are shaded in plain blue on Exhibit 2. On the other hand, the other two parcels, identified by Tax Map Key Nos. 2-9-55-05 and 2-9-55-10, were at one time in the "Forest Reserve." These two parcels are shaded in blue and are cross-hatched in blue on Exhibit 2. Upon the passage of § 19-70, R.L.H. 1955, in 1957, the owner and lessee of these last two parcels decided to withdraw the subject land from the "Forest and Water Reserve Zones" created by that section, as was permitted by § 19-70. This was done in 1958, and from that time on these two parcels were also outside of the Forest and Water Reserve Zones. Consequently, none of this land was automatically placed in the conservation district when the Land Use Law went into effect.

Since it thus appears that this land was not automatically converted into a conservation district by operation of the Land Use Law on its effective date, an investigation was prosecuted to determine the basis upon which the land

Use Commission had exercised its discretion in including this land within the temporary district boundaries, and within the proposed final district boundaries.

The files of the Land Use Commission as they existed prior to the public hearings held in March of 1963 contained no evidence whatever with respect to this land, excepting only a map, identical to Exhibit 1 except that it lacked the red circle indicating the location of the subject land and except that certain boundaries were marked on it with colored pencils. According to Mr. Mullahey, acting executive officer of the Land Use Commission, this map was forwarded to the Commission late in 1961 or early in 1962 by the Forestry Division of the Department of Land and Natural Resources, and by the Board of Water Supply of the City and County of Honolulu, with recommendations that the land within the Forest Reserve boundary shown on that map should be classified as "conservation" by the Land Use Commission.

Since the action of the Land Use Commission with respect to this land appears to have been based solely upon this map, and upon the recommendations of the Forestry Division and the Board of Water Supply, an investigation was prosecuted to determine the source of this map. This investigation indicates that there is no legal basis whatever for the boundary of the Forest Reserve as shown on this map.

The legally established boundary of the Forest Reserve is shown on Exhibit 2 in red. This boundary was established by proclamation of the Governor of the Territory

in 1926. The portion shown as a dashed line was valid only until 1958, when the withdrawal of privately owned land, including part of the subject land, moved the boundary back to the solid red line. It will be noted that none of the subject land is within that boundary.

The only relevant official action taken with respect to classifying the subject land between the Governor's proclamation in 1926 and the effective date of the Land Use Law, occurred in 1961. In April of that year, a hearing was held before the Board of Agriculture and Forestry, pursuant to published notice, for the purpose of incorporating this land within the "Honolulu Watershed Forest Reserve," "pursuant to the provisions of Sections 19-21 and 19-22, Revised Laws of Hawaii, 1955 . . . ." A copy of the public notice of this hearing is attached hereto as Exhibit 3.

It should be noted, with respect to this hearing, that §§ 19-21 and 19-22, R.L.H. 1955 (portions of Act 274, S.L.H. 1949), provide for the classification of land as "watersheds," and provide for the acquisition by the State of land so classified, by an exercise of the power of eminent domain, and do not provide for the inclusion of land in the "Forest Reserve."

In any event, a protest against the proposed action was made at the public hearing held by the Board of Agriculture and Conservation pursuant to this notice. In addition, a letter of protest was submitted on behalf of the lessee, on May 3, 1961. This written protest was concurred in by the owner of the fee. We have attached hereto

a copy of this protest, (with its exhibits omitted), as Exhibit 4.

Although the hearing was held as mentioned above, no decision was ever reached by the Board of Agriculture and Conservation subsequent thereto. Effective July 1, 1961, the Board of Agriculture and Conservation lost both its power to determine the watershed areas and its power to determine the boundaries of the Forest and Water Reserve Zones, pursuant to the provisions of Act 132, S.L.H. 1961, which transferred these powers to the Department of Land and Natural Resources. Thus, no effective action was taken to include the subject land within either a "watershed" area or within a "Forest and Water Reserve Zone." The boundary proposed to be adopted at the above mentioned hearings is shown on Exhibit 2 as a green line and was, as far as is relevant here, identical with the boundary shown on the map forwarded to the Land Use Commission by the Department of Land and Natural Resources and the Board of Water Supply, and shown on Exhibit 1 attached hereto.

As was indicated at the public hearing, the lessee of this land, with the approval of the owner, has attempted in the past to utilize it for urban purposes. In August of 1960, a subdivision map was prepared by R. M. Towill Corporation for part of this land, and was submitted to the Planning Department of the City and County of Honolulu for preliminary approval. A copy of this map is attached hereto as Exhibit 5. The Board of Water Supply of the City and County and the Board of Agriculture and Forestry had previously indicated an

interest in acquiring this land for public purposes, and because of this the lessee agreed, by a letter dated February 10, 1961, to delay subdivision activity for 60 days after preliminary approval of the maps was granted, in order to afford an opportunity to the Board of Water Supply and the Board of Agriculture and Forestry to take necessary legal steps for condemnation. A copy of this letter is attached hereto as Exhibit 6. On February 21, 1961, Mr. Gordon P. Chung-Hoon, Director of the Department of Agriculture and Conservation, wrote a letter to the Planning Director of the City and County of Honolulu with respect to this matter. This letter mentioned the pendency of hearings to be held in April of 1961 with respect to the "Honolulu Watershed Forest Reserve" boundary, a reference to the abortive hearings discussed above. A copy of this letter is attached hereto as Exhibit 7. On February 24, 1961 tentative approval of the proposed subdivision was finally granted by the Planning Director. A copy of the letter granting such approval is attached hereto as Exhibit 8.

It is submitted that the approval of this subdivision map shows conclusively that the subject land was not at that time within a Forest and Water Reserve Zone. In addition, this tentative approval indicates that the land covered by the map is suitable for subdivision.

The map attached hereto as Exhibit 2 shows that large portions of the subject land are below the 600 foot contour in the Manoa Valley. According to regulations of the Board of Water Supply, land below this level is eligible

for water service. In addition, a great deal of this land is well below the 20% slope, adopted by the Land Use Commission as a criterion for determination of the conservation district boundary. Finally, as Exhibit 2 shows, the subject land is directly in the path of urban development in Manoa Valley. Because of all these facts, we feel that the subject land should be classified as urban by the Land Use Commission.

In any event, the owner and lessee of this land feel that the adoption of final district boundaries including their land within the conservation district would be wholly and completely unjustified on the record as it now stands. Thus, so far as we know, the only evidence ever presented to the Land Use Commission for the inclusion of this land in the conservation district is the wholly false impression, conveyed by the map attached hereto as Exhibit 1, that this land was a part of the "Honolulu Watershed Forest Reserve" on December 5, 1961. As we have indicated above, this land was not a part of any Forest Reserve on that date. We feel that the mere fact that the Forestry Division of the Department of Land and Natural Resources, and/or the Board of Water Supply of the City and County of Honolulu, have recommended that this land be included within the conservation district cannot be given any weight or consideration whatever by the Land Use Commission, unless that recommendation is backed up by facts which show that the Land Use Law requires such an inclusion. So far as we know, no support whatever has ever been presented to the Land Use

Commission by the Board of Water Supply, or by the Department of Land and Natural Resources, in support of their recommendation, other than a copy of the above described map.

The owner and lessee therefore protest the proposed inclusion of the subject land within the conservation district boundary to be adopted by the Land Use Commission pursuant to § 98H-4, R.L.H. 1955. The owner and lessee also protest any classification of this land other than "urban" by the Land Use Commission unless they are given a statement of the issues involved and the facts alleged in support of such classification, and are afforded an opportunity to present such evidence and arguments as they can in opposition to such proposed classification. This protest is filed pursuant to the provisions of § 98H-4, R.L.H. 1955, and this demand for a bill of particulars and for a hearing is made pursuant to the provisions of Chapter 6C, R.L.H. 1955.

DATED: Honolulu, Hawaii, April 11, 1963.

Respectfully submitted

Martin Anderson
MARTIN ANDERSON

Christopher Cobb
CHRISTOPHER COBB

Attorneys for Hawaiian Trust Company, Limited

The Roman Catholic Church in the State of Hawaii and

The Roman Catholic Bishop of Honolulu, a corporation sole

Of Counsel :

ANDERSON, WRENN & JENKS

April 10, 1962

Mr. Roland J. Darnells
Executive Officer
Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii

Re: Account #44900-John Ena Trust
Estate, Mabel Ena, Guardianship,
#44930 Manoa Lands

Dear Mr. Darnells:

The Hawaiian Trust Company, Limited, as designated agent for John and Mabel Ena, hereby protests the classification by the Land Use Commission of the following described property as "Conservation". The Hawaiian Trust Company, Limited, requests that the following described land be designated urban:

A. John Ena Trust Estate (Lessee from Roman Catholic Church)

1. T.M.K. 2-9-54-7 containing 35.164 acres
2. T.M.K. 2-9-54-13 containing 27.100 acres
3. T.M.K. 2-9-54-18 containing 12.300 acres
4. T.M.K. 2-9-55-05 containing 33.000 acres
5. T.M.K. 2-9-55-10 containing 48.000 acres

B. Mabel Ena, Guardianship

T.M.K. 2-9-54-05 containing 122,900 square feet

The aforementioned Trust has expended substantial funds in the preparation and submission of subdivision plans for 35 acres, more or less, located and described as a portion of 2-9-54-7. This subdivision was submitted for approval before the City Planning Commission of Honolulu, and it was subsequently granted

tentative approval; however, the Board of Water Supply and Board of Agriculture have withheld their approval because they wish to extend the Honolulu Watershed Forest Reserve Boundary and include the subject lands. Official designation has not been made declaring the subject lands to be conservation.

Enclosed please find a map setting out the area herein under consideration. Thank you very much for your consideration of this matter.

Very truly yours,

HAWAIIAN TRUST COMPANY, LTD.

Charles M. Holland, Jr.

Charles M. Holland, Jr.
Property Management Dept.

CMH:eh

Encl.

AIHUALAMA
KAHUAIKI
HAALOA
KAMOANAA
PLAT 54
PLAT 55
PLAT 51
PLAT 52
PLAT 53
PLAT 64
PROPOSED SUBDIVISION
18.664 AC
16.5 AC
Roman Catholic Church
12.300 Ac.
City & County of Honolulu
12.95 Ac.
Roman Catholic Church (5.7 Ac.)
(64 Acs.)
(4.60 Acs.)
City & County of Honolulu
33.625 Ac.
Por. Ld. Ct. App. 1810
(58.685 Acs.)
City & County of Hon.
(8.578 Acs.)
(11.578 Acs.)
Ld. Ct. App. 1185
Manoa Valley
(Dist. of Water Supply of the City & County of Hon.)
Development & Construction of Water Resources
Por. Ecas. Grant 4606
Parcel
Mabel K. Bray Estate
(22.700 ?)
American Factors Ltd.
Joseph K. Poe
Parcels dropped
LOST No. 2
FIRST DIVISION
ZONE 2 | SEC 9 | PLAT 54
CONTAINING PARCELS
Scale: 1 in. = 200 ft.
ADVANCE SHEET
SUBJECT TO CHANGE
SUPPLY, LTD.
C, 1960