

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

validity of Ellis petition
ITEM Ellis
DATE 2/28/64
PLACE LUC Hearing Room
TIME 8:50 p.m.

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

COMMENTS:

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Public Hearing

LUC Hearing Room

Honolulu, Hawaii

7:00 P. M. - February 28, 1964

Commissioners

Present:

James P. Ferry
Shelley Mark
Shiro Nishimura
Charles S. Ota
Robert G. Wenkam
Leslie E. L. Wung

Absent:

Myron B. Thompson
C.E.S. Burns
Goro Inaba

Staff

Present:

Raymond Yamashita, Executive Officer
Roy Takeyama, Legal Counsel
Richard Mar, Field Officer
Amy Namihira, Stenographer

The public hearing was called to order by Commissioner Ota, Chairman Pro Tempore. The hearing was opened with a short prayer, followed by an introduction of the commissioners and staff members. The procedures to be followed throughout the public hearing were then outlined. All persons who were entering testimonies in this hearing were sworn in.

PETITION OF HAWAIIAN HOMES COMMISSION (A(T)63-54), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS CONSISTING OF 215.7 ACRES SITUATED AT WAIMANALO, KOOLAUPOKO, OAHU: Described as TMK 4-1-08: 1, 2, 3 & 4

The Field Officer presented the background on the petition and located the area on a map. There being no comments from the petitioner at this point, the Executive Officer proceeded with the staff's analysis and recommendation. The recommendation was for approval of the petition for urban districting of a portion of the subject area, specifically TMK 4-1-8:1, consisting of 121.39 acres on the bases that: (1) in considering the legislative limitations affecting the activities of the Hawaiian Homes Commission, there is reasonable proof that the land is required for urban use; (2) the subject parcel is suitable and adaptable for urban use; (3) although the fringe of prime agricultural lands does extend into the subject parcel, the urban use of this portion of prime agricultural lands does promote a

more efficient overall use of the adjacent lands; (4) the urban use of the subject parcel does not promote scatteration; and (5) the proposed use is in conformance to the Department of Land and Natural Resources' plan for Waimanalo Valley and is also in accordance with the City and County's plan for that area.

Mr. James Clark, representing the Hawaiian Homes Commission, acknowledged that 121 acres more or less would be sufficient, at present, to accommodate their present layout of approximately 450 lots. He confirmed that the Hawaiian Homes Commission would take about 10 years before they would be able to develop the quarry site for houselots (Coral Hill). He stated that they have plans drawn up for development of half of this quarry area on a 5 year basis. He indicated that because they do not have funds at the moment, they could not proceed with the development of the whole area. He stated that the Hawaiian Homes Commission matched \$200,000 from the Legislature \$200,000 and there is now \$400,000 allocated for a houselot development. Mr. Clark anticipated that the present 950 applications on file would double as soon as they start developing this subdivision.

The Executive Officer informed Mr. Clark that because the Coral Hill area is a 10 year planned program for eventual use and utilization, and this Commission is obliged to make a study of the district boundaries every five years, this additional area, should it be needed at that time, could be reviewed and considered then.

Commissioner Ferry inquired whether the Coral Hill area or quarry could qualify as an agricultural operation, or would the Hawaiian Homes Commission need to apply for a special permit?

The Executive Officer replied that a quarry operation was a permitted use in an agricultural district, and therefore it would not be necessary for the Hawaiian Homes Commission to obtain a special permit. This was confirmed by the legal counsel.

The Executive Officer informed the public that this Commission will receive additional testimonies and protests in writing within the next 15 days from this hearing and that this Commission will be taking action on the petition between 45 to 90 days from this hearing.

The public hearing was closed.

PETITION OF KULA DEVELOPMENT CORPORATION FOR AMENDMENT TO URBAN DISTRICT BOUNDARY OF "JAMESTOWN" OMAOPIO, KULA, ISLAND AND COUNTY OF MAUI, STATE OF HAWAII

Chairman Ota informed the Commissioners that the purpose of considering the petition by Kula Development Corporation was to decide whether or not this petition should be accepted for a public hearing.

The legal counsel stated that the petitioner wishes to amend the interim boundaries by keeping his particular area in Urban and putting those areas other than his own

in a rural classification. The legal question being raised is, "Can petitioner, who is not lessee nor owner in fee, petition lands not his own for another use?" Legal counsel stated that the Law states that any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent. Legal counsel stated that in his opinion the petition by Kula Development is invalid because the petitioner is not the property owner or lessee of some of the lands in question.

Mr. William Ellis, representing Kula Development Corporation, was not in agreement with legal counsel's interpretation. He stated that this Commission should be impartial and objective and should consider the petitioner's interpretation of the law as well as legal counsel's. He stated that legal counsel gives only his opinion and is not a ruling which bind this Commission. Mr. Ellis based his right to petition lands other than his own for a boundary change on Section 98H-4 of Act 205.

Commissioner Ferry asked Mr. Ellis if he felt that a group of laymen (like this Commission) who may not be attorneys, could find any valid argument to doubt the advice given by their legal counsel? Mr. Ellis replied in the affirmative.

Commissioner Wenkam stated that the issue is whether or not a person who does not have full ownership of a land can present a petition to this Commission. The law says he must be a property owner or lessee. Therefore the question is: "Are the lands being petitioned by Mr. Ellis in his ownership or not?"

Mr. Ellis replied that the majority of the lands were. He explained, however, that should this Commission insist that his petition be for just his particular lands, his petition has already indicated that this alternative be so.

Commissioner Ferry requested a clarification of this petition.

Legal counsel stated that the petitioner is requesting that lands other than his own, which are adjacent to his, be put in a rural classification while his own lands be put in urban. If a portion of the petition is not acceptable to this Commission, the petition has an alternative request that only those lands under petitioner's ownership be reclassified to urban. Legal counsel explained, however, that these particular lands were already classified under the interim boundaries as urban.

Mr. Ellis stated that he was submitting his petition at this time because of: (1) the long waiting period one must go through before his petition is heard and action is taken by this commission; (2) the possibility that the adopted final boundaries may not be in his favor; and (3) the right an individual has to withdraw his petition in the event the adopted final boundaries were in his favor.

It was explained to Mr. Ellis that this Commission had already set a precedence when it had denied similar petition of this nature on grounds that they were not in accordance with the Law.

Legal counsel stated that he believed there may have been some misinterpretation of the communications that went between the Executive Officer and Mr. Ellis. He explained to Mr. Ellis that the Executive Officer upon legal counsel's advice

ruled that his petition was invalid.

Mr. Ellis requested the reason why his petition, which was ruled invalid twice, was then accepted the third time by the Executive Officer?

The Executive Officer explained that he was called before the Chairmen of the House Judiciary and Land Committees concerning this matter. As a consequence, he concluded that only the Commission had the prerogative to decide on the validity of a petition. He therefore accepted the petition and requested permission from the Chairman to add it to the agenda for this Commission to make the decision.

Commissioner Ferry then made the following motion:

"I move that inasmuch as the petitioner has included lands in his petition which he does not own and have any interest, either as a lessor or lessee, that we deny the petition as submitted."

Commissioner Nishimura seconded the motion.

The Executive Officer polled the Commissioners. The vote was as follows:

Approval: Commissioners Wung, Wenkam, Nishimura, Ferry, Mark and Chairman Ota.

Disapproval: None.

The motion was carried.

PETITION OF DEPARTMENT OF LAND AND NATURAL RESOURCES (A(T)63-33), FOR AMENDMENT TO THE TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN URBAN DISTRICT CLASSIFICATION FOR LANDS IN LALAMILO, HAWAII: Described as TMK 6-6-01: Por. 2; 6-6-01: Por. 10; 6-6-01: 11, 15, 29, 40 and 6-6-04: 6

A background summary of the petition was given by the Field Officer. A public hearing on this petition was held on December 7, 1963 in the Hilo Electric Light Company Auditorium, Hilo, Hawaii. Action on this petition was deferred by the Commission at its meeting on February 1, 1964 in Hilo, Hawaii because of insufficient evidence to arrive at a conclusion. The recommendation of the staff was for granting a portion of the redistricting request so that the first increment of the houselot subdivision alone would be redistricted at this time. The Hawaii County Planning and Traffic Commission recommended rezoning in order to allow expansion of the proposed development by the State.

Commissioner Nishimura moved to accept the staff's recommendation, which was seconded by Commissioner Wung. The Executive Officer polled the Commissioners with the following results:

Approval: Commissioners Wung, Wenkam, Nishimura, Mark, Ferry and Chairman Ota.

Disapproval: None.

The motion was carried.

PETITION OF CENTEX TROUSDALE COMPANY BY H.W.B. WHITE (A(T)62-29), FOR CHANGE OF TEMPORARY DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT CLASSIFICATION TO AN 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

Discussion on the above petition was deferred to tomorrow's meeting, February 29, 1964, at which time the Chairman, Myron Thompson, would be present.

SCHEDULE OF ACTIVITIES

The proposed schedule of activities worked up by the staff was accepted by the Land Use Commission members up to April 25, 1964.

The meeting adjourned at 9:00 p.m.

*See Memo
Porter
memo*

Ref. No. LUC 412

July 21, 1964

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
902 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

Your letter of July 15, 1964 has been received. A copy of a letter advising you of the action taken by the Land Use Commission with regard to the zoning of the "Jamestown" area of Kula has been hand delivered to your attorney, Mr. Ralph Corey, on or about July 16, 1964. By now, you should have received the original letter to you. This letter is not a verbatim quote of the motion and the recorded vote of the commission members as you requested. Should you find the letter unsatisfactory for your purpose, please contact us.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

cc: Myron Thompson
Roy Takeyama, Legal Counsel for the Commission

25% COTTON FIBER
Type-Case
Case-#

July 15, 1964

Mr. Ralph Corey
Clark & Corey
Suite 504-506 Stangenwald Building
119 Merchant Street
Honolulu, Hawaii

Dear Mr. Corey:

Transmitted herewith is a copy of a letter to Mr. William S. Ellis, Jr. of Kula Development relating to his request of April 24, 1964 protesting the Land Use Commission's proposed Rural classification for Jamestown, Omaopio, Kula, Maui.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

cc: Roy Takeyama

STATE OF HAWAII
LAND USE COMMISSION
426 Queen Street
Honolulu, Hawaii
July 10, 1964

Mr. William S. Ellis, Jr.
President and Manager
Kula Development Corporation
900 Nuuanu Avenue
Honolulu, Hawaii

Dear Mr. Ellis:

Your request for a change in the proposed land use district boundaries dated April 24, 1964, to include in the Urban District areas generally outlined in red on Enclosure (I) to your previous letter (Petition) of February 3, 1964, has been approved

by the Land Use Commission. (Requests that were denied may be reconsidered by the Land Use Commission upon initiation of a petition for a boundary change or for a special permit, whichever may be appropriate. Such a petition may be initiated at any time. However, the outcome of such action cannot be predicted.)

The Land Use Law, Act 187, SLH 1961 as amended by Act 205, SLH 1963, mandates the Land Use Commission to prepare and adopt land use district boundaries and regulations not later than July 1, 1964. This legislative mandate has now been accomplished with the adoption of the land use district regulations, and the Kauai County and Maui County district boundaries on June 20, 1964; and the Hawaii County and City and County of Honolulu district boundaries on June 27, 1964. These adopted regulations and boundaries will become effective 10 days after they are filed in the Lt. Governor's Office. It is anticipated that the regulations and boundaries will be ready for filing in about a month and would become effective some time in August. In the meantime, the temporary regulations and district boundaries are in effect.

The recently adopted regulations and boundaries will be reviewed in its entirety every five (5) years. However, any landowner or lessee may, at any time, petition the Land Use Commission for a boundary change or petition the appropriate County for a special permit. Information, forms and assistance in initiating a petition may be obtained by contacting this office or the appropriate County Planning Agency.

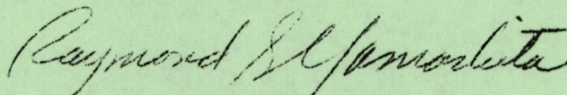
Prior to the adoption, the proposed regulations and boundaries were discussed with the public at 12 public hearings conducted throughout the State. Further, additional written comments and specific requests were received from the public subsequent to the public hearings. Over 300 oral and written requests were submitted and each request was fully considered by the Land Use Commission prior

to the adoption of the regulations and boundaries. About half of the specific requests were favorably considered, and about half were denied because of inadequate information at this time or because the granting of the request would be contrary to the intent and purpose of the Land Use Law.

The land use district boundary maps, after being filed in the Lt. Governor's office as prescribed by law, will be the official maps in the event that there are any discrepancies in the information transmitted by this letter.

Your participation has been most helpful in implementing the Land Use Law. Should you have further questions about the Land Use Law or the action taken on your request, please feel free to contact us.

Very truly yours,

A handwritten signature in cursive script, reading "Raymond S. Yamashita".

RAYMOND S. YAMASHITA
Executive Officer

1246

RECEIVED

MAY 22 1964

State of Hawaii
LAND USE COMMISSION

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,

Plaintiff,

vs.

LAND USE COMMISSION, Depart-
ment of Planning and Economic
Development, State of Hawaii,

Defendant.

COMPLAINT FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF

MOTION TO SET ASIDE REQUEST FOR ENTRY
OF DEFAULT AND ENTRY OF DEFAULT

AFFIDAVIT

MEMORANDUM IN SUPPORT OF MOTION TO SET
ASIDE REQUEST FOR ENTRY OF DEFAULT AND
ENTRY OF DEFAULT

NOTICE OF MOTION TO SET ASIDE
REQUEST FOR ENTRY OF DEFAULT
AND ENTRY OF DEFAULT

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Defendant

M. J. Young
CLERK

1964 MAY 20 PM 3 10

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,

Plaintiff,

vs.

LAND USE COMMISSION, Depart-
ment of Planning and Economic
Development, State of Hawaii,

Defendant.

COMPLAINT FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF

MOTION TO SET ASIDE REQUEST FOR ENTRY
OF DEFAULT AND ENTRY OF DEFAULT

Comes now the LAND USE COMMISSION, State of Hawaii,
by BERT T. KOBAYASHI, Attorney General, and ROY Y. TAKEYAMA,
Deputy Attorney General, its attorneys, appearing specially,
and moves this Honorable Court to set aside the request for
entry of default and entry of default for the reason that
this Court lacks jurisdiction to adjudicate the matter since
neither the Attorney General nor any deputy attorney general
appointed by the Attorney General was personally served with
a copy of the Summons and Complaint, as required under Rule 4
(d)(4) and (5), Hawaii Rules of Civil Procedure.

This motion is based upon the records in this case,
affidavit of Roy Y. Takeyama, Deputy Attorney General, and
the memorandum of authorities attached hereto.

Dated at Honolulu, Hawaii, May 20, 1964.

STATE OF HAWAII

/s/ Roy Y. Takeyama

By ROY Y. TAKEYAMA
Deputy Attorney General
Attorney for Defendant

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)
)
Plaintiff,)
)
vs.)
)
LAND USE COMMISSION, Depart-)
ment of Planning and Economic)
Development, State of Hawaii,)
)
Defendant.)

COMPLAINT FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF

AFFIDAVIT

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

ROY Y. TAKEYAMA, being first duly sworn, on oath,
deposes and says:

1. That he is a Deputy Attorney General of the
State of Hawaii;
2. That he is authorized to make this affidavit;
3. That he has searched the files in the Depart-
ment of the Attorney General and checked the return of service
of summons in the Circuit Court and states that a copy of
summons and complaint was not delivered to the Attorney
General or any deputy attorney general as of the date of
this affidavit;

4. That he makes this affidavit in support of the motion to set aside request for entry of default and entry of default.

Dated at Honolulu, Hawaii, May 20, 1964.

/s/ Roy Y. Takeyama

ROY Y. TAKEYAMA

Subscribed and sworn to before me this 20th day of May, 1964.

/s/ Helen M. Mau (Seal)

Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires 2-15-65

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)
)
Plaintiff,)
)
vs.)
)
LAND USE COMMISSION, Depart-)
ment of Planning and Economic)
Development, State of Hawaii,)
)
Defendant.)

COMPLAINT FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF

MEMORANDUM IN SUPPORT OF MOTION TO SET
ASIDE REQUEST FOR ENTRY OF DEFAULT AND
ENTRY OF DEFAULT

Rule 4(d)(4) and (5), Hawaii Rules of Civil Procedure
provides that:

"(d) SAME: PERSONAL SERVICE. The summons
and complaint shall be served together. The
plaintiff shall furnish the person making service
with such copies as are necessary. Service shall
be made as follows:

. . .

"(4) Upon the State, by delivering a copy
of the summons and of the complaint to the attorney
general of the State, or to the assistant attorney
general or to any deputy attorney general who has
been appointed by the attorney general.

"(5) Upon an officer or agency of the State
by serving the State and by delivering a copy of
the summons and of the complaint to such officer
or agency. . . . "

In his affidavit, Plaintiff's counsel states that
personal service of summons and complaint was made on the
Land Use Commission through Raymond Yamashita, its executive

officer, on March 11, 1964, and "subsequently made on the Attorney General's office by mail. . . . "

The return of service of summons, dated March 12, 1964, indicates that Officer R. Ortiz served the summons and complaint to Raymond Yamashita, Executive Officer of Land Use Commission, on March 11, 1964, at 9:45 a.m. Nowhere in the return does it appear that the Attorney General of the State of Hawaii or any of his deputies was served a copy of the summons and complaint.

It is our contention that this Court lacks jurisdiction to adjudicate this matter inasmuch as Plaintiff failed to comply with Rule 4(d)(4), which requires delivery of copies of summons and complaint upon the Attorney General, or to the Assistant Attorney General or to any deputy attorney general who has been appointed by the Attorney General.

Rule 4(d)(4) and (5) of the Federal Rules of Civil Procedure is similar to said rule involved herein. It provides that:

"Service shall be made as follows:

"(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered mail to the Attorney General of the United States at Washington, District of Columbia . . .

...
"(5) Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency. . . . "
(Emphasis added.)

The Federal courts in interpreting the above rule have consistently held that compliance with said rule is mandatory and jurisdictional. See Lenmon v. Social Security Administration, 20 F.R.D. 215 (1957); Messenger v. United States, 231 F.2d 328 (C.A. 1956); Fugle v. United States, 157 F.Supp. 81 (1957); 2 Moore's Federal Practice, paragraphs 4.28 and 4.29.

In Queens County Group, etc. v. Home Loan Bank Board et al., 104 F.Supp. 396 (1952), plaintiff brought an action for declaratory judgment and other relief against the Home Loan Bank Board, an agency of the United States, and others, seeking to set aside an order of said Board in granting Century Federal Savings and Loan Association permission to open a branch office. The facts indicate that plaintiff mailed a copy of summons and complaint to defendant Board in Washington, D. C., and to the Attorney General, and also delivered a copy of the summons and complaint to the United States Attorney for the district. The defendant Board moved to quash service of summons and to dismiss complaint on grounds that the court was without jurisdiction in the absence of compliance with Rule 4(d)(5), F.R.C.P., which requires "delivering a copy of the summons and of the complaint to such officer or agency." The court granted defendant's motion stating:

"The service of process therefore upon it must accord with Rule 4(d)(5), Fed. Rules of Civil Procedure, 28 U.S.C. namely by 'serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency.'

"There is no dispute that the only service here was by mailing a copy to the office of the

Board in Washington, D. C. and to the Attorney General, and by delivery of a copy to the United States Attorney for this District.

"It would seem that for all practical purposes the Government and its agency have been fully apprised of the plaintiff's claim for relief, but since the point has been raised as stated, it must be dealt with: I find nothing in the Rules or in any statute which has been cited, to enable the Court to brush aside the objection, however technical and non-meritorious it is seen to be. Since jurisdiction depends upon service and that has not been legally effected, it is evident that the Court is without power to examine the substantial issues which have been tendered, touching the capacity of this group of plaintiffs to demonstrate an existing controversy between them in the aggregate, and the defendants, so as legally to generate a declaratory judgment cause. . . ."
(Emphasis added.)

The above case interprets the phrase "delivering a copy of the summons and of the complaint to such officer or agency" to mean personal delivery by an authorized person and not delivery by mail. The court clearly stated that no matter how technical and non-meritorious it seems, it lacked jurisdiction unless personal delivery of a copy of summons and complaint be made upon the officer or agency.

In the instant case, a similar situation arises. Plaintiff "mailed" a copy of the summons and complaint to the Attorney General. Rule 4(d)(4), H.R.C.P. requires "delivering a copy of the summons and of the complaint to the attorney general." We contend that said rule mandates personal delivery of summons and complaint upon the Attorney General and that mailing a copy thereof is insufficient to give this Court jurisdiction to adjudicate the matter before it.

Finally, in 1 Federal Practice and Procedure, Barron and Holtzoff, §§ 180 and 181, relating to service

upon the United States and upon an agency of the United States, it states that:

"A copy of the summons and complaint must be delivered to the United States Attorney for the district in which the action is brought or to one of his assistants or clerical employees designated by him in a writing filed with the clerk of court. . . . " (Emphasis added.)

It further states that:

" . . . If an officer or agency of the United States is made a party, subdivision (d) (5) controls and requires not only that the summons and complaint be served upon the United States as provided by subdivision (d) (4) but also that a copy of the summons and complaint be delivered to each such officer or agency. This requirement is mandatory and personal service is required." (Emphasis added.)

Based on the foregoing authorities, we contend that this Court lacks jurisdiction to adjudicate the matter before it.

Dated at Honolulu, Hawaii, May 20, 1964.

STATE OF HAWAII

By /s/ Roy Y. Takeyama
ROY Y. TAKEYAMA
Deputy Attorney General
Attorney for Defendant

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)

Plaintiff,)

vs.)

LAND USE COMMISSION, Depart-)
ment of Planning and Economic)
Development, State of Hawaii,)

Defendant.)

COMPLAINT FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF

NOTICE OF MOTION TO SET ASIDE
REQUEST FOR ENTRY OF DEFAULT
AND ENTRY OF DEFAULT

TO: RALPH E. COREY
504-506 Stangenwald Building
119 Merchant Street
Honolulu, Hawaii

Attorney for Plaintiff

PLEASE TAKE NOTICE that a motion to set aside request for entry of default and entry of default will be presented before the Honorable John F. Dyer, Judge of the above-entitled Court, in the courtroom of said Judge in the Judiciary Building, Honolulu, Hawaii, on the 28th day of May, 1964, at 9:00 o'clock A.M. of said day, or as soon thereafter as counsel may be heard.

Dated at Honolulu, Hawaii, May 20, 1964.

STATE OF HAWAII

BY /s/ Roy Y. Takeyama
ROY Y. TAKEYAMA
Deputy Attorney General
Attorney for Defendant

RECEIVED

MAY 11 1964

State of Hawaii
LAND USE COMMISSION

1205

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)

Plaintiff,)

vs.)

LAND USE COMMISSION, Department)
of Planning and Economic)
Development, State of Hawaii,)

Defendant.)

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1964 MAY 7 PM 2 24

W. C. Ing

CLERK

REQUEST FOR ENTRY OF DEFAULT

AFFIDAVIT OF RALPH E. COREY

and

ENTRY OF DEFAULT

CLARK & COREY
Suite 504-506 Stangenwald Building
119 Merchant Street
Honolulu, Hawaii

Attorneys for Plaintiff

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,

Plaintiff,

vs.

LAND USE COMMISSION, Department
of Planning and Economic
Development, State of Hawaii,

Defendant.

COMPLAINT FOR DECLARATORY
AND OTHER RELIEF

REQUEST FOR ENTRY OF DEFAULT

Comes now Plaintiff above named, and hereby requests that
a default be entered against Defendant above named, on the basis
of the Affidavit attached hereto and made a part hereof by reference.

DATED at Honolulu, Hawaii, this 6th day of May, 1964.

KULA DEVELOPMENT CORPORATION,
Plaintiff,

By

Ralph E. Corey
RALPH E. COREY

Its Attorney

504-506 Stangenwald Bldg.

119 Merchant Street

Honolulu, Hawaii

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)

Plaintiff,)

vs.)

LAND USE COMMISSION, Department)
of Planning and Economic)
Development, State of Hawaii,)

Defendant.)

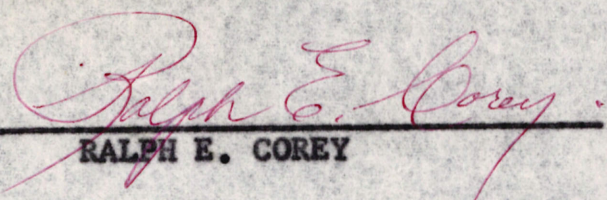
AFFIDAVIT OF RALPH E. COREY

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) s.

RALPH E. COREY, being first duly sworn, on oath, deposes and says:

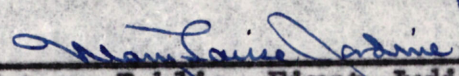
That he is one of the attorneys for the Plaintiff above named;
that service of the Complaint and Summons in the above-entitled case
and cause was made on Defendant through Raymond Yamashita, Its
Executive Officer on March 11, 1964, and subsequently made on the
Attorney General's office by mail; that, as of the present date,
Defendant has failed to plead or otherwise defend as provided by
the Hawaii Rules of Civil Procedure.

AND FURTHER AFFIANT SAYETH NOT.



RALPH E. COREY

Subscribed and sworn to before me
this 6th day of May, 1964.



Notary Public, First Judicial
Circuit, State of Hawaii.

My commission expires: 11-23-66

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)

Plaintiff,)

vs.)

LAND USE COMMISSION, Department)
of Planning and Economic)
Development, State of Hawaii,)

Defendant.)

ENTRY OF DEFAULT

Pursuant to the Request for Entry of Default and the Affidavit attached hereto and made a part hereof by reference, it appearing that the Defendant in the above-entitled case and cause was served with the Complaint and Summons in the above-entitled case and cause on March 11, 1964, and had failed to plead or otherwise defend as provided by the Hawaii Rules of Civil Procedure,

IT IS HEREBY ORDERED that the Default of the Defendant in the above-entitled case and cause is herewith entered.

DATED at Honolulu, Hawaii, this 7th day of May, 1964.

W. C. Ing

CLERK OF THE ABOVE-ENTITLED COURT



March 31, 1964

Mr. William S. Ellis, Jr.
Kula Development Corporation
902 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

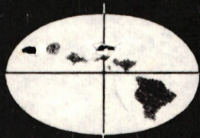
Since your petition was denied by the State Land Use Commission on February 28, 1964, prior to a public hearing, we are returning your \$50.00 check which is enclosed. Please fill in the attached upon receipt of this check and return it to the Land Use Commission, 426 Queen Street, Honolulu, in the enclosed stamped envelope.

Thank you,

ALBERTA L. KAI
Stenographer

Enclosures

RECEIVED
100-100000
Type-Trace
100-100000



State of Hawaii
DEPARTMENT OF ECONOMIC DEVELOPMENT

1124 MILLER ST.
HONOLULU 13, HAWAII
Cable: DEVELOPMENT
Phone 504-426

Date: _____ Subject: **\$50.00 Check**

TO: **Land Use Commission**
426 Queen Street
Honolulu, Hawaii

FROM: **William S. Ellis, Jr.**

This is to certify that I received my check for \$50.00 on
behalf of Kula Development Corporation on _____
date

Signature _____
WILLIAM S. ELLIS, JR.

Charges Land Use Body Confused *Ado. 3/19/64*

The Advertiser and the Land Use Commission are to be commended for the articles on the Land Use Act which appeared in your February 23 and March 1 editions.

While it is undoubtedly true, as the author states, that some of the questions raised and statements made indicate "that the law and the commission's operation are not understood thoroughly by the public," we submit that many of the statements made also indicate the far more significant fact that the law and the commission's operation are not understood thoroughly by the commission itself.

1. The commission has no legal right to alter, modify or amend the clear intent of the Legislature. Yet the commission has repeatedly "intercepted" language needing no interpretation, thus restricting or adding to legislative intent.

2. Interpretative regulations of the commission are legally invalid unless they are adopted in accordance with the provisions of the Hawaii Administrative Procedure Act. None of the interpretations "adopted" by the commission to date is legally valid, in accordance with this requirement.

3. Many of the acts required of the commission by the Land Use Act are clearly ministerial and not in the least discretionary. Yet the commission has ignored clear mandates and has assumed discretionary prerogatives not intended by the Act.

4. The commission is legally bound to process petitions for boundary changes and special use permits as a quasi-judicial tribunal. However, as Civil No. 13900 in First Circuit Court alleges, the commission has proceeded unlawfully and in an "arbitrary, capricious, discriminatory, and oppressive manner" by denying a petition on illegal grounds.

5. The commission is mandated by the Land Use Act (a) to set standards for the definition of land use districts in the state, and then (b) to apply those standards to proposed permanent land use maps. Yet, the commission has scheduled on the same dates hearings on both the proposed standards and the proposed permanent boundary maps based thereon!

6. The very existence of the commission implies the need for consistent, uniform application of legally adopted standards throughout the state, free of local pressures and discrimination. Yet, the proposed final boundary maps of the commission are palpably inconsistent.

7. We do not wish these comments to be construed as reflecting upon the integrity or sincerity of commissioners or staff. In fact, some of the procedural problems stem from overzealousness. Most of the commission's problems, however, appear to be due to the fact that the third commission has been required to do "too much too soon."

Late gubernatorial appointments, coupled with the deadlines in the amended act, have not allowed sufficient time for an adequate job. Urgency legislation extending deadlines would appear to be in the best interests of the public.

WILLIAM S. ELLIS JR.

Kula Firm Protests Action By Land Use Commission

A complaint was filed Tuesday in Circuit Court by Kula Development Company against the State's Land Use Commission, alleging the company has been denied a legal right by the commission.

The company claims it was not allowed to file a petition for a change in the urban district boundary of Kula, in a district also known as "Jamestown," on Maui.

The commission's action will result in irreparable damage to the company, which owns substantial prop-

erty in the area, the complaint alleged.

The company wants the commission to change Jamestown, now zoned for urban and agricultural purposes, to urban use only.

Ralph E. Corey is attorney for the company.

The company wants the court to grant its legal right to petition and also a hearing before the commission. Both have been denied so far, it is alleged.

The commission has 20 days to answer the complaint.

Ref. No. LUC 183

March 12, 1964

Mr. Robert Ohata
Planning Director
Planning & Traffic Commission
County of Maui
Kahului, Maui, Hawaii

Dear Mr. Ohata:

Attached is a copy of papers titled Complaint for Declaratory and Other Relief, Affidavit of Plaintiff and Summons served to the Land Use Commission. The affidavit of Plaintiff, by Mr. Ellis, also provides a good summary of events concerning the situation. We are forwarding this copy for your information.

We are also in receipt of your letter to Mr. Myron B. Thompson, dated March 11, 1964, in regards to the special permit by the Episcopal Church of Hawaii. In consideration of your Commission's request for early action, the special permit will be put on the agenda of the next meeting of the Land Use Commission, scheduled for March 20, 1964.

Also enclosed is a schedule of activities by the Land Use Commission for your information.

Very truly yours,

LAND USE COMMISSION

RAYMOND S. YAMASHITA
Executive Officer

Encl.

cc: Mr. Myron Thompson
Mr. Roy Takeyama
Mr. Charles Ota

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,

Plaintiff,

vs.

LAND USE COMMISSION, Department
of Planning and Economic
Development, State of Hawaii,

Defendant.

AFFIDAVIT OF PLAINTIFF

STATE OF HAWAII)
COUNTY OF MAUI) ss.

WILLIAM S. ELLIS, JR., hereinafter called "Affiant," after being first duly sworn, on oath, deposes and says:

1. That Affiant is now and has been the manager of KULA DEVELOPMENT CORPORATION, Plaintiff in the above-entitled case, since its incorporation on May 13, 1968; that Affiant was vice president of said corporation from said date to January 8, 1964; and that Affiant is and has been president of said corporation since the latter date.

2. That Affiant has read the Complaint of Plaintiff filed herewith and that all of the statements therein are true and correct of Affiant's own personal knowledge and belief.

3. That, in order to apprise the incumbent commissioners and new staff members of Defendant of the background and merits of the land use classification problem at "Jamestown," Kula, Maui, and by way of urging Defendant to adopt the interim urban boundaries of "Jamestown" as proposed permanent boundaries, Affiant prepared and hand delivered to Defendant a communication dated December 19, 1963; that said communication incorporated by way of

reference prior communications on the same subject dated March 3, and 6, 1963, to Defendant and March 27, 1963, to the Maui Planning and Traffic Commission; that attached to said communication as enclosures were five maps indicating the existing urban land use characteristics of "Jamestown"; and that on December 21, 1963, Affiant prepared and mailed to Defendant an amendment to said communication of December 19, 1963, primarily to correct errors in statistics contained therein.

4. That Affiant determined, by letter of January 7, 1964, from Defendant's executive officer, Mr. Raymond Yamashita, that the proposed permanent land use classification maps purportedly adopted by Defendant prior to January 1, 1964, purportedly classified "Jamestown" as rural.

5. That, on the evening of January 25, 1964, Affiant conferred casually at Silversword Inn, Kula, Maui, with Erling P. Wick, sales agent for Kula Kai subdivision (135 lots averaging 12,000 square feet) within the interim urban district of "Jamestown" regarding his position on Defendant's proposed permanent rural classification of said district; and that Mr. Wick stated to Affiant, "We are resigned to being non-conforming."

6. That, on the morning of January 28, 1964, Affiant conferred with Mr. Robert Ohata, planning director of the Maui Planning and Traffic Commission, to discuss Affiant's intention of filing a petition for a boundary change in the interim urban district of "Jamestown" under the provisions of Section 98H-4, R.L.H. 1955, as amended, so as to distinguish between that area within said interim district which is rural and that area which is urban and thereby expedite the termination of the uncertainty concerning the permanent land use classification of Plaintiff's property within the urban portion; that Affiant conferred with Mr. Ohata for the purpose of obtaining his general concurrence and resolving any areas of controversy before filing said petition; that the primary reason for this

procedure is that Mr. Ohata has admitted to Affiant and to others in the presence of Affiant that he personally, without the prior consent of or the subsequent ratification of, the Maui Planning and Traffic Commission, recommended to Defendant's consultant late in 1962 that "Jamestown" be classified agricultural, which recommendation is the root cause of the uncertainty as to the permanent classification of "Jamestown" which has caused Plaintiff alleged grievous prejudice and irreparable harm and damage; and that Mr. Ohata at said conference on January 28, 1964, expressed doubt that Plaintiff would be eligible to file said petition without joining as co-petitioners all property owners within the area affected.

7. That, in the afternoon of January 28, 1964, Affiant appeared before the Maui Planning and Traffic Commission at Wailuku, Maui, to discuss the substance of Plaintiff's proposed petition in a preliminary way; and that said Commission assured Affiant that said petition, when forwarded to it by Defendant for official consideration, would receive expeditious processing.

8. That Affiant prepared Plaintiff's petition for a change in the urban district boundary of "Jamestown," Kula, Maui, on February 3, 1964; that the urban subdivision of Kula Kai was not included within the proposed amended boundary due to the aforesaid statement of Mr. Wick to Affiant on January 25, 1964, and due to its non-contiguity with the mauka urban area of "Jamestown" within which Plaintiff's property is located; that Plaintiff personally filed said petition with Defendant on the morning of February 4, 1964, together with a covering letter and a check for \$50.00 as a filing fee; that, in anticipation of a hearing on said petition before the Maui Planning and Traffic Commission on February 11, 1964, Affiant mailed an advance copy of said petition to said Commission on February 3, 1964, with a covering letter to Mr. Ohata.

9. That, in the afternoon of February 4, 1964, Affiant conferred with Mr. Raymond Yamashita and with Mr. Roy Takeyama, counsel to Defendant, relative to questions raised by them as to the intent of Section 98H-4, R.L.H. 1955, as amended; that at the conclusion of said conference Affiant was of the opinion that the controversy had been resolved in favor of a literal construction of the unambiguous statutory language.

10. That, on the morning of February 5, 1964, Affiant personally filed with Defendant a communication supplemental to Plaintiff's petition of February 3, 1964, defining Kula as a land district, as agricultural (crop reporting) districts, and as popularly conceived (an upland climate zone); and that Affiant mailed a copy of said supplement to the Maui Planning and Traffic Commission.

11. That, late in the afternoon of February 5, 1964, Mr. Yamashita phoned Affiant to advise him that he had received a written opinion from Mr. Takeyama alleging that Plaintiff's petition was invalid, on grounds stated in Plaintiff's Complaint; and that Mr. Yamashita told Affiant that he would write a letter to Plaintiff rejecting said petition on said grounds.

12. That, at 8:55 a.m. on February 6, 1964, Affiant personally filed an amendment to said petition of Plaintiff, providing in the alternative that the amended urban boundary include only those lands for which Plaintiff has a legal right to petition, in the event that the alleged grounds of invalidity should be legally valid; that, with said amendment, Affiant filed a communication regarding the interpretation of Section 98H-4 as related to said petition; that Affiant mailed a copy of said amendment and said interpretation to the Maui Planning and Traffic Commission; that the main points of Plaintiff's interpretation in said communication are: (a) that Plaintiff has a right to file its petition as a qualified representative of a class, (b) that, in the event it should be determined that Plaintiff has no such right, it has a right to file in the

alternative for amended boundaries affecting only its own properties, (c) that Section 98H-4 provides for proper land use classification in accordance with conforming or prevailing use, whereas Section 98H-6 provides for permissive non-conforming use specific and exclusive to the property of the petitioner, and (d) that Defendant has absolutely no legal right to reject a petition without at least according the petitioner a preliminary hearing on the alleged deficiency in said petition.

13. That, on the aforesaid date, Mr. Yamashita conferred briefly with Affiant regarding the foregoing points; that, notwithstanding the aforesaid amendment, interpretative communication, and conference, Mr. Yamashita returned said petition personally to Affiant at 9:10 a.m., said date, with covering letter quoting counsel's opinion; that, on Affiant's appeal to Mr. Yamashita to rectify the alleged flagrant abuse of discretion and violation of Plaintiff's constitutional rights, by exercising his own independent judgment and common sense, he stated: "It is the policy of the Commission to be bound by the advice of its counsel. I have no choice in the matter."

14. That, at 11:33 a.m., Affiant personally refiled said petition with Defendant; that, with said petition, Affiant delivered to Defendant a memorandum devoted primarily to suggested proper quasi-judicial procedure by Defendant, drawing a parallel to court procedure, and stressing that Plaintiff was being denied its constitutional rights.

15. That, on February 7, 1964, Affiant wrote and mailed a letter to the Attorney General, State of Hawaii, calling his attention to (a) the experience of Affiant in legislative matters and litigation, (b) the existing controversy between Plaintiff and Defendant and Plaintiff's desire to settle same without resort to the courts, and (c) the unlawful and arbitrary procedures of Defendant; that Affiant mailed a copy of said letter to Mr. Myron Thompson, Defendant's chairman, and to Mr. Yamashita; and that thereafter Affiant departed for Maui.

16. That, on his return to Honolulu on February 18, 1964, Affiant received a letter from Mr. Bert T. Kobayashi, Attorney General, State of Hawaii, dated February 13, 1964; that said letter stated that Affiant's inquiry should be addressed to Defendant and also stated as follows:

"The function of our office is merely to provide advice to the staff and to the Commission. Legally, we cannot and do not make decisions for the staff or the Commission."

17. That, on February 18, 1964, Affiant also received a letter from Mr. Yamashita, dated February 7, 1964, again rejecting Plaintiff's petition and stating the same grounds therefor as in his aforesaid letter of February 6, 1964; that, on said date, Affiant also received a memorandum from Miss Alberta L. Kai of Defendant's staff, together with a check for \$50.00 in refund of Plaintiff's filing fee.

18. That, on February 18, 1964, Affiant personally refiled Plaintiff's petition and the aforesaid refund check with Defendant, together with a letter to Defendant's chairman and members, quoting the aforesaid letter of February 13, 1964, from the Attorney General to Plaintiff with respect to the merely advisory function of counsel to Defendant; that, in addition to said quotation, the main points of said letter to Defendant were: (a) that counsel to Defendant has, in fact, made the decision to reject Plaintiff's petition rather than Mr. Yamashita or Defendant, (b) that Defendant has no right to summarily reject a petition without a fair and impartial hearing, and (c) that Plaintiff wished to appear before Defendant at its next meeting in Honolulu for such an impartial preliminary hearing; that Affiant mailed copies of said letter to Governor John A. Burns, Senator Nelson Doi, Senator Kazuhisa Abe, and Representative Donald D. H. Ching.

19. That, on February 18, 1964, Affiant prepared and mailed a letter to Governor John A. Burns and that he also mailed copies of said letter to Senator Nelson Doi, Senator Kazuhisa Abe, Represent-

ative Donald D. H. Ching, and Mr. Myron Thompson; that said letter concluded with:

"As the enclosed indicates, I am making one more attempt to be accorded our constitutional rights. It would be appreciated if your office would assure the proper performance of the Land Use Commission without the necessity of our resorting to the courts."

20. That, on February 19, 1964, Affiant personally filed a second amendment to Plaintiff's petition of February 3, 1964, superseding its amendment of February 6, 1964, and expanding the latter in the following respects: (a) requesting that a declaratory ruling of a circuit court be obtained to determine Plaintiff's eligibility to file as a qualified class representative, (b) requesting that Plaintiff's petition be processed on its merits pending said ruling, on the presumption that Plaintiff is qualified to file unless proven otherwise, (c) amending the signature of Plaintiff on its petition to expressly indicate Plaintiff's capacity "as a class representative," and (d) adding to the proposed amended urban district an approved hotel-apartment site; and that Affiant mailed a copy of said amendment to the Maui Planning and Traffic Commission.

21. That, on February 19, 1964, Affiant mailed a communication to the chairman of Senate and House Judiciary and Lands committees, proposing an urgent amendment to Section 28H-4, so that section would: (a) expressly state that a petition filed thereunder "include within the proposed boundary change all properties affected by needs and trends similar to those affecting the property in which (petitioner) has an interest," (b) delete the minimum waiting periods and lower the maximum periods for a public hearing on boundary change petitions, (c) expressly provide for an appeal to circuit court in the event of denial of the petition; that Affiant stated in said communication that the urgent amendment was requested as an expedient alternative to court action to settle the controversy between Plaintiff and Defendant; that Affiant mailed a copy of said

communication to the Governor of Hawaii and to Defendant; that no action known to Affiant has been taken by the addressees on said request.

22. That, on the morning of February 20, 1964, Affiant personally delivered a communication to Defendant relative to the acceptance of Plaintiff's petition with reference to administrative procedures mandated by Chapter 6C, R.L.H. 1955, as amended; that Affiant stated his opinion in said communication that Defendant was acting unlawfully, erroneously, arbitrarily, in excess of its statutory authority, and with abuse of and clearly unwarranted exercise of discretion; that Affiant mailed copies of said communication to the Governor of Hawaii and to chairmen of Senate and House Judiciary and Land committees.

23. That, in the afternoon of February 20, 1964, Affiant mailed to Defendant a communication relative to acceptance of Plaintiff's petition with reference to Defendant's rules of practice and procedure adopted April 4, 1962; that Affiant mailed copies of said communication to the Governor of Hawaii and to chairmen of Senate and House Judiciary and Lands committees.

24. That, on the morning of February 21, 1964, Affiant received in the mail a copy of a letter dated February 20, 1964, from Mr. Yamashita to Mr. Ohata: (a) advising that Plaintiff's petition was being forwarded to the Maui Planning and Traffic Commission, (b) stating that "the validity of the petition appears to be a matter for a decision by the Land Use Commission and not the staff," and (c) stating also, "In the meantime, the law mandates that this petition be forwarded to your Commission."

25. That, in the afternoon of February 21, 1964, Affiant mailed a communication to Defendant relative to the alleged invalidity of said petition, pointing out that: (a) Defendant must follow rule-making procedures under Section 6C-3 in order to adopt an interpretation of statutory language such as proposed

by counsel to Defendant, (b) if Defendant felt that it had the legal authority to proceed under Section 1.25(e) of its own rules, that an impartial hearing must be granted (provisions of said rule to the contrary notwithstanding) to afford Plaintiff due process of law, (c) the principle expressed in Rule 23 of Hawaii Rules of Civil Procedure, allowing for a class action, is applicable to Section 98H-4, (d) if counsel's opinion should be valid, then Plaintiff's petition should be amended and scheduled for a hearing on its merits rather than be dismissed.

26. That Affiant departed for Maui on February 21, 1964; that on February 25, 1964, Affiant was informed by a telephone call from Mr. Yamashita in Honolulu that Defendant would hear Plaintiff at an informal agency proceeding to be held between 7:00 and 9:00 p.m., February 28, 1964; that, following said telephone call, Affiant prepared and on February 26, 1964, mailed a communication to Defendant suggesting procedures for said proceeding, including: (a) a prehearing conference, (b) respective roles of executive officer, counsel, and commissioners of Defendant to assure Plaintiff due process of law, (c) relevant points of law, and (d) questions of fact to be settled; and that Affiant mailed copies of said communication to the Governor of Hawaii and to the chairmen of Senate and House Judiciary and Land committees.

27. That Affiant returned to Honolulu on the morning of February 26, 1964; that Affiant telephoned Mr. Yamashita regarding the proposed prehearing conference and was told by the latter that such a conference was infeasible due to proceedings by Defendant commencing at 1:00 p.m.

28. That Affiant appeared before Defendant at about 8:00 p.m. on February 28, 1964, relative to the validity of Plaintiff's petition of February 3, 1964, as amended; that Stanley Unten, treasurer and director of Plaintiff, was present as an observer; that Charles Ota, commissioner from Maui, presided in the absence of Chairman

Thompson; that counsel to Defendant sat alongside the chairman pro tem and assisted the latter in the conduct of the meeting as an unofficial co-chairman; that Mr. Yamashita made no specific recommendation to Defendant relative to the alleged invalidity of said petition; that the attitude expressed by Defendant from the outset of the proceeding was that of a very busy adversary rather than an impartial quasi-judicial tribunal; that the chairman pro tem and the commissioners repeatedly suggested termination of the proceeding before Affiant had fully presented Plaintiff's position; that Defendant did, in fact, terminate said proceeding before Affiant had finished his presentation; that Affiant was so distracted in his presentation and so badgered by Defendant that, in his opinion, attempting to proceed further would be futile; that the right of Plaintiff to challenge the opinion or decision of Defendant was vehemently questioned by a commissioner; that Defendant neither discussed nor adopted an interpretative ruling on the construction of Section 28X-4 before voting to deny Plaintiff's petition on the basis of such nebulous rule.

29. That, on March 5, 1964, Affiant personally picked up Defendant's letter of said date from Mr. Yamashita; that said letter stated the motion adopted by defendant at the conclusion of its February 28, 1964, proceeding which denied Plaintiff's petition, which motion is quoted in Plaintiff's Complaint; and that Mr. Yamashita also provided Affiant with a mimeographed schedule of public hearings on proposed permanent boundaries, deliberations thereon, and adoption thereof.

30. That the foregoing statements are made of Affiant's own personal knowledge and belief in support of Plaintiff's Complaint filed herewith.

AND FURTHER AFFIANT SAYETH NOT.

Dated at Kaunakakai, Hawaii, this 9th day of March, 1964.

Subscribed and sworn to before
me this 9th day of March, 1964

[Signature]
Notary Public, Second Judicial
Circuit, State of Hawaii.

My commission expires: 8/1/66

[Signature]
WILLIAM S. ELLIS, JR.,
Affiant.

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)

Plaintiff,)

vs.)

LAND USE COMMISSION, Department)
of Planning and Economic)
Development, State of Hawaii,)

Defendant.)

COMPLAINT FOR DECLARATORY
AND OTHER RELIEF

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

AFFIDAVIT OF PLAINTIFF

and

SUMMONS

CLARK & COREY
Suite 504-506 Stangenwald Building
119 Merchant Street
Honolulu, Hawaii

Attorneys for Plaintiff

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,

Plaintiff,

vs.

LAND USE COMMISSION, Department
of Planning and Economic
Development, State of Hawaii,
Defendant.

COMPLAINT FOR DECLARATORY
AND OTHER RELIEF

(R.L.H. 1955, 1961, Sec.
6C-7; R.L.H. 1955, Sees.
228-1 through 228-6, in-
clusive; and Rule 57,
Hawaii Rules of Civil
Procedure)

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

Comes now KULA DEVELOPMENT CORPORATION, a Hawaii corporation,
Plaintiff above-named, by its attorney, RALPH E. COREY, ESQ., of
CLARK & COREY, and respectfully complains against the LAND USE
COMMISSION, Department of Planning and Economic Development,
State of Hawaii, as follows:

I.

Plaintiff is a Hawaii corporation, with principal offices and
post office address at 900 Nuuanu Avenue, Honolulu, City and County
of Honolulu, State of Hawaii. Defendant is a commission which is
part of the Department of Planning and Economic Development, State
of Hawaii, for administrative purposes, with principal offices and
post office address at 426 Queen Street, Honolulu, City and County
of Honolulu, State of Hawaii.

II.

This complaint is brought in accordance with, and jurisdiction
of this Honorable Court is based upon the following authorities:
R.L.H. 1955, as amended by S.L.H. 1961, Section 6C-7; R.L.H. 1955,
Sections 228-1 through 228-6, inclusive; and Rule 57, Hawaii Rules
of Civil Procedure.

III.

Plaintiff alleges that in the above-entitled case there exists an actual, justiciable controversy between the contending parties relating to Plaintiff's legal and substantial rights to file with Defendant, pursuant to Section 98H-4, R.L.H. 1955, as amended by Act 205, S.L.H. 1963, a petition for a change in the urban district boundary of "Jamestown," Kula, Island and County of Maui, State of Hawaii, within which amended boundary is located real properties owned by Plaintiff, which controversy has given rise to the within proceeding respecting the merits of antagonistic claims.

IV.

Plaintiff further alleges that Defendant's actions in denying said petition were and are (a) in violation of constitutional and statutory safeguards to a full and fair hearing on the merits of Plaintiff's petition, (b) ultra vires, (c) based upon unlawful administrative procedures, (d) clearly erroneous in law, equity, and fact, and (e) arbitrary, capricious, discriminatory and oppressive, characterized by clearly unwarranted use and abuse of administrative discretion.

V.

Plaintiff further alleges that it is an aggrieved party, having been arbitrarily denied its legal and substantial rights by Defendant; that it has suffered grievous prejudice and substantial and irreparable harm and damage because of the alleged unlawful conduct of Defendant; that unless this Honorable Court shall grant a declaratory judgment or decree and such other relief as prayed for herein, so as to terminate the uncertainty or controversy between the contending parties which has given rise to the within proceeding, Plaintiff will in futuro suffer additional grievous prejudice and substantial and irreparable harm and damage by reason of Defendant's alleged unlawful conduct.

VI.

Plaintiff's grounds for the aforesaid allegations are as follows:

1. Plaintiff is a substantial owner of real properties in the mauka portion of the ahupuaa of Omaopio, land district of Kula, Island and County of Maui, State of Hawaii, in an area classified by Defendant on an interim basis in April 1962 as an urban district, which urban district is referred to herein as "Jamestown"; that said classification is contained on interim land use classification maps officially adopted by Defendant in April 1962 following public hearings and deliberations thereon pursuant to Act 187, S.L.H. 1961.

2. In compliance to the recommendation of its consultant, as published in Land Use Districts for the State of Hawaii (January 1963, Harland Bartholomew & Associates), Defendant proposed to include "Jamestown" within the agricultural classification on permanent land use classification maps to be adopted after public hearings thereon pursuant to Act 187, S.L.H. 1961, thus causing an uncertainty as to the permanent classification of Plaintiff's properties within the "Jamestown" interim urban district.

3. Upon inquiry of Plaintiff to Defendant, by letter dated January 3, 1964, as to Defendant's proposed classification of "Jamestown" pursuant to Act 206, S.L.H. 1963, Defendant informed Plaintiff by letter dated January 7, 1964, as follows:

"The Land Use Commission has placed 'Jamestown' in Kula, Maui in the Rural district . . . on proposed classification maps to be used for public hearing purposes. . . ."

Said proposed classification by Defendant continues the uncertainty as to the permanent classification of Plaintiff's properties within "Jamestown," which state of uncertainty has existed for more than 14 months since January 1963.

4. Defendant is mandated to hold public hearings on the proposed permanent land use classification boundaries and to adopt said boundaries in final form "no sooner than May 1, 1964, nor later than July 1, 1964," in accordance with provisions of Section 98H-3, R.L.H. 1955, as amended.

5. Upon personal inquiry of Defendant by Plaintiff's president and manager on March 3, 1964, Plaintiff was informed by Defendant's executive officer that Defendant has tentatively scheduled the adoption of permanent land use classification boundaries for June 19-30, 1964. Thus, the uncertainty as to the permanent classification of Plaintiff's properties within "Jamestown" will be prolonged for at least three more months, or a total of 17 months from the date Defendant caused the uncertainty.

6. Section 98H-4, R.L.H. 1955, as amended, reads as follows:

"Section 98H-4. Amendments to district boundaries. . . . After 100 days but within 210 days of the original receipt of a petition the commission shall advertise a public hearing . . . Within a period of not more than 90 days and not less than 45 days after such hearing the commission shall act upon the petition for change. . . ."

The foregoing provisions require a minimum of 145 days to a maximum of 300 days, or a minimum of five months to a maximum of ten months, after the date of filing a petition for a boundary change within which Defendant is legally obliged to take action.

7. Should Defendant adopt its proposed permanent rural classification for "Jamestown," and should Plaintiff then file a petition for a boundary change to redress such grievance, the alleged prejudice, harm, and damage to Plaintiff caused by the present uncertainty would continue at least until November 6, 1964, and possibly until April 9, 1965, a maximum period of 27 months from the time Defendant caused the uncertainty.

8. So that the alleged grievously prejudicial, harmful, and damaging circumstances might be alleviated at the earliest possible date on appeal to a circuit court in the event that Defendant should classify "Jamestown" rural after public hearings on pro-

Plaintiff
posed permanent boundaries, prepared a petition to Defendant dated February 3, 1964, for a change in the urban district boundary of "Jamestown," in accordance with the provisions of Section 98H-4, R.L.H. 1955, as amended, which reads as follows:

"Section 98H-4. Amendments to district boundaries. Any department or agency of the State or county, or any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent. . . ." (Emphasis added.)

8. With a covering letter dated February 4, 1964, personally delivered on said date to Defendant by Plaintiff's president and manager, together with a check for \$50.00 made payable to Defendant as a filing fee, Plaintiff filed its aforementioned petition of February 3, 1964, for a change in the urban district boundary of "Jamestown." The reason for such action stated in the letter is as follows:

"We are taking this course of action despite the forthcoming hearings on proposed permanent boundaries so that we may have a firm basis for immediate appeal to the circuit court should final boundaries not recognize the amended 'Jamestown' Urban District. . . ."

9. On February 6, 1964, Defendant's executive officer refused to accept Plaintiff's petition for a change in the urban district boundary of "Jamestown," filed in accordance with the said Section 98H-4, on the alleged grounds that said petition is invalid, purportedly "on advice from Counsel for the Commission," to wit:

"Section 98H-4, Revised Laws of Hawaii, as amended, provides that ' . . . any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent.'"

"We construe the foregoing sentence to mean that a property owner or lessee who desires to use his land for uses other than for which it is distributed may petition the Land Use Commission for a change in the boundary of any district, interim or permanent."

10. On February 13, 1964, Defendant's executive officer again rejected said petition, as amended on February 6, 1964, alleging the same grounds of invalidity, again purportedly "on advice from Counsel."

11. On February 28, 1964, again on advice of counsel, said petition, as further amended on February 19, 1964, was denied by Defendant at an informal agency proceeding. Said denial was based upon the following oral motion of Commissioner James P. Ferry:

"I move that inasmuch as the petitioner has included lands in his petition which he does not own and have any interest, either as a lesser or lessee, that we deny the petition as submitted."

The motion was seconded by Commissioner Shiro Nishimura and approved by a vote of 6 ayes, 0 noes, 3 absent, and 0 abstaining.

VII.

Plaintiff alleges that it has patiently and diligently endeavored to resolve the issues of the foregoing controversy relative to the validity of said petition, as stated with particularity in the Affidavit of Plaintiff attached hereto and made a part hereof by reference; that it has exhausted all practicable administrative remedies to resolve said controversy, as stated with particularity in said Affidavit; and that recourse to a court of law affords the only means available to Plaintiff to relieve the grievous prejudice and irreparable harm and damage caused by Defendant's denial of Plaintiff's legal and substantial rights.

WHEREFORE, Plaintiff prays this Honorable Court to grant to Plaintiff its full measure of declaratory relief afforded by law, to determine, answer, adjudge, and decree the following issues of law, fact, and mixed questions of law and fact, to wit:

1. Is the below-quoted language of Section 98H-4, R.L.H. 1956, as amended, ambiguous or clear?

"Section 98H-4. Amendments to district boundaries.
... any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent. . . ."

2. If said statutory language is not ambiguous, does Defendant have a right to alter, amend, or modify the meaning, intent and application of the statute by interpretation or

construction? (2 Am. Jur. 2nd, Administrative Law, par. 234.)

3. If said statutory language is ambiguous, should said language be interpreted and construed in accordance with the administrative procedures set forth and mandated by Section 60-3, R.L.H. 1955, as amended?

4. Where the language of Chapter 96H, R.L.H. 1955, as amended, relates specifically to land use districting in Hawaii and has no technical legal connotation, should it be interpreted and construed by Defendant and its staff qualified in planning and land use, or should it be interpreted and construed by counsel to Defendant?

5. Is Defendant bound by the opinion of its counsel as to interpretation and construction of language having a specific legal connotation when such opinion is in conflict with the opinion of a petitioner not represented by counsel?

6. Is Defendant bound by the opinion of its counsel as to interpretation and construction of language having a specific legal connotation when such opinion is in conflict with petitioner represented by counsel?

7. What is the legislative intent and purpose of Section 96H-4, R.L.H. 1955, as amended?

8. Has Plaintiff a legal right to file a petition for a change of boundary under the provisions of said section without joining as co-petitioners all other members of the class within the subject area affected by said change?

9. On receipt of a petition filed in accordance with the provisions of the aforesaid section, does Defendant's executive officer have discretionary authority to reject said petition?

10. Does Defendant have discretionary authority to ^{deny} a petition filed under the provisions of the aforesaid section prior to a public hearing on the merits of the petition as mandated by said section?

11. If so, does Defendant have such authority without affording the petitioner an opportunity for an impartial preliminary hearing before Defendant which is adequate in scope and extent and in accordance with orderly procedures which do not violate fundamental constitutional rights, conducted in such a manner as to furnish adequate evidentiary opportunity for a court to determine whether the applicable rules of law and procedure have been observed by the Defendant? (Ibid., par. 353.)

12. Was Plaintiff accorded its full measure of due process of law at the informal proceeding held before Defendant on February 28, 1964 (based on a transcript to be discovered and to be produced by Defendant)?

13. If, in the course of a hearing, Defendant bases its decision upon an opinion or interpretation which falls within the definition of an agency "rule" in Section 6C-1(d), R.L.H. 1955, as amended, prior to the official adoption of such rule in accordance with procedures prescribed in Section 6C-3, is said decision by Defendant legally valid?

14. With respect to the aforesaid rulemaking procedures, was the denial of Plaintiff's petition by Defendant on February 28, 1964, legally valid?

15. In the event that Defendant determines impartially and with reasonable certainty that a petitioner does not have a legal right to file a petition for a change of boundary under Section 98H-4, R.L.H. 1955, as amended, and such defect can be corrected, should Defendant allow the petitioner a reasonable time to correct said petition's deficiencies, retaining said petition within Defendant's jurisdiction in the interim?

16. If Plaintiff does not have a legal right to file a petition under said section for a change in boundary which affects property other than its own, does Plaintiff have a legal

right to petition, in the alternative, that the proposed boundary change include only its own land?

17. Should Defendant show great liberality as to the particular form and substance of a petition filed in accordance with the provisions of said section, especially where the petitioner is not represented by counsel, and to liberally allow amendments to such petition? (Ibid., par 371.)

18. Regardless of form and substance of a petition filed under the provisions of said section and regardless of the legal qualifications of the petitioner, if said petition calls to the attention of Defendant a bona fide existing need for a boundary change to comply with the legislative intent of Chapter 98H, can the Defendant proceed with a public hearing on the merits of the petition under its broad administrative authority below-quoted? (Ibid.)

"Section 98H-4. Amendments to district boundaries.
... The commission may also initiate changes in a district boundary ..."

19. Does Defendant's executive officer or Defendant have discretionary authority to refrain for more than five days from forwarding a copy of a petition to the planning commission of the county wherein the land is located, under the provisions of said section, regardless of the form or substance of the petition?

AND Plaintiff further prays this Honorable Court to mandate Defendant:

1. To save, preserve, and conserve for discovery and evidentiary purposes the tape-recorded record of the administrative proceeding on February 28, 1964, at which Plaintiff appeared before Defendant.

2. To schedule a public hearing on Plaintiff's petition of February 3, 1964, as amended on February 6 and 19, 1964, for a change in the urban district boundary of "Jamestown," Omaopio, Kula, Island and County of Maui, State of Hawaii, computing time

for said hearing from the original date of filing said petition on February 4, 1964.

3. To permit Plaintiff to make further amendments to said petition appropriate to the circumstances in the event that Defendant classifies as rural on permanent land use classification maps the amended urban district of "Jamestown," as proposed in said petition, prior to a hearing on said petition.

4. To provide a full transcript of the proceedings of said public hearing on the merits of said petition, including the tape recording thereof, to this Honorable Court so that it may determine that Defendant has accorded Plaintiff due process of law.

AND Plaintiff further prays this Honorable Court to grant a speedy hearing in the above-entitled case so that:

1. The controversy between the contending parties will be promptly terminated and the grievous prejudice and irreparable harm and damage allegedly caused to Plaintiff by said controversy will be promptly relieved.

2. Defendant will be advised by an impartial judicial declaration as to lawful procedures under Chapter 98H before it holds public hearings on proposed permanent boundary maps and rules and regulations affecting the rights of every property owner in the state.

3. The State Legislature will be advised by an impartial judicial declaration of the qualifications of incumbent members of Defendant (subject to confirmation by the Senate) to conduct quasi-judicial proceedings so as to accord all property owners of the state fair and equal treatment under the applicable provisions of constitutional and statutory law and Defendant's own rules.

DATED at Honolulu, Hawaii, this 16th day of March, 1964.

Of counsel:
Clark & Corey
119 Merchant St.
Honolulu, Hawaii

KULA DEVELOPMENT CORPORATION,
A Hawaii Corporation, Plaintiff
By Ralph E. Corey
RALPH E. COREY, Its Counsel

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)

Plaintiff,)

vs.)

LAND USE COMMISSION, Department)
of Planning and Economic)
Development, State of Hawaii,)

Defendant.)

REQUEST FOR ENTRY OF DEFAULT

AFFIDAVIT OF RALPH E. COREY

and

ENTRY OF DEFAULT

CLARK & COREY
Suite 504-506 Stangenwald Building
119 Merchant Street
Honolulu, Hawaii

Attorneys for Plaintiff

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,

Plaintiff,

vs.

LAND USE COMMISSION, Department
of Planning and Economic
Development, State of Hawaii,

Defendant.

COMPLAINT FOR DECLARATORY
AND OTHER RELIEF

REQUEST FOR ENTRY OF DEFAULT

Comes now Plaintiff above named, and hereby requests that
a default be entered against Defendant above named, on the basis
of the Affidavit attached hereto and made a part hereof by reference.

DATED at Honolulu, Hawaii, this ____ day of May, 1964.

KULA DEVELOPMENT CORPORATION,
Plaintiff,

By _____

RALPH E. CORRY
Its Attorney
504-506 Stangenwald Bldg.
119 Merchant Street
Honolulu, Hawaii

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KULA DEVELOPMENT CORPORATION,)

Plaintiff,)

vs.)

LAND USE COMMISSION, Department
of Planning and Economic
Development, State of Hawaii,)

Defendant.)

AFFIDAVIT OF RALPH E. COREY

STATE OF HAWAII)

CITY AND COUNTY OF HONOLULU) s.

RALPH E. COREY, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys for the Plaintiff above named;
that service of the Complaint and Summons in the above-entitled case
and cause was made on Defendant through Raymond Yamashita, Its
Executive Officer on March 11, 1964, and subsequently made on the
Attorney General's office by mail; that, as of the present date,
Defendant has failed to plead or otherwise defend as provided by
the Hawaii Rules of Civil Procedure.

AND FURTHER AFFIANT SAYETH NOT.

RALPH E. COREY

Subscribed and sworn to before me
this 10th day of May, 1964.

[Signature]
Notary Public, First Judicial
Circuit, State of Hawaii.

My commission expires: 11-23-66

CIVIL NO. 13900

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

STATE OF HAWAII

KILA DEVELOPMENT CORPORATION,

Plaintiff,

vs.

LAND USE COMMISSION, Department
of Planning and Economic
Development, State of Hawaii,

Defendant.

ENTRY OF DEFAULT

Pursuant to the Request for Entry of Default and the Affidavit attached hereto and made a part hereof by reference, it appearing that the Defendant in the above-entitled case and cause was served with the Complaint and Summons in the above-entitled case and cause on March 11, 1964, and had failed to plead or otherwise defend as provided by the Hawaii Rules of Civil Procedure,

IT IS HEREBY ORDERED that the Default of the Defendant in the above-entitled case and cause is herewith entered.

DATED at Honolulu, Hawaii, this 27 day of March, 1964.

W. C. Long

CLERK OF THE ABOVE-ENTITLED COURT



In the Circuit Court of the First Circuit
STATE OF HAWAII

CIVIL NO. _____

HEA DEVELOPMENT CORPORATION,

Plaintiff

v.

LAND USE COMMISSION, Department
of Planning and Economic
Development, State of Hawaii,
Defendant

SUMMONS

State of Hawaii

To the above-named Defendant:

You are hereby summoned and required to serve upon CLARK & COREY

_____, plaintiff's attorney,

whose address is 119 Merchant Street, Honolulu, State of 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.

M. K. Young

Clerk of Court

MAR 10 1964

Dated _____



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.

Ref. No. LUC 142

March 3, 1964

Mr. William Ellis, Jr.
President & Manager
Kula Development Corporation
902 Nuuanu Avenue
Honolulu, Hawaii

Dear Mr. Ellis:

This is to inform you that the Land Use Commission of the State of Hawaii met on February 28, 1964 in the Land Use Commission hearing room, 426 Queen Street, Honolulu, Hawaii, to discuss the validity of your petition. On the basis of the following action your petition was denied.

Commissioner Ferry: I move that inasmuch as the petitioner has included lands in his petition which he does not own and have any interest, either as a lessor or lessee, that we deny the petition as submitted.

Commissioner Nishimura: I second the motion.

The vote was six ayes; 0 noes; 3 absent; and 0 abstaining.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

cc: Mr. Myron Thompson
Mr. Roy Takeyama

Eagle-H
Type-Erase

*Developers of choice
properties at Kula, Maui, on
the slopes of Haleakala*

Kula Development Corporation

902 NUUANU AVENUE, HONOLULU 17, HAWAII

March 2, 1964

Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

MAR 2 1964

State of Hawaii
LAND USE COMMISSION

Gentlemen:

Thank you for the time given us on February 28 to present our views on the validity of our February 3 petition re a boundary change at Jamestown, Kula, Maui.

Although the results of the preliminary "hearing" are not gratifying in themselves, we have at least been accorded the honor of being thrown out of court by the judge rather than the clerk.

To save your overworked staff further nuisance with respect to our petition, please retain it and the fee until we have obtained a court ruling as to the legality of your action.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

MAR 3 1964

February 28, 1964

Dear Mr. Ellis:

Your letter of February 18, 1964 has been received and I have made an inquiry into the matter. I am informed that your application has been reconsidered and has now been accepted by the Land Use Commission staff. The Land Use Commission is therefore to consider the validity of your application at an early date as is possible. If you have not yet received word on this matter from the Land Use Commission, you may expect it very shortly.

I hope the above action meets with your satisfaction. It is a pleasure to be of assistance to you.

With warm personal regards. May the Almighty be with you and yours always.

Sincerely,

John A. Burns

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
902 Nuuanu Avenue
Honolulu, 17, Hawaii

MAR 3 1964

Memo from

FEB 24 1964

John A. Burns

Iolani Palace

Feb. 19, 1964

Dear Myron:

Please note the attached letter which I have received from William S. Ellis, Jr., of Kula Development Corporation, regarding a petition before your committee. I would appreciate your comments and a draft reply for my signature at your early convenience.

Sincerely,

John A. Burns

*Honorable Myron Thompson, Chairman
Land Use Commission
Dept of Planning & Economic Development*

Attach.

Developers of choice
properties at Kula, Maui, on
the slopes of Haleakala

Kula Development Corporation

933
RECEIVED

902 NUUANU AVENUE, HONOLULU 17, HAWAII FEB 24 1964

State of Hawaii
LAND USE COMMISSION

February 18, 1964

The Honorable John A. Burns
Governor
State of Hawaii
Honolulu, Hawaii

Dear Governor Burns:

For about two weeks, I have been quietly and constructively attempting to get before the Land Use Commission a petition for change of boundaries, as clearly provided for under Section 98H-4, R.L.H. 1955, as amended.

Twice the petition has been declared "invalid" by counsel for the Commission without any consideration whatsoever by the Commission itself, in complete and utter violation of our basic rights under the Constitution of the United States. This is equivalent to being met at the courthouse door by a mere adviser to the Court who assumes the role of judge and jury and then exceeds even their functions in denying us due process of law.

As the enclosed indicates, I am making one more attempt to be accorded our Constitutional rights. It would be appreciated if your office would assure the proper performance of the Land Use Commission without the necessity of our resorting to the courts.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Senator Nelson Doi
Senator Kazuhisa Abe
Representative Donald D. H. Ching
Mr. Myron Thompson

Ref. No. LUC 129

February 25, 1964

The Honorable John A. Burns
Governor
State of Hawaii
Honolulu, Hawaii

Dear Governor Burns:

In response to your memo of February 19, 1964, I have prepared a draft of a letter for your signature. I believe the letter is self-explanatory. Should you have further questions, I shall be happy to hear from you.

Sincerely,

MYRON B. THOMPSON
Chairman

DRAFT

February 25, 1964

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
902 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

Your letter of February 18, 1964 has been received and I have made an inquiry into the matter. I am informed that your application has been reconsidered and has now been accepted by the Land Use Commission staff. The Land Use Commission, itself, will now consider the validity of your application at an early date as is feasible. If you have not yet received word on this matter from the Land Use Commission, you may expect to, at any day now.

I hope the above action provides you the relief you seek.

My warmest personal regards is extended to you.

Sincerely,

JOHN A. BURNS
Governor

cc: Senator Nelson Doi
Senator Kazuhisa Abe
Representative Donald D. H. Ching
Mr. Myron Thompson

Memo from

FEB 24 1964

John A. Burns

Iolani Palace

Feb. 19, 1964

Dear Myron:

Please note the attached letter which I have received from William S. Ellis, Jr., of Kula Development Corporation, regarding a petition before your committee. I would appreciate your comments and a draft reply for my signature at your early convenience.

Sincerely,

John A. Burns

**Honorable Myron Thompson, Chairman
Land Use Commission
Dept of Planning & Economic Development**

Attn:

Developers of choice
properties at Kula, Maui, on
the slopes of Haleakala

Kula Development Corporation

933
RECEIVED

902 NUUANU AVENUE, HONOLULU 17, HAWAII FEB 24 1964

State of Hawaii
LAND USE COMMISSION

February 18, 1964

The honorable John A. Burns
Governor
State of Hawaii
Honolulu, Hawaii

Dear Governor Burns:

For about two weeks, I have been quietly and constructively attempting to get before the Land Use Commission a petition for change of boundaries, as clearly provided for under Section 9811-4, R.L.H. 1955, as amended.

Twice the petition has been declared "invalid" by counsel for the Commission without any consideration whatsoever by the Commission itself, in complete and utter violation of our basic rights under the Constitution of the United States. This is equivalent to being met at the courthouse door by a mere adviser to the Court who assumes the role of judge and jury and then exceeds even their functions in denying us due process of law.

As the enclosed indicates, I am making one more attempt to be accorded our Constitutional rights. It would be appreciated if your office would assure the proper performance of the Land Use Commission without the necessity of our resorting to the courts.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Senator Nelson Del
Senator Kazuhisa Abe
Representative Donald D. H. Ching
Mr. Byron Thompson

Enclosures: *Howa deal w/ c/ltr.
to Chatham Feb 64*

1. Petition - dated 2/3/64 - 3 pgs
2. Acceptance by Commission of Reference (A) with Respect to Provisions of Hawaii Administrative Procedure Act (Chapter 6C, R.L.H. 1955, as amended). - dated 2/20/64 - 3 pgs.
3. Proposed Urgent Amendment to Chapter 98H - dated 2/19/64 - 2 pgs.
4. Amendment to Reference (A), Superceding Reference (B) - dated 2/19/64 - 2 pgs.
5. Covering Letter Resubmitting petition w/fee to Land Use Commission - dated 2/18/64 - 2 pgs.
6. Ltr. to Governor John A. Burns - dated 2/18/64 - 1 pg.
7. Ltr. to Senator Nelson Doi - dated 2/18/64 - 1 pg.
8. Ltr. to William Ellis from Attorney General Bert T. Kobayashi - dated 2/13/64 - 1 pg.
9. Ltr. to Attorney General from William Ellis - dated 2/7/64 - 3 pgs.
10. Ltr. to William Ellis from R. Yamashita - dated 2/7/64 - pg. 1.
11. Ltr. on Acceptance and Processing of Reference A and B - dated 2/6/64 - 3 pgs.
12. Interpretation of Section 98H-4 as Related to Reference A - dated 2/6/64 - 3 pgs.
13. Amendment to Reference A - dated 2/6/64 - 1 pg.
14. Definition of Kula, Island & County of Maui, As Land District, As Agric. Districts and as Popularly Conceived. 2/5/64 - 2pgs.

15. map

February 25, 1964

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

RECEIVED

937

FEB 26 1964

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

State of Hawaii
LAND USE COMMISSION

Re: Suggested Procedures for Hearing on February 28, 1964,
re Petitioner's Eligibility to File Reference (A), as
Amended by Reference (C), and as May Be Further Amended
Prior to, at, or Subsequent to Said Hearing.

References:

- (A) Petition to Land Use Commission dated February 3, 1964, for Amendment to Urban District Boundary of "Jamestown," Omaopio, Kula, Island and County of Maui, State of Hawaii.
- (B) Amendment to Reference (A) dated February 6, 1964, and delivered to Land Use Commission at 8:55 a.m. that date.
- (C) Amendment to Reference (A) dated February 19, 1964, superceding Reference (B).
- (D) Communication of February 6, 1964, to Land Use Commission re Interpretation of Section 98H-4 as Related to Reference (A), delivered at 8:55 a.m. that date.
- (E) Letter of February 6, 1964, from executive officer of Land Use Commission re invalidity of Reference (A), rejecting same, and citing opinion of counsel to the Commission as basis for action, received by petitioner at 9:10 a.m. that date.
- (F) Communication of February 6, 1964, to Land Use Commission re Acceptance and Processing of References (A) and (B) and returning Reference (A), delivered at 11:33 a.m. that date.
- (G) Letter of February 7, 1964, to Attorney General re acceptance and validity of petition and function of counsel to the Commission.
- (H) Letter of February 7, 1964, from executive officer of the Commission re invalidity of Reference (A), as amended by Reference (B), again rejecting same, and citing February 6, 1964, opinion of counsel as basis for action.

- (I) Letter of February 13, 1964, from Attorney General Bert T. Kobayashi to petitioner re function of counsel to the Commission.
- (J) Communication of February 19, 1964, to Chairmen, Senate and House Committees on Judiciary and Land re Proposed Urgent Amendment to Chapter 98H.
- (K) Communication of February 21, 1964, to Land Use Commission re Alleged Invalidity of Reference (A).

1. This will acknowledge, with thanks, notice by telephone to the undersigned on Maui of hearing scheduled in Honolulu on February 28, 1964, from 7:00 to 9:00 p.m., to be confined to the subject of the petitioner's eligibility to file Reference (A), as amended.
2. The purpose of this memorandum is to provide for an expeditious hearing on the subject by suggesting procedure and a specification of the issues, much in the manner of a pre-trial conference.

To implement this memorandum, and thus further expedite the hearing, it is suggested that the undersigned meet with the executive officer of and the counsel to the Commission and any representatives of interested committees of the Legislature in a pre-hearing conference to resolve or minimize differences as to procedures and issues suggested in this memorandum. The undersigned is tentatively scheduled to return to Honolulu at approximately 10:00 a.m., February 28. Any time after 11:00 a.m., including the possibility of a luncheon conference, is suggested.

3. It is requested that individual members of the Commission be provided copies of this communication and all of the above-mentioned references prior to the hearing.

It is further requested that copies of References (A) through (I) be provided to the chairmen of the Senate and House Judiciary Committees, the Senate Committee on Lands and Natural Resources, and the House Committee on Lands and that representatives of those committees be invited to participate in the suggested pre-hearing conference and/or the hearing itself as observers and advisors to the Commission on hearing procedures and Legislative intent.

4. As to respective roles, the following is suggested:

- a. That the Commission function solely as a tribunal, or forum of justice, to determine the right of the petitioner to file Reference (A). Therefore, the Commission is not a party in the juridical sense, at least, not an adversary to the petitioner.

- b. That the executive officer function solely as a master, assisting the tribunal. Therefore, he is not a party in the juridical sense, but an "officer of the tribunal."
- c. That the counsel to the Commission function solely as an adviser to the Commission (as a tribunal). Inasmuch as the Commission is not a party in the juridical sense, counsel is not an advocate pleading the cause of the Commission as an adversary to the petitioner. He is an "officer of the tribunal."
- d. That, in the juridical sense, the petitioner be considered the only party before the Commission, by virtue of having filed Reference (A) addressed to the tribunal. At a public hearing on the merits of Reference (A), any other property owner within the proposed amended boundaries who supports the petition might also be construed a party petitioner and any other property owner with similar rights who opposes the petition might be construed an adverse party. The purpose of the public hearing is to cause the joinder of parties whose rights are affected.

5. As to hearing procedure, the following is suggested:

- a. That the executive officer, as the tribunal's master, is the proper person to raise the question of the eligibility of the petitioner, should he be in doubt at the time of the hearing. In order to reach an objective conclusion as master, he must take into full consideration References (D), (F), (I), and (J), as well as the opinions of counsel to the Commission.

He should consider himself in no way bound by law or policy to concur with the opinion of counsel should he conclude, after due deliberation, that petitioner has not been proven ineligible beyond a reasonable doubt. His findings and conclusions should be briefly summarized in support of his recommendations.

- b. That should the executive officer recommend that the petitioner be considered eligible, the Commission may adopt or reject his recommendation. Should it be adopted, the matter would be settled without the necessity of hearing the petitioner.

Should the Commission reject such recommendation, or should the executive officer recommend that the petitioner be considered ineligible, the petitioner would then be afforded an opportunity to fully state his position, to be followed by questions, rebuttal, and counter-rebuttal. Should the Commission then conclude that the petitioner is a qualified party, the hearing on eligibility would be concluded.

- c. That should the Commission decide that the petitioner is ineligible, its decision should clearly state the findings of facts and conclusions upon which it is based. In such event, the petitioner should be advised in which particulars the petition should be amended so that there will be no question of eligibility. The Commission should also designate a reasonable time, in consultation with petitioner, in which to accomplish said amendments.

6. As to questions of relevant law:

- a. That the only grounds for considering the petitioner ineligible to be considered is the interpretation of the following in Section 98H-4: "...any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent."
- b. That the petitioner is presumed to have the legal right to file a petition under the provisions cited above and that the burden is upon the challenger of that right to show lack of such capacity. (39 Am. Jur., Parties, par. 12.) In other words, under the principle of "innocent unless proven guilty," the petitioner is eligible unless proven ineligible.
- c. That the petitioner must have an actual existing interest in or legal or equitable right in the subject matter of the petition, as principal, agent, or fiduciary. (39 Am. Jur., Parties, par. 13.)
- d. That the petitioner is at least entitled, if not obliged, to file a petition for a change of boundary as a representative of a class within the scope of Rule 23(a) of Hawaii Rules of Civil Procedure, should other nearby property be affected by common needs and trends. Under said rule, the petitioner is not obliged to procure the joinder of other members of the class.

7. As to questions of fact:

- a. Is the petitioner a property owner or lessee, or duly qualified representative of same?
- b. Are the property rights of the petitioner affected by the proposed boundary change?
- c. Are all nearby properties similarly affected included within the proposed amended boundary?

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Chairmen, Committees
Governor of Hawaii

Ref. No. LUC 128

February 25, 1964

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
900 Huanu Avenue
Honolulu, Hawaii

Dear Mr. Ellis:

This is to inform you that the question of the validity of your recent petition to amend the temporary urban district for "Jonestown", Kula, Maui, will be discussed by the Land Use Commission at 7:00 p.m. or as soon thereafter as is practical, on February 28, 1964 at the LUC hearing room, 426 Queen Street. Please be informed that one public hearing, on a different petition, will be heard commencing at 7:00 p.m. Your petition will be discussed at the conclusion of that hearing. You are invited to be in attendance and present any testimony on your behalf.

This letter also confirms our telephone discussion on February 24, 1964, on the matter.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

cc: Mr. Myron Thompson
Mr. Roy Takeyama
Mr. Charles Ota

February 23, 1964 938

RECEIVED

FEB 26 1964

State of Hawaii
LAND USE COMMISSION

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

To: Chairman, Senate Judiciary Committee
Chairman, Senate Committee on Lands & N.R.
Chairman, House Judiciary Committee
Chairman, House Committee on Lands

Re: Proposed Urgent Amendments to Chapter 98H to Get the
"Horse Before the Cart."

1. Section 6C-1(d), R.L.H. 1955, as amended, states:

"'Rule' means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy..."

2. Section 98H-2, referring to the Land Use Commission, states:

"The Commission shall set standards for determining the boundaries of each district..."

3. Inasmuch as the standards set by the Commission for determining boundaries are statements of general and particular applicability and future effect that implement and interpret law and prescribe policy, such standards must be set in accordance with Section 6C-3, which requires public hearings for same. The Land Use Commission has not followed this procedure in establishing its standards. Therefore, the public has not been afforded an "opportunity to submit data, views, or arguments, orally or in writing," as to these standards.

4. In view of the foregoing, any standards used by the Commission for classifying the lands in the state are not yet valid. Until they are legally valid, they should not be applied to the determination of land use boundaries. The rights of all property owners in the state will be seriously prejudiced in the event that the "cart is placed before the horse," and hearings on permanent boundaries are held prior to full hearings on and the adoption of standards.

5. For the sake of efficiency and expediency, the land classification standards should be integral with regulations mandated by Section 98H-7. The latter provides for adoption not later than July 1, 1964, whereas permanent boundaries may be adopted after May 1, 1964.

6. The Commission has not yet made available to the public the standards, proposed rules and regulations, and maps showing proposed permanent boundaries, although said items were to have been prepared, and reportedly were prepared, by the Commission by January 1, 1964. Technical conformance with the deadline without publication also seriously prejudices the public in not allowing

sufficient time to evaluate and discuss said items in order to adequately prepare comments and recommendations at public hearings.

7. None of the foregoing need reflect adversely on the integrity or sincerity of the Commission, its staff, or counsel, who appear to be zealously undertaking their assigned responsibilities with admirable dedication to duty. However, it is symptomatic of a severe case of "pressuritis" suffered by the Commission, which has been assigned an impossible task in the time allotted after its late appointment.
8. Rather than meet the arbitrary deadlines mandated by Chapter 98H, it would be very much in the public interest to adjust to the realities of the situation. The following procedures are suggested:
 - a. Place an urgency tag on amendments to Chapter 98H so that the public may immediately participate in hearings before the Legislature to clarify and amplify the principal areas of ambiguity and controversy in the act itself.
 - b. In the meantime, the Commission schedule expedited public hearings only on petitions for interim boundary changes and requests for special permits to afford prompt relief for long aggrieved property owners.
 - c. Revise the Commission's proposed rules and regulations in accordance with the amended Land Use Act. Also amend its rules of practice and procedure to eliminate abuse of its discretionary powers. Schedule public hearings under Section 60 and adopt rules and regulations by September 30, 1964.
 - d. Apply adopted standards to the classification of lands, hold public hearings and adopt permanent boundaries by January 31, 1965.
9. To implement the foregoing suggestions, it is recommended that:
 - a. The first paragraph of Section 98H-2 be amended to read as follows:

"Section 98H-2. Adoption of standards. There shall be four major land use districts into which all lands in the state shall be classified: urban, rural, agricultural and conservation. The commission shall prepare proposed standards for determining the boundaries of each district, provided...shall be in the commission. (Delete last sentence of paragraph.) Said standards shall be integral with the Commission's proposed regulations."
 - b. Renumber Section 98H-7 as 98H-3 and the intervening sections accordingly.

c. Amend renumbered Section 98H-3 to read as follows:

"Section 98H-3. Adoption of regulations. The Commission shall prepare proposed regulations relating to land classification standards and other matters within its jurisdiction and adopt same by September 30, 1964, in accordance with the provisions of Chapter 6C."

d. Amend renumbered Section 98H-4 to read as follows:

"Section 98H-4. Adoption of district boundaries. The commission shall designate land areas of the state as urban, rural, agricultural and conservation on the basis of standards adopted pursuant to Sections 98H-2 and 98H-3. Maps showing district boundaries shall be adopted by January 31, 1965, in accordance with rule-making procedures under Chapter 6C."

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Governor of Hawaii
Land Use Commission
Honolulu Advertiser

Copy sent to [unclear] [unclear]
February 21, 1964

931

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

FEB 24 1964

State of Hawaii
LAND USE COMMISSION

Re: Alleged Invalidity of Reference (A).

Reference:

(A) Petition to Land Use Commission dated February 3, 1964, for Amendment to Urban District Boundary of "Jamestown," Omaopio, Island and County of Maui, State of Hawaii, as amended February 19, 1964.

1. Receipt of a copy of the Commission's letter to the Maui Planning and Traffic Commission, forwarding Enclosure (A) for comments and recommendations is herewith acknowledged, with thanks. It is gratifying to learn that we have at last been accorded our constitutional and statutory rights after an unwarranted delay of 17 days.
2. Judging from the stubborn resistance to date and the content of said letter, acceptance of the petition appears to be the first round of a three-round battle, the first two rounds of which are unfortunately obscuring the substance of the third round:
 - Round 1. Acceptance of Reference (A).
 - Round 2. Determination of petitioner's eligibility to file Reference (A) as a class action.
 - Round 3. Consideration of the merits of Reference (A).
3. This communication is addressed primarily to the subject of Round 2. At least, we are in accord that only the Commission, and not the staff or counsel, can rule on the matter of our eligibility. Perhaps we are also in accord that the Maui Planning and Traffic Commission has no authority to "rule" on any matter for the Commission, but shall only offer its comments and recommendations on Reference (A) as provided under Section 98H-4.
4. We are fully confident that we are qualified to file Reference (A) under said section. Therefore, if there is to be any consideration of the "validity" of Reference (A), actually the qualifications of the petitioner to file as a class representative, the controversy must be raised by the Commission itself.

- petitioner to file*
5. If the Commission is to rule on the eligibility of Reference (A) specifically, it must first issue a "statement of general ...applicability and future effect that interprets" the intent of Section 98H-4. This is rule-making as defined by Section 6C-1(d). Such a rule must be made in accordance with Section 6C-3, requiring public hearings.
 6. If, despite the foregoing, the Commission feels that it has the authority to settle the matter under the provisions of Section 1.25(e) of its own rules of practice and procedure, we request that we be given a proper notice and hearing, as guaranteed under the Constitution of the United States and R.L.H. 1955. It is our contention that denial of notice and hearing under this section in a controversial matter (two or more parties involved) is in violation of constitutional and statutory provisions, in excess of the statutory authority and jurisdiction of the Commission, and a clearly unwarranted exercise of discretion.

16 Am. Jur., Declaratory Judgments, paragraph 55, states: "A case for declaratory judgment...in cases of actual controversies...must be formally presented with proper parties." A declaratory ruling procedure by the Commission would be equivalent. There can be no justice unless both parties to a controversy are present and can be heard. This is particularly true where a lay Commission, of which its counsel is an alleged party (!), is required to rule on matters of law. There could be no more biased and prejudicial circumstance than the absence of the aggrieved party during the determination of his rights.

7. It is our contention that Section 98H-4 provides for a class action within the meaning of Rule 23(a)(3) of Hawaii Rules of Civil Procedure:

Rule 23. Class Actions.

(a) REPRESENTATION. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is ... (3) Several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

8. Should it be proven that petitioner is not bringing a class action, such proof would not be grounds for dismissal of the petition, but merely cause for amendment, in accordance with Rule 21 of Hawaii Rules of Civil Procedure:

Rule 21. Misjoinder and Non-Joinder of Parties.

Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the

court on motion of any party or its own motion at any stage of the action and on such terms as are just.

It would only mean that the petition should be amended to include all proper parties as petitioners.

8. Inasmuch as Reference (A) cannot legally be construed invalid solely on the alleged ineligibility of the petitioner to file, it is respectfully requested that the Maui Planning and Traffic Commission be requested to offer its comments and recommendations forthwith, solely on the merits of the petition, leaving the matter of "validity" to the determination of the Land Use Commission.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Chairman, Senate Judiciary Committee
Chairman, Senate Lands Committee
Chairman, House Judiciary Committee
Chairman, House Lands Committee
Maui Planning and Traffic Commission

930

Thompson
OK
February 20, 1964

February 20, 1964

RECEIVED

FEB 24 1964

State of Hawaii
LAND USE COMMISSION

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

Re: Acceptance by Commission of Reference (A) with Respect to
Commission's Rules of Practice and Procedure, Adopted
April 4, 1962.

References:

- (A) Petition to Land Use Commission dated February 3, 1964,
for Amendment to Urban District Boundary of "Jamestown,"
Omaopio, Kula, Island and County of Maui, State of Hawaii,
as amended February 9, 1964.
- (B) Communication of even date re Acceptance of Reference (A)
with Respect to Chapter 6C, R.L.H. 1955.

Upon hand delivery of Reference (B) to the office of the Commission this morning, we were advised that the Commission's practice and procedure is governed by rules adopted April 4, 1962. Accordingly, Reference (B) stands corrected, particularly with respect to 6C-3 and 6C-8. The following comments apply to the Commission's own rules. (Emphasis added.)

- 1.1. "These rules govern procedure before the Land Use Commission ... They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding." Since petition was rejected by the executive officer, on advice of counsel, it was not yet before the Commission. Refusal to receive the petition was unjust, dilatory, and caused undue expense and hardship.
- 1.2. Definitions
 - (a) (5) "Proceedings. The term 'proceedings' as used in these rules shall mean the Commission's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon...initiated by a filing or submittal ...and shall include (a) proceeding involving the adoption of district boundaries..." The Commission, not the executive officer or counsel, elucidates after a petition is filed.
- 1.3. The Commission
 - (d) "Quorum and number of votes necessary to validate acts. ...a majority of all the members...shall constitute a quorum to transact business, and the concurrence of a majority of all members...shall be necessary to make any

action of the Commission valid..." By this rule, proposed barring of our petition is clearly invalid.

- (e) "Executive officer. (1) The executive officer shall have charge of the Commission's official records and shall be responsible for the maintenance and custody of the docket, files, and records of the Commission..." The executive officer, in this respect, is the "clerk" of the Commission, similar to a clerk of court. Like the latter, he has no express or implied authority to make rulings in general, nor to refuse to receive a petition on any grounds.

- (f) "Field officer.

"(1) Defined. The term "field officer"...includes the executive officer of the Commission or any other employee qualified in land use analysis and authorized by the Commission to hold a hearing for the purpose of taking evidence and make a recommendation to the Commission in a proceeding in which the application has been filed with the Commission."

The executive officer had not been authorized by the Commission to hold a hearing on the validity of our petition. If he were, he would have to follow procedures in paragraph (3). If he were, the petition would have to be filed with the Commission. A petition cannot be summarily rejected on any grounds; it must be accepted and filed even to rule on its validity.

1.5. Appearance and Practice before the Commission

- (b) "A person may be represented by or with counsel or other duly qualified representative in any proceeding under these rules." According to principles of American jurisprudence and Hawaii Rules of Civil Procedure, petitioner is a member of a class duly qualified to bring a class action in behalf of the entire class affected by the identical circumstances.
- (d) "When an individual acting in a representative capacity ...signs a paper in practice before the Commission, his ...signature shall constitute a representation to the Commission that...he is authorized and qualified to represent the particular person on whose behalf he acts." Prima facie, the petitioner is qualified to act, and his petition cannot be barred until a proper determination is made by the Commission as to petitioner's qualifications. The petition must be received by the Commission before such determination can be made.

1.7. Filing of Documents

- (a) "All...petitions...shall be filed with the executive officer

of the Commission." This section gives the executive officer no authority to reject petitions on any grounds whatsoever.

- 1.8. Docket. "The executive officer shall maintain a docket of all proceedings..." On receipt, a petition is placed on the docket for consideration of the Commission. The executive officer is not concerned with content or validity until the petition is before the Commission and then only as an expert witness on the merits of the petition.
- 1.11. Amendment of Documents and Dismissal. "If any document...in a proceeding is not in substantial conformity with applicable rules and regulations of the Commission as to the contents thereof, or on motion of any party, may strike or dismiss such document, or require its amendment." Only the Commission can do this, not the executive officer of his own accord. The petition must be before the Commission for it to take such action under this section or under Constitutional law. The usual practice, in accordance with Hawaii Rules of Civil Procedure and American jurisprudence generally, would be to permit amendment should the document be found deficient.
- 1.15. Party. "The term 'party,' wherever used in these rules, shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a proceeding." The right of a person to be a party cannot be determined until the proceeding is before the Commission.

"The Attorney General, in his capacity as counsel for the Commission, shall be a party to all proceedings governed by these rules." However, Attorney General Bert Kobayashi, in his letter to petitioner dated February 13, states: "The function of our office is merely to provide legal advice to the staff and to the Commission. Legally, we cannot and do not make decisions for the staff or the Commission." (His emphasis.) Even if properly a "party" to proceedings, the AG cannot be a party until there are proceedings; that is, until a petition is accepted by the Commission for consideration.

"The Attorney General or his representative shall be designated 'Counsel for the Commission'..." As an adviser, the AG is counsel to the Commission. He is not the Commission's advocate in a petition proceeding; rather, he is primarily amicus curiae to the Commission in its capacity as judge, not party.

Respectfully submitted,
KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Governor of Hawaii
Chairmen, Senate and House
Judiciary and Land Committees
Honolulu Advertiser

932
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FEB 24 1964

State of Hawaii
LAND USE COMMISSION

February 21, 1964

Planning & Traffic Commission
County of Maui
Kahului, Maui

Gentlemen:

As you know, our petition concerning amendment of land use boundaries for "Jamestown," Kula, which we discussed with you in a preliminary way, has been forwarded to you for comments and recommendations.

It appears that the Land Use Commission will continue to consider the possible "invalidity" of our petition on hyper-technical grounds. It is respectfully requested that your honorable body refrain from participation in this matter, which can be adequately settled at the State level, and process our petition on its merits in an expeditious manner.

We would appreciate the allocation of a half hour to 45 minutes to discuss the merits of the case at your meeting of March 10.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Land Use Commission

Ref. No. LUC 124

February 20, 1964

Mr. Robert Ohta, Planning Director
Planning and Traffic Commission
County of Maui
Kahului, Maui, Hawaii

Dear Mr. Ohta:

Transmitted herewith, in accordance with Section 90H-4, HLM 1953, 1961 Supplement, as amended by Act 203, SLH 1963, is a petition for comments and recommendations by your Planning Commission.

For your information, please be advised that upon advice from Counsel and consultation with the Chairman for the Commission, this petition has been rejected twice previously. Upon reconsideration of the issues, it was decided to accept the petition as the validity of the petition appears to be a matter for a decision by the Land Use Commission and not the staff. Therefore, the matter of a decision on the validity of the petition will be brought before the Land Use Commission, by the staff, as early as possible. In the meantime, the law mandates that this petition be forwarded to your Commission. We will keep you apprised of the situation.

Correspondence related to this matter ~~is~~ also enclosed for your information.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

Encl.

cc: Mr. William Ellis, Jr.
Mr. Myron Thompson
Mr. Roy Takeyama
Mr. Charles Ota

250-13-8071
1-31000

Ref. No. LUC 86

February 6, 1964

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
902 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

On advice from Counsel for the Commission, we are sorry to inform you that your petition is not valid. However, should signatures of the owners of properties involved be affixed to the petition, the petition would be valid and would be processed by the Land Use Commission as expeditiously as possible.

We have been advised by Counsel that:

"Section 98H-4, Revised Laws of Hawaii 1955, as amended, provides that " . . . any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent."

"We construe the foregoing sentence to mean that a property owner or lessee who desires to use his land for uses other than for which it is districted may petition the Land Use Commission for a change in the boundary of any district, interim or permanent.

"To interpret it otherwise may bring about an absurd situation wherein a property owner in Kahoolawe may request a boundary change of lands in Oahu, even though he may have no interest in the lands involved. Furthermore, it may open the floodgates to an avalanche of fruitless and frivolous requests for boundary changes.

Mr. William S. Ellis, Jr.

Page 2

February 6, 1964

"Based on the foregoing, we are of the opinion that the initiation of such requests for boundary changes is limited to owners or lessees of property whose lands are the subject of the request, except as otherwise provided, and in the same manner as special permits. (See Section 98H-6, Revised Laws of Hawaii 1955, as amended.)"

Enclosed is the original petition submitted by you. The copy will be kept for our records. As soon as we have withdrawn your check, which has been deposited, we will transmit it to you.

Should you have further questions, please contact us.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

Encl.

cc: Mr. Robert Chata
Mr. Myron Thompson
Mr. Roy Takeyama

RECEIVED

FEB 6 1964

11:33 a.m.
Q. L. Kai

P-E-T-I-T-I-O-N

RECEIVED

FEB 18 1964

What date
of receipt

State of Hawaii
LAND USE COMMISSION
February 3, 1964

sent to
Thomas and
Maryann
Oster

To: State of Hawaii
LAND USE COMMISSION
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

FEB 4 1964

State of Hawaii
LAND USE COMMISSION

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Re: Amendment to Urban District Boundary of "Jamestown,"
Omaopio, Kula, Island and County of Maui, State of
Hawaii

References:

- (A) Our communication of March 6, 1963, to the Land Use Commission protesting the deletion of "Jamestown" as an Interim Urban District.
- (B) Copy of our communication of March 27, 1963, to the Maui Planning and Traffic Commission protesting same.
- (C) Our communication of December 19, 1963, to the Land Use Commission requesting retention of "Jamestown" Urban District boundaries.
- (D) Our communication of December 21, 1963, to the Land Use Commission amending Reference (C).

Enclosure:

- (I) TMK 2nd Div. 2-3-04, showing present and proposed amended "Jamestown" Urban District boundaries.

Pursuant to Section 98H-4 of Act 205, S.L.H. 1963, Kula Development Corporation respectfully petitions the Land Use Commission, hereinafter called the "Commission," with regard to the amendment of the Urban District boundaries of that mauka portion of the ahupuaa of Omaopio, Kula, Maui, defined in Reference (A) and designated "Jamestown" therein and herein for ease of reference, as follows:

1. Pursuant to the mandate of Act 187, S.L.H. 1961, the first Commission in April 1962 appropriately designated the Urban District of "Jamestown" in accordance with existing use and including within its boundaries a "sufficient reserve area for foreseeable urban growth."

2. In January 1963, the newly constituted Commission, on the recommendation of its consultant, proposed to ignore the Urban District of "Jamestown." The consultant did not properly define the Kula area and consequently made over-generalized and erroneous statements regarding the area's residential development. (See pages 4 and 5 of Reference (A).)
3. It has been established that the consultant's recommendation was influenced by the opinion that a 400-acre Urban District at "Jamestown" would be too large. (See page 2 of Reference (B), paragraph 3b.) In other words, it might be said that the area of disagreement with the first Commission's action was in the allocation of a "sufficient reserve area for foreseeable urban growth." The basis of this controversy is the element of size of the "Jamestown" Urban District, not whether it does in fact exist.
4. Act 205, in amending the Land Use Act, suggests the appropriate compromise solution to the Jamestown controversy. The addition of the Rural classification, in this situation, is equivalent to a significant "trend of development" which warrants the amendment of the "Jamestown" Urban District boundaries. Therefore, it is respectfully requested that the "Jamestown" Urban District be changed by reducing it to the area indicated on Enclosure (I).
5. In support of this request, we submit the following:
 - a. Within the proposed Urban District of approximately 146 acres, there are:

Commercial (hotel)	11.70 acres
Completed Kula Orchards, 61 lots intended residential/commercial, of which 38 are under half-acre	49.14 "
Planned Kula Gardens, 119 lots intended residential/commercial, of which 100 are under half-acre	70.00 "
Planned condominium development	4.20 "
Resubdivided Kula Heights, 26 lots intended residential/commercial of which 23 are under a half-acre	<u>10.56</u> "
Total urban use	146.00 acres

Of the total, about 124 acres are already served or will be served by underground utilities, 6" to 8" water mains, water storage facilities, and 40-foot roadways with 20-foot macadam pavement, all such improvements qualifying as an urban level of services.

Considering the above, there is no question that the land within the proposed Urban District is "usable and adaptable" for urban use. Conversely, it is not economically usable or adaptable for any other use.

- b. In the balance of the "Jamestown" area, outside of the proposed amended Urban District and excluding Kula Kai subdivision, there are only 8 lots in the range of a half-acre or less, as compared to 161 of that size within the proposed amended Urban District. These lots might properly be considered non-conforming within the Rural classification, being in the distinct minority.
 - c. As indicated in References (C) and (D), there are no more than 30 lots less than a half-acre in all of Kula's 30,000 acres outside of "Jamestown," including the two Urban Districts of Waiakoa and Keokea. Clearly, 161 lots less than a half-acre within an area of 146 acres qualifies the proposed amended Urban District of "Jamestown" as distinctly different in land use from the Rural use prevalent in about 5,000 acres of Kula and the Agricultural use prevalent in the remaining 25,000 acres.
 - d. According to sales agent Erling P. Wick, the developers of Kula Kai, which comprises 136 lots under a half-acre, have no objection to that subdivision being considered non-conforming within the Rural classification. Hence, it has been omitted from our proposed amended Urban District.
6. In general support of this request, particularly as they relate to those characteristics of "Jamestown" which differentiate the area from the rest of Kula, we incorporate all of the above-cited references herein and make them a part hereof.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

By William S. Ellis, Jr.
 William S. Ellis, Jr.
 President & Manager

WSE:do

cc: Maui Planning Com.
 Mr. Frank James

PLAT A 06 A P U E O PLAT 06

Haleakala Ranch Co.
784.28 Ac±

EXISTING BOUNDARY

AMENDED BOUNDARY

7124

N

U

05

PLAT

Por. of KULA, MAKAWAO, MAUI.

Dwg. No. _____
By: N
Source: 1

SCALE IN FEET

500 250 0 500 1000 1500 2000



ADVANCE SHEET
SUBJECT TO CHANGE

Parcel Dropped 6, 8, 10, 12, 34, 32

SECOND DIVISION		
ZONE	SEC	PLAT
2	3	04
CONTAINING		PARCELS
SCALE: in = 500 ft.		

PRINTED

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FEB 4 1964
State of Hawaii
LAND USE COMMISSION

RECEIVED

FEB 18 1964

State of Hawaii
LAND USE COMMISSION

*Actual date
received*

RECEIVED

FEB 6 1964

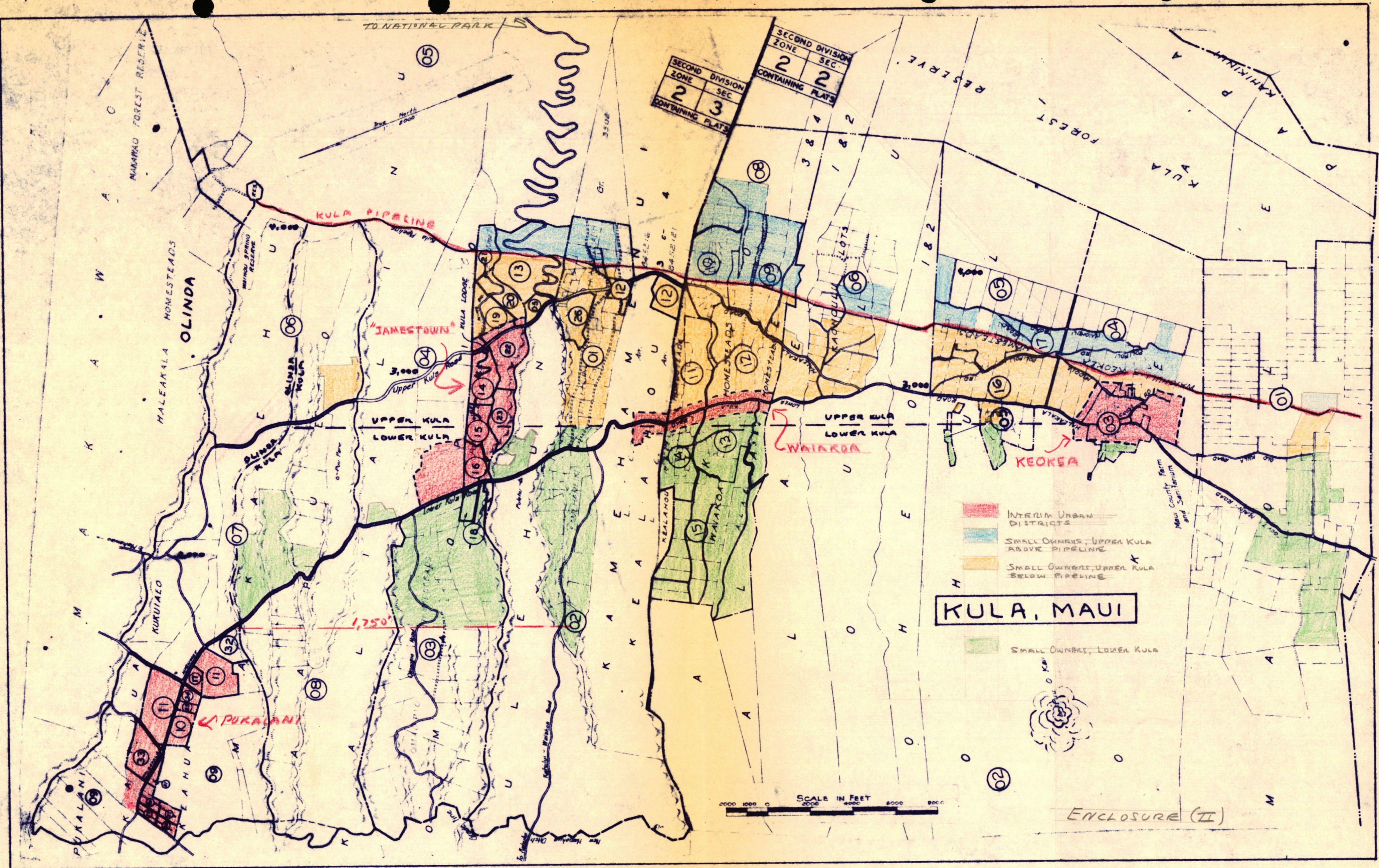
State of Hawaii
LAND USE COMMISSION

*11:33 a.m.
A.P. [signature]*

William Ellis
Concerning Kula Area
Submitted with of
2/4/64 + 2/5/64

RECEIVED
FEB 6 1964
State of Hawaii
LAND USE COMMISSION

RECEIVED
FEB 6 1964
State of Hawaii
LAND USE COMMISSION



William Ellis
Concerning Icala
Area submitted
w/lttr of 2/6/64
x 2/5/64

RECEIVED
FEB 6 1964
State of Hawaii
LAND USE COMMISSION

RECEIVED
FEB 6 1964
State of Hawaii
LAND USE COMMISSION

State Form B14

STATE OF HAWAII

OFFICIAL
RECEIPT

No.

78

LAW USE Commission
426 Queen St., Honolulu, Hawaii
Department, Bureau or Commission

Feb. 18, 1964

RECEIVED from William S. Ellis, Jr.

Fifty + 00/100

DOLLARS

for public hearing by the LHC for boundary change
in Kula, Maui

\$ 50.00

Quentin L. Lai

Public Accountant

005187 State

February 20, 1964

927

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

RECEIVED

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

FEB 20 1964

State of Hawaii
LAND USE COMMISSION

Re: Acceptance by Commission of Reference (A) with Respect to
Provisions of Hawaii Administrative Procedure Act (Chapter
6C, R.L.H 1955, as amended).

Reference:

(A) Petition to Land Use Commission dated February 3, 1964,
for Amendment to Urban District Boundary of "Jamestown,"
Omaopio, Kula, Island and County of Maui, State of
Hawaii, as amended February 19, 1964.

6C-1. Definitions.

"(a) 'Agency' means...commission...or officer author-
ized by law to make rules..." Section 98H-7 provides that
"the commission shall...prepare proposed regulations
relating to matters within its jurisdiction." No officer
of the Commission, nor its counsel, is authorized by law to
make rules.

"(d) 'Rule' means each agency statement...that imple-
ments, interprets, or prescribes law or policy." Proposed
refusal to accept Reference (A) is based on an opinion as
to the intent of Section 98H-4 which is a rule by this
definition. Neither counsel nor the executive officer has
legal authority to make such rule. The Commission has no
authority to make such rule without complying with pro-
visions of Chapters 6C and 98H, requiring public hearings.

6C-2. Public information.

"(b) No agency rule, order, or opinion shall be valid
or effective against any person or party...until it has
been published..." Opinion re Section 98H-4 has not been
published. It did not exist in any form, invalid or other-
wise, at time petition was filed.

6C-3. Procedure for adoption, amendment or repeal of rules.

Commission has not yet followed procedures for hearings
and adoption of rules under Chapters 6C and 98H. There-
fore, it has no firm, official rules (opinions, interpre-
tations, policies) except for interim regulations. These

have no bearing on eligibility of a petitioner under Section 98H-4. Therefore, Commission has no authority to declare petition invalid at this date.

6C-7. Declaratory judgment on validity of rules.

(a) Since our petition has been barred to date on the "ruling" of counsel, there is no agency rule to bring before the court.

(b) If petition were refused ex parte by the Commission at this time, it is our opinion that the Commission would be found by the court to violate constitutional and statutory provisions and to exceed its authority. If refused after a hearing, the Commission would likely be found in violation of statutory rule-making procedures.

6C-8. Declaratory rulings by agencies.

As yet, there are no rules prescribing rules for submitting petitions to the Commission for declaratory rulings under this section. There cannot be until the Commission's rules and regulations are adopted after public hearings.

If, despite all of the foregoing and other memoranda on the subject from petitioner, the Commission (not counsel to the Commission nor the executive officer of the Commission) wishes to contest the validity of our petition, the petitioner should be afforded a "private hearing" as requested. This would be the appropriate substitute for a petition for a declaratory ruling at this date.

6C-9. Contested cases; notice; hearing; records.

If our situation were to be construed a contested case, it is basic that "all parties shall be afforded an opportunity for a hearing." There could be no "case" if our petition were not before the Commission and if the petitioner were not a party to the hearing.

Procedures specified under this section are based on time-honored juridical principles. Whether or not our situation may be construed as to fall within this section, the fact remains that the petitioner must be accorded equivalent treatment under the Constitution of the U.S.

6C-10. Rules of evidence; official notice.

If ours were a contested case, we would not only have the right to appear before the Commission but also the right to cross-examine witnesses, submit rebuttal evidence, etc. This, again, is in accordance with Constitutional rights.

6C-12. Decisions and orders.

Were ours a contested case, the Commission's order would have to be in writing, accompanied by separate findings of fact and conclusions of law. Our "case" has not even come before the Commission.

6C-14. Judicial review of contested cases.

Should we appeal our "case" to a court at this time, it is our opinion that the court would find refusal of our petition by the executive officer on counsel's ruling:

(1) In violation of constitutional and statutory provisions.

(2) In excess of the statutory authority or jurisdiction of the Commission.

(3) Made upon unlawful procedure.

(4) Affected by other error of law.

(5) Clearly erroneous.

(6) Arbitrary and capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Governor of Hawaii
Chairman, Senate Judiciary Committee
Chairman, Senate Committee on Lands & N.R.
Chairman, House Judiciary Committee
Chairman, House Committee on Lands
Honolulu Advertiser

February 19, 1964

926

RECEIVED

FEB 20 1964

State of Hawaii
LAND USE COMMISSION

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

To: Chairman, Senate Judiciary Committee
Chairman, Senate Committee on Lands & N.R.
Chairman, House Judiciary Committee
Chairman, House Committee on Lands

Re: Proposed Urgent Amendment to Chapter 98H.

1. Since February 3, 1964, we have been engaged in a "running battle" with the Land Use Commission regarding our right to file a petition under Section 98H-4. Twice the petition has been "ruled" invalid by counsel to the Commission without benefit of a hearing or any other due process of law. Rather than resort to the courts for a declaratory ruling, with its attendant delay and expense, it might be more expedient for the Legislature itself to clarify the intent of said section.
2. It is our contention that said section is intended to define boundaries in accordance with prevailing use, trends, and needs. This purpose is to be sharply distinguished from the purpose of Section 98H-6, regarding special permits. The latter provides for a variance, or non-conforming use of the petitioner's own property exclusively.

In short, it is our contention that under Section 98H-4 a petitioner may be acting either individually, if only his property is affected by needs and trends, or as a member of a class, if nearby property is also affected by needs and trends. In fact, we believe that a petitioner would be remiss in his duty and would be violating the intent of the Land Use Act if he did not include other properties concerned when filing a petition under Section 98H-4.

Paraphrasing from 39 Am. Jur., "Parties," paragraph 13: "The petitioner must have an actual existing interest in or a legal or equitable right in the subject matter of the petition." This principle, running throughout American jurisprudence, would preclude nuisance petitions by those having no such rights.

3. So as to avoid any recurrence of the problem facing us or the possibility of too restrictive an interpretation of Section 98H-4, it is proposed that an "urgency" tag be given to an amendment of said section, as follows:

Section 98H-4. Amendments to district boundaries. Any department or agency of the State or county, or any owner, vendee, lessee, or optionee of private real property, or any person having an equitable interest therein, or a bona fide representative of any of the foregoing, may petition the commission for a change in the boundary of any district, interim or permanent, provided that any private petitioner shall include within the proposed boundary change all properties affected by needs and trends similar to those affecting that property in which he has an interest. . . .

4. So as to provide for more expeditious processing of such petitions by the Land Use Commission, the agency primarily concerned, it is recommended that the county planning commission be allowed only 30 days after receipt to return the petition to the Land Use Commission.

It is also suggested that the minimum time limit be deleted in the second paragraph of Section 98H-4 to allow the Commission more flexibility in programming petitions for hearings on Neighbor Islands. And it is further suggested that the maximum be changed from 210 days to 100 days in the first instance, and the maximum changed from 90 days to 30 days in the second instance, to minimize the hardship on the petitioner.

5. To assure immediate judicial appeal in contested decisions, without a prior declaratory judgment, it is suggested that Section 98H-4 be as specific as Section 98H-6 in that regard, by adding the following sentence at the end of Section 98H-4:

A denial by the commission of the proposed boundary change shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Governor of Hawaii
Land Use Commission

9-1
Thom 8302
Jalagane
February 19, 1964

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

FEB 19 1964

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

State of Hawaii
LAND USE COMMISSION

Re: Amendment to Reference (A), Superceding Reference (B).

References:

(A) Petition to Land Use Commission dated February 3, 1964, for Amendment to Urban District Boundary of "Jamestown," Omaopio, Kula, Island and County of Maui, State of Hawaii.

(B) Amendment to Reference (A) dated February 6, 1964.

1. Reference (B) is hereby superceded.
2. Reference (A) is hereby amended by changing the period at the end of the last sentence of item 4 to a comma and adding the following: "as modified by the inclusion of TMK 2nd Div. 2-3-14-18."
3. Reference (A) is hereby amended by adding to item 4 a new paragraph, to read as follows:

"In the alternative, should the foregoing request be denied by the Commission on the grounds of petitioner's eligibility, after a declaratory ruling by a circuit court of the State of Hawaii that the petitioner lacks legal authority to propose such boundaries under Section 98H-4, it is respectfully requested that the "Jamestown" Urban District be changed by reducing its boundaries to those properties within the proposed amended Urban District for which the petitioner has a legal right to make such a request at the time of the public hearing thereon."

4. Reference (A) is hereby amended by renumbering item 5 thereof as item 6 and adding a new paragraph 5 thereto, to read as follows:

"Pending determination by the Commission of petitioner's eligibility to file this petition, should such eligibility be in issue, including in the Commission's determination a declaratory ruling by a circuit court of the State of Hawaii as to such eligibility, it is respectfully requested that this petition be accepted and processed on its merits, on the presumption that petitioner is qualified to file

said petition until proven otherwise in accordance with accepted procedures of American jurisprudence under the Constitution of the United States. (Cf. 39 Am. Jur., Parties, par. 12: "Capacity to Sue (Petition).--... a party plaintiff (petitioner) is presumed to have legal capacity to sue (petition) and the burden is upon his adversary in the first instance to show lack of such capacity.")

5. Reference (A) is hereby amended by adding after the words "KULA DEVELOPMENT CORPORATION" in the signature thereto a comma and the words: "individually and as a class representative."
6. Reference (A) is hereby amended by modifying Enclosure (I) thereto to include TMK 2nd Div. 2-3-14-18 (Lot 10), to be colored red, and by coloring red TMK 2nd Div. 2-3-14-4.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION,
individually and as a class
representative

By William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Maui Planning & Traffic Commission
Mr. Frank James

*Developers of choice
properties at Kula, Maui, on
the slopes of Haleakala*

Kula Development Corporation

902 NUUANU AVENUE, HONOLULU 17, HAWAII

February 18, 1964

RECEIVED

FEB 18 1964

State of Hawaii
LAND USE COMMISSION

Mr. Myron Thompson, Chairman,
and Members
Land Use Commission
Dept. of Planning & Economic Development
426 Queen Street
Honolulu, Hawaii

Gentlemen:

On my return from Maui this morning, I found our petition of February 3 once again returned for alleged invalidity, despite the fact that it has never been considered by the Commission. I also found a check for \$50.00 made payable to this corporation, along with a memo from Miss Kai concerning same.

Additionally, I have a letter from Mr. Bert Kobayashi, Attorney General, dated February 13. I wish to call your attention particularly to the last paragraph of his letter:

"The function of our office is merely to provide legal advice to the staff and to the Commission. Legally, we cannot and do not make decisions for the staff or the Commission."

That is precisely the point of our remonstrances over the Commission's refusal to receive and consider our petition for a change of boundary. Mr. Yamashita's letter of February 6, returning our petition, begins, "On advice of Counsel for the Commission,..." His letter of February 7, again returning the petition, states, "Again, on advice of Counsel,..."

In short, it appears that Counsel has made the decision for the Commission. The decision is not Mr. Yamashita's nor the Commission's. It is our opinion that Mr. Yamashita does not have the authority to summarily reject our petition with or without the advice of counsel. According to time-honored democratic principles, only the Commission itself can do this after an objective hearing at which the petitioner is allowed to be present.

Therefore, we are once again returning our petition of February 3, 1964. We are also returning your check for \$50.00 endorsed over to the Land Use Commission. It is respectfully requested that the

the Commission receive the petition without further obstructive or dilatory tactics and schedule a "private" hearing with petitioner at its next regular meeting in Honolulu to consider this matter fairly and thoroughly. Should the Commission rule, after a proper hearing, that the petition is invalid, we might then resort to a declaratory ruling under the provisions of the Hawaii Administrative Procedures Act.

Otherwise, we will be forced to resort to a writ of mandamus to get the petition before the Commission. There is no reason why any property owner must follow this course of action to be accorded due process of law as guaranteed under the Constitution of the United States.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.

William S. Ellis, Jr.
President & Manager

WSE:do
Encls.

cc: Governor John A. Burns
Senator Nelson Doi
Senator Kazuhisa Abe
Representative Donald D. H. Ching
Honolulu Advertiser

Thompson, Nelson

RECEIVED

FEB 18 1964

State of Hawaii
LAND USE COMMISSION

February 18, 1964

The Honorable John A. Burns
Governor
State of Hawaii
Honolulu, Hawaii

Dear Governor Burns:

For about two weeks, I have been quietly and constructively attempting to get before the Land Use Commission a petition for change of boundaries, as clearly provided for under Section 98H-4, R.L.H. 1955, as amended.

Twice the petition has been declared "invalid" by counsel for the Commission without any consideration whatsoever by the Commission itself, in complete and utter violation of our basic rights under the Constitution of the United States. This is equivalent to being met at the courthouse door by a mere adviser to the Court who assumes the role of judge and jury and then exceeds even their functions in denying us due process of law.

As the enclosed indicates, I am making one more attempt to be accorded our Constitutional rights. It would be appreciated if your office would assure the proper performance of the Land Use Commission without the necessity of our resorting to the courts.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Senator Nelson Doi
Senator Kazuhisa Abe
Representative Donald D. H. Ching
Mr. Myron Thompson

Thompson
Ellis
RECEIVED

FEB 18 1964

State of Hawaii
LAND USE COMMISSION

February 18, 1964

The Honorable Nelson Doi
President, State Senate
Honolulu, Hawaii

Dear Senator Doi:

We are vitally concerned with the proper performance of the Land Use Commission.

Accordingly, we will very much appreciate being informed of any Senate hearing at which confirmation of the present appointees is considered. Please have your clerk keep us posted by phoning 507-081. Should our answering service indicate that I am on Maui, please have your clerk phone me person-to-person, collect, at Maui 782-325.

Also, should any "emergency" legislation be introduced relating to the Land Use Act, I wish to appear as a witness at hearings.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Senator Kazuhisa Abe
Representative Donald D. H. Ching
Mr. Myron Thompson

ADDRESS REPLY TO
"THE ATTORNEY GENERAL OF HAWAII"
AND REFER TO
INITIALS AND NUMBER

RYT:hbl

56:12b



CABLE ADDRESS
ATTGEN

BERT T. KOBAYASHI
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

February 13, 1964

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

We acknowledge receipt of your letter dated February 7, 1964, relative to your inquiry regarding your petition for amendment to the interim boundaries.

Inasmuch as you are questioning the action of the field executive officer, who failed to process your petition, based upon our interpretation of Section 98H-4 and further based upon the policy established by the Land Use Commission, we recommend that you address your inquiry to the Land Use Commission.

The function of our office is merely to provide legal advice to the staff and to the Commission. Legally, we cannot and do not make decisions for the staff or the Commission.

Very truly yours,


Bert T. Kobayashi
Attorney General

ADDRESS REPLY TO
"THE ATTORNEY GENERAL OF HAWAII"
AND REFER TO
INITIALS AND NUMBER

RYT:hmm

40:12b



898

CABLE ADDRESS:
ATTGEN

BERT T. KOBAYASHI
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

February 5, 1964

RECEIVED
FEB 5 1964
State of Hawaii
LAND USE COMMISSION

MEMORANDUM

TO: Mr. Raymond Yamashita, Executive Officer
Land Use Commission

FROM: Roy Y. Takeyama, Deputy Attorney General

SUBJECT: Request for Boundary Change by William E. Ellis, Jr.

Mr. William E. Ellis, Jr., president-manager of Kula Development Corporation, submitted the attached letter requesting a change in the interim boundaries from urban to agriculture of certain lands in or around Jamestown in Kula, Maui. Mr. Ellis states that he, nor the corporation he represents, has any interest in the lands involved; nor does he purport to represent the property owners to be affected by his request.

Section 98H-4, Revised Laws of Hawaii 1955, as amended, provides that "... any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent."

We construe the foregoing sentence to mean that a property owner or lessee who desires to use his land for uses other than for which it is districted may petition the Land Use Commission for a change in the boundary of any district, interim or permanent.

To interpret it otherwise may bring about an absurd situation wherein a property owner in Kahoolawe may request a boundary change of lands in Oahu, even though he may have no interest in the lands involved. Furthermore, it may open the floodgates to an avalanche of fruitless and frivolous requests for boundary changes.

Based on the foregoing, we are of the opinion that the initiation of such requests for boundary changes is limited to owners or lessees of property whose lands are the subject of the request, except as otherwise provided, and in the same manner as special permits. (See Section 98H-6, Revised Laws of Hawaii 1955, as amended.)

Roy Y. Takeyama
Roy Y. Takeyama

Attachment

RECEIVED

FEB 10 1964

State of Hawaii
LAND USE COMMISSION

RECEIVED

FEB 10 1964

State of Hawaii
LAND USE COMMISSION

February 7, 1964

909

Attorney General
State of Hawaii
Honolulu, Hawaii

Dear Sir:

I have always been interested in good government and have been active particularly in the areas of agriculture, land and water resources, and economic development since 1955. As lobbyist and consultant, I have drafted three sub-chapters of Revised Laws of Hawaii and have amended many others needing clarification, amplification, or expansion. In the process, I have often prepared drafts of committee reports as to legislative intent.

For the past 20 years, I have been a publisher-printer-editor-writer in Hawaii, with a great deal of exposure to the above-mentioned fields. For example, I founded Hawaii Agriculture in 1950 and published it for 11 years. On contract to the Hawaii Irrigation Authority, I did much of the research for and wrote irrigation feasibility reports on Kula, Kokee, and Waianae and, as a by-product, General Reference Guide for Irrigation Project Planning in Hawaii.

Having assumed the responsibility for extricating a distressed corporation from its predicament in 1962, I have spent much time during the past year in Second Circuit Court and have also been exposed to district court procedures. I am now rather familiar with the respective roles of court officers, counsel, parties, juries, and witnesses. I know something of pleadings, affidavits, memoranda of points and authorities, orders and decrees, and a good deal of the substance of the law.

So I am at least somewhat qualified to handle a petition pro se in an effort to obtain relief from a grievously prejudicial situation caused by the failure of the Land Use Commission since January 1963 to continue recognition of existing urban land use at "Jamestown," Kula, Maui. I have no personal quarrel with the Commission members and have the utmost respect for the integrity and sincere motivation of staff and counsel. I am not an adversary to the Commission nor do I wish to engage in a continuing competitive struggle to assert the rights of our corporation under the Land Use Act and the laws of Hawaii generally and those of the United States.

Accordingly, although our experience with the Commission has been most frustrating, to the point of exasperation, we are attempting to take a constructive attitude in our relations with the Commission. In this regard, I call your attention particularly to two of our communications of February 6 to the Commission relative to the intent of Section 98H-4 of Act 205 and Commission procedures thereunder.

If we were an adversary to the Commission, counsel's opinion as to the interpretation of Section 98H-4 might be a proper grounds for the equivalent of a motion to dismiss, to be considered by the Commission at a private hearing, along with our interpretation, in deciding the issue. But, at least, the petition must be before the Commission for it to reach a proper decision according to time-honored principles of jurisprudence. Counsel to the "court" cannot assume the role of judge. The clerk of court has no right to decide on the validity of a cause of action. No motion in bar can be decided before it reaches the courtroom. Clearly, the proposed refusal to receive and consider our petition would be a miscarriage of justice.

Should our petition, in truth, be invalid for technical reasons, it should be incumbent upon the Commission to permit or suggest an amendment to the petition or joinder of parties under the same liberal procedures enjoyed before a court of law. There is a period of 100 to 210 days (excessive and oppressive!) in which to accomplish this. It is not the Commission's function to defeat a petitioner's claim by summary action. Especially since many petitioners might appear without counsel, it seems to be the Commission's responsibility to assist a petitioner in preparing a proper case to achieve a legitimate objective within the scope and purpose of the Land Use Act. And since the Commission functions juridically much as a court of chancery, it should be concerned primarily with substance rather than form.

Also, it is most important that the Commission accord all petitioners equal treatment and interpret the Land Use Act with a consistent degree of liberality or technicality. We consider the proposed refusal of our petition to be based upon a hyper-technical as well as illegal interpretation. By way of contrast, we consider opinions relating to the rural zoning intent of the Land Use Act to be exceptionally liberal. This is not to attack the latter nor to impugn the sincerity or ability of counsel or the Commission, merely to illustrate the matter of consistency.

Also, we feel it to be important that the Commission be very explicitly advised that it is in no way bound by the interpretation of its own counsel in matters of law. Rather, it is obliged to consider and carefully weigh contrary views and reach impartial, judicially sound conclusions.

We hope that the constructive intent of this letter is apparent. We would much rather contribute to good government and be accorded

our due legal rights under amicable circumstances than be obliged to resort to the courts, placing ourselves in an adversary role against a government agency. The resulting delay and unlimited legal resources of the State would place us at a serious disadvantage; the attendant publicity might be a disadvantage to the administration.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Mr. Myron Thompson
Mr. Ray Yamashita

Ref. No. LUC 92

February 7, 1964

Mr. William Ellis, Jr.
President & Manager
Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

Your communications listed below were received by this office on February 6, 1964:

- (1) Re: Interpretation of Section 95H-4 as related to Reference (A), dated February 6, 1964.
- (2) Re: Amendment to Reference (A), dated February 6, 1964.
- (3) Re: Acceptance and Processing of References (A) and (B), dated February 6, 1964.

Reference (A) Petition to Land Use Commission dated February 3, 1964, for amendment to Urban District Boundary of "Jonestown," Oahepio, Kula, Island and County of Maui, State of Hawaii.

Reference (B) Amendment to Reference (A) filed on February 6, 1964.

Your communications have been discussed with Counsel for the Commission. Again, on advice from Counsel, we are sorry to inform you that your petition is still not valid and on the same basis explained in our letter to you, dated February 6, 1964. Enclosed herewith is your petition.

Very truly yours,

PAYMOND S. YAMASHITA
Executive Officer

Enc.

cc: Mr. Myron Thompson
Mr. Roy Takeyama
Mr. Robert Ohta

February 6, 1964

910
Sent to Thomas
Johnson

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

FEB 6 1964

11:33 a.m.
G. L. Kai

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

State of Hawaii
LAND USE COMMISSION

Re: Acceptance and Processing of References (A) & (B).

References:

- (A) Petition to Land Use Commission dated February 3, 1964, for Amendment to Urban District Boundary of "Jamestown," Omaopio, Kula, Island and County of Maui, State of Hawaii.
 - (B) Amendment to Reference (A) filed this date.
 - (C) Communication of even dated to Land Use Commission re interpretation of Section 98H-4 as related to Reference (A).
 - (D) Letter of even date from the executive officer of the Land Use Commission relating to interpretation of Section 98H-4, alleging that Reference (A) is invalid and returning same as enclosure.
1. This will acknowledge receipt of Reference (D), delivered to the undersigned in person at 9:10 a.m. this date, subsequent to hand delivery of References (B) and (C) to the Commission at 8:55 this date.
 2. In accordance with petitioner's interpretation of Section 98H-4, Reference (A) is considered validly filed and is returned herewith for due process, along with Reference (B), in accordance with the intent of the aforesaid section and fundamental rights guaranteed under the Constitution of the United States.
 3. Without commenting on the merits of Reference (D), petitioner submits that its interpretation of Section 98H-4 in Reference (C) is equally deserving of consideration by the Commission.
 4. As amended at 8:55 a.m. this date, Reference (A) would comply with the intent of Section 98H-4 as interpreted by counsel to the Commission.
 5. The Commission functions in three capacities:

- a. Administrative: Classification of the lands of the state and routine functions incident thereto.
 - b. Legislative: Formulation of standards, rules, and regulations pursuant to the intent of Acts 187 and 205.
 - c. Juridical: Considering petitions for changes in land use boundaries and applications for special permits.
6. In the instant situation, the Commission is functioning in its juridical capacity. Accordingly, its actions must be governed by time-honored principles of American jurisprudence which allows every person his "day in court." Due process of law is a basic tenet of the Constitution of the United States.
 7. In accordance with American and Hawaii principles of jurisprudence, these parallels might be drawn in the instant situation:
 - a. The Commission is on a level with district courts.
 - b. Collectively, the Commission sits as judge.
 - c. Severally, the Commission sits as members of a jury to determine the facts of the case and to apply the relevant law thereto.
 - d. When a petition is filed with the Commission, its administrative officer acts as clerk of court. He accepts and files petitions accompanied by proper fees, without reference to the merits of the cause or the content of the case in any respect.
 - e. In making recommendations to the Commission on the merits of the case, the executive officer (or field agent) is equivalent to an expert witness.
 - f. Since no one is being prosecuted and no one is being defended, we do not have an exact parallel of plaintiff and defendant. The petitioner is the only party to the case.
 - g. In this instant, petitioner is appearing pro se, or for itself as its own counsel. In this capacity it is privileged to advise the Commission on matters of law in support of its petition, just as any attorney advises the court in matters of law.
 - h. Counsel to the Commission is solely a legal adviser, not an attorney adverse to the petitioner. His function is roughly equivalent to amicus curiae, or friend of the court. He offers only his interpretation of the law.

- i. Having been advised by its counsel and the petitioner pro se in matters of law, the Commission reaches a decision on those matters as judge. Having heard the petitioner and its own executive officer (or field officer) on the merits of the case, the Commission reaches a decision on those merits as jury.
 - j. Should the petitioner disagree with the findings of the Commission and its conclusions of law, it has the right to appeal to a circuit court. Should the petitioner disagree with the findings and conclusions of the circuit court, it has the right to appeal to the supreme court of the State, and on to the supreme court of the United States if it so desires.
 - k. Neither counsel for the Commission, nor the Commission's "clerk of court," nor the Commission as judge, nor the Commission as jury, has the legal right to throw the petitioner out of court or dismiss its case before it is docketed and a proper hearing had on its validity, should that be in issue.
8. It is respectfully requested that the petitioner be accorded its fundamental rights upon which this country was founded and from which it derives its strength and vitality. It is respectfully requested that petitioner be accorded due process of law and allowed its "day in court." It is respectfully requested that Reference (A), as amended by Reference (B), be processed in accordance with the provisions of Section 98H-4 and those fundamental rights guaranteed by the Constitution of the United States.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

By William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do
Encl.: Reference (A).

February 6, 1964

899

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

FEB 6 1964

State of Hawaii
LAND USE COMMISSION

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Re: Interpretation of Section 98H-4 as Related to Reference (A).

Reference:

- (A) Petition to Land Use Commission dated February 3, 1964, for Amendment to Urban District Boundary of "Jamestown," Omaopio, Kula, Island and County of Maui, State of Hawaii

Having been advised verbally by Mr. Raymond Yamashita of possible controversy over the interpretation of Section 98H-4 of Act 205, S.L.H. 1963, we wish to offer our comments on the interpretation of said section.

1. Section 98H-4 states clearly and unequivocally:

Any department or agency of the State or county, or any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent. (Emphasis added.)

This statement is not qualified in any way. Compared to Sec. 6 of Act 187, S.L.H. 1961, the statement deletes "through the county planning commission" and adds "interim or permanent." In other words, the statement as originally enacted was amended, presumably after due deliberation by the Legislature as to the need for clarification. The Legislature saw no need to clarify or amplify the basic intent.

2. Section 98H-4 does not limit petitions of State or county agencies to lands owned by the State or county. For example, the planning commission of a county might initiate a request for boundary changes to conform with proposed master plan changes affecting private and public land. The State flood control agency might initiate requests relating to flood plain zoning on private and/or public lands.
3. A property owner or lessee might consider it proper under the intent of the Land Use Act to include nearby property within the proposed amended boundaries of a district, even though he has no rights in such property. Such a petition should be construed as a class action to provide for orderly and efficient Urban or Rural growth, a major objective of the Act--in fact,

Within the Kula land district, in the mauka inhabited area, are the agricultural zones of Upper Kula and Lower Kula, so designated by the Agricultural Extension Service. Climate, soil, and geology further narrow the Kula area as popularly conceived to that portion of Haleakala ranging from about 1,750 feet to 4,000 feet elevation and including the ahupuaa of Aapueo on the northeast boundary to the ahupuaa of Kamaole on the southwest. By this narrowest of definitions, Kula is approximately 20,000 acres, of which about 5,000 acres are owned by small owners.

Land District of Kula

As Reference (B) indicates, Kula is by far the largest land district on Maui, comprising essentially the eastern third of pyramid-shaped Haleakala, ranging from sea level to 10,000 feet elevation. It runs from the ahupuaa of Makawao on the northeast to the ahupuaa of Kamaole on the southwest, and it includes the mauka communities of Makawao, Olinda, Pukalani, "Jamestown," Pulehu, Waiakoa, and Keokea, and the beach community of Kihei (including Keawakapu).

Kula Agricultural Zones

Reference (C), page 1, establishes the mauka and makai limits of inhabited Kula as follows for irrigation project purposes: "Inasmuch as the small farms of the region are located at elevations of 1,000 to 4,000 feet, the lower limit has been bounded by the New Hamakua Ditch and the 1,000-foot contour; the 4,000-foot contour has been taken as the upper limit."

Within the foregoing mauka-makai boundaries and the Hawaiian land district northeast-southwest boundaries, the Agricultural Extension Service has established agricultural zones for crop reporting. Based primarily on elevation, rainfall, and wind, these zones isolate Olinda, Makawao, and Pukalani from Kula at Kaluapulani Gulch. This coincides roughly with the downslope sweep of the 40" isohyet, indicating that the principal difference between the agricultural zones of Upper and Lower Kula as distinguished from the area to the northeast is the prevailing wind and rain pattern.

According to Reference (C), the depth of the Kula agricultural zones ranges from 5.5 miles at Aapueo to 3.5 miles at Kamaole, a lateral distance of approximately 10 miles. Gross area of Lower Kula, thus defined, is 23,000 acres and Upper Kula, 9,200 acres, for a total of 32,200 acres.

Popular Conception of Kula

As indicated previously, the definition of Lower Kula for crop reporting purposes extends to 1,000 feet elevation. However, only in the ahupuaa of Omaopio is there habitation and small farming below 1,750 feet elevation. A significant limitation in this regard is the change of soils from deep, reddish prairie to stoney, reddish brown at approximately that elevation.

Locally, the name "Omaopio" is more generally used than "Kula" in reference to the lower elevations in that ahupuaa. It might be said, then, that the lower climatic and soil boundary for Kula, as popularly conceived, is generally at 1,750 feet elevation. Thus popularly defined as an upland climate zone, the common characteristics of Kula are:

- a. An elevation of 1,750 to 4,000 feet, the transition zone between Uppler and Lower Kula being at approximately 2,750 feet elevation.
- b. Warm, sunny days and cool nights, with an average high temperature of 75° and an average low of 56°, the average temperature and daily range varying about 3° for each 1,000 feet elevation.
- c. Practically no wind, except during kona weather.
- d. Comfortably dry climate, with an annual rainfall ranging from 40 inches to 22 inches, declining approximately at 8 inches per 1,000 feet elevation.

"Lying Between Upper and Lower Kula Roads"

Reference (D), on page 47, defines the Kula District as "lying between the Upper and Lower Kula Roads." In view of the foregoing, this definition of the Kula "District" is clearly inadequate for purposes of land use classification under the Land Use Act.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

By William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Maui Planning & Traffic Commission

February 6, 1964

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Re: Amendment to Reference (A).

Reference:

(A) Petition to Land Use Commission dated February 3, 1964, for Amendment to Urban District Boundary of "Jamestown," Omaopio, Kula, Island and County of Maui, State of Hawaii

We wish to and do hereby amend Reference (A) by adding to paragraph 4 thereof the following sentence:

In the alternative, should the foregoing request be denied by the Commission due to the petitioner's lack of legal authority to propose such boundaries under Section 98H-4, it is respectfully requested that the "Jamestown" Urban District be changed by reducing its boundaries to those properties within the proposed amended Urban District for which the petitioner has a legal right to make such request.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

By William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Maui Planning & Traffic Commission
Mr. Frank James

RECEIVED

FEB 6 1964

State of Hawaii
LAND USE COMMISSION

849

February 5, 1964

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Re: Definition of Kula, Island and County of Maui, as Land District, as Agricultural Districts, and as Popularly Conceived

RECEIVED
FEB 6 1964
State of Hawaii
LAND USE COMMISSION

References:

- (A) Petition to the Land Use Commission, dated February 3, 1964, to amend the Urban District boundary of "Jamestown," Kula, Maui.
- (B) Map of island of Maui, page 48, Report of the Commissioner of Public Lands, Territory of Hawaii, for the Two-Year Period Ending June 30, 1958.
- (C) Kula Irrigation Project Feasibility Report, 1957, Hawaii Irrigation Authority.
- (D) Land Use Districts for the State of Hawaii, 1963, Harland Bartholomew & Associates for the Land Use Commission.

Enclosures:

- (I) Figure 3 from Reference (C), adapted.
- (II) Composite of TMK 2nd Div. 2-2 and 2-3 and Figure 4 of Reference (C).

Purpose

This memorandum is presented in further support of Reference (A). It is essential to have a uniform concept of the Kula "District" if any observations or conclusions regarding same are to be valid for purposes of land use classification boundaries. As stated in paragraph 2 of Reference (A), the consultant to the Commission erroneously defined the Kula District. This memorandum will provide a proper frame of reference for consideration of Urban, Rural, and Agricultural zones in Kula generally, and the Urban District of "Jamestown" within that frame of reference.

Summary

As technically and most broadly defined, the Kula District is an Hawaiian land district, practically unknown to the average person.

its primary reason for existence. Property owners affected who oppose the proposed boundaries can be heard at the public hearing. However, in the final analysis, the Commission's decision must be based on the purpose of the Act, should any protests be in contravention of that purpose.

It would be reasonable to assume that the Legislature intended that property owned by or leased to the petitioner be included within the petition's proposed boundaries.

4. One petition, presented as a class action on behalf of numerous property owners, is an economical and expedient means of affecting boundary changes. Petition fees might otherwise be exorbitant and paper work excessive. To accomplish the objective of Reference (A), for example, might require about 75 to 100 separate petitions costing up to \$5,000 to file. Clearly, the Legislature intended to avoid this absurdity when it framed the first sentence of Section 98H-4.
5. Section 98H-4 is not equivalent in purpose to Section 98H-6 relating to special permits. The latter essentially provides for non-conforming use specific and exclusive to the property of the applicant. This is essentially a variance. The former provides for proper land use classification in accordance with conforming or prevailing land use patterns.
6. Act 205 does not provide for refusal to accept and process a petition on any grounds whatsoever. The applicant is a property owner and has prepared a proper case in accordance with the requirements of Section 98H-4. Even the preparation of a proper case is not relevant to the acceptance of a petition by the Commission.

Should the attorney for the Commission feel that the petition should be denied on the grounds of the petitioner's lack of authority to request the specified boundary changes, that opinion can be expressed to the Commission before, at, or following the public hearing on the petition. Counsel's interpretation would then be a proper matter for inclusion in any appeal to a circuit court, along with the merits of the petition.

In no court in the land is a person denied the privilege of filing an action which he considers just. The position of the Commission in this instant is equivalent.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Maui Planning Com.
Mr. Frank James

RECEIVED

FEB 6 1964

State of Hawaii
LAND USE COMMISSION

899

February 6, 1964

Mr. Robert Ohata
Maui Planning & Traffic Commission
Kahului, Maui

Dear Mr. Ohata:

The enclosure defining the Kula area has been prepared as an aid to an intelligent consideration of the area by the divers parties who will have to consider our petition. I have already covered much of the content in my presentation before your commission last meeting.

The other enclosures are intended to clear the air of any controversy regarding the propriety of our petition. In short, it might be denied, but it cannot be refused.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do
Encls.

cc: Land Use Commission

923

Developers of choice
properties at Kula, Maui, on
the slopes of Haleakala

Kula Development Corporation

902 NUUANU AVENUE, HONOLULU 17, HAWAII

February 19, 1964

Mr. Raymond Yamashita
Executive Officer
Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

FEB 19 1964

State of Hawaii
LAND USE COMMISSION

Dear Mr. Yamashita:

May we have immediately a copy of the proposed rules and regulations of the Land Use Commission? Also, may we have a copy of any standards adopted by the Commission for the establishment of proposed permanent boundaries, if such standards are not incorporated in the proposed rules and regulations.

We ask that this request be given your urgent attention because of our desire to suggest appropriate "emergency" legislation to this session of the State Legislature to correct prejudicial situations resulting from the lack of time the presently constituted Commission has had to do an adequate job and the lack of clarity in certain aspects of the Land Use Act, both of which circumstances have resulted in highly controversial interpretations of the Act being adopted piecemeal by the Commission in carrying out its functions.

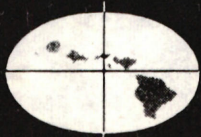
We are particularly concerned with seemingly extra-legal interpretations adopted by the Commission as the basis of its actions prior to public exposure to and adoption of rules and regulations governing these actions in accordance with the Hawaii Administrative Procedures Act. It appears that circumstances have forced the Commission to place the cart before the horse.

While this situation is no reflection on the Commission or staff, per se, unless the horse is placed in its proper location, the courts will be rife with suits seeking redress from inadequately considered interpretations.

Very truly yours,
KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
President & Manager

WSE:do
cc: Governor Burns
Senator Abe
Representative Ching
Honolulu Advertiser



State of Hawaii
DEPARTMENT OF ECONOMIC DEVELOPMENT

1124 MILLER ST.
HONOLULU 13, HAWAII
Cable: DEVELOPMENT
Phone 504-426

Date: February 14, 1964

Subject: Attached Check

TO: Mr. William S. Ellis, Jr.
Kula Development Corporation

FROM: Alberta L. Kai

Please fill in the following upon receipt of your check and return this memo to the Land Use Commission, 426 Queen Street, Honolulu in the enclosed stamped envelope.

This is to certify that I received my check of \$50.00 on _____ date
in behalf of Kula Development Corporation. Check was submitted with
application for boundary change to the Land Use Commission and is now being
returned because application was ruled not valid.

Signature _____
WILLIAM S. ELLIS, JR.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL OF HAWAII"
AND REFER TO
INITIALS AND NUMBER

RYT: hbl

56:12b



CABLE ADDRESS
ATTGEN

BERT T. KOBAYASHI
ATTORNEY GENERAL

STATE OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

February 13, 1964

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

We acknowledge receipt of your letter dated February 7, 1964, relative to your inquiry regarding your petition for amendment to the interim boundaries.

Inasmuch as you are questioning the action of the field executive officer, who failed to process your petition, based upon our interpretation of Section 98H-4 and further based upon the policy established by the Land Use Commission, we recommend that you address your inquiry to the Land Use Commission.

The function of our office is merely to provide legal advice to the staff and to the Commission. Legally, we cannot and do not make decisions for the staff or the Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bert T. Kobayashi", is written over the typed name.

Bert T. Kobayashi
Attorney General

EXPENDITURE VOUCHER
THE STATE OF HAWAII, DR.

Land Use Commission

DEPARTMENT OR ESTABLISHMENT

February 6, 1964

Voucher Number

Contract Number

APPROPRIATION SYMBOL		AMOUNT
T-63-901	B	50 00
	C	

Kuhia Development Corporation
c/o Land Use Commission
426 Queen Street
Honolulu, Hawaii

SUMMARY OF INVOICES ATTACHED

PURCHASE ORDER NUMBER	VENDOR'S INVOICE		SYMBOL		AMOUNT	TOTAL		EXPLANATION (IF REQUIRED)
	NUMBER	DATE	APPROPRIATION	OBJECT				
		1964						
		2/6	T-63-901-B	9200		50 00		Application ruled not valid.
								withdrawn & returned to petitioner 2/14/64
					TOTAL	50 00		

RECEIVED

FEB 14 1964

State of Hawaii
LAND USE COMMISSION

RECEIVED

FEB 14 1964

State of Hawaii
LAND USE COMMISSION

Raymond S. Spencer

Ref. No. LUC 86

February 6, 1964

Mr. William S. Ellis, Jr.
President & Manager
Kula Development Corporation
902 Kaimukoo Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

On advice from Counsel for the Commission, we are sorry to inform you that your petition is not valid. However, should signatures of the owners of properties involved be affixed to the petition, the petition would be valid and would be processed by the Land Use Commission as expeditiously as possible.

We have been advised by Counsel that:

"Section 98H-4, Revised Laws of Hawaii 1955, as amended, provides that " . . . any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent."

"We construe the foregoing sentence to mean that a property owner or lessee who desires to use his land for uses other than for which it is districted may petition the Land Use Commission for a change in the boundary of any district, interim or permanent.

"To interpret it otherwise may bring about an absurd situation wherein a property owner in Kahoolawe may request a boundary change of lands in Oahu, even though he may have no interest in the lands involved. Furthermore, it may open the floodgates to an avalanche of fruitless and frivolous requests for boundary changes.

Mr. William S. Ellis, Jr.

Page 2

February 6, 1964

"Based on the foregoing, we are of the opinion that the initiation of such requests for boundary changes is limited to owners or lessees of property whose lands are the subject of the request, except as otherwise provided, and in the same manner as special permits. (See Section 98E-6, Revised Laws of Hawaii 1955, as amended.)"

Enclosed is the original petition submitted by you. The copy will be kept for our records. As soon as we have withdrawn your check, which has been deposited, we will transmit it to you.

Should you have further questions, please contact us.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

Encl.

cc: Mr. Robert Chata
Mr. Myron Thompson
Mr. Roy Takeyama

STATE OF HAWAII

LAND USE Commission
426 Queen St., Honolulu, Hawaii

Department, Bureau or Commission

OFFICIAL
RECEIPT

No.

77

Feb. 4, 1964

RECEIVED from

William S. Ellis, Jr. for the Kala Development Corporation

DOLLARS

Fifty + no/100
For public hearing by the Land Use Commission for
boundary change in Kala, Maui, for an Urban
district reclassification.

\$ 50.00

JNB

Seahwa L. Kiri

Public Accountant

RECEIVED

FEB 4 1964

State of Hawaii
LAND USE COMMISSION

February 4, 1964

Mr. Robert Ohata
Planning Director
Maui Planning & Traffic Commission
Kahului, Maui

Dear Mr. Ohata:

Enclosed is an advance copy of the petition for amended boundaries of "Jamestown" which I discussed with you and your commission on January 28. It will be filed in the office of the Land Use Commission this morning. "Within 5 days of receipt" would be by a Saturday deadline that an official copy would be forwarded on to your commission. However, I have asked Mr. Yamashita to have the official copy in your hands by Friday.

In any event, the copy will be in your commission's hands in time for consideration at next Tuesday's meeting. The enclosed advance copy will give you an opportunity to study the petition in the meantime so that you might make an appropriate recommendation to your commission at that meeting.

Please place the matter on the agenda for next Tuesday's meeting, which I plan to attend.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.

William S. Ellis, Jr.
President & Manager

WSE:do

cc: Mr. Ray Yamashita
Mr. Frank James

*Developers of choice
properties at Kula, Maui, on
the slopes of Haleakala*

Kula Development Corporation

902 NUUANU AVENUE, HONOLULU 17, HAWAII

February 4, 1964

Mr. Raymond Yamashita
Executive Officer
Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED
FEB 4 1964
State of Hawaii
LAND USE COMMISSION

Dear Sir:

The continuing controversy over the "Jamestown" Urban District at Kula, Maui, with which we are directly and most urgently concerned, resolves itself into a question of the proper size of the urban district rather than whether or not an urban district does in fact exist. There is absolutely no question of the latter.

Accordingly, we have addressed ourselves almost exclusively to that basic question--size--and have presented our case for amended Urban District boundaries for "Jamestown" in the enclosed petition.

I discussed this approach briefly with Mr. Robert Ohata, planning director of the Maui Planning and Traffic Commission on the morning of January 28. Because of the urgency of our situation, the commission accorded me the courtesy of a preliminary presentation at its meeting that afternoon. While it would not be proper procedure for that commission to take action until the petition is before them, I was assured that the petition would receive the most expeditious handling.

I am forwarding a copy of the enclosed petition directly to Mr. Ohata so that it might be studied in advance of next Tuesday's meeting of his commission. If you would kindly forward an official copy from your office to reach that commission by Friday, it would be received in time to appear on the agenda of next Tuesday's meeting.

We are taking this course of action despite the forthcoming hearings on proposed permanent boundaries so that we may have a firm basis for immediate appeal to the circuit court should final boundaries not recognize the amended "Jamestown" Urban District. It might be that hearings on our petition and proposed final boundaries for Maui could be heard on the same date for the sake of administrative expediency.

Your cooperation in the expeditious processing of the petition enclosed will be most sincerely appreciated.

Very truly yours,

KULA DEVELOPMENT CORPORATION

William S. Ellis, Jr.
William S. Ellis, Jr.
President & Manager

WSE:do

cc: Mr. Robert Ohata
Mr. Frank James

P-E-T-I-T-I-O-N

February 3, 1964

To: Land Use Commission
Dept. of Planning & Economic Development
State of Hawaii
426 Queen Street
Honolulu, Hawaii

RECEIVED

FEB 4 1964

State of Hawaii
LAND USE COMMISSION

From: Kula Development Corporation
900 Nuuanu Avenue
Honolulu 17, Hawaii

Re: Amendment to Urban District Boundary of "Jamestown,"
Omaopio, Kula, Island and County of Maui, State of
Hawaii

References:

- (A) Our communication of March 6, 1963, to the Land Use Commission protesting the deletion of "Jamestown" as an Interim Urban District.
- (B) Copy of our communication of March 27, 1963, to the Maui Planning and Traffic Commission protesting same.
- (C) Our communication of December 19, 1963, to the Land Use Commission requesting retention of "Jamestown" Urban District boundaries.
- (D) Our communication of December 21, 1963, to the Land Use Commission amending Reference (C).

Enclosure:

- (I) TMK 2nd Div. 2-3-04, showing present and proposed amended "Jamestown" Urban District boundaries.

Pursuant to Section 98H-4 of Act 205, S.L.H. 1963, Kula Development Corporation respectfully petitions the Land Use Commission, hereinafter called the "Commission," with regard to the amendment of the Urban District boundaries of that mauka portion of the ahupuaa of Omaopio, Kula, Maui, defined in Reference (A) and designated "Jamestown" therein and herein for ease of reference, as follows:

1. Pursuant to the mandate of Act 187, S.L.H. 1961, the first Commission in April 1962 appropriately designated the Urban District of "Jamestown" in accordance with existing use and including within its boundaries a "sufficient reserve area for foreseeable urban growth."

2. In January 1963, the newly constituted Commission, on the recommendation of its consultant, proposed to ignore the Urban District of "Jamestown." The consultant did not properly define the Kula area and consequently made over-generalized and erroneous statements regarding the area's residential development. (See pages 4 and 5 of Reference (A).)
3. It has been established that the consultant's recommendation was influenced by the opinion that a 400-acre Urban District at "Jamestown" would be too large. (See page 2 of Reference (B), paragraph 3b.) In other words, it might be said that the area of disagreement with the first Commission's action was in the allocation of a "sufficient reserve area for foreseeable urban growth." The basis of this controversy is the element of size of the "Jamestown" Urban District, not whether it does in fact exist.
4. Act 205, in amending the Land Use Act, suggests the appropriate compromise solution to the Jamestown controversy. The addition of the Rural classification, in this situation, is equivalent to a significant "trend of development" which warrants the amendment of the "Jamestown" Urban District boundaries. Therefore, it is respectfully requested that the "Jamestown" Urban District be changed by reducing it to the area indicated on Enclosure (1).
5. In support of this request, we submit the following:

- a. Within the proposed Urban District of approximately 146 acres, there are:

Commercial (hotel)	11.70 acres
Completed Kula Orchards, 61 lots intended residential/commercial, of which 38 are under half-acre	49.14 "
Planned Kula Gardens, 119 lots intended residential/commercial, of which 100 are under half-acre	70.00 "
Planned condominium development	4.20 "
Resubdivided Kula Heights, 26 lots intended residential/commercial of which 23 are under a half-acre	<u>10.56</u> "
Total urban use	146.00 acres

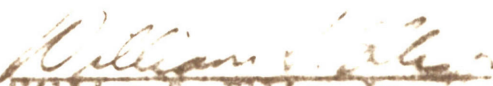
- a. Of the total, about 124 acres are already served or will be served by underground utilities, 6" to 8" water mains, water storage facilities, and 40-foot roadways with 20-foot macadam pavement, all such improvements qualifying as an urban level of services.

Considering the above, there is no question that the land within the proposed Urban District is "usable and adaptable" for urban use. Conversely, it is not economically usable or adaptable for any other use.

- b. In the balance of the "Jamestown" area, outside of the proposed amended Urban District and excluding Kula Kai subdivision, there are only 8 lots in the range of a half-acre or less, as compared to 161 of that size within the proposed amended Urban District. These lots might properly be considered non-conforming within the Rural classification, being in the distinct minority.
 - c. As indicated in References (C) and (D), there are no more than 30 lots less than a half-acre in all of Kula's 30,000 acres outside of "Jamestown," including the two Urban Districts of Waiakea and Keokea. Clearly, 161 lots less than a half-acre within an area of 146 acres qualifies the proposed amended Urban District of "Jamestown" as distinctly different in land use from the Rural use prevalent in about 5,000 acres of Kula and the Agricultural use prevalent in the remaining 25,000 acres.
 - d. According to sales agent Erling P. Wick, the developers of Kula Kai, which comprises 136 lots under a half-acre, have no objection to that subdivision being considered non-conforming within the Rural classification. Hence, it has been omitted from our proposed amended Urban District.
6. In general support of this request, particularly as they relate to those characteristics of "Jamestown" which differentiate the area from the rest of Kula, we incorporate all of the above-cited references herein and make them a part hereof.

Respectfully submitted,

KULA DEVELOPMENT CORPORATION

By 
 William S. Ellis, Jr.
 President & Manager

FSE:do
 cc: Maui Planning Com.
 Mr. Frank James

ADDRESS REPLY TO
"THE ATTORNEY GENERAL OF HAWAII"
AND REFER TO
INITIALS AND NUMBER

RYT:hbl

27;12b



RECEIVED

JAN 31 1964

CABLE ADDRESS
ATTGEN

BERT T. KOBAYASHI
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

State of Hawaii
LAND USE COMMISSION

January 30, 1964

MEMORANDUM

TO: Mr. Raymond Yamashita, Executive Officer
Land Use Commission

FROM: Roy Y. Takeyama
Deputy Attorney General

SUBJECT: Dedicated Lands

Section 128-9.2, Revised Laws of Hawaii 1955,
as amended, provides that:

" . . . In case of a change in major land use classification by a state agency, such that the owner's land is placed within an urban district, the dedication may be cancelled within sixty days of the change, without the five years' notice, by mutual agreement of the owner and the director of taxation."

Please be advised that the landowner has the right to petition the Land Use Commission to require a change in designation from agricultural to urban district even though his land is dedicated. If the Land Use Commission approves the petition, the landowner and the Director of Taxation must mutually agree on whether the dedication may be cancelled within 60 days after the change is granted.

Please be further advised that if the landowner decides to petition the Land Use Commission for such a change, the Director of Taxation should be made aware of such a proceeding.

Very truly yours,

Roy Y. Takeyama
Roy Y. Takeyama
Deputy Attorney General

cc Myron Thompson, Chairman
Land Use Commission
c/o Liliuokalani Trust
1218 Young Street
Honolulu, Hawaii

Ref. No. LUC 48

January 21, 1964

Mr. William S. Ellis, Jr.
Kula Development Corporation
902 Nuuanu Avenue
Honolulu 17, Hawaii

Dear Mr. Ellis:

Your letter of January 19, 1964, outlining your concern in regards to the land use law and procedures mandated by the law, has been received.

We would like to assure you that:

1. The Land Use Commission has classified all lands in the State.
2. The Land Use Commission has set standards in order to accomplish this objective.
3. The standards do include certain criteria.

However, as the law also mandates, the above work is for the purpose of public hearings, and final adoption will be effected prior to July 1, 1964.

The procedure of public hearings will permit the public to comment upon the Land Use Commission's proposals prior to final adoption. Such comments will receive the full consideration of the Land Use Commission prior to adoption.

We do appreciate your concern as to the Commission's definition of the many specific words and terms used in the law. However, the general concern of the Commission has been in the thought expressed by the words rather than the technical definitions of each word or term. Such undue emphasis upon the technical definitions of words

67-21000

Mr. William S. Ellis, Jr.

Page 2

January 21, 1964

or terms, rather than the thought or meaning intended to be conveyed, would lead the administrators of any law into an effectuation plan based more on technicalities of words and phrases rather than intents and purposes. While definitions of specific words and phrases are important, consideration of their contextual definitions in relation to the intents and purposes of the law is more important.

The situation suggests the possibility of becoming engaged in prolonged and untimely discussions over technical definitions of words. It would appear more prudent to delay discussions until you and the public will have had the opportunity to study the results of the Land Use Commission's application of the words and terms of the law to the proposed final district boundaries and regulations, on an overall basis. These proposed final district boundaries and regulations will be ready for presentation to the public in early March.

Much of the definitions of words and terms you have listed may be found in Act 187 and the consultants report. Some of the words like "use" and "primarily" are used by the Land Use Commission in its standard dictionary meaning.

We invite your further comments.

Very truly yours,

RAYMOND S. YAMASHITA

cc: All Commissioners
Roy Takeyama