NUUANU VENTURES A65-90

SEE SEPARATE FOLDER (A65-90-a) FOR MAPS, PHOTOGRAPHS, ETC

CIVIL NO. 18533

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. AND WALLACE A DYER and DORIS M. DYER,

Appellants,

vs.

LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and IWAO KISHIMOTO, its General Partners,

Appellees.

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1966 MAR 30 PM 3 40
V. Ching
CLERK

CERTIFIED RECORD ON APPEAL

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Land Use Commission
of the State of Hawaii

IN THE CIRCUIT OF THE FIRST CIRCUIT

STATE OF HAWAII

CIVIL NO. 18533

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER, Appellants,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and IWAO KISHIMOTO, its General Partners, Appellees.	)

CERTIFIED RECORD ON APPEAL

I, C. E. S. BURNS, Vice Chairman of the State Land Use Commission, hereby certify that all of the reports, maps, transcripts, and documents listed below are the designation of certified record on appeal in the above-entitled-matter:

1. Petition of Nuuanu Ventures to amend the district boundary at Nuuanu Valley, Oahu, described in the Staff Report of the Land Use Commission, State of Hawaii, dated October 29, 1965.

2. Staff Report of the Land Use Commission, State of Hawaii, dated October 29, 1965, concerning said Petition.

3. Minutes of the Public Hearing held on October 29, 1965.

4. Taped record of said Public Hearing.

5. Memorandum from the Land Use Commission Staff to the Land Use Commission, dated January 14, 1966.

6. Letters, maps, records, documents and other exhibits relating to said Petition.

7. Letter advising decision of Land Use Commission dated February 11, 1966.

8. Findings of Facts, Conclusions of Law and Decision of the Land Use Commission (to be filed subsequently if required by the Court).

9. Answer to Statement of Case (to be filed subsequently if required by the Court).

IN WITNESS WHEREOF I have hereunto set my hand at Honolulu, Hawaii, this 30th day of March, 1966.

C. E. S. BURNS, Vice Chairman
State Land Use Commission

Subscribed and sworn to before
me this 30th day of March, 1966

Notary Public, First Judicial Circuit
State of Hawaii

My commission expires Nov. 30, 1968.

CERTIFICATION: I do hereby certify that the foregoing data are true and correct copies of the originals on file in the office of the Land Use Commission.

GEORGE S. MORIGUCHI
Executive Officer
State Land Use Commission

CIVIL NO. 18533

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

127 Dowsett Ave.

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER,

Appellants,

v.

LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and IWAO KISHIMOTO, its General Partners,

Appellees.

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1966 MAR 15 AM 9 34
P. J. O'Sullivan, Jr.
CLERK

I do hereby certify that the original of this

DESIGNATION OF RECORD ON APPEAL

ORDER

and

STATEMENT OF CASE

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

Clerk, 1st Circuit Court, First Circuit, State of Hawaii

1966 MAR 15 AM 11:26
Service accepted by Deputy Attorney General

RECEIVED
ATTORNEY GENERAL
STATE OF HAWAII
REF. TO
ON

DWIGHT DIXON
302 Kailua Road Suite 210
Kailua, Hawaii

Attorney for Appellants.

RECEIVED
MAR 18 1966
State of Hawaii
LAND USE COMMISSION

CIVIL NO. 18533

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER,	)
Appellants,	)
v.	)
LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and IWAO KISHIMOTO, its General Partners,	)
Appellees.	)

DESIGNATION OF RECORD ON APPEAL

Comes now NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER, Appellants above named, by their attorney, DWIGHT DIXON, and hereby designate the following portions of the record and proceedings before the LAND USE COMMISSION OF THE STATE OF HAWAII, to be contained in the record on appeal in the above entitled proceeding:

1. Petition of Nuuanu Ventures to amend the district boundary at Nuuanu Valley, Oahu, described in the Staff Report of the Land Use Commission, State of Hawaii, dated in October, 1965.

2. Staff Report of the Land Use Commission, State of Hawaii, dated in October, 1965, concerning said Petition.

3. Minutes of the Public Hearing held on October 29, 1965, a copy of which is available if the Commission is unable to locate same.

4. Taped record of said Public Hearing.

5. Memorandum from the Land Use Commission Staff to

the Land Use Commission, dated January 14, 1966.

6. All letters, maps, records, documents and any other exhibits that the Land Use Commission has in its files relating to said Petition.

7. Decision and/or Order of said Commission on said Petition believed to be dated January 14, 1966.

8. Any other Order and/or Decision of said Commission containing findings of facts or rulings of law concerning said Petition.

DATED: Honolulu, Hawaii, March 14, 1966.

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER,

Appellants

By Dwight Dixon
DWIGHT DIXON
Their Attorney

CIVIL NO. 18533

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER, Appellants,	)
v.	)
LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and IWAO KISHIMOTO, its General Partners, Appellees.	)

O R D E R

Pursuant to the foregoing Designation of Record on Appeal of the Appellants, the Land Use Commission of the State of Hawaii, Appellee herein, is hereby ordered and directed to certify and transmit to this Court, within fifteen (15) days from the date hereof, or within such further time as may be allowed by the Court, the documents and items set forth in the foregoing Designation of Record on Appeal.

DATED: Honolulu, Hawaii, March 15, 1966.

P. J. O'Sullivan, Jr.

Clerk of the Above Entitled Court

CIVIL NO. 18533

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER, Appellants,	)
v.	)
LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and IWAO KISHIMOTO, its General Partners, Appellees.	)

STATEMENT OF CASE

Appellee NUUANU VENTURES, filed a Petition with the Appellee LAND USE COMMISSION to amend the urban district boundary at Nuuanu Valley, Oahu, so as to incorporate approximately 3.6 acres which were at that time in a Conservation District, identifiable by Tax Map Key 2-2-42:1. Said Petition was received by said LAND USE COMMISSION on or about July 19, 1965.

A public hearing on said Petition was scheduled and held on or about October 29, 1965, by said LAND USE COMMISSION.

All Appellants herein were represented by counsel at said public hearing, but said counsel was denied by said LAND USE COMMISSION the right to intervene by motion and to cross examine any of the witnesses.

It is believed by Appellants herein that a final decision or order of said LAND USE COMMISSION was made by it on said Petition on or about January 14, 1966, which final decision or order changed the boundary of the Conservation District in question, whereupon Appellants duly filed this Appeal with the above entitled Court.

WHEREFORE, Appellants pray that a hearing de novo be granted by this Honorable Court, and that upon such hearing this

Honorable Court issue its judgment for Appellants and dismiss the Petition herein above mentioned of Appellee NUUANU VENTURES; or, in the alternative, that this Honorable Court vacate the final order or decision heretofore issued by Appellee LAND USE COMMISSION on said Petition and remand this matter to said LAND USE COMMISSION for further hearing, and that said LAND USE COMMISSION be ordered to grant the motion herebefore filed with it by Appellants to intervene as a party;

AND for such other and further relief as to this Honorable Court may seem meet;

AND that appropriate notice issue to Appellees of the disposition herein.

DATED: Honolulu, Hawaii, March 14, 1966.

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER,

Appellants

By Dwight Dixon
DWIGHT DIXON
Their Attorney

RECEIVED
FEB 15 1966
State of Hawaii
LAND USE COMMISSION

CIVIL NO. 18533

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER,	)
Appellants,	)
v.	)
LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and IWAO KISHIMOTO, Its General Partners,	)
Appellees.	)

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1966 FEB 14 PM 3 23
R. V. Cockett
CLERK

I do hereby certify that the attached folio of

NOTICE OF APPEAL TO CIRCUIT COURT

EX PARTE MOTION FOR EXTENSION OF TIME IN WHICH TO FILE DESIGNATION OF THE RECORD ON APPEAL

and

AFFIDAVIT IN SUPPORT OF MOTION

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

Clerk, Circuit Court, First Circuit
State of Hawaii

DWIGHT DIXON
502 Kailua Road Suite 210
Kailua, Hawaii

Attorney for Appellants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER, Appellants,	)
v.	)
LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU HORITA and INAO KISHIMOTO, its General Partners, Appellees.	)

NOTICE OF APPEAL TO CIRCUIT COURT

Notice is hereby given that NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER, Appellants above named, pursuant to Section 6C-14, R.L. H. 1955, as amended, hereby appeal to the Circuit Court of the First Judicial Circuit from the decision of the LAND USE COMMISSION OF THE STATE OF HAWAII entered on January 14, 1966 in its proceedings on the application (Land Use Commission Number A65-90 to amend the urban district boundary at Nuuanu Valley, Oahu, so as to incorporate approximately 3.6 acres presently in the conservation district, indentifiable by Tax Map Key 2-2-42: 1) of NUUANU VENTURES and SHIGERU HORITA and INAO KISHIMOTO, its General Partners, Appellees above named.

DATED: Honolulu, Hawaii, February 14, 1966.

Dwight Dixon

DWIGHT DIXON
Attorney for Appellants
502 Kailua Road Suite 210
Kailua, Hawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NUUANU VALLEY COMMUNITY ASSOCIATION, INC. and WALLACE A. DYER and DORIS M. DYER,	)
Appellants,	)
v.	)
LAND USE COMMISSION OF THE STATE OF HAWAII, and NUUANU VENTURES, a Limited Partnership, and SHIGERU MORITA and IWAO KISHIMOTO, its General Partners,	)
Appellees.	)

EX PARTE MOTION FOR EXTENSION OF TIME IN WHICH TO FILE DESIGNATION OF THE RECORD ON APPEAL

Comes now Appellants, by their attorney Dwight Dixon, and moves the Court for a thirty (30) day extension of time from February 14, 1966, for filing Appellants' Designation of the Record in this Appeal, pursuant to Rule 72 (d) (2) of the Hawaii Rules of Civil Procedure.

This motion is based on the attached affidavit.

DATED: Honolulu, Hawaii, February 14, 1966.

Dwight Dixon

DWIGHT DIXON
Attorney for Appellants

APPROVED AND SO ORDERED, February _____, 1966.

Tom Okino

Judge of the Above Entitled Court

FIRST CIRCUIT COURT SEAL STATE OF HAWAII

AFFIDAVIT

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

DWIGHT DIXON, being first duly sworn on oath, deposes and says: That he is the attorney for the Appellants herein; that to the best of his knowledge the time for filing the Designation of the Record on Appeal in the above entitled appeal expires February 14, 1966; that he, the deponent, was officially retained to represent Appellants in said appeal on February 13, 1966; that there has been no sufficient time for the deponent to adequately prepare such Designation and the Statement of Case which is required to be filed concurrently therewith; that the deponent, though having tried, has been unable to obtain from Appellee Land Use Commission at this time information adequate to prepare such Designation and Statement of Case; and that an additional period of thirty (30) days from February 14, 1966 is necessary in order for deponent to adequately prepare same.

Dwight Dixon
DWIGHT DIXON

Subscribed and sworn to before
me this 14 day of February, 1966.

/s/ Joan K Dixon
Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires 9/30/69

(Seal)

DWIGHT DIXON
ATTORNEY AT LAW

SUITE 210
KAILUA BUS. & PROF. BLDG.
502 KAILUA ROAD

TELEPHONE
268-115, 581-542
KAILUA, HAWAII 96734

February 14, 1966

Materials from the Nuuanu Ventures file xeroxed for Dwight Dixon, attorney at law:

Letter from Park Engineering dated January 14, 1966 (5 pages)

Letter from Board of Water Supply dated January 6, 1966

Memorandum dated January 14, 1966 (mimeo copy)

Letter from Park Engineering, Inc. dated November 12, 1966

"Supplemental Report on Petition for Adjustment of the Land Use Boundary" submitted by Nuuanu Ventures, dated November 12, 1965(date of receipt).

Letter from Robert G. Wenkam to Mr. Myron B. Thompson, dated November 2, 1965 (5 pages).

Part of June 25, 1965 meeting of the Land Use Commission (mimeo copy)

Staff report dated October 29, 1965 (mimeo copy).

Chronological record of Mr. Dwight Dixon's request for information and examination of files on the Nuuanu Ventures petition:

February 10, 1966 (Thursday) - Mr. Dixon called in the afternoon and asked if he could have copy of petition/application by Nuuanu Ventures. Said he had been retained to appeal decision by Land Use Commission. Said he did not know what he was appealing. He indicated he would send his secretary in the next day to look at our files.

February 11, 1966 (Friday) Morning - Mr. Dixon's secretary came in to look at the file on Nuuanu Ventures. Marked the materials that she wanted copies made of. Informed her that I would call as soon as they were ready.

February 11, 1966 (Friday) Afternoon - Mr. Dixon called to ask if the material was ready. However, he said that since he was back in Kailua he would not be able to pick up the material until Monday.

February 14, 1966 (Monday) Morning - Mr. Dixon's secretary came in to pick up the xeroxed copies of the material she had requested.

February 15, 1966 (Tuesday) - The Land Use Commission was served with a Notice of Appeal to Circuit Court and Ex Parte Motion for Extension of time in which to file designation of the Record on Appeal and Affidavit in Support of Motion.

February 11, 1966

Mr. Frank Skrivanek
Planning Director
City and County of Honolulu
Honolulu Hale Annex
Honolulu, Hawaii

Re: Proposed Subdivision - Nuuanu Valley
Tax Map Key: 2-2-42 and 43

Dear Mr. Skrivanek:

The Conservation boundary as shown on the surveyor's map is correct and reflects the amendment made by the Land Use Commission on January 14, 1966.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encl.

1866

NEAL S. BLAISDELL
MAYOR

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

CITY AND COUNTY OF HONOLULU
PLANNING DEPARTMENT
HONOLULU HALE ANNEX
HONOLULU, HAWAII 96813

RECEIVED
FEB 8 1966
State of Hawaii
LAND USE COMMISSION

February 4, 1966

63(363)

State Land Use Commission
426 Queen Street
Honolulu, Hawaii 96813

Gentlemen:

Proposed Subdivision: Nuuanu Valley
Tax Map Key: 2-2-42 & 43
Owner: Shigeru Horita
Surveyor: Park Engineering, Inc.

Transmitted herewith is a map of the subject subdivision.

Your comments and recommendations are respectfully requested as to whether or not the above subdivision is within the Conservation District.

Very truly yours,

PLANNING DEPARTMENT

Frank Skrivanek

Frank Skrivanek
Planning Director

FS:mn
Encl

February 11, 1966

Mr. Larry Matsuo
Executive Vice-President
Park Engineering, Inc.
1149 Bethel St., Rm. 710
Honolulu, Hawaii

Dear Mr. Matsuo:

At its meeting of January 14, 1966, the Land Use Commission took final action on the matter of your petition requesting a change in the Urban District boundary at Nuuanu Valley, Oahu, identifiable by Tax Map Key 2-2-42: 1. The Urban District at Nuuanu Valley has been amended by the Land Use Commission as indicated on the attached map.

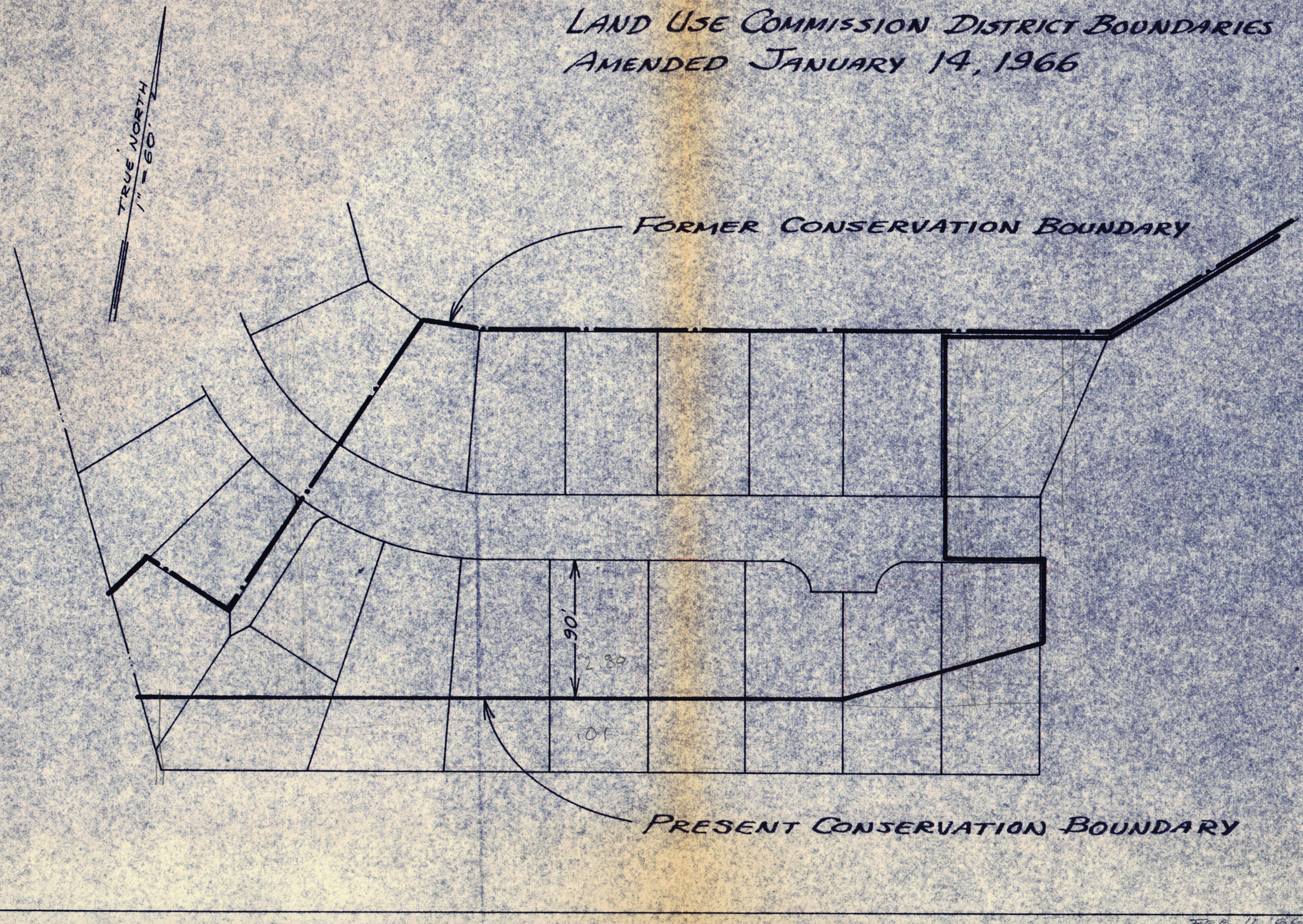
Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encl.
cc: Chairman Thompson
Planning Dept., C&C of Honolulu
Department of Taxation
Dept. of Land & Natural Resources

A65-90 NUUANU VENTURES

LAND USE COMMISSION DISTRICT BOUNDARIES
AMENDED JANUARY 14, 1966



FEB 11 '66

STATE OF HAWAII

LAND USE COMMISSION

VOTE RECORD

ITEM Nuuanu Ventures

DATE 1-14-66

PLACE Honolulu

TIME

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

COMMENTS:

For acceptance of staff rep.

motion carried

1869

RECEIVED
FEB 7 1966
State of Hawaii
LAND USE COMMISSION

February 3, 1966

Mr. Robert Wenkam
State Land Use Commission
426 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Wenkam,

The purpose of this letter is to commend your position on the "Nuuanu compromise" as reported in the January 16th edition of The Sunday Star-Bulletin and Advertiser and to heartily endorse your views on conservation in general.

It is my belief that the overwhelming majority of the citizens of our State supports your position on conservation. It is unfortunate, in my view, that a vociferous minority can sometimes override a lethargic majority.

Sincerely,

Donald G. Aten

Donald G. Aten
3277 Manoa Road
Honolulu, Hawaii 96822

Xerox copy to Wenkam - 2-10-66

Weston
Rase-Rite Bond
COTTON FIBRE CONTENT

File

Nuuanu Compromise Assailed

Hawaii is becoming a "shambles" because conservation officials are not taking a strong enough stand, a member of the State Land Use Commission said yesterday.

Robert Wenkam was commenting on the fact that a compromise has been reached in a dispute over a housing subdivision in a conservation district.

At issue was 3.6 acres in Nuuanu Valley. The area was the object of a petition to the commission by Nuuanu Ventures, a development firm.

The commission on Friday night approved the designation of 2.5 acres in the district for urban use. They had been asked by the developer to approve the whole area for urban development. The vote was 6-1, with Wenkam the only dissenter.

* * *

WENKAM SAID Nuuanu Ventures had violated commission laws by carving 17 houselots out of the conservation district.

Kinji Kanazawa, partner-attorney for Nuuanu Ventures, said the violation by the developer was not intentional.

"It was an unfortunate mistake," he said.

Kanazawa said the City had approved the developer's subdivision plans for the Nuuanu Park Place development. He said the developer would landscape the area.

Wenkam said he was disappointed that the majority of the commission voted to grant Nuuanu Ventures permission to expand their subdivision.

He said it was "most disturbing" to learn that important forest reserve and watershed boundaries have no legal status and are not defendable in the courts.

* * *

"I WAS SHOCKED TO learn of the apparent complete lack of concern over this unfortunate situation by Jim Ferry's land department, the State Land Surveyor's office, the Division of Forestry and the Board of Water Supply," he said.

He quoted Ferry as saying, "Since the area in Nuuanu is already bulldozed, there are no longer any conservation values—so what does it matter?"

"I will continue to resist this use of legal technicalities, vague legal opinions, and Johnny-come-lately declarations by government assistants, who seem intent on using our laws and our legal loopholes to serve individual property owners rather than the best interests of all the citizens of Hawaii," said Wenkam.

PARK Engineering, Inc.

1149 BETHEL ST., RM. 710
HONOLULU 13, HAWAII
TELEPHONE: 511-676

January 14, 1966

Land Use Commission
State of Hawaii
Honolulu, Hawaii

Subject: Petition by Nuuanu Ventures
(A65-90) for amendment of the
Urban Boundary in Nuuanu

Gentlemen:

I wish to take this means of correcting misquotes made by Mr. Robert G. Wenkam, Commissioner of Land Use Commission and Mr. William M. Swope of Smith, Wild, Beebe & Cades, attorney for Nuuanu Valley Community Association regarding my testimony at the Public Hearing held by the Land Use Commission on October 29, 1965.

Mr. Wenkam in his letter dated November 2, 1965, Page 2, Paragraph 1 states "The statement at the public hearing by the petitioner's engineer that this stake was placed 'about a month ago' to locate the lots is obviously false since, without lot stakes, the developer would have been unable to proceed with his grading on basis of the grading permit obtained October 6, 1964."

Mr. Swopes states in his report attached with his transmittal letter dated November 15, 1965 Page 3, Section B, <u>The Public Hearing</u> "At the public hearing, a representative of the developer stated under oath that the survey stake in Photograph #1 was placed a month previously at the request of a government agency and not earlier as suggested by the Nuuanu Community Association."

At the public hearing, I testified that about a month ago a gentleman from the Board of Forestry and Reserve asked our office for help in determining the Forest and Watershed Boundary.

I did not say that we nor anyone else did any survey during this period to determine any property corner or Forestry Reserve Boundary.

Mr. Wenkam's statement that the property corner was staked prior to grading operations is correct because without such a stakeout, proper grading will be impossible. Our records show that the property corner stake was surveyed on September 21, 1964 and is recorded in Field Book 269, Page 57.

The 3/4" pipe referred to as the "Forest Reserve Boundary Pipe" by both Mr. Wenkam and the Nuuanu Valley Community Association was non-existant when we surveyed the property corners on September 21, 1964. As to by whom and when this pipe was placed, I do not know.

Subsequent to the Public Hearing of October 29, 1965, I have seen said 3/4" pipe and found it to be approximately 18" long with about 3" below the surface. Said pipe being very loose and easily removable even by a child.

Due to the non-permanency of said pipe, I have taken a field trip to the site with a representative of the Board of Agriculture of Forestry and it has been confirmed by him that said pipe is <u>not</u> the Forest Reserve boundary.

Commissioner Wenkam further states on Page 3, Paragraph 7, "With respect to the integrity of the developer, no concern for conservation values were demonstrated when the bulldozers worked seven days a week to destroy as many trees as possible and excavate as much hillside as possible, before the Commission determination".

The matter of possible encroachment of portion of the subdivision into the Conservation District was brought to our attention by the newspaper article of June 6, 1965. Upon determination by the Executive Officer of the Land Use Commission of encroachment of 17 lots of the subdivision within the Conservation District, all work within this area was stopped by the developer on his own accord. Furthermore, no work speed up of work was ordered during this period as claimed by Mr. Wenkam as evidence by the statement of the contractor attached hereto. (Exhibit A)

Inasmuch as from the contractor's records, the only possible work that could have been done on Saturday in the conservation area was the work of one bulldozer for lot grading work on June 5th and 19th. We have asked the contractor where exactly this bulldozer worked on those days mentioned above. Unfortunately their records indicate only that this bulldozer worked on the project.

From above evidence, it is evident I believe that Mr. Wenkam's statement regarding developer's integrity is unfounded.

Petitioners contend that they have not violated the legislative intent of Act 274 of the Legislative Session of 1949 (which was erroneously reported by Mr. Wenkam as 1944) or the intent under Act 234 of the Legislative Session of 1957 where the official watershed line is near the top of the ridge rising in the rear of the boundary of the project. A communication from Mr. James M. Dunn, State Land Surveyor, indicates that the official boundary line is that described in proclamation of December 24, 1926. A copy of a map showing the location of this line and the communication from Mr. Dunn is attached hereto and made a part of this letter. (Exhibit B)

There are no records indicating that the area under examination has ever been acquired or condemned for watershed purposes by any governmental body as provided in Act 274, Section 3, of the Legislative Session of 1949. Developers or their predecessor's show no record of having surrendered or dedicated the subject area for watershed purposes. This fact is a matter of record supported by the title search heretofore filed with the Commission.

Developers therefore contend that the amendment to the boundary of the conservation line does not cause an encroachment into watershed areas as claimed.

The Nuuanu Valley Community Association Report of November 15, 1965 (Page 2) states the Interim Boundary had metes (meets) and bounds and show on <u>all</u> U.S. Geological Maps. This statement is grossly in error since the base map of both your interim

boundary and final boundary are maps published by the U.S. Geological Survey and does not have any metes and bounds.

Sincerely yours,

PARK ENGINEERING, INC.

Larry K. Matsuo

Larry K. Matsuo
Executive Vice-President

LKM:ma

P. O. BOX 1111
HONOLULU, HAWAII 96807

PHONE 992-971
1055 KALO PLACE
MOILILI

J. M. TANAKA CONSTRUCTION, INCORPORATED
GENERAL CONTRACTOR • EQUIPMENT RENTALS

December 17, 1965

Park Engineering, Inc.
1149 Bethel Street
Honolulu, Hawaii

Attention: Mr. Larry Matsuo

Gentlemen:

Subject: Nuuanu Park Place Subdivision

The undersigned certifies that, by checking through the records, no work of any description was done on any Sunday in the month of June 1965 at the Nuuanu Park Place Subdivision.

In addition, work on Saturdays for the same month was limited to a small force of about five to ten men as compared to the normal thirty-five to forty-five men on week days. The small force was used to catch up on the work schedule, doing work such as trenching, masonry work, equipment maintenance, and lot grading work. On lot grading work, only one bulldozer was used and it worked only on June 5, 1965 and June 19, 1965.

Sincerely yours,

J. M. TANAKA CONSTRUCTION, INC.

T. Shigeta

T. Shigeta
Engineer

Exhibit "A"

FILE NO._____

JOHN A. BURNS
GOVERNOR

V. MARCIEL
COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
SURVEY DIVISION
HONOLULU, HAWAII 96813

December 16, 1965

Mr. Larry Matsuo
Park Engineering, Inc.
1149 Bethel St., Room 710
Honolulu, Hawaii

Dear Sir:

In reply to your oral request for information as to the status of the boundary of the Honolulu Watershed Forest Reserve as shown on Government Survey Registered Map 2718 and H.S.S. Plat 2134E. I have checked the Survey Office files and find that as follows:

Registered Map 2718 was based on surveys made in 1923 and 1924. From this map, CSF 4140 was compiled and furnished the Forestry Department on November 24, 1926.

The Honolulu Watershed Forest Reserve boundary line was described in Governor's Proclamation dated December 24, 1926. Since then the Survey Office has made several surveys amending and realigning the lower boundaries of this forest reserve but there has been no proclamation or executive order of the governor adopting the line as described in these later surveys.

I have been informed by the Forestry Division that public hearings were held on the new line but as there was no follow up with a proclamation or executive order by the Governor, the only official boundary is still the line as described by the proclamation of December 24, 1926.

A revised description based on H.S.S. Plat 2134E was furnished the Forestry Division on December 11, 1961.

Very truly yours,

James M. Dunn

JAMES M. DUNN
State Land Surveyor

JMD:kgh

Exhibit "B"

File

1848

BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA
POST OFFICE BOX 3410
HONOLULU, HAWAII 96801

EDWARD J. MORGAN
Manager and Chief Engineer

RECEIVED
JAN 10 1966
State of Hawaii
LAND USE COMMISSION

January 6, 1966

Mr. George S. Moriguchi
Executive Officer
Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Moriguchi:

Subject: Petition for Change in Boundary,
Conservation District to Urban District
Location: Tax Map Key 2-2-42-Parcel 1
Petitioner: Nuuanu Ventures

We thank you for allowing us the opportunity to make comments on the subject application for a change in boundary of the Conservation District. Our views in general on encroachments in the Conservation District, have been made known to the Land Use Commission many times in the past.

However, in this particular situation, we have no comments to make as records indicate that the subject lands are not presently within the established Honolulu forest reserve watershed area.

Very truly yours,

Masami Iwamura

Masami Iwamura
Acting Land & Contracts Administrator

MI:by

STATE OF HAWAII
LAND USE COMMISSION

January 14, 1966
Honolulu, Hawaii

MEMORANDUM

TO: LAND USE COMMISSION

FROM: STAFF

SUBJECT: Parker Ranch (A65-89), Puna Sugar Co. (A65-92), Honokaa Sugar Co.(A65-96), Maui Meadows Subdivision (A65-91), Tony Hashimoto (A65-98), Nuuanu Ventures (A65-90)

1. PARKER RANCH (A65-89)

The petition for change from an Agricultural District to a Rural District was heard by the Land Use Commission on November 5, 1965 at Kona, Hawaii. On November 15, 1965, a modified request was received from the petitioners with an amendment which now requested change from an Agricultural District to an Urban District in lieu of a Rural District.

On the basis of the revised petition, and on the basis that land is presently used and has been used for urban purposes, with all community facilities and services available, and on the basis that subject lands presently abut an urban area, the staff modifies its original recommendation from a denial to an approval of the petition.

2. PUNA SUGAR COMPANY (A65-92)

Two parcels of land involving approximately 24,000 square feet and 23,000 square feet in the Mountain View town area on the Island of Hawaii are involved for a change from an Agricultural District to an Urban District. At the public hearing held on this petition, it was the staff's recommendation that the petition be granted since the area is urban in nature and community services and facilities are established and available within the immediate area.

Subsequent to the public hearing, the petitioners have amended their request in order to include the 40-foot road reserve adjacent to the parcels north of the highway. This will increase the total area from 24,000 feet to 30,000 feet for the mauka parcel.

The staff finds no change in its original evaluation and, therefore, maintains its recommendation for approval.

3. HONOKAA SUGAR COMPANY (A65-96)

At a public hearing held on November 5, 1965 at Kailua, Kona, Hawaii, the staff report and presentation by the petitioners were heard. Since that time, the petitioners have requested that the original petition be amended to

include approximately five acres of land to one of the two parcels requested for change from an Agricultural to an Urban District. This involved the Namoku lands immediately adjacent to the Camp 8 Subdivision.

Additional information on the petition has not been received and the staff maintains its original recommendation for approval of the petition, including the amended portion.

4. MAUI MEADOWS SUBDIVISION (A65-91)

A public hearing on this petition was held at the Kahului Library, Kahului, Maui on November 5, 1965. At that time, Mr. George M. Hasegawa, representing the owners, presented his testimony in support of their petition to reclassify approximately 401 acres from an Agricultural District to a Rural District. The Land Use Commission staff presented its recommendation for denial based on the extensive areas presently available for residential development in the Kihei area.

Subsequently, on November 9, 1965, the petitioners submitted the following:

1. That a comparable development by Mr. Walter Zane in Kihei, Maui, had sold nearly 80% of his rural subdivision and this, therefore, points out the demand for such a development.

2. That the petitioners disagreed with the staff's contention that excessive land area has already been zoned. They indicate that Mr. Zane's subdivision has been nearly sold out, and that the remaining 195 acres, located in the Makena area, are two miles from the nearest improved road system, without water available for development.

3. That the engineering plans prepared for the petitioners indicate that such a development is feasible.

4. That the State Farm Bureau and Mr. Erdman of Ulupalakua Ranch have expressed their feelings as to the present zoning of agriculture.

An item that is prominent by its omission from the petitioners' additional testimony is the fact that approximately 2,500 acres, within the present Kihei Urban District, are undeveloped and can be used for the purposes proposed by the petitioners. On the basis of development standards involving four lots per acre and four persons per family, the acreage available for urban development can provide for approximately 40,000 persons. In contrast, a prominent economist in Hawaii has estimated that the population of Maui would increase by approximately 20,000 persons in the next decade. This would indicate that even under the farfetched assumption that the entire population increase for the next decade would occur at Kihei, adequate residential lands are presently available to provide for the entire increase and more.

Notwithstanding the fact that the Land Use Commission has provided for adequate urban expansion in the Kihei area, the petitioners propose to add another 401 acres for rural residential purposes in this same area. The magnitude of their proposal can be clarified by its comparison with the

Kahului Dream City Development. Approximately 500 acres have been developed in the Kahului Dream City area and, in comparison, the petitioners' proposal involves an area approximately 80% of the Kahului Dream City Development. It is also noted that the available residential acreage at Kihei can provide for developments five times the size of the present Kahului Dream City Development. On the basis of these data, it is inconceivable that a petition for more residential lands can be justified upon the argument that this Commission has not provided adequate lands for residential purposes. Also, the argument that the subject lands are unsuitable for agricultural purposes cannot be received as a justification for change when other extensive areas are available for the proposed use.

Both the Maui County General Plan and the State General Plan classify the area within an Agricultural District.

Act 205, SLH 1963, Section 98H-4, stipulates that no change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified. Accordingly, the staff finds that it must adhere to its original recommendation for denial of the petition.

5. TONY HASHIMOTO (A65-98)

The public hearing for this petition was held on November 5, 1965, at Kahului, Maui. In addition to the testimony heard at the public hearing, letters in support of the petition have been received. Letters in support of the petition have been received from the petitioner, Mr. Tony Hashimoto, Mr. Tin Fook Tom, a landowner in Kihei, and Mr. Ben Miyahira, President of the Maui County Farm Bureau. All three letters base their support of the petition on the unsuitability of the area for agricultural purposes, and therefore suggest that an urban classification would be more appropriate.

The consensus of the staff is that the unsuitability of lands for agricultural purposes is not a justification for a boundary change in itself. If this alone were to be the criteria for permitting boundary changes, it would open the door to extensive scattered development, in view of the fact that there are any number of acres of land unsuited for agricultural purposes scattered throughout the State. As stipulated in the State Land Use Law, a change in boundary can only be justified by proof of need, which would also involve proof of the unavailability of lands for the proposed use.

There are presently approximately 2,500 acres of vacant urban lands in the Kihei area which would indicate that more adequate land is available.

Therefore, in compliance with Section 98H-4, Act 205, SLH 1963, the staff must maintain its original recommendation for denial of this petition.

6. NUUANU VENTURES (A65-90)

A public hearing was held on a petition filed by Nuuanu Ventures, Inc., on October 29, 1965. The petition involved reclassification of approximately 3.6 acres of land presently in the Conservation District to an Urban District. At that time, the staff recommended that only a 2.5 acre portion be changed to an Urban classification, with the remaining 1.1 acre to be disallowed. It was also recommended that this Commission ask the Department of Land and Natural Resources to resolve a satisfactory landscaping plan and its effectuation by the developer in the area of the high cuts, and to maintain the high cut banks within the Conservation District as unsubdivided lands.

During the public hearing, arguments against the petition were received from the Nuuanu Valley Community Association, the League of Women Voters, and from the ILWU. Subsequently, additional data have been received from the petitioners, supporting their position, and from the Hawaiian Trail and Mountain Club, and the Nuuanu Valley Community Association, opposing the petition. Copies of these data have been distributed to each of the members of this Commission. In addition, a letter dated November 2, 1965, from Commissioner Wenkam to Chairman Thompson, commenting on the public hearing and the staff report was received. These comments and the staff findings therefor are as follows:

1. Commissioner Wenkam indicated that where substantial evidence and technicalities of the law are available, these should be used to bolster and defend the Conservation Districts, and that he was disappointed in the staff report from this standpoint.

   Staff Finding: Section 98H-4, Act 205, SLH 1963, specifically provides that amendments in district boundaries may be allowed and sets forth the conditions therefor. This leads the staff to believe that arguments for, as well as against any petition must be evaluated without the preconceived judgment that any petition for change is improper to begin with. The staff's recommendation is a consensus based on the facts available.

2. Commissioner Wenkam indicates that the Executive Officer fails to consider the fact that, on the basis of the temporary boundary, more than 17 lots come under discussion and that actually 31 lots are at stake. He also states that to base the staff report on the compromise redrawing of the Conservation District lines, in favor of the developer, as was done on June 28, 1965, appears indefensible and improper.

   Staff Finding: The staff's plotting of the temporary district boundary is based upon Section 2.11 (b) (4) of the State Land Use District Regulations which stipulate that district lines for lands that are not subdivided shall be determined by the use of the scale contained on the map (Land Use District Map). This procedure was again confirmed by the Land Use Commission, during its general discussion on Rules and Regulations held on October 2, 1965, at Lihue, Kauai. The center line of the thick temporary district boundary was used in the staff plotting.

Insofar as "compromise redrawing of the Conservation District lines, in favor of the developer" is concerned, it should be noted that this was an official recorded action of this Commission based on a motion, a second to the motion, and a vote taken on June 25, 1965. Therefore, it is not apparent to the staff how the use of this line set by the Commission is "indefensible and improper".

3. Commissioner Wenkam indicates that a few minutes inspection would have revealed that the developers' engineers must have had full knowledge of the surveyed lines of the Honolulu Watershed Forest Reserve in which the lots are located. He also indicates that the corner stakes of Lots 58 and 60 coincide with the Territorial Survey's pipe monument locating the watershed reserve. And, also, that the engineer's lot stake was driven immediately alongside the Territorial monument which was apparently used as a reference point by the surveyors.

   Staff Finding: "A few minutes inspection" by the staff of the pipe purported to be the Territorial Survey monument immediately raised a question in the staff's mind as to how it happened to be there in the first place. It was found to be loose and imbedded in grass and dead leaves, instead of being firmly imbedded into the ground as ordinarily staked by surveyors. There was absolutely no indication that this pipe was a Territorial monument and certainly not one that was used as a reference point by the surveyors. Moreover, survey data from the State Survey office indicate that this survey point would be located 33 feet mauka of the loose pipe.

4. Commissioner Wenkam indicated that the petitioners' engineer had placed a stake "about a month ago" to locate the lots. This is obviously false since, without lot stakes, the developer would have been unable to proceed with his grading on the basis of the grading permit obtained October 6, 1964. He also states "it is also of interest that the lot number on the stake is the old series of lot numbers used in 1963; lot numbers have since been renumbered."

   Staff Finding: A verbatim transcript of the taped record of the public hearing has found that Commissioner Wenkam's quote is completely incorrect and, therefore, his allegations are also incorrect.

   The reason for Commissioner Wenkam's reference to the change in lot numbers is not apparent. However, it is a known fact to anyone with any experience in subdivision development, that the State Survey Office will request renumbering of lots during their review of survey calculations for one reason or another and that this is common practice.

5. Commissioner Wenkam indicates that "the developers statement at the hearing that 'all cuts were completed when work was ordered stopped' is also false. Adequate site inspection by the staff would have revealed this not to be so. In both of these cases the testimony should be challenged by the Commission and charges for perjury initiated, if warranted."

Staff Finding: Reference to the last sentence of the first paragraph of the staff's report finds that subdivision construction has proceeded to the general grading stage with no other construction started or completed to date. On the matter of "charges for perjury", the staff feels that this does not warrant its comments.

6. Commissioner Wenkam censures the Executive Officer for ignoring "the entire history of the proceedings between the developers and the Honolulu Planning Commission which exists under a cloud of suspicion and accusations of corruption."

Staff Finding: The Executive Officer has no data relating to the existence of a "cloud of suspicion and accusations of corruption." Moreover, he does not feel that this is an item for consideration within his scope of duties.

7. Commissioner Wenkam indicates that the staff is apparently not aware of the importance of forest reserve lands to the Honolulu Watershed Recharge Basin, and cites the expert testimony by the Board of Water Supply concerning another petition for change in boundary from Conservation to Urban in the Manoa Valley area. He also states that by voting denial to the Manoa petition, the Land Use Commission in effect recognized the boundaries of the Honolulu Watershed Forest Reserve, which is the same boundary the petitioner violated in Nuuanu Valley.

Staff Finding: The staff would again inform Commissioner Wenkam that the Board of Water Supply approved the petitioners' construction plans before the petitioner initiated construction. Moreover, the Board of Water Supply has indicated that it does not wish to comment on this matter since the subject lands are not within the watershed. This, of course, would completely negate Commissioner Wenkam's statement that the petitioner violated the watershed reserve in Nuuanu Valley.

8. Commissioner Wenkam indicates that "it is difficult to understand how the staff could recommend withdrawal of land from the Honolulu Watershed in complete opposition to the clear intent of the Legislature of the Territory and the State of Hawaii".

Staff Finding: This statement is unwarranted and incorrect in that the staff is not recommending any "withdrawal of land from the Honolulu Watershed" since the Board of Water Supply has indicated that the subject lands are not within the Honolulu Watershed.

9. Commissioner Wenkam disputes the staff's contention that the petitioners sought approval through "proper channels". He also indicates that the petitioner did not check with the Land Use Commission even when the Nuuanu Community pointed out the encroachment.

Staff Finding: Section 2.35 of the Land Use District Regulations stipulates that the appropriate County Officer or agency charged with the administration of County Zoning Laws shall enforce the use classification districts. On this basis, staff maintains that the petitioner sought approval through the "proper channels".

On or about June 4, 1965, the petitioners learned of the encroachment that was pointed out by the Nuuanu Community. On June 10, 1965, six days hence, the petitioners submitted maps to the Land Use Commission to check out this matter.

10. Commissioner Wenkam contends that the City & County of Honolulu, in issuing preliminary subdivision permits, specifically provides that all applicable City, County and State regulations must be satisfied before final approval is granted.

    Staff Finding: The fact of the matter is that final approval was granted by the City and County of Honolulu on July 30, 1964, which would lead any developer to reasonably conclude that even State requirements had been met, since it is stipulated that final approval is only granted thereafter.

11. Commissioner Wenkam indicates that erroneous generalizations plague the staff report, including the strange statement that "land use in the surrounding area is primarily residential". He then indicates that "any study of our Land Use maps will reveal that the majority of lands in upper Nuuanu Valley to be in conservation".

    Staff Finding: The staff report indicated that the subject lands are presently in the Conservation District and that land use in the surrounding area is primarily residential. On this basis, the staff finds it inconceivable that anyone should interpret this to mean that even lands in the Conservation District are used primarily for residential purposes and, therefore, the staff would offer no further comment.

12. Commissioner Wenkam contends that further investigation by the staff along the lines he proposes will permit a recommendation based on facts rather than generalizations. Also, that with full understanding of the history of this development, it will be impossible for the staff to conclude that the developers' illegal act was not surreptitious.

    Staff Finding: Investigation along the lines of Commissioner Wenkam's comments as indicated in the items above has served to adequately substantiate the purported "generalizations" of the staff. Concerning the history of this development, which would make it impossible for the staff to conclude that the developers' illegal act was not surreptitious, the staff would suggest that Commissioner Wenkam elaborate on the matter for the benefit of the Commission, since this information is not available to the staff from any source in documented form.

13. Commissioner Wenkam contends that the General Plan of the City and County of Honolulu shows the area under contention in the "preservation" zone and that the City Planning Commission of Honolulu is contradicting its own General Plan in recommending approval of this petition.

Staff Finding: A check with the City Planning Department has determined that Resolution 124 of the City Planning Commission sets the zoning of the entire developers' lands as Class A Residential. As reported in the staff report at the public hearing, this is the official zoning of the subject lands. Moreover, the General Plan Map was adopted by Ordinance No. 2443 on May 7, 1964, less than two months before final approval of the petitioners' subdivision. Since tentative approval was granted on October 3, 1963, it is apparent that subdivision plans were nearing completion at the time of the adoption of the General Plan on May 7, 1964.

14. Commissioner Wenkam contends that the developers should have known of the watershed reserve since the Territorial Survey indicated pipe monuments which also marked the location of the Conservation District.

    Staff Finding: A check with the State Surveyor indicates that the official forest reserve line runs along the top of the ridge and not as indicated by Commissioner Wenkam.

15. Commissioner Wenkam conteds that survey work sheets prepared by Park Engineering showing location of corner of lots 58 and 60 coincide with Forest Reserve pipe monument, proving subdivision was surveyed with full knowledge of the Honolulu Watershed.

    Staff Finding: This statement is incorrect in toto as confirmed by the State Surveyor.

Initial investigations conducted by the staff prior to preparation of its original report involved examination of Land Court Maps, Land Court Title documents, State Tax Maps, Tax Assessment records. The data presented in items 1 to 15 above only serve to substantiate official documents examined and used by the staff initially. Therefore, the staff takes strong exception to Commissioner Wenkam's allegations that "inaccuracies and generalizations" plague the staff report.

In their supplementary data submitted after the public hearing date, the Nuuanu Valley Community Association has offered comments in objection of the petition. These comments and the staff findings are enumerated below:

1. The Nuuanu Valley Community Association contends that maps submitted for preliminary approval to the City and County by the petitioner did not comply with the Subdivision Rules and Regulations since the map scale, contour interval and site information were not included. Also that the map did not clearly indicate the Nuuanu Stream. They also make the conjectural observation that "if these had been observed, Nuuanu Ventures would probably not have received preliminary approval of its plans."

   Staff Finding: These observations are absolutely conjectural in nature. The fact of the matter is that the City and County did approve the subdivision.

2. The Nuuanu Valley Community Association contends that the developers should not have erred on the matter since the interim boundary had metes and bounds show on all U. S. Geological Survey Maps.

   Staff Finding: There is no record on file in the Land Use Commission which establishes the interim boundary by metes and bounds.

3. The Nuuanu Valley Community Association has submitted a photograph showing the pipe marking the interim boundary and the Honolulu Watershed Forest Reserve Boundary. Therefore, they claim that the developers' statement that the line was "broadbrush" is farfetched.

   Staff Finding: As indicated in the items above, the staff is satisfied that the pipe submitted is not the pipe marking the Honolulu Watershed Forest Reserve boundary. This is on the basis of data available at the State Survey office. Moreover, Mr. Mitchell, during the testimony at the public hearing, has admitted that this is based entirely upon an assumption on his part.

4. The Nuuanu Valley Community Association contends that the developers are asking their buyers to do what he claims is practically impossible for him to do himself.

   Staff Finding: The developers' contention is that it would be practically impossible to restore the area to its original condition. He has made no statement that he expects his buyers to restore the area to its original condition.

5. The Nuuanu Valley Community Association contends that under the law, economic hardship is not to be considered.

   Staff Finding: The staff's opinion is that this must be evaluated on the basis of the circumstances involved in each situation. Specifically, the petitioners of the subject lands had received final approval from an agency charged with enforcing the Land Use Law.

6. The Nuuanu Valley Community Association has submitted a plan which it considers a reasonable solution to the problem facing the developer. It also indicates that the developer should be forced to build underground retaining walls so that he can safely restore the bulldozed area to its original state as the law specifies.

   Staff Finding: Staff is not aware of any law which specifies that the developer must restore the area to its original state. Upon checking with Mr. Mitchell, he has indicated that he also is not aware of such a law.

   Nuuanu Valley Community Association's report and plan are contradictory in that they propose forcing the developer to build underground retaining walls. In the Association's report, its drawings specifically propose that "existing cut slope planted but not filled".

The developers' data submitted in addition to their testimony given at the public hearing have been circulated to each of the Commissioners. These data are in support of the need of the land for urban purposes, their contention that their encroachment has been entirely inadvertent, and other data in support of their petition.

The consensus of the staff is that additional data received and researched on the subject petition, since submittal of its original recommendation, indicate that this recommendation should stand as made.

FILE NO.

JOHN A. BURNS
GOVERNOR

V. MARCIEL
COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
SURVEY DIVISION
HONOLULU, HAWAII 96813

December 16, 1965

Mr. Larry Matsuo
Park Engineering, Inc.
1149 Bethel St., Room 710
Honolulu, Hawaii

Dear Sir:

In reply to your oral request for information as to the status of the boundary of the Honolulu Watershed Forest Reserve as shown on Government Survey Registered Map 2718 and H.S.S. Plat 219[illegible]. I have checked the Survey Office files and find that as follows:

Registered Map 2718 was based on surveys made in 1923 and 1924. From this map, CSF 4140 was compiled and furnished the Forestry Department on November 24, 1926.

The Honolulu Watershed Forest Reserve boundary line was described in Governor's Proclamation dated December 24, 1926. Since then the Survey Office has made several surveys amending and realigning the lower boundaries of this forest reserve but there has been no proclamation or executive order of the governor adopting the line as described in these later surveys.

I have been informed by the Forestry Division that public hearings were held on the new line but as there was no follow up with a proclamation or executive order by the Governor, the only official boundary is still the line as described by the proclamation of December 24, 1926.

A revised description based on H.S.S. Plat 219[illegible] was furnished the Forestry Division on December 11, 1961.

Very truly yours,

James M. Dunn

JAMES M. DUNN
State Land Surveyor

JMD:kgh

BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA
POST OFFICE BOX 3410
HONOLULU, HAWAII 96801

File

1848

EDWARD J. MORGAN
Manager and Chief Engineer

RECEIVED
JAN 10 1966
State of Hawaii
LAND USE COMMISSION

January 6, 1966

Mr. George S. Moriguchi
Executive Officer
Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Moriguchi:

Subject: Petition for Change in Boundary,
Conservation District to Urban District
Location: Tax Map Key 2-2-42-Parcel 1
Petitioner: Nuuanu Ventures

We thank you for allowing us the opportunity to make comments on the subject application for a change in boundary of the Conservation District. Our views in general on encroachments in the Conservation District, have been made known to the Land Use Commission many times in the past.

However, in this particular situation, we have no comments to make as records indicate that the subject lands are not presently within the established Honolulu forest reserve watershed area.

Very truly yours,

Masami Iwamura

Masami Iwamura
Acting Land & Contracts Administrator

MI:by

January 6, 1966

Mr. Edward J. Morgan
Manager and Chief Engineer
Board of Water Supply
630 South Beretania Street
Honolulu, Hawaii 96813

Dear Mr. Morgan:

A petition is presently pending before the Land Use Commission regarding a request for a change in boundary of certain lands from a Conservation District to an Urban District. Approximately 17 lots with a total land area of about 3.5 acres in the Laimi area of Nuuanu Valley are involved. The general background of the project is indicated in the Land Use Commission staff report which is enclosed herewith for your reference.

Available records to date indicate that the subject lands are not presently within the established Honolulu forest reserve watershed area. However, we would appreciate your comments and recommendations on the subject matter insofar as its effect on our water resources is concerned.

The Commission will be taking final action on the subject petition on January 14, 1966 and, therefore, we would appreciate your comments by early next week.

Should you require further information, please feel free to be in touch with us.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encl.

12-18-65 Advertiser

Nuuanu Land Use Probe Asked

Land Use Commissioner Robert Wenkam yesterday made an impassioned but unsuccessful plea for an Attorney General's investigation of whether any State laws had been broken by a developer in Nuuanu Valley.

Nuuanu Ventures, a development firm, carved 17 houselots out of a conservation district and the commission now has under advisement the firm's petition that the conservation district boundary be altered to make the lots legal.

"When I break a law," Wenkam said, "I get picked up, brought to court and all sorts of terrible things happen.

"It seems strange that the Attorney General has not started an investigation. I think the integrity of the Land Use Law is at stake.

"It's almost as though the Attorney General is waiting until we make a decision which would make this whole thing moot," Wenkam said.

He urged the commission to request an investigation by the Attorney General and a determination if any laws were violated before the commission reaches a decision sometimes next month on the developer's petition for a conservation boundary change.

The vote on Wenkam's motion was 3-4.

Advertiser 11-18-65

Nuuanu Lots Plea Disputed

By BILL COOK

A community association which is fighting against the development of 17 houselots on a Nuuanu Valley hillside charged yesterday that the developer's petition to the Land Use Commission "contains errors in logic and fact."

The Nuuanu Valley Community Assn. made the claim in a written supplemental report against Nuuanu Ventures, developers of Nuuanu Park Place. The commission held a public hearing on Nuuanu Ventures petition last month.

The association, represented by Smith, Wild, Beebe & Cades, said in the supplemental report that the developer's claim that the subdivision was approved before final land-use boundaries were set was not a valid argument.

"The interim boundary was in effect when the City approved the subdivision, and the interim boundary line existed for many years before as the Honolulu Watershed and Forest Reserve boundary," the report said.

The association also attacked the developer's claim that the interim boundary was a "broad brush" line, which accounted for the error in placing the 17 lots within the conservation district boundary.

"The interim boundary had meets and bounds (been pinpointed by survey) and shows on all U.S. Geological Survey maps," the report said.

The community association urged the commission to order the developer to restore the bulldozed area to its original state.

Its report said that a "major landslide was observed to have occurred on Sunday, Nov. 14," and that by restoring the 17 lots to the conservation district the vegetation would "protect the houses in the urban area below from landslides above."

At the Oct. 29 public hearing, the commission staff recommended that of the 17 lots, the developer should be permitted to develop all of six of the lots and portions of 10 of them. However, it was believed that the recommended reductions in sizes of some of the lots would make four of the lots too small for development.

If the commission adopts the staff recommendation, Nuuanu Ventures probably would be able to develop only 12 of the 17 lots.

The development firm, in its supplemental report to the commission, said it would support the adjusted boundary recommended by the staff.

The developer also commented on the community association's attempt to prove by a photograph of two surveying markers that the developer wilfully violated the conservation district boundary.

A photograph submitted by the community association showed a pipe purported to be the temporary conservation district boundary and a surveyor's stake of the type by the developer to mark off lots. The two stakes were side by side.

The developer said an investigation revealed that the pipe was not a Forest Reserve boundary marker.

The developer said also that "a check with our survey crew indicates the nonexistence of said pipe during our original stakeout."

The Land Use Commission must rule on the developer's petition within 90 days of the public hearing.

November 17, 1965

Hawaiian Trail and Mountain Club
Box 2238
Honolulu, Hawaii 96804

Gentlemen:

Thank you for your communication of November 1, 1965.

Please be assured that the Land Use Commission will render an objective decision after all of the facts have been gathered and weighed. The Commission will accept additional new testimony for 15 days following the hearing as well as at the meeting when a decision is made. Up until this process of fact gathering is completed, your Commission is not in a position to act in the best interest of all of the people of our state.

Your communication implies a tone of threat to the integrity of the Land Use Commission should we approve this petition. I personally resent such implication, particularly when not all of the facts have been gathered. We welcome your participation and guidance; however, in the future, I suggest that your organization confine its remarks to the merits and/or demerits of the petition being submitted rather than how this Commission should or should not act.

Very truly yours,

Myron B. Thompson
Chairman

MBT:em

NOV 9 1965

November 1, 1965

From: Hawaiian Trail and Mountain Club
Box 2238
Honolulu, Hawaii 96804

To: State Land Use Commission
426 Queen St.
Honolulu, Hawaii 96813

Chairman Thompson

Subj: Nuuanu Ventures Petition, heard 10-29-65

Gentlemen:

Contained herein are the points we intended to make before the Commission's hearing October 29, 1965. We were in attendence at the hearing but had to leave early because of time limitations.

In regard to the subject petition, the Hawaiian Trail and Mountain Club submits the following comments for the Commission's consideration:

1. PROOF OF NEED: In our opinion, the petitioner has not furnished the required proof that the subject area is needed for an Urban designation. Without such proof, granting of the petition could only be on the most dubious basis, having damaging implications for the integrity of the Land Use Law.

2. PLANNING COMMISSION: Admittedly, the fact that the Planning Commission had given its approval to the project makes the present decision more difficult, perhaps. It is our feeling, however, that the proper approach on this point would be to consider the application as a fresh case, from the time when the error regarding the District boundary was first brought to light.

3. PROJECT MERIT: It seems to us that the fact that the project may have merit, may be well-conceived in itself, must be held to be irrelevant for purposes of the decision on the petition.

4. COST TO DEVELOPER: Likewise, the economic impact to the developer should be considered to have no direct bearing on the Commission's decision. The public interest in preserving the integrity of the Land Use Law and its mature concepts would not be served if approval were to any degree based on the possible economic loss or hardship involved.

5. GENERAL IMPRESSION: A point of foremost consideration, it seems to us, is the implication of the present decision by the Commission on the future of the Land Use Law as affected by the public's feeling about the Law. We feel that the possibility is strong enough to be of concern, that the general impression will be that the intent of the Law has been compromised (in the event of approval of the petition), even though the Commission may make its decisions independent of precedent.

6. PLEA: In view of these points we feel that disapproval is the better course in this case, and we so urge the Commission.

Very truly yours,

David C. Sanford, Pres.

1798

SMITH, WILD, BEEBE & CADES
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
P. O. BOX 939
HONOLULU, HAWAII 96808

TELEPHONE
569-331

CABLE AND WIRELESS ADDRESS
"LEX" HONOLULU

RECEIVED
NOV 15 1965
State of Hawaii
LAND USE COMMISSION

November 15, 1965

Land Use Commission
State of Hawaii
Honolulu, Hawaii

Re: Request of Nuuanu Venturers to
Amendment to District Boundary

Gentlemen:

Our client Nuuanu Valley Community Association, Inc., submits herewith certain of its objections to the request of the petitioner for a boundary amendment.

On behalf of our client, we hereby move that the petition be denied on the grounds that the petitioner has not "submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified". See § 98H-4 of the Revised Laws of Hawaii 1955, as amended. We respectfully request that you seek the opinion of your counsel on this technical question of law before you make a decision on the petition.

If we can be of any service, please do not hesitate to contact us.

Very truly yours,

SMITH, WILD, BEEBE & CADES

By
William M. Swope

11-18-65
Copy to Commissioners

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NOV 15 1965
State of Hawaii
LAND USE COMMISSION

Nuuanu Valley Community Association Report on Nuuanu Ventures' Petition before Hawaii State Land Use Commission

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Nuuanu Ventures' Petition to the Land Use Commission contains errors in logic and in fact that have not been exposed. The following report analyzes the statements made by the developer in his petition and at the October 29, 1965 public hearing, and recommends what the Association considers to be the valid solution to the controversy.

A. Nuuanu Ventures' Petition

1) The developer claims:

> "Subdivision plans of the affected area were approved by the various agencies of the City and County of Honolulu on or before August 13, 1964, prior to adoption of the final land use district boundary on August 23, 1964."

The Interim Boundary was in effect when the City approved the subdivision, and the Interim Boundary line existed for many years before as the Honolulu Watershed Forest Reserve Boundary.

Preliminary approval of the subdivision was based on a map that did not comply with the City's "Subdivision Rules and Regulations." These regulations specify requirements such as map scale, contour interval and site information that was not included. Also, the map did not clearly indicate that Nuuanu Stream, which was the city zoning boundary between Class "A-A" and "A" residential districts, had been or was proposed to be moved. The result was that six lots were zoned partially "A-A" and partially "A". These lots

11-18-65
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did not contain the 10,000 square feet required by "A-A" zoning.

One can only conclude that in preparing his preliminary plan, the developer not only ignored the State's Conservation Boundary but also the City's Zoning Boundary and Subdivision Rules and Regulations. If these had been observed, Nuuanu Ventures would probably not have received preliminary approval of its plans.

In any event, the final boundary was set before October 6, 1964, when Nuuanu Ventures received its grading permit. This was the "approval" on the basis of which Nuuanu Ventures proceeded to bulldoze the 17 lots.

2) The developer claims:

> "Inasmuch as the interim boundary was a "broad brush" line, the developer inadvertently erred in not asking the State Land Use Commission for a better determination of the boundary."

The Interim Boundary had meets and bounds and shows on all U. S. Geological Survey Maps. The boundary is reflected in the taxes the developer has paid on the land for almost three years, and the appraisal made for the Harriet E. Weight Estate, from which the developer purchased the property, showed this line.

The Community Association in its petition to the City Council in July 1963 stated that:

> .... only approximately 5 of the 50 + acres (on the diamond head side of Nuuanu Stream) are usable for subdivision for building lots and the remainder is suitable only for inclusion in the government watershed....

Furthermore, Photograph #1 (attached) shows a surveyor's stake within inches of what, in the absence of a survey, is considered

to be the pipe marking the Interim Boundary and the Honolulu Watershed Forest Reserve Boundary. Therefore, for the developer to say that the line was "broadbrush" is somewhat farfetched, and to say that his error was inadvertent is highly questionable.

3) The developer claims:

> "On the basis of approved engineering plans, this area has been graded and at this time to request the developers to restore this area to its original condition would be practically impossible. However, with proper landscaping and maintenance by each individual lot owner, this area can be greatly improved."

Photographs #2 and #3 (attached) show some of the area the developer claims to have graded. The photographs clearly indicate that what the developer claims is incorrect. For the developer to say that his buyers can do what he claims is practically impossible for him to do himself is nonsense.

4) The developer states:

> "Denial of this request will create an economic hardship on the developers as cost allocations were made on the basis of approved plans."

Under the law, economic hardship is not to be considered.

B. The Public Hearing

At the public hearing, a representative of the developer stated under oath that the survey stake in Photograph #1 was placed a month previously at the request of a government agency and not earlier, as suggested by the Nuuanu Community Association. The stake was labeled as the corner of lots 58 and 60. Drawing #1 (attached) shows the lot numbering of the plan that received preliminary approval by the city on

December 5, 1963. Drawing #2 (attached) is the Tax Map dated October 30, 1964. The Tax Map shows a different numbering than the earlier map; i.e. the spur road is numbered "59" and the house lot adjacent to "58" is numbered "61". The implication of this is that the stake was placed prior to October 30, 1964, and at the very least the developer was mistaken. If the developer's representative believed the statements he made, he must have "erred inadvertently" again.

C. The Community Association's Plan

The Nuuanu Community Association submits a plan (Drawing #3) which it considers a reasonable solution to the problem facing the developer. To force the developer to build underground retaining walls so that he can safely restore the bulldozed area to its original state as the law specifies, is necessary. By keeping all of the 17 lots in the Conservation District and replanting the flatter areas, the vegetation will serve as a buffer and protect the houses in the urban area below from landslides above. (Incidentally, a major landslide was observed to have occured on Sunday, November 14, 1965.) Erosion has already partially filled in the rock cuts, and in the years to come this will continue. The trees will grow to screen the scar from the valley below and the effects of the developer's destruction will be minimized.



PHOTOGRAPH #1

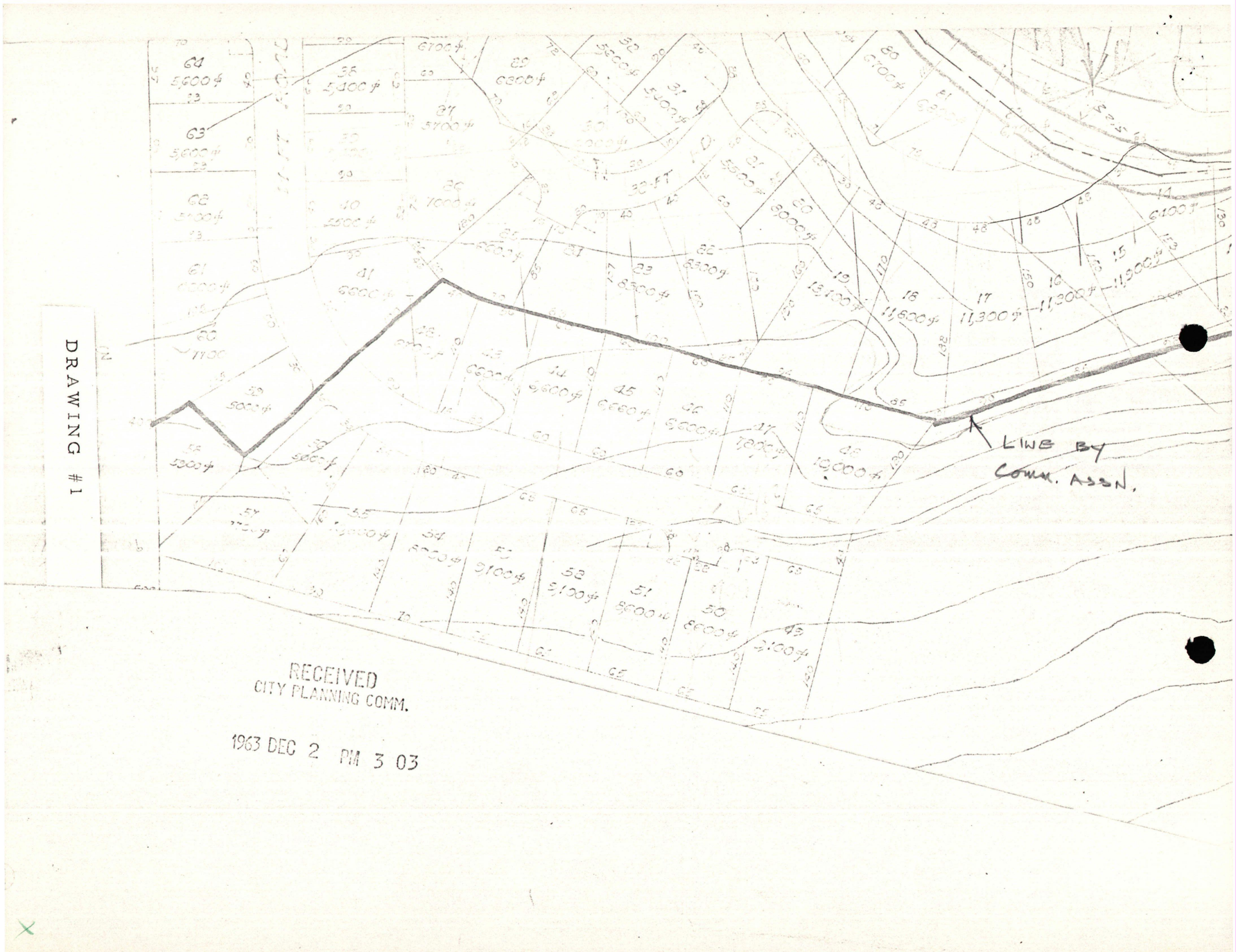


PHOTOGRAPH #2



PHOTOGRAPH #3

DRAWING #1



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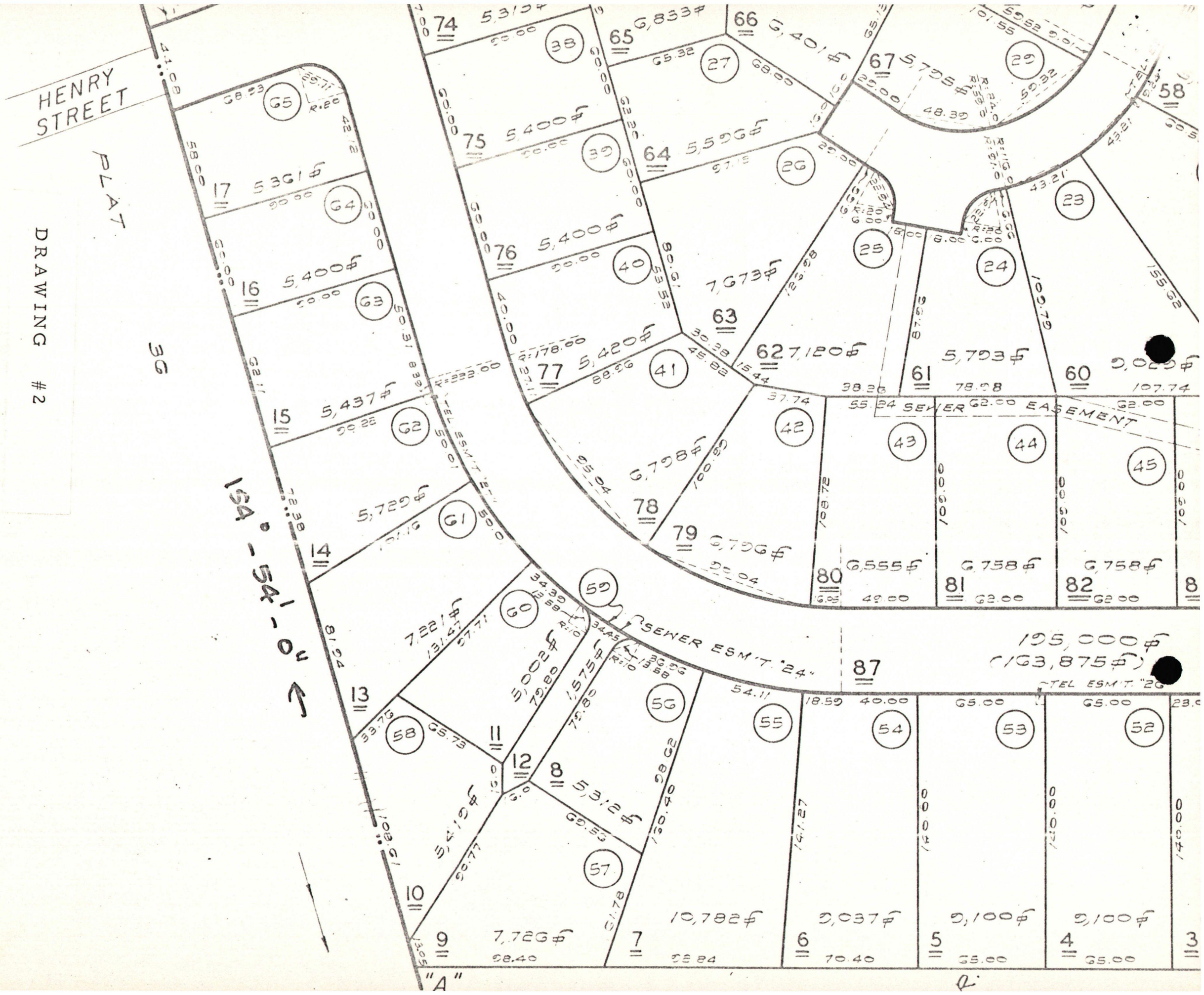
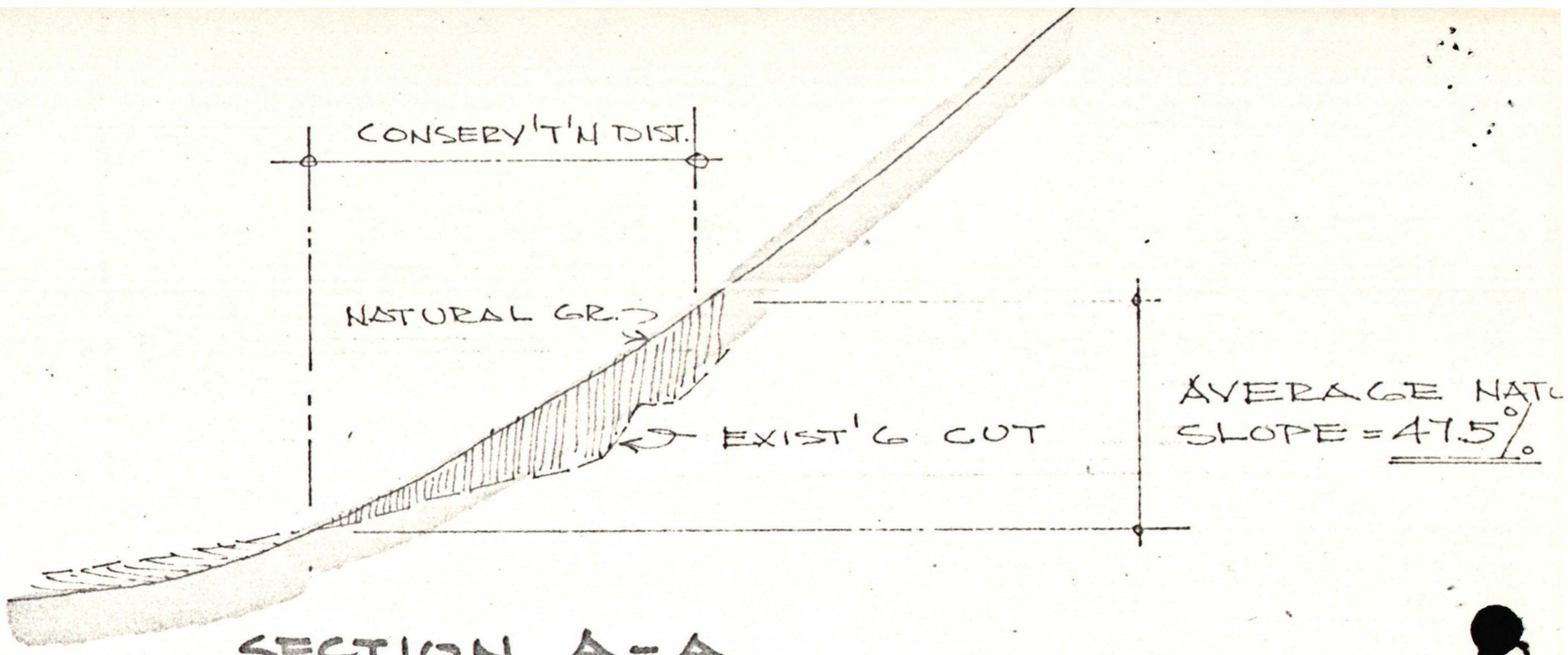
CITY PLANNING COMM.

1963 DEC 2 PM 3 03

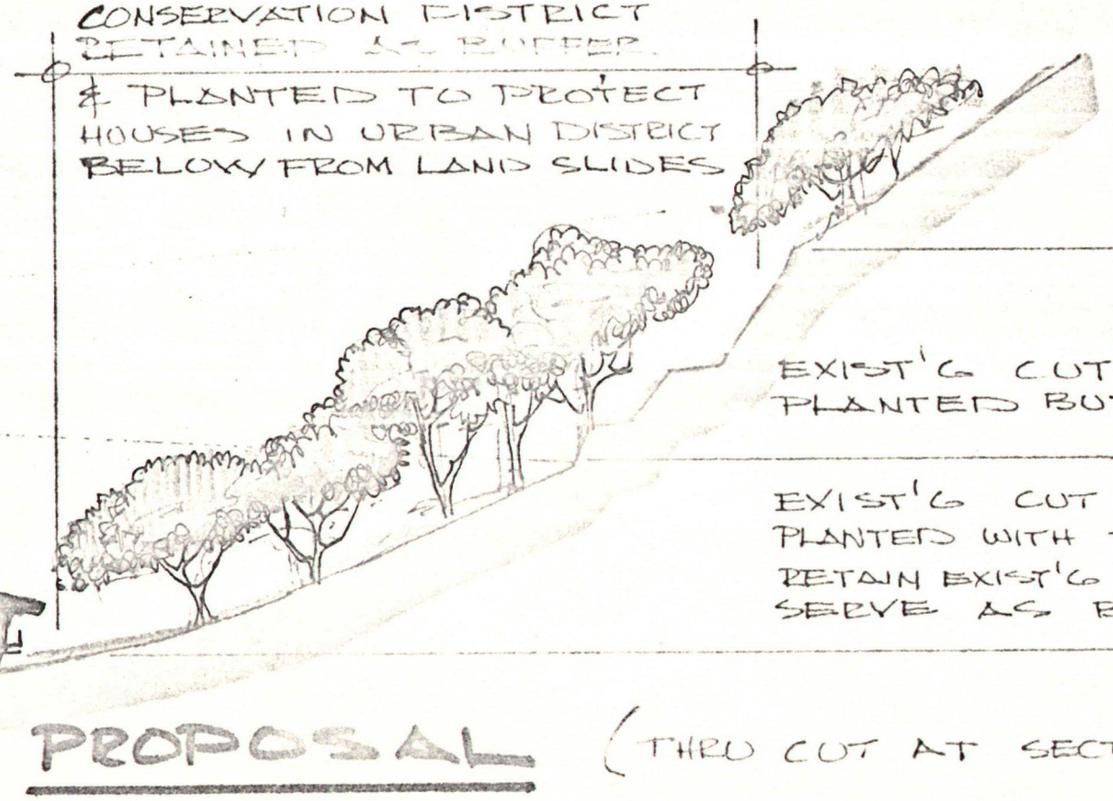

HENRY STREET
PLAT
36
154° - 54' - 0"
SEWER EASEMENT
SEWER ESM'T. "24"
TEL ESM'T. "26"
195,000 ⌀
(163,875 ⌀)
"A"

DRAWING #2

DRAWING #3



SECTION A-A



PROPOSAL (THRU CUT AT SECTION B-B)

1785

PARK *Engineering, Inc.*

1149 BETHEL ST., RM. 710
HONOLULU 13, HAWAII
TELEPHONE: 511-676

November 12, 1965

RECEIVED
NOV 12 1965
State of Hawaii
LAND USE COMMISSION

Mr. George Moriguchi
Executive Officer
Land Use Commission
State of Hawaii

Subject: Petition by Nuuanu Ventures
(A65-90) for amendment of the
Urban Boundary in Nuuanu

Dear Sir:

Transmitting herewith are:

1. Supplementary report of the petitioners
2. Landscape of area as prepared by Mr. Richard C. Tong, Landscape Architect with his comments and cost estimate
3. Zerox copy of Notice of Assessment of subject property
4. Zerox copy of Land Court Title of subject property
5. Map showing Forest Reserve Boundary

As Engineer and Surveyor for the developer's I wish to repudiate statements made by the opponents of this petition regarding the intentional encroachment into the conservation area. I wish to state emphatically that this encroachment was unintentional. Park Engineering, Inc. has been in business in Honolulu for over 15 years and to do anything of this nature intentionally would be fool hardy.

The opposition presented photographs showing a 3/4" pipe close to our property corner stakeout for Lots 58 and 60 and made claims that said pipe was the Forest Reserve boundary corner. After checking the records we have found that said statement is incorrect because :

1. The State Surveyor's Office description for the Watershed boundary calls for an 1½" pipe.
2. Computation shows that Forest Reserve boundary being 33.30 ft. away from said property corner.

3. Further inquiry at the State Surveyor's Office indicate that the Watershed boundary for this area was compiled and there seem to be some doubt as to whether said boundary were actually surveyed on the ground.

4. The pipe referred to by the opposition is loose and can be pulled out of the ground with no effort at all. No surveyor will mark any property corner in such a manner.

5. Check with our survey crew indicates the non-existance of said pipe during our original stakeout.

Sincerely yours,

PARK ENGINEERING, INC.

Larry K. Matsuo

Larry K. Matsuo
Executive Vice-President

LKM:ma
Attach.

11-18-65
Copy to Commissioners

1782

RECEIVED
NOV 17 1965
State of Hawaii
LAND USE COMMISSION

To: Land Use Commission

From: Nuuanu Ventures, a Ltd. Partnership

Subject: SUPPLEMENTAL REPORT ON PETITION FOR ADJUSTMENT OF THE LAND USE BOUNDARY

The developers of the Nuuanu Park Place respectfully submit the following additional information in support of their petition for an adjustment in the boundary of the Land Use Commission as follows:

1. The developers are in support of the adjusted boundary recommended by the staff of the Land Use Commission.

2. A survey of the records of available residential lots within the immediate area extending from mauka of Judd Street to the Dowsett area show as follows:

a. The record of subdivisions of larger parcels for residential use show as follows:

(1) 1957 - A 24 lot subdivision for AA zoning in the Dowsett Highlands.

(2) 1957 - A 14 lot subdivision for A zoning on Liliha and Judd Streets by S. Narikawa.

(3) 1964 - A 6 lot subdivision on Judd Street for Class A zoning by Shimizu and Uyeda.

b. There are two proposed subdivisions on record as follows:

(1) A 4 lot subdivision on Pali Highway for Class AA zoning of the M. A. Kellett property.

(2) A 4 lot subdivision at Ragsdale Place for AA zoning by Hanslee Chang.

c. There are a number of miscellaneous subdivisions of single parcels into lots which are not considered significant for the purposes of this submission.

3. The record of subdivision of lands for residential use within the area from Judd St., to Dowsett Highlands indicate very limited available land. Sales records

indicate that all of the subdivided lots appear to have been sold, and that the real estate activity in this area is limited to resale of previously purchased lots.

4. In contrast to these developments, the Nuuanu Park Place Development offers residential homes at $39,750.00 for the entire house and lot completed and ready for occupancy at a level which is within the price range in great demand at the present. The rapidity with which the initial sales of available lots for the first increment prior to the question on the marginal boundary of the development indicate there is a great demand for the residential homes within this area. This development meets a current active demand for housing for this area.

5. The development is within grade elevations which will permit the development of residential lots which are comfortably adaptable for desirable home sites within the questioned area. The area in question is approximately 3.5 acres which offers choice residential sites at completed elevations of about 25% grade. We have been successful in many other areas in offering highly desirable residential lots at this grade elevation in other subdivisions directed by the developers. We may indicate that there are lots within the permitted urban use area which exceed finished grade elevations which are slightly more acute than these lots. It is the opinion of the developers that the home sites within the recommended adjusted boundary established by the staff of the Land Use Commission will be completed into highly desirable residential lots.

6. To further assure the desirability of these lots we submit a landscape proposal by Richard C. Tong, Landscape Architect, for the area under question. The submitted plan shows the specifications of plantings, types of trees and the general location in relationship to the completed development contemplated by the developers. The cost of the development of the landscape work is projected to be $2535.00 by Mr. Tong. A bond covering this work will be issued at such time you may require. We are ready to place a bond assuring the full completion of the suggested landscape work by Mr. Richard C. Tong prior to your consideration on this petition and action if the Commission so desires. We will contact your office with reference to this matter.

7. In conclusion, may we state a few additional facts in support of our petition for the adjustment of the boundary, to-wit:

a. The developers in good faith initiated the subdivision and did comply with such known requirements undertaken in all subdivisions without being aware of the encroachment into the conservation area. This is indicated by our records of the development and also pointed out by the staff of the Land Use Commission. To use the existence of the old boundary stake which shows very little reliability and permanence is an indication that the developers and surveyors were aware of an existing boundary cannot be justified by such allegations.

b. A suggestion that we should have been aware of the conservation area because of the separated evaluation for tax purposes due to the existence of water shed area is untrue. We submit a zerox copy of notice of assessment for the tract which fails to show any separation of the conservation area. This statement shows a single assessment value and the area involved.

c. The documents of title and conveyance also do not indicate the existence of any conservation area within the tract purchased by the developers in good faith. The documentation throughout the history of this development passing through the hands of the developers failed to give any indication of the location of the conservation area.

Nuuanu Ventures, a Limited Partnership

By Iwao Kishimoto

11-18-65
Copy to Commissioners

MEMORANDUM FROM . . .

Office of RICHARD C. TONGG
LANDSCAPE ARCHITECT—SITE PLANNER

DATE: Nov. 10, 1965

TO: Herbert K. Horita Realty, Inc.

RE: Landscaping Description

JOB: Nuuanu Park Place Sub-division

In developing the landscape planting plan for the hillside portion of Nuuanu Park Place sub-division consideration was given to the following:

The area is usually very wet. The benches were cut into a very rocky hillside in thin line drifts. The verdure of the surrounding country side is in a wild and native state. The affected area needs to be restored to its natural look in as short a time as possible, first by obliterating construction scars and then introducing trees that will blend with those that are growing near the site.

Woodrose vines were chosen to climb the slopes. They are fast growing and will make quick coverage. Plants should be set in at the bottom of the slopes.

Trees selected were the mountain ironwood, lemon gum and gold tree for the bench areas. These are shown in groupings at different levels. This arrangement will help to destroy the straight line effect of the benches.

The Jacaranda was chosen for the street tree near the houses becauses it has fine foliage and will not create a damp atmosphere such as would be done by the monkeypod or other more spreading trees.

Tree holes should be dug to the sizes specified as they are necessary for the success of the trees in the rocky ground.

Richard C. Tongg

RCT:ck

11-18-65
Copy to Commissioners

PROJECT BUDGET ESTIMATE SHEET

JOB: NUUANU PARK PLACE SUB-DIVISION RICHARD C. TONGG - LANDSCAPE ARCHITECT

This appraisal uses approximate figures only and does not include our fee

BASIC LANDSCAPING
11/10/65

Item	Description	Quantity	Unit	Total	Quantity	Unit	Total
1.	Eucalyptus maculata citriodora - Lemon scented gum (1 gal.)	15	$ 32 00	$ 480 00			
2.	Casuarina stricta - Ironwood (5 gal.)	18	35 00	630 00			
3.	Tabebuis donnellsmithii Gold tree (5 gal.)	14	35 00	490 00			
4.	Jacaranda acutifolia Jacaranda (5 gal.)	26	10 00	260 00			
5.	Ipomoea tuberosoa - Woodrose (1 gal.)	135	5 00	675 00			
	TOTAL			$2,535 00			

STATE OF HAWAII
DEPARTMENT OF TAXATION
P. O. Box 259
Honolulu, Hawaii 96809

1964
FIRST TAXATION
DIVISION
OAHU

NOTICE OF PROPERTY ASSESSMENT

DATED MARCH 10, 1964

OWNER

SHIGERU HORITA & IWAO
KISHIMOTO JT

TAX KEY				AREA
Z	S	PLAT	PARCEL	
2	2	042	001	50.985A

ASSESSOR'S VALUATION		
LAND	BUILDING	TOTAL
166359	3003	169362
	EXEMPTION	NET VALUE
		169362

SHIGERU HORITA

2024 NO KING ST

HONOLULU 19 HW

FORM P-2 THIS IS A NOTICE - NOT A BILL

Real property Division says this void

STATE OF HAWAII
DEPARTMENT OF TAXATION
P. O. Box 259
Honolulu, Hawaii 96809

1964
FIRST TAXATION
DIVISION
OAHU

NOTICE OF PROPERTY ASSESSMENT

DATED MARCH 10, 1964

OWNER

SHIGERU HORITA & IWAO
KISHIMOTO JT

TAX KEY				AREA
Z	S	PLAT	PARCEL	
2	2	042	001	50.985A

ASSESSOR'S VALUATION		
LAND	BUILDING	TOTAL
101371	3003	104374
	EXEMPTION	NET VALUE
		104374

SHIGERU HORITA

2024 NO KING ST

HONOLULU 19 HW

FORM P-2 THIS IS A NOTICE - NOT A BILL

HONOLULU HAWAII MAY 21 '64 22 U.S. POSTAGE 04 P.B. METER 381594

SHIGERU HORITA

2024 NO KING ST
HONOLULU 19 HW

$1,241.43

TAX KEY	Z	S	PLAT	PARCEL	TOTAL TAX
0	2	2	042	001	248285

22

NOV 18-64 PAID TOSH 13 253 RP**1,241.42

HONOLULU HAWAII NOV 3-'64 22 U.S. POSTAGE 04 P.B. METER 381594

SHIGERU HORITA

2024 NO KING ST
HONOLULU 19 HW

TAX KEY	Z	S	PLAT	PARCEL	TOTAL TAX
0	2	2	042	001	124142

XEROX COPY

TRANSFER CERTIFICATE OF TITLE

No. 90,054

From Transfer Certificate No. 90,053, Originally Registered January 25, 1963 in Registration Book 901 Page 209 for the Registry District of the State of Hawaii.

This is to Certify that -SHIGERU HORITA-, husband of Mitsue Horita, whose residence and post office address is 1639 Makuahine Drive, Honolulu, City and County of Honolulu, State of Hawaii, and -IWAO KISHIMOTO-, husband of Yaeko Kishimoto, whose residence and post office address is 126 Ohelo Lane, Honolulu aforesaid, authorized general partners doing business in the trade name of Nuuanu Ventures, a limited partnership, whose principal place of business and post office address is 2024 North King Street, Honolulu aforesaid, are the owners in fee simple, as Joint Tenants with full right of survivorship, of those certain parcels of land situate at Nuuanu Valley, Honolulu aforesaid, described as follows:

LOTS: B, area 1,769.0 square feet, as shown on Map 1, and A-2, area 50.944 acres, as shown on Map 3, the maps herein referred to by numbers are filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1441 of Harriet Emily Wilder Wight, and being all of the land described in Transfer Certificate of Title No. 90,053 issued to Hawaiian Trust Company, Limited, Trustee.

214

And it is further certified that said land is under the operation and provisions of Chapter 342 of the Revised Laws of Hawaii, 1955, and that the title of said

-SHIGERU HORITA- and -IWAO KISHIMOTO-

to said land is registered under said Chapter subject, however, to any of the encumbrances mentioned in Section 342-42 of said Revised Laws of Hawaii which may be subsisting, and subject also to:

1. An easement in favor of the State of Hawaii for the free flowage of water in the "Nuuanu Stream" located within Lot A-2, said stream being shown on Maps 1 and 3 and made a part of the herein application.

2. As to Lot B only, perpetual easements for road purposes and for the laying, maintaining, repairing and removal of underground pipe line or pipe lines for carrying water as appurtenances to the land registered in Land Court Application No. 1421.

3. Designation of Easement 1 over and across Lot B and affecting Lot A-2, as shown on Maps 1 and 3.

4. An easement in favor of the City and County of Honolulu, a municipal corporation of the State of Hawaii, to be exercised by the Board of Water Supply, City and County of Honolulu, for a right of way to lay, operate, maintain, repair and remove an underground water pipe line or pipe lines under and across said Easement 1, together with the right of ingress and egress in and to and therefrom for the purpose of exercising said easement.

5. Any and all rights of the applicant to water rights appurtenant to the land herein described, or the rights to any easements appurtenant thereto in or upon adjoining or other lands in the vicinity for the free flowage of water in certain auwais located therein have not been determined in the matter of the registration of this land, but have been expressly excluded from any such determination.

6. Any rights or claims of the Board of Water Supply of the City and County of Honolulu, and particularly without prejudice to its claim that the agreement entered into between applicant and the Territory of Hawaii, dated May 6, 1912, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 386 at page 459 to perpetually furnish water to said applicant from government water mains is invalid, ultra vires and void, and that said rights or claims, or any thereof, have not been determined in the matter of the registration of this land, but have been expressly excluded from any such determination.

The foregoing encumbrances are mentioned in Transfer Certificate of Title No. 90,053 to which reference is hereby made.

Witness, the Honorable Harry R. Hewitt, Judge of the Land Court at Honolulu, in the City and County of Honolulu, State of Hawaii, the 25th day of January in the year nineteen hundred and sixty-three at 9 o'clock and 05 minutes in the fore- noon

Attest, with the Seal of Said Court,

Assistant Registrar.

MEMORANDA OF ENCUMBRANCES, ETC., ON THE LAND DESCRIBED IN THIS CERTIFICATE

90054

…UMENT …MBER	KIND	RUNNING IN FAVOR OF	TERMS	DATE OF INSTRUMENT	DATE OF REGISTRATION: YEAR & MONTH	D.	H.	M.	A.M. or P.M.	SIGNATURE OF ASSISTANT REGISTRAR	DISCHARGE
517	Mortgage	Hawaiian Trust Company, Limited Tr. under the Will & of the Estate of Harriet Emily Wilder Wight, dec'd.	$75,000.00 payable as per note and further advances, if any	Jan. 23, 1963	1963 Jan.	25	9	05	A.M.	[illegible]	Released Feb. 20, 1964 at 3:56 P.M. by Doc. No. 325558 Charles F. Neumann III
561	Mortgage	HONOLULU SAVINGS AND LOAN COMPANY, LIMITED	$1,430,000.00 on this & Cert. No. 95784	Feb. 19, 1964	1964 Feb.	20	3	56	P.M.	Charles F. Neumann III	
[illegible]	[illegible]	[illegible] withdrawn — See Cert. No. 100236		Oct. 22, 1964	1964 Oct.	29	8	30	A.M.	James A. Smith	
62[illegible]	[illegible]	Hawaiian Electric Company, Inc. and Hawaiian Telephone Company	easement for utilities over Lot 6	July 23, 1964	1964 Oct.	29	8	30	A.M.	James A. Smith	
621	[illegible]	[illegible] Savings & Loan Co.	[illegible] to [illegible] Doc. No. 345620	July 23, 1964	1964 Oct.	29	8	30	A.M.	James A. Smith	
62[illegible]	Assignment as Security	HAWAIIAN TRUST CO., LTD., TR.	Int. of Hawaiian Electric Co., Inc. in GRANT Doc. No. 345620 to Tr./Mtg. Doc. No. 45945, am.	July 28, 1964	1964 Oct.	29	8	30	A.M.	James A. Smith	
62[illegible]	Assignment as Security	HAWAIIAN TRUST CO., LTD., TR.	Int. of Hawaiian Telephone Co. in GRANT Doc. No. 345620 to Tr./Mtg. Doc. No. 56356, as am.	Aug. 11, 1964	1964 Oct.	29	8	30	A.M.	James A. Smith	

[See over]

XERO COPY

TRANSFER CERTIFICATE OF TITLE

No. 95,784

From Transfer Certificate No. 90,052, Originally Registered January 25, 1963 in Registration Book 901 Page 205 for the Registry District of the State of Hawaii.

This is to Certify that -SHIGERU HORITA-, husband of Mitsue Horita, whose residence and post office address is 1639 Makuahine Drive, Honolulu, City and County of Honolulu, State of Hawaii, and -IWAO KISHIMOTO-, husband of Yaeko Kishimoto, whose residence and post office address is 126 Ohelo Lane, Honolulu aforesaid, authorized general partners doing business under the trade name of Nuuanu Ventures, a limited partnership, whose principal place of business and post office address is 2024 North King Street, Honolulu aforesaid, are the owners in fee simple, as Joint Tenants with full rights of survivorship, of that certain parcel of land situate at Nuuanu Valley, Honolulu aforesaid, described as follows:

Lot A-1-A, area 12.174 acres, as shown on Map 4, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1411 of Harriet Emily Wilder Wight, and being the remainder of the land described in Transfer Certificate of Title ~~No. 90,052 issued to Hawaiian~~ Trust Company, Limited, Trustee, and Harry Masao Uemura.

CANCELLED Inv. Ld. Ct. Order No. 23386 Oct. 29, 1964

SEE CERTIFICATE No. 100236

REGISTRATION BOOK 1003 PAGE 141

James A. Smith
ASSISTANT REGISTRAR, LAND COURT

And it is further certified that said land is under the operation and provisions of Chapter 342 of the Revised Laws of Hawaii, 1955, and that the title of said -SHIGERU HORITA- and -IWAO KISHIMOTO- to said land is registered under said Chapter subject, however, to any of the encumbrances mentioned in Section 342-42 of said Revised Laws of Hawaii which may be subsisting, and subject also to:

1. An easement in favor of the State of Hawaii for the free flowage of water in the "Nuuanu Stream" located within Lot A-1-A, said stream being shown on Maps 1 and 4 and made a part of the herein application.

2. Any and all rights of the applicant to water rights appurtenant to the land herein described, or the rights to any easements appurtenant thereof in or upon adjoining or other lands in the vicinity for the free flowage of water in certain auwais located therein have not been determined in the matter of the registration of this land, but have been expressly excluded from any such determination.

3. Any rights or claims of the Board of Water Supply of the City and County of Honolulu, and particularly without prejudice to its claim that the agreement entered into between applicant and the Territory of Hawaii, dated May 6, 1912, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 386 at page 459 to perpetually furnish water to said applicant from government water mains is invalid, ultra vires and void, and that said rights or claims, or any thereof, have not been determined in the matter of the registration of this land, but have been expressly excluded from any such determination.

4. Designation of Easements 3, 4, 5, 6, 7 and 8 affecting Lot A-1-A, as shown on Map 4, as set forth by Land Court Order No. 20615, filed November 5, 1962.

5. An easement appurtenant to Lot A-1-B for the installation, maintenance and removal of a drainage structure under, across and through said Easement 3, as shown on Map 4, subject, however, to the terms and conditions set forth in said Land Court Order No. 20615, filed November 5, 1962.

6. By Adverse Claim, Ellwood Coggeshall Wilder, Jr. and Florence Wilder Blake, Executors under the Will and of the Estate of Ellwood Coggeshall Wilder, dec'd., owners of Lot A-1-D, claim an easement for sanitary sewer purposes against all of Lot A-1-A until such time as such an easement appurtenant to said Lot A-1-D is designated, dated December 3, 1963 and filed as Document No. 320760.

The foregoing encumbrances are mentioned in or noted on Transfer Certificate of Title No. 90,052 to which reference is hereby made.

Witness, the Honorable Samuel P. King, Judge of the Land Court at Honolulu, in the City and County of Honolulu, State of Hawaii, the 20th day of February in the year nineteen hundred and sixty-four at 3 o'clock and 56 minutes in the after-noon

Attest, with the Seal of Said Court,

Charles F. Neumann III
Assistant Registrar.

MEMORANDA OF ENCUMBRANCES, ETC., ON THE LAND DESCRIBED IN THIS CERTIFICATE 95784

Document Number	Kind	Running in Favor of	Terms	Date of Instrument	Date of Registration					Signature of Assistant Registrar	Discharge
					Year & Month	D.	H.	M.	A.M. or P.M.		
325561	Mortgage	HONOLULU SAVINGS AND LOAN COMPANY, LIMITED	{$1,430,000.00 on this & Cert. No. 90054}	Feb. 19, 1964	1964 Feb.	20	3	56	P.M.	Charles T. Neumann III	

[See over]

cc Chairman Thompson - 11-3-65

1774

RECEIVED
NOV 3 1965
State of Hawaii
LAND USE COMMISSION

November 2, 1965

Mr. Myron B. Thompson, Chairman
Land Use Commission
426 Queen Street
Honolulu, Hawaii

Dear Mr. Thompson:

Knowing your desire for the Land Use Commission to receive all possible information from public hearings, I was very disappointed that you did not permit me to proceed with my questioning at Friday's public hearing to clarify inaccuracies and generalizations by both the petitioner and our staff.

The opportunity was ours at the public hearing to receive all the facts concerning contradictions in statements by petitioners and witnesses. I do not understand why you felt it necessary to end the hearing and stop the asking of questions on my part. Time was not of the essence. The gathering of information was.

I spent considerable time investigating matters of fact, both on the site and by questioning individuals and government agencies, and found that many statements made by the petitioner are not true, and his past actions in obtaining the original preliminary subdivision permit from the City and County are clouded in apparent acts of deceit and unethical behavior by public officials, the facts being well known by the public.

I am very disappointed in the staff report prepared for the Nuuanu Ventures petition and wish to question several conclusions made in the report, and ask why several important matters of fact were not discussed, considering the "clean bill" of intent given the developers. Under these circumstances, I am particularly concerned where substantial evidence and technicalities of the law are not used to bolster and defend the conservation districts, instead of weakening the districts.

The Executive Officer, in indicating "that consideration of the petition on the basis of the temporary district boundaries would be proper and reasonable", fails to consider the fact that with this boundary many more than 17 lots come under discussion. Actually on these grounds, which is the only legal basis on which violation can be questioned, more than 31 lots are at stake, of which 12 are completely within the Conservation District and 19 partially so. This, therefore, is no minor matter. To base the staff report on the compromise redrawing of the Conservation District lines in favor of the developer, as was done on June 28, 1965, appears to be indefensible and improper, and does not fully reveal the magnitude of the violation. In addition, the staff has plotted the conservation boundary in the wrong position. Apparently, the staff has not adequately inspected the site, as a few minutes' inspection would have revealed that the developer's engineers must have had full knowledge of the surveyed lines of the "Honolulu watershed forest reserve" in which the lots are located. The corner stake of lots 58 and 60

Xerox copy to Larry Mattson - 11-12-65

coincides with the territorial surveys pipe monument locating the watershed reserve. The engineer's lot stake was driven immediately alongside the territorial monument, which was apparently used as a reference point by the surveyors.

The statement at the public hearing by the petitioner's engineer that this stake was placed "about a month ago" to locate the lots is obviously false since, without lot stakes, the developer would have been unable to proceed with his grading on the basis of the grading permit obtained October 6, 1964. It is also of interest that the lot number on the stake is the old series of lot numbers used in 1963. Lot numbers have since been renumbered.

The developer's statement at the hearing that "all cuts were completed when work was ordered stopped", is also false. Adequate site inspection by the staff would have revealed this to be not so. In both these cases the testimony should be challenged by the Commission and charges for perjury initiated, if warranted.

Under these circumstances and the historical designation and public knowledge of the Honolulu watershed over the years, I cannot understand how the staff could conclude "that this has not been a surreptitious act on the part of the developers". The entire history of the proceedings between the developers and the Honolulu Planning Commission exists under a cloud of suspicion and accusations of corruption. That could hardly be ignored by the Executive Officer.

It is also difficult to comprehend why the staff has ignored completely the history of this land and its importance to the Honolulu watershed. Apparently they are not aware of the importance of all forest reserve lands to the Honolulu watershed recharge basin.

The Commission may well remember the petition of Hawaiian Trust Company and the Roman Catholic Church (who were apparently able to read our maps quite well), who petitioned for a change in boundary from conservation to urban for their lands in Manoa Valley. After considerable testimony, the Commission voted to deny the petition, based primarily upon expert testimony by the Board of Water Supply that any removal of land, no matter how small, from the Honolulu watershed would have an accumulative effect, seriously detrimental to the Honolulu artesian basin.

By its act of voting denial to the Manoa petition, the Land Use Commission in effect recognized the boundaries of the "Honolulu watershed forest reserve" as a legal basis for determining the Conservation District boundaries under Act 187, the same boundary which the petitioner violated in Nuuanu Valley.

Since the Commission is now in court with a complaint for declaratory judgment filed by the affected Manoa property owners, challenging the legality of the Conservation District boundaries, it would seem strange indeed for the Commission staff to suddenly reverse itself and recommend granting to another petitioner urban rights in a watershed Conservation District.

In 1944, legislative Act 274 established the Honolulu "watershed area", based upon the description originally determined by motion of the Territorial Board of Agriculture and Forestry in 1944. Act 274 clearly states "that the conservation development and protection of the water resources of the islands of the territory are of paramount importance to the welfare of its people. It is hereby found and determined that the water supply within the territory is dependent upon protected watershed areas, in that they reduce erosion and flash runoff, provide steady stream flow, and permit infiltration into aretsian and other ground water areas".

This declaration of legislative policy was never more truer and is possibly of even greater importance in today's rapidly expanding Honolulu urban complex. The Commission staff should be aware of this legislative intent and oppose the whittling away by gradual encroachment of the Conservation District.

Further moves by the Legislature are of interest, particularly Act 234, passed 1957 which "freezes" lands which were in the established forest watershed boundaries as of January 15, 1957.

Act 187, establishing the State Land Use Law, specifically provides that "in the establishment of the boundaries of Conservation Districts, the forest and water reserve zones provided in Act 234, shall constitute the boundaries of the Conservation District".

The Conservation District boundaries at issue in Nuuanu are identical with the boundaries of the "Honolulu watershed forest reserve". It is difficult to understand how the staff could recommend withdrawal of land from the Honolulu watershed in complete opposition to the clear intent of the Legislature of the Territory and State of Hawaii.

The staff report claims the petitioner sought approval through the "proper channels". The "proper channels" by any measurement include petitioning of the Land Use Commission. This was not done, even when the Nuuanu Community pointed out the encroachment, until weeks after the Land Use Commission confirmed the fact of violation.

With respect to the integrity of the developer, no concern for conservation values was demonstrated when the bulldozers worked seven days a week to destroy as many trees as possible and excavate as much hillside as possible, before the Commission determination. The destruction of many forest trees planted with public funds in the forest reserve occurred during this time, when the developer must have been well aware of his trespassing in a Conservation District.

It should be noted that the land in question should not have been put to <u>any</u> use until the owner first applied to the Board of Land and Natural Resources and received its approval. No application was ever made.

The implication made in the report that the City and County Planning staff is to blame is not wholly accurate.

The City and County of Honolulu, in issuing preliminary subdivision permits, specifically provides that all applicable City, County and State regulations must be satisfied before final approval is granted the petitioner. However, knowing full well the existence of State Land Use Laws, the petitioner never requested, nor was granted, a boundary change from conservation to urban.

It should be pointed out that jurisdiction over the Conservation District is held, not by the City and County, but by the State Department of Land and Natural Resources, on the basis of boundaries determined by the Land Use Commission. The issuing of a preliminary subdivision permit by the City and County does not carry with it any implication that all State laws have been automatically complied with. The satisfactory compliance with State laws and regulations is the ultimate responsibility of the developers.

Other erroneous generalizations plague the report, including the strange statement that "land use in the surrounding area is primarily residential". Any study of our land use maps will reveal the majority of lands in upper Nuuanu Valley to be in conservation. At least half the lands in the vicinity of Nuuanu Ventures development are in conservation--including all of the 17 lots, not portions as the staff states.

It may well be that further investigation by the staff along the lines outlined in this letter will permit a recommendation based on fact rather than generalizations. With full understanding of the history of this development, it will be impossible for the staff to conclude that the developer's illegal act was not "surreptitious".

If pleas of "ignorance of the law" are to be given credence in granting boundary changes, our Conservation Districts are indeed threatened with destruction. Should the analysis of our staff be accepted, it may soon become common practice for the unethical developer to bulldoze the finest scenery and then sit back and claim ignorance of the law, while political moves are made to grant him a special permit he would not otherwise be able to obtain.

The Commission cannot wait until the scheduled meeting for action on this matter to obtain factual information. There would be insufficient time. Action must be taken now to rewrite the staff report, based on full and complete research.

The following material should be obtained and made part of the staff report:

1. General plan of the City and County of Honolulu. The detailed portion in Nuuanu Valley shows that the general plan places in 'preservation' the areas under contention, and agree fully with our Conservation District. The Planning Commission of Honolulu, in recommending approval of this petition, is contradicting its own general plan.

2. Hawaii territorial survey of the Honolulu watershed forest reserve, showing surveyed boundary and pipe monuments in the Nuuanu subdivision.

Marking location of the Conservation District established by Act 187. This map is proof the boundary line was located precisely and representations by the developer of a "vague location" are without foundation.

3. Survey work sheets prepared by Park Engineering showing location of corners of lots 58 and 60 coincide with forest reserve pipe monument, proving subdivision was surveyed with full knowledge of the Honolulu watershed.

4. State Division of Forestry maps showing location of the forest reserve lands in Nuuanu, minutes on hearings for withdrawal of private lands from the forest reserve, and tabulation of property owners who have not claimed tax exemptions for forest reserve lands. This information will show that the Nuuanu lands in contention were still within the forest reserve when subdivision was requested.

5. The Division of Forestry should be requested to survey and reestablish the forest reserve land boundary in Nuuanu, in keeping with its responsibilities to protect these lands and the watershed under law.

I wish to further urge that the influence and prestige of the Land Use Commission staff be used to preserve and protect the Conservation Districts to the maximum extent, and the law be interpreted wherever possible to support the interest of the general public in preserving Hawaii's natural scenic resources.

Sincerely,

R. Wenkam

ROBERT G. WENKAM, Commissioner
LAND USE COMMISSION

Part of June 25, 1965 meeting of the
Land Use Commission held in
Honolulu, Hawaii

OTHER BUSINESS

Mr. Gordon Soh presented the background and analysis on the issue of Pacific Skyways, Limited. The staff recommended denial of this request on the basis that this parcel was not "inadvertently zoned Agricultural instead of Urban" and that there were no protests against the proposed districting of this parcel at that time. The staff also concludes that the time element, as stated in the letter of request, is not a valid basis for this request.

A brief discussion concerning the limits of the boundary lines ensued. The Commission agreed to accept the staff's recommendation for denial of the request of Pacific Skyways, Limited.

The next issue discussed was the boundary line question for the Nuuanu Park Place subdivision. The Executive Officer advised that the Land Use Commission is now officially involved in this matter to the extent that the Board of Land and Natural Resources has requested for an interpretation of where the Conservation boundary line is. The Executive Officer presented maps showing the district boundaries in Honolulu and, specifically, the subject area. He explained that a subdivision plan was submitted to the City while the temporary Urban Districts were in effect. The City and County then gave approval to that subdivision and the developer proceeded. The Land Use Commission was not made aware of the matter until the Board of Land and Natural Resources brought forth the problem.

In response to Commissioner Burns' inquiry in determining which side of the boundary line should be Urban and which side Conservation, the Executive Officer pointed out the districts and explained that the boundary dividing the two districts drawn on the subdivision is the approximate location of the line.

Commissioner Wenkam pointed out that the only legal basis upon which the subdivision was approved in 1964 was on the basis of the first Land Use Commission for temporary boundaries. He suggested that if this basis is valid, the present boundaries would then be only of extra legal significance.

The Executive Officer reiterated that the question before the Commission is where is that boundary now.

Commissioner Wenkam stated he could not visualize the situation because the subdivision was approved before this date. He added that they were not bound to adjust their subdivision boundaries according to the present land use boundaries which were approved after the date the subdivision was approved.

Commissioner Ferry pointed out that there was an interim boundary established by the first Land Use Commission and in effect when the final boundaries were drawn by this Land Use Commission on December 31, 1963.

The Executive Officer indicated the temporary Conservation District line on the map. He also pointed out the approximate location of the final district line which became effective on August 23, 1964. He pointed out that in laying the final district boundaries over the temporary boundaries, both would fall within

the same line. However, if the maps were blown up, there is a marked difference between the lines. The Executive Officer also indicated a reasonable interpretation of where the final district boundary is and suggested approximately where it should be.

He advised that approximately 3 acres lie in a Conservation District and estimates the area to contain 17 lots.

A motion to accept the interpretation suggested by the Executive Officer was made, seconded, and approved by the Commission.

NEXT MEETING

The next meeting is tentatively scheduled to be held on July 23, 1965, at Lihue, Kauai.

COMMUNICATIONS

The Executive Officer read into the record a letter (letter on file) from the Maui Planning and Traffic Commission in regard to land use violations in the Wailua and Keanae area. The legal counsel advised that the responsibility for the enforcement of the law is vested within the County agency. The Executive Officer inquired as to why the matter would be referred to the Land Use Commission if it's the County's responsibility. The legal counsel remarked that the County is delegated to act as the "eye" for the Commission and if violations noted are reported in, the Commission is the appropriate agency to institute proceedings. The Chairman referred the matter to the Attorney General's office for a formal opinion.

The Executive Officer informed the Commission of several communications received from the legislature in the form of Resolutions. The Executive Officer gave a brief description of each material for the record as follows:

Senate Resolution No. 33 requesting the Board of Land and Natural Resources of the State to open public lands for all races.

Senate Concurrent Resolution No. 80 relating to increasing the efficiency, economy and productivity of the State government.

Commissioner Ferry briefed the commissioners of the Western States Land Conference to be held at Princess Kaiulani on July 26 and 27. The purpose of the conference is to afford public land officials a forum for mutual problems. The Executive Officer advised the commissioners that the staff will make the necessary arrangements.

Commissioner Ota referred to the Commission a problem on the mix-up of the zoning procedure. He asked if there were a standard procedure for making boundary determinations in an area where the boundary line is not clearly drawn. The Executive Officer informed him that whenever there is any question or doubt as

Department of PLANNING AND ECONOMIC DEVELOPMENT

Lark

1..... 2..... 3..... 4.....

5..... 6..... 7..... 8.....

LUC..... OTS.....

Originator: [ ] DUE DATE.....

.....For Your Information .....Approval

.....Appropriate Action .....Signature

.....See Me ( ) .....Please Type

.....Note & Return to ( ) .....Investigate & Report

.....Prepare Draft: letter, report, memorandum

.....Verifax .....copies .....Comment & Recommendation

.....Mail .....

.....File .....Discard [ ]

.....Direct Reply with copy to Director

Pls mark each Commissioners name on copy and mail. Add date (day) on orig. and file.

(Keep routing slip attached to material)

1773

November 1, 1965

From: Hawaiian Trail and Mountain Club
Box 2238
Honolulu, Hawaii 96804

RECEIVED
NOV / 1965
State of Hawaii
LAND USE COMMISSION

To: State Land Use Commission
426 Queen St.
Honolulu, Hawaii 96813

Subj: Nuuanu Ventures Petition, heard 10-29-65

Gentlemen:

Contained herein are the points we intended to make before the Commission's hearing October 29, 1965. We were in attendence at the hearing but had to leave early because of time limitations.

In regard to the subject petition, the Hawaiian Trail and Mountain Club submits the following comments for the Commission's consideration:

1. PROOF OF NEED: In our opinion, the petitioner has not furnished the required proof that the subject area is needed for an Urban designation. Without such proof, granting of the petition could only be on the most dubious basis, having damaging implications for the integrity of the Land Use Law.

2. PLANNING COMMISSION: Admittedly, the fact that the Planning Commission had given its approval to the project makes the present decision more difficult, perhaps. It is our feeling, however, that the proper approach on this point would be to consider the application as a fresh case, from the time when the error regarding the District boundary was first brought to light.

3. PROJECT MERIT: It seems to us that the fact that the project may have merit, may be well-conceived in itself, must be held to be irrelevant for purposes of the decision on the petition.

4. COST TO DEVELOPER: Likewise, the economic impact to the developer should be considered to have no direct bearing on the Commission's decision. The public interest in preserving the integrity of the Land Use Law and its mature concepts would not be served if approval were to any degree based on the possible economic loss or hardship involved.

5. GENERAL IMPRESSION: A point of foremost consideration, it seems to us, is the implication of the present decision by the Commission on the future of the Land Use Law as affected by the public's feeling about the Law. We feel that the possibility is strong enough to be of concern, that the general impression will be that the intent of the Law has been compromised (in the event of approval of the petition), even though the Commission may make its decisions independent of precedent.

6. PLEA: In view of these points we feel that disapproval is the better course in this case, and we so urge the Commission.

Very truly yours,

David C. Sanford, Pres.

Xerox copy sent to all Commissioners 11-8-65

NUUANU VENTURES PETITION
Statement by Robert Wenkam
State Land Use Commissioner

I question whether it is proper or ethical for the Land Use Commission to consider at this time a petition for change of boundary from a land owner who has clearly violated the State Land Use Law, The Conservation DistrictsRegulations, and Restrictive Rules of The Honolulu Watershed Forest Reserve. The development company appearing before the Commission today has not been indicted for these crimes against the community, nor has their record been cleared by appropriate proscecuting agencies.

Governor John Burns stated in recent correspondance about the Nuuanu lands, "This administration has already done much to give meaning to the Land Use Law, and it is our intent that the safeguards provided shall be maintained".

He said further, "In the case immediately involved, there must be a finding finding of both fact and law... I have directed the Attorney General to review the proceedings thoroughly and to take whatever steps may be legal and proper".

This has not yet been done. I have read a report on the Nuuanu properties by the Attorney General, and find to date, to my knowledge, he has not yet made any determinations or conclusions. He has said only, "under the circumstances, pending a determination by the Land Use Commission any further comment will be inappropriate."

The State Attorney General obviously has not had sufficient time to completely investigate this matter. I do not feel the Land Use Commission should continue with these proceedings without a definite investigation and a clear determination by the Attorney General as to the innocence or guilt of the petitioner. To continue, will place the Commissioners the embarassing position of granting a violator of state law a change of boundary, which will make the issue legally moot, and thereby declare him innocent of the crime by elimibating the evidence. The Commission will have legalized the right to wrongfully develop land in a conservation district.

It should be noted that the land inquestion, located within a conservation district should not have been put to <u>any</u> use until the owner first applied to the Board of Land and Natural Resources and received its approval. No application was ever made, yet the developer has already destroyed the trees planted at public expense on this land.

The City and County of Honolulu in issuing preliminary subdivision permits specifically provides that all applicable city, county, and state regulations must be satisfied before final approval is granted. The petitioner, however, never requested, nor was granted a required boundary change from conservation to urban by the Land Use Commission.

It should be pointed out in this respect that jurisdiction over the conservation districts is held not by the city and county, but by the State Department of Land and Natural Resources, on the basis of boundaries determined by the Land Use Commission. The issuing of a preliminary subdivision permit by the city and county does not carry with it any implication that all state laws have been automatically complied with. The satisfactory compliance with state laws and regulations is the ultimate responsibility of the developer. In this case the developer ignored appropriate state laws.

It has been claimed that the pertinent official conservation district maps did not clearly and with sufficient precision delineate the boundary between the conservation and urban districts, and therefore errors in interpretation were made in good faith.

This excuse is without foundation. Act 187, establishing the State Land Use Law, specifically provided that " in the establishment of the boundaries of conservation districts, the 'forest and water reserve zones' providied in Act 234...Shall constitute the boundaries of the conservation district, provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission".

The conservation district boundaries at issue in Nuuanu are identical with the boundaries of the Honolulu Watershed Forest reserve. The official Hawaii Territorial survey maps not only accurately defines this boundary but delineates the line in surveyed meets and bounds. The corners of the boundary are actually marked on the Nuuanu site with pipe monuments. Under these circumstances it is difficult to understand how a proported sincere developer could claim that the boundary maps are vague and difficult to interpret. His own surveyor must have located ~~tniped~~ over the boundary markers.

According to official maps of record on file in the State Division of Forestry and the Honolulu Board of Water Supply, the entire land area requested for urban use by the petitioner is within the Hobolulu Watershed Reserve and subject to regulations which prohibit use of the land as proposed by the petitioner. The grubbing and grading already underway is clearly a violation of State Division of Forestry regulations and should be investigated by the affected government agencies.

Futhermore, it has been reported that several of the lots now in the conservation district have been sold. Since the subdivision, as it exists in the salesroom, is illegal, the subdivider has sold lots that do not exist. Any money deposited should therefore be returned to the buyer and the sales cancelled.

It is only proper to require that a petitioner appear before this commission with "clean hands". That there be no question of illegality and improper proceedures so that the commission may consider his plea without compromising the integrity of the State Land Use Law and the sacredness of the conservation districts.

The Land Use Commission must insist that trespassers in the conservation district be punished and the land restored. There can be no alternatives or compromises when Hawaii's natural scenic resources are threatened.

I submit that the question of innocence or quilt must be resolved in the courts before the Land Use Commission considered the petition by Nuuanu ventures.

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Library of Hawaii Auditorium

Honolulu, Hawaii

1:40 P.M. - October 29, 1965

Commissioners Present:	Myron B. Thompson, Chairman Robert G. Wenkam Jim P. Ferry Leslie Wung Goro Inaba Charles Ota Shiro Nishimura
Commissioners Absent:	Shelley Mark C.E.S. Burns
Staff Present:	George S. Moriguchi, Executive Officer Roy Takeyama, Legal Counsel Ah Sung Leong, Draftsman Dora Horikawa, Stenographer

Chairman Thompson called the meeting to order and offered a short prayer. He then proceeded with his explanation of the procedure to be followed during this hearing in detail.

Following this, members in the audience who would be testifying during the hearing were duly sworn in by Chairman Thompson.

Minutes of Public Hearing - October 29, 1965 - Library of Hawaii, Honolulu

PETITION OF AMITY DEVELOPERS (A65-88) TO AMEND THE URBAN DISTRICT BOUNDARY AT KALANI- IKI, OAHU, SO AS TO INCORPORATE ABOUT 20.221 ACRES IDENTIFIABLE BY TAX MAP KEY 3-5-24: 9

Mr. George Moriguchi presented the staff report on the above petition (see staff report on file). Staff recommended approval of the petition on the basis of the following facts:

1. Usability and adaptability of the subject lands.
2. City-like concentration of people, structures, streets and other related uses would be effectuated on the subject lands.
3. All community services and utilities are available in the immediate and nearby areas.

Mr. Moriguchi also read a letter addressed to the Land Use Commission by the Bernice P. Bishop Estate, expressing their approval of the revised plans and grading plans by the Amity Developers and earnestly requesting approval of the petition.

Chairman Thompson opened the floor for questions from the Commissioners.

Commissioner Wenkam asked Mr. Moriguchi for a brief explanation of the reasons for requesting that the petitioner be permitted to continue with construction. Mr. Moriguchi explained that at the October 1, 1965 meeting of the Land Use Commission, the petitioners had requested a ruling to determine that their development came under the non-conformance clause under Section 2.18 of the State Land Use District Regulations, which allowed continuance of any existing use prior to the establishment of the Land Use District Boundaries. The Commission had ruled that the subject petition did fall under Section 2.18. In addition, the Planning Director of the City and County had approved a permit by the developers which was never withdrawn.

Commissioner Wenkam wondered about the status of the request made by the developers to the Department of Land and Natural Resources with respect to construction of the first 12 units. Chairman Thompson stated that this matter had been clarified with the Attorney General's office and was in order.

Mr. H. William Burgess, attorney for the developers, said that he had nothing further to add except to assure the Commission that the project will be a benefit to the community.

Since there were no further comments, the hearing was closed.

PETITION OF NUUANU VENTURES (A65-90) TO AMEND THE URBAN DISTRICT BOUNDARY AT NUUANU VALLEY, OAHU, SO AS TO INCORPORATE APPROXIMATELY 3.6 ACRES PRESENTLY IN THE CONSERVATION DISTRICT, IDENTIFIABLE BY TAX MAP KEY 2-2-42: 1

Chairman Thompson announced that the Land Use Commission had been served with a Motion to Intervene in the matter of the Nuuanu Ventures petition by Attorney William M. Swope, representing the Nuuanu Valley Community Association, Inc., and presented it to the Commissioners.

Mr. Roy Takeyama, legal counsel, requested Mr. Swope to enumerate the sections of the Hawaii Administrative Procedure Act, and the Land Use Commission Rules of Practice and Procedure upon which this was based.

Mr. Swope supported his motion on the basis that, under the provisions of the Hawaii Administrative Procedure Act, every party was given a right to conduct a close examination which may be required for full disclosure of facts; but that this was permitted under the Land Use Commission Rules of Practice and Procedure only with the permission of the Chairman of the Commission. He said that the intervenors represented a community association of property owners in the area affected by the subdivision and also the property owners immediately adjacent to the proposed subdivision, Wallace A. and Doris M. Dyer, who would be adversely affected in terms of diminishing property values if the petition were granted. Mr. Swope referred to Section 6C-14, Judicial review and justification of the Revised Laws of Hawaii, which sets forth an appeal procedure. He continued that under the Rules of Practice and Procedure of the Land Use Commission, no provision had been set forth for intervention. He also quoted Section 1.6 - "The Commission may on its own motion conduct such proceedings", and Section 1.15 - "Party. The term 'party', wherever used in these rules, shall mean each person or agency named or admitted as a party," of the Rules of Practice and Procedure. Mr. Swope felt that the Commission should have a procedure by which a party could be admitted.

Mr. Takeyama agreed that under Section 6C-14, any person aggrieved by a final decision had a right to appeal, but wondered whether the matter of right to intervene in the proceedings might not be an entirely different matter.

Mr. Swope replied that he was taking the position of a representative of property owners in the Community Association with a right to be heard.

Chairman Thompson informed Mr. Swope that he would be given the right to be heard, but that under the proceedings he would not be permitted to cross-examine any of the witnesses.

Mr. Swope again pointed to the fact that under the Hawaii Administrative Procedure Act, the Commission was bound to give his client the right to cross-examine and to be heard. He stated that he wanted to go on record as having filed a Motion to Intervene.

Following Mr. Takeyama's reminder to Mr. Swope that the petitioner in the case had not been served with the motion, Mr. Kinji Kanazawa, attorney for the petitioner, was served with a copy.

Chairman Thompson called for a recess at 2:05 p.m. to allow the three attorneys to confer on the above matter.

The meeting reconvened at 2:15 p.m.

Chairman Thompson advised that, after due consideration of facts involved, the Motion to Intervene was denied, but that the persons originating this motion would be given the opportunity to be heard.

Commissioner Wenkam stated that he wished to present a prepared statement, questioning the propriety of the Land Use Commission to consider, at this time, a petition for change of boundary from a land owner who had clearly violated the State Land Use Law (see copy of statement on file).

Chairman Thompson asked for comments from Mr. Takeyama regarding the question of whether or not the petitioner had a right to come before the Commission. Mr. Takeyama advised that under Section 4 of the Land Use Act, petitioner was entitled to petititon the Land Use Commission for a determination.

Commissioner Ota requested that Commissioner Wenkam's statement be stricken from the records since it expressed an opinion. Chairman Thompson explained that he had accepted the statement in the hopes that it would substantiate the need for denying the hearing, although none of the facts bore this out. However, he stated that the statement was accepted for the records.

Mr. George Moriguchi, Executive Officer, read the report prepared by the staff on the above petition (see copy on file). Staff's recommendation was for modification of the Urban District boundary to include lots 42 through 47 and portions of lots 49 through 58, since the developer had proceeded with subdivision grading construction with the sanction of a governmental body, and resotration of the graded areas would be economically infeasible. Moreover, restoration would probably present a serious potential landslide hazard to life and property in the area below the subject lands.

Mr. Moriguchi also read a letter from the International Longshoremen's and Warehousemen's Union addressed to the State Land Use Commission, expressing serious concern over the possibility of revising the Conservation District boundary in Nuuanu Valley (see letter on file).

Commissioner Wenkam disagreed completely with the staff's recommendation and asked the Executive Officer to explain the reasons therefor. Mr. Moriguchi replied that, based on his experience with land development, it would be economically infeasible to restore this area. Commissioner Wenkam argued that notwithstanding the economic hardship to the developer, serious damage had occurred in a Conservation District and restoration should be made. As outlined in the staff report, Mr. Moriguchi explained that the developers had sought to subdivide these lands unsurreptitiously, openly and publicly, and to require them to restore these lands would be unreasonable.

Commissioner Wenkam wondered if the Executive Officer was aware that the survey stakes of the developer were driven into the ground immediately next to the forest reserve boundary marker. Mr. Moriguchi replied that he had seen the developer's basic survey map of the area but that he did not observe any forest reserve boundary marker. Chairman Thompson asked if Commissioner Wenkam would like Mr. Moriguchi to check further into this matter. Commissioner Wenkam felt it would be very appropriate for every Commissioner to see the basic survey map of the developers.

Commissioner Ferry reaffirmed the plea made earlier by the Chairman to confine the hearing to accumulation of facts as related to this particular petition.

Mr. Herbert K. Horita, a partner of Nuuanu Ventures, made the following presentation. He observed that the developers could go along with the recommendations made by the staff. A brief account of events leading up to the present petition was reviewed. The developers had applied, in all good faith, to the City governmental agencies and, upon their approval, had gone ahead and developed the land according to the Subdivision Rules and Regulations, and were not aware of any encroachment into the Conservation District until they were so notified. At that time 60% of the lots in the area had been sold on a package deal. Approximately 50% of the lots in the Conservation District were sold in the initial stages. By that time about 80% of the overall development of the subdivision had been completed, including the grading of the hillside. No work has been done in the area since.

As a developer, Mr. Horita stated that they were interested in complementing the area with their development and that they were fully aware of the beauty of the Nuuanu area. Prices have definitely gone up in other areas where they have completed developments. A sketch of the proposed development was presented. Mr. Horita cited the Moanalua Subdivision as an example of what proper landscaping and planting could do to beautify a community. Following a similar pattern, he stated that the developers were planning to plant the sidewalks with trees which would be contributed by the Foster Gardens. Site plans were also produced at this time. When the proposed development is completed, it would definitely enhance the Nuuanu-Dowsett area with an appreciation in property values, Mr. Horita concluded.

Chairman Thompson wondered if the developers had in any way indicated to the City their intent to landscape the cut areas. Mr. Moriguchi informed that a similar testimony had been presented to the City Planning Commission, according to the minutes of their meeting of August 26, 1965. It was also brought out that the City Planning Commission's approval of this subdivision was not contingent upon the developers' commitment to landscape the cut areas.

Commissioner Wenkam stated that according to the maps on file with the Division of Forestry and Board of Water Supply, the 17 lots in question were within the Honolulu watershed area. Mr. Horita reiterated the fact that they were not aware of this until they were so informed.

Commissioner Wenkam continued that according to the records on file in the Division of Forestry, there was no indication that the property owners had stopped claiming any tax benefits because this land was in the forest reserve area. Mr. Horita replied that he did not know about any tax benefits and had assumed that they had been paying for the property as urban lands. Upon Commissioner Wenkam's request, Chairman Thompson directed the Executive Officer to check into this matter.

Commissioner Wenkam stated that he understood land placed in the forest reserve received certain tax benefits. He wondered whether the appraisal obtained for the petitioners would indicate this. It had a bearing on the petition as to whether or not the petitioners did or did not know that the subject lands were in the Conservation District.

Mr. Moriguchi advised that as far as the Tax Department was concerned, they had assessed the makai side of the lands at $7,000 per acre and $140 per acre for the mauka area. It was also pointed out that although there was this differential

in assessed value, the notice to the landowners merely indicated the total tax responsibility for the whole area and did not indicate the two different values.

Chairman Thompson interrupted the hearing to recognize a group of Vietnamese officials in the midst, who were introduced by Mr. Katekaru of the East-West Center as provincial deputy chiefs, equivalent to our Lieutenant Governor. These officials were visiting our State to observe local government in operation at the invitation of the Governor.

Chairman Thompson resumed the hearing by opening the floor for comments in connection with the petition.

Attorney Swope moved to dismiss the petition on the grounds that it violated Section 98H-4 which reads, in part, as follows: "The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified." Mr. Swope stated that he failed to have heard one word that this area is needed for a use other than what is normally considered Conservation District.

Chairman Thompson denied the motion to dismiss the petition on the basis that the Commission would make a ruling within 45 to 90 days.

Attorney Swope asked if he could have the material, as submitted, identified including any proof that the area was needed for other than that for which it was classified. Chairman Thompson reminded Mr. Swope that this was not a court of law. Mr. Swope said that scarcity of houselots in the Honolulu area, usability and adaptability of land for urban uses, were not proofs that the area was needed for a use other than that for which it is classified.

During a question and answer session between Mr. Swope and Mr. Mark Mitchell, President of the Nuuanu Valley Community Association, the following testimony was recorded. Mr. Mitchell pointed to the fact that Mr. Kinji Kanazawa, one of the partners in Nuuanu Ventures, was a member of the City Planning Commission. Mr. Mitchell also mentioned that Mr. Kanazawa's name appeared in the acknowledgment of a report prepared by Larry A. Nelson dealing with detailed land classification. This document summarized the different classifications of land by use and under consideration were lands in the Nuuanu Valley area. The maps clearly showed the area involved, existing forest reserve water shed boundary lines, and the existing conservation line.

Mr. Mitchell continued that he had gone into the area under discussion, and wished to submit evidence of a pin that was noted at the intersection and also the surveyor's stake as shown in the photograph. He stated that this line had been surveyed and been in existence for a long time, and that he had very good evidence that it was used by the developers to determine the survey. Mr. Swope commented that, in other words, Mr. Mitchell was saying that the Nuuanu Ventures themselves found the designation by a pipe of the Water and Forestry reserve boundary.

The Nuuanu Valley Community Association felt very strongly that the high cuts and banks were dangerous. During the last rain, the water was coming out in gushes from the forest reserve that had been cut, and the only way to preserve the safety of the residents was to stabilize the banks by replacing the trees which had held the earth.

Mr. Mitchell then presented their map showing the 17 lots in question, the 400 ft. contour line which he claimed was the final boundary adopted by the Commission, and the interim boundary line.

Mr. Mitchell stated that the land was purchased by the present developers in January of 1963.

Commissioner Ferry questioned whether Mr. Mitchell had confirmed the stakes he had found by actual survey. Mr. Mitchell replied that he had not. Commissioner Ferry wondered whether Mr. Mitchell was disputing the Land Use Commission's declaration that 17 lots were affected by the Conservation District. Mr. Mitchell stated that he was not disputing this but that he was referring to the red line as the boundary, based upon information he had found on the tax map in the Land Use Commission office.

Referring to the point made by Commissioner Ferry about the fact that the stakes had not been confirmed by actual survey, Mr. Mitchell explained that he did not see the necessity of this as the wooden pegs were marked with the numbers 58 and 60 and were found on the corner of lots 58 and 60.

Mr. Mitchell replied in the affirmative in answer to Commissioner Ferry's query as to whether it was an assumption on his part that the pipe was the Forest Reserve boundary line.

Mr. Larry Matsuo, engineer for the developers, informed the Commission that the Department of Agriculture and Forestry had asked his engineering firm to show them where the line would be, after the dispute over the Conservation District had been brought to Mr. Matsuo's attention. Prior to that time, they were not aware of any restrictions. He also pointed out that the peg was a lot corner point and not necessarily the Board of Forestry and Reserve line.

Mr. Swope proceeded to rebut the four reasons submitted by the petitioner in support of the petition, outlined in the staff report, as follows:

1. He did not think that the Commission should be concerned with the fact that subdivision plans of the affected area were approved by the various agencies of the City and County of Honolulu, because Act 187 adopted in 1961 and subsequent acts set forth with preciseness the boundaries of the Conservation Districts.

2. The crux of the whole matter lay in the developers' claim that they had inadvertently erred in not asking the State Land Use Commission for a determination of the boundary. When one member of the developers was a member of the Planning Commission and also an adviser in the establishment of the detailed land use boundary in the City and County of Honolulu, Mr. Swope could not see how the Commission could give any due consideration to the second point.

3. The developers were now suggesting that "with proper landscaping and maintenance by each individual lot owner, this area can be greatly improved " They were imposing upon the lot owners what they had originally proposed to do themselves.

4. If economic hardship to the developers were to be the criteria for planning, Mr. Swope could not see how the Land Use Commission could carry out its responsibility.

Chairman Thompson opened the floor for comments from the audience.

Miss Gertrude Humphries wondered if the developers could legally sue the City and County. Chairman Thompson advised that Mr. Takeyama, legal counsel, would be happy to discuss this with Miss Humphries after the meeting.

Miss Humphries expressed her feeling that the responsibility for checking on the boundary was not entirely up to the City and County, and that she had no sympathy for the petitioner because of the steepness of the slopes.

Mrs. Eldon Dykes, representing the League of Women Voters, read a letter urging the Commission to preserve the Conservation District in Nuuanu and to deny the petition (see letter on file).

A question was posed to Mr. Horita by a Nuuanu resident as to just how home owners were expected to replace soil and landscape their property. Chairman Thompson asked Mr. Horita to elaborate on his plans in this respect. Mr. Horita pointed to the developers' site plans and explained that they were planting trees between the sidewalk and the curbing, and planting shrubberies and bushes on the slopes wherever possible. He assured the Commission that the developers would carry out their commitment to landscape the slopes if this petition were granted.

Mr. Matsuo explained that it would be almost impossible to plant trees on a one to one cut (10' horizontal and 10' high, creating a 45° angle) because the soil content would be a mixture of rock and dirt and would not be able to support trees.

Chairman Thompson advised that the Land Use Commission could not impose any conditions upon the petitioner, in reply to Commissioner Ota's concern over the developers' obligation to landscape the slope.

Mr. Matsuo informed the Commission that the developers were residents of the State of Hawaii, in business to stay, and fully realized their obligation to the State to do whatever they had committed themselves to do.

Since there was no further testimony, the hearing was closed.

A short recess was called by the Chairman at 3:45 p.m. and the hearing was resumed at 3:50 p.m.

ACTION

PETITION OF HAWAIIAN HOME LANDS, (A65-87) TO AMEND THE URBAN DISTRICT BOUNDARY AT KAWAIHAE, COUNTY OF HAWAII, SO AS TO INCORPORATE ABOUT 119 ACRES IDENTIFIABLE BY FIRST DIVISION TMK 6-1-01: 3

Mr. Moriguchi presented memorandum prepared by staff on the above petition (see memo on file), in which it was recommended that:

1. Urban District boundary be moved mauka and paralleling the Mahukona Highway to provide for a depth of 860 feet.

2. Approximately 44 additional acres would be added to the 70 acres within the Urban District.

At Chairman Thompson's request, Mr. Moriguchi pointed out the staff's recommended boundary change on the map.

Commissioner Wenkam wondered whether a petition would be required if deletion of the urban area makai of the highway were contemplated. Chairman Thompson replied in the affirmative.

A letter received from Belt, Collins & Associates, expressing their views and position with regard to the planning for industrial areas in the vicinity of Kawaihae Harbor was read by the Executive Officer. (See letter on file.)

Commissioner Ferry moved that staff recommendation be accepted, which was seconded by Commissioner Wenkam. The motion was carried by 6 affirmative votes. Commissioner Ota abstained from voting.

APPLICATION BY WALTER YAMAGUCHI (SP65-17) FOR A SPECIAL PERMIT TO CONSTRUCT A FRAME STORE BUILDING FOR RETAIL AND GENERAL MERCHANDISING PURPOSES AT KALAPANA, PUNA, HAWAII, IDENTIFIABLE BY TAX MAP KEY 1-2-03: 35

Staff report on the above request for special permit recommended approval on the basis that the use was "unusual and reasonable", with the additional condition that the petitioner conform generally to the site plan as submitted, and that the petitioner landscape the property at least to the extent shown on his plan.

Chairman Thompson raised the question of whether the Commission had the authority to set conditions on special permits.

Mr. Moriguchi replied that the Hawaii County Planning Commission was vested with the power to enforce building codes, etc., and it was his recommendation that the Planning Commission impose compliance with the site plans and landscape plans as submitted by the petitioner.

Mr. Suefuji advised that the Planning Commission could spell out the terms to petitioner and impose restrictions and conditions. He also added that the County General Plan for this particular parcel designated it for village commercial use.

Commissioner Inaba moved to grant the special permit as recommended by staff, seconded by Commissioner Ferry. The Commissioners were polled as follows:

Aye: Commissioners Inaba, Nishimura, Ferry

No: Chairman Thompson, Commissioners Wung, Wenkam

Abstained: Commissioner Ota

The motion was not carried.

Commissioner Wung moved for a reconsideration of the vote, seconded by Commissioner Ferry, which was passed unanimously.

Commissioner Wung then moved to defer action on the permit, seconded by Commissioner Ferry. Motion was carried.

DIAMOND HEAD BOUNDARY

Mr. Moriguchi presented staff's review and study on the subject lands and the recommended adjustments in the Conservation District, (see staff report on file). In response to the Commissioners' request, Mr. Moriguchi pointed out the areas affected, the Department of Land & Natural Resources lands, etc.

Chairman Thompson pointed out that if the Commission agreed with staff's recommendation to adjust the Conservation District boundary, a public hearing would be necessary.

At this point, Commissioner Ferry requested deferment of action on this matter since the Department of Land had been committed by the last Legislature, through concurrent resolution, to make a report on the status of the Diamond Head Monument. Therefore, if the Commissioners did not feel that a decision was urgant, he felt that a deferment might be in order, pending completion of the report. Commissioner Ferry went on to explain that the purpose of maintaining the Diamond Head Monument was primarily to keep the area in a clean condition and also for preservation.

Chairman Thompson wondered whether declaration of the area as a national monument might affect the adjacent urban lands, and Commissioner Ferry replied that they would remain unchanged.

Commissioner Wenkam made a plea that the Commissioners do everything possible to protect the Diamond Head area from urban encroachment.

Since there was no objection, it was unanimously agreed to defer this matter until completion of the report by the Department of Land & Natural Resources.

FINAL BOUNDARIES AT PUNA

Chairman Thompson brought up the problem faced by Mr. Suefuji, Hawaii County Acting Director, with respect to which was the more accurate map, of the two maps prepared by staff for the Puna District, in determining boundaries. Mr. Suefuji explained that both maps were dated about the time the final boundaries were adopted--one map with a scale of 1"=4,000' and the other with a scale of 1"=62,500'. A public hearing was held on an application for use of a parcel of land which was determined to be in the Agricultural District from the 1"=4,000 scale map. However, upon reviewing all of the documents, the staff came up with the second map, which showed this parcel to be in the Conservation District. Therefore, Mr. Suefuji was requesting determination from the Commission as to which map to use.

Chairman Thompson asked the Executive Officer if the Commission were prepared to make this determination at this time. Mr. Moriguchi replied that he did not think so, but that it was his understanding, from discussions with other members of the staff, that the intent of the Commission, at one time, was to include the Queen's Bath within the Conservation District.

Since there was still sufficient time for the Hawaii County Planning Commission following the next Commission meeting in Hawaii on November 5, 1965 to render a decision, the matter was deferred until the next Land Use Commission hearing.

DEPARTMENT OF TAXATION RECOMMENDATIONS

Chairman Thompson recommended deferral of this matter until there was representation from the Department of Taxation so that the Commissioners could receive the benefit of their thinking and knowledge. Since these data were submitted from the field agents of the Department of Taxation, Chairman Thompson directed the Executive Officer to invite the field agents in their respective counties to the next Commission meeting.

ADOPTION OF MINUTES

The minutes of the August 20, 1965 meeting were approved and adopted as circulated.

1777

League of Women Voters of Honolulu

P. O. Box 1411 • Honolulu, Hawaii 96806
Telephone 587-061

RECEIVED
OCT 29 1965
State of Hawaii
LAND USE COMMISSION

October 29, 1965

Mr. Myron Thompson, Chairman,
and Members of the State Land Use Commission
Honolulu

Dear sirs:

The League of Women Voters of Honolulu respectfully urges the State Land Use Commission to retain the present conservation district boundaries in Nuuanu, and to deny to the developers of the Nuuanu Park Place subdivision their petition to rezone to urban a portion of land which falls within those boundaries.

The League's request is based on the endorsement by its membership of the principles of sound planning. We feel that a retroactive legalizing of a land-use violation would not be consistent with these principles.

The excessive slope of the land in question, the unresolved problem of possible flood damage to lower areas, and the deterioration in the aesthetic value of the hillside were subsidiary factors in the League's decision to make this request.

Restoration of the topsoil and vegetation already cleared by the developer is recommended.

Sincerely,

Nancy A. Dykes

Mrs. Eldon R. Dykes
President

STATE OF HAWAII

LAND USE COMMISSION

In the Matter of the Petition of NUUANU VENTURERS for Amendment to the Land Use Commission District Boundary	)	A65-90

MOTION TO INTERVENE

and

AFFIDAVIT

RECEIVED
OCT 29 1965
State of Hawaii
LAND USE COMMISSION

WILLIAM M. SWOPE
165 South King Street
Honolulu, Hawaii

Attorney for Intervenors

Of Counsel

SMITH, WILD, BEEBE & CADES

STATE OF HAWAII

LAND USE COMMISSION

In the Matter of the Petition of NUUANU VENTURERS for Amendment to the Land Use Commission District Boundary	)	A65-90

MOTION TO INTERVENE

Comes now the NUUANU VALLEY COMMUNITY ASSOCIATION, INC., an incorporated nonprofit Hawaii corporation, and WALLACE A. DYER and DORIS M. DYER, residents and property owners, located at 127 Dowsett Avenue, Honolulu (hereinafter "Intervenors"), by their attorneys, and hereby request permission to intervene as an interested party to the above-entitled proceeding.

This motion is based upon the Hawaii Administrative Procedure Act, Land Use Commission Rules of Practice and Procedure and the affidavit of Mark B. Mitchell attached hereto.

Dated: Honolulu, Hawaii, October 29, 1965.

WILLIAM M. SWOPE

WILLIAM M. SWOPE

Attorney for Intervenors

Of Counsel

SMITH, WILD, BEEBE & CADES

AFFIDAVIT OF MARK B. MITCHELL

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

MARK B. MITCHELL, being first duly sworn, states:

1. That he is a resident of the City and County of Honolulu, residing at 3039 Puiwa Lane.

2. That he is the President of Intervenor Nuuanu Valley Community Association, Inc., a nonprofit Hawaii corporation, and makes this affidavit on its behalf.

3. That one of the purposes of this corporation is to promote the general welfare of its members and preserve and protect their property interests in the Nuuanu Valley area;

4. That the petition of Nuuanu Ventures to amend and reclassify approximately 3.6 acres presently in the Con-Servation District to an Urban District classification is not in the best interests of the Nuuanu Valley Community Association, Inc., or its members, will seriously and adversely affect property values surrounding said 3.6 acres, and will create a dangerous erosion and potential land slide area if permitted to exist.

5. That the Nuuanu Valley Community Association, Inc. is vitally interested in the present proceedings and any subsequent appeals therefrom and has substantial and probative evidence that will assist the Land Use Commission in rendering its present decision on the pending petition.

6. That he is informed and so believes that one of the general partners of the petitioner is presently a member of the Planning Commission of the City and County of Honolulu.

7. That if the petition is granted the Nuuanu Valley Community Association, Inc., will be an aggrieved person as that term is used in Section 6C-14 of the Revised Laws of Hawaii 1955,

as amended.

s/ Mark B Mitchell
Mark B. Mitchell

Subscribed and sworn to
before me this 29
day of October, 1965.

s/ Frieda H Robert
Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: 6-30-69

CHUCK LEAHY
KAILUA vs. AIEA
7:25 p.m.
KGU 76 On Your Dial

L.A.

Smog caused tens of thousands of complaints among persons with respiratory problems. Eye irritation was almost universal.

"It is the 14th day the temperature inversion layer is at the surface with virtually no wind," one APCD official said.

Louis J. Fuller, recently named air pollution chief to

See SMOG on A-2, Col. 5

Luci, Pat To Wed, Pals Say

JOHNSON CITY, Tex. (UPI)—Luci Baines Johnson and her Waukegan, Ill., boyfriend, Pat Nugent, flew to the LBJ ranch last night, and, close friends said, planned to try to gain President Johnson's consent to their marriage.

The President's wife, Lady Bird, reportedly has already given consent to her younger daughter's marriage.

Mrs. Elizabeth Carpenter, press secretary for Mrs. Johnson, said Luci and Nugent arrived at the ranch aboard a Jetstar aircraft shortly before 8 p.m. CST (10 p.m. EDT).

Concerning the report that the President's daughter wished to marry Nugent, Mrs. Carpenter said "we have no knowledge of any such plans."

"She (Luci) always brings a boyfriend down with her when she comes to the ranch," said Mrs. Carpenter.

In Waukegan, Nugent's parents expressed surprise at the news.

"I know nothing about it," Nugent's father said. "I haven't heard a thing about it." The elder Nugent, an in-

See LUCI on A-2, Col. 5



LUCI

Nuuanu Violation Charged

By BILL COOK

The Nuuanu Valley Community Assn. yesterday offered to the State Land Use Commission a photograph of two surveying markers in an attempt to prove a developer wilfully violated a conservation district boundary.

An engineer for the developer denied there was a wilful violation.

Mark Mitchell, president of the Nuuanu group, introduced the photograph at the commission's public hearing on the developer's petition to have the boundary changed to permit development of the 17 lots, part of the 50-acre Nuuanu Park Place subdivision.

The photograph shows a pipe purported to be the temporary conservation district boundary and a surveyor's stake of the type used by the developer to mark off lots.

The stake and pipe are within inches of each other.

The developer's engineer said the stake was driven about a month ago after the Board of Water Supply asked that the disputed 17 lots be marked off.

Until then, he said, he had

See NUUANU on A-2, Col. 1

See Back

HONOLULU ADVERTISER
A-2 Saturday, Oct. 30, 1965
★ ★ ★

Nuuanu Lot Violation Charged

Continued from Page 1

no knowledge of the pipe marker.

The association has been fighting the development of the 17 lots since last spring when one of its members discovered the boundary violation.

Attorney William Swope represented the association at the public hearing, which was held at the Library of Hawaii. About 70 attended.

After more than two hours of testimony, the commission took the issue under advisement. A ruling will be made in no less than 45 days and no more than 90 days.

George Moriguchi, executive officer of the Land Use Commission, recommended to the commissioners that the boundary be changed to permit the developer to keep all of six of the disputed lots and portions of 10 of them.

One of the 17 lots, Moriguchi said, had an extremely steep grade and should be kept in the conservation district.

It was believed that the staff's recommended boundary change would so reduce the size of four of the lots that they would be substandard and unsuitable for building.

Herbert K. Horita, one of the members of the development firm, told the commission he could "go along" with the staff recommendation. He emphasized in his testimony that Nuuanu Ventures proceeded with the subdivision in good faith and was unaware of the boundary error.

Horita said sales in the 50-acre subdivision—Nuuanu Park Place — suffered because of publicity brought about by the boundary dispute.

He told the commission of plans to landscape the 3.6 acres now within the conservation district and said he believed the entire subdivision would increase land values in the area.

Commissioner Robert Wenkam at the outset of the public hearing questioned whether it was "proper or ethical" for the commission to consider the developer's petition.

"I do not feel the Land Use Commission should continue with these proceedings without a definitive investigation and a clear determination by the Attorney General as to the innocence or guilt of the petitioner," Wenkam said.

Commission Chairman Myron Thompson, on the advice of legal counsel, denied Wenkam's request that the matter be settled in the courts before the commission considered the petition.

By questioning Mitchell, Swope had it entered into the record that Attorney Kinji Kanazawa, a partner in the development firm and a member of the City Planning Commission, "actively participated" in establishing the conservation district boundary.

Swope said also that the developer should have known of the boundary because of the difference in real property taxes for conservation and urban lands. It was brought out that the tax rate for conservation land is $140 per acre, compared with $7,000 per acre for urban land in the area.

Moriguchi, however, had testified earlier that Nuuanu Ventures had paid its tax bill in a lump sum and possibly would not have known of the exact boundary because of the tax statement.

Girl Charged In Death of Pedestrian

Donna E. Benz, 17, of 3826 Poka St., was charged by police yesterday with juvenile delinquency in the traffic death Oct. 12 of Mrs. Helen Takumoto, 54, of 3840 Diamond Head Road.

Miss Benz, a University of Hawaii coed, was charged as a juvenile with second degree negligent homicide.

Police said she was the driver of a car traveling toward Waikiki on Diamond Head Road when it struck and killed Mrs. Takumoto in front of her home. A witness said Mrs. Takumoto was crossing Diamond Head Road toward her home, police reported.

New Zoning Proposal Has Something for Everyone

By BILL COOK
Advertiser Staff Writer

Developers and conservationists, who frequently travel collision courses on planning matters, likely will be seeing eye-to-eye over a planned unit development provision contained in the City's proposed Comprehensive Zoning Ordinance (CZO).

The City Planning Department, which has been talking about a CZO for several years, finally has drafted the bulky document and now is briefing the members of the Planning Commission on each of its provisions at a series of workshop luncheons.

The CZO is designed to give government stricter control of densities and preservation of Oahu's natural assets. These principles, of course, will appeal to the conservationists.

Developers, however, can be expected to challenge many of the restrictive provisions of the ordinance.

But the planned unit development provision is designed to appeal to both sides.

A developer with a minimum of 20 acres of land would be permitted to apply to the Planning Department for a planned unit development instead of the usual grid pattern subdivision.

Assuming the property is zoned for 6,000-square-foot residential lots, the developer would be permitted to build on 4,400-square-foot parcels, with the remainder going into open space. The developer also would be permitted to mix uses on his 20 acres—some apartments and a commercial area.

The major benefit to the developer would be in reduced land development and utility costs. Frequently, developers of large subdivisions must grub and grade the land to permit every square foot to be utilized for house lots. The grid pattern subdivision requires great expense for street construction and utility lines.

By clustering the apartments and single-family residences within the subdivision, these costs are reduced.

The reduction in development costs would appeal to the developer, and the increased open space in the planned unit development would appeal to the conservationist.

A planned unit development, as one member of the Planning Department puts it, would "provide for more creativity, more urban design, greater flexibility and most important, preservation of open space and natural terrain.

The open space provision of the CZO contains certain restrictions. For instance, a developer would not be permitted to set aside unbuildable or extremely steep land for the open space requirement for a planned unit development.

To insure that the open space will be maintained, the ordinance provides that the property owners—those who buy homes or apartments in the planned unit development — assume the responsibility of maintaining the open space.

A legal document assuming this responsibility becomes a matter of record, and if the homeowners neglect the obligation, the City would be empowered to assume maintenance and charge the property owners for the service.

Planning Commissioner Kinji Kanazawa, who generally opposes too much government interference with the rights of property owners and developers, has told The Advertiser that he is impressed with the planned unit development provision.

He indicated that he felt the controversial Nuuanu Ventures, Inc., Nuuanu Park Place subdivision might have benefited from such an ordinance. Kanazawa, an investor in Nuuanu Ventures, agreed that the subdivision development costs would have been reduced had such an ordinance been in effect.

Just how many planned unit developments spring up on Oahu if the CZO is approved will depend largely on the acceptance of the home-buying public to purchase property in them.

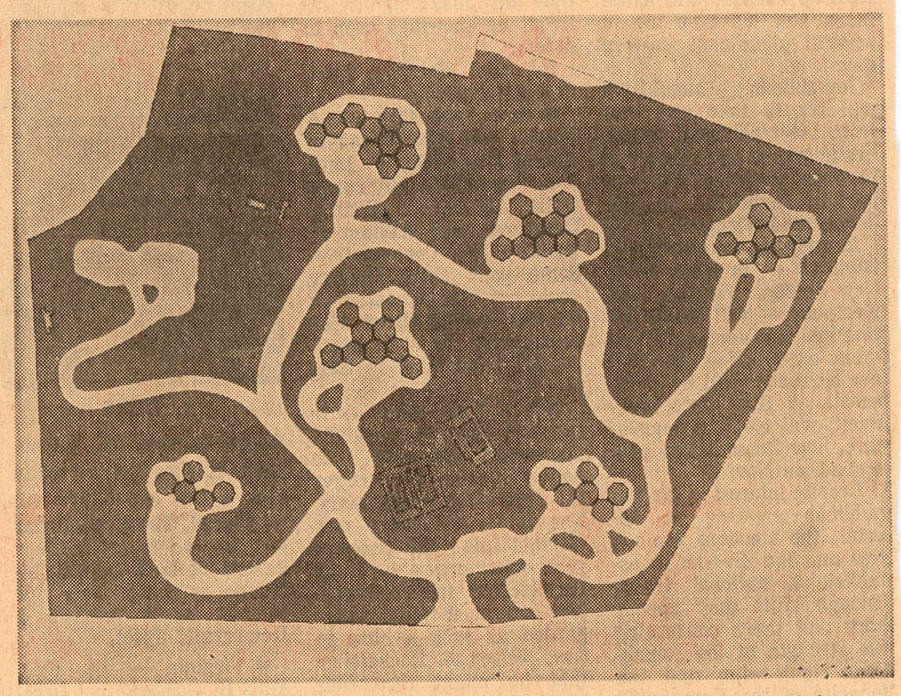
An indication of the potential may be seen in the effectiveness of a cluster development ordinance recently approved here. This ordinance permits a developer with 10 acres of property to cluster single-family homes only and leave the remainder of the property in open space.

The developer of one such cluster-type subdivision — Kalani-Iki — reports public acceptance. However, this subdivision is on leasehold land and is considered a "horizontal condominium."

Some developers feel the average home-buyer here seeking fee simple property will demand as much square footage for his house as he can afford and shy away from part of what he is purchasing being left in open space to which he does not hold clear title.

Other developers feel the planned unit development, which provides lower development costs, will permit the developer to charge less for homes and homesites, thus opening the market to people who might not have been able to afford homes at today's market prices.

A story on this page from the Washington Post discusses a planned unit or cluster development on a 47-acre estate in Virginia. The open space principles it sets forth can be applied to the kind of developments which could result from the proposed CZO.



Architect Gruen's "cluster" plan for Merrywood Estate in Virginia.

Clustered Homes Save Hill's Scenic Woodland

Washington Post Service
Special to the Advertiser

Washington — The scenic beauty of the wooded hillside where Jacqueline Kennedy lived as a child will be preserved by an architect's plan to "stack" and "cluster" expensive homes.

Forty-six "manor houses" costing $125,000 and up are to be built on the 47-acre Merrywood Estate in Virginia formerly owned by Hugh D. Auchincloss, Mrs. Kennedy's stepfather.

The plan ends a three-year effort to preserve the woods of Merrywood from being overshadowed by 1,000 high rise apartments or being cut down to clear the way for streets and house lots.

Interior Secretary Stewart L. Udall blocked high rise apartments by getting a "scenic easement" to prevent buildings higher than 40 feet. A similar easement preserves the view from George Washington's Mount Vernon a few miles down the river.

When it became clear that even one-acre lots would carve the land into just another subdivision, Udall, who lives three-quarters of a mile upriver from Merrywood, suggested to the present owner, C. Wyatt Dickerson, that he consult New York architect Victor Gruen. Dickerson and his wife, NBC newswoman Nancy Dickerson, live in the Merrywood mansion.

Gruen planned homes to be built in clusters of either six or nine on promontories with dramatic views of the river. Each cluster will be made up of stacks of three houses built into the hillside. The roofs of the bottom houses will be used as terrace gardens for the houses above.

Stacking and clustering will preserve nearly 90 per cent of the trees on the estate. Putting the same number of dwellings on one-acre lots with the usual grid of streets would have destroyed 75 per cent of the trees.

The two-story homes will be either octagon or hexagon shaped. The many-sided layout makes the most of the river view. Three upstairs bedrooms will open on to a sitting room that overlooks the two-story-high living room.

Owners will have a private terrace and use of the vacant land, a swimming pool, tennis courts and other recreation without maintenance problems.

"While this is, of course, a very low density luxury development for the economically fortunate," says Gruen, "the concept is applicable anywhere in suburbia. By clustering and stacking complete houses we can preserve unspoiled land and give everyone the benefits of nature without stuffing people into high rise apartments.

The idea offers comforts of a house combined with the service, amenities and security of apartment house living."

Udall says, "the Gruen plan proves that imaginative planning can preserve nature and yet yield legitimate profits to the developer." He hopes the plan "will make the high rise boys stop and pay attention."

Gruen likes to think that his structures will add the kind of subtle interest to the Potomac shoreline that castles add to the Rhine and Loire.

7700

The Honolulu Advertiser

109 Years Your Family Newspaper *Established July 2, 1856*

THURSTON TWIGG-SMITH, *President & Publisher*

GEORGE CHAPLIN, *Editor* BUCK BUCHWACH, *Managing Editor*

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FRIDAY, OCTOBER 29, 1965

Nuuanu: Which Way?

Planning in Honolulu has been called less an orderly process than a series of last-ditch battles various groups have fought in the face of apathy, mistakes and a bias in favor of a certain type of developer.

Today another such battle will be fought before the State Land Use Commission on the infamous case of a three-acre gash illegally carved out of State conservation district land in Nuuanu Valley.

* * * *

THE ISSUE is whether you correct a mistake by making it legal and in the process further diminish our dwindling resources.

The principles involved have broad implications for the entire community, which is why some important civic and professional groups have joined the Nuuanu Valley Community Assn. in this fight.

The disputed area is three acres making up 17 houselots on the edge of the 50-acre Nuuanu Park subdivision. The developers—who include City Planning Commissioner Kinji Kanazawa—have said if this is denied them it would jeopardize the economics of the project.

Since the disputed 17 lots are valued at $300,000, their loss obviously would cut the level of developer profits. But that must not be the sole criterion, especially since the area should not have been developed for houselots in the first place.

Blame in this case is hard to distribute in proper degree, and that will be important for the Land Use Commission to consider.

The City Planning Department was obviously wrong in not referring the matter to the Land Use Commission before approving the subdivision plans in July of 1964.

* * * *

BUT IT SEEMS to us that a developer who is investing several million dollars also has a responsibility to know what he is doing and where he is going.

As we commented earlier, the violation of the conservation district is all the more painful because it was not that difficult to determine. A Nuuanu resident — using an ordinary school ruler — was the one who found it.

The essential point is that two wrongs, by the City and the developer, should not now be legalized as the right to continue developing the present conservation land.

Such disregard for the general good has been typical of much Honolulu planning in the past. One hopes for a more progressive attitude from the State Land Use Commission.

10/29/65 MINUTES

PETITION OF NUUANU VENTURES (A65-90) TO AMEND THE URBAN DISTRICT BOUNDARY AT NUUANU VALLEY, OAHU, SO AS TO INCORPORATE APPROXIMATELY 3.6 ACRES PRESENTLY IN THE CONSERVATION DISTRICT, IDENTIFIABLE BY TAX MAP KEY 2-2-42: 1

Chairman Thompson announced that the Land Use Commission had been served with a Motion to Intervene in the matter of the Nuuanu Ventures petition by Attorney William M. Swope, representing the Nuuanu Valley Community Association, Inc., and presented it to the Commissioners.

Mr. Roy Takeyama, legal counsel, requested Mr. Swope to enumerate the sections of the Hawaii Administrative Procedure Act, and the Land Use Commission Rules of Practice and Procedure upon which this was based.

Mr. Swope supported his motion on the basis that, under the provisions of the Hawaii Administrative Procedure Act, every party was given a right to conduct a close examination which may be required for full disclosure of facts; but that this was permitted under the Land Use Commission Rules of Practice and Procedure only with the permission of the Chairman of the Commission. He said that the intervenors represented a community association of property owners in the area affected by the subdivision and also the property owners immediately adjacent to the proposed subdivision, Wallace A. and Doris M. Dyer, who would be adversely affected in terms of diminishing property values if the petition were granted. Mr. Swope referred to Section 6C-14, Judicial review and justification of the Revised Laws of Hawaii, which sets forth an appeal procedure. He continued that under the Rules of Practice and Procedure of the Land Use Commission, no provision had been set forth for intervention. He also quoted Section 1.6 - "The Commission may on its own motion conduct such proceedings", and Section 1.15 - "Party. The term 'party', wherever used in these rules, shall mean each person or agency named or admitted as a party," of the Rules of Practice and Procedure. Mr. Swope felt that the Commission should have a procedure by which a party could be admitted.

Mr. Takeyama agreed that under Section 6C-14, any person aggrieved by a final decision had a right to appeal, but wondered whether the matter of right to intervene in the proceedings might not be an entirely different matter.

Mr. Swope replied that he was taking the position of a representative of property owners in the Community Association with a right to be heard.

Chairman Thompson informed Mr. Swope that he would be given the right to be heard, but that under the proceedings he would not be permitted to cross-examine any of the witnesses.

Mr. Swope again pointed to the fact that under the Hawaii Administrative Procedure Act, the Commission was bound to give his client the right to cross-examine and to be heard. He stated that he wanted to go on record as having filed a Motion to Intervene.

Following Mr. Takeyama's reminder to Mr. Swope that the petitioner in the case had not been served with the motion, Mr. Kinji Kanazawa, attorney for the petitioner, was served with a copy.

Chairman Thompson called for a recess at 2:05 p.m. to allow the three attorneys to confer on the above matter.

The meeting reconvened at 2:15 p.m.

Chairman Thompson advised that, after due consideration of facts involved, the Motion to Intervene was denied, but that the persons originating this motion would be given the opportunity to be heard.

Commissioner Wenkam stated that he wished to present a prepared statement, questioning the propriety of the Land Use Commission to consider, at this time, a petition for change of boundary from a land owner who had clearly violated the State Land Use Law (see copy of statement on file).

Chairman Thompson asked for comments from Mr. Takeyama regarding the question of whether or not the petitioner had a right to come before the Commission. Mr. Takeyama advised that under Section 4 of the Land Use Act, petitioner was entitled to petititon the Land Use Commission for a determination.

Commissioner Ota requested that Commissioner Wenkam's statement be stricken from the records since it expressed an opinion. Chairman Thompson explained that he had accepted the statement in the hopes that it would substantiate the need for denying the hearing, although none of the facts bore this out. However, he stated that the statement was accepted for the records.

Mr. George Moriguchi, Executive Officer, read the report prepared by the staff on the above petition (see copy on file). Staff's recommendation was for modification of the Urban District boundary to include lots 42 through 47 and portions of lots 49 through 58, since the developer had proceeded with subdivision grading construction with the sanction of a governmental body, and resotration of the graded areas would be economically infeasible. Moreover, restoration would probably present a serious potential landslide hazard to life and property in the area below the subject lands.

Mr. Moriguchi also read a letter from the International Longshoremen's and Warehousemen's Union addressed to the State Land Use Commission, expressing serious concern over the possibility of revising the Conservation District boundary in Nuuanu Valley (see letter on file).

Commissioner Wenkam disagreed completely with the staff's recommendation and asked the Executive Officer to explain the reasons therefor. Mr. Moriguchi replied that, based on his experience with land development, it would be economically infeasible to restore this area. Commissioner Wenkam argued that notwithstanding the economic hardship to the developer, serious damage had occurred in a Conservation District and restoration should be made. As outlined in the staff report, Mr. Moriguchi explained that the developers had sought to subdivide these lands unsurreptitiously, openly and publicly, and to require them to restore these lands would be unreasonable.

Commissioner Wenkam wondered if the Executive Officer was aware that the survey stakes of the developer were driven into the ground immediately next to the forest reserve boundary marker. Mr. Moriguchi replied that he had seen the developer's basic survey map of the area but that he did not observe any forest reserve boundary marker. Chairman Thompson asked if Commissioner Wenkam would like Mr. Moriguchi to check further into this matter. Commissioner Wenkam felt it would be very appropriate for every Commissioner to see the basic survey map of the developers.

Commissioner Ferry reaffirmed the plea made earlier by the Chairman to confine the hearing to accumulation of facts as related to this particular petition.

Mr. Herbert K. Horita, a partner of Nuuanu Ventures, made the following presentation. He observed that the developers could go along with the recommendations made by the staff. A brief account of events leading up to the present petition was reviewed. The developers had applied, in all good faith, to the City governmental agencies and, upon their approval, had gone ahead and developed the land according to the Subdivision Rules and Regulations, and were not aware of any encroachment into the Conservation District until they were so notified. At that time 60% of the lots in the area had been sold on a package deal. Approximately 50% of the lots in the Conservation District were sold in the initial stages. By that time about 80% of the overall development of the subdivision had been completed, including the grading of the hillside. No work has been done in the area since.

As a developer, Mr. Horita stated that they were interested in complementing the area with their development and that they were fully aware of the beauty of the Nuuanu area. Prices have definitely gone up in other areas where they have completed developments. A sketch of the proposed development was presented. Mr. Horita cited the Moanalua Subdivision as an example of what proper landscaping and planting could do to beautify a community. Following a similar pattern, he stated that the developers were planning to plant the sidewalks with trees which would be contributed by the Foster Gardens. Site plans were also produced at this time. When the proposed development is completed, it would difinitely enhance the Nuuanu-Dowsett area with an appreciation in property values, Mr. Horita concluded.

Chairman Thompson wondered if the developers had in any way indicated to the City their intent to landscape the cut areas. Mr. Moriguchi informed that a similar testimony had been presented to the City Planning Commission, according to the minutes of their meeting of August 26, 1965. It was also brought out that the City Planning Commission's approval of this subdivision was not contingent upon the developers' commitment to landscape the cut areas.

Commissioner Wenkam stated that according to the maps on file with the Division of Forestry and Board of Water Supply, the 17 lots in question were within the Honolulu watershed area. Mr. Horita reiterated the fact that they were not aware of this until they were so informed.

Commissioner Wenkam continued that according to the records on file in the Division of Forestry, there was no indication that the property owners had stopped claiming any tax benefits because this land was in the forest reserve area. Mr. Horita replied that he did not know about any tax benefits and had assumed that they had been paying for the property as urban lands. Upon Commissioner Wenkam's request, Chairman Thompson directed the Executive Officer to check into this matter.

Commissioner Wenkam stated that he understood land placed in the forest reserve received certain tax benefits. He wondered whether the appraisal obtained for the petitioners would indicate this. It had a bearing on the petition as to whether or not the petitioners did or did not know that the subject lands were in the Conservation District.

Mr. Moriguchi advised that as far as the Tax Department was concerned, they had assessed the makai side of the lands at $7,000 per acre and $140 per acre for the mauka area. It was also pointed out that although there was this differential

in assessed value, the notice to the landowners merely indicated the total tax responsibility for the whole area and did not indicate the two different values.

Chairman Thompson interrupted the hearing to recognize a group of Vietnamese officials in the midst, who were introduced by Mr. Katekaru of the East-West Center as provincial deputy chiefs, equivalent to our Lieutenant Governor. These officials were visiting our State to observe local government in operation at the invitation of the Governor.

Chairman Thompson resumed the hearing by opening the floor for comments in connection with the petition.

Attorney Swope moved to dismiss the petition on the grounds that it violated Section 98H-4 which reads, in part, as follows: "The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified." Mr. Swope stated that he failed to have heard one word that this area is needed for a use other than what is normally considered Conservation District.

Chairman Thompson denied the motion to dismiss the petition on the basis that the Commission would make a ruling within 45 to 90 days.

Attorney Swope asked if he could have the material, as submitted, identified including any proof that the area was needed for other than that for which it was classified. Chairman Thompson reminded Mr. Swope that this was not a court of law. Mr. Swope said that scarcity of houselots in the Honolulu area, usability and adaptability of land for urban uses, were not proofs that the area was needed for a use other than that for which it is classified.

During a question and answer session between Mr. Swope and Mr. Mark Mitchell, President of the Nuuanu Valley Community Association, the following testimony was recorded. Mr. Mitchell pointed to the fact that Mr. Kinji Kanazawa, one of the partners in Nuuanu Ventures, was a member of the City Planning Commission. Mr. Mitchell also mentioned that Mr. Kanazawa's name appeared in the acknowledgment of a report prepared by Larry A. Nelson dealing with detailed land classification. This document summarized the different classifications of land by use and under consideration were lands in the Nuuanu Valley area. The maps clearly showed the area involved, existing forest reserve water shed boundary lines, and the existing conservation line.

Mr. Mitchell continued that he had gone into the area under discussion, and wished to submit evidence of a pin that was noted at the intersection and also the surveyor's stake as shown in the photograph. He stated that this line had been surveyed and been in existence for a long time, and that he had very good evidence that it was used by the developers to determine the survey. Mr. Swope commented that, in other words, Mr. Mitchell was saying that the Nuuanu Ventures themselves found the designation by a pipe of the Water and Forestry reserve boundary.

The Nuuanu Valley Community Association felt very strongly that the high cuts and banks were dangerous. During the last rain, the water was coming out in gushes from the forest reserve that had been cut, and the only way to preserve the safety of the residents was to stabilize the banks by replacing the trees which had held the earth.

Mr. Mitchell then presented their map showing the 17 lots in question, the 400 ft. contour line which he claimed was the final boundary adopted by the Commission, and the interim boundary line.

Mr. Mitchell stated that the land was purchased by the present developers in January of 1963.

Commissioner Ferry questioned whether Mr. Mitchell had confirmed the stakes he had found by actual survey. Mr. Mitchell replied that he had not. Commissioner Ferry wondered whether Mr. Mitchell was disputing the Land Use Commission's declaration that 17 lots were affected by the Conservation District. Mr. Mitchell stated that he was not disputing this but that he was referring to the red line as the boundary, based upon information he had found on the tax map in the Land Use Commission office.

Referring to the point made by Commissioner Ferry about the fact that the stakes had not been confirmed by actual survey, Mr. Mitchell explained that he did not see the necessity of this as the wooden pegs were marked with the numbers 58 and 60 and were found on the corner of lots 58 and 60.

Mr. Mitchell replied in the affirmative in answer to Commissioner Ferry's query as to whether it was an assumption on his part that the pipe was the Forest Reserve boundary line.

Mr. Larry Matsuo, engineer for the developers, informed the Commission that the Department of Agriculture and Forestry had asked his engineering firm to show them where the line would be, after the dispute over the Conservation District had been brought to Mr. Matsuo's attention. Prior to that time, they were not aware of any restrictions. He also pointed out that the peg was a lot corner point and not necessarily the Board of Forestry and Reserve line.

Mr. Swope proceeded to rebut the four reasons submitted by the petitioner in support of the petition, outlined in the staff report, as follows:

1. He did not think that the Commission should be concerned with the fact that subdivision plans of the affected area were approved by the various agencies of the City and County of Honolulu, because Act 187 adopted in 1961 and subsequent acts set forth with preciseness the boundaries of the Conservation Districts.

2. The crux of the whole matter lay in the developers' claim that they had inadvertently erred in not asking the State Land Use Commission for a determination of the boundary. When one member of the developers was a member of the Planning Commission and also an adviser in the establishment of the detailed land use boundary in the City and County of Honolulu, Mr. Swope could not see how the Commission could give any due consideration to the second point.

3. The developers were now suggesting that "with proper landscaping and maintenance by each individual lot owner, this area can be greatly improved " They were imposing upon the lot owners what they had originally proposed to do themselves.

4. If economic hardship to the developers were to be the criteria for planning, Mr. Swope could not see how the Land Use Commission could carry out its responsibility.

Chairman Thompson opened the floor for comments from the audience.

Miss Gertrude Humphries wondered if the developers could legally sue the City and County. Chairman Thompson advised that Mr. Takeyama, legal counsel, would be happy to discuss this with Miss Humphries after the meeting.

Miss Humphries expressed her feeling that the responsibility for checking on the boundary was not entirely up to the City and County, and that she had no sympathy for the petitioner because of the steepness of the slopes.

Mrs. Eldon Dykes, representing the League of Women Voters, read a letter urging the Commission to preserve the Conservation District in Nuuanu and to deny the petition (see letter on file).

A question was posed to Mr. Horita by a Nuuanu resident as to just how home owners were expected to replace soil and landscape their property. Chairman Thompson asked Mr. Horita to elaborate on his plans in this respect. Mr. Horita pointed to the developers' site plans and explained that they were planting trees between the sidewalk and the curbing, and planting shrubberies and bushes on the slopes wherever possible. He assured the Commission that the developers would carry out their commitment to landscape the slopes if this petition were granted.

Mr. Matsuo explained that it would be almost impossible to plant trees on a one to one cut (10' horizontal and 10' high, creating a 45° angle) because the soil content would be a mixture of rock and dirt and would not be able to support trees.

Chairman Thompson advised that the Land Use Commission could not impose any conditions upon the petitioner, in reply to Commissioner Ota's concern over the developers' obligation to landscape the slope.

Mr. Matsuo informed the Commission that the developers were residents of the State of Hawaii, in business to stay, and fully realized their obligation to the State to do whatever they had committed themselves to do.

Since there was no further testimony, the hearing was closed.

STATE OF HAWAII
LAND USE COMMISSION

Library of Hawaii
Honolulu, Hawaii

1:30 P.M.
October 29, 1965

STAFF REPORT

A65-90 - NUUANU VENTURES

District Classification: Conservation

Background

A petition has been filed by Nuuanu Ventures to amend the district boundaries at Nuuanu Valley, Oahu, affecting approximately 17 lots of the Nuuanu Park Place Subdivision (portion of Tax Map Key 2-2-42: 1). The proposed amendment involves reclassification of approximately 3.6 acres presently in the Conservation District to an Urban District classification. Lands involved under the subject petition are part of an eighty-two lot subdivision presently under construction at the east side of Nuuanu Stream, opposite the Nuuanu Elementary School. Land use in the surrounding area is primarily residential. Subdivision construction involving the lands under petition has proceeded to the general grading stage with no other construction started or completed to date.

The petitioner has submitted that:

1. Subdivision plans of the affected area were approved by the various agencies of the City and County of Honolulu on or before August 13, 1964, prior to adoption of the final land use district boundary on August 23, 1964.
2. Inasmuch as the interim boundary was a "broad brush" line, the developers inadvertently erred in not asking the State Land Use Commission for a better determination of the boundary.
3. On the basis of approved engineering plans, this area has been graded and at this time to request the developers to restore this area to its original condition would be practically impossible. However, with proper landscaping and maintenance by each individual lot owner, this area

can be greatly improved.

4. Denial of this request will create an economic hardship on the developers as cost allocations were made on the basis of approved plans.

The staff has confirmed that on October 3, 1963, tentative approval was granted by the Planning Director of the City Planning Department for a 78-lot subdivision in this area. Subsequently, the subdivision layout was revised and on December 5, 1963, tentative approval was granted by the Planning Director of the City Planning Department for an 82-lot subdivision. Final approval for the 82-lot subdivision was granted by the Planning Director on July 30, 1964 while the temporary district boundaries were in effect. A grading permit for the project was issued by the Division of Engineering, City and County of Honolulu, on October 6, 1964

The matter of possible encroachment of portions of the subdivision into the Conservation District was brought up by the Nuuanu Valley Community Association on June 4, 1965. A check by the Executive Officer of the Land Use Commission on June 28, 1965 determined that 17 lots of the subdivision were within the Conservation District. On July 19, 1965, Nuuanu Ventures submitted their petition for amendment to the Land Use Commission District Boundary to include the 17 lots in the Urban District.

On August 26, 1965, the City Planning Commission reviewed the petition for boundary amendment as submitted. It was recommended by the Director of the City Planning Department that portions of the subdivision should remain in the Conservation District due to steep topography. However, the Planning Commission, after considering all of the facts, voted to recommend that the Land Use District Boundary be amended from a Conservation District to an Urban District for all lands under the subject petition. The Planning Commission's

recommendation was a confirmation of the former Planning Director's action of July 30, 1964, approving the subdivision plan.

Letters opposing the subject petition have been received from several organizations as follows:

1. The outdoor Circle, letter dated August 27, 1965.
2. Hawaiian Trail and Mountain Club, copy of memorandum to the Nuuanu Valley Community Association, dated September 20, 1965.
3. Manoa Valley Community Association, letter dated October 5, 1965.

Copies of these data are on file in the Land Use Commission office and copies have been forwarded to all members of the Land Use Commission.

Analysis

The developer's petition for boundary amendment is based upon the final land use district boundaries as established on August 23, 1964 by the State Land Use Commission. However, background data on initiation of construction plans and issuance of tentative plan approvals by the City indicate that consideration of the petition on the basis of the temporary district boundaries would be proper and reasonable. Accordingly, of the 17 lots in question, 7 lots would have been completely within the Conservation District, 8 lots would have been partially within the Conservation District and partially within the Urban District, and 2 lots would have been entirely within the Urban District. Of the 8 lots partially in and partially out of the Conservation District, 4 lots would have their major portion within the Urban District. Including these 4 lots in the Urban District, the count would then be 6 lots within the Urban District and 11 within the Conservation District.

In accordance with the Land Use Commission's tests to be applied for boundary amendment, the petitioner has submitted that the subject lots are needed for

house lots due to the scarcity of house lots in the Honolulu area. The staff finds that this is substantiated for the entire Nuuanu Valley area and the adjoining Pacific Heights and Alewa Heights areas. Urban expansion areas in Nuuanu Valley consist primarily of about 50 acres in Dowsett Highlands and about 45 acres, under numerous ownership, in the Waokanaka Street area to the west of the Pali Highway. However, these expansion areas are zoned as Class AA Residential with 10,000 square feet minimum lot sizes. The subject 17 lot area is zoned for Class A Residential with 5,000 square feet minimum lots.

The petitioner has submitted also that the land is usable and adaptable for residential use as evidenced by the approved subdivision construction plans and by commitments to purchase by various prospective purchasers. However, the staff maintains that usability and adaptability of lands must also be evaluated in light of the objectives of the Land Use Law and its regulations involving protection and preservation of lands in the State.

Construction grading as performed to date, according to approved plans, present a topographic picture with hillside cuts ranging from 40 feet high to 60 feet high at the mauka third of the top tier of lots in the subdivision. It is quite apparent that such grading construction is contrary to the objectives of the Land Use Law in protecting and preserving scenic values and other open space amenities. The high cuts are visible to many existing homes in the area. They are visible from only a few points along the inbound lane of the Nuuanu Pali Highway and only if actively sought visually. (See cross-section maps.) In the lot areas intended for building construction, ground slopes of the graded subdivision range from about 22% to 30%.

While the mauka lots as graded with the high, steep cut banks do have buildable portions, maintenance of the steep cuts by the ordinary householder would present

a difficult, if not a hazardous, chore. Under these conditions, it would not be reasonable to permit residential subdivisions using such lands with high, steep cuts.

Lots fronting on the makai side of the roadway, excepting lot 48, have ground slopes ranging from 13% to 22%. Ground slopes on lot 48 average 50%. Lots fronting on the mauka side of the roadway have ground slopes ranging from 20% to 30% in the area between the toe of the high cut bank and the roadway. With the exception of lot 48 and the high cut bank, all other land areas are reasonably usable and adaptable for residential use.

It is clear that an encroachment exists into the Conservation District. However, the staff finds that this has not been a surreptitious act on the part of the developers, in that they had openly and publicly sought approval through the proper channels before starting construction. With the approvals as obtained from the various governmental agencies, it would have been reasonable for any developer to proceed with construction based upon the approved plans. Recurrence of similar situations will be precluded since all proposed subdivisions on Oahu, which are near or adjacent to Conservation Districts, are now referred to the Land Use Commission for review before approval.

Recommendation

The developer had proceeded with subdivision grading construction with the sanction of a governmental body and the topography as it exists today and potential uses have been evaluated. Without any doubt, restoration of the graded areas to its original topographic condition would be economically infeasible. Moreover, if this were attempted, it would probably present a serious potential landslide hazard to life and property in the area below the subject lands. In light of these conditions and circumstances, and satisfactory application of the Land Use

(2) STAFF REPORT OCT 29 '65

Commission's tests for boundary amendment, it is the staff's recommendation that the Urban District boundary be modified to include lots 42 through 47 and portions of lots 49 through 58 (see map). The staff also suggests that a recommendation be made to the Department of Land and Natural Resources to:

1. Resolve a satisfactory landscaping plan and its effectuation by the developer for the high cuts.
2. Maintain the high cut banks within the Conservation District as unsubdivided lands.

1769

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

HAWAII REGIONAL OFFICE • 451 ATKINSON DRIVE, HONOLULU, HAWAII 96814

JACK W. HALL
Regional Director

October 29, 1965

RECEIVED
OCT 29 1965
State of Hawaii
LAND USE COMMISSION

Mr. Myron Thompson, Chairman
State Land Use Commission
Kapuiwa Building
Queen & Punchbowl Streets
Honolulu, Hawaii

Dear Sir:

Permit us to convey our serious concern over the possibility of revising the State Conservation District Boundary in Nuuanu Valley.

We begin with the premise that this boundary was drawn for the good and proper reason and particularly for the protection of our natural scenic and forest resources.

We logically conclude that any change should be only for good and proper reason and in the public interest.

We cannot accept the position advanced that a wrong should be corrected retroactively by committing another wrong.

The question of who is responsible for this mistake, if that is what it is, should be thoroughly investigated and the equities balanced.

Sincerely yours,

ILWU HAWAII REGIONAL OFFICE

Eddie Tangen

Eddie Tangen
International Representative

ET:bw

howu

October 26, 1965

Smith, Wild, Beebe & Cades
Attorneys at Law
P. O. Box 939
Honolulu, Hawaii 96808

Attention: Mr. William M. Swope

Gentlemen:

We have reviewed your request by letter dated October 22, 1965 concerning a possible postponement of the State Land Use Commission public hearing on the Nuuanu Ventures petition to be held on October 29, 1965. Although we would attempt to accommodate the public wherever possible, we find that the Commission's schedule of meetings throughout the State based on petitions filed to date and on statutory time limitations on scheduling, does not reasonably permit postponement as you have requested.

We are mandated to hold a public hearing on Oahu no later than October 30, 1965 on a petition presently on the Commission's schedule. The Commission will be meeting on Maui and on Hawaii a week later on November 5, 1965. Thereafter, the Commission will be meeting on Oahu and Kauai on November 29, 1965. However, the petition on the Nuuanu Ventures Subdivision must be heard prior to November 29, 1965 on the Island of Oahu. Therefore, the postponement of the October 29th meeting would require a special meeting of the Commission on Oahu sometime in mid-November.

Under these circumstances and since the petitioners themselves are anxious to resolve this petition, we find that we will not be able to accommodate your request for postponement.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

cc: Chairman Thompson
Nuuanu Community Association

1764

SMITH, WILD, BEEBE & CADES
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
P. O. BOX 939
HONOLULU, HAWAII 96808

TELEPHONE
569-331

CABLE AND WIRELESS ADDRESS
"LEX" HONOLULU

October 22, 1965

RECEIVED
OCT 25 1965
State of Hawaii
LAND USE COMMISSION

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

Re: Nuuanu Venturers

Gentlemen:

We have been retained by the Nuuanu Community Association to represent their interests before your Commission relating to the request of the Nuuanu Venturers to change a portion of a Conservation District to the Urban District. Recently, we were notified that a hearing has been scheduled before you on October 29, 1965.

Our client has requested that Mr. J. Russell Cades of this office appear before you on this date to present its position. Unfortunately, Mr. Cades is on a combined business and vacation trip and is presently away from the island, returning on or about November 1, 1965.

It goes without saying that this pending matter is extremely important to our client. Accordingly, would it be possible to extend the date for the hearing on the Nuuanu Venturers request one or two weeks so that Mr. Cades may be present at your meeting.

Very truly yours,

SMITH, WILD, BEEBE & CADES

By William M. Swope
William M. Swope

cc - Nuuanu Community Association

10-26-65 Advertiser

Nuuanu Asks Zone Fight $$

By BILL COOK

The Nuuanu Valley Community Assn. issued a plea yesterday for moral and financial support in its fight to block development of 17 houselots in the Nuuanu Park Place subdivision.

Mark B. Mitchell, president of the group, said in a statement that he wanted as many persons as possible to attend the State Land Use Commission public hearing at 1:30 p.m. Friday to argue against the developer's petition to rezone the area of the 17 lots from conservation to urban use.

"Secondly, we need money," Mitchell said. "The association has retained Russell Cades to represent its position before the public hearing. We have been advised our only hope of winning is to counter with a legal voice the arguments of the developer's attorney."

The developer, Nuuanu Ventures Inc., received permission from the City Planning Department to develop the area of the 17 lots, but before homes could be constructed on the land the community association discovered the property was in the State conservation district.

The 17 houselots are part of a 50-acre subdivision, and the developer has argued that to delete them from the subdivision would cause financial hardship.

"We encourage progress, but oppose the disfigurement of our natural resources to provide profit for a developer," Mitchell said.

Mitchell also made public a letter from Gov. John A. Burns, to whom the association had written for support in its fight.

Burns replied:

". . . The State Land Use Law was conceived and enacted with good reason and, I believe, with a type of pioneering foresight that will insure future generations of our people the pleasure of natural beauty and open spaces that we have known.

"This Administration has already done much to give meaning to the Land Use Law, and it is our intent that the safeguards provided shall be maintained . . .

"I have directed the Attorney General to review the proceedings thoroughly and to take whatever steps may be legal and proper . . ."

The association, in its letter to Burns, contended that the conservation boundaries should not be changed.

The developer has argued that the violation was not intentional and that permission for the development was granted by several government agencies.

The City Planning Commission has recommended to the Land Use Commission that the boundaries be changed to permit development of the 17 lots.

The City Planning Department, which originally approved the subdivision plans, has said the conservation district boundaries are vague and that the subdivision permit was granted because it appeared the lots were in an urban district.

A member of the Nuuanu Valley Community Assn. detected the error.

The Land Use Commission hearing has been scheduled for the commission hearing room at the State Department of Planning and Economic Development building, but a commission spokesman said it would be transferred to the Public Library auditorium if a large number appear for the hearing.

The community association said its position has been endorsed by the Daughters of Hawaii, Outdoor Circle, League of Women Voters, Hawaii Mountain & Trail Club, Hawaii chapter of the American Institute of Architects and the Manoa Community Assn.

The Nuuanu group has asked the Land Use Commission to deny the developer's rezoning request and order the developer to restore the top soil and trees he cleared to make room for houses on the 17 lots.

The Land Use Commission by law is required to take action on the developer's petition within 90 days after the public hearing.

Not so. Pancho says it was overlooked in his memo to Mayor.

when? By Ltr? By whom? No record in LUC

file

1763

PARK *Engineering, Inc.*

1149 BETHEL ST., RM. 710
HONOLULU 13, HAWAII
TELEPHONE: 511-676

October 21, 1965

RECEIVED
OCT 22 1965
State of Hawaii
LAND USE COMMISSION

Mr. George S. Moriguchi
Executive Officer
Land Use Commission
State of Hawaii

Subject: Petition by Nuuanu Ventures for Amendment to Urban District Boundary in Nuuanu (A65-90)

Dear Mr. Moriguchi:

Transmitting herewith are two (2) prints showing existing contours at Nuuanu Park Place. The excavation along the rear of Lots 49 to 57, inclusive were substantially completed prior to your request to stop work in this area.

Sincerely yours,

PARK ENGINEERING, INC.

Larry K. Matsuo

Larry K. Matsuo
Executive Vice-President

Matsuo says this is not really "our request."
10-23-65

LKM:ma
Attach.

cc: Nuuanu Ventures

(C & C File # 63-363)

Nimanu Ventures (A65-90) Shigeru Horita & Iwao Kishimoto
TMK 2-2-92:1; C to A; Park Eng, Inc.

① Mar 23 '65 – Ltr fr Park Eng. to Plang Dept. transmitting 10 prints of consolidation of Lots 66 to 71 & resubdivision of lots into Lots 137 to 142
② Apr 27 '65 – same as item (1)
③ Map – showing subdivision of Lot A-1 into Lots 1 to 85 inclusive dtd Nov 21, '63 and Sep 16 '63
④ Set of Maps – (colored) showing various subdivisions of 2-2-42 and 43; dates received Jul 28 and 29 '64

Bound File –

① Worksheet (application for subdivision) date rec'd – 9/30/63 TMK 2-2-92:1 and 2-2-93:1; Zoning A & AA No. of lots – 81; Approval subject to constrc. of street improvements, utilities etc.
② Ltr from Div. of Sewers to C C P D regarding results of review. dtd Oct 2 '63
③ Ltr from Horita + Kishimoto re/ authority of Park Eng. to prepare subdiv. plans; dtd Sep 26 '63
④ Ltr from Bd. w/Supply to CCPD stating requirements for subdivision dtd Oct 2 '63
⑤ Ltr fr Park Eng to C C P D re/ transmittal of subdiv. maps (1941 into Lots 1 to 81) dtd Sep 30 '63
⑥ Ltr fr CCPD to Chief Eng requesting comments dtd Oct 9 '63
⑦ Ltr fr CCPD to Park Eng dtd Oct 9 '63 stating that tentative approval was granted by P. Div. on Oct 3 '63 to proposed subdiv. of R.P. 1816 L C Aw 1325 etc. into 78 lots (5,200 ± to 13,100 ± etc.; Approved subject to C & C Div.

Hiena Nakagawa states that we have to have Chief Eng.'s approval to get ~~Xerox~~ copy of routing slip.

of Eng. requirements.

(8) Ltr from Health Dept to CCPD dtd Oct 10 '63 recommending sewering of subdiv.

(9) Ltr fr Traffic Eng to CCPD stating recommdations Oct 11 '63

(10) " Chief Eng to " stating land is suitable for residen. use; Oct 17 '63

(11) Ltr fr Bldg Supt. to CCPD dtd Oct 22 '63 stating recommdations.

(12) Ltr fr Park Eng to CCPD dtd Dec. 2 '63 re/ transmission of subdiv. maps.

(13) Ltr from BWS to CCPD dtd Dec 3 '63 stating requirements.

(14) Ltr fr Traffic Eng to CCPD Dtd Dec 5 '63 re/ requirements.

(15) Ltr fr CCPD to Park Eng dtd Dec 16 '63 stating tentative approv. was granted on (Dec 5 '63) to proposed subdiv. into 82 lots ranging from 5,000 ☐' to 12,600 ☐' etc. Approval subject to C & C req.

(16) Ltr from Bldg Supt. to CCPD dtd Jan 21 '64 re/ recommdations.

(17) Ltr from Park Eng. to CCPD dtd Mar 23 '64 transmitting set of construction plans (Shts 1 to 24) for review.

NA (18) Memo to Ed Young fm R. Nagasawa re/ request of chief Eng.'s recommdation for grade variance for Roads B & C etc. Apr 1 '64

? (19) Ltr from Chief Eng to Park Eng, dtd May 27 '64 stating construct. plans were approved by DPW subject to conditions found on the ground at time of construction; requirements stated: 1) written notice prior to construct.

X

2) submission of approved plans to Div. Eng
3) " to Div. Sewers

NA (20) Worksheet (application for consolidation and resubdivision); date rec'd = 7-7-69 (typo error 69 ?)
TMK 2-2-42:1 & 2-2-43:1 and 2
? Class AA and A-2 Zones; No. of lots - 99

(21) Ltr from Park Eng to CCPD dtd Jul 7'69 transmitting subdiv. maps 1491 into lots 83 to 131)
NA (22) Ltr from BW Supply to CCPD dtd Jul 7'69 re/ reg.
(23) Ltr from Traffic Eng Jul 9'69 re/ reg.
(24) " Health Dept Jul 15'69 "
NA (25) Ltr fr CCPD to Park Eng dtd Jul 21'69 stating tent. approv. granted on Jul 9'69 to proposed consolidation & resubdiv. of 1491 into 99 lots subject to C & C reg.
NA (26) Ltr from Bldg Supt to CCPD dtd Jul 21'69 re/ reg.
NA (27) Ltr of authorization from owners to Park Eng dtd Jul 28'69 re/ prep. of plans.
NA (28) Ltr of Authoriz. fr Shigenma re/ authoriz. of Park Eng. to prepare subd. plans Mar 21'69
NA (29) Ltr fr Park Eng to CCPD dtd Jul 28'69 submitting 10 prints of subdiv. plans re/ consolid. & resubdiv. of 1491
NA (30) Ltr fr CCPD to CC Corporation Counsel dtd Jul 28'69 transmitting Surety Bond, Agreement, Specification, Performance Bond for check & approval.
NA (31) Ltr from BWS to CCPD dtd Jul 28'69 re/ constructed cost of water fac.
NA (32) Ltr from Chief Eng to CCPD re/ above Jul 30'69

NA (33) Ltr from BWS to CCPD Aug 4 '69 re/ req. for water facilities.

6 (34) Ltr from CCPD to Park Eng. dtd Aug 13 '69 stating Final approval was granted by P. Dir. on Jul 30 '64 to proposed subdiv. and consolidation of pw of 1991; approv. granted on basis of filing of 1) surety bond 2) agreement betw N.V. & C&C, 3) Specifications 4) performance bond; Copies of final maps w/ stamps of approv. enclosed.

(35) Ltr fr Park Eng to CCPD dtd Aug 13 '69 submitting construction plans (1-29) for review & sign

N/A
(36) Copies of Surety Bond dtd Jul 21 '69
(37) Ltr from CCPD to Corp Counsel transmitting documents for approv. Jul 28 '69
(38) Ltr from CCPD to BWS dtd Aug 14 '69 transmitting documents for approv.

NA (39) Legal document - applic. # 1991 - petition for subdiv. dtd Sep 23 '69; also - Petition for Delineation

NA (40) Copies of Owner's Bond by JM Tanaka dtd Jul 22 '69

NA (41) Notice to Contractors - Advertis. for Bids by Park Eng dtd Jun 10 '69

NA (42) Contract betw. Horita & Kishimoto and Construc. Equip. Inc. dtd Jul 10 '69

NA (43) Copies of Agreement betw. Nawahine V. & C&C re/ C&C construction requirements.

NA (44) Ltr from BWS to CCPD dtd Aug 25 '69 transmitting documents

Not appl. (45) Ltr fr Park Eng to CCPD transmitting prints for consolid. of Lots 67 & 71 & resubdiv. of

said lots, dtd Mar 1 '65 requesting approv.

NA (46) Ltr from BWS to CCPD dtd Mar 2 '65 re/requirements for above.

NA (47) Copies of maps re/above.

NA (48) Ltr from CCPD to Park Eng dtd Mar 4 '65 stating action was deferred by P. Dir. on Mar 4 '65 to the revised proposed consolidation of Lots 67 to 71; requesting consultation w/ Wally Kim re/ 16' rts of way on prelim. plan

NA (49) Ltr fr Ch. Eng to CCPD dtd Mar 5 '65 stating requirements.

NA (50) Ltr fr Build. Supt to CCPD dtd Mar 9 '65 re/results of review - recommends approv.

NA (51) Ltr fr Health Dept. Mar 9 '65 re/sewage

NA (52) Ltr fr Park Eng to CCPD Mar 12 '65 submitting prints for consolid. of Lots 66 to 71 & resubdiv. to Lots 137 to 142

NA (53) Ltr from BWS to CCPD dtd Mar 16 '65 re/results of review

NA (54) Copies of maps re/above.

NA (55) Ltr from CCPD to Park dtd Mar 19 '65 stating tentative approv. granted on Mar 18 '65 re/above; requirements stated.

NA (56) Traffic Eng to CCPD Mar 18 '65 re/review.

NA (57) Ch. Eng to CCPD Mar 22 '65 re/review.

NA (58) Health Dept to CCPD Mar 24 '65 re/rev

NA (59) Traff. Eng to CCPD Mar 24 '65 re/ "

(60) Ltr fr. LUC to CCPD dtd Jun 28 '65 returning subdiv. maps; states that boundary interpretation made shows lots 42 thru' 58 still in "C" map enclosed w/ boundary shown.

→ admits human error in two instances (61) Ltr from CCP Dir. to LUC Chairman dtd

62 6)

Jun 29 '65 re/ issuing of building permits within conservation areas requesting larger scale maps

(62) Report from CCP Dir to Maya dtd Jun 30 '65 giving background of events re/ Neumann Park subdiv.

(63) Ltr from M. Mitchell pres. of N.V.C. Assn. dtd Sep 14 '65 to C&C Corp. Counsel urging action re/ violation by developer in Neumann V.

(64) Copies of C&C General Plan maps & LUC maps covering subdivision

(65) Ltr from M. Mitchell (NC Assn) to CCP Dir dtd Sep 3 '65 requesting work stoppage; points out that work stopped in "C" District that still carried on in C&C Preservation District.

(66) Note inserted -

Ordinance 2443 May 7 '64

Adoption of GP

Prelim. Approval

82 Lots Dec 16 '63

32 " Oct 9 '63

Final Approv. 30 Jul '69

LUC Bonds 23 Aug '64

(67) Ltr from Mitchell to Maya dtd Sep 19 '65 enclosing his and pix respect to violation of GP.

(68) Reply from CC Corp Counsel to Mitchell dtd Sep 17 '65 stating that there have been no violations of city zoning laws.

(69) Ltr from CCP Dir to Mitchell dtd Sep 20 '65 in response to ltr of Sep 3 '65 stating some of the allegations were erroneous and correcting same

Nelson Ventures

DIV. OF ENGRG
10-6-65
ASC

Grading Permit 1759

Date of applic. Oct 6 '64
Renewal — 9/30 '65 to Mar 30 '66
Date of issue - Oct 6 '64
Estimated date starting — Oct 1 '64
" " Completion - Oct 1 '65

Oct 9 '63 - Ltr from C & C Planning Dept to C & C Chief Eng. requesting comments as to suitability of land for subdivision of 2-2-42:1 and 2-2-93:1 and 2; subdivision map enclosed.

Oct 17 '63 - C & C Eng to CCPD reply to above; suitable for residential use; mentions proposed improvement programs for Pinina Lane

Mar 23 '64 - Ltr from Park Eng. to Div. Eng. transmitting construction plans (24 shts), grading plans, drainage maps, hydraulic comput. & check prints

May 27 '64 - Ltr from Chief Eng to Park Eng. re/ approval by P. P.W. stating requirements prior to actual construction

Construction Plans - rec'd Mar 23 '64 by Div. of Eng.; Approved - May 22 '64

TAX DEPT RECORDS
ASL 10-6-65

2-2-92-01 AA Residential Zoning Lot A-2 LC App 1441

Harriet E.W. Wight 4/13/43 .031 ac to Par 2)

TMB 6/14/46 51.475 ac LC App 1441 issued

4/26/46 51.475 Ac

Harriet E.W. Wight (Gdn Trust) Prob #18020 2/12/59

(incompetent person) Gdn Hawn Trust Co Ltd 51.475 ac

(For 1960 51.475 ac dropped into 2293-2 Nil

(For 1960 50.985 ac fr 2293-2) 50.985 ac

Shigeru Honda (M(J/T) D: 1/22/63 fr Wight 50.985 ac

Iwao Kishimoto RS #115.50 1/25/63 Doc 302516

50.985 ac.

(For 1965 50.985 ac dropped into 2-2-93-1)

For 1965 9100 ♯ fr 2-2-93-01)

1946	Yr.	1950	1954	1958	1960	1962
51.475 ac	Area	51.975	51.975	51.475	50.985	50.985
10855	Land	11704	15605	19056	52630	85124
824	Imp	1394	1877	3785	3179	2973
11679	Tot	13098	17482	23291	55809	88097
11679	Net	13048	17482	23291	55809	88097
379.80	Tax	431.37	289.08	352.52	652.97	1223.67

1963	~~1964~~	1964	
50.985		U.V.	162470
85124		7000	3889
2875		140	166359
87999			
87999	All Bldgs out - 12/21/64		
1290.07			

X

Nuuanu Ventures 10-6-65

Ld Ct Appn 1441 (Map 1)

Total Area = 71.515 Ac.
Applicant = Harriet Wight
Date = Apr 26 '46

(Map 2)

Subdivision of small parcel at junction of Dow St. & Nuuanu Stream Ld Ct. Appn 1421 (Lot B)

(Map 3)

Subdivision of Lot A into A-1 & A-2
Area Lot A-1 = 20.409 Ac
" " A-2 = 50.944 Ac
Hawn Trust Co. - Executors of Wight Estate
Date = Jan 27 '59

(Map 4)

Subdivision of Lot A-1 into A-1-A to A-1-E
Hawn Trust; Nov 1 '62

(Map 5)

Consolidation of Lot A-1-A as shown on Map 4 and Lot A-2 as shown on Map 3
and resubdivision of said consolidation into Lots 1 to 83 inclusive Lots D to H inclusive, J and K
etc.
Honita & Kishimoto; Oct 22 '69

Property Assessment 1965

Owner Horita, Shigeru & et al

TMK	Land Area	Code
2-2-42-01	9100	SF1

Assessed Valuation

Building	Exemption	Net Val.
Land	"	"
3185		3185

Total N.V. 3185

TMK	Land Area	Code
2-2-42-77	5420	SF 1

Land	N.V.
1897	1897

Total 1897

Herman

TMK 2-2-42:01

Dept. of Taxation
Field Bk Data
Oct 6 '65

YR.	Area	C.V.	YR. VAL.
1946	28.296 ac	15	424
	23.179 "	450	10431
	51.475 "		10855
1949	"	45	1273
		950	10431
			11704
1952	"	60	1698
		600	13907
			15605
1956	"	75	2122
		750	17384
			19506
1959	23.210 ac	1400	32494
	28.296 "	75	2122
	51.506		34616
1960	23.210	2100	48741
	27.775	140	3889
	50.985		52630
1962	"	3500	81235
		140	3889
			85124
1964	"	7000	162470
		140	3889
			166359
1965	91004	.35	3185

① Maps showing breakdown of the two categories?
② Billing for parcel in question

1961 Real Property Assessment

Land	Bldg & Improv.	Total	Net Value
52630	3074	55704	55704

Area 5985A (Penciled in Red) 386.87 386.86

Owner Harriet Wight Edn Tr.
Addressee Hwn Trust Co. PO Box 3170 Hon.

Previous assessments based on; C & C zoning; actual use; highest & best use

Land Use "C" Bounds as it relates to assessment - Eff Jan of 1965

Assment Notices for 1960 and previous in Archives

1760

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

~~BTKan: jhs~~

10a

10-13-65
xerox copy
to Thompson

RECEIVED
OCT 13 1965
State of Hawaii
LAND USE COMMISSION

CABLE ADDRESS:
ATTGEN

BERT T. KOBAYASHI
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

October 11, 1965

Mr. Mark B. Mitchell, President
Nuuanu Valley Community Association, Inc.
3039 Puiwa Lane
Honolulu, Hawaii 96817

Dear Mr. Mitchell:

After our letter to you dated September 27, 1965, this office conducted a thorough review of the facts and the law with respect to the area in question.

We find that the area is in a conservation district and is subzoned for "general use" as provided in conservation district regulation no. 4. (The other type of subzone is "watershed reserve," in which uses are more restricted.) Said conservation district regulation 4 sets forth a number of permissible uses, among them residential use. However, land may not be put to such uses unless the owner first apply to the Board of Land and Natural Resources and receive its approval, or if the Board takes no action within 180 days after the application. It appears that such application had not been made in this instance.

Here, commencement of the operations ante-dated the effective date of the regulation. However, it appears that the applicable statute (Section 19-70, R.L.H. 1955, as amended), similar to the regulation, requires that a land-owner, before establishing a new use of his property, make application to the Board of Land and Natural Resources. Facts indicate that this had not been done.

On the other hand, it should be noted that at the time that the property owners began their operations, the pertinent official conservation district maps then available did not clearly and with sufficient precision delineate the boundary between the conservation district area and other areas. Meanwhile, agencies of government had duly issued permits and approvals for development of the subject property.

LUC was never asked to make this determination until then.

and the developers in apparent good faith have incurred substantial expenditures in reliance upon such governmental permits and approvals. Only after this did the State Land Use Commission make a clear determination that a portion of the development is in a conservation district.

Because of the equities of the situation, the landowners have petitioned the State Land Use Commission for a boundary change, and a public hearing thereon is scheduled for October 29, 1965.

We have been informed that all work in the disputed area has been stopped. Under the circumstances, pending a determination by the Land Use Commission, any further comment will be inappropriate.

It is hoped that the Commission will have the benefit of a full discussion of the problem at its hearing so that it can reach an informed and just decision.

Very truly yours,

Bert T. Kobayashi

BERT T. KOBAYASHI
Attorney General

cc: Governor John A. Burns
Mr. Myron Thompson, Chairman ✓
Land Use Commission
Mr. Jim P. Ferry, Director
Dept. of Land & Natural Resources

Mr. Larry Matsuo
Executive Vice-President
Park Engineering Inc.
1149 Bethel Street, Rm. 710
Honolulu, Hawaii

Dear Mr. Matsuo:

The Land Use Commission next meets on October 29, 1965 at 1:30 p.m. in the hearing room of the Land Use Commission at 426 Queen Street, Honolulu, Hawaii. At that time the petition by Nuuanu Ventures (A65-90) for amendment of the Urban District Boundary in Nuuanu will be heard.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

cc: Chairman Thompson
Planning Dept., C&C of Honolulu
Nuuanu Ventures

June 28, 1965

Mr. Frank Skrivanek, Director
Planning Department
City and County of Honolulu
Honolulu Hale Annex
Honolulu, Hawaii

Dear Mr. Skrivanek:

We are returning the plans for the Nuuanu Park Place subdivision transmitted to us by messenger on June 23, 1965. These are the plans approved by Mr. Lee on July 30, 1964.

The subdivision straddles the Land Use Commission's final district boundary between the Urban and Conservation Districts which became effective on August 23, 1964.

Because of the doubt surrounding the exact location of that line, the Department of Land and Natural Resources requested the Land Use Commission for an interpretation of the boundary as provided in Section 2.11, State Land Use District Regulations. On June 25, 1965, an interpretation was made.

This interpretation holds that all but seventeen lots are in the Urban District. It maintains that lots 42 through 58 lie in a Conservation District. The interpretation is that line shown in red on the enclosed plans.

Sincerely,

RAYMOND S. YAMASHITA
Executive Officer

Encl.

Residents Map Fight Against Subdivision

The Nuuanu Valley Community Assn. will meet at 7:30 p.m. tomorrow at Nuuanu School to map battle plans against development of 17 houselots on conservation district land in the valley.

President Mark Mitchell said the group wants to prepare its presentation against the development of Nuuanu Ventures, Inc., when the State Land Use Commission holds a public hearing on the development firm's petition to have the conservation district boundary changed.

A commission spokesman said the public hearing will be held "on Oct. 29 or soon thereafter."

The controversial subdivision is on a 50-acre tract and the Nuuanu Valley Community Assn. discovered last spring that about three acres of it violated the conservation district boundary line.

The developer petitioned the Land Use Commission to change the boundaries to permit construction on the disputed area.

On Friday, the Land Use Commission approved the petition of Amity Developers, Inc., which is building Kalani-Iki Estate, a 20-acre "horizontal condominium," first of its kind in the State.

A portion of the 20-acre tract, which the developer leased from Bishop Estate, was held to be in conservation district land, and the development firm appealed to the commission to change the conservation boundary to permit construction of the entire $3.5 million project.

The commission based its approval of the Amity petition on grounds that the developer acted in good faith by getting the approval of the City Planning Director on the development plan.

George V. Tharp, head of the firm, said yesterday he believed the delay caused by the boundary dispute will result "in a better development."

"We started out to build 126 houses, but it probably will be only about 85 now," Tharp said. "Although there is no legal obligation to reduce the number, we have decided we have a moral obligation not to construct homes on some of the property."

It was erroneously reported in Saturday's Advertiser that the Nuuanu Valley Community Assn. opposed the Kalani - Iki boundary change.

Mitchell, who earlier had described the cluster-type condominium as an imaginative development, said yesterday the association neither endorsed nor opposed it.

"It is not our kuliana," he said.

Burns Asks Study Of Valley Dispute

adv'tise - 10-7-65

Gov. John A. Burns has asked the Attorney General's office to review the controversy surrounding the development of 17 houselots in Nuuanu Valley.

That was revealed last night at a meeting of the Nuuanu Valley Community Assn. at Nuuanu Elementary School.

Association president Mark Mitchell read a letter from Burns dated Sept. 27 which said in part:

"I have directed the Attorney General's office to review the proceedings thoroughly and to take whatever steps may be legal and proper."

Nuuanu Ventures Inc., developer of the 17 lots, has petitioned to have the conservation district boundary changed.

The State Land Use commission will consider the petition at a public hearing sometime on or after Oct. 29.

Burns also said in the letter:

"The State Land Use law was conceived and enacted with good reason and, I believe, with the type of pioneering foresight that will ensure future generations of our people pleasure of natural beauty and open spaces that we have known."

Nuuanu Assn. Seeks Action

Adv. 9-10-65

The Nuuanu Valley Community Assn. last night passed three strong resolutions to get action in its fight to prevent Nuuanu Park subdivision from developing property in a State conservation district.

The resolutions were:

● That the Association request the State attorney general to take immediate action to force compliance with State laws regarding conservation district land in Nuuanu Valley.

● That the Association request the City Corporation Counsel to take immediate steps to force compliance with the general plan regarding land in Nuuanu Valley.

● That the Association employ legal counsel to represent it in the forthcoming State Land Use Commission hearing.

Association president Mark Mitchell, said: "We're determined to get action. I have spoken to many community groups and civic organizations in the city and they all have pledged their support."

The meeting in Nuuanu School was attended by 35 members.

Bad Influence

Ask State Inquiry Into Nuuanu Lots

Advertiser Photo by Jerry Y. Chong

Hillside cuts in this Nuuanu Valley subdivision have prompted area residents to seek investigation of a possible violation of conservation district boundary.

By BILL COOK
Advertiser Staff Writer

The Nuuanu Valley Community Assn. has asked the State to investigate whether bulldozed cuts into a Pacific Heights hillside for a residential subdivision are violating the State Land Use Commission's conservation district.

The subdivision — known as Nuuanu Park Place — is being developed by Shigeru Horita and Iwao Kishimoto, recorded owners of the property.

City Planning Commissioner Kinji Kanazawa is attorney for the developers and one of a number of partners.

Another member of the City Planning Commission, Chairman George F. Centeio, has said he plans to build a home in the subdivision.

In a letter to Jim P. Ferry, director of the State Department of Land and Natural Resources, the Nuuanu association, through its executive committee, said its comparison of the subdivision layout and the conservation boundary line indicates that 16 lots appear to be encroaching into the conservation district.

"During last month's heavy rains, Valley residents became concerned about the quantity of storm runoff seen gushing from the hillside and eroding the future house lots," the association letter noted.

One of the purposes of establishing conservation districts is to permit vegetation in undeveloped areas to slow the runoff of rain water.

The association, headed by Mark B. Mitchell, vigorously opposed the developers' application two years ago to re-

See NUUANU on A-1A, Col. 1

1720

THE OUTDOOR CIRCLE
1319 KALAKAUA AVENUE
HONOLULU, HAWAII 96814

RECEIVED
AUG 31 1965
State of Hawaii
LAND USE COMMISSION

August 27, 1965

Mr. Myron Thompson, Chairman
Land Use Commission
426 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Thompson:

The Outdoor Circle would respectfully urge your most careful consideration of the request to move the boundary lines of the conservation district to legally clear the Mauka border of Nuuanu Park Subdivision.

We feel the approval of this request would set a further precedent for the constant creeping encroachment on conservation areas. Little by little such encroachment will destroy the purpose of your commission and the law which establishes it, mainly to conserve our vital land resources.

The beautiful lush green Nuuanu valley is the approach to Nuuanu Pali, one of our most valuable scenic sites and tourist attractions. Already this approach is scarred on both sides with the barren and ugly ravages of subdividers bulldosers. To condone this one will invite further such blights.

It would seem to us far more important to try to find ways to restore and preserve the natural beauty of this valley. We hope you will consider preservation a part of the total problem and do what you can to protect our greatest assest, the beauty of our islands.

Sincerely,

Mrs. Richard H. Rice

Mrs. Richard H. Rice
President

ACADEMY BOND
RAG CONTENT
VALLEY PAPER CO

File

1746

RECEIVED
SEP 23 1965
State of Hawaii
LAND USE COMMISSION

September 20, 1965

To: Nuuanu Valley Community Association
c/o Mr. Mark B. Mitchell, President
3039 Puiwa Lane
Honolulu, Hawaii 96817

From: Hawaiian Trail and Mountain Club
c/o David C. Sanford, President
99-215 Leomanu Place
Aiea, Hawaii 96701

Subj: Encroachment of Conservation District

Dear Mr. Mitchell:

The Hawaiian Trail and Mountain Club offers its support to the Nuuanu Valley Community Association in opposing the encroachment of the Conservation District by unauthorized projects and activities.

We feel that there must be no chance for the establishment of any precedent (or feeling among the public that such a precedent has been established) whereby the granting of a petition for District Boundary change can be obtained after encroachment has already been made. We feel, also, that enforcement should not be side-stepped and that if such unauthorized encroachment occurs, then the offending party should be required to perform or pay for any restoration work needed.

We plan to oppose the Nuuanu Ventures petition for District Boundary change, insofar as approval of the petition may contribute to the possible establishment of the type of precedent referred to above.

Please let us know how our two Organizations may best work together on this matter. I can be reached during the day at 673-357 or 673-349, and during the evening at 464-419.

Very truly yours,

David C. Sanford

David C. Sanford

cc: City Planning Commission
Land Use Commission — CHAIRMAN & MEMBERS

1757

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OCT 6 1965
State of Hawaii
LAND USE COMMISSION

MANOA VALLEY COMMUNITY ASSOCIATION
P O Box 3162, Honolulu, Hawaii

October 5, 1965

Mr. Myron B. Thompson, Chairman
Land Use Commission
426 Queen St.
Honolulu 96813

Dear Mr. Thompson:

I am enclosing a copy of a letter sent to Mr. Ferry on September 24th. Please accept my apologies for failing to send you a copy earlier.

The concern of the association members, as indicated during our discussion of this matter, is to avoid irreparable damage to the beauty of our island by encroachment upon established forest reserve lands. We believe that each request for a change in boundaries should be impartially studied by our public officials and commissions and that there should be no action taken without a full public hearing on the matter.

Sincerely,

Stewart Liner

Stewart Liner
President

Copy to Thompson

MANOA VALLEY COMMUNITY ASSOCIATION
P O Box 3162, Honolulu, Hawaii

September 24, 1965

Mr. James P. Ferry, Chairman
Board of Land and Natural Resources
P O Box 621
Honolulu, Hawaii 98609

Dear Mr. Ferry:

The Manoa Valley Community Association at its meeting on September 9, 1965, with approximately 100 members present, unanimously passed a motion supporting the preservation of our present forest reserve boundaries. While the association's primary interest lies in the retention of existing forest reserve boundaries in Manoa Valley, its attention in this particular instance is directed to efforts now being made to classify as residential the present forest reserve lands in Nuuanu Valley.

This association feels strongly that to permit a pattern of encroachment would encourage speculation in forest reserve lands and make a farce of the Land Use Program. We therefore urge that forest reserve boundary changes be considered only when the long-term interests of the entire community require them.

Sincerely,

Stewart Liner
President

cc: Nuuanu Valley Community Association
Editor Honolulu Advertiser
Editor Honolulu Star Bulletin
Editor Press Newspapers

1718

NEAL S. BLAISDELL
MAYOR

RECEIVED
AUG 31 1965
State of Hawaii
LAND USE COMMISSION

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

CITY AND COUNTY OF HONOLULU
PLANNING DEPARTMENT
HONOLULU HALE ANNEX
HONOLULU, HAWAII 96813

August 27, 1965

Mr. George Moriguchi, Executive Officer
State Land Use Commission
426 Queen Street
Honolulu, Hawaii 96813

Dear Mr. Moriguchi:

SUBJECT: Amendment to Land Use District Boundaries
Nuuanu - Nuuanu Park Place
Tax Map Key: 2-2-42: portion of 1
Applicant: Nuuanu Ventures

Pursuant to Section 98H-4, Revised Laws of Hawaii, 1955, as amended, the Planning Commission on Thursday, August 26, 1965, considered the petition filed by Mr. Larry K. Matsuo of Park Engineering, Inc., representing Nuuanu Ventures, for an amendment to the Land Use District Boundaries from Conservation district to Urban district for land situated at Nuuanu Park Place (Lots 42 to 59 inclusive), comprising approximately 155,900 square feet.

The staff reviewed for the Planning Commission the grades of the area and the proposals for the subdivision development. Certain portions of the property were considered too steep for logical subdivision purposes. It was the recommendation of the Planning Department that such steep portions remain in the Conservation district.

The Planning Commission, after considering all of the facts, voted to recommend that the Land Use District Boundary be amended from Conservation district to Urban district for that portion of land comprising approximately 155,900 square feet.

The recommendation for the change in Land Use District Boundaries by the Planning Commission confirms the Planning Director's action of July 30, 1964, approving the subdivision plan.

Very truly yours,

PLANNING COMMISSION

By Frank Skrivanek
Frank Skrivanek
Planning Director

CONCUR:

Victor K. Givan
ACTING Managing Director

John D. Ellis
ACTING Mayor

EY:ef

July 20, 1965

Mr. Frank Skrivanek
Planning Department
City & County of Honolulu
Honolulu Hale Annex
Honolulu, Hawaii 96813

Dear Mr. Skrivanek:

Pursuant to Section 98H-4, RLH 1955, as amended, and Act 32/SLH 1965, a copy of a petition for an amendment to the Land Use District Boundaries, submitted by Mr. Larry K. Matsuo of Park Engineering, Inc., representing Nuuanu Ventures, is forwarded to you for your comments and recommendations.

Thank you for your cooperation.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

Encls. - 1 (petition w/map)

July 19, 1965

Mr. Larry Matsuo
Executive Vice-President
Park Engineering, Inc.
1149 Bethel St., Rm. 710
Honolulu 13, Hawaii

Dear Mr. Matsuo:

This is to acknowledge the receipt of your $50.00 check for an application to amend the land use district boundaries as shown on TMK 2-2-42:1.

In accordance with Section 98H-4, SLH 1955, as amended and Act 32/SLH 1965, this Commission must schedule a public hearing on your petition no sooner than 60 days nor more than 120 days. After 45 but within 90 days following the public hearing, the Land Use Commission is obliged to render a decision on your petition.

A hearing schedule will be determined at a later date to consider the several pending petitions, including yours, in the City and County of Honolulu. We will inform you of the date of the hearing as soon as it is determined.

Should any questions develop in the meantime, we will contact you. If you should have any questions, please feel free to contact us.

Very truly yours,

RAYMOND S. YAMASHITA
Executive Officer

cc: Chairman M. Thompson

PARK Engineering, Inc.

1149 BETHEL ST., RM. 710
HONOLULU 13, HAWAII
TELEPHONE: 511-676

A65-90

July 19, 1965

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JUL 19 1965
State of Hawaii
LAND USE COMMISSION

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

Subject: Petition for Amendment to Land Use District Boundary affecting Tax Map Key: 2-2-42:1
Situated at Honolulu, Oahu, Hawaii

Gentlemen:

Transmitting herewith are two (2) copies of Petition for Amendment to Land Use District Boundary affecting Tax Map Key: 2-2-42:1 and filing fee of FIFTY DOLLARS ($50.00).

Sincerely yours,

PARK ENGINEERING, INC.

Larry K. Matsuo

Larry K. Matsuo
Executive Vice-President
Engineers for the Developers

State Form B14

STATE OF HAWAII

OFFICIAL RECEIPT No. 60

Planning & Econ. Development
Department, Bureau or Commission

July 21, 1965

RECEIVED from Nuuanu Venture

Fifty & no/100 DOLLARS

Public Hearing Fee — Land Use Commission

$ 50 00

Henry K. Dukelow
Public Accountant

State Form B14

STATE OF HAWAII

Land Use Commission
426 Queen Street, Hon. Haw.
Department, Bureau or Commission

OFFICIAL RECEIPT **No.** 105

July 19 1965

RECEIVED from Nuuanu Venture

Fifty + no/100 **DOLLARS**

For public hearing by LUC for boundary change from Conservation to Urban District on Oahu

$ 50.00

Dora Y. Horikawa
Public Accountant

① PETITION

① PETITION

RECEIVED
JUL 19 1985
State of Hawaii
LAND USE COMMISSION

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

This space for LUC use

Date Petition and Fee received by LUC _____

Date forwarded to County for recommendation _____

Date Petition, and County recommendation received by LUC _____

PETITION FOR AMENDMENT TO THE LAND USE COMMISSION DISTRICT BOUNDARY

(I) (We) hereby request an amendment to the Land Use Commission District Boundary respecting the County of Honolulu, Island of Oahu, map number and/or name 0-13 Honolulu to change the district designation of the following described property from its present classification in a(n) conservation district into a(n) urban district.

Description of property:

Portion of Tax Map Key 2-2-42:1 as shown on Exhibit "A"

Petitioner's interest in subject property:

Owner

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

See attached Sheet "1

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

The subject property is needed for a use other than that for which the district in which it is located is classified. See sheet #2

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

(a) The land is usable and adaptable for the use it is proposed to be classified. See Sheet #2

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

Signature(s) SHIGERU HORITA & IWAO KISHIMOTO, Authorized General Partners of Nuuanu Ventures, a limited partnership

Shigeru Horita

Iwao Kishimoto

Address: 2024 No. King St, Hon.

Telephone: 812-858

Sheet #1

Petitioners' reasons for requesting boundary change:

(1) Subdivision plans of affected area were approved by the various agencies of the City and County of Honolulu on or before August 13, 1964, prior to the adoption of the final boundary on August 23, 1964.

(2) Inasmuch as the interim boundary was a "broad brush" line, the developers inadvertently erred in not asking the State Land Use Commission for a better determination of the boundary.

(3) On the basis of approved Engineering Plans, this area has been graded and at this time to request the developers to restore this area to its original condition would be practically impossible. However, with proper landscaping and maintenance by each individual lot owner, this area can be greatly improved.

(4) Denial of this request will create an economic hardship on the developers as cost allocation were made on the basis of approved plans.

SHEET #2

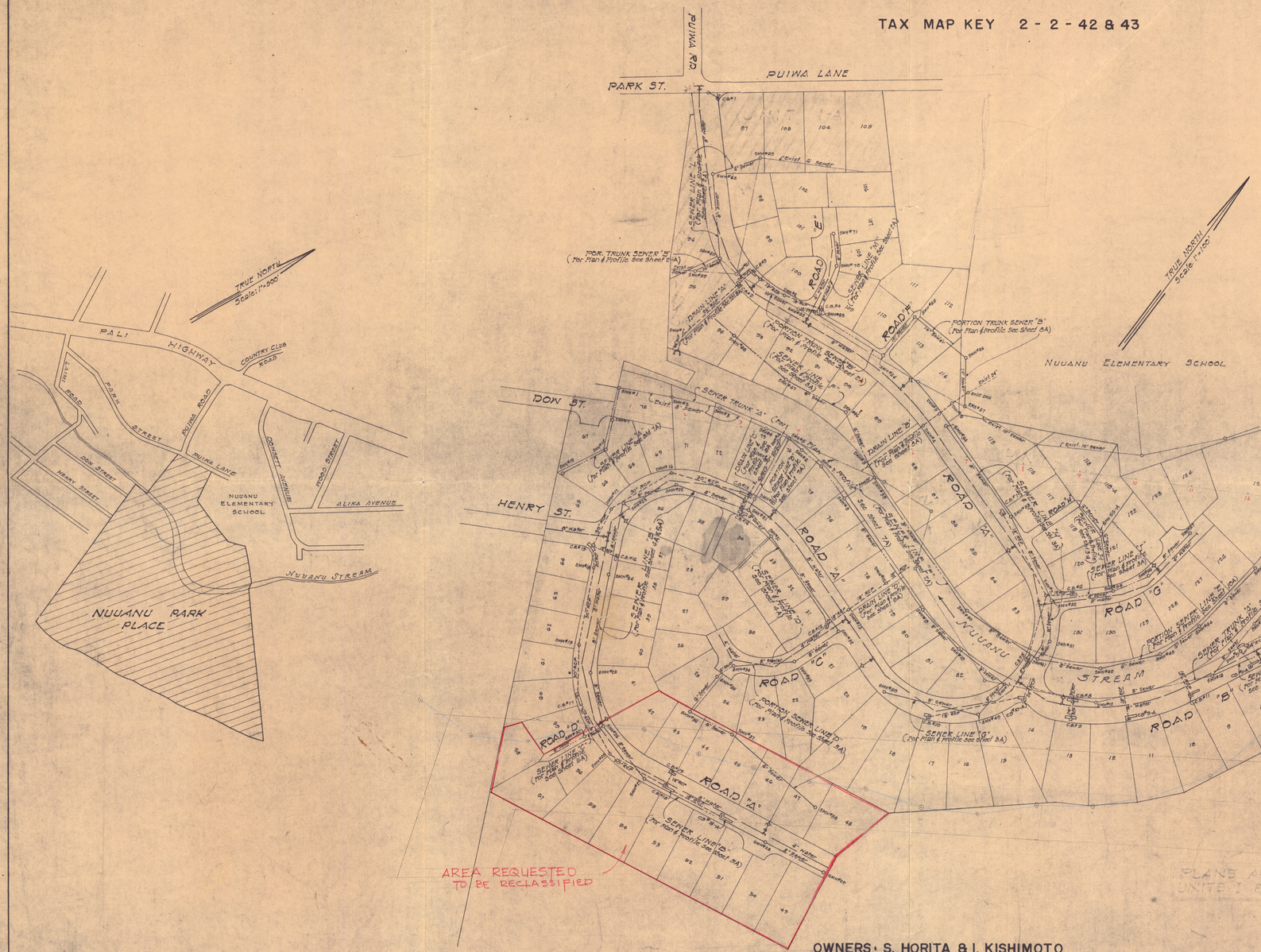
(1) The subject property is needed for a use other than that for which the district in which it is located is classified because of the scarcity of house lots in the Honolulu area and for reasons stated in Sheet #1.

(2) The land is usable and adaptable for the use it is proposed to be classified as evidenced by the approved subdivision plans and commitments to purchase from potential buyers.

NUUANU PARK PLACE

AT NUUANU, HONOLULU, OAHU, HAWAII

TAX MAP KEY 2 - 2 - 42 & 43



NOTE: Sheets 1-A to 10-A inclusive Supercedes Sheets 1 to 10 inclusive.

INDEX

		SHEET
TITLE SHEET		1 A
PLAN & PROFILE	ROAD "A" & "B", PORTION TRUNK SEWER "B" & PORTION SEWER LINE "L"	2 A
PLAN & PROFILE	ROAD "A" & "G"	3 A
PLAN & PROFILE	ROAD "A" & "C"	4 A
PLAN & PROFILE	ROAD "A" & "D", SEWER LINE "C" & PORTION SEWER LINE "D"	5 A
PLAN & PROFILE	ROAD "B", DRAIN LINE "E" & PORTION TRUNK SEWER "A"	6 A
PLAN & PROFILE	PORTIONS TRUNK SEWER "A", SEWER LINES "B" & "E" & SEWER LINE "A"	7 A
PLAN & PROFILE	DRAIN LINES "A" & "B", SEWER LINE "F" ROAD "F" & PORTION TRUNK SEWER "B"	8 A
PLAN & PROFILE	NUUANU STREAM & DRAIN LINES "C" & "D"	9 A
PLAN & PROFILE	NUUANU STREAM & PORTION SEWER LINE "E"	10 A
CROSS SECTIONS	NUUANU STREAM	11 & 12
STREAM DETAILS		13
~~PLAN & PROFILE~~	~~INTERCEPTOR DITCH~~ DELETED	~~14 & 15~~
CURB RETURN GRADES		16
NOTES, TYPICAL ROAD SECTIONS & DETAILS		17
THREE - CELL 10 X 10 BOX CULVERT DETAILS		18 & 19
CROSS SECTIONS ROADS		20 - 24

APPROVED

[signature] CHIEF ENGINEER, DEPARTMENT OF PUBLIC WORKS	8/11/64 DATE
[signature] PLANNING DIRECTOR, PLANNING DEPARTMENT	8/13/64 DATE
for [signature] DIRECTOR, DIVISION OF SANITATION	8/13/64 DATE
for [signature] TRAFFIC ENGINEER, DEPARTMENT OF TRAFFIC	8/12/64 DATE
Acting [signature] MANAGER & CHIEF ENGINEER, BWS	7/23/64 DATE

OWNERS: S. HORITA & I. KISHIMOTO

PLANS PREPARED BY

PARK ENGINEERING INC.

EXHIBIT "A"

7701

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JUL 19 19..5
State of Hawaii
LAND USE COMMISSION

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