A65-107
R. E. ALLISON. ET AL

COPY

PLANNING DEPARTMENT
25 AUPUNI STREET

COUNTY OF HAWAII
HILO, HAWAII 96720

Take to Kona on 18th

RECEIVED
APR 7 1969
State of Hawaii
LAND USE COMMISSION

April 2, 1969

R. E. Allison
Allisons of Hawaii
451 Awa Street
Hilo, Hawaii 96720

Re: Proposed Subdivision
Panaewa Houselots

Please be informed that your request for subdividing Lot 33 into 10,000 square feet minimum lot does not conform to our existing zoning ordinance. Said area is zoned as Agricultural 3 acres minimum size lots by the County.

Therefore we are returning your application and maps. You are informed that until this matter is resolved by the Land Use Commission and until said area is zoned as residential 10,000 minimum under the County, we are not able to process the subdivision as you requested.

Raymond H. Suefuji

Raymond H. Suefuji
Planning Director

PIY:vmm

cc: Ramon Duran
Land Use Commission

Attachment

STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM September 20, 1968

TO: LAND USE COMMISSION

FROM: STAFF

SUBJECT: A65-107 - RALPH E. ALLISON, ET AL

CHRONOLOGICAL SUMMARY

December 3, 1965 - Petition dated December 2, 1966 for amendment of boundaries from Agricultural to Urban or Rural submitted by Allison, containing 48 signatures of owners of Panaewa Houselots subdivision in Hilo, for the reason that the Territory of Hawaii had restricted the lots for residential purposes only and had given the purchasers of the lot the right to subdivide and that the Agricultural designation by the LUC amounts to a breach of contract or a lack of good faith on the part of the State.

December 17, 1965 - Standard petition form, filing fee and supplemental evidence received, indicating that 96% of the owners of Panaewa Houselots, TMK 2-2-51 and 52, signed the petition.

February 4, 1966 - Hawaii County Planning Commission's recommendation for approval from Agricultural to Rural received based on the following:

a. Existing use of area indicates rural conditions.

b. Soils not suited for intensive agriculture.

c. Area should not be in urban since it is not contiguous to urban.

d. The County General Plan has provided for adequate residential areas in Hilo.

March 25, 1966 - Public hearing held in Kona. However, Attorney Curtis

Carlsmith testified that the public notice contained "irregularities" which needed to be corrected. He requested that the hearing be deferred. Request granted by the LUC.

April 12, 1966 - Amended petition for boundary amendment submitted by Allison, representing 59 owners, requesting change from Agricultural to Urban or Rural.

April 14, 1966 - LUC voted to initiate a boundary change for the owners who did not sign the Allison petition to expedite processing of the petition.

May 5, 1966 - Letter received from Suefuji indicating that the County Planning Commission's position remains unchanged in regard to the amended petition.

May 6, 1966 - Public hearing held in Hilo. LUC staff recommended disapproval of the petition on the basis of:

1. Lack of substantiation for need for boundary change.
2. An estimated 2,400 acres of vacant urban lands occur in the Hilo District.
3. Approval of ½-acre lots in the area would increase the number of lots from 67 to 313 and thereby overtax existing facilities.
4. Petitioners' arguments relating to their right to subdivide in accordance with sales agreement and Land Patents have been ruled upon negatively by the LUC.
5. The County Planning Commission recommended against Urban districting but recommends a Rural classification, and would not approve any subdivisions until improvement

district projects and density studies are initiated.

July 8, 1966 - LUC voted to accept staff recommendation for denial of Allison petition (7 ayes, 1 nay, 1 absent).

July 26, 1966 - C.A. #1383 filed on July 20 and 21, 1966 in Third Circuit Court received--Notice of Appeal, Designation of Record on Appeal, Motion to Hear Oral Argument and Receive Written Briefs, Order for Transcript and Statement of Case.

August 3, 1966 - Summons filed by Carlsmith on August 2, 1966 received.

August 5, 1966 - Motion to Dismiss, Affidavit, Memorandum in Support of Motion to Dismiss and Notice of Motion filed by Roy Takeyama on August 2, 1966 received.

August 22, 1966 - Answer to Statement of Case filed by Roy Takeyama on August 19, 1966.

August 24, 1966 - Certified Record on Appeal signed by Myron Thompson.

August 26, 1966 - Findings of Fact, Conclusions of Law and Decision delivered to Carlsmith.

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Molokai Community Center
Kaunakakai, Moloaki

September 13, 1968 - 2:30 p.m.

Commissioners Present: C. E. S. Burns, Jr., Chairman
Wilbert Choi
Shelley Mark
Alexander Napier
Goro Inaba
Leslie Wung
Shiro Nishimura
Keigo Murakami

Commissioners Absent: Sunao Kido

Staff Present: Ramon Duran, Executive Officer
Ah Sung Leong, Planner
George Pai, Legal Counsel
Dora Horikawa, Stenographer

Chairman Burns swore in persons planning to testify before the Commission.

HEARING

PETITION BY MOLOKAI RANCH, LTD. (A68-192) TO RECLASSIFY 6,800 ACRES FROM AGRICULTURAL TO URBAN AT THE WEST END OF MOLOKAI

Prior to the presentation of the staff report, Mr. Duran pointed out on the map the property under discussion and the other land uses on the Island of Molokai.

It was recommended by staff that an area sufficient to accommodate a 10-year growth, 1,460 acres, be rezoned to the Urban District. However, it was further recommended that the consultants be requested to review and comment on this application before final action is taken by the Commission. (See copy of report on file.)

Chairman Burns noted that the Maui Planning Commission had recommended approval of the petition and wondered what the County's responsibilities were in terms of supplying water, etc., to the project.

See pg. 8

people, close to urban amenities, free from floods, and abuts an Urban District. (See copy of report on file.)

It was brought out that petitioners' plan involved approximately 35 lots for residential homes with a density of 2 acres per dwelling unit. Furthermore, since a golf course was also being created in the area surrounding the subdivision, which is a permitted use in the Agricultural District, the area in question automatically will be taken out of agricultural use. In this respect, Mr. Duran raised the question of the reasonableness of permitting golf courses in an Agricultural District by the Land Use Commission regulations.

Commissioner Murakami moved to approve the petition as recommended by staff, which was seconded by Commissioner Choi. The Commissioners were polled as follows:

Ayes: Commissioners Choi, Napier, Mark, Inaba, Nishimura, and Murakami

Nays: Commissioner Wung

Abstain: Chairman Burns

The motion was carried.

APPLICATION BY HISAO AND MATSUI FUJII (SP68-57) FOR A SPECIAL PERMIT TO OPERATE A RESTAURANT AND BAR AT OLOWALU, LAHAINA, MAUI

Mr. Leong presented staff report recommending approval of the special permit as conditioned by the Maui County Planning Commission and also that the alterations be completed within one year. (See copy of report on file.)

Commissioner Wung moved to approve the special permit request, as recommended by staff, seconded by Commissioner Choi and the motion was carried by 7 ayes. Commissioner Napier voted Kanalua.

DECISION IN THE THIRD CIRCUIT COURT - ALLISON, ET AL VS. LAND USE COMMISSION - A65-107

Mr. Duran adivsed that Mr. George Pai, legal counsel, received a court decision by the Third Circuit Court, Ralph Allison, et al versus the Land Use Commission, dated September 3, 1968, reversing the decision of the Commission.

Mr. George Moriguchi, Executive Officer of the Land Use Commission at the time of the decision, briefly reviewed the background of the case.

A special permit request by James Tamura (SP65-19) in May of 1964 to subdivide his one-acre lot in an Agricultural District at Panaewa Houselots into 4 parcels had been denied by the Land Use Commission. Petitioner took the case to court, and the judge directed that the Hawaii Planning Commission request a favorable ruling from the Land Use Commission. The subsequent denial by the Land Use Commission was upheld by the Third Circuit Court.

A new petition by Ralph E. Allison, et al was filed with the Land Use Commission, requesting a rural or urban districting for the Panaewa Houselots. The Commission ruled that this was not proper and denied the request. Thereafter, the petitioners took the case to court which resulted in the present decision by Judge Ogata, reversing the decision of the Land Use Commission.

Mr. Pai expressed his opinion that the conditions of the sale under which these people purchased the land from the then Territory of Hawaii weighed heavily in the Judge's decision. Mr. Moriguchi stated that Judge Monden ruled this was not valid and sustained the Land Use Commission's action.

In the present decision, Judge Ogata was placing the case solely on the physical characteristic of the land without any consideration for the need for this type of development. Mr. Moriguchi quoted a passage in the decision which read "while this court must not sit as a zoning commission and it should not substitute and replace its judgment for that of the Commission, such salient physical features and land qualities would overwhelmingly indicate that the area is deserving of at least a rural district boundary". It was Mr. Moriguchi's impression that although Judge Ogata mentioned that the Territory of Hawaii sold the land for houselots, he did not use it as a basis for his decision.

Mr. Pai reiterated his impression that the conditions of sale by the territorial government in 1958 restricting the use to residential purposes weighed heavily in Judge Ogata's decision. He added that although a prior action by a State agency does not bind the Land Use Commission in its zoning powers, this was a technical point and the courts did not rule on technicalities but on the justice and merits of the case.

Chairman Burns raised the question of the alternative left to the Commission. Mr. Pai advised that there were 30 days in

which an appeal could be filed with the Supreme Court and the decision was up to the Commission. He added that he disagreed with the Judge's decision insofar as the ruling was based on the rationale that the land was usable for rural and not agricultural purposes.

Chairman Burns observed that if the Supreme Court rules in favor of the appellants, this could result in other similar court decisions.

Mr. Pai felt that the result of this court decision would not create a binding precedent.

Mr. Duran wondered whether the court could ignore the fact that the Commission had based its decision on need according to the mandates of the Land Use Law and for the court to determine that the Land Use Commission had acted in a capricious and arbitrary manner, could set a precedent, and reverse the Commission's decision in other similar situations.

Mr. Duran advised that legal counsel could, within 30 days, indicate to the court of the Commission's intent to appeal and work up a brief in the meantime. Mr. Moriguchi suggested that Mr. Duran, Mr. Pai and he could review the matter in detail and report back to the Commission.

Chairman Burns agreed that the matter will be held in abeyance until a recommendation could be prepared on a course of action.

Since there was no further business, the meeting was adjourned.

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom and when delivered ☐ Show to whom, when, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 28064

CERTIFIED NO.

INSURED NO.

DATE DELIVERED AUG 26 1966

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*) Cyrus Cadsmith

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Louis Bayo

SHOW WHERE DELIVERED (*only if requested*)

c55—16—71548-8 GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

POSTMARK OF DELIVERING OFFICE

HILO, HAWAII
AUG 26 1966
USPO

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

State of Hawaii

STREET AND NO. OR P.O. BOX

Land Use Commission,

POST OFFICE, STATE, AND ZIP CODE

HONOLULU, HAWAII

436 Queen St.

POD Form 3811 Oct. 1965 055—16—71548-8

LAND USE COMMISSION
STATE OF HAWAII

IN THE MATTER OF THE PETITION)
BY RALPH E. ALLISON, ET AL,)
A65-107)

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

The above Petition for amendment to the Land Use Commission District Boundary from Agriculture to Urban having come on for hearing on May 6, 1966, at the Board of Supervisors' Chambers, Hilo, Hawaii, and the Land Use Commission having duly considered the evidence now finds and concludes as follows:

FINDINGS OF FACT

1. That the Petition encompasses approximately 174 acres of land which is in the Agricultural District and which is located in the Panaewa Houselots Subdivision, Waiakea, South Hilo, Hawaii (TMK 2-2-51, 2-2-52).

2. That the Petitioners involved are fifty-nine owners of sixty separate parcels and the State Land Use Commission, which upon its own motion, initiated proceedings for seven parcels of land owned by others.

3. That the State Land Use Commission has notified by mail all owners of the seven parcels whose lands were brought under consideration on the motion of the Commission itself.

4. That the Petition involves a change in district boundary from an Agricultural District to an Urban or a Rural District

involving approximately 174 acres. That the fifty-nine Petitioners desire the right to subdivide their lands for residential purposes.

5. That the Hawaii County Planning Commission, after duly considering the data submitted to them, recommended that the subject area not be put in the Urban District but should be in the Rural District.

6. That the Hawaii County Planning Commission has indicated that the General Plan has provided for adequate residential areas in the city of Hilo including some areas which are not designated as agricultural but are contiguous to Urban Districts.

7. That the Hawaii County Planning Commission recommends that no subdivision be approved until adequate water service is provided for by improvement district and until the density of rural-agricultural districts are set at a later date upon further study.

8. That the Petitioners' statement that adequate basic services are close at hand and available at relatively low cost to the owners of the lots is in direct contradiction with statements offered by the Hawaii County Board of Water Supply. The Board of Water Supply has indicated that the present water system at the Panaewa Houselots is adequate only for low-density development, such as presently exists, and any further subdivision of the existing lots would overtax the system.

9. That the Petitioners' statement indicating that an increase of 10,000 persons will generate a need for 4,000 additional homes (2.5 persons per home), has not been substantiated in light of 1960

U. S. Census data for the Island of Hawaii, which indicated 3.8 persons per household and data for the Island of Oahu, which indicated 4.4 persons per household.

10. That approximately 2,400 acres of vacant lands occur within the existing Hilo Urban District.

11. That the Petitioners have failed to substantiate their statement that 2,400 acres will not provide for 4,000 additional homes plus lands for schools and roads.

12. That extensions of the present ratio of residential land use to commercial, industrial, quasi-public, schools, and off-street parking uses can provide for approximately 6,240 households.

13. That the Petitioners themselves are of the opinion that a rural classification is not proper.

14. That the existing land use involves residential, agricultural, and wooded vacant areas.

15. That among the wild growth in the area, coffee orchards, lichee orchards, macadamia nut orchards, and small gardens are evident. Therefore, there is no absolute preclusion of agricultural activities in the area.

16. That the land patent issued to the present owners by the then Commissioner of Public Lands of the Territory of Hawaii indicated that:

a. "Should the Patentees, or any assignee of theirs, desire to subdivide said lot or any portion thereof, each subdivision shall conform with the minimum specifications and standards established by the

Hawaii Traffic and Planning Commission, excepting that said lot and each additional lot created as a result of said subdivision shall contain an area of at least 10,000 square feet, or the minimum area required by said Planning Commission, whichever is the greater and the owner of each lot as subdivided shall be required within a period of five (5) years next following the day of said subdivision or re-subdivision to construct on each lot so created a single family dwelling meeting the requirements above mentioned with respect to materials and minimum floor area."

b. "That the land hereby conveyed shall be used for residence purposes only for a period of ten (10) years from the date of issuance of this land patent. In the event of violation of the foregoing provision, said land shall forthwith be forfeited and resume the status of government land and may be recovered by the State of Hawaii or its successors in an appropriate action or proceeding."

17. That the Petitioners' arguments relating to their right to subdivide in accordance with special sales agreement and land patent issued by the then Territory of Hawaii have been ruled upon negatively by the Land Use Commission.

CONCLUSIONS OF LAW

1. That the Petitioners have failed to prove that the land is needed for a use other than that for which it is classified. While there is evidence that said lands could be developed for urban uses, there is over-riding evidence that other lands (approximately 2,400 acres) in close proximity to the lands under consideration have already been placed in the Urban District and are presently vacant and adequate for foreseeable urban growth in the Hilo area.

2. That other undeveloped lands already districted Urban are better located to centers of trading and employment facilities and are more easily serviced by public agencies than the lands under consideration, thus alleviating any evidence of urban pressure in the area under petition.

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

4. That further extension of the existing Urban or Rural District to include the lands under consideration would contribute towards scattered development.

5. That urbanization of these lands under consideration would be contrary to the plan prepared for the County of Hawaii and may thus hamper coordination of government programs.

6. That the proposed urban or rural reclassification can result in further subdivision that would burden public agencies to provide adequate roads and water service.

7. That the proposed subdivision will substantially alter and change the essential character of the land by introducing higher density uses.

8. That the specifications in the land patent issued by the then Territory of Hawaii require conformance with the minimum specifications and standards established by the land use law and regulations in effect at the time subdivisions are initiated by the land owners.

9. That the land patent specifies a minimum lot area of 10,000 square feet, or the minimum area required by the Hawaii County Planning Commission, whichever is the greater; that it does not create a legal contract requiring the Land Use Commission to permit subdivision of said lands into 10,000 square foot lots.

10. That said lands can still be used for residential purposes as specified in the land patent provided that the requirements of the land use law and regulations are met.

11. That the Petitioners have failed to substantiate their statement indicating that the present high cost of small residential lots in Hilo is an indication that insufficient urban residential lands have resulted in a gross over-inflation of the price of the small amount of as yet unsold urban land in Hilo. In direct contradiction, the Petitioners themselves have reported that the over-

inflated price of urban houselots is attributed to the rise in interest of individual home ownership and upgraded County standards for new subdivision construction. Also in contradiction to their statements of "over-inflated price of urban houselots," the Petitioners have indicated that there has been a 10 per cent increase in land price over the past five years, or an average of only 2 per cent per year.

12. That the Petitioners' statement indicating that there presently exists city-like concentrations of people, structures, and streets including available urban level of services is incorrect. The entire length of Lama Street is unpaved and water services are inadequate for further subdivisions. Also, the present building density in the area approximates 2.7 acres per dwelling unit.

13. That approval of a rural classification can increase the number of lots in the area nearly five-fold from 67 lots to 313 lots and thereby overtax the present facilities available. That the approval of an urban classification can increase the number of lots even greater than the increase for a rural classification.

14. That the lands are usable for agricultural purposes as evidenced by present activities in the area and that the present agricultural districting is reasonable and proper.

DECISION

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

Dated: August 24, 1966, Honolulu, Hawaii.

STATE LAND USE COMMISSION

By Myron Thompson
Myron Thompson

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,	)
	)
Appellants,	)
	)
vs.	)
	)
STATE LAND USE COMMISSION,	)
	)
Appellee.	)
	)
	)

CERTIFIED RECORD ON APPEAL

BERT T. KOBAYASHI
Attorney General

ROY Y. TAKEYAMA
Deputy Attorney General

State of Hawaii
Iolani Palace Grounds
Honolulu, Hawaii

Attorneys for Appellee

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,	)
Appellants,	)
vs.	)
STATE LAND USE COMMISSION,	)
Appellee.	)

CERTIFIED RECORD ON APPEAL

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

1. Petition with accompanying letter and data from appellants (petition received 12/17/65).
2. Comments and recommendations from the Hawaii County Planning Commission, together with its staff report, received February 4, 1966.
3. Memo of telephone conversation with Hawaii County Board of Water Supply re adequacy of present water system, dated March 14, 1966.
4. Land Use Commission staff report dated March 25, 1966.
5. Minutes of March 25, 1966 meeting of Land Use Commission.
6. Letter from Curtis Carlsmith, dated March 29, 1966, re Allison's authority to represent the Panaewa owners and their intent to file amended petition for urban first and then rural.
7. Letter from Curtis Carlsmith, dated April 11, 1966, transmitting amended petition with supporting data.
8. Minutes of April 14, 1966 meeting of Land Use Commission re absence of signatures of a few of the landowners at Panaewa. Commission moved to initiate boundary change for these people.

9. Land Use Commission staff report dated May 6, 1966.

10. Special Sale Agreement No. 4133 with schedules A and B.

11. Land Patent No. S-13,710.

12. Legal Notice dated Sept. 19, Oct. 11, Nov. 1, 16, 1958 re Land Auction.

13. Supporting data and rebuttals submitted by Curtis Carlsmith. (Property needed for other use, usable for proposed use, changed conditions, contract theory, improper original district boundary, etc.)

14. Land Use Commission staff memorandum dated July 8, 1966.

15. Verbatim transcript of May 6, 1966 meeting of Land Use Commission.

16. Verbatim transcript of July 8, 1966 meeting of Land Use Commission.

17. Letter to Curtis Carlsmith informing him of denial of petition.

18. Exhibit A - Land Use District Boundary Map (H-City of Hilo) - Scale 1" = 1000'.

19. Exhibit B - State Land Use Change of Boundaries (County Planning Commission) - Scale 1" = 300'.

20. Exhibit C - Tax Maps (spliced): Zone 2, Section 2, Plat 51)
Zone 2, Section 2, Plat 52)
Third Taxation Division.

21. Findings of Fact, Conclusions of Law and Decision of the Land Use Commission.

IN WITNESS WHEREOF I have hereunto set my hand at Honolulu, Hawaii, this 24 day of August 1966.

Myron B. Thompson

Myron B. Thompson
Chairman
State Land Use Commission

Subscribed and sworn to before me
this 24th day of August 1966.

Daniel J. Mulligan, Jr.

Notary Public
First Judicial Circuit
State of Hawaii

My Commission expires 10/29/69.

File

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants, vs. STATE LAND USE COMMISSION, Appellee.	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

ANSWER TO STATEMENT OF CASE

I hereby certify that I served a copy of the within Answer on Curtis W. Carmichael, Attorney for Appellants, by depositing the same in the United States Post Office at Honolulu, Hawaii, properly addressed and postage prepaid, on the 19th day of August, 1966.

Roy Y. Takeyama
Deputy Attorney General

BERT T. KOBAYASHI
Attorney General
State of Hawaii

ROY Y. TAKEYAMA
Deputy Attorney General

Iolani Palace Grounds
Honolulu, Hawaii 96813

Attorneys for Appellee

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants, vs. STATE LAND USE COMMISSION, Appellee.	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

ANSWER TO STATEMENT OF CASE

COMES NOW appellee, State Land Use Commission, by Bert T. Kobayashi, Attorney General, State of Hawaii, and Roy Y. Takeyama, Deputy Attorney General, its attorneys, and in answer to appellants' statement of case states as follows:

FIRST DEFENSE

The statement of case fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. Appellee admits the allegations stated in paragraphs I and II.

2. Appellee denies the allegations contained in paragraph III (1), (2), (3), (4), (5), (6), (7) and (8).

THIRD DEFENSE

Appellants do not have the statutory right to appeal the decision of the State Land Use Commission under the Land Use Law.

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

DATED: Honolulu, Hawaii, August 19, 1966.

LAND USE COMMISSION,
STATE OF HAWAII, Appellee

By Roy Y. Takeyama
ROY Y. TAKEYAMA
Deputy Attorney General

Its Attorney

File

RECEIVED
AUG 22 1966
State of Hawaii
LAND USE COMMISSION

C. A. NO. 1383

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ANSWER TO STATEMENT OF CASE

BERT T. KOBAYASHI
Attorney General
State of Hawaii

ROY Y. TAKEYAMA
Deputy Attorney General

Iolani Palace Grounds
Honolulu, Hawaii 96813

Attorneys for Appellee

C. A. NO. 1383

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

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LAND USE COMMISSION,
STATE OF HAWAII, Appellee

By _____
ROY Y. TAKEYAMA
Deputy Attorney General

Its Attorney

COPY

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, CHARLES K. SAKAGUCHI, MASAJI KAWAZOE, SATORU SATO, MRS. HENRY YOUNG, JAMES TAMURA, TSUTOMU MENDE, JOHN AH SING, JR., KAZUO TANJI, BUNICHI HARADA, NOOMAN K. AU, BERNARD E. AU, BERNARD T. MIURA, JERRY NAGO, JANE K. KUBO, THEODORE HIRO, ROY RIHACHI NAGATA, SHIZUE KAYA, TSUTOMU NISHIZAKI, MARGARET W. AU, JACK Y. OTA, KENJI INOUYE, JAMES U. ISHII, PAUL M. OKAMOTO, TETSUO MORINOUE, TOMOO OKUYAMA, JENNIE A. KONDO, AKIRA YAMAMOTO, YUKIE HIRAKI, BECKY B. ARQUERO, THOMAS T. SAKAKIHARA, ITSUJI KODAMA, KENJI SUGAWARA, TAKEO TSUTSUI, JACK KANEKO, FRANCIS AI, EDWARD W. ROSEHILL, JR., KAZUICHI OKINO, WILLIAM R. AU, JR., HENRY T. MONIZ, LOUIS P. ARAUJO, IWAO NAGATA, HIROSHI SHISHIDO, MILTON HAKODA, PROCOPIO VESPERAS, REBECCA TIM SING and GEORGE S. YUDA,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

RECEIVED
AUG 3 1966
State of Hawaii
LAND USE COMMISSION

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
1966 JUL 20 PM 4 02
FILED
ANN EGUCHI
CLERK

NOTICE OF APPEAL

CARLSMITH, CARLSMITH, WICHMAN AND CASE
(Curtis W. Carlsmith)
121 Waianuenue Avenue
Hilo, Hawaii

Attorneys for Appellants.

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

NOTICE OF APPEAL

Notice is hereby given that Appellants above named, pursuant to Chapters 6C and 98H, R. L. H. 1955, as amended, hereby appeal to the Circuit Court of the Third Circuit from the decision of the Land Use Commission of the State of Hawaii entered on July 8, 1966, on petition No. A65-107 of Ralph E. Allison, et al., for a district boundary change.

Dated at Hilo, Hawaii, this 20th day of July, 1966.

RALPH E. ALLISON, et al., Appellants,

By CARLSMITH, CARLSMITH, WICHMAN AND CASE
Their Attorneys

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

121 Waianuenue Avenue
Hilo, Hawaii

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Third Circuit Court of the State of Hawaii, at Hilo. JUL 20 1966

Ann Eguchi
Clerk, Third Circuit Court, State of Hawaii

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, CHARLES K. SAKAGUCHI, MASAJI KAWAZOE, SATORU SATO, MRS. HENRY YOUNG, JAMES TAMURA, TSUTOMU MENDE, JOHN AH SING, JR., KAZUO TANJI, BUNICHI HARADA, NOOMAN K. AU, BERNARD E. AU, BERNARD T. MIURA, JERRY NAGO, JANE K. KUBO, THEODORE HIRO, ROY RIHACHI NAGATA, SHIZUE KAYA, TSUTOMU NISHIZAKI, MARGARET W. AU, JACK Y. OTA, KENJI INOUYE, JAMES U. ISHII, PAUL M. OKAMOTO, TETSUO MORINOUE, TOMOO OKUYAMA, JENNIE A. KONDO, AKIRA YAMAMOTO, YUKIE HIRAKI, BECKY B. ARQUERO, THOMAS T. SAKAKIHARA, ITSUJI KODAMA, KENJI SUGAWARA, TAKEO TSUTSUI, JACK KANEKO, FRANCIS AI, EDWARD W. ROSEHILL, JR., KAZUICHI OKINO, WILLIAM R. AU, JR., HENRY T. MONIZ, LOUIS P. ARAUJO, IWAO NAGATA, HIROSHI SHISHIDO, MILTON HAKODA, PROCOPIO VESPERAS, REBECCA TIM SING and GEORGE S. YUDA,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

RECEIVED
AUG 3 1966
State of Hawaii
LAND USE COMMISSION

SUMMONS

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
1966 AUG 2 PM 2 14
ISSUED
TERRY KAIDA
CLERK

CARLSMITH, CARLSMITH, WICHMAN AND CASE

121 Waianuenue Avenue
Hilo, Hawaii

Attorneys for Appellants.

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, CHARLES K. SAKAGUCHI, MASAJI KAWAZOE, SATORU SATO, MRS. HENRY YOUNG, JAMES TAMURA, TSUTOMU MENDE, JOHN AH SING, JR., KAZUO TANJI, BUNICHI HARADA, NOOMAN K. AU, BERNARD E. AU, BERNARD T. MIURA, JERRY NAGO, JANE K. KUBO, THEODORE HIRO, ROY RIHACHI NAGATA, SHIZUE KAYA, TSUTOMU NISHIZAKI, MARGARET W. AU, JACK Y. OTA, KENJI INOUYE, JAMES U. ISHII, PAUL M. OKAMOTO, TETSUO MORINOUE, TOMOO OKUYAMA, JENNIE A. KONDO, AKIRA YAMAMOTO, YUKIE HIRAKI, BECKY B. ARQUERO, THOMAS T. SAKAKIHARA, ITSUJI KODAMA, KENJI SUGAWARA, TAKEO TSUTSUI, JACK KANEKO, FRANCIS AI, EDWARD W. ROSEHILL, JR., KAZUICHI OKINO, WILLIAM R. AU, JR., HENRY T. MONIZ, LOUIS P. ARAUJO, IWAO NAGATA, HIROSHI SHISHIDO, MILTON HAKODA, PROCOPIO VESPERAS, REBECCA TIM SING and GEORGE S. YUDA,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

RECEIVED
AUG 3 1966
State of Hawaii
LAND USE COMMISSION

SUMMONS

THE STATE OF HAWAII

To the State Land Use Commission and
to the Attorney General, State of Hawaii:

You are hereby summoned and required to serve upon CARLSMITH, CARLSMITH, WICHMAN AND CASE, Appellants' attorney, whose address is 121 Waianuenue Avenue, Hilo, Hawaii, an answer to the Statement of Case, Notice of Appeal,

Designation of Record on Appeal, Motion to Hear Oral Argument and Receive Written Briefs, and Order for Transcript which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Statement of Case, Notice of Appeal, Designation of Record on Appeal, Motion to Hear Oral Argument and Receive Written Briefs, and Order for Transcript.

Dated this 2nd day of August, 1966.

TERRY KAIDE
Clerk of Court

THIRD CIRCUIT COURT
SEAL
STATE OF HAWAII

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Third Circuit Court of the State of Hawaii, at Hilo. AUG 2 1966

Terry Kaide

Clerk, Third Circuit Court, State of Hawaii

COPY

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,

Appellants,

vs.

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Appellee.

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State of Hawaii
LAND USE COMMISSION

DESIGNATION OF RECORD ON APPEAL,

MOTION TO HEAR ORAL ARGUMENT AND RECEIVE WRITTEN BRIEFS,

ORDER FOR TRANSCRIPT

and

STATEMENT OF CASE

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
1966 JUL 21 PM 12 58
FILED
ANN EGUCHI
CLERK

CARLSMITH, CARLSMITH, WICHMAN AND CASE
(Curtis W. Carlsmith)
121 Waianuenue Avenue
Hilo, Hawaii

Attorneys for Appellants.

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

DESIGNATION OF RECORD ON APPEAL

Appellants, Ralph E. Allison, et al., designate the complete record and all proceedings at the hearing before the State Land Use Commission regarding the petition of Ralph E. Allison, et al. for a land use district boundary change on July 8, 1966, including:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;

(3) Offers of proof and rulings thereon;

(4) Proposed findings and exceptions;

(5) Report of the officer who presided at the hearing; and

(6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

Dated at Hilo, Hawaii, this 20th day of July, 1966.

RALPH E. ALLISON, et al., Appellants

By CARLSMITH, CARLSMITH, WICHMAN AND CASE
Their Attorneys

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

121 Waianuenue Avenue
Hilo, Hawaii

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

RECEIVED
AUG 3 1966
State of Hawaii
LAND USE COMMISSION

MOTION TO HEAR ORAL ARGUMENT AND RECEIVE WRITTEN BRIEFS

Appellants, Ralph E. Allison, et al., hereby request that this Honorable Court hear oral argument and receive written briefs in the above-captioned matter.

Dated at Hilo, Hawaii, this 20th day of July, 1966.

RALPH E. ALLISON, et al., Appellants

By CARLSMITH, CARLSMITH, WICHMAN AND CASE
Their Attorneys

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

121 Waianuenue Avenue
Hilo, Hawaii

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

RECEIVED
AUG 3 1966
State of Hawaii
LAND USE COMMISSION

ORDER FOR TRANSCRIPT

STATE OF HAWAII

Appellants, Ralph E. Allison, et al., having appealed to the Third Circuit Court from the Judgment of the State Land Use Commission entered on July 8, 1966,

IT IS HEREBY ORDERED AND DIRECTED that the State Land Use Commission prepare and furnish to the Third Circuit Court of Hawaii a transcript of the evidence and proceedings taken in the petition of Ralph E. Allison, et al., (A65-107) for an amendment to land use district boundaries.

IT IS FURTHER ORDERED that said transcript be furnished on or before August 5, 1966.

Dated at Hilo, Hawaii, this 21st day of July, 1966.

ANN EGUCHI

CLERK

THIRD CIRCUIT COURT
SEAL
STATE OF HAWAII

C. A. NO. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

RECEIVED
AUG 3 1966
State of Hawaii
LAND USE COMMISSION

STATEMENT OF CASE

Pursuant to Section 72(e) Hawaii Rules of Civil Procedure, Appellants herewith submit the following statement of the case:

I.

Appellants herein, pursuant to Section 98(h)-4, Revised Laws of Hawaii 1955, as amended, have filed a petition for amendment to the land use district boundaries affecting their land requesting that their land be designated urban, or if that not be proper, rural, rather than agricultural.

II.

The State Land Use Commission on July 8, 1966 rendered a decision denying relief on the said petition.

III.

(1) The decision of the State Land Use Commission

is clearly erroneous in view of the reliable, probitive and substantial evidence on the whole record.

(2) The decision is based upon a statute which is unreasonable, arbitrary and unconstitutional in that it places an affirmative burden on the landowner to prove that his land is "needed" for a use other than agricultural uses before he is allowed to use it for other purposes.

(3) The decision violates the Constitution of the State of Hawaii and the Constitution of the United States in that it is confiscatory and it is a taking of the Appellants' property without due process of law, because it forbids the only reasonable use of the land, and it prohibits the highest and best use of the land.

(4) The decision below constitutes a violation of an express contract between the landowner and the State of Hawaii allowing subdivision and urban use of the land; and for this reason, the decision is illegal and violates the Constitution of the State of Hawaii and the Constitution of the United States of America.

(5) The decision below is unconstitutional and contrary to the law in that it attempts to make void certain valid and legal restrictive covenants limiting the use of the land to urban residential uses.

(6) Agricultural zoning of the subject property is illegal and improper because standards in Section 98(h), Revised Laws of Hawaii and the present land use regulations require that the district shall be determined so far as practicable and reasonable so as to maintain existing uses.

The existing uses at the time the regulations were entered into were predominantly urban.

(7) Agricultural zoning of the land is illegal, improper and unconstitutional because the land consists of small lots, mostly rock, not suitable for agricultural uses.

(8) The zoning of this land for agriculture is unconstitutional because the zoning is not necessary to protect, and has no real or substantial relation to the health, safety, morals, or general welfare of the people of the State of Hawaii.

WHEREFORE, Appellants demand:

(1) That the decision of the State Land Use Commission be reversed or modified and that the subject property be placed in an urban, or if that be deemed improper, a rural land use district.

(2) That this Court issue an order to the State Land Use Commission requiring it to designate the subject property as urban, or if that be improper, as rural.

(3) That the contract with the State of Hawaii giving the Appellants the right to subdivide their land into 10,000 square-foot lots be specifically enforced.

(4) That the attempted limitation on the right of the Appellants to use their land be declared unconstitutional, illegal and void.

(5) In the alternative, that this cause be remanded to the Land Use Commission with instructions for further proceedings.

(6) That the court grant such other and further relief as it may deem just and proper.

DATED: Hilo, Hawaii, this 20th day of July, 1966.

CARLSMITH, CARLSMITH, WICHMAN AND CASE
Attorneys for Appellants

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Third Circuit Court of the State of Hawaii, at Hilo JUL 21 1966
Clerk, Third Circuit Court, State of Hawaii

COPY

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants, vs. STATE LAND USE COMMISSION, Appellee.	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

RECEIVED
AUG 5 1966
State of Hawaii
LAND USE COMMISSION

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
FILED
1966 AUG 2 AM 9 55
ANN EGUCHI
CLERK

MOTION TO DISMISS

AFFIDAVIT

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

and

NOTICE OF MOTION

BERT T. KOBAYASHI
Attorney General
State of Hawaii

ROY Y. TAKEYAMA
Deputy Attorney General

Iolani Palace Grounds
Honolulu, Hawaii 96813

Attorneys for Appellee

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants, vs. STATE LAND USE COMMISSION, Appellee.	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

MOTION TO DISMISS

Comes now the STATE LAND USE COMMISSION, by Bert T. Kobayashi, Attorney General, and Roy Y. Takeyama, Deputy Attorney General, its attorneys, appearing specially, and moves this Honorable Court for an order dismissing this appeal for the reason that neither the Attorney General nor any deputy attorney general of the State of Hawaii has been served with the notice of appeal, statement of case and summons as required by the Hawaii Rules of Civil Procedure.

This motion is based upon the papers and records herein, the Affidavit of Roy Y. Takeyama and the memorandum attached hereto.

DATED: Honolulu, Hawaii, August 1, 1966.

STATE LAND USE COMMISSION,
Appellee

By BERT T. KOBAYASHI
Attorney General

By Roy Y. Takeyama
ROY Y. TAKEYAMA
Deputy Attorney General

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,)
)
Appellants,)
)
vs.)
)
STATE LAND USE COMMISSION,)
)
Appellee.)
)

AFFIDAVIT

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

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

1. That he is duly appointed as Deputy Attorney General of the State of Hawaii;

2. That he is authorized to make this affidavit;

3. That he has checked the files of the Department of the Attorney General and states that a copy of the Notice of Appeal, Statement of Case and Summons was not personally delivered to the Attorney General or any Deputy Attorney General as of the date of this affidavit;

4. That he makes this affidavit in support of the Motion to Dismiss filed herewith.

/s/ Roy Y. Takeyama
Deputy Attorney General

Subscribed and sworn to before me this 1st day of August, 1966.

Rose Y. Okimoto
Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: 3/5/68

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants, vs. STATE LAND USE COMMISSION, Appellee.	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Rule 72(e) of the Hawaii Rules of Civil Procedure, relating to statement of case, provides:

> "The statement shall be treated, as near as may be, as an original complaint and the provision of these rules respecting motions and answers in response thereto shall apply."

Rule 4(d) of said rules requires that the summons and complaint shall be served personally:

> "(4) Upon the State, by delivering a copy of the summons and of the complaint to the attorney general of the State, or to the assistant attorney general or to any deputy attorney general who has been appointed by the attorney general.
>
> "(5) Upon an officer or agency of the State by serving the State and by delivering a copy of the summons and of the complaint to such officer or agency. . . ."

The Land Use Commission is a State agency. Its executive officer was served with a copy of the notice of

appeal and the statement of case. The State, however, has not been served as required under the rule.

DATED: Honolulu, Hawaii, August 1, 1966.

STATE OF HAWAII

By BERT T. KOBAYASHI
Attorney General

By Roy Y. Takeyama
ROY Y. TAKEYAMA
Deputy Attorney General

NOTICE OF MOTION

TO: CURTIS W. CARLSMITH
Carlsmith, Carlsmith, Wichman and Case
121 Waianuenue Avenue
Hilo, Hawaii

Attorneys for Appellants

PLEASE TAKE NOTICE that the foregoing Motion will be heard before the Honorable Albert M. Felix, Judge of the Third Circuit Court, in his courtroom, Hilo, Hawaii, on the 4th day of August, 1966, at 1:30 o'clock, p.m., or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, August 1, 1966.

Roy Y. Takeyama

ROY Y. TAKEYAMA
Deputy Attorney General

COPY

RECEIVED
JUL 26 1966
State of Hawaii
LAND USE COMMISSION

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, CHARLES K. SAKAGUCHI, MASAJI KAWAZOE, SATORU SATO, MRS. HENRY YOUNG, JAMES TAMURA, TSUTOMU MENDE, JOHN AH SING, JR., KAZUO TANJI, BUNICHI HARADA, NOOMAN K. AU, BERNARD E. AU, BERNARD T. MIURA, JERRY NAGO, JANE K. KUBO, THEODORE HIRO, ROY RIHACHI NAGATA, SHIZUE KAYA, TSUTOMU NISHIZAKI, MARGARET W. AU, JACK Y. OTA, KENJI INOUYE, JAMES U. ISHII, PAUL M. OKAMOTO, TETSUO MORINOUE, TOMOO OKUYAMA, JENNIE A. KONDO, AKIRA YAMAMOTO, YUKIE HIRAKI, BECKY B. ARQUERO, THOMAS T. SAKAKIHARA, ITSUJI KODAMA, KENJI SUGAWARA, TAKEO TSUTSUI, JACK KANEKO, FRANCIS AI, EDWARD W. ROSEHILL, JR., KAZUICHI OKINO, WILLIAM R. AU, JR., HENRY T. MONIZ, LOUIS P. ARAUJO, IWAO NAGATA, HIROSHI SHISHIDO, MILTON HAKODA, PROCOPIO VESPERAS, REBECCA TIM SING and GEORGE S. YUDA,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

NOTICE OF APPEAL

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
FILED
1966 JUL 20 PM 4 02
ANN EGUCHI
CLERK

CARLSMITH, CARLSMITH, WICHMAN AND CASE
(Curtis W. Carlsmith)
121 Waianuenue Avenue
Hilo, Hawaii

Attorneys for Appellants.

Copy sent Ray Takeyama
7-26-66

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

NOTICE OF APPEAL

Notice is hereby given that Appellants above named, pursuant to Chapters 6C and 98H, R. L. H. 1955, as amended, hereby appeal to the Circuit Court of the Third Circuit from the decision of the Land Use Commission of the State of Hawaii entered on July 8, 1966, on petition No. A65-107 of Ralph E. Allison, et al., for a district boundary change.

Dated at Hilo, Hawaii, this 20th day of July, 1966.

RALPH E. ALLISON, et al., Appellants,

By CARLSMITH, CARLSMITH, WICHMAN AND CASE
Their Attorneys

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

121 Waianuenue Avenue
Hilo, Hawaii

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Third Circuit Court of the State of Hawaii, at Hilo JUL 20 1966

Clerk, Third Circuit Court, State of Hawaii

COPY

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

RECEIVED
JUL 26 1966
State of Hawaii
LAND USE COMMISSION

DESIGNATION OF RECORD ON APPEAL,

MOTION TO HEAR ORAL ARGUMENT AND RECEIVE WRITTEN BRIEFS,

ORDER FOR TRANSCRIPT

and

STATEMENT OF CASE

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
1966 JUL 21 PM 12 53
FILED
ANN EGUCHI
CLERK

CARLSMITH, CARLSMITH, WICHMAN AND CASE
(Curtis W. Carlsmith)
121 Waianuenue Avenue
Hilo, Hawaii

Attorneys for Appellants.

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

DESIGNATION OF RECORD ON APPEAL

Appellants, Ralph E. Allison, et al., designate the complete record and all proceedings at the hearing before the State Land Use Commission regarding the petition of Ralph E. Allison, et al. for a land use district boundary change on July 8, 1966, including:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;

(3) Offers of proof and rulings thereon;

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(5) Report of the officer who presided at the hearing; and

(6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

Dated at Hilo, Hawaii, this 20th day of July, 1966.

RALPH E. ALLISON, et al., Appellants

By CARLSMITH, CARLSMITH, WICHMAN AND CASE
Their Attorneys

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

121 Waianuenue Avenue
Hilo, Hawaii

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

MOTION TO HEAR ORAL ARGUMENT AND RECEIVE WRITTEN BRIEFS

Appellants, Ralph E. Allison, et al., hereby request that this Honorable Court hear oral argument and receive written briefs in the above-captioned matter.

Dated at Hilo, Hawaii, this 20th day of July, 1966.

RALPH E. ALLISON, et al., Appellants

By CARLSMITH, CARLSMITH, WICHMAN AND CASE
Their Attorneys

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

121 Waianuenue Avenue
Hilo, Hawaii

C. A. No. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

ORDER FOR TRANSCRIPT

STATE OF HAWAII

Appellants, Ralph E. Allison, et al., having appealed to the Third Circuit Court from the Judgment of the State Land Use Commission entered on July 8, 1966,

IT IS HEREBY ORDERED AND DIRECTED that the State Land Use Commission prepare and furnish to the Third Circuit Court of Hawaii a transcript of the evidence and proceedings taken in the petition of Ralph E. Allison, et al., (A65-107) for an amendment to land use district boundaries.

IT IS FURTHER ORDERED that said transcript be furnished on or before August 5, 1966.

Dated at Hilo, Hawaii, this 21st day of July, 1966.

ANN EGUCHI

CLERK

THIRD CIRCUIT COURT SEAL STATE OF HAWAII

C. A. NO. _____

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,
Appellants,

vs.

STATE LAND USE COMMISSION,
Appellee.

STATEMENT OF CASE

Pursuant to Section 72(e) Hawaii Rules of Civil Procedure, Appellants herewith submit the following statement of the case:

I.

Appellants herein, pursuant to Section 98(h)-4, Revised Laws of Hawaii 1955, as amended, have filed a petition for amendment to the land use district boundaries affecting their land requesting that their land be designated urban, or if that not be proper, rural, rather than agricultural.

II.

The State Land Use Commission on July 8, 1966 rendered a decision denying relief on the said petition.

III.

(1) The decision of the State Land Use Commission

is clearly erroneous in view of the reliable, probitive and substantial evidence on the whole record.

(2) The decision is based upon a statute which is unreasonable, arbitrary and unconstitutional in that it places an affirmative burden on the landowner to prove that his land is "needed" for a use other than agricultural uses before he is allowed to use it for other purposes.

(3) The decision violates the Constitution of the State of Hawaii and the Constitution of the United States in that it is confiscatory and it is a taking of the Appellants' property without due process of law, because it forbids the only reasonable use of the land, and it prohibits the highest and best use of the land.

(4) The decision below constitutes a violation of an express contract between the landowner and the State of Hawaii allowing subdivision and urban use of the land; and for this reason, the decision is illegal and violates the Constitution of the State of Hawaii and the Constitution of the United States of America.

(5) The decision below is unconstitutional and contrary to the law in that it attempts to make void certain valid and legal restrictive covenants limiting the use of the land to urban residential uses.

(6) Agricultural zoning of the subject property is illegal and improper because standards in Section 98(h), Revised Laws of Hawaii and the present land use regulations require that the district shall be determined so far as practicable and reasonable so as to maintain existing uses.

The existing uses at the time the regulations were entered into were predominantly urban.

(7) Agricultural zoning of the land is illegal, improper and unconstitutional because the land consists of small lots, mostly rock, not suitable for agricultural uses.

(8) The zoning of this land for agriculture is unconstitutional because the zoning is not necessary to protect, and has no real or substantial relation to the health, safety, morals, or general welfare of the people of the State of Hawaii.

WHEREFORE, Appellants demand:

(1) That the decision of the State Land Use Commission be reversed or modified and that the subject property be placed in an urban, or if that be deemed improper, a rural land use district.

(2) That this Court issue an order to the State Land Use Commission requiring it to designate the subject property as urban, or if that be improper, as rural.

(3) That the contract with the State of Hawaii giving the Appellants the right to subdivide their land into 10,000 square-foot lots be specifically enforced.

(4) That the attempted limitation on the right of the Appellants to use their land be declared unconstitutional, illegal and void.

(5) In the alternative, that this cause be remanded to the Land Use Commission with instructions for further proceedings.

(6) That the court grant such other and further relief as it may deem just and proper.

DATED: Hilo, Hawaii, this 20th day of July, 1966.

CARLSMITH, CARLSMITH, WICHMAN AND CASE
Attorneys for Appellants

By /s/ Curtis W. Carlsmith
Curtis W. Carlsmith

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Third Circuit Court of the State of Hawaii, at Hilo JUL 21 1966
Anne Eguchi
Clerk, Third Circuit Court, State of Hawaii

July 11, 1966

Mr. Curtis W. Carlsmith
Carlsmith, Carlsmith, Wichman and Case
P. O. Box 686
Hilo, Hawaii 96720

Dear Mr. Carlsmith:

The petition by Ralph E. Allison, et al (A65-107), for an amendment to the Land Use District Boundaries from an Agricultural District to an Urban or a Rural District for approximately 174 acres at Panaewa Forest, South Hilo, Hawaii, Tax Map Key 2-2-51: 1 through 34, and 2-2-52: 1 through 33, was denied by the Land Use Commission at its meeting on July 8, 1966.

Prior to taking action on your petition, the enclosed memorandum was presented to the Commission.

Should you desire any further information, or have any questions, please feel free to contact us.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encl.
cc: Chairman Thompson
Planning Commission, Hawaii
Mr. Ralph E. Allison

STATE OF HAWAII

LAND USE COMMISSION

VOTE RECORD

Item A65-107 R.E. Allison, et al Date 7-8-66

Place L.U.C. Hon. Time

Commissioner	Yes	No	Abstain	Absent
S BURNS, C.E.S.	✓			
FERRY, J.	✓			
INABA, G.	✓			
MARK, S.				✓
M NISHIMURA, S.	✓			
OTA, C.	✓			
WENKAM, R.	✓			
WUNG, L.		✓		
THOMPSON, M.	✓			

Comments:

Accept Staff recom for denial

Pls file - Allison, et al

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

County Board of Supervisors Chambers

Hilo, Hawaii

3:10 P.M. - May 6, 1966

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

The meeting was called to order by Chairman Thompson who offered a short opening prayer. This was followed by an explanation of the procedures to be followed during this hearing and persons testifying before the Commission were duly sworn in.

PETITION OF R. E. ALLISON, ET AL (A65-107) TO AMEND THE DISTRICT BOUNDARY FROM AN AGRICULTURAL DISTRICT INTO AN URBAN OR A RURAL DISTRICT AT PANAEWA HOUSELOT SUBDIVISION, HILO, HAWAII, identifiable by TMK 2-2-51 and 52.

Mr. Moriguchi presented staff report recommending denial of the petition on the basis that the proposed subdivision would require substantial governmental expenditure for improvements and necessary facilities, and also on the basis of the lack of substantiating data to support the petitioners' claim that additional lands are needed for urban purposes in the Hilo area.

A detailed map showing the location of the subject area in relation to its surroundings was also presented. It was noted by the Executive Officer that the request was for redistricting of the entire area from Agricultural to Urban or Rural although the petition was not signed by all of the landowners involved.

Mr. Moriguchi advised that recommendation was for denial of Urban as well as Rural classification due to the inadequacy of facilities in the area, in reply to Chairman Thompson's question.

Mr. Philip Yoshimura of the Hawaii County Planning Commission stated that the County recommendation was for approval of a Rural classification in lieu of an Urban classification based on further studies made by the Commission with respect to the need for additional subdivisions, the water system, roads, etc.

Mr. Moriguchi commented that the report from the County indicated that it would not approve any subdivision plans for the area until further improvements are completed, even if the Land Use Commission were to approve the petition. Mr. Yoshimura replied that this was up to the County Planning Commission since the matter of the inadequate water system and roads had yet to be resolved.

Mr. Yoshimura advised that the County General Plan for this area designated it for residential-agricultural uses similar to a Rural designation. In reply to Commissioner Ferry's query, Mr. Yoshimura informed that presently a residential-agricultural classification stipulated lot sizes of 5,000 to 7,500 square feet. However, the proposed zoning for this classification would require minimum lot sizes of from 1/2 acre to 5 acres, which hopefully will be adopted this year.

Mr. Curtis Carlsmith, representing the petitioners, was advised that he would be given an opportunity to ask questions of governmental representatives after his presentation.

Mr. Carlsmith handed out to each petitioner a copy of a prepared argument in favor of the petition and proceeded to present it in the following manner: (See copy on file.)

Burden of proof is still with petitioner!

1. Staff contends that sufficient lands have been allocated for residential purposes. In rebuttal Mr. Carlsmith quoted the following figures:

   a. Population projection for 1980 (according to General Plan for Hilo) - 40,000. Increase of 15,000 in next 14 years.

   2.5 persons/fam.

   40,000 - 15,000 = 25,000

   b. 10 years from now there will be an increase of 10,000 people. 10 years from now 4,000 additional homes will be needed.

   Even if so, GP says expansion should occur (residential) in other areas.

   c. 2,400 acres presently available for urban residential uses will not provide for the 4,000 additional homes, plus lands for schools and roads, that will be needed in 1976.

   4000/3 = 800

   1600 x 4 = 6400

   1600 x 3 = 4800

   Proof?

2. Insufficient urban lands presently zoned in Hilo.

   ?really?

   a. Substantiated by the grossly over-inflated price of urban houselots in the Hilo area, due to insufficient urban lands.

   Referring to the matter of grossly over-inflated price of urban lands in the Hilo area, Mr. Carlsmith called on Mr. Kenneth Griffin, principal broker and manager of the Real Estate Department of the Realty Investment Company in Hilo, to give the Commissioners an idea of the relative costs of residential lands in the Hilo area, the high and low figures of per square foot prices and the availability of such lands.

Mr. Griffin submitted the following data:

Residential A - 15,000 square feet and above	- 25¢ to 45¢ a foot
Residential B - 10,000 square feet) Residential C - 7,500 square feet)	- 35¢ to 50¢, depending on the size of lot since much of the land sales are based on unit cost of lots
Agricultural lands fairly close to Hilo area	- Latest sale at the Waikea area for 30-acre piece sold for $1,500 an acre = 3½¢/s.f.

Conservation lands carry a lesser price per acre than Agricultural lands.

2% / yr increase merely reflects inflation rise -- not need.

Chairman Thompson asked Mr. Griffin for comparative prices on Residential A, B and C lands two years ago and today. Mr. Griffin replied that the difference would be anywhere from 5¢ to 10¢ a foot on A lands and from 10¢ to 20¢ a foot on B and C lands. He added that perhaps there was a 10% difference five years ago.

Not based on need?

In reply to Mr. Moriguchi's question, Mr. Griffin commented that he attributed the rise in land prices to the (1) increased interest in individual home ownership and (2) upgraded County standards requiring curbs and sidewalks in new subdivisions.

3. Both the County and the State have an obligation to provide relatively inexpensive lands so that the people can buy and build own homes on own land.

   a. Hawaii Constitution provides that individual home ownership be encouraged. By limiting amount of urban lands, actually discourages this.

Doesn't mean "wholesale" scatter

4. The land is needed for another use because it is not presently usable for the use for which it is districted--namely, agricultural. This was based on questionnaires sent to all the landowners named in the petition concerning their success or failure in agricultural pursuits, soil composition of the lands, etc.

Fallacious

   a. Mr. Carlsmith presented an aerial photograph showing the cleared areas, the jungle and virgin forest areas of the subject parcels. He noted that approximately two-thirds to three-fourths of the lands were undeveloped under the present zoning.

   b. General Information on Panaewa Houselots:

      63 lots privately owned by 61 landowners

      177 acres involved in rezoning

71 houses now built - 46 owner-occupied
6 occupied by members of owners' families
19 rented to outsiders

6 lots have more than 1 house, 2 lots have 3 houses, 4 lots have 2 houses

5. People living here are neither farmers nor agriculturists and do not have the knowledge, skill or time to grow crops economically. They bought the lands as residences for their families and also to possibly build houses for rental purposes.

6. Mr. Carlsmith submitted that the highest and best use of subject lands was for urban residential subdivision purposes.

Mr. Carlsmith continued that the lands were usable for the proposed use since they were very close to the centers of shopping, recreational and employment facilities. They were also only a short drive to the shopping and business centers of Hilo. Adequate basic services were close by, available at relatively low cost, and it was not necessary to construct additional telephone or electric power facilities. There is one six-inch water line and one eight-inch line running along the highway adjacent to the subdivision. There would be a defect in the water system only if many, many more homes were built in the area. However, this was a matter that should be considered only at the time of the subdivision of the lands. If at that time it develops that more water facilities are needed, Mr. Carlsmith felt that possibly the subdividers and the people in the area may agree on a plan or the County may bring about an improvement district for additional facilities.

It was also brought out by Mr. Carlsmith that all except two roads in the subdivision were paved and that they had been informed by the Department of Land and Natural Resources in Hilo that the money for paving these roads had been allocated by the government, and that it was in the last stages of processing before actual construction.

Mr. Carlsmith continued that subject lands were entirely free from flood dangers, an excellent area in which to channel urban growth, and while not absolutely contiguous to urban Hilo, it was located 900' from lands presently zoned urban, separated only by a small number of 10-acre farm lots. Mr. Carlsmith called on Mr. Allison to give an idea of the actual distances to various points in Hilo and nearby urban areas:

Keaau Police Department	-	3.6 miles
Hilo Police Department	-	4.5
Nearest Fire Station	-	2.3
Keaau Fire Station	-	3.6
Keaau Post Office	-	3.6
Hilo Post Office	-	4.5
Hilo Airport	-	3.7
Hilo Shopping Center	-	3.5

New Taniguchi Shopping Center	-	2.
Bank of Hawaii	-	2.7
First National Bank	-	3.5
New County Building	-	4.3
Municipal Golf Course	-	1.5

Mr. Carlsmith commented that the statutes suggest changing conditions as possible grounds for amendment of district boundaries. In support of this, Mr. Carlsmith noted that subject area was a rapidly changing portion of Hilo where new businesses, new shopping centers were coming up and increased power lines were being installed along the Volcano Road.

Mr. Carlsmith then turned to several legal theories (see copy on file) on which he elaborated as follows:

1. The State had entered into a contract with the purchasers of the Panaewa Houselots, giving them the right to subdivide the lots into 10,000 square foot properties. To support this theory, Mr. Carlsmith passed around the Special Sale Agreement and Land Patent issued to Mr. Allison. He also made available to each Commissioner xeroxed copies of relevant sections of the Sale Agreement, Land Patent and the Legal Notice of sale of territorial government lots on the Island of Hawaii (see copies on file).

2. Notice of Sale. It was pointed out that land was restricted to residential purposes only for 10 years next following the issuance of Land Patent or Deed. It was further stated in the notice that "subdivision of lot permitted with certain lot size and building requirements." Therefore, the purchasers had relied upon this when they showed up for the auction, and they paid as much as they did for the land because they anticipated the land would be worth much more if it were subdividable.

3. Land Patent Grant. Not only does the Land Patent specify residential use only, it goes much further and states that if the lot is used for any use other than residential purposes (and this includes agricultural pursuits), the land "shall forthwith be forfeited and resume the status of government land." In other words, if the landowners attempt to put the land to agricultural uses, by the terms of the Land Patent Grant, the State not only can revert the land to government status, but no provisions have been made for reimbursement of the land price. The landowners are caught in the middle of two conflicting statements.

Mr. Carlsmith felt that the Executive Officer had misunderstood his argument on the contract theory whereby the staff states "that the landowner is governed by the ordinances in effect at the time he proposes to subdivide, and not by the ordinances that were in effect at the time he first purchased his lands." Mr. Carlsmith agreed that there was no doubt that generally this was a sound statement of law. However, in the present case under discussion, there was an additional fact to be considered. The State had expressly contracted to allow these people to subdivide their lands into 10,000 square foot lots and it was a conditioned, by County Reg.

Also, not mandated to subdivide.

contract binding on the State. In fact, this contract was upheld in Hilo in the Third Circuit Court by Judge Felix in the decision of July 30, 1965.

Mr. Carlsmith argued that the restrictive covenants were incorporated in the deed to protect everyone in the subdivision. If the State attempts to supersede the restrictive covenant and perhaps allow one landowner to bring a noxious use into the subdivision, this would be held to deprive every lot owner without due process of law. Presently, pig-raising, for instance, is an allowable use of the land and this would break down the essential residential nature of the area.

Mr. Carlsmith further argued that the original boundary was an improper district boundary, relying on the statement made by Judge Felix in the decision to the effect that at the time boundaries were enacted, they were supposed to represent the present use of the land. At that time, the use was urban-residential as restricted by the State in the Land Patent. Mr. Carlsmith quoted the section of Judge Felix's decision in point:

> "It should be noted that the second sentence of Section 5, Act 187, Session Laws, 1961, (the original Land Use Law) reads, 'These temporary districts shall be determined so far as practicable and reasonable to maintain existing uses...' There is no doubt that by said sentence the Legislature in enacting Act 187 intended the Land Use Commission to place land which had been put into urban (residential) use prior to enactment of said Act to be continued in an urban district."

Mr. Carlsmith explained the reason for the alternate request for a Rural classification in the petition. He said that the landowners were primarily interested in an Urban classification but that they would also like a ruling on the Rural classification at the same time.

However, it was Mr. Carlsmith's contention that Rural was not the proper classification for this area for the following reasons:

1. Minimum lot sizes in a Rural area would require 1/2 acre lots. This is in conflict with the use promised by the State.

2. Theoretically, Rural lands are used for vegetable or flower gardens and production of crops to supplement income. Subject lands are rocky and unsuitable for gardens.

3. The State Land Use District Regulations designate Rural lands to "include parcels of land where 'city-like' concentration of people, structures, streets and urban level of services are absent." A high degree of urban services are presently available in the area and there existed a city-like concentration of people. The Regulations also state that land not contiguous to urban lands shall not be used for urban purposes. The three reasons for the latter statement and why they were not applicable in this case were presented as follows:

a. To cut down amount of scattered urban areas by reason that scattered urban areas would burden the State and County with costs for services and facilities. - Services are already available in subject area. for what? urban? rural?

b. Urban sprawl would not be aesthetically pleasing. - The subdivision would not be visible from the highway since it was hidden by a 300' wide strip of virgin forest. L.U.C. Regs?

c. Additional tax burden resulting from need for services and facilities--this is adequately covered in (a) above. Not so!

In summary, Mr. Carlsmith submitted that there were several fingers of urban land uses which extended out a significant distance from the central urban area. He contended that the Panaewa Houselots were closer to the Hilo area than some of these urban fingers on the map. where? even so, no justification to allow other urban. Services are there!

Commissioner Nishimura wondered whether the State would have to bear the cost of installing water lines and building roads should the classification be changed to Rural. Mr. Carlsmith assured him that he believed there was no way the subdividers could demand this of the State--that these costs would be allocated among the people of the subdivision. ?

Commissioner Ferry wondered whether Mr. Carlsmith would consider that there was a taking of property if a piece of property he owned, zoned for hotel-apartment, on which improvements had not been made, was subsequently rezoned for single-family dwelling. Mr. Carlsmith replied that the law was clear in this case--since there was no construction or improvement on the property, one could not complain at the time of rezoning.

Commissioner Ferry likened this to the present petition under discussion and wondered how these people, who had not subdivided their lands, could consider that there was a taking of property now that the lands had been rezoned for another use by the Land Use Commission. The difference here, Mr. Carlsmith argued was that in one instance there was a contractural right of property under the Constitution of the United States, whereas in the other case there was no contract.

?? right?

Commissioner Ferry pointed to the fact that the sale of the Panaewa Houselots had been conducted by the State Commissioner of Public Lands and did Mr. Carlsmith feel that the Land Use Commission should concede to the Commissioner of Public Lands. By the same token if a governmental agency wanted to subdivide its lands they would not need to go to the County Planning Commission or the Land Use Commission for proper approval. Commissioner Ferry felt that a permissive use contained in a deed document or land patent grant by the State on a previous disposition could not be weighed by this Commission.

Mr. Carlsmith argued that this was not a mere case of permissive use. This was a contract and it was ruled to be so and upheld in the Court of Law in Hilo.

Commissioner Ferry pointed to page 3 second line of the staff report which read "only one owner indicated intention to subdivide and sell lots, while the rest plan to keep all of their land." Mr. Carlsmith agreed that this was true. Commissioner Ferry then referred to page 3, seventh argument in Mr. Carlsmith's written presentation, which indicated that these lots were needed for subdivision purposes.

Mr. Carlsmith admitted that substantially more than one land owner would want to subdivide their lands, but stated that his point in the argument was to stress that these people were not land speculators. They had bought these lands for their own and their family's use, with possible additions of rental units.

Commissioner Ferry wondered why it would be necessary to subdivide the land at all if ownership were to be retained by one person. If the zoning were established at 10,000 square foot for a home and there were 100,000 square feet of land, 10 homes could be built on the land without subdividing.

Mr. Carlsmith replied that he had approached the County Planning Commission and they had informed him that they would not issue any building permit until the land was subdivided.

In reply to Commissioner Wung's question, Mr. Carlsmith felt that a 1,000-acre macadamia nut orchard would be economically profitable whereas a 3-acre farm would not. The economy of large farms is being recognized all over the United States.

He did not know whether vandas would be an economic success since he did not know the cost of hapu, etc.

Mrs. Becky Arquero, one of the landowners in the Panaewa Houselots, testified that the only reason she wanted to subdivide was to be able to deed the land to her children, and that many of the others felt the same way.

Chairman Thompson brought up the point that Mr. Carlsmith seemed to negate the request for rural in his testimony. Mr. Carlsmith replied that the petitioners actually sought an urban designation. However, he had submitted the petition in the alternative with the request that the Commission rule on urban and rural so that in the event urban is denied, taken to court and upheld, the

petitioners would not have to go through the entire proceedings for a rural classification. Mr. Carlsmith agreed that he would take the matter to court if the petition were denied in either case.

Mr. Carlsmith questioned the source of Mr. Moriguchi's information relative to the sufficient amount of reserved areas for urban growth in Hilo as stated in the staff report. Mr. Moriguchi replied that this was based on a survey made of the Urban District in the Hilo area during the latter part of 1965 using aerial photographs and field inspections.

Mr. Carlsmith wondered what factors were considered in making this survey to which Mr. Moriguchi replied that vacancy of urban lands was the only consideration. Mr. Carlsmith implied that within the 2,400 acres of vacant urban lands, portions may already be subdivided and owned by many different landowners and not available to other people in Hilo. Mr. Moriguchi clarified that staff did not consider availability--only vacancy of urban lands.

For purposes of appeal, Mr. Carlsmith requested that these figures be incorporated in the records.

Mr. Carlsmith asked whether the land area that would be necessary for roads, schools, additional facilities, etc., had been deducted from the 2,400 acres to which Mr. Moriguchi replied that staff referred only to vacant lands.

Mr. Moriguchi submitted that staff was only mandated by the statutes to provide for sufficient urban lands and was not required to specify whether they were for homes or business, in direct reply to Mr. Carlsmith's question.

Mr. Carlsmith contended that staff was required to delve into the matter of availability of urban lands as well. In Hilo, 90% of the lands were owned by either the Mauna Kea Sugar Company or the State of Hawaii, neither of which had any intention of making these lands available in Hilo.

Fact?

Referring to Mr. Carlsmith's earlier statement with respect to insufficient urban lands in the Hilo area, Chairman Thompson pointed out that the statutes clearly place the responsibility of proving this on the petitioner.

Mr. Carlsmith agreed that the burden of proof of insufficient lands rested with the petitioner. However, to plan for urban needs on the basis of vacant urban lands, he did not feel was a proper application of the statutes.

Mr. Takeyama, legal counsel, commented that Mr. Carlsmith was interpreting the term "available" to mean that the Land Use Commission should pry into the minds of property owners as to their intention, which was an impossible task.

Mr. Carlsmith replied that he meant it was necessary to make a reasonable inference whether these lands were available to the people of Hilo.

In reply to Mr. Carlsmith's question, Mr. Moriguchi advised that he had not made an estimate of the lands that would be needed in the next 10 years on the population projection, since the Commission had ruled that the Urban District would provide for that.

Referring to staff's statement in the report that 2,400 acres of urban lands in Hilo would be sufficient to take care of the urban needs, Mr. Carlsmith wondered about the reasoning behind this contention. Staff replied that he was relying on the fact that the Commission had found it adequate within the bounds established in August, 1964, to take care of the urban needs. Mr. Carlsmith argued that the mere statement that it is adequate was not sufficient grounds for upholding the regulations--that it had to be based upon substantial evidence.

Mr. Takeyama advised that population projection was a consideration in determining the urban needs of the Hilo area since, at the time of adoption of the final boundaries in August, 1964, by the Land Use Commission, this was taken into consideration.

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

Chairman Thompson called for a five-minute recess.

PETITION BY MAUNA KEA SUGAR CO., INC. (A66-109) TO AMEND THE URBAN DISTRICT BOUNDARIES AT HILO, HAWAII, identifiable by Tax Map Keys 2-3-35: 1, 2-3-39: 2, 2-5-08: 3

Staff Report (see copy on file) as presented by Mr. Moriguchi, recommended denial of the petition since the petitioners had not substantiated the need for additional urban lands and since there were other vacant urban lands within the immediate Urban District.

Mr. Philip Yoshimura advised that the Planning Commission had recommended approval of the petition because the subject lands were included in the General Plan for urban development, they were prime residential lands, urban facilities were available, available houselots in the Hilo area were limited.

In response to the Chairman's and Commissioners' requests, Mr. Yoshimura pointed out the areas planted in cane, park areas, and the uses of adjoining lands.

Mr. Yoshimura agreed that the General Plan followed essentially the plan drawn up by Belt Collins. A detailed study for need had not been made. Mr. Yoshimura commented that the Kaumana Gardens were fully developed although he was not sure whether they were all sold.

Mr. Roy Nakamoto of the law firm of Ushijima and Nakamoto, representing the Mauna Kea Sugar Co., testified that the three parcels in question were immediately adjacent to built-up urban areas, and included as urban lands in the General Plan and earmarked for residential use. They were also very close to community facilities such as the hospital, school, roads. The importance of proximity to the Hilo urban center was also pointed out by Mr. Nakamoto as a result of the poor transportation system.

Since these were relatively small parcels, Mr. Nakamoto submitted that district reclassification would not affect the over-all agricultural picture. Presently, the lands were being taxed for residential use and they were uneconomical for agricultural use. Therefore, the highest and best use was for residential purposes.

Referring to the staff's statement that proof had not been submitted for additional urban lands Mr. Nakamoto called on Mr. Kenneth Griffin, reat estate broker, for comments along this line.

Mr. Griffin stated that although it was true that vacant lands were available in the Hilo area, the demand for lots was peculiar to certain areas and the subject lands were in a highly desirable area for residential use. He cited the Halai Hills, selling around 85¢ to $1.25, as having 100% use. The Kaumana Terrace, selling around $1.35 to $1.40, has been completely sold. The first 40 lots in the Bay View Subdivision developed by Mr. Griffin's firm, sold within 6 months after they were put on the market, and an additional 20 lots were offered later. Of this total, Mr. Griffin stated that there were about 18 lots with homes already built or under construction

On the matter of the wooded area, Mr. Griffin thought that the upper area more than compensated for the cutting of the trees. He submitted that the danger of flooding had been alleviated by natural drainage and through built-up drainage. He said that he had not noticed any flooding in the last 1½ years, although Hilo has experienced considerable rain during that time.

In reply to Commissioner Ferry's query as to the type of subdivision contemplated for the subject parcels, Mr. Griffin informed that Mauna Kea Sugar had made no commitments in this respect. However, his firm would probably plan for 10,000 square foot lots with 100' frontage, storm drainage, sidewalks, taking advantage of the natural terrain and view of the bay. Mr. Griffin was not able to say whether it would be a grid or cluster-type subdivision.

Mr. Moriguchi pointed to the 45 acres of land in the Urban District, owned by Mauna Kea Sugar, presently vacant and asked whether any consideration had been given to these lands.

Mr. Claude Moore of Mauna Kea Sugar commented that these lands were highly impractical to develop. A stream cuts right through this land and a road will be required which could only be served from one side. He added that this land was located in the County watershed area.

Mr. Griffin offered additional data on the 45-acre parcel under discussion. He identified the parcel as being right behind the De Silva School with drops of approximately 25 to 30'. He said that there were almost no usable land and most of the lots would be down in a hole. He thought perhaps that the lower area could be subdivided into 10 or 12 lots.

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

APPLICATION BY GERALDINE L. CARVALHO (SP66-22) FOR A SPECIAL PERMIT TO CONVERT A GREASE RACK SECTION OF AN EXISTING SERVICE STATION INTO A LAUNDROMAT AT PEPEEKEO, SOUTH HILO, HAWAII, identifiable by Tax Map Key 2-8-16: 25

Staff recommended approval of the special permit on the basis that the proposed use would not adversely affect the surrounding property nor alter the essential character of the land or burden public agencies and also on the basis that the proposed use could be considered an unusual and reasonable use within an Agricultural District. (See copy of staff report on file.)

Commissioner Ferry moved to accept the staff recommendation, seconded by Commissioner Inaba. The motion was carried unanimously.

APPLICATION BY HILO ELECTRIC LIGHT CO., LTD. (SP66-23) FOR A SPECIAL PERMIT TO PROVIDE STORAGE SPACE FOR EQUIPMENT AT KAULEOLI, SOUTH KONA, HAWAII, identifiable by Tax Map Key 8-5-5: 19

It was recommended by staff that the application for the special permit be approved on the basis of the evaluation performed, using the guidelines set up by the Land Use District Regulations. (See copy of staff report on file.)

Mr. Moriguchi advised the Commissioners that he had talked with Mr. Niyao of the Hilo Electric Light Co. who indicated that they might not need the storage space.

Mr. Niyao explained that the additional equipment which they had proposed to store in the storage area were all circuit breakers used to protect the transmission lines.

Mr. Moriguchi confirmed that this was a permissible use within an Agricultural District, in reply to Chairman Thompson's question.

Mr. Moriguchi recommended that this matter be referred back to the Hawaii County Planning Commission for re-evaluation in light of the latest data submitted by Mr. Niyao.

Commissioner Ferry moved that the application for special permit be referred back to the Planning Commission in the County of Hawaii, seconded by Commissioner, and the motion was carried unanimously.

APPLICATION BY GEORGE M. HUDSON, ET AL (SP66-24) FOR A SPECIAL PERMIT TO ESTABLISH INDIVIDUAL ONE-ACRE HOME SITES WITHIN THE AGRICULTURAL DISTRICT AT GLENWOOD, PUNA, HAWAII, identifiable by Tax Map Key 1-8-7: 25

Mr. Moriguchi presented the staff report which recommended denial of the application since the proposed use could be accomplished without subdividing the land and it could not be considered "unusual" in any sense.

Mr. Suefuji referred to page 2, second paragraph, in the staff report which read "Under the State Land Use Regulations involving Agricultural Districts....., the construction of six residential dwelling units can be permitted since minimum lot sizes are established at three acres. It is also noted that it may be possible to construct the homes in the manner suggested by the applicants without subdividing the 29-acre parcel."

Mr. Suefuji commented that he got the impression staff was recommending that the six dwellings be treated as one dwelling and the three acres be used without parcelization.

Mr. Moriguchi replied that the petitioner had indicated that the land was going to be used for agricultural purposes, and that a residential dwelling was permitted.

Mr. Suefuji stated that the applicant was informed to go through this procedure since he had implied that the homes were being built for future heirs of the family.

Commissioner Ferry suggested that this could be accomplished by subdividing the land into three-acre parcels.

Commissioner Ferry moved that staff recommendation be accepted and the special permit be denied. The motion was seconded by Commissioner Nishimura and carried unanimously.

The remaining items on the agenda were all deferred.

The meeting was adjourned at 5:10 p.m.

STATE OF HAWAII
LAND USE COMMISSION

July 8, 1966
Honolulu, Hawaii

MEMORANDUM

TO: Land Use Commission

FROM: Staff

SUBJECT: A65-107 - Ralph E. Allison, et al

A public hearing on this petition which requested a change in district boundary from an Agricultural District to an Urban or a Rural District was held on May 6, 1966. The subject area is known as the Panaewa Houselots Subdivision, located off the main highway to the Volcano area, approximately 4 miles from the Hilo Airport.

During this public hearing, the Land Use Commission staff recommended denial of the petition since:

1. The petitioners have failed to substantiate their claim that additional lands are needed for urban purposes in the Hilo area.

2. An estimated 2,400 acres of vacant urban lands occur within the Hilo District.

3. Approval of half-acre lots in the area can increase the number of lots nearly five-fold from 67 lots to 313 lots and thereby overtax the present facilities available.

4. Petitioners' arguments relating to their right to subdivide in accordance with Special Sales Agreement and Land Patent issued by the then Territory of Hawaii have been ruled upon negatively by the Land Use Commission during its deliberations on December 17, 1965. The Board of Water Supply of the County of Hawaii has reported that the existing water supply system in the Panaewa Houselots area can only meet the demands of the subdivision as presently platted, and any further subdivision would overtax the present system.

5. The Hawaii County Planning Commission has recommended against an Urban classification but recommended a Rural classification. The County Planning Commission also reported that they would not approve subdivisions in the area until improvement district projects are initiated for the water system, and until further studies are completed to determine densities in Agricultural-Rural areas.

During the public hearing held in Hilo, Hawaii, Mr. Curtis Carlsmith, attorney representing the petitioners, presented his arguments on the matter of the petition. These arguments with related Land Use staff comments are as follows:

1. Carlsmith - Population projections according to the Hilo General Plan show a 40,000 person estimate for the year 1980, or an increase of 15,000 in the next 14 years. 10 years from now there will be an increase of 10,000 people and a need for 4,000 additional homes. 2,400 acres for urban-residential uses will not provide for the 4,000 additional homes, plus lands for schools and roads that will be needed in 1976.

LUC Staff Comment - Latest population estimates for the South Hilo area as prepared by the Department of Planning & Economic Development indicate a population estimate of 30,800 for the year 1975, and 31,700 for the year 1980. This is considerably less than the 40,000 reported by Mr. Carlsmith.

Mr. Carlsmith's figures of 10,000 people and the need for 4,000 homes by 1976 are apparently based on 2.5 persons per household. Assuming that the 10,000 person estimate is realistic, the suggestion of 2½ persons per household cannot be substantiated. In fact, the 1960 census for the Island of Hawaii indicates 3.8 persons per household, and for the Island of Oahu 4.4 persons per household. Moreover, it can be said that future urban development in the City of Hilo would approach the 4.4 persons per household criteria as evident in Honolulu. However, applying the range of 3.8 persons per household and 4.4 persons per household, a projected increase in households on the basis of an increase of 10,000 persons, a range of from approximately 2,300 to 2,600 additional homes needed would be derived. These figures are considerably less than the 4,000 additional homes suggested by Mr. Carlsmith.

Mr. Carlsmith has stated, without substantiation, that 2,400 acres will not provide for 4,000 additional homes, plus lands for schools and roads that will be needed in 1976. Since the statement was made without substantiating data, the staff would not comment further on the matter. However, it is noted that the present developed acreage within the Hilo Urban District allocates approximately 65% of the total land area developed to residential purposes and the remaining 35% to commercial, industrial,* quasi public, schools and off-street parking facilities. Applying this same proportion to the 2,400 acres merely as a matter of comparison, it might be said that approximately 1,560 acres (65% of 2,400) would ordinarily be allocated for residential development. On the basis of a residential development of 4 units per acre, 1,560 acres can provide for 6,240 households. This would indicate that even Mr. Carlsmith's figures using 2½ persons per household to derive the need of 4,000 additional households can be met.

*Excludes airports, harbors, military, regional parks

2. Carlsmith - Insufficient urban lands are presently zoned in Hilo as substantiated by the grossly over-inflated price of urban houselots in the Hilo area. Mr. Carlsmith then called upon Mr. Kenneth Griffin, a real estate broker in Hilo, who submitted that there has been perhaps a 10% increase in land prices over the 5 years. He also indicated that the rise in land prices can be attributed to the increased interest in individual home ownership and upgraded County standards requiring curbs and sidewalks in new subdivisions.

LUC Staff Comments - It is noted that although Mr. Carlsmith has attributed the over-inflated price of urban houselots to insufficient urban lands zoned in Hilo, Mr. Griffin attributes the rise to interest in individual home ownership and upgraded County standards for new subdivisions. Therefore, Mr. Griffin has not substantiated Mr. Carlsmith's statement. Moreover, it is noted that the 10% increase in land price over the past 5 years would amount to ~~approximately~~ 2% per year. It appears that this increase is no more than the inflationary rise in all costs and not merely to land prices. This again does not substantiate Mr. Carlsmith's statement that insufficient urban lands presently zoned in Hilo is reflected in the grossly over-inflated price of houselots.

Further testimony was offered by Mr. Carlsmith during the course of the public hearing; including extensive testimony concerning Notice of Sale, Land Patent Grant, and Special Sales Agreement, between the State and the purchasers within the Panaewa Houselots Subdivision. The staff's comments on the matter are reflected in its original staff report; therefore, further comment is not offered at this time. Staff's comments on other testimony presented by Mr. Carlsmith at the public hearing are also reserved, in that it is not deemed applicable nor correct in justification of a boundary change.

In view of the discussion above, the original recommendation for denial of the petition is maintained.

June 24, 1966

Mr. Curtis W. Carlsmith
Carlsmith, Carlsmith, Wichman and Case
P. O. Box 686
Hilo, Hawaii 96720

Dear Mr. Carlsmith:

The Land Use Commission next meets at 8:30 a.m. at the Land Use Commission Hearing Room, 426 South Queen Street, Honolulu, Hawaii on July 8, 1966.

On or about that time a decision of the petition by Ralph E. Allison, et al (A65-107) will be rendered.

There is no requirement for you to be present. However, should you wish to attend, please feel free to do so.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

cc: Chairman Thompson

File 1944

C. WENDELL CARLSMITH
MERRILL L. CARLSMITH
JAMES H. CASE
CHARLES R. WICHMAN
DONN W. CARLSMITH
ROBERT E. BETHEA
JAMES W. BOYLE
TOM C. INGLEDUE
TAMOTSU TANAKA
JAMES P. WOHL
DAVID L. IRONS
J. THOMAS VAN WINKLE
CURTIS W. CARLSMITH
C. DUANE CARLSMITH

CARLSMITH, CARLSMITH, WICHMAN AND CASE
ATTORNEYS AT LAW
HILO, HAWAII

P. O. BOX 686
HILO, HAWAII 96720
P. O. BOX 656
HONOLULU, HAWAII 96809

May 13, 1966

RECEIVED
MAY 17 1966
State of Hawaii
LAND USE COMMISSION

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

Dear Mr. Moriguchi:

Enclosed are two Xerox copies of each of the following documents:

(1) Special Sale Agreement No. 4133 by and between the Territory of Hawaii and Kenichi Shintaku and Hideyo Sera Shintaku dated November 20, 1953, covering Lot 33, Panaewa House Lots.

(2) Land Patent (Grant) No. S-13,710 issued by the State of Hawaii to Ralph Edward Allison and Lorna Jane Dedolph Allison on November 20, 1958, covering Lot 33, Panaewa House Lots.

Very truly yours,

CARLSMITH, CARLSMITH, WICHMAN AND CASE

By Curtis W. Carlsmith
Curtis W. Carlsmith

p
Enc.

FORM 16-B-1 (Revised 1955)
SPECIAL SALE AGREEMENT
FOR OTHER THAN HOMESTEAD
PURPOSES

OFFICE OF THE
COMMISSIONER OF PUBLIC LANDS
TERRITORIAL OFFICE BUILDING
TERRITORY OF HAWAII

RECEIVED
MAY 17 1966
State of Hawaii
LAND USE COMMISSION

App. Bk. 23:36
L. B. 3463, Aug. 29, 1958
Ad. Bk. 24:11

SPECIAL SALE AGREEMENT No. 4133

THIS AGREEMENT, made this 20th day of November, 19 58, by and between the TERRITORY OF HAWAII, by its Commissioner of Public Lands, hereinafter called the "TERRITORY", and KENICHI SHIMIZU and KIYOTO SHIRA SHIMIZU, husband and wife,

whose residence and post office address is P.O. Box 308, Pahala, Hawaii

, Territory of Hawaii, hereinafter called the "PURCHASER",

WITNESSETH THAT:

WHEREAS, on November 20, 19 58, pursuant to the provisions of the Hawaiian Organic Act and the Revised Laws of Hawaii 1945, as amended, certain land, hereinafter more particularly described, situate at Panaewa, Waiakea, South Hilo, Hawaii

said Territory, and being Lot 33, Panaewa House Lots
was offered for sale at public auction on terms and conditions in this agreement set forth; and

WHEREAS, at such sale, said Purchaser bid the sum of TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($ 2,200.00), becoming thereby the highest qualified bidder therefor, and entitled to purchase said land under this agreement of sale; and

WHEREAS, said Purchaser has deposited with the Commissioner of Public Lands of the Territory, hereinafter called the "COMMISSIONER", the sum of FOUR HUNDRED FORTY AND NO/100 DOLLARS ($ 440.00), to be applied by said Commissioner as a down payment upon the execution hereof;

NOW, THEREFORE, the Territory agrees to sell to the Purchaser and the Purchaser agrees to buy from the Territory all of the land described in Schedule "A" hereof, upon the terms and conditions contained in this agreement and in Schedule "B", hereto attached and made a part hereof:

1. The Purchaser promises to pay to the Commissioner, for and on behalf of the Territory, and for the purchase price of said land, the sum of TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($ 2,200.00), as follows:

(a) the sum of FOUR HUNDRED FORTY AND NO/100 DOLLARS ($ 440.00), as a down payment, the receipt whereof is hereby acknowledged, and (b) the balance in twenty ~~annual~~ quarterly equal annual installments, payable on the 20th day of Feb., May, Aug. & Nov. of each and every year until paid, first payment to be made on February 20, 19 59; *provided, however*, the Purchaser shall have the right to make payment of all or any part of the principal on quarterly installment payment dates only ~~Payment of all of remaining balance may be made at any time~~

The Purchaser further promises to pay to the Commissioner, interest at the rate of four per cent (4%) per annum, computed upon the then outstanding principal balance due the Commissioner, at the time specified for each installment payment of principal

SCHEDULE "A"

LOT 33

PANAEWA HOUSE LOTS

Panaewa, Waiakea, South Hilo, Hawaii

Being portion of the Government (Crown) Land of Waiakea.

Beginning at a 1-inch pipe at the northeast corner of this lot, the northwest corner of Lot 32 of Panaewa House Lots and on the south side of Government Road (50.00 feet wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 17524.48 feet South and 14667.54 feet East, as shown on Government Survey Registered Map H.T.S. Plat 922, thence running by azimuths measured clockwise from True South:-

1. 341° 00' 538.27 feet along Lot 32 of Panaewa House Lots to a 1-inch pipe;

2. 71° 00' 221.25 feet along Government Land to a 1-inch pipe;

3. 161° 00' 488.27 feet along the east side of Government Road (50.00 feet wide);

4. Thence along the east side of Government Road (50.00 feet wide), on a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being: 206° 00' 70.71 feet;

5. 251° 00' 171.25 feet along the south side of Government Road (50.00 feet wide) to the point of beginning and containing an AREA OF 2.72 ACRES.

RESERVING to the Territory of Hawaii, its successors and assigns, in perpetuity, all rights to ground but not to surface waters which are or may be appurtenant to the hereinabove described land or the ownership thereof.

RESERVING ALSO to the Territory of Hawaii, its successors and assigns, in perpetuity, all minerals in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove minerals and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, conditioned upon the payment, prior to any exercise of such right, of compensation for destruction of or damage or injury, caused by the exercise of such right to occupy and use said land, to permanent improvements placed upon the land.

"Minerals" within the meaning of such reservation shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, rock, gravel, and other similar materials when used in road or building construction.

SCHEDULE "B"

1. IT IS AGREED that the Purchaser shall, at his own cost and expense, within five (5) years after the date of this agreement, complete the erection of a single-family dwelling of new materials or masonry upon said land for residence purposes in full compliance with all applicable laws, ordinances, rules and regulations and containing a floor area of not less than 850 sq. ft., exclusive of garage & open lanai. Such building shall be well and substantially built and shall be finished in a good, thorough and workmanlike manner. In the event that the Purchaser shall, in order to comply with such building requirement, find it necessary to secure a loan from a lending agency so as to finance the erection or construction of said building, and such lending agency shall require of said Purchaser a mortgage of the land described herein as security for such loan, such loan to be effected upon the issuance of a deed or a Land Patent or both, whichever is or are deemed applicable by the Commissioner, then and in such event the Commissioner may issue to said Purchaser, subject to the conditions hereafter set forth, upon a request therefor being made in writing, such deed or Land Patent or both covering said land. The conditions upon which such deed or Land Patent or both may issue shall be as follows:

a. That all of the terms, covenants and conditions of this agreement shall have been performed by the Purchaser (excepting such building requirement) including, without prejudice to the generality of the foregoing, the payment of all sums of money provided for in paragraphs 1 and 2 hereof; and

b. That the Purchaser and lending agency shall have agreed with the Commissioner and with each other that all moneys to be loaned to said Purchaser by said lending agency for which the land described in Schedule "A" hereof shall be held as security, shall be retained by said lending agency and by it placed in a special account, from which account disbursements shall be made by it directly to the contractor in such amounts, at such times and upon such conditions as shall be provided for in a suitable building contract covering the erection or construction of said building; and

c. That the Purchaser shall have entered into a suitable contract with a reputable contractor providing for the erection or construction of said building to be completed within the period required by this agreement, and said contractor shall have executed in favor of said Purchaser and said lending agency, or either of them and the Territory of Hawaii, a performance and payment bond conditioned upon terms satisfactory to the Commissioner; and

d. That the Purchaser shall have performed such other conditions and shall have executed such other documents as the Commissioner shall, in his discretion, deem necessary to insure the *bona fide* performance by the Purchaser of said building requirement within the time prescribed therefor in this agreement.

2. IT IS ALSO AGREED that the Commissioner of Public Lands reserves the right, for good cause, to grant to any purchaser an extension of time to meet the building requirement, and if such extension is granted, it shall be for only such period of time and under such conditions as may be established by the Commissioner; provided, however, that the granting of an extension to any one purchaser shall not be considered as a grant of an extension to any or all other purchasers, or as a waiver of the building time requirement except to the extent to which it may be expressly extended.

3. PURSUANT TO the conditions incorporated in the Notice of Sale dated September 16, 1958 (Ad. Bk. 24:11), it is understood and agreed that:

(a) No quonset hut or dwelling of similar design or construction will be permitted for the dwelling required.

(b) Should the purchaser, or any assignee of his, desire to subdivide said lot or any portion thereof, each subdivision shall conform with the minimum specifications and standards established by the Hawaii Traffic and Planning Commission, excepting that said lot and each additional lot created as a result of said subdivision shall contain an area of at least 10,000 square feet, or the minimum area required by said Planning Commission, whichever is the greater, and the owner of each lot as subdivided shall be required within a period of five (5) years next following the date of such subdivision or resubdivision to construct on each lot so created a single-family dwelling meeting the requirements above-mentioned with respect to materials and minimum floor area. The foregoing construction requirements shall not be construed, however, to relieve the purchaser of the necessity for the erection of a dwelling on the premises within a period of five (5) years from the date of sale as hereinabove provided.

(c) No more than one dwelling shall be constructed on said lot, or if the same be subdivided, no more than one dwelling on each lot created as a result of said subdivision; provided, however, that accessory buildings, so long as they do not comprise dwelling units and so long as the same are erected in conformity with a plot plan and are of a character and design suitable to the area, will be permitted.

(d) A 25-foot building setback line from the roadway is provided for on this lot.

and repossess said land, with or without legal process, and retain all payments of principal and interest made by the Purchaser hereunder as liquidated damages and as and for an agreed rent for the use and possession of said land.

12. The acceptance by the Commissioner of any payment of principal or interest as the same shall become due shall not be considered a waiver of the right of the Commissioner, in the name of the Territory, to pursue any remedy or right for breach of or for cancellation of this agreement.

13. It is understood and agreed that the Purchaser under this agreement is not acquiring any private right in any public street, park or other area designated or shown in any schedule attached hereto as being public property, nor any right to have any or all such areas improved; *provided, however,* that nothing herein contained shall serve to prejudice such rights as the law may confer upon said Purchaser in common with others as an abutter on any public street.

14. As used herein, "land" shall mean the land described in Schedule "A" hereof, and all improvements whether now or hereafter erected thereon; "Governor" shall mean the Governor of the Territory of Hawaii, his successors in office and any other officer or officers who may succeed to his powers or duties; "Commissioner" shall mean the Commissioner of Public Lands of the Territory of Hawaii, his successors in office and any other officer or officers who may succeed to his powers or duties; "Purchaser" shall mean said Purchaser, his heirs and those who shall lawfully hold under him; the use of any gender shall include all genders, and if there be more than one purchaser, then the singular shall signify the plural, and this agreement shall bind said purchasers, and each of them, jointly and severally, and any documents issued pursuant hereto and all right, title and interest of said purchasers hereunder shall be held by them as tenants by the entirety.

As used hereinabove in Condition Nos. 2, 3, 7, 10 and 14 the document or documents conveying to the Purchaser all of the land covered by this Agreement is or are to be a Land Patent.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

TERRITORY OF HAWAII

By _____
Its Commissioner of Public Lands

_____
Purchaser ICHICHI SHIMABUKU

_____
Purchaser HIDEYO SERA SHIMABUKU

Honolulu, T. H., _____, 19____.

I consent to the sale of the land herein mentioned upon the terms and conditions above set forth:

_____
Governor of the Territory of Hawaii

Approved as to Form:

_____
Attorney General

TERRITORY OF HAWAII
} ss.
_____ COUNTY OF _____
(City and)

On this _____ day of _____, A. D. 19____, before me personally appeared ICHICHI SHIMABUKU and HIDEYO SERA SHIMABUKU, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that they executed the same as their free act and deed.

_____
Notary Public, _____
Judicial Circuit, Territory of Hawaii.

My Commission Expires _____

Written by vk

Checked by _____

2. In addition to the foregoing, the Purchaser shall, prior to the issuance of a document or documents as is or are hereinafter provided, pay to the Commissioner a fee in the sum of FIFTEEN AND NO/100 DOLLARS ($ 15.00), together with all statutory charges as may by law be imposed on a purchaser of public lands.

3. Title to the land subject to this agreement shall remain in the Territory until the Purchaser has made all payments required under paragraphs 1 and 2 above, and has otherwise observed and performed the terms and conditions herein contained on the part of the Purchaser to be observed and performed. Upon such payments being made and upon the observance and performance of such terms and conditions the Commissioner shall cause to be executed and delivered to the Purchaser a document or documents conveying to said Purchaser the land described in Schedule "A" hereof; *provided, however,* such document or documents shall contain a condition subsequent which shall restrict the use of said land to residence purposes only for a period of ten (10) years next following the date of issuance of said document or documents, a violation of which condition shall entitle the Commissioner, on behalf of the Territory, to enter upon said property and to forfeit the estate granted under said document or documents.

4. The Purchaser may, as of the date of these presents, enter upon and take possession of the land described in Schedule "A" hereof, and use and occupy the same hereunder for so long as said Purchaser shall not be in default of the terms and conditions of this agreement. The risk of loss of complete or partial destruction of the subject matter of this sale shall rest upon the Purchaser from and after the date of these presents.

5. The Purchaser shall, for the duration of this agreement, use the land described in Schedule "A" hereof for residence purposes only.

6. During the existence of this agreement the Purchaser shall pay, when due, all taxes, impositions and assessments of every kind, all garbage and sewer and water rates, and all other outgoings of every kind and nature whatsoever, which now are, or hereafter shall be, laid, imposed, assessed or charged on or in respect of said land or any part thereof or any interest therein or to which the Purchaser in respect thereof is now or may hereafter become liable.

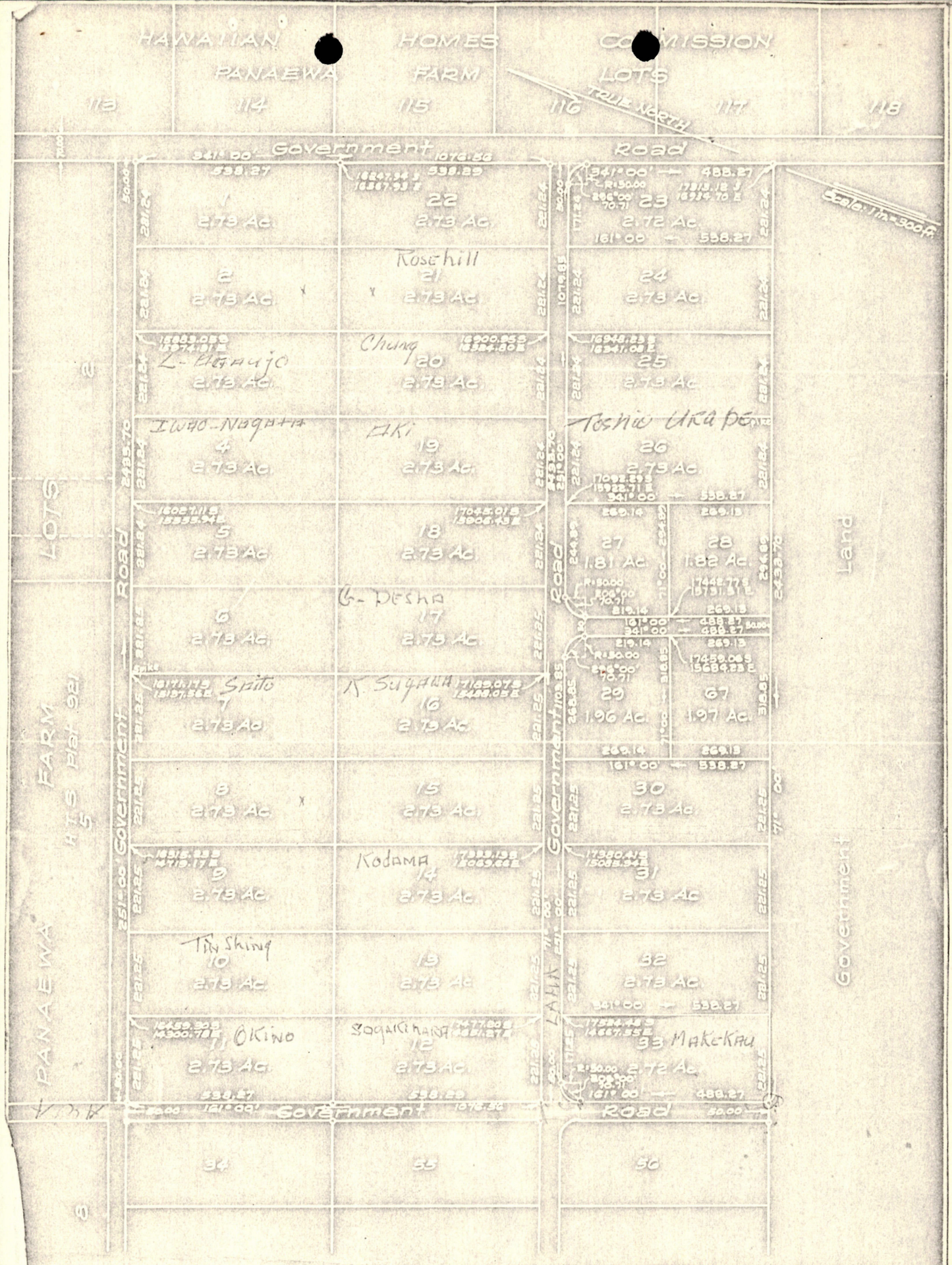
7. The Purchaser shall, pending the issuance of said document or documents, well and substantially repair, maintain, amend and keep said land and all improvements, now or hereafter erected thereon, in good order and repair, ordinary wear and tear excepted, and shall not do or commit, or permit to be done any willful or voluntary strip, waste or spoil or other damage to or destruction of said land and improvements.

8. The Purchaser shall, at his own cost and expense, keep all buildings and improvements, now or hereafter erected upon said land, insured throughout the term of this agreement against loss or damage by fire, including demolition and extended coverage, in an insurance company or companies satisfactory to the Commissioner, in the name of the Commissioner and in an amount equal to the full insurable value thereof, and shall deposit said policy or policies and all premium receipts therefor with the Commissioner, who shall have the option in the event of loss, damage or destruction to apply such proceeds either: (a) toward rebuilding or repair of such loss, damage or destruction, or (b) toward payment or reduction of the moneys due under this agreement.

9. The Commissioner, his agents and representatives, shall, at all reasonable times, be allowed to enter and to examine the property subject to this agreement for the purpose of determining whether the terms and conditions herein contained are being fully observed and performed.

10. The Purchaser shall not, without the written consent of the Commissioner and Governor endorsed hereon or attached hereto, except as specially provided by law, in any way, directly or indirectly, before a document or documents is or are issued hereunder, sell, assign, convey, lease, mortgage or otherwise transfer or dispose of this agreement or any rights hereunder, or said land or any part thereof or interest therein or control thereof, or contract so to do.

11. Time is of the essence of this agreement, and the Purchaser shall be deemed to be in default hereunder if (a) the Purchaser shall fail to pay any sums of money (including interest) when the same shall become due, or if (b) the Purchaser shall fail to observe or perform any of the terms and conditions herein contained on his part to be observed and performed, or if (c) the Purchaser shall vacate or abandon, or threaten to vacate or abandon, all or any part of said land. In the event of such default, the Commissioner may: (1) declare to be immediately due and payable all sums of money owing hereunder and may institute suit or other remedy against the Purchaser therefor, or (2) cancel this agreement and render void all interest of the Purchaser herein by giving written notice to said Purchaser, either personally or by sending the same by registered mail, postage prepaid, to his last known address (or if the land is or shall be under the operation of the Land Court of the Territory of Hawaii, the Commissioner may upon giving notice as aforesaid, file in the Office of the Assistant Registrar of said court an affidavit to the effect that such notice has been given and that this agreement has been cancelled thereby, or at the option of the Commissioner, file a petition in the Land Court for an order cancelling said agreement, which order may be issued in said Land Court or by the judge thereof on ex parte petition, without summoning or notifying the Purchaser),



Note: Lots 23, 27, 28, 29 and 33 revised and Lot 67 added to plan by O. Fukuya - Sept. 5, 1958

NOTE:
All lot corners marked with 1" pipes unless otherwise noted.
Coordinates referred to Halai △

LOTS 1 TO 33, INCLUSIVE
PANAEWA HOUSE LOTS
WAIAKEA, SOUTH HILO, HAWAII
SCALE: 1 IN. = 300 FT.

Map Key: 3rd Div. 2-5-48

SURVEY DEPARTMENT
TERRITORY OF HAWAII

Carton, 230

R.L. April 4, 1956

Land Patent No. S-13,710

(Grant)

Issued On

SALE AT PUBLIC AUCTION ON TIME PAYMENTS
ON NOVEMBER 20, 1958

RECEIVED
MAY 17 1966
State of Hawaii
LAND USE COMMISSION

By THIS PATENT the ACTING Governor of the ~~Territory~~ State of Hawaii, in conformity with the laws of the ~~United States of America and of the~~ ~~Territory~~ State of Hawaii, relating to public lands, and in accordance with Section 73 of the Hawaiian Organic Act, as amended, and continued in force and effect by Public Law 86-3, 86th Congress (March 18, 1959),

makes known to all men that he has this day granted and confirmed unto

—— RALPH EDWARD ALLISON and LORNA JANE DEDOLPH ALLISON, ——
husband and wife, as tenants by the entirety,

for the consideration of their *having paid into the Treasury the sum of* TWO THOUSAND TWO HUNDRED AND 00/100 *Dollars,* $2,200.00 ,

and for the further consideration of their having complied with the terms and conditions of Special Sale Agreement No. 4133, issued on November 20, 1958,

all of the land situate at —— PANAEWA, WAIAKEA ——

in the District of — SOUTH HILO — *Island of* — HAWAII — *bounded and described as follows:*

(REVISED SEPTEMBER 1958)

LOT 33
PANAEWA HOUSE LOTS

Being portion of the Government (Crown) Land of Waiakea

BEGINNING at a 1-inch pipe at the northeast corner of this lot, the northwest corner of Lot 32 of Panaewa House Lots and on the south side of Government Road (50.00 feet wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI' being 17524.48 feet South and 14667.55 feet East, as shown on Government Survey Registered Map H.T.S. Plat 922, thence running by azimuths measured clockwise from True South:-

1. 341° 00' 538.27 feet along Lot 32 of Panaewa House Lots to a 1-inch pipe;

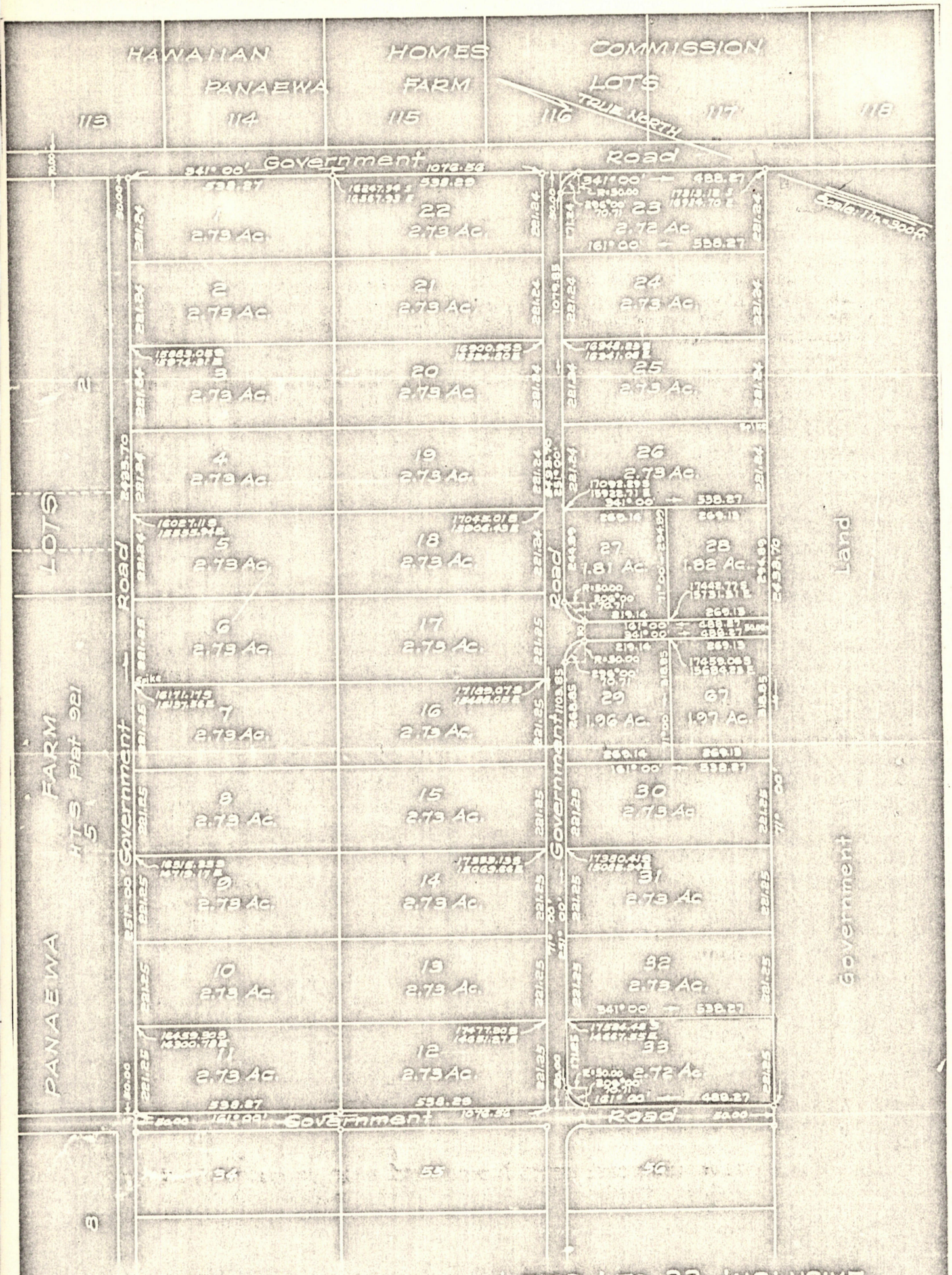
2. 71° 00' 221.25 feet along Government Land to a 1-inch pipe;

3. 161° 00' 488.27 feet along the east side of Government Road (50.00 feet wide);

4. Thence along the east side of Government Road (50.00 feet wide), on a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being: 206° 00' 70.71 feet;

EXHIBIT A

Attached to and made a part of Land Patent Grant No.
S-13,710



Note: Lots 23, 27, 28, 29 and 33 revised and Lot 67 added to plan by O. Fukuya - Sept. 5, 1958.

NOTE:
All lot corners marked with 11 pipes unless otherwise noted.
Coordinates referred to "Halai" △

LOTS 1 TO 33, INCLUSIVE
PANAEWA HOUSE LOTS
WAIAKEA, SOUTH HILO, HAWAII
SCALE: 1 IN. = 300 FT.

Tax Map Key: 3rd Div. 2-2-48

Carton, 230

42

SURVEY DEPARTMENT
TERRITORY OF HAWAII

R.L. April 4, 1950

5. 251° 00' 171.25 feet along the south side of Government Road (50.00 feet wide) to the point of beginning.

AREA 2.72 ACRES

RESERVING to the State of Hawaii, its successors and assigns, in perpetuity, all rights to ground but not to surface waters which are or may be appurtenant to the hereinabove described land or the ownership thereof.

RESERVING ALSO to the State of Hawaii, its successors and assigns, in perpetuity, all minerals in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove minerals and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, conditioned upon the payment, prior to any exercise of such right, of compensation for destruction of or damage or injury, caused by the exercise of such right to occupy and use said land, to permanent improvements placed upon the land.

"Minerals" within the meaning of such reservation shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, rock, gravel, and other similar materials when used in road or building construction.

THIS PATENT is subject to the following conditions, as contained in Special Sale Agreement No. 4133, dated November 20, 1958:

(a) Should the patentees, or any assignee of theirs, desire to subdivide said lot or any portion thereof, each subdivision shall conform with the minimum specifications and standards established by the Hawaii Traffic and Planning Commission, excepting that said lot and each additional lot created as a result of said subdivision shall contain an area of at least 10,000 square feet, or the minimum area required by said Planning Commission, whichever is the greater, and the owner of each lot as subdivided shall be required within a period of five (5) years next following the date of such subdivision or resubdivision to construct on each lot so created a single-family dwelling meeting the requirements above-mentioned with respect to materials and minimum floor area. The foregoing construction requirements shall not be construed, however, to relieve the patentees of the necessity for the erection of a dwelling on the premises within a period of five (5) years from the date of sale as hereinabove provided. Subdivision requirements shall continue for a period of ten (10) years next following the issuance of the land patent.

(b) A 25-foot building setback line from the roadway is provided for on this lot.

(c) No more than one dwelling shall be constructed on said lot, or if the same be subdivided, no more than one dwelling on each lot created as a result of said subdivision; provided, however, that accessory buildings, so long as they do not comprise dwelling units and so long as the same are erected in conformity with a plot plan and are of a character and design suitable to the area, will be permitted.

(d) No quonset hut or dwelling of similar design or construction will be permitted for the dwelling required.

(e) That the land hereby conveyed shall be used for residence purposes only for a period of ten (10) years from the date of issuance of this Land Patent. In the event of violation of the foregoing provision, said land shall forthwith be forfeited and resume the status of government land and may be recovered by the State of Hawaii or its successors in an appropriate action or proceeding.

Containing —— 2.72 ACRES —— *, more or less.*

TO HAVE AND TO HOLD the above granted Land unto the said

—— RALPH EDWARD ALLISON and LORNA JANE DEDOLPH ALLISON, ——
husband and wife, as tenants by the entirety,

their assigns and the heirs and assigns of the survivor of them forever, subject, however, to the reservations and conditions herein set forth.

IN WITNESS WHEREOF, The ~~ACTING~~ *Governor of the* ~~*Territory*~~ State *of Hawaii has hereto set his hand and caused the Great Seal of the* ~~*Territory*~~ State *to be hereunto affixed, this* 1st *day of* August *A. D. 19*60

STATE
~~TERRITORY~~ OF HAWAII

William F. Quinn
~~ACTING~~ *Governor of Hawaii.*

Countersigned:

E. W. Pooley
~~*Commissioner of Public Lands.*~~
MEMBER, BOARD OF LAND & NATURAL RESOURCES

Approved as to form:

Shiro Kashiwa
Attorney General.

Written by bys

Checked by H. H.

*Land Patent No.*_____

(Grant)

*Patentee*_____

*District*_____

*Island*_____

*Issued*_____

Land Patent

5. 251° 00' 171.25 feet along the south side of Government Road (50.00 feet wide) to the point of beginning.

AREA 2.72 ACRES

RESERVING to the State of Hawaii, its successors and assigns, in perpetuity, all rights to ground but not to surface waters which are or may be appurtenant to the hereinabove described land or the ownership thereof.

RESERVING ALSO to the State of Hawaii, its successors and assigns, in perpetuity, all minerals in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove minerals and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, conditioned upon the payment, prior to any exercise of such right, of compensation for destruction of or damage or injury, caused by the exercise of such right to occupy and use said land, to permanent improvements placed upon the land.

"Minerals" within the meaning of such reservation shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, rock, gravel, and other similar materials when used in road or building construction.

THIS PATENT is subject to the following conditions, as contained in Special Sale Agreement No. 4133, dated November 20, 1958:

(a) Should the patentees, or any assignee of theirs, desire to subdivide said lot or any portion thereof, each subdivision shall conform with the minimum specifications and standards established by the Hawaii Traffic and Planning Commission, excepting that said lot and each additional lot created as a result of said subdivision shall contain an area of at least 10,000 square feet, or the minimum area required by said Planning Commission, whichever is the greater, and the owner of each lot as subdivided shall be required within a period of five (5) years next following the date of such subdivision or resubdivision to construct on each lot so created a single-family dwelling meeting the requirements above-mentioned with respect to materials and minimum floor area. The foregoing construction requirements shall not be construed, however, to relieve the patentees of the necessity for the erection of a dwelling on the premises within a period of five (5) years from the date of sale as hereinabove provided. Subdivision requirements shall continue for a period of ten (10) years next following the issuance of the land patent.

(b) A 25-foot building setback line from the roadway is provided for on this lot.

(c) No more than one dwelling shall be constructed on said lot, or if the same be subdivided, no more than one dwelling on each lot created as a result of said subdivision; provided, however, that accessory buildings, so long as they do not comprise dwelling units and so long as the same are erected in conformity with a plot plan and are of a character and design suitable to the area, will be permitted.

(d) No quonset hut or dwelling of similar design or construction will be permitted for the dwelling required.

(e) That the land hereby conveyed shall be used for residence purposes only for a period of ten (10) years from the date of issuance of this Land Patent. In the event of violation of the foregoing provision, said land shall forthwith be forfeited and resume the status of government land and may be recovered by the State of Hawaii or its successors in an appropriate action or proceeding.

LEGAL NOTICE

LAND AUCTION

NOTICE OF SALE OF TERRITORIAL GOVERNMENT LOTS AND CERTAIN REAL PROPERTY INTERESTS ON THE ISLAND OF HAWAII

PUBLIC NOTICE is hereby given that on Tuesday, November 18, 1958 at 9:00 o'clock A.M., and on Thursday, November 20, 1958 at 9:00 o'clock A.M., or as soon thereafter as the Commissioner of Public Lands or his representative may deem necessary, at the Office of the Subland Agent in the Hilo Land Office Building at 1665 Kamehameha Avenue, Hilo, County and Island of Hawaii, there will be sold at public auction to the highest bidders, pursuant to the provisions of Section 73 of the Hawaiian Organic Act and of the Revised Laws of Hawaii 1955, as amended, relating to public lands, and with the approval of the Land Board, certain public lands (lots and certain rights) on the Island of Hawaii, as hereinbelow set forth.

Items 1, 2 and 3 as detailed below will be sold on Tuesday, November 18, 1958. Item 4, together with any unsold lots or real property interests covered by Items 1, 2 and 3, will be sold on Thursday, November 20, 1958.

Said auction may be postponed or continued from time to time by public announcement by the Commissioner or his representative, at the time and place previously set, to such other time and place as then shall be announced.

The sale is subject to reservations, exceptions, restrictions, building and improvement requirements and conditions not specifically or in detail recited in this Notice, the details of which may be examined in Conditions of Sale Instrument, together with maps and descriptions, and the forms of Special Sale Agreement and Deed or Patent which will be used, (subject to necessary modifications to conform to results of sale), in the Office of the Commissioner of Public Lands in Honolulu and at the Offices of the Subland Agents in Hilo, Hawaii; Wailuku, Maui; and Lihue, Kauai. All of the foregoing are incorporated by reference in this Notice of Sale. In case of conflict, the provisions contained in the forms of the Deed or Patent, Special Sale Agreement, Conditions of Sale Instrument and Notice of Sale shall control, in the order listed.

A. LOTS AND REAL PROPERTY INTERESTS TO BE SOLD; LOCATION; AREA; QUALITY; UPSET PRICE.

ITEM 1. HOUSE LOTS

Eighteen of the Lalamilo House Lots, Second Series, Waimea, South Kohala, Hawaii. See Government Survey Maps HTS Plat 416 and Carton 65 and Hawaii Tax Map Keys 6-6-04: 6-6-01; 6-5-01.

Lot No.	Area—Sq. Ft. (More or Less)	Upset Price
*24	43,560	$1106.00
*28	43,560	1034.00
*30	43,560	1023.00
*32	43,560	868.00
*34	43,560	861.00
*35	43,558	854.00
*37	43,560	843.00
42	33,474	1377.00
43	30,163	1414.00

*Lots subject to telephone line easement.

Lot No.	Area—Sq. Ft. (More or Less)	Upset Price
44	34,286	1234.00
45	40,499	939.00
46	49,645	749.00
47	43,901	991.00
48	41,094	950.00
49	42,239	844.00
53	43,802	876.00
57	43,560	676.00
58	43,564	653.00

LOT PURCHASE RESTRICTION: One lot only to purchaser. Spouse of any puchaser prohibited from purchasing another lot.

BUILDING REQUIREMENT AND RESTRICTION: A single-family dwelling of new materials or masonry containing a floor area of not less than 850 square feet, exclusive of garage and open lanai, must be constructed within three (3) years from date of sale. Accessory buildings permitted. However, all structures must meet certain specifications.

RESTRICTIVE USE: Residence purposes only for ten (10) years next following the issuance of Land Patent Grant or Deed.

METHOD OF PAYMENT: Minimum of twenty percent (20%) of purchase price; balance in twenty (20) equal quarterly installments at four percent (4%) interest per annum.

SUBDIVISION: Subdivision of lot permitted with certain lot size and building requirements.

ITEM 2. HOUSE LOT

Lot 8-A, Waiakea Camp Site, Waiakea Homesteads, Second Series, Waiakea, South Hilo, Hawaii, containing an area of 1.15 acres. See Government Survey Map Carton 161 and Tax Map Key 2-4-07.

UPSET PRICE: $575.00. Bid price payable in full at sale.

BUILDING REQUIREMENT AND RESTRICTION: A single-family dwelling of new materials or masonry costing not less than $6,000.00, must be constructed within three (3) years from date of sale. No quonset hut or dwelling of similar design or construction will be permitted.

RESTRICTIVE USE: Residence purposes for ten (10) years next following the issuance of Land Patent Grant or Deed.

ITEM 3. RIGHTS RELATING TO PAYMENT OF DAMAGES IN EXERCISE OF RESERVED MINERAL AND MINING RIGHTS

Sale of so much of the rights relating to minerals and mining heretofore reserved to the Territory, affecting approximately 55.273 acres of the lands of Lalamilo, Keoniki and Kauniho, Ilis of the Government (Crown) Land of Waimea, South Kohala, Hawaii, T. H., as shown on Government Survey Map C.S.F. No. 12,693, the extent and effect of such sale being to convey the right to require of the Territory and persons authorized by it, prior to entry, occupation and use of the surface of said land, compensation for destruction of or damage or injury to permanent improvements placed upon said land caused by such entry, occupation and use of the surface thereof. (Tax Map Keys 6-6-04:2 and 6-5-01:10)

UPSET PRICE: $5,000.00

METHOD OF PAYMENT: Minimum of twenty percent (20%) of purchase price: balance in thirty-two (32) equal quarterly installments at four percent (4%) interest per annum.

ITEM 4. HOUSE LOTS

Twenty house lots situated at Panaewa, Waiakea, South Hilo, Hawaii, varying in size from 1.81 acres to 2.73 acres, as shown on Government Survey Maps HTS Plat 922 and Carton 230 and Hawaii Tax Map Key 2-2-48.

Lot No.	Area—Acres (More or Less)	Upset Price
23	2.72	$2200.00
24	2.73	2050.00
25	2.73	2050.00
26	2.73	2050.00
27	1.81	1400.00
29	1.96	1500.00
30	2.73	2050.00
31	2.73	2050.00
32	2.73	2050.00
33	2.72	2200.00
44	2.42	1850.00
56	2.72	2200.00
57	2.73	2050.00
58	2.73	2050.00
59	2.73	2050.00
60	2.73	2050.00
61	1.81	1400.00
63	1.96	1500.00
64	2.73	2050.00
65	2.49	1900.00

LOT PURCHASE R: TRICTION: One lot only to purchaser. Spouse of any purchaser prohibited from purchasing another lot.

BUILDING REQUIREMENT AND RESTRICTION: A single-family dwelling of new materials or masonry containing a floor area of not less than 850 square feet, exclusive of garage and open lanai, must be constructed within five (5) years from date of sale. Accessory buildings permitted. However, all structures must meet certain specifications.

RESTRICTIVE USE: Residence purposes only for ten (10) years next following the issuance of Land Patent Grant or Deed.

METHOD OF PAYMENT: Minimum of twenty percent (20%) of purchase price; balance in twenty (20) equal quarterly installments at four percent (4%) interest per annum.

SUBDIVISION: Subdivision of lot permitted with certain lot size and building requirements.

B. PAYMENT REQUIRED ON DATE OF SALE: To be in Cash or Certified or Cashier's check.

C. CONDITIONS OF SALE INSTRUMENT: For details of above and general provisions and conditions of sale, see Conditions of Sale Instrument.

DONE at the Office of the Commissioner of Public Lands, Territorial Office Building, Honolulu, Hawaii, this 16th day of September, 1958.

FRANK W. HUSTACE, JR.
Commissioner of Public Lands

(Hilo Tribune-Herald:
Sept. 19; Oct. 11; Nov. 1, 16, 1958.)
JJD:ft

2. IT IS ALSO AGREED that the Commissioner of Public Lands reserves the right, for good cause, to grant to any purchaser an extension of time to meet the building requirement, and if such extension is granted, it shall be for only such period of time and under such conditions as may be established by the Commissioner; provided, however, that the granting of an extension to any one purchaser shall not be considered as a grant of an extension to any or all other purchasers, or as a waiver of the building time requirement except to the extent to which it may be expressly extended.

3. PURSUANT TO the conditions incorporated in the Notice of Sale dated September 16, 1958 (Ad. Bk. 24:11), it is understood and agreed that:

(a) No quonset hut or dwelling of similar design or construction will be permitted for the dwelling required.

(b) Should the purchaser, or any assignee of his, desire to subdivide said lot or any portion thereof, each subdivision shall conform with the minimum specifications and standards established by the Hawaii Traffic and Planning Commission, excepting that said lot and each additional lot created as a result of said subdivision shall contain an area of at least 10,000 square feet, or the minimum area required by said Planning Commission, whichever is the greater, and the owner of each lot as subdivided shall be required within a period of five (5) years next following the date of such subdivision or resubdivision to construct on each lot so created a single-family dwelling meeting the requirements above-mentioned with respect to materials and minimum floor area. The foregoing construction requirements shall not be construed, however, to relieve the purchaser of the necessity for the erection of a dwelling on the premises within a period of five (5) years from the date of sale as hereinabove provided.

(c) No more than one dwelling shall be constructed on said lot, or if the same be subdivided, no more than one dwelling on each lot created as a result of said subdivision; provided, however, that accessory buildings, so long as they do not comprise dwelling units and so long as the same are erected in conformity with a plot plan and are of a character and design suitable to the area, will be permitted.

(d) A 25-foot building setback line from the roadway is provided for on this lot.

PROPERTY NEEDED FOR OTHER USE

First. Section 98H-2, Revised Laws of Hawaii, states that

> "in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included."

In addition, Section 2.3 of the State Land Use District Regulations states that in fixing or amending district boundaries, urban areas "shall include sufficient reserve areas for urban growth in appropriate locations, based on a ten-year projection."

Under the present zoning the area reserved for urban expansion is inadequate and will not satisfy growth needs for the next ten years as required by law.

Second. Zoning of adequate land for urban growth is necessary to prevent artificial inflation of land values. The present very high cost of small residential lots in Hilo indicates that insufficient urban residential lands have resulted in a gross overinflation of the price of the small amount of as of yet unsold urban land in Hilo. Although there is some vacant land zoned urban, most of it has already been subdivided and sold.

Third. The County and State have a duty to the people of Hawaii to provide relatively inexpensive land for citizens on which they may construct houses of reasonable cost. Only wealthy individuals can afford to pay the over-inflated prices (generally over thirty cents per square foot) of the small amount of land presently zoned urban in Hilo.

There is a present lack of small lot size, relatively inexpensive land for residents to purchase as home sites. Individual home ownership is discouraged and prohibited by the present zoning structure in Hilo and the resulting inflated residential lot prices.

Fourth. The land is "needed" for another use because it is not suitable for agricultural development. The land is not suitable because:

(a) No crops can be economically raised on these pahoehoe and aa lava parcels without trucking in soil to cover the rough lava rock surface.

(b) The lots, ranging from 1.5 to 2.73 acres in size, are too small for economical agricultural uses, especially considering the fact that all lots presently have at least one dwelling home and adjacent yards constructed on them and occupying a part of the land.

Fifth. The present owners of the land are largely wage earners employed by various businesses in Hilo, who purchased the land in reliance on its being zoned for 10,000 square foot residential lots. These owners are not farmers or agriculturists. They do not have the knowledge, skill or time to attempt to convert these lots to agricultural uses. The owners bought these lots to use for their own residences, for residences of their family, and for construction of rental homes as a source of income. They are not land speculators. At the last interview, only one owner indicated an intention to subdivide and sell lots. The rest plan to keep all of their land.

The present owners bought these lots at the relatively high prices paid because of the close proximity to Hilo, the availability of adequate utilities, good roads, quick access to jobs, promised residential 10,000 square foot lot sizes, and in general because of the suitability of the land for urban residential uses.

Sixth. These lots are needed for another use because the land, as presently zoned, is going to waste. At least 64% of the land was at one time cleared. Many owners have had to let their land go back to jungle when they found that they could not use it for agricultural uses, could not build more houses, and could not occupy and maintain the entire lot as their own yard. Probably, less than 50% of the land is now maintained.

Seventh. These lots are needed for other uses because the highest and best use of the land is for urban residential subdivision purposes. Further, the only reasonable use of the land is urban residential dwellings. To deprive the Petitioners of the only reasonable use of their land is to deprive them of proferty without due process of law in violation of the United States and Hawaii Constitutions.

USABLE FOR PROPOSED USE

The land involved is usable and adaptable for 10,000 square feet of lots because:

(a) The land is close to the centers of shopping, recreational and employment facilities. It is only a short drive on what is perhaps the best highway on the island, two shopping centers and commercial and business center of both Hilo and Keaau.

(b) Adequate basic services are close at hand and available at relatively low cost to the owners of the lots. Water is available in almost unlimited quantity. There is one six-inch line and one eight-inch line running along the highway adjacent to the subdivision. Eventually a deep well will be installed less than a mile from the subdivision to supply water for the area. Telephone service and electric power service are both readily available.

(c) School and playground areas are a short drive from the land. Police and fire protection are only a short distance away.

(d) All subdivisions roads but one are paved, and it is expected that the last one will be paved shortly. The money has been approved by the State Legislature in the 1965 Session.

(e) The land has excellent topography (now that it has been leveled off). It has excellent drainage and is entirely free from the danger of floods. The land is composed of rock that provides excellent foundations for residential dwellings. Urban growth should be chanelled

into this rocky waste area rather than into good agricultural land.

(f) The following, recently calculated, distances to various points in Hilo indicate that the land is ideally suited for residential dwelling:

(1)	Keaau Police Department	3.6 miles
(2)	Hilo Police Department	4.5 miles
(3)	Nearest Fire Station	2.3 miles
(4)	Keaau Fire Station	3.6 miles
(5)	Keaau Post Office	3.6 miles
(6)	Hilo Post Office	4.5 miles
(7)	Hilo Airport	3.7 miles
(8)	The new Hilo Shopping Center	3.5 miles
(9)	Taniguchi's new Shopping Center (nearly completed	2.0 miles
(10)	Bank of Hawaii	2.7 miles
(11)	First National Bank	3.5 miles
(12)	The new County Building	4.3 miles
(13)	Municipal Golf Course	1.5 miles
(14)	Waiakea-Waena Elementary School	1.2 miles

CHANGED CONDITIONS

Conditions in Hilo have changed so as to require redistricting of this land for urban uses because:

(1) Recent subdivision of land and construction of homes in areas presently zoned urban have resulted in an inadequate supply of urban lands suitable for low and middle cost housing developments.

(2) Construction of the new four-lane divided highway connecting Keaau with these house lots has made this land an excellent location for persons working at Keaau but still requiring the services and facilities of Hilo's urban area.

(3) Recent construction of additional power lines, water pipes, etc., have made this area an excellent one for urban growth.

(4) New supermarkets have been built within a short distance of this subdivision. The new business section is located along the same highway. Since the tidal wave of 1960, most damaged businesses have been relocated on this side of Hilo.

(5) This is the most rapidly growing part of Hilo.

CONTRACT THEORY

The State of Hawaii had the power and the capacity to enter into a contract with any individual and to bind itself thereby. In the present case, the State of Hawaii entered into agreements with the purchasers of the Panaewa Houselots. The express terms of the agreements stated that the new owners would have the right to use their lots for exclusively residential purposes and further, that the new owners could subdivide their parcels into 10,000 square foot houselots. Because of the express representations of the State, many of the purchasers relied on the fact that they could build more than one house on their lots and they bought lots with that in mind.

The following sources indicate the terms of the contract:

(1) The notice of sale published by the Territorial government in the Hilo Tribune-Herald on September 19th, October 11th, November 1st and November 16th, 1958. The said notice indicated that the lots were restricted to "residential purposes only for 10 years next following the issuance of Land Patent Grant or Deed." The notice explicitly stated: "Subdivision of lot permitted with certain lot size and building requirements."

(2) Special Sale Agreements and Land Patent Grants signed by the representatives of the State of Hawaii state that the buyer was required to construct a residence meeting

certain requirements within five years, and that all subdivisions shall conform to the then existing subdivision regulations.

Both instruments provided that no lot of an area of less than 10,000 square feet could be created. Under the terms of both instruments, the land could be used only for residential purposes for a period of ten years.

(3) In addition, members of the County Planning Commission, the Building Department and the Board of Water Supply all stated to certain lot owners that subdivision of these lots was permissible.

(4) The Land Patent Grants (deeds) make mention of future subdivision similar to the representations of the sales contract. Not only do the deeds specify residential use only, they go much further and state that if the lot is used for any use other than residence uses (and this includes most agricultural uses), the land "shall forthwith be forfeited and resume the status of government land."

If the landowner attempts to use his land for agricultural purposes, the State can step in and take his land. More than that, the State must take his land because the deed states that the land "shall" forthwith be forfeited and resume the status of government land.

This was a contract and the people of Panaewa relied on it, and they certainly had a right to rely on it.

A questionnaire answered and signed by 57 of the 59 signers of the petition indicated that the private owners

relied on the original promises of the State allowing the land to be divided into 10,000 square foot lots.

This contract issue has already been decided by the Third Circuit Court in Hilo on July 30, 1965 in Tamura vs. Planning and Traffic Commission. In that case, the court upheld the contract in spite of later State zoning. There was a legal contract to allow subdivision into 10,000 square foot residential lots.

IMPROPER ORIGINAL DISTRICT BOUNDARY

In establishing the Land Use districts, the State Land Use Commission improperly included this essentially urban area in an agricultural district, contrary to the standards set forth in the Land Use Law and the present Land Use Regulations.

Judge Felix in the Tamura vs. Planning and Traffic Commission decision passed upon this point:

> "It should be noted that the second sentence of Section 5, Act 187, Session Laws 1961 (the original Land Use Law) reads: 'These temporary districts shall be determined so far as practicable and reasonable to maintain existing uses . . .' There is no doubt that by said sentence, the Legislature in enacting Act 187 intended the Land Use Commission to place land which had been put into urban (residential) use prior to enactment of said Act to be continued in an urban district; and accordingly, it would seem that the Land Use Commission in classifying the lots in the Panaewa Subdivision should have classified said lots in an urban district."

RURAL ZONING NOT PROPER

Rural zoning is not proper for the land in question because:

1. The minimum lot size in rural districts is one-half acre. The contractual agreement between the landowners and the State guaranteed that the land could be subdivided into 10,000 square foot lots.

2. The purpose of establishing rural districts is to provide areas occupied by houses and adjacent vegetable gardens, or other agricultural areas. The theory is that landowners will supplement their other income by raising fruits, vegetables, flowers, etc. for their own use or profit.

Such zoning would be improper here because it is impossible to raise these items on bare rock.

3. Under the State Land Use District Regulations effective August 23, 1964, Regulation 2.10(e), rural districts "shall include parcels of land where 'city-like' concentrations of people, structures, streets and urban level of services are absent." With respect to the property here involved, there presently exist city-like concentrations of people, structures, and streets. There is also presently available an urban level of services.

LAND NOT CONTIGUOUS TO URBAN HILO

Although the Land Use Statute does not so require, it is presently the policy of the Planning Commission and the Land Use Commission to withhold recommendations for urban districting where the land is not immediately contiguous to present urban districts. As a general rule of thumb, this policy has some merit.

However, before the rule of thumb should be applied to any one case, the reasons behind the rule must be examined to see whether they apply. The reasons for the policy are as follows:

1. Land that is not adjacent to developed urban areas does not have readily available services such as telephone, electricity, water, police and fire protection, schools, shopping areas, etc. If such services are not available they will be very costly for the land purchasers, and it may not be advisable to allow urban structures to be developed.

In the present case this policy does not apply. All services are already installed, readily available, and close at hand, at no unusual cost to the landowners.

2. A second reason for the rule of thumb is that urban developments not contiguous to existing urban districts are aesthetically unpleasing. A strong policy of the Hawaii Statute is to prohibit scattered urban developments because they mar the beauty of our countryside.

Again this reason does not apply in the present case. The State has provided a 300-foot wide expanse of

virgin forest between the highway and this development for the express purpose of maintaining beautiful, undeveloped forest along the roadway.

3. A third reason is the added tax burden on the community when new roads, and other services will have to be installed by the State or County to service the new developments. New roads or other services are required, new government outlays will be required and the burden on the citizens will be increased.

Again, this policy does not apply to the present case. Roads have already been constructed and other services are readily available. Although the water system within the State subdivision may have to be supplemented at some time in the indefinite future, that bridge can be crossed when individual subdivision applications are processed.

The reasons for this rule of thumb do not apply. The rule should not apply.

In the present case, the land is less than 900 feet from areas presently zoned urban. Ten-acre farm lots now separate this residential subdivision from urban Hilo. The area involved is an ideal one for urban expansion because it is very close to urban Hilo and is on an excellent road with easy access to necessary services. Zoning of this area as urban would be in line with the State's policy of preserving good agricultural land in its agricultural uses and channeling growth of urban areas into wastelands not suitable for agricultural uses.

STATE OF HAWAII
LAND USE COMMISSION

County Board of Supervisors Chambers
Hilo, Hawaii

3:00 P. M.
May 6, 1966

STAFF REPORT

A65-107 - R. E. ALLISON, ET AL

Mr. R. E. Allison and 58 other property owners in the Panaewa Houselot Subdivision, Hilo, Hawaii, have submitted a petition requesting a change in district boundary from an Agricultural District to an Urban or a Rural District, involving parcels of land as indicated on the staff map identified by Tax Map Key 2-2-51 and 52 of the Third Taxation Division. The Land Use Commission, upon its own motion, has included the remaining parcels for the same consideration.

In support of their petition, the petitioners have submitted the following:

1. That the lots in the Panaewa Houselot Subdivision were offered for sale at public auction by the then Territory of Hawaii, restricting the use to residential purposes.
2. That the Special Sales Agreement and Land Patent executed and issued for the subject lots provided that the lots shall be used for residential purposes only from date of sale for a period of ten years next following the issuance of the Land Patent or deed, and that subdivision requirements likewise shall continue for a period of ten years next following such issuance.
3. That the petitioners purchased the lots for residential purposes only as so restricted by the then Territory of Hawaii.
4. That most of the people of the Panaewa Lot Subdivision purchased lands for the purpose of building more than one house.

5. That the Land Use Commission rezoned the area to an Agricultural District, although many landowners did not realize this had been done.

6. That the act of the Land Use Commission in zoning the area within the Agricultural District amounts to a breach of contract on the part of the State, or at least lack of good faith.

Further, the petitioners have submitted the following reasons to justify the need for other uses of the subject lands:

1. Under the present zoning, the area reserved for urban expansion is inadequate and will not satisfy growth needs for the next ten years as required by law.

2. The present very high cost of small residential lots in Hilo indicates that insufficient urban residential lands have resulted in a gross over-inflation of the price of the small amount of as yet unsold urban lands in Hilo.

3. Individual home ownership is discouraged and prohibited by the present zoning structure in Hilo and the resulting inflated residential lot prices.

4. The land is needed for another use because it is not suitable for agricultural development because:

   a. No crops can be economically raised on subject lands without trucking in soil to cover the rough lava rock surface.

   b. The lots, ranging from 1.5 to 2.73 acres in size, are too small for economical agricultural uses, especially considering the fact that all lots presently have at least one dwelling home and adjacent yards constructed on them and occupying a part of the land.

5. The present owners of the land are not farmers or agriculturists and

do not have the knowledge or skill or time to attempt to convert these lots to agricultural uses. Only one owner indicated an intention to subdivide and sell lots, while the rest plan to keep all of their land.

6. The present lands are needed for another use because the lands, as presently zoned, are going to waste.

7. The only reasonable use of the land is urban residential dwellings, and to deprive them of property without due process of law is in violation of the United States and Hawaii Constitutions.

8. The subject lands are usable and adaptable for 10,000 square foot lots on the basis of the topography, community services and facilities available, and the relative proximity to community facilities within the Hilo Urban District.

9. Conditions have changed to require redistricting of the subject lands for urban uses since an inadequate supply of urban lands suitable for low and middle cost housing developments has resulted; construction of a new four-lane highway has been completed; recent construction of additional power lines and water lines makes this area excellent for urban growth; new supermarkets have been built within a short distance; and this is the most rapidly growing part of Hilo.

10. The contract issue between the State and the landowners has already been decided by the Third Circuit Court in Hilo on July 30, 1965 in Tamura vs. Planning and Traffic Commission.

11. The original district boundaries have been established improperly for the subject lands in accordance with Judge Felix's decision in Tamura vs. Planning and Traffic Commission.

12. Rural zoning for the area is not proper in accordance with the contractural agreement between the landowners and the State, and in accordance with Land Use District Regulations.

13. Although the land is not contiguous to the Hilo Urban District and the Land Use Commission District Regulations have set up a rule of thumb requiring favorable consideration to contiguous lands, the theory behind this rule of thumb do not apply to the subject lands.

The Hawaii County Planning Commission has recommended approval of the change from an Agricultural District to a Rural District on the basis of the following:

1. Existing land use of areas in question indicates the characteristics of a Rural District.
2. The area is not suited for intensive agricultural use because of poor soil conditions.
3. The area should not be in urban as it is not contiguous to the existing urban area and it is against the policy of the County and State to provide a scattering of urban areas.
4. The General Plan has provided for adequate residential areas in the City of Hilo, that no subdivision should be approved in the area until adequate water service is provided and until the density of rural-agricultural is set at a later date upon further study.

Analysis:

Soils in the area of the subject lands are known as the Olaa or Ohia soil material, consisting of young lava with a thin covering of volcanic ash, occurring in very wet regions on the islands of Hawaii. More than half of the land surface is occupied by bare bed rock outcrop, with the rest consisting of a thin covering of volcanic ash that extends into cracks and

crevices in the rough, broken, a-a lava. Some parts of this unit are forested and others are pastured, while in a few places sugar cane was once grown by hand labor, but these have been abandoned. This land type is difficult to cultivate, and pastures are very poor quality. However, some areas at lower elevations are being developed for macadamia nuts, coffee, and pastures.

The general area involves a mixed land use of residential, agricultural and wooded areas. Building density approximates 2.7 acres per dwelling unit located among wild growth, coffee orchards, lichee orchards, macadamia nut orchards and small gardens. Basic electrical, telephone and water services are available for the present subdivision, although Lama Street is of cinder construction. The average annual rainfall in the area approximates 130 inches.

The validity of the petitioners' argument relating to their right to subdivide in accordance with the Special Sales Agreement and Land Patent issued by the then Territory of Hawaii has been ruled upon negatively by the Land Use Commission during its deliberations on December 17, 1965. The consensus at that time was that the landowner is governed by the ordinances in effect at the time he proposes to subdivide, and not by the ordinances that were in effect at the time he first purchased his lands. Since the exact arguments on the matter have been submitted by the petitioners, a similar ruling is in order by the Commission on the basis of its earlier ruling.

It has been reported by the Board of Water Supply of the County of Hawaii that the existing water system in the Panaewa Houselot area can only meet the demands of the subdivision as presently platted, and any further subdivision would overtax the present system. Approval of half-acre lots in the area can increase the number of lots five-fold from 50 lots to 250

lots. On this basis, road improvement requirements and water service requirements would require governmental expenditures approaching $300,000.00. The Hawaii County Planning Commission has reported that they would not approve subdivisions in the area until improvement district projects are initiated for the water system, and until further studies are completed to determine densities in agricultural-rural areas.

The petitioners have submitted that the subject lands are needed for urban purposes, with arguments based primarily upon a claim of a shortage of urban lands within the Hilo District. No substantiating data of this shortage have been submitted however. Also, it is noted that the Hawaii County Planning Commission is of the opinion that adequate residential areas have been provided for in the City of Hilo according to its General Plan. The Land Use Commission staff estimates that approximately 2,400 acres of vacant urban lands occur within the Hilo Urban District.

On the basis of a lack of substantiating data to support the petitioners' claim that additional lands are needed for urban purposes in the Hilo area, and on the basis of the discussion above, it is recommended that the petition be denied.

File

1933

RECEIVED
MAY 5 1966
State of Hawaii
LAND USE COMMISSION

COUNTY PLANNING COMMISSION
COUNTY OF HAWAII
HILO, HAWAII

May 3, 1966

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

Re: Panaewa Houselots
Amendment to State Land Use boundaries

Please be informed that the County Planning Commission has reviewed this case on the basis of whether the area can be changed to urban or rural. Therefore, the original Commission's recommendation applies to the amended petition.

Will be seeing you at the May 6th meeting.

Raymond H. Suefuji
Acting Director

PIY:mh

5-2-66

Note to files - Allison

C. I. P.

$45,000 put in for resurfacing of Lama + Ave streets

Land Dept. has requested allotment for 4th quarter.

C. I. P. section has held-up allotment since justification lacking. State should not pay entire cost when only a few benefit from taxpayers monies.

STATE OF HAWAII

LAND USE COMMISSION

VOTE RECORD

ITEM Panaewa Petition Adj.

DATE 4-14-66

PLACE

TIME

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

COMMENTS: Commission ~~Mota~~ moved to ~~cons~~ initiate boundary change for those people who did not sign Allison petition motion carried

Ask staff to poll other counties on similar matters per above

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

County Board of Supervisors Chambers
Wailuku, Maui

April 14, 1966 - 2:25 P.M.

Commissioners Present: Myron B. Thompson, Chairman
C. E. S. Burns
Robert Wenkam
Shelley Mark
Jim P. Ferry
Leslie Wung
Goro Inaba
Charles Ota
Shiro Nishimura

Staff Present: George S. Moriguchi, Executive Officer
Roy Takeyama, Legal Counsel
Ah Sung Leong, Draftsman
Dora Horikawa, Stenographer

A short prayer by Chairman Thompson was followed by the usual introduction of Commissioners and staff members, swearing in of persons testifying during the hearing, and a brief explanation of the procedures to be followed.

PETITION OF ALEXANDER AND BALDWIN, INC. (A65-106), TO AMEND THE URBAN DISTRICT BOUNDARY AT KAHULUI, MAUI, identifiable by Tax Map Key 3-8-07: 02

Staff recommendation was for favorable consideration of the petition since adequate proof had been submitted of the need for urbanization of an additional 12 acres, and the lands were suitable for development for urban purposes.

Commissioner Wenkam asked whether petitioner had entertained the idea of revising the urban line more approximate with the master plan for Maui, and Mr. Moriguchi replied that this had been done, that the petitioner had closely followed the master plan.

Mr. Richard Cox of Alexander and Baldwin stated that the staff had adequately covered the pertinent points. He submitted an additional map showing how the proposed area would tie in with the other developments, pointing out the various existing uses.

Mr. Cox solicited comments from the Commissioners with respect to Alexander and Baldwin's desire to proceed with construction of the 32.5 acres of the 10th increment presently in an Urban District.

See page 10

Commissioner Ferry advised that this matter would fall under the jurisdiction of the County, inasmuch as it involved urban lands, and that it would not be prudent for the Commissioners to make any comments.

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

PETITION OF HONOKAI DEVELOPERS (A65-101), TO AMEND THE URBAN DISTRICT BOUNDARY AT HONOULIULI, OAHU, identifiable by Tax Map Key 9-1-15: 8

Staff memorandum presented by Mr. Moriguchi (see copy on file) maintained the original recommendation made at the time of the public hearing for denial of the petition, since the petitioner had not served to prove that additional urban lands were required, and on confirmation of the fact that sufficient urban lands were available.

Commenting on the hardship factor, Commissioner Burns wondered when the project was started and how much money had been expended. The only expense incurred to date was for the sewage treatment plant, Mr. Moriguchi advised, which was installed around 1962 to serve the existing subdivision in addition to the subject area in anticipation of receiving approval.

Chairman Thompson pointed to the statement in the staff memo referring to the availability of sufficient urban lands in this area. Mr. Moriguchi replied that this was a direct quote taken from the City Planning Commission's recommendation which reads as follows: "Although there are sufficient lands for urban purposes in the Ewa District (i.e. Makakilo City) this is the only fee simple residential subdivision in the immediate area."

Mr. Vincent Yano of Honokai Developers presented additional testimony in support of the petition. At the time the developers submitted the 50-acre plan to the City Planning Commission, the whole area was zoned Rural Protective. Subsequently, the Land Use Commission reclassified it in the Agricultural District. The sewage treatment plant was a City Planning Commission requirement even before the developers could proceed with Unit 1-A. Mr. Yano stressed that he certainly did not mean to imply that they "gambled" $170,000 for a sewage plant to take care of the entire 50-acre subdivision. They were mandated by the City to submit detailed subdivision plans for the entire area before tentative approval could be granted. Although the City did grant tentative approval for the entire subdivision, the developers were advised to seek actual approval on an increment basis at the time their plans materialized. This was the reason they did not have approval for the subject parcel under petition.

Commissioner Ferry felt that the amount of $170,000 for the sewage plant was in line with expenditures required to serve the needs of 250 lots.

Chairman Thompson raised the question of flooding in the 1-A increment resulting from an over-flow of the stream following a big rain. Mr. Yano replied that this was handled by adequate drainage.

Referring to the slow rate of sales in the 1-A increment, Commissioner Ferry submitted that during the latter part of 1959 to the middle of 1961, there was a depressed real estate market, and that some weight should be given this factor

since petitioner was granted approval in 1960. Secondly, the growth of the leeward area has only begun, primarily due to the investment that the government has begun making. One of the stifling growth factors was the lack of proper access, and this was being resolved by construction of better highways. With the projection of 1,185,000 people for 1980 for Oahu alone, it was easy to conceive that a good portion of the increase in population would locate in the leeward area.

Commissioner Ferry continued that staff was not presenting a true picture by drawing comparisons such as that described in page 2, item 4, of the memorandum. Other factors that should be considered in making such comparisons would be the availability of financing, the promotional budget, the number of developed lots, etc.

Commissioner Ferry confirmed that the H-I highway would be completed within the next 10 years.

Commissioner Nishimura observed that the amount of urban lands submitted as being available in the general area was deceiving, in that much of this land was owned by the federal government. Mr. Moriguchi commented that the federal government did develop its own residential subdivisions. He also pointed out that Makakilo is available with a potential for 25,000 persons.

Pursuing the matter a little further, Commissioner Ferry commented that facilities for an additional 25,000 persons in the Makakilo area were hardly sufficient to meet the needs of the 450,000 additional residents anticipated for the Island of Oahu by 1980.

Commissioner Wenkam pointed to the fact that this Commission had previously turned down reclassification of Fort Barrette which had the same potential as the subject area under consideration. To argue for approval of this petition on the basis of population expansion, he felt, was invalid since this would only accommodate such a small percentage of the needs. He felt that the proposed urban reclassification in the Makaha area, on which the Commission will be acting on today, would more than adequately meet the requirements of the population growth within the leeward area.

Commissioner Wenkam continued that he was arguing against this petition because it was typical of the scattering of developments which, to some extent, was responsible for bringing about the establishment of the Land Use Commission. To condone the continuation of this subdivision merely because it had already been started, was akin to agreeing that two wrongs make a right. This was an undesirable projection of an urban area into the center of an Agricultural District and open spaces, and did not contribute to a well-planned and well-organized community.

Mr. Moriguchi submitted that the Commission had denied any number of requests involving indigent citizens wishing to subdivide agricultural lands, even though hardship had been advanced as the major factor. Therefore, in order to be consistent, this fact should be given due consideration.

In addition, a study made by Harlan Bartholomew had recommended keeping the subject area in agriculture and this Commission had seen fit to accept this recommendation and had modified the urban line to its present location.

Commissioner Ota commented that petitioner's lands were not in productive use and some improvements had already been installed. Also, this was one of the few fee simple lands available in the rural area on Oahu.

Commissioner Ferry wondered whether any of the petitions turned down in the past on the neighbor islands abutted an urban area, and Mr. Moriguchi replied that they did not.

Commissioner Ferry then asked if a similar situation had occurred on the neighbor island with all things being equal, would there be much reason to deny extension of an Urban District. Chairman Thompson requested that the discussion be confined to the subject petition without making references to precedents set. Also, circumstances differed on the neighbor islands and on Oahu.

Commissioner Wenkam referred to the hardship factor presented by the petitioner and commented that Fort Barette had also suffered similar difficulties.

Commissioner Ferry replied, as a matter of clarification, that there was a major difference between Fort Barette and the Honokai development. At the time of purchase, Fort Barette had already been zoned agricultural, whereas petitioners had received approval for the subdivision in 1960 and committed their investments.

Commissioner Ferry moved that the application be approved since sufficient justification had been presented by the petitioner for a boundary change from an Agricultural District to an Urban District, seconded by Commissioner Nishimura. The Commissioners were polled as follows:

Ayes: Commissioners Inaba, Ota, Burns, Nishimura, Ferry.

Nays: Commissioners Wung, Wenkam, Mark, Chairman Thompson.

The motion was not carried.

PETITION OF CAPITAL INVESTMENT CO., LTD. (A65-100), TO AMEND THE URBAN DISTRICT BOUNDARY AT MAKAHA, OAHU, identifiable by Tax Map Key 8-4-02

Mr. Moriguchi presented the staff memorandum recommending a modified urban-conservation line, involving 1,370 acres (see copy on file). The modifications and the recommended urban boundaries were pointed out in detail on the map.

Commissioner Burns questioned whether staff's recommendation for approval included the 20% slopes.

Mr. Moriguchi conceded that it did--that denial of the 20% slopes would restrict the development to such an extent that it would be economically difficult for the developers to proceed with their plans. It was also pointed out that staff had recommended urbanization of the remaining Class E lands since most of the prime agricultural lands had already been absorbed in the plans.

In reply to Commissioner Ota's request, Mr. Moriguchi pointed out the proposed uses on the map such as the resort complex, commercial areas, open spaces, residential area, etc. There were provisions for a total of 5,400 dwelling units

if the petition as requested by Capital Investment Co. were approved.

Mr. Moriguchi advised that the modified urban-conservation line was discussed with the petitioner and agreed upon, although petitioner did point out the fact that the City and County had planned on allowing construction on lands over 30% slopes.

Commissioner Wenkam stated that the beauty of the islands was largely dependent upon keeping the hillsides free of developments. However, he felt that construction on slopes up to 30% in this instance was feasible due to the vastness of the area and the tremendous open spaces which allowed for greater flexibility, and that he supported the staff's recommendations.

Commissioner Ota expressed bewilderment over staff's inconsistency in recommending denial of the Honokai petition, acted on earlier, for 32 acres adjacent to an Urban District on grounds that sufficient urban lands were available; and then to recommend approval of this petition involving thousands of acres.

Mr. Moriguchi replied that staff recognized this very point might be brought up. Staff had viewed the Makaha petition from the standpoint of the overall general plan for the island, and the State General Plan's proposal for this area was for a major resort complex, based on future tourist expansion. The petitioner had submitted substantial data along this line. The Honokai petition was for an isolated appendage to an Urban District that should not have been there in the first place, and the State General Plan did not include this area for urban purposes.

Referring back to the statement made earlier by staff, Commissioner Ferry agreed that economic hardship was involved if construction were disallowed on the gentle slopes. However, one could not deny that staff was arguing from the economic standpoint. Yet, in the Honokai petition, the economics involved did not warrant staff's consideration. Commissioner Ferry wondered how this could be rationalized.

It was stressed by staff that economics was not the basis for recommending approval of the Capital Investment petition--that if sufficient justification of need for the complex had not been submitted by the petitioner, staff would have argued against the proposal.

Chairman Thompson agreed that the question raised by Commissioner Ferry required clarification, with respect to the rationale for the Honokai petition. He advised that there were 24 hours in which to reconsider the Honokai petition, but for the moment discussion should be confined to the subject petition.

Commissioner Ferry stated that he was completely in favor of the proposed subdivision by Capital Investment Co. On the basis of 5 persons per unit, the 5,400 units would accommodate 27,000 persons, which would take care of only a fraction of the projected population increase by 1980.

Commissioner Wenkam moved that petition be approved as recommended by staff, which was seconded by Commissioner Ferry. The Commissioners were polled as follows:

Ayes: Commissioners Burns, Ferry, Inaba, Mark, Nishimura, Wenkam, Chairman Thompson.

Nays: Commissioners Ota and Wung

The motion was carried.

Chairman Thompson called for a 5-minute recess.

****

The meeting was resumed at 3:45 p.m.

RECONSIDERATION OF THE HONOKAI DEVELOPERS' PETITION (A65-101)

Chairman Thompson announced that a reconsideration of the Honokai petition was in order based on the conflicting rationale presented on this and the Makaha petition. It was also pointed out that whatever the decision was during this reconsideration, it would be absolutely final.

To enable Chairman Thompson to make the move for reconsideration, Vice-Chairman Burns was requested to chair this portion of the meeting.

Commissioner Thompson moved to reconsider the Honokai petition, which was seconded by Commissioner Ferry. The motion was carried by the following votes:

Ayes: Commissioners Wung, Inaba, Ota, Nishimura, Ferry, Thompson, Chairman Pro-tempore Burns

Nays: Commissioners Wenkam and Mark

The floor was opened for discussion.

Commissioner Wenkam commented that population increase should not be the only consideration for justification of boundary change. Emphasis should also be placed on proper planning, proper location, community services available in keeping with an orderly community.

In answer to Commissioner Thompson's query, Mr. Moriguchi advised that the H-I Highway ended at Barbers Point and cut off before the Honokai development. Completion date for the H-I Highway, according to the Bureau of Public Roads, was set for 1972, and 1974 for the whole defense highway system.

Commissioner Wenkam suggested that perhaps the petitioner could come in and apply for boundary change when the highway system was completed and as the need arose.

Commissioner Ferry argued that if this Commission were to operate as a functional body, it was necessary to look 10 years into the future. He added that the Department of Transportation has moved with acceleration on the road construction project to alleviate the inadequacy of the highway system in the leeward area.

Commissioner Ota submitted that equal emphasis should be placed on good planning and conservation of prime agricultural land. He stated that the Makaha petition involved prime agricultural lands with easy accessibility to water. The Honokai lands involved rocky, uneven terrain, without access to water, with absolutely no agricultural value. He stressed that one of the main purposes of the Commission was the conservation of prime agricultural lands. Yet, the Makaha petition was approved for boundary change while the Honokai development was denied.

Commissioner Ferry remarked that an argument in favor of granting the Honokai petition was the existence of facilities and that this would constitute a normal extension of an existing Urban District.

Referring to the existing facilities, Mr. Moriguchi pointed out that when the petitioners were mandated by the County to install the sewage treatment plant, they had not received approval for the subject parcel. Therefore, the plant could have been built on an increment basis, but instead the petitioners chose to "gamble" in anticipation of receiving approval for the whole development. By the very action of this Commission in pulling the urban line back, they recognized that urbanization of this parcel would constitute spot zoning. In addition, marginal lands did not necessarily have to be reclassified into an urban zone.

Commissioner Thompson wondered what drain it would place on the county and state if this development were approved. Mr. Moriguchi informed that bus services for the children, fire and police protection will need to be provided.

Commissioner Ferry agreed with staff that land that is not in productive agricultural use need not necessarily be put into urban. However, the reason the Puna area, where small lot sizes were zoned agricultural, fell into this category was that there was no physical development on those lots. He contended that had there been a multitude of homesexisting on the lots, this Commission would have seen fit to zone this area as urban. He continued that the Honokai development presented an entirely different situation, in that home were already existing in the first unit and families were living there.

Mr. Moriguchi argued that this was merely conjecture, that even if there had been homes in the Puna area, this was no assurance that the Commission would have zoned it in the Urban District. The criteria for urbanization was not to extend an already existing urban use but rather on the basis of whether this constitutes a good Urban District and is contiguous with facilities ordinarily related to a community. He reiterated that Harlan Bartholomew had concurred with staff's findings.

In reply to Commissioner Thompson's comment that when the Land Use Commission classified the subject area in the Agricultural District, they did not have knowledge of the population expansion, Mr. Moriguchi stated that this should not lead to urbanization anywhere, that instead it should follow a well-developed plan.

Commissioner Ferry moved that the Honokai Developer's petition be granted because ample proof had been submitted, seconded by Commissioner Nishimura. Commissioner Wenkam argued that he did not believe proof had been provided for need of subject parcel, that there were sufficient urban lands in the Waianae area.

The Commissioners were polled as follows:

Ayes: Commissioners Inaba, Ota, Nishimura, Ferry, Thompson, Chairman Pro-tempore Burns.

Nays: Commissioners Wung, Wenkam, Mark.

The motion was carried.

PETITION OF BERNICE P. BISHOP ESTATE (KAPAKAHI RIDGE) A65-97, TO AMEND THE URBAN DISTRICT AT WAIALAE-IKI, OAHU, identifiable by Tax Map Key 3-5-19: 13 and 3-5-24: portion of parcel 1

Staff memorandum, presented by Mr. Moriguchi (see copy on file), recommended denial of the original petition in its entirety and advised the petitioners to come in with an entirely new petition submitted in accordance with the latest plans of the Trustees of the Bishop Estate.

Commissioner Inaba moved to deny the original petition in its entirety on the basis of staff's recommendation which was seconded by Commissioner Wenkam.

Mr. Takeyama, legal counsel, advised that a request for amendment had been made by the petitioner and it was in order to act on this matter before moving on staff's recommendation.

Chairman Thompson reminded the members that the Land Use Commission, in the past, had made it its practice not to extend a boundary for a petition; however, had exercised its prerogative to bring it down. The Makaha petition was the only exception, but it was pointed out that this was done at the time of the hearing.

Mr. Takeyama stated that the petitioner was within his legal rights to come in and request for an amendment to the petition, in this case involving 12 plus acres. The Commission could vote to either deny or approve the request for amendment, and act on the petition separately. In reply to Chairman Thompson's question, Mr. Takeyama advised that there was nothing in the rules and regulations to prohibit the Commission from granting the request for amendment.

Mr. Takeyama continued that approval of the amendment did not remove the necessity for another public hearing. If the request is approved the petitioners would have to come in with a new petition which would be duly advertised. This would put into motion the proceedings for a new hearing. However, if the request for amendment to the petition is denied, the Commission would be acting on the original petition as submitted by the petitioners. If it followed that the Commission voted for denial of the original petition, the petitioners would have to submit substantial grounds of change in condition before they can attempt to file another petition for the subject parcel.

Commissioner Inaba moved to deny petitioner's request for amendment to the original petition, seconded by Commissioner Nishimura. The motion was passed with the following votes:

Ayes: Commissioners Inaba, Mark, Nishimura, Wenkam, Wung.

Nays: Chairman Thompson, Commissioner Burns.

Excused: Commissioner Ota

Chairman Thompson then announced that the Commission was now in a position to act on the original petition as submitted.

Commissioner Nishimura moved that the petition be denied as recommended by staff, seconded by Commissioner Wenkam. The Commissioners were polled as follows:

Ayes: Commissioners Wenkam, Inaba, Wung, Nishimura, Mark, Chairman Thompson.

Nays: Commissioner Burns.

Excused: Commissioner Ota

LALAMILO HOUSE LOTS

Mr. Moriguchi reviewed that during the previous meeting on March 25, 1966 at Kona, staff had been instructed by the Commission to investigate whether there might be substantiating evidence to indicate Commission's intent when the permanent boundaries were established for the subject area. However, staff was not able to locate any concrete evidence in this respect. Therefore, it was the staff's recommendation that this Commission, on its motion, initiate a boundary change for the subject area, along with the Honokaa lands, sometime in the future.

Following a brief discussion, Commissioner Wung moved that the Commission initiate a boundary change for the Lalamilo House Lot area, which was seconded by Commissioner Nishimura, and the motion was passed unanimously.

NEXT MEETING DATE AND PLACE

Tentative meeting schedule was presented by staff. It was pointed out that this was to inform the Commissioners of tentative dates and to give them an opportunity to voice their preferences.

Staff-recommended date of May 13, 1966 for the next meeting was changed to May 6, 1966 to be held in Hilo. The action items were eliminated.

SENATE RESOLUTION NO. 97

Chairman Thompson referred to Senate Resolution No. 97, a certified copy of which had been distributed to each Commissioner. This involved a request for the State Land Use Commission and the Department of Planning and Economic Development to study the feasibility of the arrangements for the conveyance of lands in rural or agricultural districts as outlined and to report their findings and recommendations to the Legislature not later than 20 days preceding the convening of the 1967 session of the Legislature.

Chairman Thompson expressed concern over the fact that the already limited staff time would be taxed with this additional responsibility. However, it was determined that staff would find time to complete its findings before the next Legislature.

LETTER FROM MAUI COUNTY ATTORNEY GENERAL (KAANAPALI BATCHING PLANT)

Chairman Thompson referred to a letter received from Mr. Kase Higa, Maui County Attorney, regarding the application for a special permit by Pioneer Mill Company involving a concrete batching plant at Kaanapali, Maui. In effect, the letter suggested that no further action be taken in this matter, but that the County Attorney would be willing to pursue this matter further if the Commission felt strongly enough and if the legal counsel could find adequate legal grounds.

Commissioner Burns advised that, as an officer of Pioneer Mill Company, he would have to abstain from making any comments.

Chairman Thompson wondered how it was possible that Pioneer Mill Company had not consulted with its attorneys prior to negotiating with the Kahului Railroad Company.

Commissioner Burns thought that this might have merely been a letter of agreement between the two firms; whereas, had it been funneled through the legal office, they might have checked into the matter of proper zoning for such an installation.

Commissioner Wung moved to accept the letter from the Maui County Attorney and take no further action on this matter. Commissioner Wenkam seconded the motion and it was passed unanimously. Commissioner Burns abstained from voting.

ALLISON PETITION - April 14, 1966 meeting - Wailuku, Maui

A point for clarification was brought up by Mr. Moriguchi on the Allison petition. He wondered whether the Allison petition was acceptable as submitted despite the absence of signatures of a few of the landowners involved in the petition.

Mr. Takeyama, legal counsel, suggested that the Land Use Commission, on its own motion, could initiate petition for those people who did not sign the petition so that the whole area might be considered as one contiguous parcel. He further advised that this action would not imply that the Commission was in favor of the petition, but was merely to clear the way for a public hearing. If this is not done, Mr. Takeyama advised that the Commission could not consider those 3 or 4 parcels on which there was no request for boundary change, at the time of the hearing.

Mr. Moriguchi stated that the request from the petitioners was for reclassification of the entire area, in response to Chairman Thompson's question.

Mr. Takeyama further clarified his earlier suggestion with the statement that it was specifically provided in the law that the Land Use Commission could, on its own motion, initiate a boundary change. This provision was set up to enable the Land Use Commission to open up other lands.

Commissioner Wenkam felt that a broad discussion on the reasonableness, the moral implications, etc., should precede any motion by the Commission.

Chairman Thompson stated that the motion was merely to expedite and facilitate proceedings for the hearing, and that interested parties could voice their feelings at the time of the hearing.

Commissioner Inaba moved that the Land Use Commission initiate a boundary change for those people who did not sign the Allison petition, which was seconded by Commissioner Ota. The motion was carried with the following votes:

Ayes: Commissioners Inaba, Ota, Burns, Nishimura, Chairman Thompson.

Nays: Commissioners Wung, Wenkam, Mark

LITIGATION

Mr. Takeyama, legal counsel, advised that he was meeting with Judge Felix in Hilo tomorrow to discuss the case of Tamura vs. Land Use Commission. He was also appearing in court next week on the motion to dismiss appeal of the Nuuanu Valley Community Association.

ADOPTION OF MINUTES

Minutes of the meetings of October 1, 1965 and October 2, 1965 were adopted as circulated.

The meeting was adjourned at 5:10 p.m.

May 2, 1966

Mr. Ralph E. Allison
451 Awa Street
Hilo, Hawaii 96720

Dear Mr. Allison:

Thank you for clearing the matter of signatures for the Panaewa petition. We will review the petition in light of this information.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

R. E. ALLISON

File

1924 L. J. ALLISON



ALLISONS OF HAWAII

451 AWA STREET • HILO, HAWAII 96720 • TELEPHONE 56-353

April 26, 1966

RECEIVED
APR 27 1966
State of Hawaii
LAND USE COMMISSION

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

Dear Mr, Moriguchi,

Mr. Carlsmith told me that your office had been unable to locate the second half of our petition with the remainder of the names on it. I went down to the Planning Commission Office here, thinking that I might be able to borrow their petetion, make a photocopy of it and send you the photocopy. I found that the office here in Hilo had your copy, stamped with your office's received stamp. I presume that someone in your office thought that it was a duplicate of the first page and sent it on to the Hilo Office. I am happy to get this point cleared up.

I understand that the Land Use Commission Hearing is to be here in Hilo on May 6. I shall see you then.

Thank you.

Ralph Allison

Ralph E. Allison

RA:JL
enc.

Gold Crest Bond
MADE IN U.S.A.
RAG CONTENT

April 21, 1966

Copy of attached xeroxed letter, signed individually by George S. Moriguchi, sent to the following: (Panaewa Houselot Owners)

Mr. George S. Yuda
360 Makalika
Hilo, Hawaii

Mr. Milton Hakoda
Makalika
Hilo, Hawaii

Mr. Henry T. Moniz
Makalika
Hilo , Hawaii

Mr. Kenji Inouye
P. O. Box 65
Pepeekeo, Hawaii

Mr. William S. Au
170 Makalika
Hilo, Hawaii

Wanda A. Miura (Also Bernard, husband)
3059 Kalihi Street
Honolulu, Hawaii

Mr. Norman K. Au
3059 Kalihi Street
Honolulu, Hawaii

Mr. William Raymond Au, Jr.
3059 Kalihi Street
Honolulu, Hawaii

Mr. Bernard Earle Au
3059 Kalihi Street
Honolulu, Hawaii

Mr. Teruo Takahachi (Takahashi)
Onomea
Hawaii

Dept. of Land & Nat. Res.
State of Hawaii

Susumu Maeda & Ruth Maeda
1767 Kilauea Avenue
Hilo, Hawaii

Robert and Asako Kita
420 Lama
Hilo, Hawaii

Richard J. K. & Maile Chong
589 Lama
Hilo, Hawaii

Kazuo & Masano Tanji
Alexander M. Tanji
33 Lama
Hilo, Hawaii

The Nichiren Sect Mission of Hawaii
Hilo, Hawaii

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

April 21, 1966

On May 6, 1966, the State Land Use Commission will hold a public hearing on the matter of a proposed amendment to the State Land Use District Boundaries in the Panaewa Houselot area, Waiakea, South Hilo, Hawaii. The proposed amendment involves a change from an Agricultural District to either an Urban or Rural District, and arguments for and against the amendment will be heard in the Hawaii County Board of Supervisors Chambers in Hilo, at 3:00 p.m. Lands subject to the proposed amendment are identified by Tax Map Key 2-2-51, parcels 1 through 34, and Tax Map Key 2-2-52, parcels 1 through 33, which include your lands.

Further data on the matter of the proposed amendment are available for your inspection at the Hawaii County Planning Commission office in the Hilo Armory during regular working hours. Should you require further information on the matter, please feel free to contact Mr. Raymond Suefuji of the Hawaii County Planning Commission, or this office in Honolulu.

All interested parties may submit written testimony to this Commission during or before the May 6 public hearing, or verbally during the public hearing on May 6, 1966.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

cc: Chairman Thompson
Hawaii County Planning Commission

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

April 21, 1966

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Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

cc: Chairman Thompson
Hawaii County Planning Commission

April 21, 1966

Mr. Curtis W. Carlsmith
Carlsmith, Carlsmith, Wichman and Case
P. O. Box 686
Hilo, Hawaii 96720

Dear Mr. Carlsmith:

The Land Use Commission next meets on May 6, 1966 at 3:00 p.m. in the County Board of Supervisors Chambers at Hilo, Hawaii. At that time the petition by R. E. Allison, et al (A65-107), as amended, for boundary change from an Agricultural District into an Urban or Rural District at Hilo, Hawaii, will be heard.

Although your amended petition indicates that 59 petitioners are involved, we count only 48 signatures. Allowing for the three parcels owned by Mr. L. Arquero, the actual count will amount to 50 signatures. A copy of the signatures and a copy of the list of signers submitted by the petitioners are enclosed herewith. We have no record of signatures of the persons listed on page 2 of the typewritten list enclosed herewith.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encls.

April 20, 1966

Mr. Raymond Suefuji
Acting Director
Planning Commission
Hilo Armory
Hilo, Hawaii

Dear Mr. Suefuji:

The Panaewa Houselots petitioners have requested that their public hearing be heard on the basis of a change to either Urban or Rural from Agricultural, and have submitted an amended petition accordingly. A copy of the amended petition is enclosed.

We would appreciate hearing from you as to whether or not the original Planning Commission recommendation applies to the amended petition. A hearing will be held on May 6, 1966 at the Board of Supervisors Chambers in Hilo.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encl.

Panacwa

	If ½ ac lots allowed	If 900 sf lots allowed
~~2.73 = 23~~	= 115 lots	345
~~2.72 = 1~~	5	
~~1.96 = 2~~	3	
~~1.97 = 1~~	3	
~~1.94 = 1~~	3	
~~1.81 = 1~~	3	
~~1.82 = 1~~	3	
~~2.42 = 1~~	4	
~~2.41 = 1~~	4	
~~2.49 = 1~~	4	
	33 lots	(151 lots)

~~242~~ + < 15
~~241~~ + < 20
~~273~~ + <
~~273~~ + < 10
~~273~~ + <
~~273~~ + < 10
~~273~~ + < 10
~~273~~ + <
~~273~~ + < 10
~~273~~ + < 13
~~273~~ + <
(2) ~~196~~ + < 13
~~194~~ + <
~~273~~ + < 13
~~273~~ + < 459
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~249~~ + <
~~273~~ + <
(1) ~~196~~ + <
~~197~~ + <
~~181~~ + <
~~182~~ + <
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~272~~ + <

2 - 2 - 52 = 8429 * <

~~2.73 = 29~~	140
~~2.72 = 2~~	10
~~1.97 = 1~~	3
~~1.96 = 1~~	3
~~1.81 = 1~~	3
~~1.82 = 1~~	3
	34 lots
	(162)
	151
	313

+ <
~~273~~ + <
~~273~~ + < 420
~~273~~ + < 30
~~273~~ + <
~~273~~ + < 10
~~273~~ + < 10
~~273~~ + <
~~273~~ + < 10
~~273~~ + <
~~273~~ + < 10
~~273~~ + <
~~273~~ + < 490
~~273~~ + < 459
~~273~~ + < 949
~~273~~ + <
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~~197~~ + <
~~181~~ + <
~~182~~ + <
~~273~~ + <
~~273~~ + <
~~273~~ + <
~~272~~ + <

2 - 2 - 51 = 8944 * <

+ <
8944 + <
8429 + <
Total 173,73 * <

File

1916

C. WENDELL CARLSMITH
MERRILL L. CARLSMITH
JAMES H. CASE
CHARLES R. WICHMAN
DONN W. CARLSMITH
ROBERT E. BETHEA
JAMES W. BOYLE

TOM C. INGLEDUE
TAMOTSU TANAKA
W. LAWRENCE CLAPP
JAMES P. WOHL
DAVID L. IRONS
J. THOMAS VAN WINKLE
CURTIS W. CARLSMITH
C. DUANE CARLSMITH

CARLSMITH, CARLSMITH, WICHMAN AND CASE
ATTORNEYS AT LAW
HILO, HAWAII

P. O. BOX 686
HILO, HAWAII 96720

P. O. BOX 656
HONOLULU, HAWAII 96809

April 11, 1966

RECEIVED
APR 12 1966
State of Hawaii
LAND USE COMMISSION

Mr. George Moriguchi
State Land Use Commission
426 Queen Street
Honolulu, Hawaii

Dear Mr. Moriguchi:

I am enclosing two copies of a Petition for Amendment to the Land Use Commission District Boundary for the Panaewa Houselots, Tax Map Keys 2-2-51 and 52. Mr. Allison will be out of the State for a few weeks so please direct any reply or correspondence to myself.

I have attached to the Petition certain explanatory notes as well as the arguments that we intend to rely on before the Land Use Commission. Hopefully, these facts will help you in re-evaluating our case and in preparing to present your arguments.

If there are any questions or if there is any way I can be of service, please don't hesitate to let me know.

Yours very truly,

CARLSMITH, CARLSMITH, WICHMAN AND CASE

By Curtis W. Carlsmith
Curtis W. Carlsmith

CWC/m

Encs.

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 _____

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

RECEIVED
APR 1 1966
State of Hawaii
LAND USE COMMISSION

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 Hawaii, Island of Hawaii, map number and/or name H - City of Hilo to change the district designation of the following described property from its present classification in a(n) agricultural district into a(n) (see attached sheet) district.

Description of property:

Panaewa Houselots - Tax Map Keys 2-2-51 and 52.

Petitioner's interest in subject property:

The 59 petitioners are owners of 61 of the 63 privately-owned lots included in Tax Map Keys 2-2-51 and 52.

Petitioner's reason(s) for requesting boundary change: Petitioners entered into an Agreement of Sale with the State under which the State guaranteed and promised that the petitioners could subdivide their lots into 10,000 square foot parcels. Present zoning forbids such subdivision.

(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.

(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.

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

Signature (s) Ralph E. Allison
Ralph E. Allison for
59 Landowners

Address: 451 Awa Street
Hilo, Hawaii 96720

Telephone: 56-353

TYPE OF DISTRICT REQUESTED

Petitioners desire that their land be districted as "urban." Only if their land is designated urban can the minimum lot size of 10,000 square feet promised by the State be put into effect.

If the Land Use Commission holds that the land may not be districted urban, and if the Circuit Court, on appeal, upholds the decision of the Land Use Commission, it is the request of the Petitioners that the land be zoned rural.

To simplify and expedite administrative and judicial hearings, Petitioners request that they be permitted to submit evidence in support of both urban and rural districting. Petitioners request that the Planning Commission in its recommendation and the Land Use Commission, after final hearing, specifically grant or deny both the request for urban districting and request for rural districting, giving their reasons for both positions.

PROPERTY NEEDED FOR OTHER USE

First. Section 98H-2, Revised Laws of Hawaii, states that

> "in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included."

In addition, Section 2.3 of the State Land Use District Regulations states that in fixing or amending district boundaries, urban areas "shall include sufficient reserve areas for urban growth in appropriate locations, based on a ten-year projection."

Under the present zoning the area reserved for urban expansion is inadequate and will not satisfy growth needs for the next ten years as required by law. } proof?

Second. Zoning of adequate land for urban growth is necessary to prevent artificial inflation of land values. The present very high cost of small residential lots in Hilo indicates that insufficient urban residential lands have resulted in a gross overinflation of the price of the small amount of as of yet unsold urban land in Hilo. Although there is some vacant land zoned urban, most of it has already been subdivided and sold.

Third. The County and State have a duty to the people of Hawaii to provide relatively inexpensive land for citizens on which they may construct houses of reasonable cost. Only wealthy individuals can afford to pay the over-inflated prices (generally over thirty cents per square foot) of the small amount of land presently zoned urban in Hilo.

?

There is a present lack of small lot size, relatively inexpensive land for residents to purchase as home sites. Individual home ownership is discouraged and prohibited by the present zoning structure in Hilo and the resulting inflated residential lot prices.

Fourth. The land is "needed" for another use because it is not suitable for agricultural development. The land is not suitable because:

(a) No crops can be economically raised on these pahoehoe and aa lava parcels without trucking in soil to cover the rough lava rock surface.

(b) The lots, ranging from 1.5 to 2.73 acres in size, are too small for economical agricultural uses, especially considering the fact that all lots presently have at least one dwelling home and adjacent yards constructed on them and occupying a part of the land.

Fifth. The present owners of the land are largely wage earners employed by various businesses in Hilo, who purchased the land in reliance on its being zoned for 10,000 square foot residential lots. These owners are not farmers or agriculturists. They do not have the knowledge, skill or time to attempt to convert these lots to agricultural uses. The owners bought these lots to use for their own residences, for residences of their family, and for construction of rental homes as a source of income. They are not land speculators. At the last interview, only one owner indicated an intention to subdivide and sell lots. The rest plan to keep all of their land.

The present owners bought these lots at the relatively high prices paid because of the close proximity to Hilo, the availability of adequate utilities, good roads, quick access to jobs, promised residential 10,000 square foot lot sizes, and in general because of the suitability of the land for urban residential uses.

Sixth. These lots are needed for another use because the land, as presently zoned, is going to waste. At least 64% of the land was at one time cleared. Many owners have had to let their land go back to jungle when they found that they could not use it for agricultural uses, could not build more houses, and could not occupy and maintain the entire lot as their own yard. Probably, less than 50% of the land is now maintained.

Seventh. These lots are needed for other uses because the highest and best use of the land is for urban residential subdivision purposes. Further, the only reasonable use of the land is urban residential dwellings. To deprive the Petitioners of the only reasonable use of their land is to deprive them of property without due process of law in violation of the United States and Hawaii Constitutions.

USABLE FOR PROPOSED USE

The land involved is usable and adaptable for 10,000 square foot lots because:

(a) The land is close to the centers of shopping, recreational and employment facilities. It is only a short drive on what is perhaps the best highway on the island, to shopping centers and commercial and business centers of both Hilo and Keaau.

(b) Adequate basic services are close at hand and available at relatively low cost to the owners of the lots. Water is availble in almost unlimited quantity. There is one six-inch line and one eight-inch line running along the highway adjacent to the subdivision. Eventually a deep well will be installed less than a mile from the subdivision to supply water for the area. Telephone service and electric power service are both readily available.

(c) School and playground areas are a short drive from the land. Police and fire protection are only a short distance away.

(d) All subdivisions roads but one are paved, and it is expected that the last one will be paved shortly. The money has been approved by the State Legislature in the 1965 Session.

(e) The land has excellent topography (now that it has been leveled off). It has excellent drainage and is entirely free from the danger of floods. The land is composed of rock that provides excellent foundations for residential dwellings. Urban growth should be chanelled

into this rocky waste area rather than into good agricultural land.

who's doing this?

(f) The following, recently calculated, distances to various points in Hilo indicate that the land is ideally suited for residential dwelling:

(1)	Keaau Police Department	3.6 miles
(2)	Hilo Police Department	4.5 miles
(3)	Nearest Fire Station	2.3 miles
(4)	Keaau Fire Station	3.6 miles
(5)	Keaau Post Office	3.6 miles
(6)	Hilo Post Office	4.5 miles
(7)	Hilo Airport	3.7 miles
(8)	The new Hilo Shopping Center	3.5 miles
(9)	Taniguchi's new Shopping Center (nearly completed)	2.0 miles
(10)	Bank of Hawaii	2.7 miles
(11)	First National Bank	3.5 miles
(12)	The new County Building	4.3 miles
(13)	Municipal Golf Course	1.5 miles
(14)	Waiakea-Waena Elementary School	1.2 miles

CHANGED CONDITIONS

Conditions in Hilo have changed so as to require redistricting of this land for urban uses because:

(1) Recent subdivision of land and construction of homes in areas presently zoned urban have resulted in an inadequate supply of urban lands suitable for low and middle cost housing developments.

(2) Construction of the new four-lane divided highway connecting Keaau with these house lots has made this land an excellent location for persons working at Keaau but still requiring the services and facilities of Hilo's urban area.

(3) Recent construction of additional power lines, water pipes, etc., have made this area an excellent one for urban growth.

(4) New supermarkets have been built within a short distance of this subdivision. The new business section is located along the same highway. Since the tidal wave of 1960, most damaged businesses have been relocated on this side of Hilo.

(5) This is the most rapidly growing part of Hilo.

CONTRACT THEORY

The State of Hawaii had the power and the capacity to enter into a contract with any individual and to bind itself thereby. In the present case, the State of Hawaii entered into agreements with the purchasers of the Panaewa Houselots. The express terms of the agreements stated that the new owners would have the right to use their lots for exclusively residential purposes and further, that the new owners could subdivide their parcels into 10,000 square foot houselots. Because of the express representations of the State, many of the purchasers relied on the fact that they could build more than one house on their lots and they bought lots with that in mind.

The following sources indicate the terms of the contract:

(1) The notice of sale published by the Territorial government in the Hilo Tribune-Herald on September 19th, October 11th, November 1st and November 16th, 1958. The said notice indicated that the lots were restricted to "residential purposes only for 10 years next following the issuance of Land Patent Grant or Deed." The notice explicitly stated: "Subdivision of lot permitted with certain lot size and building requirements."

(2) Special Sale Agreements and Land Patent Grants signed by the representatives of the State of Hawaii state that the buyer was required to construct a residence meeting

certain requirements within five years, and that all subdivisions shall conform to the then existing subdivision regulations.

Both instruments provided that no lot of an area of less than 10,000 square feet could be created. Under the terms of both instruments, the land could be used only for residential purposes for a period of ten years.

(3) In addition, members of the County Planning Commission, the Building Department and the Board of Water Supply all stated to certain lot owners that subdivision of these lots was permissible.

(4) The Land Patent Grants (deeds) make mention of future subdivision similar to the representations of the sales contract. Not only do the deeds specify residential use only, they go much further and state that if the lot is used for any use other than residence uses (and this includes most agricultural uses), the land "shall forthwith be forfeited and resume the status of government land."

If the landowner attempts to use his land for agricultural purposes, the State can step in and take his land. More than that, the State must take his land because the deed states that the land "shall" forthwith be forfeited and resume the status of government land.

This was a contract and the people of Panaewa relied on it, and they certainly had a right to rely on it.

A questionnaire answered and signed by 57 of the 59 signers of the petition indicated that the private owners

relied on the original promises of the State allowing the land to be divided into 10,000 square foot lots.

This contract issue has already been decided by the Third Circuit Court in Hilo on July 30, 1965 in Tamura vs. Planning and Traffic Commission. In that case, the court upheld the contract in spite of later State zoning. There was a legal contract to allow subdivision into 10,000 square foot residential lots.

IMPROPER ORIGINAL DISTRICT BOUNDARY

In establishing the Land Use districts, the State Land Use Commission improperly included this essentially urban area in an agricultural district, contrary to the standards set forth in the Land Use Law and the present Land Use Regulations.

Judge Felix in the Tamura vs. Planning and Traffic Commission decision passed upon this point:

> "It should be noted that the second sentence of Section 5, Act 187, Session Laws 1961 (the original Land Use Law) reads: 'These temporary districts shall be determined so far as practicable and reasonable to maintain existing uses . . .' There is no doubt that by said sentence, the Legislature in enacting Act 187 intended the Land Use Commission to place land which had been put into urban (residential) use prior to enactment of said Act to be continued in an urban district; and accordingly, it would seem that the Land Use Commission in classifying the lots in the Panaewa Subdivision should have classified said lots in an urban district."

RURAL ZONING NOT PROPER

Rural zoning is not proper for the land in question because:

1. The minimum lot size in rural districts is one-half acre. The contractual agreement between the landowners and the State guaranteed that the land could be subdivided into 10,000 square foot lots.

2. The purpose of establishing rural districts is to provide areas occupied by houses and adjacent vegetable gardens, or other agricultural areas. The theory is that landowners will supplement their other income by raising fruits, vegetables, flowers, etc. for their own use or profit.

Such zoning would be improper here because it is impossible to raise these items on bare rock.

3. Under the State Land Use District Regulations effective August 23, 1964, Regulation 2.10(e), rural districts "shall include parcels of land where 'city-like' concentrations of people, structures, streets and urban level of services are absent." With respect to the property here involved, there presently exist city-like concentrations of people, structures, and streets. There is also presently available an urban level of services. ???

LAND NOT CONTIGUOUS TO URBAN HILO

Although the Land Use Statute does not so require, it is presently the policy of the Planning Commission and the Land Use Commission to withhold recommendations for urban districting where the land is not immediately contiguous to present urban districts. As a general rule of thumb, this policy has some merit.

However, before the rule of thumb should be applied to any one case, the reasons behind the rule must be examined to see whether they apply. The reasons for the policy are as follows:

1. Land that is not adjacent to developed urban areas does not have readily available services such as telephone, electricity, water, police and fire protection, schools, shopping areas, etc. If such services are not available they will be very costly for the land purchasers, and it may not be advisable to allow urban structures to be developed.

In the present case this policy does not apply. All services are already installed, readily available, and close at hand, at no unusual cost to the landowners.

2. A second reason for the rule of thumb is that urban developments not contiguous to existing urban districts are aesthetically unpleasing. A strong policy of the Hawaii Statute is to prohibit scattered urban developments because they mar the beauty of our countryside.

Again this reason does not apply in the present case. The State has provided a 300-foot wide expanse of

virgin forest between the highway and this development for the express purpose of maintaining beautiful, undeveloped forest along the roadway.

3. A third reason is the added tax burden on the community when new roads, and other services will have to be installed by the State or County to service the new developments. New roads or other services are required, new government outlays will be required and the burden on the citizens will be increased.

Again, this policy does not apply to the present case. Roads have already been constructed and other services are readily available. Although the water system within the State subdivision may have to be supplemented at some time in the indefinite future, that bridge can be crossed when individual subdivision applications are processed.

The reasons for this rule of thumb do not apply. The rule should not apply.

In the present case, the land is less than 900 feet from areas presently zoned urban. Ten-acre farm lots now separate this residential subdivision from urban Hilo. The area involved is an ideal one for urban expansion because it is very close to urban Hilo and is on an excellent road with easy access to necessary services. Zoning of this area as urban would be in line with the State's policy of preserving good agricultural land in its agricultural uses and channeling growth of urban areas into wastelands not suitable for agricultural uses.

State Form B14

STATE OF HAWAII

OFFICIAL RECEIPT No. 118

Department of Planning and Economic Development
Department, Bureau or Commission

April 15, 1966

RECEIVED from Carlsmith, Carlsmith, Wichman & Case

Fifty and no/100 DOLLARS

Public Hearing Fee – Land Use Commission

$ 50.00

Harvey D. Takenaka
Public Accountant

April 13, 1966

Mr. Curtis W. Carlsmith
Carlsmith, Carlsmith, Wichman and Case
P. O. Box 686
Hilo, Hawaii 96720

Dear Mr. Carlsmith:

This is to acknowledge the receipt of your check in the amount of $50.00 for a public hearing and publication of legal notice on the amended petition for boundary change by Ralph E. Allison, et al. We will notify you of the new hearing date as soon as it is determined.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encl.
cc: Hawaii Planning Commission

State Form B14

STATE OF HAWAII

Land Use Commission
Department, Bureau or Commission

OFFICIAL RECEIPT No. 134

April 13 19 66

RECEIVED from Carlsmith, Carlsmith, Wichman & Case

Fifty + no/100 ——— **DOLLARS**

Public Hearing for amendment to petition for boundary change

$ 50 00

Donn G. Hontama
Public Accountant

PLEASE DETACH THIS VOUCHER BEFORE DEPOSITING CHECK

Payment re fee for boundary change application
-Ralph Allison

(P)s
CARLSMITH, CARLSMITH, WICHMAN & CASE
HILO, HAWAII

16584

C. WENDELL CARLSMITH
MERRILL L. CARLSMITH
JAMES H. CASE
CHARLES R. WICHMAN
DONN W. CARLSMITH
ROBERT E. BETHEA
JAMES W. BOYLE

TOM C. INGLEDUE
TAMOTSU TANAKA
JAMES P. WOHL
DAVID L. IRONS
J. THOMAS VAN WINKLE
CURTIS W. CARLSMITH
C. DUANE CARLSMITH

CARLSMITH, CARLSMITH, WICHMAN AND CASE
ATTORNEYS AT LAW
HILO, HAWAII

P. O. BOX 686
HILO, HAWAII 96720

P. O. BOX 656
HONOLULU, HAWAII 96809

April 12, 1966

RECEIVED
APR 13 1966
State of Hawaii
LAND USE COMMISSION

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

Gentlemen:

Enclosed is our check No. 16584 dated April 12, 1966 in the sum of $50.00 in payment of the boundary change application fee for Ralph Allison.

Very truly yours,

CARLSMITH, CARLSMITH, WICHMAN AND CASE

By Curtis W. Carlsmith
Curtis W. Carlsmith

p

Enc.

April 6, 1966

Mr. Curtis W. Carlsmith
P. O. Box 686
Hilo, Hawaii 96720

Dear Mr. Carlsmith:

Your letter of March 29, 1966 requested that this Commission order a copy of the land use district map for the town of Hilo from the blueprint office, and send it and a copy of the invoice to your office in Hilo. However, we are not able to do this, in that this office cannot serve as your agent in any transactions with the several blueprint companies in Honolulu.

I would recommend that you write to one of the blueprint companies here in Honolulu and furnish authority and instructions to them for the printing of the map that you request, the tracing for which is available at our office to any blueprint company, and is entitled "H - City of Hilo":

Blueprint Company
815 Alakea Street
Honolulu, Hawaii 96813

Hawaii Blueprint & Supply, Ltd.
1512 Kona Street
Honolulu, Hawaii 96814

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

1909

C. WENDELL CARLSMITH
MERRILL L. CARLSMITH
JAMES H. CASE
CHARLES R. WICHMAN
DONN W. CARLSMITH
ROBERT E. BETHEA
JAMES W. BOYLE

TOM C. INGLEDUE
TAMOTSU TANAKA
W. LAWRENCE CLAPP
JAMES P. WOHL
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J. THOMAS VAN WINKLE
CURTIS W. CARLSMITH
C. DUANE CARLSMITH

CARLSMITH, CARLSMITH, WICHMAN AND CASE
ATTORNEYS AT LAW
HILO, HAWAII

P. O. BOX 686
HILO, HAWAII 96720

P. O. BOX 656
HONOLULU, HAWAII 96809

March 29, 1966

RECEIVED
APR 5 1966
State of Hawaii
LAND USE COMMISSION

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

Dear Mr. Moriguchi:

I am writing to confirm with you the matters that we discussed last week by telephone, and to give you the information with respect to Mr. Allison's authority to represent the Panaewa Houselot owners.

Mr. Allison represented the houselot owners from the beginning when he obtained the signatures of all but two landowners on the original petition. Since that time he has worked closely with them, sending out occasional letters to the group indicating the progress of the action. Although the signers of the petition have not signed a power of attorney to let Mr. Allison represent them, they have all orally agreed to his position as their spokesman, and would certainly agree to his signing on their behalf the amended petition. Mr. Allison will circulate another mimeographed letter very shortly describing to these persons the latest action by the Land Use Commission in delaying the hearing and indicating to them that we are filing an amended petition.

Since the terms of the amended petition will be essentially identical to the terms of the original petition, the changes being more of form than of substance, I think you were correct in indicating that all of the signatures would not be required again.

There are, however, two landowners in the subdivision that did not want to have anything to do with the application. These are Mr. Richard Chong, who simply could not be aroused, and Mr. Robert M. Kita, who could not take a position because of family connections with the Planning Commission.

Although these two landowners did not sign the petition and are quite indifferent as to whether the new districting takes place, the fifty-nine signers of the petition have asked that the entire subdivision be zoned urban, or if urban is not possible, rural.

CARLSMITH, CARLSMITH, WICHMAN AND CASE

Mr. George S. Moriguchi
Page 2
March 29, 1966

As I mentioned over the phone, we will plan to phrase our amended petition in the alternative. If the Commission determines that urban districting is not proper, we would like them to district the land rural, reserving our right to appeal on the urban decision. If the Circuit Court in Hilo will not uphold our argument for urban districting, we will probably be content with rural.

At this time I would like to order the large map showing the urban boundaries and the other land use districts in the town of Hilo. Please order a copy from the blueprint office and send it and a copy of the invoice to this office in Hilo.

H - City of Hilo

I enjoyed sitting in on the land use hearings last Friday in Kailua, and was quite impressed with Myron Thompson and his commission. I believe that I will be doing most of the land use work for Carlsmith, Carlsmith, Wichman and Case, and I am sure that I will enjoy working with you and the Commission.

Yours very truly,

Curtis W. Carlsmith

Curtis W. Carlsmith
Carlsmith, Carlsmith, Wichman and Case

CWC:p

Blueprint Co
815 Makea St
Hawaii Blue & Sup LTD
1512 Kona

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Hale Hawaii Cultural Center

March 25, 1966 - 1:00 P. M.

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

The Reverend Boshard of Mokuaikaua Church offered a short prayer, which was followed by the usual introduction of Commission members and staff, procedure to be followed, and swearing in of persons testifying during the hearing.

PETITION OF MAUNA LOA DEVELOPMENT CORPORATION (A65-105), TO AMEND THE URBAN DISTRICT BOUNDARY AT KEAUHOU, HAWAII, identifiable by Tax Map Key 9-9-01: portion 4

Staff report, presented by Mr. Moriguchi, recommended modification of the petition for a Rural District, initially providing for 100 lots, with the country store and inn facility allowed in the area on the basis of a special permit.

Contrary to Mr. Ernest Kai's impression that the schematic subdivision plan for the proposed project had been submitted to the Land Use Commission, the staff was not in possession of the plan at the time report was prepared.

Mr. Moriguchi explained that the recommendation for a rural classification, instead of an urban classification, was based on the developer's statement that there will be two homes on an acre which would fall within the Rural District. It was also pointed out that under an urban classification, the County would be required to provide services and facilities to the development, whereas a rural classification would place this responsibility in the developer's hands. Mr. Moriguchi further explained that the intent of the developer was really for a cluster-type development, rather than for a 2-home per acre plan.

In response to Commissioner Nishimura's request, Mr. Moriguchi gave a detailed account of the proposed and existing uses, such as the dude ranch, golf course and club, country store and inn, the residential subdivision, etc., as projected on the land uses sketch submitted by the petitioner.

Chairman Thompson wondered whether advance appraisal of the schematic subdivision plan might have made a difference in the staff report. Mr. Moriguchi replied that he was unable to comment on this since he had not had the time to study the plan. However, the original data submitted implied that there would be two houses to an acre, although it developed later that this was true only in terms of overall density, that,including the open spaces, the gross density would be one house per half acre. This latter plan would not be permissible under a rural classification, it was pointed out.

Commissioner Nishimura asked whether staff felt that an urban designation in this area would constitute spot zoning. Mr. Moriguchi replied

that under the regulations, staff was required to take into consideration the possibility of scattered urban development, and that this was one of the bases for recommending a rural classification.

The inability to afford vacation lots by most people and environmental factors in the Alii Subdivision in the Volcano area were submitted as possible reasons for the slow rate of sales. Commissioner Wung felt that the inclement weather contributed to the slow sales.

Mr. Philip Yoshimura of the Hawaii County Planning Commission commented that at the time the developers seek County approval for subdivision plans, the Planning Commission would require them to provide all necessary facilities, improvements and services under the County subdivision regulations. In reply to Chairman Thompson's question, Mr. Yoshimura advised that there was no water supply available in the subject area, but that water catchment was possible.

Mr. Moriguchi clarified his earlier statement regarding the County's responsibility as far as providing the necessary services to the proposed development was concerned--that services did not end with the initial cost of constructing facilities for utilities and services, that schools, fire and police protection, etc. also had to be provided, and dedicated roads would have to be maintained by the County.

Mr. Ernest Kai, Secretary-Treasurer of the Mauna Loa Development Corporation, Mr. Edward Fitzsimmons, President of the corporation, Mr. Alex Castro of Bishop Realty who will handle sales, testified in behalf of the petitioners.

Mr. Kai explained that the Mauna Loa Development Corporation was a Hawaiian corporation comprised of Honolulu and Hilo associates, who were

interested in developing the Volcano area. The resort complex will include an existing 18-hole golf course which would be upgraded into first-class condition, club house, tennis courts, swimming pools, archery, riding stable, dude ranch, game hunting, country inn, etc. Mr. Moriguchi had confirmed that golf course and dude ranch were permissible uses in an Agricultural District, so that the developers were requesting urban classification for the remaining 415 acres, designated in yellow and red on the map.

To preserve the natural landscape, the developers had decided in favor of a cluster-type plan over a grid-type development of one house per half acre, as stipulated by the Land Use Regulations within a Rural District. Therefore, the developers were requesting an urban classification to enable them to pursue a cluster-type development.

Mr. Kai advised that the development was geared primarily to meet the needs of island residents for a vacation-type home in the islands with recreational facilities. A poll taken in Honolulu of people in the middle and upper income brackets indicated the great interest and need for such a facility. Governor Burns had also stressed that we were overlooking the available recreational facilities within the islands for the island people, at a tourism seminar held in Hilo.

Mr. Kai has worked out an agreement with the Bishop Estate whereby leases will be for a period of not less than 55 years, with very nominal rental. The developers also plan to permit multiple ownership to enable two or three families joint ownership of a vacation home. This will be a package deal, with nominal down payment within the reach of island residents. Climate in the area is equitable and there will be storage for

water for drinking and irrigation purposes for the golf course. Every purchaser of a lease lot will be given membership in the golf club.

The total development cost would run in the neighborhood of five to six million dollars. There is a great market for this type of development which has never been provided previously for the benefit of island residents.

With respect to the availability of water, Mr. Kai had been informed by the Board of Water Supply that there was no requirement for a water system in the development area, that one tank to each home would be sufficient.

Mr. Kai requested that the schematic subdivision plan be admitted as Exhibit 2-A. He explained that the cluster type development envisions 1/4 acre plus or minus lots with open spaces between and will meet all county standards and requirements.

On the matter of substantiating a need for such a development, Mr. Kai submitted that the most conclusive proof of need could be established by the fact that they had in their possession many signed sales agreement. Although he realized that they could not solicit subscriptions until the subdivision was approved, Mr. Kai stated that there were over 50 people among his acquaintances who had expressed a desire to purchase. He added that if they were compelled to break this up into increments of 100 lots at a time, it would be disastrous since this would cause needless delay and would be too expensive in terms of having to apply to the Land Use Commission each time they started on another increment. It would also ruin their financing arrangement, which has already been negotiated for, since this was based on the whole subdivision.

Regarding staff's recommendation that the developers seek a special permit for the country store and inn, Mr. Kai requested that this also be reclassified urban. He said the country store would serve people in the entire area, including those who utilize the military camps.

The scheme will be rugged in keeping with the Mauna Kea and Mauna Loa background. The lease agreement will incorporate a requirement that the design and color be approved by the developers, and also a two-year building covenant to preclude speculation.

Mr. Alex Castro of Bishop Realty commented that the proposed subdivision not only followed a trend, but it was unique and the only one of its kind in Hawaii. Hawaii boasted a very sophisticated buying market interested in competitive products. During informal discussions with different people, a great deal of interest was expressed. This was a well-conceived project, properly priced with well-built homes. From the realtor's point of view, Mr. Castro felt that it was very important to obtain approval for the whole project, since some people might be making deposits today for a home they may decide to build in the future.

Chairman Thompson wondered about the projected completion date for the whole development. Based on the assumption that approval will be given immediately, it would take the developers at least three months to begin the project. As developers, they would have to plan six months to a year ahead of time and for this very reason it was important to have approval for the whole project.

Chairman Thompson asked whether the development had been correlated with the economic trends as it related to increased leisure time which would result from automation. Mr. Castro replied that they had recognized

that the market demands for vacation and leisure-type homes had increased substantially within the last five years.

Commissioner Nishimura posed the possibility of putting this on a package deal basis instead of the two-year building requirement to discourage land speculation.

It was pointed out that the developers were appealing to the public with a buying power of from $14,000 to $16,000 and that some of them did not wish to purchase a package deal.

Mr. Moriguchi wondered about the statement that Mr. Kai had made earlier during his testimony in regard to the signed sales agreement. Mr. Kai commented that perhaps the most impressive evidence to substantiate the need to reclassify the land for the proposed development would be to have signed sales agreement. However, since this was unlawful without approval of the subdivision plans, the petitioner had conducted a poll bearing on the subject, which was appended to the petition as an exhibit, and which confirmed the need.

Presently the golf course was maintained by the Volcano Golf Club, an incorporated private non-profit club, Mr. Kai replied in answer to Commissioner Wung's question.

Mr. Kai assured the Commissioners that if approval for reclassification was granted, the developers would see the project to its completion with proper financing, etc.

Commissioner Ota wondered how the developers justified the 10-acre shopping site within the development. Mr. Kai replied that the country store area would include all sorts of facilities--market, liquor store, camera shop, sporting goods store, meeting place for banquets, etc. and

eventually even a drive-in motel and cabins. He added that there would be enough population within the development and the surrounding areas to support a country store and inn of this scope.

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

March 25, 1966

Hale Halawai Cultural Center Kona, Hawaii

PETITION OF RALPH E. ALLISON, ET AL (A65-107), TO AMEND THE DISTRICT BOUNDARY AT PANAEWA HOUSELOTS, HILO,HAWAII, identifiable by Tax Map Key 2-2-51 and 52.

Mr. Curtis Carlsmith, attorney for the petitioners, asked to be recognized to make a statement on behalf of the Allisons. He pleaded some irregularity in the notice that had been sent out by the Land Use Commission, in that the request for reclassification by the petitioners had been publicized as rural, whereas the petition was filed for an urban designation and rural only if urban were not possible. Therefore, he felt that inadequate notice had been served to the people on Hawaii, and any ruling by the Commission would not have the effect of the law by reason of the fact that statutory notice was not complied with.

In view of the foregoing, Mr. Carlsmith requested that the hearing be postponed until adequate notice could be served to the people on the Island of Hawaii to apprise them of the fact that more intense and more advanced uses of the lands were being sought than implied by the public notice.

Chairman Thompson called for a short recess at 2:15 p.m.

The meeting was resumed at 2:30 p.m. Chairman Thompson announced that by mutual consent, the petition by R. E. Allison, et al was being deferred.

PETITION OF BERNICE P. BISHOP ESTATE (A65-103) TO AMEND THE URBAN DISTRICT BOUNDARY AT KEEI, HAWAII, identifiable by Tax Map Key 8-3-04; 1, 8-3-05: 1 and 8-3-06.

On the basis of the following analysis, staff recommendation was for denial of this petition (see copy of report on file):

1. The need for the urban area in lieu of the conservation area has not been demonstrated.
2. The petitioner's proposal would not be in the best public interest.

Mr. Moriguchi advised that the distance between the present urban boundary and that requested by the petitioner was about 200 feet. The rainfall in the area approximated 34" annually.

Mr. Moriguchi commented that there was considerable change in the matter of the land area, from the original petition submitted and denied a year ago previously. The area colored in yellow on the map was pointed out as the lands involved in the original petition, and the red area as being requested in the present petition.

On the subject of the water system, Mr. Moriguchi commented that the Napoopoo area was not presently being served and that water was provided by rainfall catchment. However, there was a possibility that this might be sought under the Capital Improvement Project.

Mr. Philip Yoshimura of the Hawaii County Planning Commission office stated that approval for the petition had been based on the fact that the County General Plan for the Kona area had designated the subject lands for urban uses. In reply to Chairman Thompson's question, Mr. Yoshimura thought that the Board of Water Supply might require the developer to install its own water system.

Mr. Roy Fernandez, representing the petitioner, clarified a few points. The Bishop Estate had recently granted the Board of Water Supply permission to run a temporary line from the existing line in Keei mauka to the City of Refuge. This was only a temporary line and the original proposal to build a water system to Napoopoo to Honaunau was still in effect.

Mr. Fernandez also submitted that if the petition were approved for an urban designation, it would permit Bishop Estate to go ahead with the development and justify the cost of road construction, which roads in turn will be dedicated to the County.

Mr. Fernandez continued that this was a logical extension of the present Urban District, and that the proposed project would be a high-standard development which would benefit both the County and the State of Hawaii in increased taxes. The petitioners also envisioned a future cluster type subdivision with open spaces in the general area. Mr. Fernandez advised that these were all lease lands.

In response to Commissioner Nishimura's concern over the fact that the State would be bearing the cost of providing water facilities to the Napoopoo area, Mr. Fernandez remarked that the Board of Water Supply's plans for the area were conceived prior to the petitioner's development plans. He also pointed to the fact that the Bishop Estate and Board of Water Supply are working hand in hand for the overall development of the Island of Hawaii.

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

PETITION OF TAKESHI AND CHIZUKO KUDO (A65-104) TO AMEND THE URBAN DISTRICT BOUNDARY AT KEALAKEKUA, HAWAII, identifiable by Tax Map Key 8-1-06: 13

Staff's recommendation for approval was based on the fact that there was a definite upward trend in population growth in the area, urban uses of the subject parcel would most probably not have an adverse effect on agricultural operations and would not create a burden to the general public (see copy of report on file).

Referring to the 15 percent (48 acres) of vacant urban lands mentioned in the staff report, Chairman Thompson wondered about the approximate dates when all of these lands might be in use. Mr. Moriguchi was unable to make this projection due to the fact that the relative development of existing lots as plotted in the Kona area has not been typical of development in other areas. These were mostly family plots, grown in coffee, and kept within the family for sentimental reasons.

Mr. Moriguchi explained that the 15 percent referred to in the Staff Report indicated the area within the Urban District that is either vacant or in low-density use, on the basis of acreage.

Chairman Thompson contended that actually there was a great deal more than 15 percent developable for urban uses, since, for example, a 1¼ acre parcel could be subdivided into five lots.

Mr. Sumio Nakashima, attorney for the petitioner, testified that most of the fee simple lands in the area were in North Kona since Bishop Estate owned a good part of the lands in South Kona. The greatest potential for residential development and most of the future of Kona lay in the North Kona area. Many people desire houselots in this area, and all of the Kudo lots had already been spoken for by relatives.

Replying to Chairman Thompson's question, Mr. Moriguchi commented that the population had increased by approximately 500 in the last decade, from 3,500 to 4,000.

There being no further testimony, the hearing was closed.

PETITION OF A. C. & EMILY F. GOUVEIA (A65-108) TO AMEND THE URBAN DISTRICT BOUNDARY AT LAALOA, NORTH KONA, identifiable by Tax Map Key 7-7-07-18

Staff Report, presented by Mr. Moriguchi, recommended denial of the petition due to the lack of justification for the need of additional urban lands, and on the basis that approval of the petition would contribute toward scattered urban developments.

Mr. Philip Yoshimura, representing the Hawaii County Planning Commission, stated that their approval had been recommended on the following bases:

1. Existing land use is for single-family residences, around and up to petitioner's property.
2. The general plan indicates that the urban area would move toward the south.
3. This would not impose a burden on the county since there were adequate water and electrical services.

Chairman Thompson wondered whether the Hawaii County Planning Commission contemplated a request for boundary change in the general area. Mr. Yoshimura replied that they were in the process of preparing such a petition and that Mr. Gouveia's parcel would be contiguous to this area.

Mr. Gouveia testified that the general development plan was moving southward from Holualoa. The subject parcel consisted of very poor subsoil, and it was economically unfeasible to continue agricultural pursuits,

As an example of this, he cited that during the last year he was able to realize only $600 on an outlay of $1,242 for coffee crops.

Commissioner Ota commented on the fact that there were larger parcels of ranch land surrounding Mr. Gouveia's property and whether the owners of these lands would accept or look favorably upon subdivision plans for the whole general area.

Mr. Gouveia replied there was no doubt about this--that in fact a preliminary survey had been done on one of the larger parcels, and indicated for houselots.

Referring to the relatively slow development of the subdivided lots in the area, Commissioner Nishimura commented that he felt the Hawaii County Planning Commission was 20 to 30 years ahead in its planning. Mr. Gouveia commented that the lack of water was the greatest problem. However, when the 12" line is installed along the Kuakini Highway, a water line will be hooked on to serve the back lots.

The hearing was closed thereafter.

RULING - LALAMILO HOUSE LOTS (Lloyd Kaneshiro)

Mr. Moriguchi reported that a request had been received from Mr. Lloyd Kaneshiro to investigate the matter of the urban boundary line in the Lalamilo House Lots area. When the temporary boundaries were established, Mr. Kaneshiro's property was included in the Urban District; however, in the process of delineating the boundaries, the urban line was moved and Mr. Kaneshiro found his parcel in the Agricultural District. It was the staff's contention that some discrepancy had occurred, and that the area in question should have been included in the Urban District.

Commissioner Inaba was of the opinion that at the time of the boundary decision, it was the intention of the Commission to include the Lalamilo House Lots in the Urban District. It was highly improbable that the Commission would urbanize the surrounding state lands and leave the Lalamilo House Lots in an Agricultural District.

In response to Commissioner Ota's question, Mr. Moriguchi informed that the lot sizes in the area under discussion were just a little over an acre, and that they did not even qualify under an agricultural classification.

Chairman Thompson commented that the task before the Commission was to determine what the intention was at the time of decision and whether or not a drafting error had been made. He added that if a drafting error had been made the Commission was empowered to make a ruling.

Mr. Takeyama, Legal Counsel, confirmed that the shift in boundary could only be accomplished if it could be established that a drafting error had been made, based on the facts that were presented at the time of the decision. This will have to be done by checking back on the records to determine the Commission's intent.

It was finally decided that the matter be deferred pending research into the records to determine Commission's intent on this matter.

SENATE STANDING COMMITTEE REPORT NO. 98

Mr. Moriguchi read the Senate Standing Committee Report No. 98 from the Committee on Kauai Select, recommending favorable consideration of Commissioner Nishimura's gubernatorial appointment to the Land Use Commission and recommending referral of the matter to the Committee on Lands and Natural Resources.

SENATE RESOLUTION NO. 33

Senate Resolution No. 33 requesting the City Planning Commission and the State Land Use Commission to give ample notice of hearings relating to North Shore Development was presented (see copy on file).

SENATE RESOLUTION NO. 34

Senate Resolution No. 34 was also presented requesting the State Land Use Commission to retain present zoning for University of Hawaii Research farm site in Waialee (see copy on file).

SENATE RESOLUTION RE AGRICULTURAL LANDS

Mr. Moriguchi informed that there was still another resolution in the Senate, a copy of which had not yet been received by the Commission, introduced by Senator Benjamin Menor, requesting that the Land Use Commission look into the problem of small agricultural lands. The problem was one of subdividing small agricultural lands into several parcels, primarily for the purpose of giving title to the heirs, which had come before the Land Use Commission time and again, and also involved sociological implications.

Chairman Thompson felt that the Commission should conduct such a study, and wondered whether funds would be available for this purpose. Mr. Moriguchi thought that this might be used as a tool for requesting additional funds from the Legislature. He added that the findings will have to be reported to the 1967 Legislature 20 days before they convene.

Mr. Takeyama advised that this was merely a resolution and that it did not have the effect of the law.

No further action was taken on the matter, pending receipt of the certified copy of the resolution.

REQUEST FROM THE UNIVERSITY EXTENSION SERVICE

A request had been received from Mr. Steven Doue of the University Extension Service for representation from the Land Use Commission to its panel discussions which will be held in the various counties for the benefit of county agents and farmers. Mr. Moriguchi wondered whether the Commissioners would be favorably inclined to participate in such panel discussions. Mr. Moriguchi felt that this was an excellent opportunity to disseminate information to the general public.

Commissioner Nishimura stated that he had been approached by the Extension Service and was in full accord with its request. He felt that each county should be represented by its respective Commissioner and possibly Chairman Thompson.

It was the consensus of the Commissioners that they would be willing and available to participate in these panel discussions.

NEXT MEETING DATE

The next meeting date was announced as being on April 14, 1966, Thursday. This was necessitated by the fact that statutory requirements placed the cut-off date on a few of the action items as April 14.

Commissioner Nishimura suggested that meeting dates be cleared with Chairman Thompson, especially now that summer is approaching and some of the members may be planning on trips.

INCREASED WORK LOAD

Mr. Moriguchi commented that additional responsibilities were projected for staff by the Department and he was hopeful of filling the Assistant Planner's position by the 1st of May. However, this would not wholly alleviate the work load needs.

Chairman Thompson followed up on this by stating that during the last beautification conference, it was recommended that by the middle of 1967, work be started on the revision of the land use district boundaries. This means that the next Legislature would have to request that such a revision take place. Therefore, the Commission should start working on it before the session. Perhaps, additional staff service could be solicited on this basis.

Mr. Takeyama recommended that the staff reports presented during hearings on the petitions be mailed out in advance to the petitioners to enable them to prepare adequate rebuttals for the public hearings. Although there was a 15-day period in which the petitioners were allowed to submit rebuttals or additional data, this did not afford the petitioners the full benefit of cross-examining the witnesses or making an adequate presentation to the Commission. To preclude the possibility of newspaper coverage of the staff report in advance, Mr. Takeyama suggested that a note be appended to the report requesting that information contained therein be kept in confidence up to the time of the public hearing. The question was raised as to whether a public hearing could be cancelled in the event of publication of advance information regarding a petition. Mr. Takeyama was not able to say whether this was a legal basis for denying a hearing.

Mr. Moriguchi wondered if this consideration should be extended to persons other than the petitioners, who were interested in the petitions, as for example those persons who might be opposed to a petition.

Mr. Takeyama advised that this should only follow in the case of aggrieved persons. However, this could not be determined until such

time as the aggrieved person came in to request for a motion to intervene or to become a party, either by letter or some other formal means.

Chairman Thompson felt that the confidential nature of the staff report should be explicitly expressed in the memo, with instructions to refrain from any discussion of the contents with any of the Commissioners.

FEDERATION ON NATURAL BEAUTY

Chairman Thompson reported that the Federation on Natural Beauty was still in the planning stages. At the last meeting, the following general outline was agreed upon:

1. That a non-governmental body act as the coordinating agency.
2. Actively seek to have legislations passed.
3. Open up participation to all organizations in the city.
4. A paid staff be employed to carry out the work of the Federation.

There being no further business, the meeting was adjourned.

STATE OF HAWAII
LAND USE COMMISSION

Hale Halawai Cultural Center
Kona, Hawaii

1:00 P.M.
March 25, 1966

STAFF REPORT

R. E. ALLISON, ET AL - A65-107
HAWAII

Mr. R. E. Allison and 47 other property owners in the Panaewa Houselot Subdivision, Hilo, Hawaii, have submitted a petition requesting a change in district boundary from an Agricultural District to an Urban or a Rural District, involving parcels of land as indicated on the staff map identified by Tax Map Key 2-2-51 and 52 of the Third Taxation Division.

In support of their petition, Mr. Allison et al have submitted the following:

1. That the lots in the Panaewa Houselot Subdivision were offered for sale at public auction by the then Territory of Hawaii, restricting the use to residential purposes.
2. That the Special Sales Agreement and Land Patent executed and issued for the subject lots provided that the lots shall be used for residential purposes only from date of sale for a period of ten years next following the issuance of the Land Patent or deed, and that subdivision requirements likewise shall continue for a period of ten years next following such issuance.
3. That the petitioners purchased the lots for residential purposes only as so restricted by the then Territory of Hawaii.
4. That most of the people of the Panaewa Lot Subdivision purchased lands for the purpose of building more than one house.
5. That the Land Use Commission rezoned the area to an Agricultural District, although many landowners did not realize this had been done.

6. That the act of the Land Use Commission in zoning the area within the Agricultural District amounts to a breach of contract on the part of the State, or at least lack of good faith.

The Hawaii County Planning Commission has recommended approval of the change from an Agricultural District to a Rural District on the basis of the following:

1. Existing land use of areas in question indicates the characteristics of a Rural District.
2. The area is not suited for intensive agricultural use because of poor soil conditions.
3. The area should not be in urban as it is not contiguous to the existing urban area and it is against the policy of the County and State to provide a scattering of urban areas.
4. The General Plan has provided for adequate residential areas in the City of Hilo, that no subdivision should be approved in the area until adequate water service is provided and until the density of rural-agricultural are set at a later date upon further study.

Analysis:

Soils in the area of the subject lands are known as the Olaa or Ohia soil material, consisting of young lava with a thin covering of volcanic ash, occurring in very wet regions on the islands of Hawaii. More than half of the land surface is occupied by bare bed rock outcrop, with the rest consisting of a thin covering of volcanic ash that extends into cracks and crevices in the rough, broken, a-a lava. Some parts of this unit are forested and others are pastured, while in a few places sugar cane was once grown by hand labor, but these have been abandoned. This land type is difficult to cultivate, and pastures are very poor quality. However, some areas at lower elevations are being developed for macadamia nuts, coffee, and pastures.

The general area involves a mixed land use of residential, agricultural and wooded areas. Building density approximates 2.7 acres per dwelling unit located among wild growth, coffee orchards, lichee orchards, macadamia nut orchards and small gardens. Basic electrical, telephone and water services are available for the present subdivision, although Lama Street is of cinder construction. The average annual rainfall in the area approximates 130 inches.

Requirements of Section 2.30 of the State Land Use District Regulations, involving submission of proof by the petitioner that the area is needed for a use other than that for which the district in which it is situated is classified, have been disregarded and have not been met in the data submitted by the petitioner. In the absence of such data an evaluation as to its adequacy and applicability cannot be made.

The validity of the petitioners' argument relating to their right to subdivide in accordance with the Special Sales Agreement and Land Patent issued by the then Territory of Hawaii has been ruled upon negatively by the Land Use Commission during its deliberations on December 17, 1965. The consensus at that time was that the landowner is governed by the ordinances in effect at the time he proposes to subdivide, and not by the ordinances that were in effect at the time he first purchased his lands. Since the exact arguments on the matter have been submitted by the petitioners, a similar ruling is in order by the Commission on the basis of its earlier ruling.

It has been reported by the Board of Water Supply of the County of Hawaii that the existing water system in the Panaewa Houselot area can only meet the demands of the subdivision as presently platted, and any further subdivision would overtax the present system. Approval of half-acre lots in the area can increase the number of lots five-fold from 50 lots to 250 lots. On this basis, road improvement requirements and water service requirements would require governmental expenditures approaching $300,000.00. The Hawaii County Planning

Commission has reported that they would not approve subdivisions in the area until improvement district projects are initiated for the water system, and until further studies are completed to determine densities in agricultural-rural areas. In light of these data and the lack of substantiation by the petitioners concerning the need for the boundary change, the staff recommends that the petition be disapproved.

A65-107

Jpz 3-22-66

ROUGH COST EST.

bal. brought forward
$174,650

Street lights

~~200~~
Stds. on existing poles
add new circuit + controls

Assume 200' pole spacing
129,65/200 = 65 poles
65 @ $200 = $13,000

Storm Drainage
Say $100,000 L.S.

Sub-Total $287,000

.0250
.01
80.00
8000

287000/67 lots = 4300.00

287000/176.5 acres = $1720/ac. = $0.04/s.f.

1720.00 .04 tax (Urban) say $80/8000 s.f. = $0.01/s.f./year

A65-107

Cinder

① Lana St (50') 3600 + 1150 = 4750'

② Lana St (50') 1075 + 540 = 1615'

~~③ 2 side Sts (50') 540 + 540 = 1080'~~

④ Govt Rd (70') 1200 + 500 = 1700'

8065 L.F.

Paved

① Makaliki (50') 4800 + 100 = 4900'

Pavement Work { 24' wide 8000 L.F of AC pavem't. 192,000 SF @ 15¢/s.f. = $29,000
+ Engg + contng 3000
$ 32,000

Water (Not including possible modification to Wells) 8065 + 4900 = 12,965 L.F. of new 8" water main @ $10.00/LF = $129,650
contng 15,000
144,650

See over Sub Total — $174,650

Panaewa Houselots

3-14-66

Telephone conversation with Mr. Akira Fujimoto, Hawaii County BWS.

Akira reported that the present water system at the Panaewa houselots is adequate only for low density development such as presently exists and any further subdivision of the existing lots would overtax the system.

It was the understanding of their office that the state would not subdivide the lots any further and therefore the water system was sized accordingly.

JM

March 9, 1966

Mr. R. E. Allison
451 Awa Street
Hilo, Hawaii 96720

Dear Mr. Allison:

The Land Use Commission next meets on March 25, 1966 at 1:00 p.m. at the Hale Halawai Cultural Center, in Kailua, Kona, Hawaii. At that time your application (A65-107) to amend the ~~Rural~~ Agricultural District boundary at Panaewa Forest, South Hilo, Hawaii, will be heard.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

R. E. ALLISON

1868

L. J. ALLISON



ALLISONS OF HAWAII

451 AWA STREET • HILO, HAWAII 96720 • TELEPHONE 56-353

RECEIVED

FEB 8 1966

State of Hawaii
LAND USE COMMISSION

Feb. 2, 1966

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

Dear Mr. Moriguchi,

RE: Land Use Commission hearing on Panaewa Houselots Petition.

I would very much appreciate you letting me know, unofficially, whenever you learn the date of the above hearing as I have to make a trip to the mainland and want to avoid a conflict with the date of the hearing.

I am enclosing a self addressed envelope for your convenience.

Thank you very much.

Yours truly,

R. E. Allison

R. E. Allison

RA:lj

Answered 2-8-66

COUNTY OF HAWAII

COUNTY PLANNING COMMISSION

Applicant Ralph E. Allison, et al.

Date petition received by Planning Commission December 21, 1965

Date of Planning Commission Meeting January 28, 1966

Date petition and recommendations forwarded to LUC February 1, 1966

AMENDMENT OF ZONE DISTRICT BOUNDARY

The County Planning Commission of the County of Hawaii pursuant to consideration required by the provisions of Act 204, SLH 1963, hereby transmit the petition, comments, and recommendations of the above request for amendment of zone district boundary of the following described property:

Panaewa Houselots - tax map key 2-2-51 and 52

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JAN 4 1966
State of Hawaii
LAND USE COMMISSION

from its present classification in a(n) Agricultural district into a(n) Rural ? district.

The Commission decided to recommend: Approval

but is there a need?

on the basis of the following findings:

1. Rural districts are created in areas characterized by low-density residential lots and where small farms are intermixed with such low density residential lots. Existing land use of areas in question indicates this condition.

2. Area is not suited for intensive agricultural use because of poor soil condition.

"houselots" = urban use

3. The area should not be in urban as it is not contiguous of the existing urban area and is against the policy of the County and State to provide a scattering of urban areas.

4. The General Plan has provided for adequate residential areas in the city of Hilo including some areas which are not designated as agricultural but are contiguous to urban districts. The comprehensive plan reserves residential area for a population of 40,000 in 1980.

★ For future reference also!

The staff further recommends that no subdivision be approved until adequate water is provided for by improvement district and when the density of rural-agricultural are set at a later date upon further study.

No reason to amend today, now if this will come. What we do now might conflict with this study!

(Signed) Raymond S. Suefuji

Acting Director, County Planning Commission

STAFF REPORT: (Hawaii County Planning Comm.)

Subject: Change of State Land Use Boundaries
RALPH E. ALLISON, ET AL.
From Agricultural to Urban or Rural
Panaewa Houselots - 1st Series.

BACKGROUND:

The petitioners, Ralph E. Allison and 55 other lot owners request for a favorable recommendation from the County Planning Commission to be forwarded to the State Land Use Commission for a change of land use boundaries from Agricultural to Urban or Rural in Panaewa Forest, South Hilo.

The lots in question are situated on the Puna side of Makalika Street and on both sides of Lama Street encompassing approximately 176.5 acres and 67 lots.

only 131 ac. actually since all owners not involved.

50 Lots (signed)

The petitioners have requested for the boundary change as their land patent (deed) stipulates that the lots shall be used for residential use and that the lots can be subdivided to 10,000 square feet or the minimum as required by the County Planning Commission.

Existing Land Use and Conditions:

The existing land use of the lots in question are as follows:

1. 68 single-family residences with 6 lots vacant making existing density of 2.6 acres per dwelling unit. 5 of the lots contain two or more residential dwellings which are against the land patent's stipulation that only one residential dwelling be built per lot unless subdivided.
2. 18 lots are presently being fully utilized as agricultural use, 12 lots partially cleared for agricultural use, 24 lots wholly utilized in residential use with area only for dwelling use being cleared and 5 lots in their natural state of heavy vegetation. Land use show an intermixture of farm and low-density residential uses.

3. Water, telephone, and electricity are available; however, there is adequate water only to handle the existing residential development.

Surrounding areas include a scattering of residences on the north side of the area in question with only a few areas being actually built-up for agricultural use. The Panaewa Houselots, 2nd Series, borders the south and the area contains few existing residences and a scattering of lots being cleared for residential use. All of the remaining areas are in their natural state of heavy forest land.

The existing state land use designation of the study area is agricultural with the closest urban district ending approximately 2,000 feet away along Kanoelehua Avenue and 1,000 feet away across the existing forest reserve and Volcano Road. There are no rural designation in the Hilo area.

Soil conditions are known as the Olaa soil material consisting of young lava with thin covering of volcanic ash. More than half of the land surface is occupied by bare bed rock outcrop in rough, broken, a-a lava. This land type is difficult to cultivate or be kept in pasture.

The General Plan of Hilo has designated the area as ~~Residential-Agriculture~~ and the proposed zoning map indicates the area in Residential-Agricultural with minimum lot sizes of 3 acres.

RECOMMENDATION: No prop of need presented.

On the following analysis, the staff contends that the areas in question should be changed from Agricultural to Rural land use designation:

1. Rural districts are created in areas characterized by low density residential lots and where small farms are intermixed with such low density residential lots. Existing land use of areas in question indicates this condition.

2. Area is not suited for intensive agricultural use because of poor soil condition.

3. The area should not be in urban as it is not contiguous of the existing urban area and is against the policy of the County and State to provide a scattering of urban areas.

4. The General Plan has provided for adequate residential areas in the city of Hilo including some areas which are now designated as agricultural but are contiguous to urban districts. The comprehensive plan reserves residential area for a population of 40,000 in 1980.

The staff further recommends that no subdivision be approved until adequate water is provided for by improvement district and when the density of rural-agricultural are set at a later date upon further study.

December 20, 1965

Mr. Raymond Suefuji
Acting Director
Planning Commission
Hilo Armory
Hilo, Hawaii

Dear Mr. Suefuji:

Pursuant to Section 98H-4, RLH 1955, as amended, and Act 32/SLH 1965, a copy of a petition for amendment to the land use district boundaries, submitted by Mr. R. E. Allison, together with supporting data, is forwarded to you for your comments and recommendations.

Thank you for your cooperation.

Very truly yours,

GEORGE S. MORIGUCHI
Executive Officer

Encls. - Petition, etc.

State Form B14

STATE OF HAWAII

OFFICIAL RECEIPT No. 95

Planning & Econ. Dev.
Department, Bureau or Commission

Dec. 22, 1965

RECEIVED from Allison's of Hawaii

Fifty and no/100 DOLLARS

Public Hearing Fee - Land Use Commission

$ 50.00

Henry K. Takeda
Public Accountant

State Form B14

STATE OF HAWAII

OFFICIAL RECEIPT No. 123

Land Use Commission
Department, Bureau or Commission

December 17 1965

RECEIVED from R. E. Allison

Fifty + no/100 **DOLLARS**

Land Use Commission hearing for boundary change

$ 50.00

Dora Y. Horikawa
Public Accountant

December 20, 1965

Mr. R. E. Allison
451 Awa Street
Hilo, Hawaii 96720

Dear Mr. Allison:

This is to acknowledge the receipt of your check for $50.00 for an application to amend the land use district boundaries as shown on Tax Map Key 2-2-51 and 52, Panaewa Houselots, Hilo, Hawaii.

In accordance with Section 98H-4, RLH 1953, as amended, and Act 32/SLH 1965, this Commission must schedule a public hearing on your petition no sooner than 60 days and no 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 County of Hawaii. 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,

GEORGE S. MORIGUCHI
Executive Officer

cc: Chairman Thompson
Planning Commission, Hawaii

R. E. ALLISON

L. J. ALLISON



ALLISONS OF HAWAII

451 AWA STREET • HILO, HAWAII 96720 • TELEPHONE 56-353

RECEIVED
Dec 17 1965
State of Hawaii
LAND USE

1831

December 14, 1965

Mr. George Moriguchi , Executive Officer
State Land Use Commission
% State Department of Planning and Economic Development
426 Queen St.
Honolulu, Hawaii

Dear Mr. Moriguchi,

To confirm our conversation, I am enclosing a check for $50.00. In addition a standard form, (Petition for Amendment to the Land Use Commission District Boundary) is enclosed. This is to supplement the information given in the original petition signed by the owners of property in this district.

We hope that there will be a minimum of delay in acting on this petition.

Thank you for efforts and time spent on this matter.

Yours truly,

R E Allison

R. E. Allison

RA:lj
enc.

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

RECEIVED
DEC 17 1965
State of Hawaii
LAND USE COMMISSION

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 _____

A65-107

PETITION FOR AMENDMENT TO THE LAND USE COMMISSION DISTRICT BOUNDARY

~~(XX)~~ (We) hereby request an amendment to the Land Use Commission District Boundary respecting the County of Hawaii, Island of Hawaii, map number and/or name Panaewa Houselots, Tax Map 2-2-51 and 52 to change the district designation of the following described property from its present classification in a(n) Agricultural district into ~~a(n) XXX~~ Houselots as per original deeds.

Description of property: Panaewa Houselots-- Tax Map 2-2-51 and 52.

Petitioner's interest in subject property: This is a supplemental petition to one already signed by more than 96% of the lot owners in this district.

Petitioner's reason(s) for requesting boundary change: Our deeds for the Panaewa Houselots specify that these houselots may be subdivided. The Land Use Commission rezoned this area to agricultural without the Panaewa Houselots owners realizing that this was being done. Many owners felt that their deeds were valid contracts.

(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.

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

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

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

Signature ~~(s)~~ Ralph E. Allison

R.E. Allison

Address: 451 Awa St.
Hilo, Hawaii 96720

Telephone: 56 353

EVIDENCE IN SUPPORT OF A PETITION FOR AMNEDMENT TO THE LAND USE COMMISSION DISTRICT BOUNDARY.

In 1958 the State of Hawaii subdivided a plot of land in Panaewa Forest into two to three acre houselots. These lots, called Panaewa Houselots, were then put up for sale by the state with restrictions as to the length of time a buyer could hold the land without building a house on it, the size of the house and materials for same, as well as the land area for each subsequent house.

Most people purchasing land in the Panaewa Houselots bought for the purpose of building more than one house on their lot. The right to subdivide was clearly stated in both the sales agreement as well as in the deed. The additional houses that were to be built were very often for children or parents, or for rental income for old age. One man bought a lot with the help of his friends understanding that as soon as he had met the states building requirements for the first house, the lot could be divided between them.

The Land Use Commission rezoned the Panaewa Houselots to agricultural. Many of the land owners did not realize that this had been done. In circulating to petition, sent to you in December, 1965 and signed by more than 96% of the owners, time and again we heard-----"I must have a different kind of a deed than you do. My deed gives me the right to subdivide!"

The deeds issued to the owners of land in Panaewa Houselots by the State of Hawaii specifically state that these two to three acre lots may be subdivided. A deed is a valid contract. The Land Use Commission rezoned this area to agricultural land and we, as owners, feel that we have been wronged. We would like to have our land rezoned residential as it was when we bought it from the state.

From the Desk of . . . **George S. M[illegible]riguchi**

Panaewa

2-2-51:

1 –
2 –
3 –
4 –
5 state
6 –
7 –
8 state
9 ~~Kitaok~~
signed 10 ~~Hiraki~~
11 –
12 –
13 –
14 –
15 –

16 –
17 –
18 –
19 –
20 –
21 chong
22 –
23 –
24 –
25 –
26 –
27 –
28 –
29 –
30 –

31 –
32 –
33 –
34 –

O = lot owners who did not sign.



MEMO
Call
998-700
SERVICE PRINTERS
For All Your Printing Needs

From the Desk of . . . **George S. M[redacted]iguchi**

2-2-52: 1-
2-
3-
4-
5-
(Maeda) (6) State
7-
8-
9-
10-
signed ~~(11) Mendo~~ ?
12-
(13) Tanji
14-
15-
16-
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18-
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28-
29-
30-
31-
32-
(33) Nichiren Mission

9/67 = 0.135
13½% did not sign.

58/67 = 0.865
86½% signed



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R. E. ALLISON

L. J. ALLISON



1816

ALLISONS OF HAWAII

451 AWA STREET • HILO, HAWAII 96720 • TELEPHONE 56-353

RECEIVED via certified mail
DEC 3 1965
State of Hawaii
LAND USE COMMISSION

December 2, 1965

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

Dear Mr. Thompson

Enclosed is a petition signed by land owners in the Panaewa House Lots Subdivision in Hilo. The signatures on this petition represent more than 96% of the privately owned lots in this subdivision.

When this land was sold, it was specifically stated in the deed that these three acre plots could be divided and much of the land was purchased with this in mind. Many buyers had plans to build additional houses for their children, other members of their family, or for rental as old age income. The right to do this has been taken away by a change in the zoning law.

It is our earnest hope that the Land Use Commission will recognize the desires of the property owners in the Panaewa House Lots Subdivision and will convert the zoning back to house lots.

A copy of this petition is being sent to the Planning Commission here in Hilo.

Yours truly,

REAllison

R. E. Allison

RA:lj
enc. Two (2) petitions
Typewritten list of signers and their lot numbers

cc: to Raymond Suefuji 12-20-65

HONORABLE MYRON B. THOMPSON, Chairman
And HONORABLE MEMBERS OF THE LAND USE COMMISSION
STATE OF HAWAII
HONOLULU, HAWAII

RECEIVED
DEC 3 1965
State of Hawaii
LAND USE COMMISSION

P E T I T I O N

WHEREAS, before the lots in the Panaewa House Lots Subdivision at Panaewa, Waiakea, District of South Hilo, County and State of Hawaii were offered for sale at public auction, the Territory of Hawaii published notices in the Hilo Tribune Herald on September 19, October 11, November 1, and November 16, 1958; said notices indicated that the lots in the Panaewa Subdivision were restricted to "residence purposes only for ten years next following the issuance of Land Patent Grant or deed;" and the notice also stated "subdivision of lot permitted with certain lot size and building requirements;"

WHEREAS, the Conditions of Sale Instrument, Special Sales Agreement and Land Patent executed and issued for lots in the said subdivision provided that the lot "shall be used for residential purposes only from date of sale for a period of ten years next following the issuance of the Land Patent or deed. Subdivision requirement shall likewise continue for period of ten years next following such issuance;"

WHEREAS, the aforementioned instruments also provided that each purchaser of lot in said subdivision shall construct a single family dwelling of new materials or masonary on said lot, within five years from date of sale; and further it is provided in said instruments "that no purchaser shall be permitted to construct more than one dwelling on said lot, or if the same be subdivided, more than one dwelling on each lot created as a result of said subdivision;"

AND WHEREAS, we the undersigned purchased lots in the Panaewa Subdivision for residential purposes only as so restricted in the aforementioned instruments; and for the further reason that according to the notice of the public sale we were to have the right to subdivide the lot purchased by us upon meeting the condition as to size and building requirements;

NOW, THEREFORE, we respectfully petition the LAND USE COMMISSION of the STATE OF HAWAII to reclassify the Panaewa House Lots to either urban or rural instead of agricultural for the reason that the State had legally restricted the lots in the subdivision for residential purposes only prior to the enactment of the Land Use Law, and the Land Use Commission should not have classified lots in the Panaewa House Lots in the agricultural class. Further, in our opinion, inasmuch as the lots in said subdivision had been advertised for residential purposes only, and as the purchasers of the lots were given the right to subdivide upon meeting certain requirements, the act of the Land Use Commission classifying said lots as

agricultural amounts to breach of contract on the part of the State, or at least lack of good faith.

Trusting that this petition will be given due consideration and our prayer be granted.

Respectfully submitted,

Thomas S. Tarascinara

2 James J. Zamora

3 Bunichi Harada

4 Bernard H Kamahele

5 Jerry Y. Nago

(3 parcels) 6 Liborio E. Arquero

7 Charles Tabaguchi

8 Mitsuko Matsunaga

9 Ralph E Allison

10 Earl W. [illegible]

11 Tatsumi Nishizaki

12 Mrs E. Vesperos

13 Yoko Setoda

14 Iwao Nagata

15 Sylvia K. Young

16 Roy Nagata

17 Rebecca Tim Sing

18 Jack Ota

19 Tsutomu Mende

20 Masayuki Hiraki

21 Jennie Kondo

22 Tomoo Okuyama

23 Alec T. Inouye

24 T. Morinoue

25 Jane Okamoto

26 Edward W Roehm Jr

27 Francis Ai

28 Jack Kaneko

29 Godfrey B. Desha

30 Akira Yamamoto

31 Kenji Sugawara

32 Takeo Matsui

33 Itsuji Kodama

34 Yoshimasa Nakagawa

35 John A. Sing Jr

36 Chiyoko Ishii

37 Shizue Kaya

38 Shimono Mikai

39 Theodore Hiro

40 Satoru Sato

41 Kazuichi Okino

42 Masaji Kawazoe

43 Katsuki Kubo

44 Noboru Oda

45 Richard Ito

46 Hiroshi Shishido

47 Louis P. Asanjio

48 Shizu Sugawara

December 2, 1965

Names of the signers of the Panaewa Houselots Petition in the order that their names appear on the petitions.

1.	Thomas K. Sakakihara	Lot tax key-	2-2-51-13
2.	James S, Tamura	"	2-2-52-8
3.	Bunichi Harada	"	2-2-52-15
4.	Brenard K. Kamahele	"	2-2-52-14
5.	Jerry Y Nado	"	2-2-52-19
6.	Liborio E. Arquero	"	2-2-52-9
	" " "	"	2-2-52-10
	" " "	"	2-2-51-11
7.	Charles K. Sakaguchi	"	2-2-52-1
8.	Mitsuki Matsunaga	"	2-2-52-25
9.	Ralph E. Allison	"	2-2-51-12
10.	Earl M. Ide	"	2-2-52-26
11.	Tsutomu Nishizaki	"	2-2-52-27
12.	Mrs. E. Vesperas	"	2-2-51-32
13.	Yaeko Setoda	"	2-2-51-31
14.	Iwao Nagata	"	2-2-51-27
15.	Sylvia K. Young	"	2-2-52-7
16.	Roy (Rihachi) Nagata	"	2-2-52-22
17.	Rebecca Tim Sing	"	2-2-51-33
18.	Jack Ota	"	2-2-52-29
19.	Jennie Kondo	"	2-2-51-6
20.	Tomoo Okuyama	"	2-2-51-4
21.	Alex K. Inouye	"	2-2-51-3
22.	Tetsuo Morinoue	"	2-2-51-2
23.	Jane Okamoto	"	2-2-51-1
24.	Edward W. Rosehill, Jr.	"	2-2-51-22
25.	Francis Ai	"	2-2-51-20
26.	Jack Kaneko	"	2-2-51-19
27.	Godfrey B. Desha	"	2-2-51-18
28.	Akira Yamamoto	"	2-2-51-7
29.	Kengi Sugawara	"	2-2-51-17
30.	Takeo Tustsui	"	2-2-51-16
31.	Itsuji Kodama	"	2-2-51-15
32.	Yoshimasa Nakagawa	"	2-2-51-14
33.	John Ah Sing, Jr.	"	2-2-52-12
34.	Chiyoko Ishii	"	2-2-52-32
35.	Shizue Kaya	"	2-2-52-24
36.	Shimano Mukai	"	2-2-52-23
37.	Theodore Hiro	"	2-2-52-21
38.	Satoru Sato	"	2-2-52-4
39.	Kazuichi Okino	"	2-2-51-23
40.	Masaji Kawazoe	"	2-2-52-3
41.	Katsuki Kubo	"	2-2-52-20
42.	Noboru Oda	"	2-2-52-5
43.	Richard (Tadao) Ito	"	2-2-51-30
44.	Hiroshi Shishido	"	2-2-51-28
45.	Lousi P. Araujo	"	2-2-51-26
46.	Shizu Sugawara	"	2-2-52-2

NAGO →

Tantoun Mende
Masayaki Hiraki

not signed by OWNER
(Louise M. Desha)

cc: to Raymond Suefuja - 12-20-65

Names of the signers of the Panaewa Houselots Petition in the order that their names appear on the petitions.

← No record of signature (47 - 56)

47.	George S. Yuda----------	Lot tax key-	2-2-51-34
48.	Milton Hakoda----------	"	2-2-51-29
49.	Henry T. Moniz----------	"	2-2-51-25
50.	KKenji Inouye----------	"	2-2-52-30
51.	William S. Au----------	"	2-2-52-28
52.	Wanda A. Miura- ----------	"	2-2-52-18
53.	Norman K. Au----------	"	2-2-52-16
54.	William Raymond Au, Jr.-----	"	2-2-51-24
55.	Bernard Earle Au----------	"	2-2-52-17
56.	Teruo Takahachi---------- -	"	2-2-52-31

Also not signed or listed:

State of Hawaii — 2-2-51: 5, 8

Susumu Maeda + wf. Ruth — 2-2-52: 6

Robert & Asako Kita — 2-2-51: 9

Richard J.K. + Maile Chong — 2-2-51: 21

{Kazuo + Masano Tanji} {Alexander M. Tanji} — 2-2-52: 13

The Nichiren Sect Mission of Hawaii — 2-2-52: 33

8-10-66

Dora,

re: Data for Court

In addition to items tabbed or clipped, list the following exhibits:

Exh. A. Land Use District Boundary Map (H- City of Hilo) Scale: 1" = 1000'

Exh. B. State Land Use Change of Boundaries (County Planning Commission) Scale: 1" = 300'

Exh C Tax Maps: Zone 2, Sec 2, Plat 51
(Spliced) " " " " Plat 52
Third Taxation Div.

Also 7 of 7 and Conc. of Laws
(Do you have this?)

File

RECEIVED
AUG 9 1966
State of Hawaii
LAND USE COMMISSION

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants, vs. STATE LAND USE COMMISSION, Appellee.	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

STIPULATION TO WITHDRAW MOTION TO DISMISS AND TO EXTEND TIME FOR FILING RECORD ON APPEAL

BERT T. KOBAYASHI
Attorney General
State of Hawaii

ROY Y. TAKEYAMA
Deputy Attorney General

Iolani Palace Grounds
Honolulu, Hawaii 96813

Attorneys for Appellee

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants, vs. STATE LAND USE COMMISSION, Appellee.	APPEAL FROM DECISION OF THE STATE LAND USE COMMISSION

STIPULATION TO WITHDRAW MOTION TO DISMISS AND TO EXTEND TIME FOR FILING RECORD ON APPEAL

The parties hereto stipulate to the following:

1. To withdraw appellee's motion to dismiss the above-entitled case for the reason that the Attorney General has been served with the necessary papers in accordance with Rule 4(d) of the Hawaii Rules of Civil Procedure.

2. To extend time for appellee to file the record on appeal in the above-entitled case up to and including Friday, August 26, 1966.

DATED: Honolulu, Hawaii, August 5, 1966.

LAND USE COMMISSION,
STATE OF HAWAII, Appellee

By Roy Y. Takeyama
ROY Y. TAKEYAMA
Deputy Attorney General
Its Attorney

RALPH E. ALLISON, et al.,
Appellants

By _____
Their Attorney

APPROVED AND SO ORDERED:

_____
Judge of the above-entitled Court

X two copies

FORM 16-B-1 (Revised 1955)
SPECIAL SALE AGREEMENT
FOR OTHER THAN HOMESTEAD
PURPOSES

OFFICE OF THE
COMMISSIONER OF PUBLIC LANDS
TERRITORIAL OFFICE BUILDING
TERRITORY OF HAWAII

RECEIVED
MAY 17 1966
State of Hawaii
LAND USE COMMISSION

App. Bk. 25:36
L. B. 3463, Aug. 29, 1958
Ad. Bk. 24:11

SPECIAL SALE AGREEMENT No. 4133

THIS AGREEMENT, made this 20th day of November, 19 58, by and between the TERRITORY OF HAWAII, by its Commissioner of Public Lands, hereinafter called the "TERRITORY", and KENICHI SHINKAI and HIDEYO SARA SHINKAI, husband and wife,

whose residence and post office address is P.O. Box 308, Pahala, Hawaii

, Territory of Hawaii, hereinafter called the "PURCHASER",

WITNESSETH THAT:

WHEREAS, on November 20, 19 58, pursuant to the provisions of the Hawaiian Organic Act and the Revised Laws of Hawaii 1945, as amended, certain land, hereinafter more particularly described, situate at Paauwa, Waiakea, South Hilo, Hawaii

said Territory, and being Lot 33, Panaewa House Lots
was offered for sale at public auction on terms and conditions in this agreement set forth; and

WHEREAS, at such sale, said Purchaser bid the sum of TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($ 2,200.00), becoming thereby the highest qualified bidder therefor, and entitled to purchase said land under this agreement of sale; and

WHEREAS, said Purchaser has deposited with the Commissioner of Public Lands of the Territory, hereinafter called the "COMMISSIONER", the sum of FOUR HUNDRED FORTY AND NO/100 DOLLARS ($ 440.00), to be applied by said Commissioner as a down payment upon the execution hereof;

NOW, THEREFORE, the Territory agrees to sell to the Purchaser and the Purchaser agrees to buy from the Territory all of the land described in Schedule "A" hereof, upon the terms and conditions contained in this agreement and in Schedule "B", hereto attached and made a part hereof:

1. The Purchaser promises to pay to the Commissioner, for and on behalf of the Territory, the for the purchase price of said land, the sum of TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($ 2,200.00), as follows:

(a) the sum of FOUR HUNDRED FORTY AND NO/100 DOLLARS ($ 440.00), as a down payment the receipt whereof is hereby acknowledged, and (b) the balance in twenty ~~annx~~ quarterly equal annual installments, payable on the 20th day of Feb., May, Aug. & Nov. of each and every year until paid, first payment to be made on February 20, 19 59; *provided, however*, the Purchaser shall have the right to make payment of all or any part of the principal ~~XXX~~ on quarterly installment payment dates only payment of all or remaining balance may be made at any time

The Purchaser further promises to pay to the Commissioner, interest at the rate of four per cent (4%) per annum, computed upon the then outstanding principal balance due the Commissioner, at the time specified for each installment payment of principal

SCHEDULE "A"

LOT 33

PANAEWA HOUSE LOTS

Panaewa, Waiakea, South Hilo, Hawaii

Being portion of the Government (Crown) Land of Waiakea.

Beginning at a 1-inch pipe at the northeast corner of this lot, the northwest corner of Lot 32 of Panaewa House Lots and on the south side of Government Road (50.00 feet wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 17524.48 feet South and 14667.54 feet East, as shown on Government Survey Registered Map H.T.S. Plat 922, thence running by azimuths measured clockwise from True South:-

1.	341°	00'	538.27 feet	along Lot 32 of Panaewa House Lots to a 1-inch pipe;
2.	71°	00'	221.25 feet	along Government Land to a 1-inch pipe;
3.	161°	00'	488.27 feet	along the east side of Government Road (50.00 feet wide);
4.	Thence along the east side of Government Road (50.00 feet wide), on a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being: 206° 00' 70.71 feet;			
5.	251°	00'	171.25 feet	along the south side of Government Road (50.00 feet wide) to the point of beginning and containing an AREA OF 2.72 ACRES.

RESERVING to the Territory of Hawaii, its successors and assigns, in perpetuity, all rights to ground but not to surface waters which are or may be appurtenant to the hereinabove described land or the ownership thereof.

RESERVING ALSO to the Territory of Hawaii, its successors and assigns, in perpetuity, all minerals in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove minerals and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, conditioned upon the payment, prior to any exercise of such right, of compensation for destruction of or damage or injury, caused by the exercise of such right to occupy and use said land, to permanent improvements placed upon the land.

"Minerals" within the meaning of such reservation shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, rock, gravel, and other similar materials when used in road or building construction.

SCHEDULE "B"

1. IT IS AGREED that the Purchaser shall, at his own cost and expense, within five (5) years after the date of this agreement, complete the erection of a single-family dwelling of new materials or masonry upon said land for residence purposes in full compliance with all applicable laws, ordinances, rules and regulations and containing a floor area of not less than 850 sq. ft., exclusive of garage & open lanai. Such building shall be well and substantially built and shall be finished in a good, thorough and workmanlike manner. In the event that the Purchaser shall, in order to comply with such building requirement, find it necessary to secure a loan from a lending agency so as to finance the erection or construction of said building, and such lending agency shall require of said Purchaser a mortgage of the land described herein as security for such loan, such loan to be effected upon the issuance of a deed or a Land Patent or both, whichever is or are deemed applicable by the Commissioner, then and in such event the Commissioner may issue to said Purchaser, subject to the conditions hereafter set forth, upon a request therefor being made in writing, such deed or Land Patent or both covering said land. The conditions upon which such deed or Land Patent or both may issue shall be as follows:

a. That all of the terms, covenants and conditions of this agreement shall have been performed by the Purchaser (excepting such building requirement) including, without prejudice to the generality of the foregoing, the payment of all sums of money provided for in paragraphs 1 and 2 hereof; and

b. That the Purchaser and lending agency shall have agreed with the Commissioner and with each other that all moneys to be loaned to said Purchaser by said lending agency for which the land described in Schedule "A" hereof shall be held as security, shall be retained by said lending agency and by it placed in a special account, from which account disbursements shall be made by it directly to the contractor in such amounts, at such times and upon such conditions as shall be provided for in a suitable building contract covering the erection or construction of said building; and

c. That the Purchaser shall have entered into a suitable contract with a reputable contractor providing for the erection or construction of said building to be completed within the period required by this agreement, and said contractor shall have executed in favor of said Purchaser and said lending agency, or either of them and the Territory of Hawaii, a performance and payment bond conditioned upon terms satisfactory to the Commissioner; and

d. That the Purchaser shall have performed such other conditions and shall have executed such other documents as the Commissioner shall, in his discretion, deem necessary to insure the *bona fide* performance by the Purchaser of said building requirement within the time prescribed therefor in this agreement.

2. IT IS ALSO AGREED that the Commissioner of Public Lands reserves the right, for good cause, to grant to any purchaser an extension of time to meet the building requirement, and if such extension is granted, it shall be for only such period of time and under such conditions as may be established by the Commissioner; provided, however, that the granting of an extension to any one purchaser shall not be considered as a grant of an extension to any or all other purchasers, or as a waiver of the building time requirement except to the extent to which it may be expressly extended.

3. PURSUANT TO the conditions incorporated in the Notice of Sale dated September 16, 1958 (Ad. Bk. 24:11), it is understood and agreed that:

(a) No quonset hut or dwelling of similar design or construction will be permitted for the dwelling required.

(b) Should the purchaser, or any assignee of his, desire to subdivide said lot or any portion thereof, each subdivision shall conform with the minimum specifications and standards established by the Hawaii Traffic and Planning Commission, excepting that said lot and each additional lot created as a result of said subdivision shall contain an area of at least 10,000 square feet, or the minimum area required by said Planning Commission, whichever is the greater, and the owner of each lot as subdivided shall be required within a period of five (5) years next following the date of such subdivision or resubdivision to construct on each lot so created a single-family dwelling meeting the requirements above-mentioned with respect to materials and minimum floor area. The foregoing construction requirements shall not be construed, however, to relieve the purchaser of the necessity for the erection of a dwelling on the premises within a period of five (5) years from the date of sale as hereinabove provided.

(c) No more than one dwelling shall be constructed on said lot, or if the same be subdivided, no more than one dwelling on each lot created as a result of said subdivision; provided, however, that accessory buildings, so long as they do not comprise dwelling units and so long as the same are erected in conformity with a plot plan and are of a character and design suitable to the area, will be permitted.

(d) A 25-foot building setback line from the roadway is provided for on this lot.

and repossess said land, with or without legal process, and retain all payments of principal and interest made by the Purchaser hereunder as liquidated damages and as and for an agreed rent for the use and possession of said land.

12. The acceptance by the Commissioner of any payment of principal or interest as the same shall become due shall not be considered a waiver of the right of the Commissioner, in the name of the Territory, to pursue any remedy or right for breach of or for cancellation of this agreement.

13. It is understood and agreed that the Purchaser under this agreement is not acquiring any private right in any public street, park or other area designated or shown in any schedule attached hereto as being public property, nor any right to have any or all such areas improved; *provided, however,* that nothing herein contained shall serve to prejudice such rights as the law may confer upon said Purchaser in common with others as an abutter on any public street.

14. As used herein, "land" shall mean the land described in Schedule "A" hereof, and all improvements whether now or hereafter erected thereon; "Governor" shall mean the Governor of the Territory of Hawaii, his successors in office and any other officer or officers who may succeed to his powers or duties; "Commissioner" shall mean the Commissioner of Public Lands of the Territory of Hawaii, his successors in office and any other officer or officers who may succeed to his powers or duties; "Purchaser" shall mean said Purchaser, his heirs and those who shall lawfully hold under him; the use of any gender shall include all genders, and if there be more than one purchaser, then the singular shall signify the plural, and this agreement shall bind said purchasers, and each of them, jointly and severally, and any documents issued pursuant hereto and all right, title and interest of said purchasers hereunder shall be held by them as tenants by the entirety.

As used hereinabove in Condition Nos. 2, 3, 7, 10 and 14 the document or documents conveying to the Purchaser all of the land covered by this Agreement is or are to be a Land Patent.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

TERRITORY OF HAWAII

By _____
Its Commissioner of Public Lands

_____
Purchaser KENICHI SHINTAKU

_____
Purchaser MIDUYO SHIRA SHINTAKU

Honolulu, T. H., _____, 19__.

I consent to the sale of the land herein mentioned upon the terms and conditions above set forth:

_____
Governor of the Territory of Hawaii

Approved as to Form:

_____
Attorney General

TERRITORY OF HAWAII
} ss.
_____ COUNTY OF _____
(City and)

On this _____ day of _____, A. D. 19__, before me personally appeared KENICHI SHINTAKU and MIDUYO SHIRA SHINTAKU, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that they executed the same as their free act and deed.

_____
Notary Public, _____
Judicial Circuit, Territory of Hawaii.

My Commission Expires _____

Written by VK

Checked by _____

2. In addition to the foregoing, the Purchaser shall, prior to the issuance of a document or documents as is or are hereinafter provided, pay to the Commissioner a fee in the sum of FIFTEEN AND NO/100 DOLLARS ($ 15.00), together with all statutory charges as may by law be imposed on a purchaser of public lands.

3. Title to the land subject to this agreement shall remain in the Territory until the Purchaser has made all payments required under paragraphs 1 and 2 above, and has otherwise observed and performed the terms and conditions herein contained on the part of the Purchaser to be observed and performed. Upon such payments being made and upon the observance and performance of such terms and conditions the Commissioner shall cause to be executed and delivered to the Purchaser a document or documents conveying to said Purchaser the land described in Schedule "A" hereof; *provided, however,* such document or documents shall contain a condition subsequent which shall restrict the use of said land to residence purposes only for a period of ten (10) years next following the date of issuance of said document or documents, a violation of which condition shall entitle the Commissioner, on behalf of the Territory, to enter upon said property and to forfeit the estate granted under said document or documents.

4. The Purchaser may, as of the date of these presents, enter upon and take possession of the land described in Schedule "A" hereof, and use and occupy the same hereunder for so long as said Purchaser shall not be in default of the terms and conditions of this agreement. The risk of loss of complete or partial destruction of the subject matter of this sale shall rest upon the Purchaser from and after the date of these presents.

5. The Purchaser shall, for the duration of this agreement, use the land described in Schedule "A" hereof for residence purposes only.

6. During the existence of this agreement the Purchaser shall pay, when due, all taxes, impositions and assessments of every kind, all garbage and sewer and water rates, and all other outgoings of every kind and nature whatsoever, which now are, or hereafter shall be, laid, imposed, assessed or charged on or in respect of said land or any part thereof or any interest therein or to which the Purchaser in respect thereof is now or may hereafter become liable.

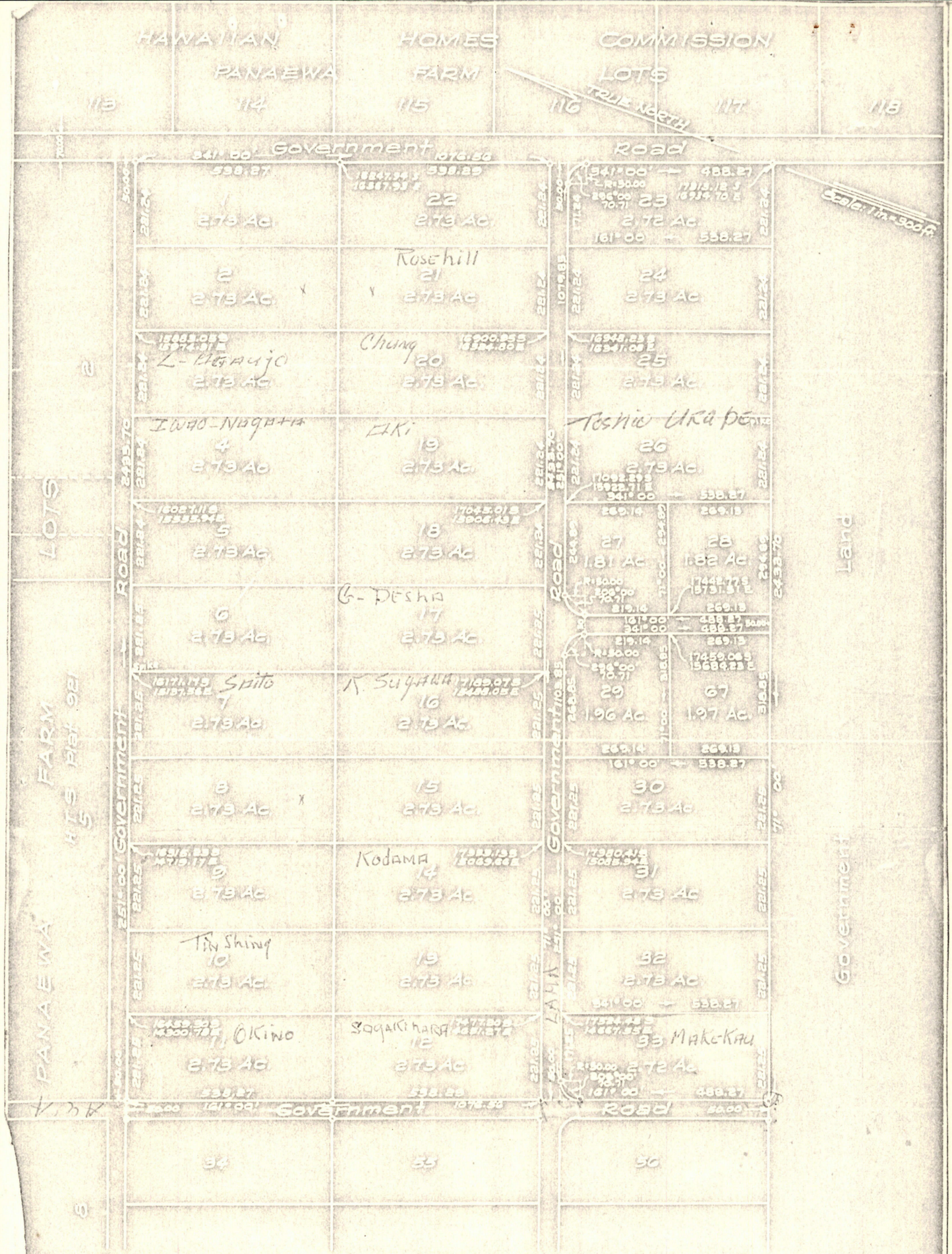
7. The Purchaser shall, pending the issuance of said document or documents, well and substantially repair, maintain, amend and keep said land and all improvements, now or hereafter erected thereon, in good order and repair, ordinary wear and tear excepted, and shall not do or commit, or permit to be done any wilful or voluntary strip, waste or spoil or other damage to or destruction of said land and improvements.

8. The Purchaser shall, at his own cost and expense, keep all buildings and improvements, now or hereafter erected upon said land, insured throughout the term of this agreement against loss or damage by fire, including demolition and extended coverage, in an insurance company or companies satisfactory to the Commissioner, in the name of the Commissioner and in an amount equal to the full insurable value thereof, and shall deposit said policy or policies and all premium receipts therefor with the Commissioner, who shall have the option in the event of loss, damage or destruction to apply such proceeds either: (a) toward rebuilding or repair of such loss, damage or destruction, or (b) toward payment or reduction of the moneys due under this agreement.

9. The Commissioner, his agents and representatives, shall, at all reasonable times, be allowed to enter and to examine the property subject to this agreement for the purpose of determining whether the terms and conditions herein contained are being fully observed and performed.

10. The Purchaser shall not, without the written consent of the Commissioner and Governor endorsed hereon or attached hereto, except as specially provided by law, in any way, directly or indirectly, before a document or documents is or are issued hereunder, sell, assign, convey, lease, mortgage or otherwise transfer or dispose of this agreemem or any rights hereunder, or said land or any part thereof or interest therein or control thereof, or contract so to do.

11. Time is of the essence of this agreement, and the Purchaser shall be deemed to be in default hereunder if (a) the Purchaser shall fail to pay any sums of money (including interest) when the same shall become due, or if (b) the Purchaser shall fail to observe or perform any of the terms and conditions herein contained on his part to be observed and performed, or if (c) the Purchaser shall vacate or abandon, or threaten to vacate or abandon, all or any part of said land. In the event of such default, the Commissioner may: (1) declare to be immediately due and payable all sums of money owing hereunder and may institute suit or other remedy against the Purchaser therefor, or (2) cancel this agreement and render void all interest of the Purchaser herein by giving written notice to said Purchaser, either personally or by sending the same by registered mail, postage prepaid, to his last known address (or if the land is or shall be under the operation of the Land Court of the Territory of Hawaii, the Commissioner may upon giving notice as aforesaid, file in the Office of the Assistant Registrar of said court an affidavit to the effect that such notice has been given and that this agreement has been cancelled thereby, or at the option of the Commissioner, file a petition in the Land Court for an order cancelling said agreement, which order may be issued in said Land Court or by the judge thereof on ex parte petition, without summoning or notifying the Purchaser),



LOTS 1 TO 33, INCLUSIVE
PANAEWA HOUSE LOTS
WAIAKEA, SOUTH HILO, HAWAII
SCALE: 1 IN. = 300 FT.

Note: Lots 33, 27, 28, 29 and 33 revised and Lot 67 added to plan by O. Fukuya - Sept. 5, 1958.

NOTE:
All lot corners marked with 1" pipes unless otherwise noted.
Coordinates referred to Hala: A

Map Ka. 3 Sta. Div. 2-5-48

SURVEY DEPARTMENT
TERRITORY OF HAWAII

Carton, 230

R.L. April 4, 1958

Land Patent No. S-13,710

(Grant)

Issued On

SALE AT PUBLIC AUCTION ON TIME PAYMENTS
ON NOVEMBER 20, 1958

By THIS PATENT the ~~ACTING~~ *Governor of the* State ~~Territory~~ *of Hawaii, in conformity with the laws of the* ~~United States of America and of the~~ State ~~Territory~~ *of Hawaii,* relating to public lands, and in accordance with Section 73 of the Hawaiian Organic Act, as amended, and continued in force and effect by Public Law 86-3, 86th Congress (March 18, 1959).

makes known to all men that he has this day granted and confirmed unto

—— RALPH EDWARD ALLISON and LORNA JANE DEDOLPH ALLISON, ——
husband and wife, as tenants by the entirety,

for the consideration of their *having paid into the Treasury the sum of* TWO THOUSAND TWO HUNDRED AND 00/100 *Dollars,* $2,200.00 ,

and for the further consideration of their having complied with the terms and conditions of Special Sale Agreement No. 4133, issued on November 20, 1958,

all of the land situate at —— PANAEWA, WAIAKEA ——

in the District of — SOUTH HILO — *Island of* — HAWAII — *bounded and described as follows:*

(REVISED SEPTEMBER 1958)

LOT 33
PANAEWA HOUSE LOTS

Being portion of the Government (Crown) Land of Waiakea

BEGINNING at a 1-inch pipe at the northeast corner of this lot, the northwest corner of Lot 32 of Panaewa House Lots and on the south side of Government Road (50.00 feet wide), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI' being 17524.48 feet South and 14667.55 feet East, as shown on Government Survey Registered Map H.T.S. Plat 922, thence running by azimuths measured clockwise from True South:-

1. 341° 00' 538.27 feet along Lot 32 of Panaewa House Lots to a 1-inch pipe;

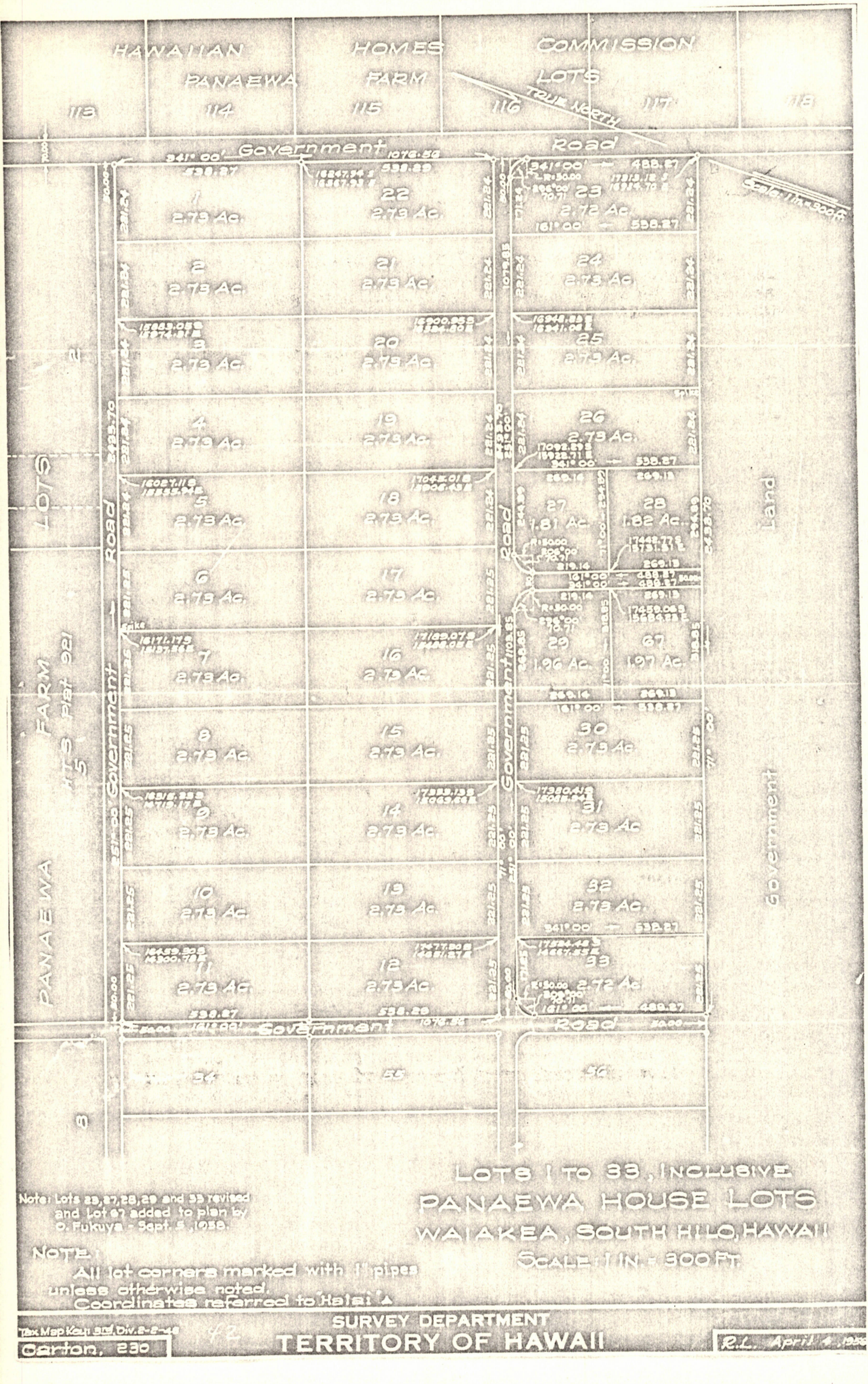
2. 71° 00' 221.25 feet along Government Land to a 1-inch pipe;

3. 161° 00' 488.27 feet along the east side of Government Road (50.00 feet wide);

4. Thence along the east side of Government Road (50.00 feet wide), on a curve to the right having a radius of 50.00 feet, the chord azimuth and distance being: 206° 00' 70.71 feet;

EXHIBIT A

Attached to and made a part of Land Patent Grant No.
S-13,710



Note: Lots 23, 27, 28, 29 and 33 revised and Lot 67 added to plan by O. Fukuya - Sept. 5, 1958.

NOTE:
All lot corners marked with 1" pipes unless otherwise noted.
Coordinates referred to 'Kalai'

LOTS 1 TO 33, INCLUSIVE
PANAEWA HOUSE LOTS
WAIAKEA, SOUTH HILO, HAWAII
SCALE: 1 IN. = 300 FT.

Tax Map Key: 3rd Div. 2-6-48

SURVEY DEPARTMENT
TERRITORY OF HAWAII

Carton 230

R.L. April 4, 1956

5. 251° 00' 171.25 feet along the south side of Government Road (50.00 feet wide) to the point of beginning.

AREA 2.72 ACRES

RESERVING to the State of Hawaii, its successors and assigns, in perpetuity, all rights to ground but not to surface waters which are or may be appurtenant to the hereinabove described land or the ownership thereof.

RESERVING ALSO to the State of Hawaii, its successors and assigns, in perpetuity, all minerals in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove minerals and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, conditioned upon the payment, prior to any exercise of such right, of compensation for destruction of or damage or injury, caused by the exercise of such right to occupy and use said land, to permanent improvements placed upon the land.

"Minerals" within the meaning of such reservation shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, rock, gravel, and other similar materials when used in road or building construction.

THIS PATENT is subject to the following conditions, as contained in Special Sale Agreement No. 4133, dated November 20, 1958:

(a) Should the patentees, or any assignee of theirs, desire to subdivide said lot or any portion thereof, each subdivision shall conform with the minimum specifications and standards established by the Hawaii Traffic and Planning Commission, excepting that said lot and each additional lot created as a result of said subdivision shall contain an area of at least 10,000 square feet, or the minimum area required by said Planning Commission, whichever is the greater, and the owner of each lot as subdivided shall be required within a period of five (5) years next following the date of such subdivision or resubdivision to construct on each lot so created a single-family dwelling meeting the requirements above-mentioned with respect to materials and minimum floor area. The foregoing construction requirements shall not be construed, however, to relieve the patentees of the necessity for the erection of a dwelling on the premises within a period of five (5) years from the date of sale as hereinabove provided. Subdivision requirements shall continue for a period of ten (10) years next following the issuance of the land patent.

(b) A 25-foot building setback line from the roadway is provided for on this lot.

(c) No more than one dwelling shall be constructed on said lot, or if the same be subdivided, no more than one dwelling on each lot created as a result of said subdivision; provided, however, that accessory buildings, so long as they do not comprise dwelling units and so long as the same are erected in conformity with a plot plan and are of a character and design suitable to the area, will be permitted.

(d) No quonset hut or dwelling of similar design or construction will be permitted for the dwelling required.

(e) That the land hereby conveyed shall be used for residence purposes only for a period of ten (10) years from the date of issuance of this Land Patent. In the event of violation of the foregoing provision, said land shall forthwith be forfeited and resume the status of government land and may be recovered by the State of Hawaii or its successors in an appropriate action or proceeding.

Containing —— 2.72 ACRES —— *, more or less.*

TO HAVE AND TO HOLD the above granted Land unto the said

—— RALPH EDWARD ALLISON and LORNA JANE DEDOLPH ALLISON, ——
husband and wife, as tenants by the entirety,

their assigns and the heirs and assigns of the survivor of them forever, subject, however, to the reservations and conditions herein set forth.

IN WITNESS WHEREOF, The ~~ACTING~~ *Governor of the* ~~*Territory*~~ State *of Hawaii has hereto set his hand and caused the Great Seal of the* ~~*Territory*~~ State *to be hereunto affixed, this* 1st *day of* August *A. D. 19*60

STATE
~~TERRITORY~~ OF HAWAII

William F. Quinn
~~ACTING~~ *Governor of Hawaii.*

Countersigned:

E. W. Pavey
~~*Commissioner of Public Lands.*~~
MEMBER, BOARD OF LAND & NATURAL RESOURCES

Approved as to form:

Shiro Kashiwa
Attorney General.

Written by bys

Checked by H. H.

*Land Patent No.*_____

(Grant)

*Patentee*_____

*District*_____

*Island*_____

*Issued*_____

HONORABLE MYRON B. THOMPSON, Chairman
And HONORABLE MEMBERS OF THE LAND USE COMMISSION
STATE OF HAWAII
HONOLULU, HAWAII

RECEIVED
DEC 3 1965
State of Hawaii
LAND USE COMMISSION

P E T I T I O N

WHEREAS, before the lots in the Panaewa House Lots Subdivision at Panaewa, Waiakea, District of South Hilo, County and State of Hawaii were offered for sale at public auction, the Territory of Hawaii published notices in the Hilo Tribune Herald on September 19, October 11, November 1, and November 16, 1958; said notices indicated that the lots in the Panaewa Subdivision were restricted to "residence purposes only for ten years next following the issuance of Land Patent Grant or deed;" and the notice also stated "subdivision of lot permitted with certain lot size and building requirements;"

WHEREAS, the Conditions of Sale Instrument, Special Sales Agreement and Land Patent executed and issued for lots in the said subdivision provided that the lot "shall be used for residential purposes only from date of sale for a period of ten years next following the issuance of the Land Patent or deed. Subdivision requirement shall likewise continue for period of ten years next following such issuance;"

WHEREAS, the aforementioned instruments also provided that each purchaser of lot in said subdivision shall construct a single family dwelling of new materials or masonary on said lot, within five years from date of sale; and further it is provided in said instruments "that no purchaser shall be permitted to construct more than one dwelling on said lot, or if the same be subdivided, more than one dwelling on each lot created as a result of said subdivision;"

AND WHEREAS, we the undersigned purchased lots in the Panaewa Subdivision for residential purposes only as so restricted in the aforementioned instruments; and for the further reason that according to the notice of the public sale we were to have the right to subdivide the lot purchased by us upon meeting the condition as to size and building requirements;

NOW, THEREFORE, we respectfully petition the LAND USE COMMISSION of the STATE OF HAWAII to reclassify the Panaewa House Lots to either urban or rural instead of agricultural for the reason that the State had legally restricted the lots in the subdivision for residential purposes only prior to the enactment of the Land Use Law, and the Land Use Commission should not have classified lots in the Panaewa House Lots in the agricultural class. Further, in our opinion, inasmuch as the lots in said subdivision had been advertised for residential purposes only, and as the purchasers of the lots were given the right to subdivide upon meeting certain requirements, the act of the Land Use Commission classifying said lots as

agricultural amounts to breach of contract on the part of the State, or at least lack of good faith.

Trusting that this petition will be given due consideration and our prayer be granted.

Respectfully submitted,

George S. Zuda

Milton Nakoda

Henry T. Moniz

[illegible]

William S. Au

Wanda A. Miura

Norman F. Au

William Raymond Au Jr.

Bernard Earle Au

Teruo Takahashi

TRUE NORTH
Scale: 1" = 200'

PANAEWA FARM LOTS

MaKalika Street

PANAEWA FOREST RESERVE

VOLCANO ROAD

HAWAIIAN HOMES COMMISSION
PANAEWA FARM LOTS

PANAEWA HOUSE LOTS 2ND SERIES

Mamaki Street

Government Land

HOME

LAND

LEGEND:

- RESIDENTIAL HOME
- FARM
- CHURCH
- UNDEVELOPED LAND

STATE LAND USE CHANGE OF BOUNDARIES
PANAEWA, SOUTH HILO

59 PETITIONERS FROM 67 LOTS

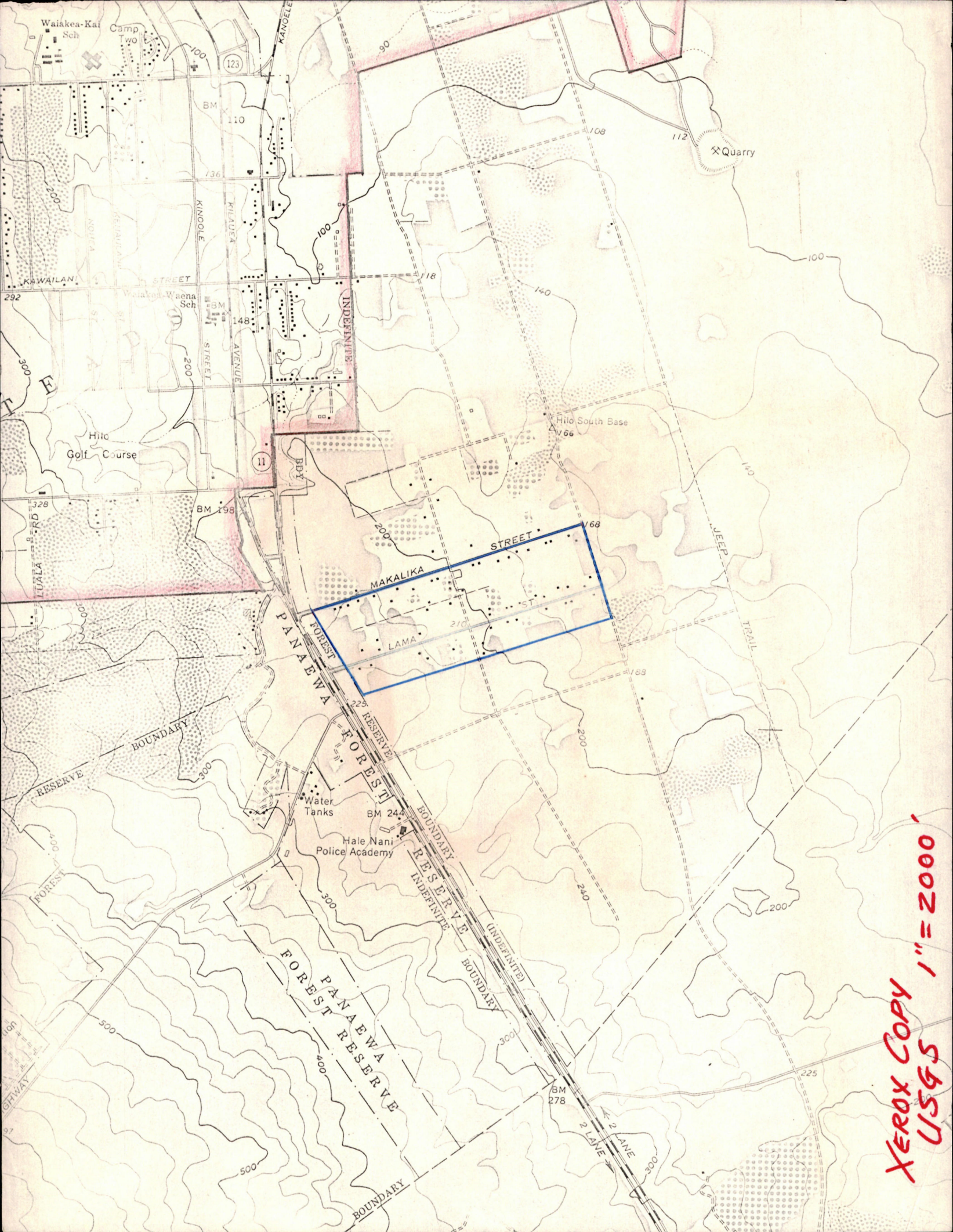
EXISTING LAND USE

- 29 → 30 LOTS IN AGR. USE
- 6 → 5 2-FAMILY LOTS
- 59 → 29 SINGLE-FAMILY LOTS
- 5 → 6 VACANT
- 1 CHURCH

EXHIBIT "B"
COPY for LUC FILE

County Planning Comm.

4350



Xerox Copy
USGS 1"=2000'

Hawaii Tribune-Herald
9-6-68

Panaewa Land Use Ruling Reversed

First Circuit Judge Thomas S. Ogata has reversed a 1966 ruling of the State Land Use Commission and upheld the appeal of 59 lot owners of Panaewa houselots.

The owners had filed a petition to change the land use for 67 parcels in the subdivision from agricultural to rural or urban use.

The state commission had denied the peitition following a hearing on the petition.

The Hawaii County Planning Commission, however, had supported the owners by recommending approval of their request for a change of land use since the property was "not suitable" for agricultural use, Ogata recalled in his review of the case.

Ogata quoted the local commission's findings which said in part, that,

"Rural districts are created in areas characterized by low-density residential lots and where small farms are intermixed with such low-density residential lots.

"Existing land use of areas in question indicates this condition."

The record "clearly shows," said Ogata in his ruling, "that the appellants' lots were subdivided in 1958 by the territorial government for residential purposes."

He stated in his conclusion that "continued imposition of an agricultural classification an agricultural classification" upon the Panaewa parcels "would be arbitrary, capricious, discriminating and illegal."

Third Circuit Court Judges Albert Felix and Tamao Monden had disqualified themselves from ruling on the Panaewa owners' appeal.

Data to be submitted to the Third Circuit Court from the files of RALPH E. ALLISON, ET AL

1. Petition with accompanying letter and data (petition received 12/17/65)

2. Comments and recommendations from the Hawaii County Planning Commission, together with its staff report, received February 4, 1966

3. Memo of telephone conversation with Hawaii County Board of Water Supply re adequacy of present water system, dated March 14, 1966

4. Staff report dated March 25, 1966 w/item 15

5. Minutes of March 25th meeting (requested postponement of hearing due to inadequate hearing notice--granted)

6. Letter from Carlsmith, dated March 29, 1966, re Allison's authority to represent the Panaewa owners and their intent to file amended petition for urban first and then rural.

7. Letter from Carlsmith, dated April 11, 1966, transmitting amended petition with supporting data

8. Minutes of April 14, 1966 re absence of signatures of a few of the landowners at Panaewa. Commission moved to initiate boundary change for these people.

9. Staff report dated May 6, 1966

10. Special Sale Agreement No. 4133 with schedules A and B

11. Land Patent No. S-13,710

12. Legal Notice dated Sept. 19, Oct. 11, Nov. 1, 16, 1958 re Land Auction

13. Supporting data and rebuttals submitted by Carlsmith (Property needed for other use, usable for proposed use, changed conditions, contract theory, improper original district boundary, etc.)

14. Staff Memorandum dated July 8, 1966

15. Verbatim transcript of May 6, 1966 meeting. w/item 4- attached

16. Verbatim transcript of July 8, 1966 meeting.

17. Letter of Carlsmith informing him of denial of petition

18. Exhibit A - Land Use District Boundary Map (H-City of Hilo) - Scale 1"=1000'

19. Exhibit B - State Land Use Change of Boundaries (County Planning Commission) - Scale 1"=300'

20. Exhibit C - Tax Maps (spliced): Zone 2, Section 2, Plat 51) Third Taxation Div.
Zone 2, Section 2, Plat 52)

21. Findings of Fact and Conclusions of Law

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,	)
	)
Appellants,	)
	)
vs.	)
	)
STATE LAND USE COMMISSION,	)
	)
Appellee.	)

DECISION

A petition was filed with the Land Use Commission of the State of Hawaii by fifty-nine owners of sixty separate parcels of land, constituting almost all of the lots in the Panaewa Houselots Subdivision in Waiakea, South Hilo, Hawaii, in which the owners of such parcels of land requested that the Commission change the land use district boundary within which their lots are located from an agricultural to an urban district. The petition was subsequently amended by the enlargement of the request so that the Commission was asked to change the boundary to an urban or rural district. After the petition was amended the area to be affected thereunder was increased by the inclusion of the remaining seven other parcels of land in the Panaewa Houselots Subdivision.[1]

1. These additional lots were brought under the petition by the Land Use Commission on its own initiative as authorized by section 98H-4, R.L.H. 1955, as amended.

Copy of decision to W. Story 1-8-71

A public hearing was held by the Commission on the amended petition in the manner required by section 98H-4, R.L.H. 1955, as amended. A written report was prepared and presented by the staff of the Commission at the hearing and the report recommended the denial of the requested district change. Most of the owners were represented by counsel during such public hearing. On July 8, 1966, the Commission accepted the staff recommendation and the amended petition was denied, and it thereafter made findings of fact, conclusions of law and decision, dated and filed on July 24, 1966. Just prior to the denial of the amended petition, another staff memorandum refuting some of the reasons and arguments submitted during the public hearing by the petitioners was presented to the Commission in the absence of the petitioners and their counsel.

Forty-seven of the fifty-nine owners who were petitioners have appealed pursuant to chapters 6C and 98H, R.L.H. 1955, as amended, from the decision of the Commission.

The scope of the appeal is limited to a review of the record as transmitted to the Court by the Commission and no evidence was offered or adduced de novo.

The houselots involved in the district boundary change proceedings before the Commission were originally a tract of land owned by the territorial government, predecessor of the state. The territorial government, previous to the enactment in 1961 of chapter 98H, R.L.H. 1955, had caused this tract to be subdivided into lots, a few of such

lots containing a minimum area of 1.81 acres and most having a maximum area of 2.73 acres.

The notice of sale, conditions of sale instrument, special sale agreement and the land patent pertaining to the sale, disposition and transfer of the title to each of these lots expressly specified that the purchasers and owners of each of such lots must for a period of at least ten years after the issuance of the land patents use the land for residential purposes only and that such purchasers and owners could subdivide their lots if such smaller lots shall contain at least 10,000 square feet, or such minimum area as may be required by the Hawaii County Planning Commission.

The petitioners in their request for the change in the district boundary relied primarily upon such covenant relative to use and representation authorizing the future subdivision of their land claiming that most of the petitioners had purchased these lots for the purpose of building more than one house per lot to provide homes for their children or parents or to derive rental income after their retirement.

Eight separate grounds for reversal or modification of the decision of the Commission and for other incidental relief have been alleged by the appellants. In addition to the usual contention that the decision of the Commission is contrary to the evidence, the appellants claim that chapter 98H, R.L.H. 1955, as amended, is unreasonable, arbitrary and unconstitutional,

and that the decision violates the state and federal constitutions since it forbids the only reasonable use of the land involved in the district boundary change and prohibits the highest and best use of such land, and since it also impairs the express contracts between the appellants as landowners and the state and renders void certain restrictive covenants regarding the use of such land. It is also urged by the appellants that agricultural classification for such land has no real or substantial relation to the health, safety, morals or general welfare, and that agricultural zoning for such land is illegal and improper because in appellants' view the provisions of said chapter 98H, as amended, require the Commission to maintain the existing uses in the establishment of land use districts and the physical characteristics of the land demonstrate that these lots are not suitable for agricultural uses.

This is not the first case to be presented to this court for judicial review involving the application of said chapter 98H to the Panaewa lands. Two other cases have been already decided with conflicting results where a lot owner, who is also an appellant here, sought to obtain a special permit under the provisions of the said chapter. See C. A. No. 1059, and C. A. No. 1261.

Certain well established principles should be set forth and considered in connection with the determination of the issues in this case.

In the resolution of these questions, the court must primarily look to and examine the record as made before the Commission in order to ascertain whether the findings are consonant with or against the clear weight of the evidence. City of Tulsa v. Swanson, 366 P.2d 629 (Okla.1961); Lockard v. City of Los Angeles, 202 P.2d 38 (Cal. 1949).

It is a basic rule applicable to zoning cases that the action of a board or commission vested with authority to classify and to zone property is presumed to be correct. Zilm v. Zoning Board of Adjustment, 150 N.W.2d 606 (Ia. 1967); Leroux v. Baltimore, 234 A.2d 747 (Md. 1967); Agneslane Inc. v. Lucas, 233 A.2d 757 (Md. 1967); Mutz v. Village of Villa Park, 226 N.E.2d 644 (Ill. App. 1967); City of Lubbock v. Whitacre, 414 S.W.2d 497 (Tex.Civ. App. 1967).

In view of such presumption of correctness and validity, and as a consequence thereof, it is also the general rule that the party attacking the zoning of a parcel of land has the burden to prove that the action of the Commission was arbitrary, unreasonable and confiscatory, or that the limitation of use is unreasonable and bears no substantial relationship to the public health, morals, safety and general welfare. Agneslane Inc. v. Lucas, supra; Strandberg v. Kansas City, 415 S.W.2d 737 (Mo. 1967); Metropolitan Dade County v. Kanter, 200 So.2d 624 (Fla. App. 1967); Muntz v. Village of Villa Park, supra; Hudson v. Township of Buena Vista Zoning Board, 150 N.W.2d 167 (Mich.

App. 1967); City of Lubbock v. Whitacre, supra; Gilmer v. Fritz, 281 N.Y.S.2d 154 (1967).

While a general scheme of land use classification adopted by the Commission may be valid, such a plan when applied to a particular property and a particular set of facts and circumstances may be so arbitrary and unreasonable as to result in a confiscation; and if such be the case as to the parcels involved here, then the decision must be nullified. Denman v. City of Cincinnati, 159 N.E.2d 805 (Ohio 1959). Of course, a zoning act is beyond the pale of the exercise of the police power if it is not reasonably required to promote the public health, morals, safety and general welfare. Gerstenfeld v. Jett, 374 F.2d 333 (1967); Mutz v. Village of Villa Park, supra. It has been said in this connection that "in all cases attacking the validity of an ordinance, there must be a careful balancing of the essential interests between the individual in the enjoyment of his property rights and the general welfare." Style Rite Homes, Inc. v. Zoning Board of Appeals, 28 N.Y.S.2d 623 (1967).

This court must then decide whether the Commission in this instance correctly interpreted said chapter 98H, as amended, and applied it with reasonable discretion to the facts. Pascale v. Board of Zoning Appeals of New Haven, 186 A.2d 377 (Conn. 1962). If the correctness of the decision denying the boundary change is fairly debatable, then the action of the Commission should not be disturbed. Gerstenfeld v. Jett, supra; Lockard v. City of

Los Angeles, supra; City of Long Beach v. California Lambda Chapter, 63 Cal. Rptr. 419 (1967); Bosley v. Hospital for Consumptives of Maryland, 227 A.2d 746 (Md. 1967); Price v. Cohen, 132 A.2d 125 (Md. 1957); Mutz v. Village of Villa Park, supra; City of Lubbock v. Whitacre, supra; Gilmer v. Fritz, supra.

In accordance with the statutory requirements contained in said chapter 98H, as amended,[2] the Commission was fully informed and advised of the comments and recommendations of the Hawaii County Planning Commission. It was the recommendation of the local planning commission that the request of the appellants for a boundary change from agricultural to rural be approved since the property was

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2. Section 98H-4, R.L.H., as amended, 1965 Supplement, reads in part as follows:

> "Section 98H-4. Amendments to district boundaries. Any department or agency of the state or county, or any property owner or lessee may petition the commission for a change in the boundary of any district. Within five days of receipt, the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within forty-five days after receipt of the petition by the county, the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. Upon written request by the county planning commission, the commission may grant an extension of not more than fifteen days for the receipt of such comments and recommendations. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning agency for comments and recommendations in the same manner as any other request for a boundary change."

not suitable for agricultural uses and that it should be allocated for low density residential use.[3]

Although a condition was set forth in the report from the county planning commission which seemed to suggest that the subdivision of the area should not be approved until adequate water is made available and the density of rural-agricultural shall be determined, such a notation appears to be merely a staff advice and nothing more.

In the report of the staff of the Commission presented during the public hearing held in connection with the petition the following observation is found: "Soils in the area of the subject lands are known as the Olaa or Ohia soil material, consisting of young lava with a thin covering of volcanic ash, occurring in very wet regions on the islands of Hawaii. More than half of the land surface is occupied by bare bed rock outcrop, with the rest consisting of a thin covering of volcanic

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3. The findings of the Hawaii County Planning Commission were as follows:

> "1. Rural districts are created in areas characterized by low-density residential lots and where small farms are intermixed with such low density residential lots. Existing land use of areas in question indicates this condition.
> 2. Area is not suited for intensive agricultural use because of poor soil condition.
> 3. The area should not be in urban as it is not contiguous of the existing urban area and is against the policy of the County and State to provide a scattering of urban areas.
> 4. The General Plan has provided for adequate residential areas in the city of Hilo including some areas which are not designated as agricultural but are contiguous to urban districts. The comprehensive plan reserves residential area for a population of 40,000 in 1980."

ash that extends into cracks and crevices in the rough, broken, a-a lava. Some parts of this unit are forested and others are pastured, while in a few places sugar cane was once grown by hand labor, but these have been abandoned. This land type is difficult to cultivate, and pastures are very poor quality. However, some areas at lower elevations are developed for macadamia nuts, coffee, and pastures.

"The general area involves a mixed land use of residential, agricultural and wooded areas. Building density approximates 2.7 acres per dwelling unit located among wild growth, coffee orchards, lichee orchards, macadamia nut orchards and small gardens. Basic electrical, telephone and water services are available for the present subdivision, although Lama Street is of cinder construction. The average annual rainfall in the area approximates 130 inches."[4]

The staff of the Commission recommended adversely that the petition for boundary change from agricultural to urban or in the alternative to rural be denied. Mr. Moriguchi, the Executive Officer of the Commission, revealed that his basis for refusal to favorably recommend an urban district for the appellants' land was the lack of information to substantiate any need for additional urban land for Hilo and its immediate vicinity as well as the apprehension that urban facilities would then be required to serve such land.[5]

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4. See Staff Report, dated May 6, 1966, page 405.

5. See Minutes of Meeting, dated May 6, 1966, page 31, also Staff Report, dated May 6, 1966, page 6.

Section 98H-2, R.L.H. 1955, as amended, 1965 Supplement, provides that there shall be four major land use districts into which all lands in the State shall be placed, namely, urban, rural, agricultural and conservation, and further defines these districts in the following terms:

> "Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.
> Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentration of people, structures, streets and urban level of services are absent, and where small farms are intermixed with such low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.
> Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; and open area recreational facilities.
> These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.
> Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic areas; providing park lands, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

The section referred to clearly imposes upon the Commission a duty to set standards for the determination of boundaries in each district consistent with the prescribed

legislative mode and it further prescribes that "in the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included."

Pursuant to such statutory provision, the Commission has adopted land use district regulations[6] which include the standards used in establishing the final boundaries and to be used as guides for review of district boundaries and the granting amendments thereto.[7] Section 2.8 of such regulations provides inter alia that "(d) Lands with limited potential for other agricultural uses or which require extensive development to reach moderate quality may be included in either this District or in the Rural District depending on location with respect to other agricultural or rural lands." Section 2.10 of the same regulations applicable to rural districting reads:

> "2.10 "R" Rural District
>
> In determining the boundaries for the "R" Rural District, the following standards shall apply:
>
> (a) Areas consisting of small farms shall be included in this District.
> (b) It shall include activities or uses as characterized by low density residential lots of not more than one-half (1/2) acre and a density of not more than one-single family dwelling per one-half (1/2) acre.
> (c) Generally, parcels of land not more than five (5) acres shall be included in this District.
> (d) Notwithstanding subsection 'c' above, parcels of land larger than five (5) acres may be included in this District.

6. Adopted on June 20, 1964, effective as of August 23, 1964.
7. Section 2.6, Part II, State Land Use Regulations.

(e) It shall include parcels of land where 'city-like' concentration of people, structures, streets and urban level of services are absent.
(f) It may include parcels of land that are not suitable for agricultural uses.
(g) It may include small parcels of land that are contiguous to this District and are not suited to low density residential uses, or for small farm uses.
(h) Parcels of land consisting of small farms need not be included in this District, if it will alter the general characteristics of the area." (Emphasis added)

There is no dispute, and the record clearly shows, that appellants' lots were subdivided in 1958 by the territorial government for residential purposes. The notice of sale published in the Hilo Tribune-Herald informing the public of the date, time and place of sale of these lots described the property as "house lots" and also disclosed that the use thereof would be restricted to residence purposes only for ten years after the issuance of the land patents. All of the subsequent documents relating to the disposition of these lots contain similar references as to the type and nature of as well as the restriction upon the use. A reasonable inference that may be drawn is that the land was and is best suitable for residential development, rather than for agricultural pursuits. Such a conclusion is amply sustained by the physical characteristics of the land as to which there seems to be no disagreement.

It is also apparent from the record that in July, 1964,[8] prior to the adoption of the permanent district boundaries

8. Section 98H-3, R.L.H. 1955, as amended, provides that district boundaries within a county shall be adopted in final form within a period of not more than 90 days and not less than 45 days from the time of the last hearing in the county, provided that district boundaries for all counties shall be adopted in final form no sooner than May 1, 1964, nor later than July 1, 1964

placing the appellants' lots within an agricultural district these lots had been used for low density residential purposes, with not more than one dwelling house per one-half acre, and within the Panaewa Subdivision area "city-like" concentration of people, structures, streets and urban level of services were absent. Further, because of the low density of population, small farms were intermixed with residences. Thus, the report of the staff of the Commission noted that the "area involves a mixed land use of residential, agricultural and wooded areas,"[9] and such environmental conditions also existed at the time of the original classification of these lots.[10] While this court must not sit as a zoning commission and it should not substitute and replace its judgment for that of the Commission, such salient physical features and land qualities would overwhelmingly indicate that the area is deserving of at least a rural district boundary.

From what has been said and based especially upon the record and the provisions of said chapter 98H, as amended, this court can arrive at no other conclusion than that the original district boundaries into which the Panaewa Houselots Subdivision was placed was erroneous. It must also be concluded that under the facts as shown by the record the correctness of the decision of the Commission is not a "fairly debatable" matter, but that the continued imposition of an agricultural classification upon

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9. Staff Report, dated May 6, 1966, page 5.

10. Findings of Fact, Conclusions of Law and Decision, dated August 24, 1966, page 5.

the appellants' property would be arbitrary, capricious, discriminatory and illegal. County Commission of Howard County v. Merryman, 159 A.2d 854 (Md. 1960). The classification is manifestly not founded on a legitimate exercise of the police powers of the state, bears no relation to the public interest, benefits no one, and is unfair and discriminatory. In City of Tulsa v. Swanson, 366 P.2d 629 (Okla. 1961) it was said:

> "By unmistakable tenor of the argument we are urged by the city to, in effect, place its legislative powers beyond the scope of judicial review whenever the matter appears 'fairly debatable'. But this, as was stated in the Barclay case, must depend upon the physical facts disclosed in each particular case. We must be ever mindful that, inasmuch as the inevitable effect of ordinances, such as the one here involved, is to limit private rights in the interest of public welfare, the exercise of the municipal power must be carefully guarded and be permitted only when the conditions and circumstances as shown disclose a need for the proper exercise of the police power. Oklahoma City v. Barclay, supra. An academic opinion of a professional city planner as to the desirability of a particular restriction to serve as a 'buffer of lesser than normal commercial intensity', will not when contradicted by controlling physical facts, justify this court in holding as a matter of law that the question here presented is 'fairly debatable' and precludes judicial interference with the municipal determination of necessity for the particular restriction placed."

The foregoing disposes this appeal and it becomes unnecessary to rule uon the other numerous grounds specified for review.

Decision of the Commission is reversed.

Dated at Honolulu, Hawaii, this 3rd day of September ~~August~~, 1968.

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Assigned Judge of the above entitled court

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Assigned Judge of the above entitled court

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.
Clerk, Third Circuit Court, State of Hawaii

SEAL
THIRD CIRCUIT COURT
STATE OF HAWAII

the appellants' property would be arbitrary, capricious, discriminatory and illegal. County Commission of Howard County v. Merryman, 159 A.2d 854 (Md. 1960). The classification is manifestly not founded on a legitimate exercise of the police powers of the state, bears no relation to the public interest, benefits no one, and is unfair and discriminatory. In City of Tulsa v. Swanson, 366 P.2d 629 (Okla. 1961) it was said:

> "By unmistakable tenor of the argument we are urged by the city to, in effect, place its legislative powers beyond the scope of judicial review whenever the matter appears 'fairly debatable'. But this, as was stated in the Barclay case, must depend upon the physical facts disclosed in each particular case. We must be ever mindful that, inasmuch as the inevitable effect of ordinances, such as the one here involved, is to limit private rights in the interest of public welfare, the exercise of the municipal power must be carefully guarded and be permitted only when the conditions and circumstances as shown disclose a need for the proper exercise of the police power. Oklahoma City v. Barclay, supra. An academic opinion of a professional city planner as to the desirability of a particular restriction to serve as a 'buffer of lesser than normal commercial intensity', will not when contradicted by controlling physical facts, justify this court in holding as a matter of law that the question here presented is 'fairly debatable' and precludes judicial interference with the municipal determination of necessity for the particular restriction placed."

The foregoing disposes this appeal and it becomes unnecessary to rule uon the other numerous grounds specified for review.

Decision of the Commission is reversed.

Dated at Honolulu, Hawaii, this 3rd day of September ~~August~~, 1968.

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SEAL
THIRD CIRCUIT COURT
STATE OF HAWAII

STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM

September 20, 1968

TO: LAND USE COMMISSION

FROM: STAFF

SUBJECT: A65-107 - RALPH E. ALLISON, ET AL

CHRONOLOGICAL SUMMARY

December 3, 1965 - Petition dated December 2, 1966 for amendment of boundaries from Agricultural to Urban or Rural submitted by Allison, containing 48 signatures of owners of Panaewa Houselots subdivision in Hilo, for the reason that the Territory of Hawaii had restricted the lots for residential purposes only and had given the purchasers of the lot the right to subdivide and that the Agricultural designation by the LUC amounts to a breach of contract or a lack of good faith on the part of the State.

December 17, 1965 - Standard petition form, filing fee and supplemental evidence received, indicating that 96% of the owners of Panaewa Houselots, TMK 2-2-51 and 52, signed the petition.

February 4, 1966 - Hawaii County Planning Commission's recommendation for approval from Agricultural to Rural received based on the following:

a. Existing use of area indicates rural conditions.

b. Soils not suited for intensive agriculture.

c. Area should not be in urban since it is not contiguous to urban.

d. The County General Plan has provided for adequate residential areas in Hilo.

March 25, 1966 - Public hearing held in Kona. However, Attorney Curtis

Carlsmith testified that the public notice contained "irregularities" which needed to be corrected. He requested that the hearing be deferred. Request granted by the LUC.

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April 14, 1966 - LUC voted to initiate a boundary change for the owners who did not sign the Allison petition to expedite processing of the petition.

May 5, 1966 - Letter received from Suefuji indicating that the County Planning Commission's position remains unchanged in regard to the amended petition.

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1. Lack of substantiation for need for boundary change.
2. An estimated 2,400 acres of vacant urban lands occur in the Hilo District.
3. Approval of ½-acre lots in the area would increase the number of lots from 67 to 313 and thereby overtax existing facilities.
4. Petitioners' arguments relating to their right to subdivide in accordance with sales agreement and Land Patents have been ruled upon negatively by the LUC.
5. The County Planning Commission recommended against Urban districting but recommends a Rural classification, and would not approve any subdivisions until improvement

district projects and density studies are initiated.

July 8, 1966 - LUC voted to accept staff recommendation for denial of Allison petition (7 ayes, 1 nay, 1 absent).

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August 3, 1966 - Summons filed by Carlsmith on August 2, 1966 received.

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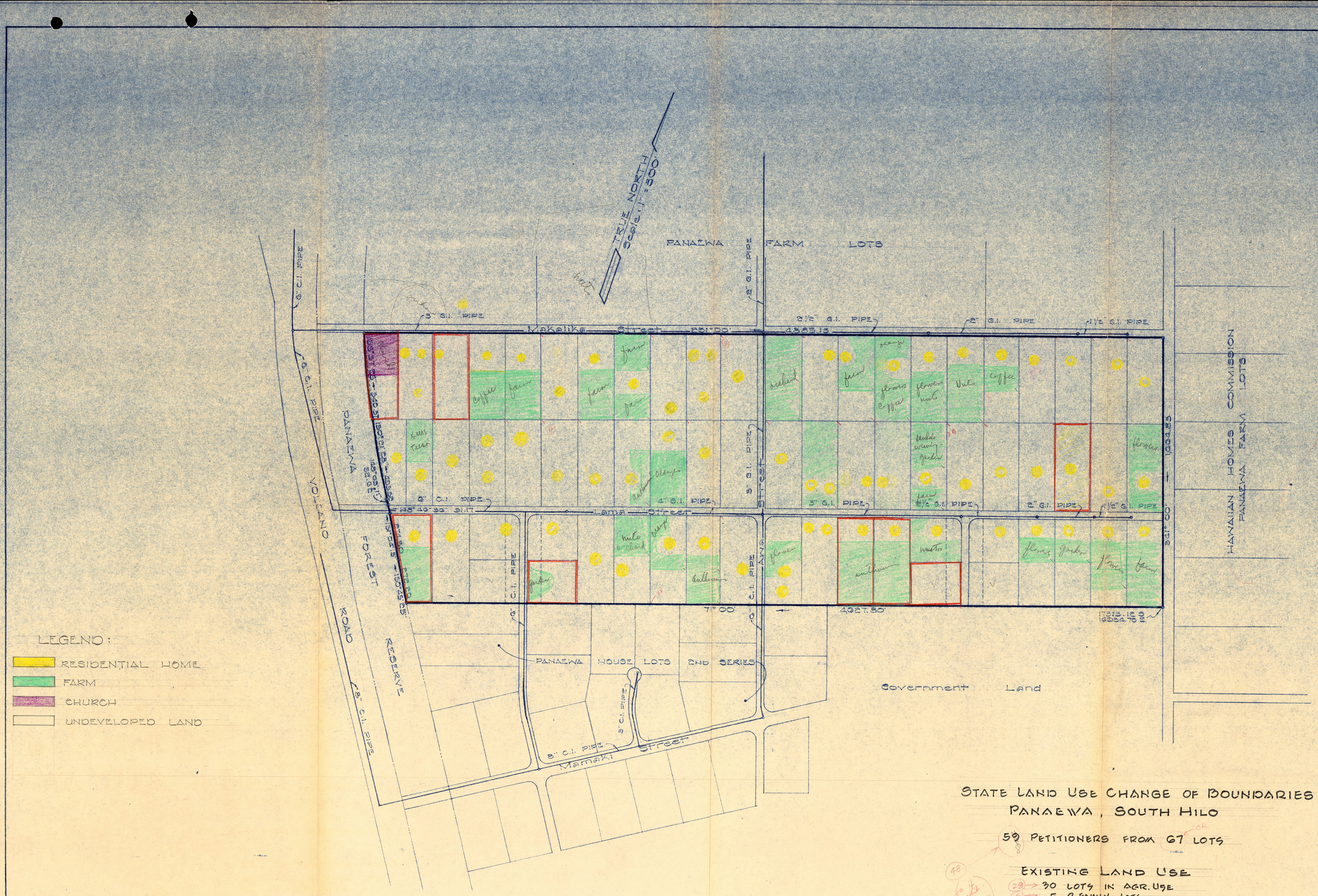


STATE LAND USE CHANGE OF BOUNDARIES
PANAEWA, SOUTH HILO

59 PETITIONERS FROM 67 LOTS

EXISTING LAND USE

29 → 30 LOTS IN AGR. USE
6 → 5 2-FAMILY LOTS
59 → 29 SINGLE-FAMILY LOTS
67 → 6 VACANT OR
1 CHURCH

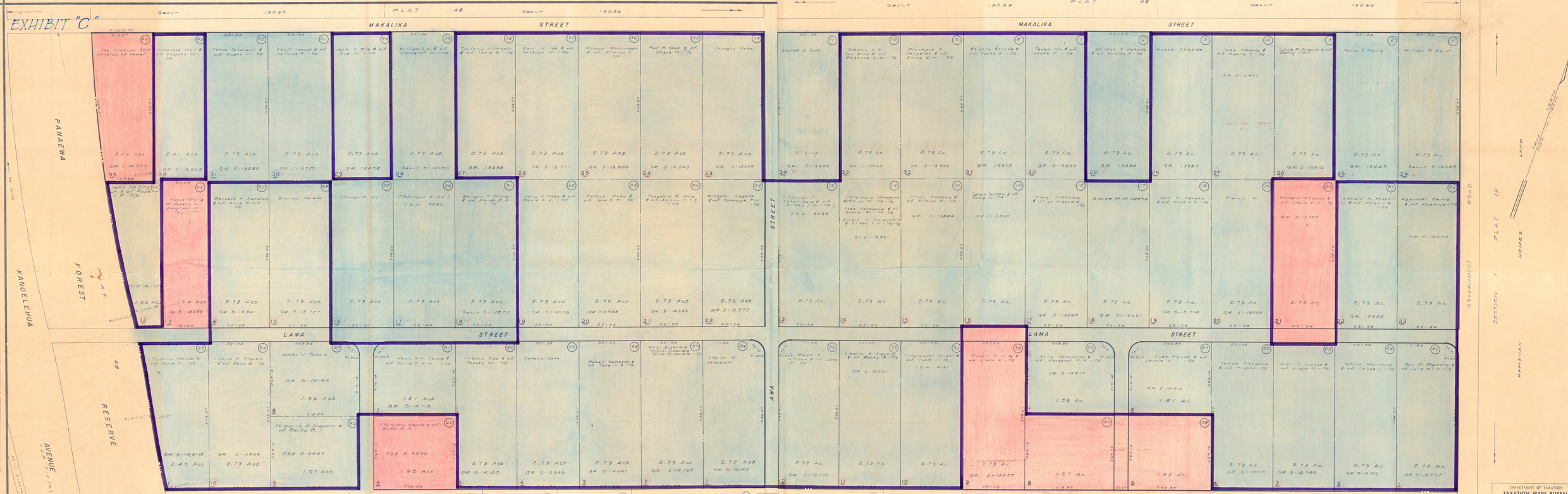
EXHIBIT "B"

County Planning Comm.

4351

2-2-52

EXHIBIT "C"


GRANT 13037
PLAT 48
GRANT 13038
GRANT 13033
PLAT 48
GRANT 13030
MAKALIKA STREET
LAMA STREET
PANAEWA FOREST RESERVE
KANOELEHUA AVENUE
HOMES
GOVERNMENT LAND
SECTION 1 PLAT 19
HAWAIIAN RAILROAD
The Hilo Kan Sect Mission of Hawaii
Umetaro Ishii & wf. Ciyuno M.
Teruo Takabachi & wf. Kyoko K.
Kenji Inouye & wf. Hatsume O.
Jack Y. Ota & wf. Sue M.
William S. Ota & wf. Margaret M.
Tsutomu Hiroki & wf. Yuki O.
Earl H. Ide & wf. Tatsuyo M.
Mitsuki Matsunaga & wf. Kimiyo I.
Paul H. Kaya & wf. Shigue M.
Shimano Mutai
George S. Yuda
Gregory A. Yo Sun Jung & wf. Rebecca L. A.
Masaepie E. Ortanez & wf. Emma E. K.
Shizuto Setoda & wf. Yasue E.
Tadao Ito & wf. Tsuru M.
William T. Hakoda & wf. Pumiko F.
Hiroshi Shishido
Isao Nagata & wf. Agena T.
Louis P. Araujo & wf. Betty V.
Henry T. Maniy
William M. Au, Jr.
Joan Ah Sing Jr. & wf. Rose T. K.
Kaya Tani & wf. Nancy U. Kinzuno H. Tani
Bernard K. Hanakeh & wf. Anna K. H.
Buniei Harada
Herman K. Au
(Bernard E. Au) I.S.A. 4082
Bernard T. Miura & wf. Handa M. A.
Leroy Y. Nagata & wf. Mayle A. A.
Kafuki Kubo & wf. Jane T. K.
Theodore B. Nino & wf. Ah Lin M. T. S.
Rimzohi Nagata & wf. Tomoye T.
(Thomas Y. Sahara) & wf. Aileen O. A.
Yataimata Hatayama & wf.
Isao Hasegawa & wf. Anne S.
Ernest A. Dusmukes & wf. Helen O. H.
Ituki Kodama & wf. Kimiko O.
Taxeo Tsutsui & wf. Tokie M.
Kenji Sugisaka & Shizu Sugisaka
Richard K. Chang & wf. Idalia E. K.
Edward K. Kaaaii Jr. & wf. Helen L.
Kazuichi Gaino & wf. Kazuiyo
Tsutomu Maeda & wf. Marie K.
Clyde E. Argueio & wf. Bess B.
James J. Tanura
Henry H. K. Young & wf. Sui A. C. K.
Hiroto Oda & wf. Tatuno M.
Satoru Sato
Hayaji Kamaoka & wf. Jane N.
Shinji Sugisaka & Mitsuki Sugisaka & Yuna Sugisaka
Charles K. Sahagural
Ralph E. Allison & wf. Jane D.
Liborio E. Argueio & wf. Becky B.
(Hatazuki Hirai & wf. Yuki I.) I.S.A. 4191
Robert M. Hifo & wf. Alaka K.
Akio Yamamoto & wf. Margaret M. K.
Isao Kanda & wf. Jennie A.
Tomeo Okuyama & wf. Kiyoko
Alex T. Inouye & wf. Atsuyo M.
Tetsuo Morimune & wf. Chiyoe I.
Paul M. Okamoto & wf. Jane M. T.
(Liborio E. Argueio & wf. Becky B.)
(Tsutomu Maeda & wf. Ruth A. S.)
GR. S-14,189
1.56 Acs.
55A 3-4547
1.57 Acs.
GR. S-14,212
2.45 Acs.
GR. S-13,868
2.73 Acs
55A 5-6546
1.82 Acs.
GR. S-14,113
GR. S-14,120
GR. S-13,845
GR. S-14,047
GR. S-14,165
GR. S-14,145
GR. S-13,711
GR. S-13,710
GR. S-14,051
GR. S-13,859
GR. S-14,017
1.56 Acs.
GR. S-14,018
GR. S-13,140
GR. S-14,129
GR. S-13,572
2.73 Ac.
2.72 Ac.
2.73 Acs.
2.72 Acs.
2.42 Acs.
2.41 Acs.
1.54 Acs
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GR. S-13,841
GR. S-13,737
GR. S-14,139
GR. S-13,572
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GR. S-13,624
GR. S-13,560
GR. 13612
GR. S-13,855
GR. 13484
GR. 13387
GR. S-13,810
GR. 13440
GR. S-14,085
GR. S-13,765
GR. S-13,652
GR. S-13,887
GR. S-13,651
GR. S-13,714
GR. S-14,003
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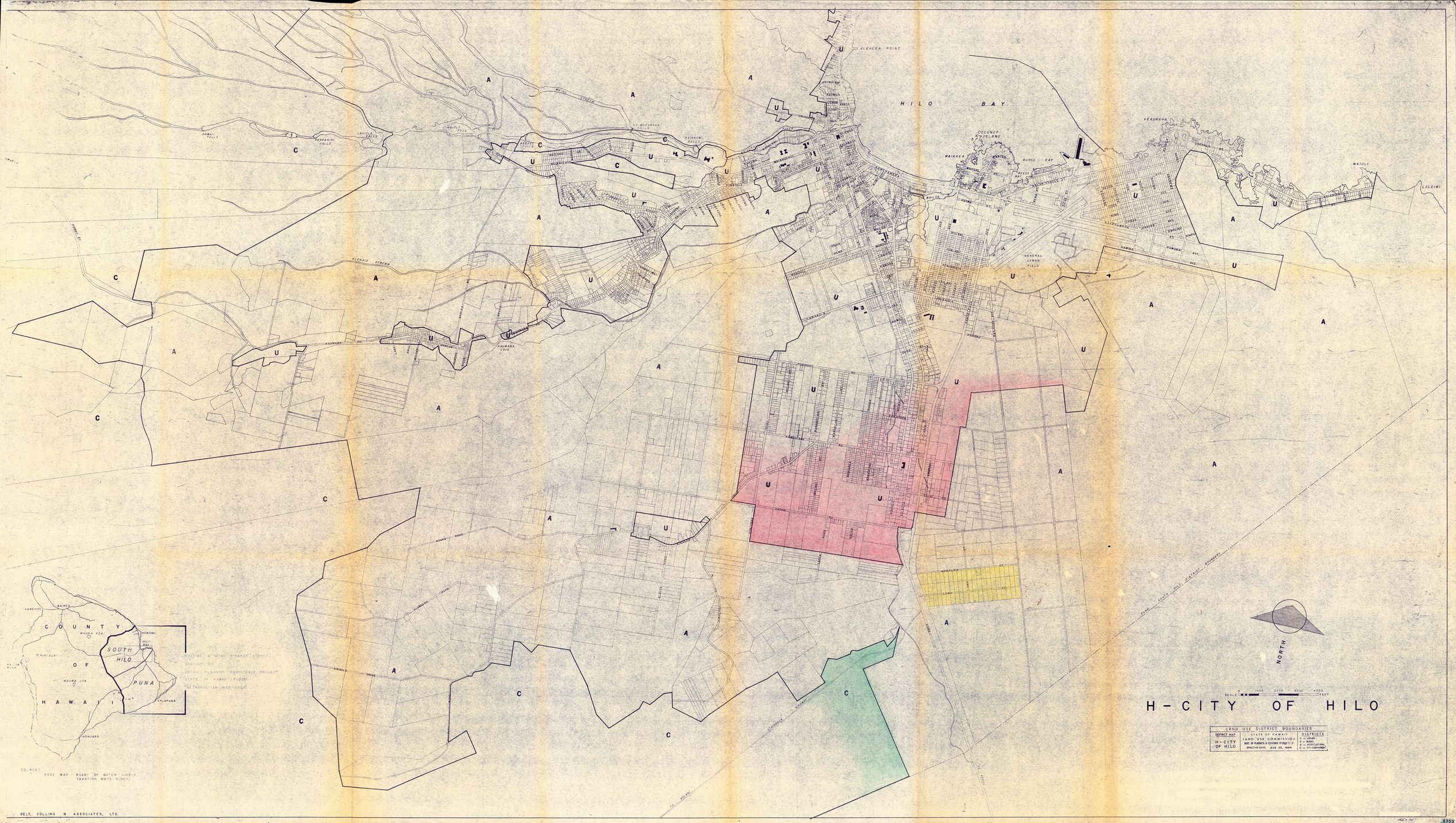
GR. S-13,800
GR. 13387
GR. S-13,652



LAND USE DISTRICT BOUNDARIES

DISTRICT MAP	STATE OF HAWAII LAND USE COMMISSION DEPT. OF PLANNING & ECONOMIC DEVELOPMENT	DISTRICTS U = URBAN A = AGRICULTURAL C = CONSERVATION
H-CITY OF HILO	EFFECTIVE DATE: AUG. 23, 1964	