A67-171 - PAUL C. & MARTHA T. GILLETTE

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

WDYH:ro

9247

CABLE ADDRESS:
ATTGEN

BERTRAM T. KANBARA
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HAWAII STATE CAPITOL
4TH FLOOR
HONOLULU, HAWAII 96813

February 5, 1971

RECEIVED
FEB 9 1971
State of Hawaii
LAND USE COMMISSION

Mr. Goro Inaba
Vice Chairman
State Land Use Commission
Dept. of Planning and
Economic Development
State of Hawaii
Honolulu, Hawaii

Attention Mr. Ramon Duran
Executive Officer

Dear Mr. Inaba:

Enclosed herewith are copies of the Memorandum Opinion, Judgment on Appeal, and Notice Of Judgment On Appeal, filed in Supreme Court Case No. 4986, Gillettes v. Land Use Commission. Needless to say, the Supreme Court ruled in favor of the Land Use Commission in upholding the rezoning from urban to rural in establishing its permanent district boundaries.

You may close your files of the case.

Very truly yours,

Walton D. Y. Hong

Walton D. Y. Hong
Deputy Attorney General

Enc.

NO. 4986

IN THE SUPREME COURT OF HAWAII

OCTOBER TERM 1970

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, v. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, Judge

MEMORANDUM OPINION

Samuel K. Wakekau

NO. 4986

IN THE SUPREME COURT OF HAWAII

OCTOBER TERM 1970

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, v. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, JUDGE

MEMORANDUM OPINION

The court having considered this case and finding that the appeal is without merit,

The judgment is affirmed.

Sanford J. Langa
for plaintiffs-appellants.

Bertram T. Kanbara,
Attorney General, and
Walton D. Y. Hong,
Deputy Attorney General,
for defendant-appellee.

William S. Richardson

Kazuhiro Abe

Bernard H. Levinson

Alfred Laurita

SUPREME COURT SEAL STATE OF HAWAII

NO. 4986

IN THE SUPREME COURT OF HAWAII

OCTOBER TERM 1970

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, Judge

JUDGMENT ON APPEAL

FILED
FEB 4 10 55 AM 1971
Samuel K. Makekau
CLERK, SUPREME COURT

GEORGE PAI 609
Acting Attorney General
State of Hawaii

WALTON D. Y. HONG 890
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Attorneys for Defendant-Appellee

SANFORD J. LANGA, ESQ.
Wailuku Townhouse Building
Wailuku, Maui, Hawaii 96793

Attorney for Plaintiffs-Appellants

NO. 4986

IN THE SUPREME COURT OF HAWAII

OCTOBER TERM 1970

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA Judge

JUDGMENT ON APPEAL

Pursuant to the opinion of the Supreme Court of the State of Hawaii filed January 21, 1971, the Judgment entered in the trial court is affirmed.

DATED: Honolulu, Hawaii, FEB 4 1971.

BY THE COURT:

Samuel K. Makekau

Clerk

SUPREME COURT SEAL STATE OF HAWAII

APPROVED BY THE COURT:

William S. Richardson

Justice

NO. 4986

IN THE SUPREME COURT OF HAWAII

OCTOBER TERM 1970

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, Judge

NOTICE OF JUDGMENT ON APPEAL

FILED
FEB 4 10 55 AM '71
Samuel K. Makekau
CLERK, SUPREME COURT

GEORGE PAI 609
Acting Attorney General
State of Hawaii

WALTON D. Y. HONG 890
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Attorneys for Defendant-Appellee

SANFORD J. LANGA, ESQ.
Wailuku Townhouse Building
Wailuku, Maui, Hawaii 96793

Attorney for Plaintiffs-Appellants

NO. 4986

IN THE SUPREME COURT OF HAWAII

OCTOBER TERM 1970

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, Judge

NOTICE OF JUDGMENT ON APPEAL

TO: THE HONORABLE PRESIDING JUDGE OF THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, STATE OF HAWAII:

PLEASE TAKE NOTICE that in the above-entitled cause the Supreme Court of the State of Hawaii has entered the following Judgment on Appeal:

> "Pursuant to the opinion of the Supreme Court of the State of Hawaii filed January 21, 1971, the Judgment entered in the trial court is affirmed."

DATED: Honolulu, Hawaii, FEB 4 1971

BY THE COURT:

Samuel K. Makekau

Clerk

The form of the foregoing Notice is hereby approved and IT IS ORDERED that the same issue forthwith.

DATED: Honolulu, Hawaii, FEB 4 1971

SUPREME COURT SEAL STATE OF HAWAII

William S. Richardson

Justice

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

Memorandum

From Walton D. Y. Hong, Deputy Atty Gen'l Date Oct. 19, 1970

To Ramon Duran, Land Use Commission File No.

Subject Supreme Court No. 4986, Gillettes v. Land Use Commission

Rom:

Enclosed herewith for your information is a copy of the Answering Brief filed on behalf of the Land Use Commission with the Supreme Court.

RECEIVED
OCT 20, 1970
State of Hawaii
LAND USE COMMISSION

Walton D.Y. Hong

NO. 4986

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1969

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	SECOND CIRCUIT CIVIL NO. 1198 APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, JUDGE

ANSWERING BRIEF OF LAND USE COMMISSION OF THE

STATE OF HAWAII

FILED
OCT 16 4 25 PM 1970
Samuel K. Makekau
CLERK SUPREME COURT

BERTRAM T. KANBARA 261
Attorney General
State of Hawaii
and
WALTON D. Y. HONG 890
Deputy Attorney General
State of Hawaii
Hawaii State Capitol
415 So. Beretania Street
Honolulu, Hawaii 96813

Attorneys for Defendant-Appellee

I hereby certify that two copies of the within Answering Brief were served upon Sanford J. Langa, Esq., Attorney for Plaintiffs-Appellants, by mailing the same to him at the Wailuku Townhouse Building, Wailuku, Maui, Hawaii, postage prepaid, on this 15th day of October, 1970.

Walton D. Y. Hong
Deputy Attorney General
State of Hawaii

NO. 4986

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1969

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	SECOND CIRCUIT CIVIL NO. 1198 APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, JUDGE

ANSWERING BRIEF OF LAND USE COMMISSION OF THE STATE OF HAWAII

INDEX

	Page
INDEX	i, ii
TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	1
RELEVANT PARTS OF STATUTES	2, 3
SUMMARY OF ARGUMENTS	4

INDEX

Page

ARGUMENT

I. THE GILLETTES' POSITION THAT SECTION 205-2(1), H.R.S., APPLIES TO THE INSTANT CASE IS CONTRARY TO AND WOULD SUBVERT THE PURPOSE OF THE LAND USE LAW. 5

A. SPOT ZONING 6
B. PRECLUDES DOWNZONING 7

II. THE PLAINTIFFS-APPELLANTS' USE OF THE PROPERTY IS A NONCONFORMING USE UNDER SECTION 205-8, HAWAII REVISED STATUTES. . 9

III. "URBAN USE" MUST BE DEFINED AS A USE "CHARACTERIZED BY CITY-LIKE CONCENTRATIONS OF PEOPLE, STRUCTURES, STREETS AND THE LIKE". 13

CONCLUSION 16

TABLE OF AUTHORITIES

Page

Statutes

Hawaii Revised Statutes

§ 205-2 . . . . . 2, 11, 13, 14

§ 205-2(1) 1, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16

§ 205-5(b) 10, 11

§ 205-5(c) 10

§ 205-8 . . . . . 1, 4, 5, 9, 10, 12, 13, 16

§ 602-5 1

Revised Laws of Hawaii 1955, as amended

§ 6C-7 1

Chapter 98H 5

Session Laws of Hawaii 1969

Act 232 10

Session Laws of Hawaii 1963

Act 205 . . . . . 1, 7, 12, 13, 14

Session Laws of Hawaii 1961

Act 187 . . . . . 6, 7, 14

Other References

1963 House Journal, p. 755
Standing Committee Report No. 656 . . . . . 7, 8

State Land Use District Regulations
Section 2.7, Sub-Part B, Part II 14, 15

101 C.J.S., Zoning § 181, at p. 938 10

Sutherland, Statutes and Statutory Construction, (3rd Ed., 1943), Vol. 2, at pp. 149-155 . . 15

STATEMENT OF JURISDICTION

This is an appeal from summary judgment filed in Second Circuit Court case Civil No. 1198 brought under and pursuant to Section 6C-7, Revised Laws of Hawaii 1955, as amended.

Civil No. 1198 was an action for declaratory judgment with respect to the placing of the Appellants Gillettes' property into the rural district classification pursuant to Act 205, Session Laws of Hawaii 1963.

The Second Circuit Court entered summary judgment for the Appellee on March 3, 1970 (Record, 36-37). Appellants' Notice of Appeal was filed on March 25, 1970 (Record, 38-39).

The Supreme Court's jurisdiction was invoked under Section 602-5, Hawaii Revised Statutes, as an appeal from a final judgment of the Circuit Court.

QUESTIONS PRESENTED

A. Does Section 205-2(1) or Section 205-8 of the Hawaii Revised Statutes apply where property containing a duplex rental unit established prior to 1963 is thereafter placed in the rural district classification by the Land Use Commission of the State of Hawaii pursuant to Act 205, Session Laws of Hawaii 1963?

B. Is the term "urban use", as used in Section 205-2(1), Hawaii Revised Statutes, defined as a use "characteristic of cities and towns rather than of farms, ranches, etc." or as a use "characterized by city-like concentrations of people, structures, streets and the like"?

STATEMENT OF THE CASE

The Appellee accepts the Appellants' Statement of the Case as set forth in the Opening Brief.

RELEVANT PARTS OF STATUTES

Hawaii Revised Statutes

§ 205-2. Districting and classification of lands.

There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

(1) 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;

(2) 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;

(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and

* * *

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 the 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.

§ 205-5. Zoning.

(a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to section 183-41.

(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the land use commission shall be permitted. Other uses may be allowed by special permits issued pursuant to this chapter. The county standards for agricultural subdivision existing as of May 1, 1963, shall constitute the minimum lot size of agricultural districts within the respective counties.

(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

(1) Low density residential uses;
(2) Agricultural uses; and
(3) Public, quasi-public, and public utility facilities.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre.

Section 205-8. Nonconforming uses.

The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; provided that no nonconforming building shall be replaced, reconstructed, or enlarged or changed to another nonconforming use and no nonconforming use of land shall be expanded or changed to another nonconforming use. In addition, if any nonconforming use of land or building is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited."

Session Laws of Hawaii 1961

Act 187.

Section 1. Findings and declaration of purpose.

Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. Inadequate basis for assessing lands according to their value in those uses that can best serve both the well-being of the owner and the well-being of the public have resulted in inequities in the tax burden, contributing to the forcing of land resources into uses that do not best serve the welfare of the State. Scattered subdivisions with expensive, yet reduced, public services; the shifting of prime agricultural lands into nonrevenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action.

Therefore, the Legislature finds that in order to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare and to create a complementary assessment basis according to the contribution of the lands in those uses to which they are best suited, the power to zone should be exercised by the State and the methods of real property assessment should encourage rather than penalize those who would development* these uses.

---

* So in original.

State Land Use District Regulations

Section 2.7, Sub-Part B, Part II.

"'U' Urban District

"In determining the boundaries for the 'U' Urban District, the following standards shall apply:

(a) It shall include lands characterized by 'city-like' concentration of people, structures, streets and other related land uses."

SUMMARY OF ARGUMENTS

The Appellee Land Use Commission of the State is not mandated by Section 205-2(1), Hawaii Revised Statutes, to place the subject property into the urban district classification. The subject property was not an "urban use", as defined by the Appellants, within the purview of Section 205-2(1), H.R.S.

The Appellants' contentions would result in the undermining of the intent and purpose of the Land Use Law in that it would tend to create spot zoning, perpetuate the urban district classification where urban uses may no longer exist, and would not permit the effecting of general overall zoning plans for the State.

"Urban use" within the mandate of Section 205-2(1), H.R.S., must be defined as a use "characterized by city-like concentration of people, structures, streets and the like", and the subject property does not fall into this definition.

The use of the subject property as a duplex rental unit is a nonconforming use pursuant to Section 205-8, Hawaii Revised Statutes.

ARGUMENT

I. THE GILLETTES' POSITION THAT SECTION 205-2(1), H.R.S., APPLIES TO THE INSTANT CASE IS CONTRARY TO AND WOULD SUBVERT THE PURPOSE OF THE LAND USE LAW.

This appeal raises the narrow question of whether Section 205-2(1) or Section 205-8 of the Hawaii Revised Statutes applies where a property in use as a duplex rental unit is thereafter placed in the rural district classification by the Land Use Commission of the State of Hawaii. To conform to the Opening Brief, all references to the Land Use Law shall be to Chapter 205 of the Hawaii Revised Statutes, notwithstanding the fact that the applicable law in effect at the time of the cause of action giving rise to this appeal was Chapter 98H of the Revised Laws of Hawaii 1955, as amended.

The Plaintiffs-Appellants Gillettes, hereinafter referred to as the "GILLETTES", argue that the Defendant-Appellee Land Use Commission of the State of Hawaii, hereinafter referred to as the "COMMISSION", is mandated by Section 205-2(1), H.R.S., to place the subject property in the urban district classification. Section 205-2(1), H.R.S., 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 support of their position that Section 205-2(1), H.R.S., applies exclusively to the instant situation, the Gillettes argue that an "urban use" within the language of Section 205-2(1), H.R.S., is a use "characteristic of cities

and towns rather than of farms, ranches, etc.", that a use as a duplex apartment unit is a use characteristic of cities and towns, and that, therefore, the use as a duplex rental unit is an urban use within the mandate of the above-stated provision of the Land Use Law. The Commission contends that such an interpretation is clearly inconsistent with and contrary to the intent and purpose of the Land Use Law, and respectfully submits the following arguments in support thereof.

A. Spot Zoning

The Gillettes' argument, if accepted, would result in spot zoning throughout the State, clearly contrary to the orderly expansion of urban development sought by the Land Use Law.

Scattered throughout the State in non-urban district classifications are numerous parcels of land containing uses characteristic of cities and towns. Among them are service stations, stores, museums, motels, and other roadside services. If the Commission is mandated by the language in Section 205-2(1), H.R.S., to place all of these parcels in an urban district classification, as contended by the Gillettes, the obvious result would be spot zoning, a scattering of urban parcels throughout the State.

It is inconceivable that the Legislature could have intended such a result. One of the purposes of the Land Use Law was to promote orderly development of land within the State and to stem speculative scattered developments. This is borne out by the Legislature's "Findings and declaration of purpose" set forth in the original Land Use Law, to wit, Act 187, Session Laws of Hawaii 1961. Section 1 of Act 187, S.L.H. 1961, states, in pertinent part, as follows:

"Findings and declaration of purpose. Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. . . . Scattered subdivisions with expensive, yet reduced, public services; the shifting of prime agricultural lands into nonrevenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action."

The Commission contends that the purpose for which the Land Use Law was enacted will be seriously subverted if this Court holds that Section 205-2(1), H.R.S., is applicable to these numerous parcels in non-urban districts containing uses characteristic of towns and cities, thereby mandating that these parcels be placed in the urban district classification.

B. Precludes Downzoning

The Commission also contends that the Gillettes' argument would undermine the purpose of the rural district classification by precluding downzoning thereto where applicable.

The original Land Use Law (Act 187, S.L.H. 1961) provided that all lands within the State of Hawaii be placed in one of three district classifications. They were the urban, agricultural, and conservation districts. In 1963, the Land Use Law was amended by Act 205, S.L.H. 1963, to add the rural district classification as an intermediate classification for greater flexibility in zoning. The purpose of adding the rural district classification is stated in the House Committee on Lands Standing Committee Report 656,

Regular Session 1963, Second State Legislature, as follows:

> "The purpose of this bill is to amend Act 187, Session Laws of Hawaii 1961 to provide for a 'rural' district. The Land Use Commission in establishing its recommended permanent district has found a problem in the districting of areas where a pattern of small farms intermixed with larger residential units exists. While many of these areas are in transition to urban uses, others particularly on the neighbor islands are likely and would be desirable to continue in this open country-like atmosphere for indefinite periods. They do not need a full level of urban services and cannot bear a full level of urban costs. Providing regulations in agricultural districts to recognize their special circumstances opens the way for the urban infringement on fully agricultural lands that the Act was designed to prevent. The creation of the fourth 'rural' districts provides the mechanism for the recognition of this existing situation."
> House Journal 1963, p. 755.

Under the Gillettes' position, however, this purpose could not be accomplished. Section 205-2(1), H.R.S., would be a prohibition against placing lands intended by the Legislature to be affected by the newly created rural district classification merely because such lands contain a use characteristic of cities and towns. Thus, a country grocery store, surrounded by small farms intermingled with larger residential units, would be required to remain in the urban district classification even though the area is of a country-like atmosphere. A public utility sub-station in the center of a rural or agricultural community would have to remain in the urban district classification.

It is rather obvious that the Legislature could not have intended such a result. It is unreasonable to assume that only agriculturally zoned lands were meant to be placed in the new rural district classification, that the Legislature did not contemplate that lesser developed lands with an "open country-like atmosphere" might be downzoned

from the urban to rural district classification. Yet, this is where the Gillettes' argument would lead this Court.

In view of the consequences as would result from the Gillettes' interpretation and application of Section 205-2(1), H.R.S., the Commission contends that the use of the subject property as a duplex rental unit is not an urban use within the language of Section 205-2(1), H.R.S., and that that section has no applicability to the instant case.

II. THE PLAINTIFFS-APPELLANTS' USE OF THE PROPERTY IS A NONCONFORMING USE UNDER SECTION 205-8, HAWAII REVISED STATUTES.

On the other hand, the Commission argues that the subject property is a nonconforming use under Section 205-8, H.R.S. Section 205-8, H.R.S., the nonconforming use provision of the Land Use Law, states in pertinent part that:

> "The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; . . ."

Generally, nonconforming use provisions are enacted to permit uses which were permissible prior to the enactment of statutes or regulations prohibiting such uses. Through the use of such provisions, governmental planning bodies are able to effect overall comprehensive general plans without treading on the rights of individual property owners with respect to prior established uses. Such provisions further provide for the gradual elimination of such nonconforming uses, resulting in ultimate compliance with the general zoning plans for the area.

The rationale behind nonconforming use provisions is stated by the editors of Corpus Juris Secundum as follows:

> "The granting of permission for continuation of a nonconforming use is designed to avoid the imposition of hardship on the owner of property already devoted to a proscribed use, and has in mind the injustice and doubtful constitutionality of compelling the immediate removal of objectionable buildings and uses already in the district."
> 101 C.J.S., Zoning § 181, p. 9

The Gillettes contend that the nonconforming use provisions of the Land Use Law has no application to urban uses established prior to 1963, and that Section 205-2(1), H.R.S., is a prohibition against the application of Section 205-8, H.R.S., to such uses. The Commission contends that this would severely and unduly limit the purpose and operation of the nonconforming use provision.

Section 205-5, Hawaii Revised Statutes, sets forth the uses permitted in the various use district classifications. With respect to the rural district classification, Section 205-5(c), H.R.S., provides as follows:

> "(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:
>
> (1) Low density residential uses;
> (2) Agricultural uses; and
> (3) Public, quasi-public, and public utility facilities.
>
> "In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre."

With respect with the uses within the agricultural district classification, Section 205-5(b), H.R.S., prior to amendment by Act 232, Session Laws of Hawaii 1969, states that:

"(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the land use commission shall be permitted. Other uses may be allowed by special permits issued pursuant to this chapter. The county standards for agricultural subdivision existing as of May 1, 1963, shall constitute the minimum lot size of agricultural districts within the respective counties."

Section 205-2, referred to above, states in pertinent part, that:

"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."

There are no use restrictions within the urban district classification except those as may be imposed by the counties. Uses within the conservation district classification, including nonconforming uses, are within the control and jurisdiction of the Department of Land and Natural Resources.

If Section 205-2(1), H.R.S., is deemed a prohibition against the creation of nonconforming uses from uses characteristic of cities and towns established prior to 1963 on lands placed in non-urban district classifications, as argued by the Gillettes, then the nonconforming use provision would be extremely limited in its application. In view of the above statutory provisions regarding permitted uses in the various districts, the only nonconforming uses

would be: 1) nonconforming residences in the agricultural district classification by reason of their not being ancillary to agriculture, 2) nonconforming lot sizes in either the rural or agricultural districts, 3) public, quasi-public, and public utility facilities in the agricultural districts, and 4) urban uses established after 1963 on lands rezoned from urban to nonurban classification subsequent thereto.

However, the great majority of nonconforming uses exist as a result of property with prior established uses characteristic of cities and towns being placed in non-urban classification districts pursuant to the mandate of the Land Use Law, Act 205, S.L.H. 1963. Examples of such nonconforming uses are service stations, garages, country stores, hotels, and other roadside services located in rural or agricultural areas. The Commission contends that the Legislature could not have intended to exclude these numerous nonconforming uses from the purview of Section 205-8, H.R.S. It could not have intended that the nonconforming use provision of the pioneering Land Use Law be restricted in its applicability, thereby destroying the means of effecting a general overall and comprehensive zoning plan. Yet, under the Gillettes' argument, such a result would be reached.

III. "URBAN USE" MUST BE DEFINED AS A USE "CHARACTERIZED BY CITY-LIKE CONCENTRATIONS OF PEOPLE, STRUCTURES, STREETS AND THE LIKE".

The Commission realizes and acknowledges shortcomings in both its and the Gillettes' contentions as hereinbefore stated. To permit unrestricted application of the nonconforming use provision would result in rendering the mandate of Section 205-2(1), H.R.S., meaningless. Carried to its logical conclusion, the unrestricted application of Section 205-8, H.R.S., would give the Commission the authority to place all lands in non-urban district classifications and to treat all existing uses as nonconforming. The shortcomings of the Gillettes' position have been set forth in the preceding sections.

In view of the above, the Commission submits that the term "urban use" as used in Section 205-2(1), H.R.S., must be defined as a use "characterized by concentrations of people, structures, streets and the like". Only in this manner can a logical and reasonable reconciliation between Sections 205-2(1) and 205-8, H.R.S., be reached.

Such a definition would prevent arbitrary and possibly capricious placing of lands, under the guise of the nonconforming use provision, into the rural or agricultural district classification when true urban uses exist. It would also prevent the undermining of the Land Use Law, the rise of spot zoning, and the perpetuation of the urban district classification where urban uses no longer exist.

The Gillettes argue that there is no authority to support the Commission's proposed definition of "urban use" save for the definition repealed by Act 205, Session

Laws of Hawaii 1963. The Commission contends that notwithstanding the above, its proposed definition can still be sustained.

It is significant that the language proposed by the Commission was not omitted completely when Act 205, S.L.H. 1963, failed to restate the definitions found in the original Land Use Law (Act 187, S.L.H. 1961). The "omitted" definition of "urban" was restated in Act 205, S.L.H. 1963, in the description of the rural district classification. Section 2 of Act 205, S.L.H. 1963, (presently Section 205-2, Hawaii Revised Statutes) states, in pertinent part, that:

> "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 the 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." [Emphasis added.]

The Legislature could not have intended that lands where such "city-like concentration of people, structures, streets and urban level of services" are present be placed in the agricultural or conservation district classification; such lands could only logically be placed in the urban district classification.

Similar language is also found in the Commission's State Land Use District Regulations in effect at the time. Section 2.7, Sub-Part B, Part II of the State Land Use District Regulations states, in pertinent part, that:

"In determining the boundaries for the 'U' Urban District, the following standards shall apply:
(a) It shall include lands characterized by 'city-like' concentration of people, structures, streets and other related land uses."

Furthermore, the literal interpretation and application of Section 205-2(1), H.R.S., with its shortcomings as stated above, will be contrary to the rule of statutory construction which restrict the language of a statute to conform to the general aim and policy of the statute. The rule is stated by J. G. Sutherland in Statutes and Statutory Construction, 3rd Edition, as follows:

"There are times when even the literal expression of legislation may be inconsistent with the general objectives or policy behind it, and on the basis of the equity or spirit of the statute the courts rationalize a restricted meaning of the letter. A restricted interpretation is usually applied where the effect of a literal interpretation will make for injustice and absurdity, or, in the words of one court, the language must be so unreasonable 'as to shock general common sense.'

* * *

"The doctrine of interpreting a statute according to its purpose or spirit, when properly employed, undoubtedly provides the soundest judicial technique for understanding the meaning of a statute. Not only must attention be given the language and contextual arrangement of the statute, but also the proper emphasis must be accorded the existing law relating to the subject, the social and economic factors giving rise to the legislation, and the effect that a possible interpretation will have upon society. It follows, then, that the other rules of statutory interpretation must be consulted in applying the doctrine. In its final analysis the rule serves as an identical substitute for the proper use of a liberal interpretation." Sutherland, Statutes and Statutory Construction, 3rd Ed., Vol. 3, pp. 149-155.

CONCLUSION

There can be little doubt that if it should be determined that an urban use is a use "characteristic of cities and towns rather than of farms, ranches, etc.", as contended by the Gillettes, the mandate of Section 205-2(1), H.R.S., applies to the subject property.

However, the Commission has set forth a myriad of reasons why such a definition cannot be accepted in view of the purpose and intent of the Land Use Law and the amendments thereto. Instead, the Commission contends that sound reasoning and foresight into the consequences of the Gillettes' position necessitates that this Court accept the definition of "urban use" as proposed by the Commission and treat the duplex rental unit on the subject property as a nonconforming use pursuant to Section 205-8, H.R.S. Only in such a manner can the purpose behind the pioneering Land Use Law be preserved.

For these reasons, the Defendant-Appellee Land Use Commission of the State of Hawaii respectfully urges this Honorable Court to uphold the decision of the lower Court.

DATED: Honolulu, Hawaii, October 16, 1970.

Respectfully submitted,

Walton D. Y. Hong

Walton D. Y. Hong
Deputy Attorney General
State of Hawaii
Hawaii State Capitol
415 South Beretania St.
Honolulu, Hawaii 96813

Attorney for Defendant-Appellee

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

Memorandum

From Walton D. Y. Hong, Deputy Atty Gen'l Date November 24, 1970

To Ramon Duran, Executive Officer, Land Use Commission File No.

Subject Supreme Ct. No. 4986, Gillettes v. LUC

Enclosed herewith for your files and records is a copy of the Reply Brief submitted by Mr. Sanford J. Langa in the above-mentioned case.

Walton D.Y. Hong

NO. 4986

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER A. D. 1969 TERM

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, JUDGE

REPLY BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS

RECEIVED
ATTORNEY GENERAL
STATE OF HAWAII
REC'D ON
1970 NOV 16 AM 11:23

SANFORD J. LANGA #808
Wailuku Townhouse Building
Wailuku, Maui, Hawaii 96793
Telephone 244-9169

Attorney for Plaintiffs-
Appellants.

SUBJECT INDEX

	Page
INDEX TO AUTHORITIES CITED	i
Statutes	
ARGUMENT	
I APPELLEE'S ARGUMENT IS BASED UPON AN ERRONEOUS INTERPRETATION OF SECTION 205-2(1) AND 205-8, HRS.	1
II APPELLEE'S INTERPRETATION OF SECTION 205-2(1) UNREASONABLY ASSUMES A LEGISLATIVE INTENT TO BENEFIT LARGE LANDOWNERS AT THE EXPENSE OF SMALL LANDOWNERS.	5
CONCLUSION	7

INDEX TO AUTHORITIES CITED

STATUTES

	Page
HRS §205-2(1)	1, 2, 3, 4, 5, 6, 7
HRS §205-6	1, 2, 3, 5

ARGUMENT

I. APPELLEE'S ARGUMENT IS BASED UPON AN ERRONEOUS INTERPRETATION OF SECTION 205-2(1) AND 205-8, HRS.

Appellee argues on page 6 of its Brief:

> Scattered throughout the state in non-urban district classifications are numerous parcels of land containing uses characteristic of cities and towns. Among them are service stations, stores, museums, motels and other roadside services. If the Commission is mandated by the language which in Section 205-2(1), HRS, to place all of these parcels in a urban district classification * * * the obvious result would be the spot zoning, a scattering of urban parcels throughout the state.

Appellants find nothing in the record to support Appellee's recitals; however, even assuming the facts recited, Appellee's argument only begs the question. Section 205-2, HRS, requires inclusion in urban districts, based on uses existing as of the time the Act was passed, by the following language:

> The Commission shall set standards for determining the boundaries of each district, provided that: (1) In the establishment of boundaries of urban districts those lands that are now in urban use * * * shall be included; * * * (Emphasis added)

The purpose of this section was to prevent reclassifications such as that which has occurred in the instant case. If

parcels of land which were in urban use prior to the enactment of the statute are permitted to be reclassified as rural rather than urban, then the urban use can continue only as a nonconforming use under Section 205-8, HRS. That section, while permitting the continuation of the use, imposes serious restrictions and results in eventual extinguishment.

Under the Appellee's interpretation of the statute all of these parcels in urban use (service stations, country stores, etc.) must exist as nonconforming uses. None of the buildings on these parcels of land can be replaced, reconstructed or enlarged, and in the passage of time, will certainly collapse. It is obvious that it was not the intent of the legislature to deprive rural districts of the types of services enumerated above.

The Appellee's argument is based upon a misinterpretation of both Section 205-2(1) and 205-8, HRS. Section 205-2(1) applies to uses existing at the time of the enactment of the statute. Section 205-8 applies instead to uses existing at the time the districts are established.

It is not the least bit surprising that the legislature would treat more favorably uses existing prior to the statute and less favorably uses established after enactment of the statute but prior to establishing of district boundaries.

Under Section 205-8 a nonconforming use can arise only after the enactment of the statute prior to the

establishment of the district in final form. Service stations, motels, stores, etc. that were built during the interim period now exist under Section 205-8, HRS, as nonconforming uses, but as to any parcel of land upon which an urban use existed prior to the enactment of the statute, Section 205-2(1), HRS, requires that the Land Use Commission classify that land in an urban district. There is no discretion vested in the Land Use Commission to change the classification if the use was in fact an urban use.

Appellee argues that if the Appellants' interpretation of Section 205-2(1) is correct it would preclude down-zoning of any urban land to rural and result in spot zoning. The contention is correct only insofar as it would preclude any down-zoning of urban land upon which an urban use existed at the time of enactment of the statute. As to urban land which did not contain an urban use prior to the enactment of the statute, Section 205-2(1) need not inhibit the Commission.

Appellee also misconstrues the intent of the legislature with respect to the purpose of the statute. Appellee argues on page 6 of its brief: "One of the purposes of the Land Use Law was to promote orderly development of land within the State and to stem speculative scattered developments." (Emphasis Added) The key word is "developments." The legislature only intended to halt further undesirable developments. It did not intend to penalize landowners who had existing urban uses upon their lands. If the legislature

formulated a policy against "spot zoning" as alleged by Appellee, that policy gave way in Section 205-2(1) to a more compelling policy against causing injustice to small landowners.

In the instant case, the Appellants' land was zoned urban prior to the enactment of the statute. There was also an urban use upon this land at the time of its enactment. Therefore, the Land Use Commission was without authority to reclassify Appellants' land as rural and its action should be declared illegal.

II. APPELLEE'S INTERPRETATION OF SECTION 205-2(1) UNREASONABLY ASSUMES A LEGISLATIVE INTENT TO BENEFIT LARGE LANDOWNERS AT THE EXPENSE OF SMALL LANDOWNERS.

The Appellee alleges that in order to reconcile Section 205-2(1) with Section 205-8, urban use must be defined as a use characterized by "citylike concentrations of people, structures, streets and the like." It is only because of the Appellee's misinterpretation of those sections that any reconciliation is necessary. As noted in the preceding division of this brief, the two sections apply to different situations.

The Appellee concedes at page 13 of its brief that under its interpretation of Section 205-8 there would be no restriction upon its placing all lands in nonurban districts and treating all existing uses as nonconforming. In order to mitigate this absurdity, Appellee concludes that Section 205-2(1) requires only that lands having citylike concentrations of people, structures, streets and urban level services be placed in urban districts. Appellee argues that its definition of "urban" can be inferred from the fact that rural districts are allowed only in areas where such concentrations do not exist. It need hardly be stated that Appellee's inference simply does not follow its premise.

As pointed out previously, Appellee's interpretation would permit only large tracts of land to be protected by Section 205-2(1). It is obvious that an urban parcel of

a small size cannot contain within itself a citylike concentration of streets.

Appellants can find nothing in the legislative history of Section 205-2(1) to indicate that the legislature intended to benefit large landowners at the expense of small landowners, nor is it reasonable to suppose that the legislature intended such a policy.

CONCLUSION

Appellee concedes at page 16 of its brief that if an urban use is a use characteristic of cities and towns then its regulations violate Section 205-2(1) as to the Gillettes' property.

Appellee has shown no compelling reason why the normal and natural meaning of the statutory language should be ignored and the appellants be denied the protection of the statute. Appellants therefore respectfully urge this Honorable Court to reverse the judgment of the Circuit Court.

Respectfully submitted,

s/ SANFORD J. LANGA
Sanford J. Langa

11 copies To be herded

STATE OF HAWAII
Department of PLANNING AND ECONOMIC DEVELOPMENT

sent 10/25/68

Send copies to all
Commissioners
Geo. Pai
EDAW

Note date mailed in records
— of course —

426 Queen St.—Honolulu, Hawaii 96813
Phone 504-426

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant.	2ND CIRCUIT STATE OF HAWAII WAILUKU, HAWAII FILED & ISSUED 1968 OCT 22 PM 1 20 (SGD.) HELEN H. CORREA CLERK

COMPLAINT FOR DECLARATORY RELIEF

AND

SUMMONS

RECEIVED
OCT 23 1968 2:10 p.m.
State of Hawaii
LAND USE COMMISSION

I hereby certify that this is a full, true and correct copy of the Original.

Helen H. Correa
Clerk, Circuit Court, Second Circuit

SANFORD J. LANGA #808
207 Wailuku Townhouse Building
Wailuku, Maui, Hawaii

Attorney for Plaintiffs.

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs.	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

COMPLAINT FOR DECLARATORY RELIEF

1. Plaintiffs are residents of Kula, Maui, Hawaii. Defendant is an agency of the State of Hawaii, as defined by Section 6C-1, R.L.H. 1955, as amended.

2. This action is brought under Section 6C-7, R.L.H. 1955, as amended, for a judicial declaration as to the validity of the rules and regulations promulgated by Defendant, to the extend that said rules and regulations have the effect of classifying Plaintiffs' land, hereinafter described, as a rural district within the provisions of Chapter 98 H, R.L.H. 1955, as amended.

3. Plaintiffs are owners of a parcel of land, approximately 3 acres in area, situated at Kula, Maui, Hawaii, and identified by tax map key 2-3-19-28.

4. Plaintiffs' land has, since prior to the enactment of Chapter 98 H, R.L.H. 1955, been used for residential

purposes of the kind known as multi-family dwelling, and Plaintiffs have since they purchased said property in June, 1962, maintained said property for said purpose, deriving rental income from tenants thereon.

5. Under the regulations promulgated by Defendant, specifically sub-part C of Part II of said regulations, Plaintiffs' use of their property is an urban land use.

6. At the time Plaintiffs purchased said property in 1962, Defendant's regulations then existing had established the area in which Plaintiffs' property is situated as an urban zone, pursuant to Section 98 H-2, R.L.H. 1955.

7. In 1964 Defendant amended its regulations and promulgated new maps which changed the classification of numerous areas, including Plaintiffs' property from urban classification to rural classification.

8. Plaintiffs allege that Defendant's regulations are illegal and void in that Section 98 H-2, R.L.H. 1955, as amended, requires that all land that was in urban use on the date of enactment of Act 205, S.L.H. 1963, is required by law to be included within urban districts.

WHEREFORE Plaintiffs pray that this honorable court enter judgment herein declaring that that portion of Defendant's regulations, which classifies Plaintiffs' land as a rural district is illegal and void and further declaring that Plaintiffs' land is and lies within an urban district pursuant to 98 H-2, R.L.H. 1955, as amended.

Dated at Wailuku, Maui, Hawaii, this 22 day of October, 1968.

Sanford J. Langa
Attorney for Plaintiffs

In the Circuit Court of the Second Circuit

STATE OF HAWAII

CIVIL NO. 1198

PAUL C. GILLETTE and
MARTHA T. GILLETTE
Plaintiffs

V.

LAND USE COMMISSION OF THE
STATE OF HAWAII,
Defendant

SUMMONS

State of Hawaii

To the above-named Defendant:

You are hereby summoned and required to serve upon SANFORD J. LANGA, ..., plaintiff's attorney, whose address is 207 Wailuku Townhouse Bldg., Wailuku, Maui, Hawaii, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(SGD.) HELEN H. CORREA
Clerk of Court

SEAL OF COURT

Dated Oct 22, 1968

RETURN ON SERVICE OF SUMMONS

I HEREBY CERTIFY and return that on the ..... day of ....., 19.....

I served the within summons .....

on .....

.....

at ....., by delivering to ..... a certified copy hereof and of the complaint hereto annexed.

Dated .....

.....

☐ Police Officer
☐ Person specially appointed by the Court

SUBSCRIBED and sworn to before me

this ..... day of ....., 19.....

.....

NOTE: This summons is issued pursuant to rule 4 of the Hawaii Rules of Civil procedure. AFFIDAVIT required only if service is made by a person specially appointed by the court.

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant.

2nd CIRCUIT
STATE OF HAWAII
WAILUKU, HAWAII
FILED & ISSUED
1968 OCT 22 PM 1 20
(SGD.) HELEN H. CORREA
CLERK

COMPLAINT FOR DECLARATORY RELIEF

AND

SUMMONS

RECEIVED
OCT 23 1968 2:10 p.m.
State of Hawaii
LAND USE COMMISSION

I hereby certify that this is a full, true and correct copy of the Original.

Helen H. Correa
Clerk, Circuit Court, Second Circuit

SANFORD J. LANGA #808
207 Wailuku Townhouse Building
Wailuku, Maui, Hawaii

Attorney for Plaintiffs.

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs.	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

COMPLAINT FOR DECLARATORY RELIEF

1. Plaintiffs are residents of Kula, Maui, Hawaii. Defendant is an agency of the State of Hawaii, as defined by Section 6C-1, R.L.H. 1955, as amended.

2. This action is brought under Section 6C-7, R.L.H. 1955, as amended, for a judicial declaration as to the validity of the rules and regulations promulgated by Defendant, to the extend that said rules and regulations have the effect of classifying Plaintiffs' land, hereinafter described, as a rural district within the provisions of Chapter 98 H, R.L.H. 1955, as amended.

3. Plaintiffs are owners of a parcel of land, approximately 3 acres in area, situated at Kula, Maui, Hawaii, and identified by tax map key 2-3-19-28.

4. Plaintiffs' land has, since prior to the enactment of Chapter 98 H, R.L.H. 1955, been used for residential

purposes of the kind known as multi-family dwelling, and Plaintiffs have since they purchased said property in June, 1962, maintained said property for said purpose, deriving rental income from tenants thereon.

5. Under the regulations promulgated by Defendant, specifically sub-part C of Part II of said regulations, Plaintiffs' use of their property is an urban land use.

6. At the time Plaintiffs purchased said property in 1962, Defendant's regulations then existing had established the area in which Plaintiffs' property is situated as an urban zone, pursuant to Section 98 H-2, R.L.H. 1955.

7. In 1964 Defendant amended its regulations and promulgated new maps which changed the classification of numerous areas, including Plaintiffs' property from urban classification to rural classification.

8. Plaintiffs allege that Defendant's regulations are illegal and void in that Section 98 H-2, R.L.H. 1955, as amended, requires that all land that was in urban use on the date of enactment of Act 205, S.L.H. 1963, is required by law to be included within urban districts.

WHEREFORE Plaintiffs pray that this honorable court enter judgment herein declaring that that portion of Defendant's regulations, which classifies Plaintiffs' land as a rural district is illegal and void and further declaring that Plaintiffs' land is and lies within an urban district pursuant to 98 H-2, R.L.H. 1955, as amended.

Dated at Wailuku, Maui, Hawaii, this 22 day of October, 1968.

Sanford J. Langa
Attorney for Plaintiffs

In the Circuit Court of the Second Circuit

STATE OF HAWAII

CIVIL NO. 1198

PAUL C. GILLETTE and
MARTHA T. GILLETTE
Plaintiffs

V.

LAND USE COMMISSION OF THE
STATE OF HAWAII,
Defendant

SUMMONS

State of Hawaii

To the above-named Defendant:

You are hereby summoned and required to serve upon SANFORD J. LANGA, ..., plaintiff's attorney, whose address is 207 Wailuku Townhouse Bldg., Wailuku, Maui, Hawaii, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(SGD.) HELEN H. CORREA
Clerk of Court

SEAL OF COURT

Dated Oct 22, 1968

RETURN ON SERVICE OF SUMMONS

I HEREBY CERTIFY and return that on the ..... day of ....., 19.....

I served the within summons .....

on .....

.....

at ....., by delivering to ..... a certified copy hereof and of the complaint hereto annexed.

Dated .....

.....

☐ Police Officer
☐ Person specially appointed by the Court

SUBSCRIBED and sworn to before me

this ..... day of ....., 19.....

.....

NOTE: This summons is issued pursuant to rule 4 of the Hawaii Rules of Civil procedure. AFFIDAVIT required only if service is made by a person specially appointed by the court.

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF
THE STATE OF HAWAII,

Defendant.

FILED
1970 MAR 25 AM 10 09
(SGD.) HELEN H. CORREA
CLERK

RECEIVED
ATTORNEY GENERAL
STATE OF HAWAII
1970 MAR 26 AM 11 48

NOTICE OF APPEAL

I certify that I served the within upon the Attorney
for Defendant.
On MAR 25 1970.
[sgd] SANFORD J. LANGA

SANFORD J. LANGA #808
Wailuku Townhouse Bldg.
Wailuku, Hawaii 96793
Phone: 39-169

Attorney for Plaintiffs.

I hereby certify that this is a full, true and correct copy of the Original.
Helen H. Correa
Clerk, Circuit Court, Second Circuit

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF
THE STATE OF HAWAII,

Defendant.

_____/

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs hereby appeal from the Summary Judgment filed herein on March 3, 1970, and from the Order Granting Cross-Motion for Summary Judgment filed herein on February 26, 1970.

Dated at Wailuku, Hawaii MAR 25 1970.

(sgd) SANFORD J. LANGA
Sanford J. Langa

SANFORD J. LANGA #808
Wailuku Townhouse Bldg.
Wailuku, Hawaii 96793

Attorney for Plaintiffs.

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

RECEIVED
MAR 2, 1970
State of Hawaii
LAND USE COMMISSION

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant.

WAILUKU, HAWAII
FILED
1970 FEB 26 AM 11 36
(SGD.) HELEN H. CORREA
CLERK

ORDER GRANTING CROSS-MOTION

FOR SUMMARY JUDGMENT

I HEREBY CERTIFY that on February 26, 1970, I served a copy of this ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT by depositing the same in the U. S. Post Office at Wailuku, Maui, Hawaii, postage prepaid and properly addressed, upon SANFORD J. LANGA, ESQ., Attorney at Law, Wailuku Townhouse Bldg., Wailuku, Maui and HON. BERTRAM T. KANBARA, Attorney General, State of Hawaii, Hawaii State Capitol, 415 South Beretania Street, Honolulu, Hawaii 96813.

/sgd/ ETHEL M. MIYAHIRA

SEAL
CCURT

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT

IT IS HEREBY ORDERED that Plaintiffs' Motion for Summary Judgment be denied and Defendant's Cross-Motion for Summary Judgment be granted.

DATED: February 26, 1970.

/s/ S. GEORGE FUKUOKA

Judge of the Above-Entitled Court

SEAL

STATE OF HAWAII

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Scheduled for

February 19, 1970

(Thursday)

STATE CAPITOL HONOLULU, HAWAII 96813

TELEPHONE 531-6251

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

CROSS-MOTION FOR SUMMARY JUDGMENT

MEMORANDUM IN SUPPORT OF MOTION

and

NOTICE OF MOTION

I hereby certify that I served a copy of the within Cross-Motion, Memorandum & Notice on Sanford J. Langa, Esq., Attorney for Plaintiffs, by depositing the same in the United States Post Office at Honolulu, Hawaii, properly addressed and postage prepaid, on the 9th day of February, 1970.

Walton D.Y. Hong
Deputy Attorney General

BERTRAM T. KANBARA 261
Attorney General
State of Hawaii
and
WALTON D. Y. HONG 890
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Attorneys for Defendant

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

CROSS-MOTION FOR SUMMARY JUDGMENT

The Defendant Land Use Commission of the State of Hawaii moves this Honorable Court to grant summary judgment in favor of the Defendant on the grounds that there is no genuine issue as to any material fact and that the Defendant is entitled to a judgment as a matter of law on the theories that:

a. The Plaintiffs' use of the property is a nonconforming use under section 205-8 of the Hawaii Revised Statutes;

b. Section 205-2(1) of the Hawaii Revised Statutes has no application to the instant action; and

c. The property was properly placed in the rural district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations.

This Motion is based on the following Memorandum in Support of Motion, and the files and proceedings of this case.

NOTICE OF MOTION

TO: SANFORD J. LANGA, ESQ.
207 Wailuku Townhouse Building
Wailuku, Maui, Hawaii 96793

Please take notice that the undersigned will bring the foregoing Motion on for hearing before the Honorable Judge S. George Fukuoka, in his Courtroom at Wailuku, Maui, Hawaii, on Thursday, the 19th day of February, 1970, at 9:30 o'clock A.M., or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawaii, February 9, 1970.

Walton D.Y. Hong

WALTON D. Y. HONG
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Attorney for Defendant

MEMORANDUM IN SUPPORT OF MOTION

I. The property is a nonconforming use under section 205-8, H.R.S., and section 205-2(1), H.R.S., has no application thereto.

The Defendant Land Use Commission of the State of Hawaii, hereinafter called the "COMMISSION", contends that the Plaintiffs Gillettes', hereinafter called the "GILLETTES", use of the property is a nonconforming use, that the property was not in urban use, that section 205-2(1) of the Hawaii Revised Statutes does not mandate that the property be placed in the urban district, and that to so hold would destroy completely the purpose of the nonconforming use provision of the Land Use Law.

Section 205-8 of the Hawaii Revised Statutes states, in pertinent part, that:

> "The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; . . ."

Section 2.3(t) of the Land Use Commission Regulations defines nonconforming use as:

> ". . . the use of a building or structure, or of a parcel of land, lawfully existing at the time of adoption of the State Land Use District Regulations and Boundaries or subsequent amendments made thereto, that does not conform to the State Land Use District Regulations and Boundaries."

The Commission contends that the use of the property is a nonconforming use and that section 205-2(1), H.R.S., has no application to the instant case.

The Gillettes contend that section 205-2(1), H.R.S., mandates that the property be placed in the urban district by reason that a multi-family dwelling, to wit, a duplex, was situated thereon prior to the establishing of the rural district boundaries in final form. The bases for the Gillettes' contention are that only a single-family dwelling is permitted in a rural district under section 2.16 of the Land Use Commission Regulations, that the property was never considered to be in agricultural or conservation use, and that therefore the property must have been in urban use. Therefore, the Gillettes conclude that section 205-2(1), H.R.S., which states in pertinent part, 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;" mandates that the Commission place the property in the urban district.

An analysis of the Gillettes' contention reveals that their conclusion is based on the premise that if a use does not conform to a rural, agricultural, or conservation use, as defined by Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations, it must, by the process of elimination, therefore be an urban use.

The Commission contends that such a premise cannot be upheld; to do so would result in the undermining of the purposes of the Land Use Law and would leave the nonconforming use provision meaningless.

At present, there are hundreds of parcels of property throughout the State in rural and agricultural

districts which have uses that are not in conformance with the uses prescribed for their respective districts. There are service stations, grocery stores, motels, and hospitals which have existed prior to the establishing of the rural and agricultural district boundaries in final form. Carried to its logical conclusion, the Gillettes' contention would mean that all of these pre-existing nonrural, nonagricultural, or nonconservation uses must result in the property being placed in an urban district. This would result in spot zoning throughout the State, clearly contrary to the need for logical and uniform development of the lands in the State.

Furthermore, the Gillettes' analysis would leave the nonconforming provision of the Land Use Law, section 205-8 of the Hawaii Revised Statutes, without any meaning whatsoever. The purpose of the nonconforming use provision was to permit continued uses of the property while classifying nonurban districts in final form, where such uses did not conform to the uses prescribed for the district where the property is situated. To hold that any nonrural, nonagricultural, or nonconservation use is therefore an urban use to be placed in an urban district would eliminate the nonconforming use.

However, the Commission acknowledges that section 205-2(1), H.R.S., must be reconciled with section 205-8, H.R.S. To carry the nonconforming use provision without restriction to its logical conclusion would

leave the mandate of section 205-2(1), H.R.S., meaningless, for it would give the Commission the authority to classify any land as rural or agricultural and determine that the uses thereon are nonconforming uses. Thus, the Commission could classify downtown Wailuku as rural and regard all the existing businesses as nonconforming uses.

Therefore, the Commission contends that the term "urban use", as used in section 205-2(1), H.R.S., must be defined as "any and all uses permitted by the counties, either by ordinances or regulations, and which are characterized by city-like concentrations of people, structures, streets and the like." Only in this manner can the apparently conflicting provisions of the Land Use Law, sections 205-2(1) and 205-8, H.R.S., be reconciled in a logical and reasonable manner.

While Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations do not define "urban use", the Commission's position is not without support. The original Land Use Law, Act 187, S.L.H. 1961, defined "urban" as ". . . areas characterized by 'city-like' concentrations of people, structures, street and other related land uses."

Furthermore, such a definition of "urban use" would afford a logical and reasonable reconciliation of sections 205-2(1) and 205-8 of the Hawaii Revised Statutes. It would prevent arbitrary and possibly capricious classification of

land, under the nonconforming use provision, into a rural or agricultural district where true urban uses exist, such as Wailuku. It would also prevent the undermining of the Land Use Law and the rise of spot zoning under section 205-2(1) where nonrural, nonagricultural and nonconservation uses existed prior to the establishment of nonurban district boundaries in final form.

II. The property was properly placed in the rural district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations.

The Commission contends that the property of the Gillettes under consideration was rightfully placed in the rural district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations.

Section 205-2 of the Hawaii Revised Statutes states that:

> "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 the 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."

Section 2.10 of the Land Use Commission Regulations sets forth the standards for the rural district classification as follows:

"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 [less?] 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.

(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."

The Commission concedes that the use of the Gillettes' property does not meet the density requirements of "(b)", above. However, the Commission contends that, as the existence of a duplex is a nonconforming use under section 205-8, H.R.S., this failure to meet the density requirements does not detract from the fact that the property meets the other standards for a rural district.

Furthermore, the Gillettes' property does not conform to the standards for the urban districts, as set forth in the Land Use Commission Regulations. Section 2.7 of the Land Use Commission Regulations states, in part, that:

> "In determining the boundaries for the 'U' Urban District, the following standards shall apply:
>
> (a) It shall include lands characterized by 'city-like' concentration of people, structures, streets and other related land uses.
>
> (b) It shall take into consideration the following specific factors:
>
> (1) Proximity to centers of trading and employment facilities.
>
> (2) Economic feasibility and proximity to basic services such as sewers, water, sanitation, schools and playground and police and fire protection.
>
> * * * * *
>
> (d) It shall include sufficient reserve areas for urban growth in appropriate locations, based on a 10 year projection. . . ."

The Commission contends that the area is not characterized by "city-like" concentrations of people, structures, streets and other related land uses, is not in close proximity to centers of trading and employment facilities, and is not needed as a reserve area for urban growth, there being sufficient undeveloped urban lands in the immediate area.

The Defendant Land Use Commission of the State of Hawaii therefore concludes that the property was placed

rightfully in the urban district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations, and that this Honorable Court should grant its Cross-Motion for Summary Judgment.

Dated: Honolulu, Hawaii, February 9, 1970.

Walton D. Y. Hong

Walton D. Y. Hong
Deputy Attorney General

Attorney for Defendant

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant

/

STATE OF HAWAII
WAILUKU, HAWAII
FILED
1969 DEC 29 PM 3 57
(SGD.) HELEN H. CORREA
CLERK

MOTION FOR SUMMARY JUDGMENT

AFFIDAVIT OF PAUL C. GILLETTE

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

and

NOTICE OF MOTION

RECEIVED
ATTORNEY GENERAL
DEC 29 1969

I certify that I served the within upon the Attorney
for Defendant
On DEC 29 1969
[sgd] SANFORD J. LANGA

SANFORD J. LANGA #808,
207 Wailuku Townhouse Building,
Wailuku, Maui, Hawaii, 96793.
Phone: 39-169

Attorney for Plaintiffs

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant

/

MOTION FOR SUMMARY JUDGMENT

Plaintiffs move the court as follows:

That it enter, pursuant to Rule 56 of the Hawaii Rules of Civil Procedure, a summary judgment in Plaintiffs' favor for the relief demanded in the complaint on the grounds that there is no genuine issue as to any material fact and that Plaintiffs are entitled to a judgment as a matter of law.

This motion is based upon:

(a) Plaintiffs' Complaint

(b) Defendant's Answer

(c) Plaintiff's Affidavit

(d) Plaintiffs' Memorandum

Dated at Wailuku, Maui, Hawaii, on DEC 29 1969

/S/ SANFORD J. LANGA
Sanford J. Langa
Attorney for Plaintiffs

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiff,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant.

AFFIDAVIT OF PAUL C. GILLETTE

1. Affiant is a Plaintiff herein and an owner of the real property described in the Complaint heretofore filed herein.

2. Plaintiffs acquired said real property in July, 1962, at which time said property was in use as a duplex rental property. Said use had existed continuously since prior to May 1, 1960, and has continued to the present time without interruption.

Rule 56(e) requires affidavits shall be made on personal knowledge

Dated: Wailuku, Maui, Hawaii, DEC 29 1969, 1969.

Paul C. Gillette

Subscribed and sworn to before me
this 29th day of December, 1969.

(seal) (sgd) SANFORD J. LANGA
Notary Public, Second Judicial
Circuit, State of Hawaii

My commission expires: 8/21/72

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant

/

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

According to Land Use Commission Regulations, Part II, Sub-Part C, any property which is the site of a multi-family dwelling is in urban use. Specifically, the Commission's Regulations provide that, "[t]here shall be no more than one single-family dwelling per one-half (1/2) acre." permitted within a rural district. Land Use Commission Regulations, Part II, Sub-Part C, 2.16(b). A multi-family dwelling is not permitted or otherwise provided for in a rural district. Land Use Commission Regulations, Part II, Sub-Part C, 2.16. The regulations define the term "single-family dwelling" as "a dwelling occupied exclusively by one family." Land Use Commission Regulations, Part II, Sub-Part A, 2.3(m). Therefore, under the regulations, a multi-family dwelling is not a rural district use.

Prior to the enactment of Chap. 205. H.R.S., and for all times material to this action, Plaintiffs' property has

been used for residential purposes of the kind known as multi-family dwelling. Specifically, Plaintiffs' land has been, and still is, the site of a duplex apartment house. The court may take judicial notice of the fact that duplex apartment houses are used for the occupancy of more than one family.

Plaintiffs' property was not at any time material to this action, considered to be in agricultural or conservation use. As indicated above, the use of the property does not come within the prescribed use for rural districts. Therefore, by definition, Plaintiffs' property use falls into the urban use category.

"Any and all uses permitted by the Counties, either by ordinances or by regulations, shall be allowed within this [urban] district." Land Use Commission Regulations, Part II, Sub-Part C, 2.13.

When property (according to Land Use Commission Regulations,) was in urban use, at the time of the enactment of Chap. 205. H.R.S., as was Plaintiffs' property, then §205-2(1) H.R.S. must be applied. That section in part provides:

> "The [Land Use] Commission shall set standards for determining the boundaries of each class of district; provided, 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 ..."

This statute has been in effect with no substantive changes since the enactment of Act 187 in 1961, which established the Land Use Commission. Whenever there is conflict between the rules made by the commission and the establishment act of the Legislature, the act will control. The conflict in this case is between the districting mandate of §205-2(1) H.R.S. and the ruling of the Land Use Commission that Plaintiffs' property is in a rural district. Since the Legislature has already decided that land in urban use at the time of the establishing Act 187, as was Plaintiffs', is to be put in an urban district by the Commission, Commission rulings to the contrary are superseded and void.

Therefore, this court should find that the portion of Defendant's regulations which classifies Plaintiffs' land as a rural district is void as contrary to §205-2(1), H.R.S.

Dated at Wailuku, Maui, Hawaii, on DEC 29 1969.

/S/ SANFORD J. LANGA
Sanford J. Langa
Attorney for Plaintiffs

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant

_____/

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above Motion on for hearing before the Honorable S. George Fukuoka, in his Courtroom at Wailuku, Maui, Hawaii, on Friday the 9th day of January, 1970, at 9:00 o'clock A.M., or as soon thereafter as counsel may be heard.

Dated at Wailuku, Maui, Hawaii, this 29th day of December, 1969.

/S/ SANFORD J. LANGA
Sanford J. Langa

ASC
RO

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

Memorandum

From Walton D. Y. Hong, Deputy Attorney Gen'l Date August 24, 1970

To Ramon Duran, Land Use Commission File No.

Subject Supreme Court Case No. 4986, Gillettes vx. Land Use Commission of the State of Hawaii

HAW'N PRINTING

Rom:

Enclosed for your file and information is a copy of the Appellants Gillettes' Opening Brief filed with the Supreme Court.

Walton D.Y. Hong

RECEIVED
AUG 25 1970
State of Hawaii
LAND USE COMMISSION

NO. 4986

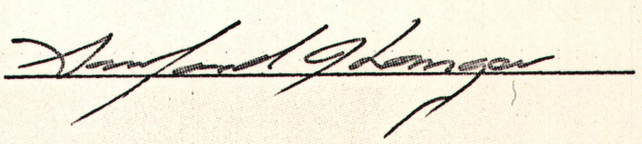
IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER A. D. 1969 TERM

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs-Appellants, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant-Appellee.	APPEAL FROM ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT ENTERED FEBRUARY 26, 1970, AND FROM SUMMARY JUDGMENT ENTERED MARCH 1, 1970. CIRCUIT COURT OF THE SECOND CIRCUIT HON. S. GEORGE FUKUOKA, JUDGE

OPENING BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS

I hereby certify that I served two copies of the within Opening Brief of Plaintiffs-Appellants upon the Attorney for Defendant-Appellee on this 15th day of August, 1970.



RECEIVED
ATTORNEY GENERAL
STATE OF HAWAII
REF. TO
ON
1970 AUG 17 AM 10:55

SANFORD J. LANGA #808
Wailuku Townhouse Building
Wailuku, Maui, Hawaii 96793
Telephone 244-9169

Attorney for Plaintiffs-Appellants.

SUBJECT INDEX

	Page
INDEX TO AUTHORITIES CITED	i
Statutes	
Cases	
STATEMENT OF JURISDICTION	1
QUESTIONS PRESENTED	2
STATEMENT OF CASE	3
SPECIFICATION OF ERRORS	4
ARGUMENT	5
DEFENDANT WAS MANDATED BY HRS §205-2(1) TO INCLUDE PLAINTIFFS' LAND IN AN URBAN ZONE, BECAUSE AT THE TIME THE LAW WAS ENACTED PLAINTIFFS' LAND WAS IN URBAN USE.	

INDEX TO AUTHORITIES CITED

STATUTES

	Page
HRS §205-2(1)	2, 3, 5, 6, 7, 8
HRS 205-8	7
Act 187, SLH 1961	6
Act 205, SLH 1963	6

CASES

Bishop Trust Co. v. Burns, 46 Haw 375, 381 P2d 687	6
In Re Johnson's Taxes, 44 Haw 519, 356 P2d 1028	6
Mann v. Mau, 38 Haw 421	6

STATEMENT OF JURISDICTION

The Second Circuit Court entered judgment for the Defendant on March 3, 1970 (Record. 36-37). Plaintiffs' Notice of Appeal was filed on March 25, 1970 (Record. 38-39). The Supreme Court's jurisdiction is invoked under HRS §602-5 as an appeal from a final judgment of the Circuit Court.

QUESTIONS PRESENTED

Whether the regulations of the LAND USE COMMISSION OF THE STATE OF HAWAII are illegal and void to the extent that they classify in a rural district land which, at the time of enactment of HRS §205-2(1), was in urban classification and was in use as duplex apartment rental property.

STATEMENT OF THE CASE

This case is an action for a declaratory judgment initiated by Plaintiffs in the Second Circuit Court. Plaintiffs own a parcel of land at Kula, Maui, which has been classified as "rural" by Defendant's regulations. Plaintiffs allege that Defendant's regulations are in violation of HRS §205-2(1) and are therefore void.

Plaintiffs acquired their property in July, 1962, at which time the property was in use as a duplex apartment rental property, a use which has continued to the present (Aff. of Paul C. Gillette, Record. p. 16). At and prior to July, 1962, Plaintiffs' property was classified as "urban" by Defendant's regulations. (Answer, paragraph 6, Record. p. 12.)

In 1964 Defendant amended its regulations altering the district boundaries so as to classify Plaintiffs' property as "rural" rather than "urban" (Answer, paragraph 7, Record. p. 12).

Both Plaintiffs and Defendant moved for summary judgment after the pleadings had been filed. The Circuit Court denied Plaintiffs' motion and granted Defendant's motion (Record. p. 34). Although the Order Granting Cross Motion for Summary Judgment (Record. p. 34) and the Summary Judgment (Record. p. 36), are a bit ambiguous in that they don't state just what the Court's judgment was, Plaintiffs will assume for the purposes of this appeal that the Court below held Defendant's regulations to be valid.

SPECIFICATION OF ERRORS

1. The Court below erred in granting Defendant's motion for summary judgment.

2. The Court below erred in denying Plaintiffs' motion for summary judgment.

ARGUMENT

DEFENDANT WAS MANDATED BY HRS §205-2(1) TO INCLUDE PLAINTIFFS' LAND IN AN URBAN ZONE, BECAUSE AT THE TIME THE LAW WAS ENACTED PLAINTIFFS' LAND WAS IN URBAN USE.

The Plaintiffs rely primarily in this appeal on the statutory mandate contained in HRS §205-2(1), which provides as follows:

> ... 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.

This provision was contained in the original Land Use Law (Act 187, SLH 1961, section 3) and was re-enacted in the general revision of the law in 1963 (Act 205, SLH 1963, section 2) as §98H-2(a), RLH 1955.

It is Plaintiffs' contention in this proceeding that their land was in urban use at the time of enactment of the land use law and that therefore their land is by law required to be included in an urban zone. The Defendant disputed in the court below both (1) whether duplex apartment use is an urban use, and (2) whether §205-2(1) required land in urban use to be zoned urban.

As it now stands, Chapter 205 does not contain a statutory definition of "urban use." It therefore is appropriate to look to the ordinary and usual meaning of the phrase to

establish the statutory meaning. (See Bishop Trust Co. v. Burns, 46 Haw 375, 381 P2d 687; In Re Johnson's Taxes, 44 Haw 519, 356 P2d 1028; Mann v. Mau, 38 Haw 421). Looking to its ordinary meaning, the phrase "urban use" is relatively clear and unambiguous and means a use characteristic of cities and towns rather than of farms, ranches, etc.

It is a conceded fact of this case that Plaintiffs' land is, and was when the law was enacted, in duplex apartment rental use (Aff. of Paul C. Gillette, Record. p. 16). Since the conceded use of Plaintiffs' property is one which is characteristic of cities and towns, and not characteristic of farms and other rural areas, Plaintiffs submit that their land is squarely within the statutory mandate.

In the Court below, the Defendant did not seek to contradict the material allegations of the Plaintiffs' affidavit regarding the actual land use, but instead argued to the court that HRS §205-2(1) should be read as requiring land in urban use to be zoned urban only if that land happens to be "characterized by city-like concentrations of people, structures, streets and the like." (Page 4 of Memorandum in Support of [Defendant's] Motion, Record. p. 27); thus denying the benefits of the statute to every small landowner whose land is not large enough to have "city-like concentrations" within it. The only direct statutory support Defendant could find for this proposition was in a portion of Act 187 SLH 1961. As to that statutory authority, Plaintiffs need only point out that the Legislature has repealed the provision Defendant relies on (Act 204, SLH 1963).

Beyond citing the repealed statute, Defendant's only argument for its peculiar reading of HRS §205-2(1) is based on a supposed inconsistency with HRS §205-8. Defendant's argument seemed to be that the plain meaning of §205-2(1) if accepted would render §205-8 meaningless or futile. Defendant's argument, however, was based on a misreading of both sections. The two sections are as follows

> §205-2(1) 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;

> §205-8 Nonconforming uses. The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; provided that no nonconforming building shall be replaced, reconstructed, or enlarged or changed to another nonconforming use and no nonconforming use of land shall be expanded or changed to another non-conforming use. In addition, if any nonconforming use of land or building is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.

It is clear from a comparison of the two sections that §205-2(1) is designed to protect landowners in one particular situation against the severe consequences of §205-8. That is, §205-2(1) is a prohibition against the creation of non-conforming use status as to land in urban use when the law was enacted.

As to urban uses that began after 1963, HRS §205-2(1) would not apply, and presumably non-conforming uses may have been properly created by the 1969 re-districting. (The record

in this case would not, of course, show whether or not that happened.) In any event, since Plaintiffs' land was in urban use in 1963 and before, HRS §205-2(1) protected it against becoming a non-conforming use under Defendant's 1964 regulations, and the statutory protection continues under Defendant's current 1969 regulations.

Plaintiffs submit that the Court below erred in granting Defendant's motion for summary judgment and further erred in denying Plaintiffs' motion for summary judgment, and that the judgment below should be reversed with instructions to enter judgment declaring Defendant's regulations illegal and void to the extent that said regulations purport to classify Plaintiffs' land in any classification other than "urban."

Respectfully Submitted

Sanford J. Langa

Gillette File

ROUGH DRAFT

CHRONOLOGICAL SUMMARY OF EVENTS REGARDING PAUL C. AND MARTHA G. GILLETTE PETITION (A67-171)

1. ~~On~~ November 29, 1967 - Paul C. Gillette filed a rezoning petition with the Land Use Commission to rezone TMK 2-3-19:28 to change present classification of Rural District into an Urban District.
2. ~~On~~ November 30, 1967 - the Executive Officer acknowledged receipt of the letter and the $50 filing fee. cc: Maui Planning Commission.
3. ~~On~~ November 30, 1967 - petition referred to Robert Ohata and Maui County Planning Commission.
4. December 26, 1967 - LUC received recommendation from Maui County to deny application based on the staff report also attached.
5. February 12, 1968 - Letter to Paul Gillette from Executive Officer stating meeting will be held on March 8, 1968 in Kahului, Maui, to conduct a public hearing on his application.
6. February 13, 1968 - Executive Officer received letter from Paul Gillette commenting on discrepancies of the Maui County staff report.
7. February 7, 1968 - Public notice appeared in the Maui News.
8. March 8, 1968 - LUC conducted public hearing. Staff recommended denial on the basis of sufficient urban reserve land has been set aside for foreseeable urban growth in the Kula area.

9. March 25, 1968 - LUC received letter from Stanford J. Langa, attorney for petitioner which stated:

   1. Gillette's land was in the temporary Urban District when purchased.
   2. Land was in urban use.
   3. Adjacent land in commercial use and land across the road zoned urban.
   4. Gillette's land not suited for agricultural use.
   5. Land is needed by Gillette for residential use of the type only permissible in urban zone.

   Langa also pointed out that 98H-2, RLH 1955, as amended, provided: "that (a) in the establishment of boundaries of Urban Districts, these lands now in urban use shall be included (in the Urban District)."

10. April 30, 1968 - Letter to Paul Gillette from EXECUTIVE OFFICER advising the Commission will meet at 7 p.m., May 17, 1968, Wailuku, Maui.

11. May 17, 1968 - Staff report summarized the above-mentioned material and again recommended denial of the petition. Motion to approve by Nishimura, seconded by Choi was defeated by the following votes: Ayes - Choi, Napier, Nishimura, Murakami, Burns. Nayes - Mark, Kido, Inaba, Wung.

12. May 21, 1968 - Executive Officer notified Gillette that his petition to rezone 3 acres of land situated in Kula from Rural to Urban was denied by the LUC.

13. June 3, 1968 - LUC received a letter from Langa wherein he raised the matter that the question of law raised by Gillette's petition had not been considered that the Land Use Law mandated the inclusion of urban uses in the Urban District.

14. June 7, 1968 - LUC at a meeting considered Langa's letter and requested a legal opinion from the Attorney General's office and decided not to reconsider the petition but to defer action pending the Attorney General's opinion and requested that the applicant agree to a 60-day extension.

15. June 17, 1968 - Letter to the LUC from Gillette agreeing to the extension of time.

16. August 8, 1968 - Memorandum from George Pai to the Executive Officer advising the Commission that they had the power to make a decision as to whether the area should be zoned urban or rural.

17. August 30, 1968 - Commission met in Honolulu and considered the Attorney General's opinion and voted not to reconsider their action of May 17, which was unanimously approved by the seven members present.

18. September 3, 1968 - Executive Officer wrote to Gillette informing him that the Commission reviewed the memorandum legal opinion and voted to uphold their original opinion on May 17 and that the petition is denied.

19. October 23, 1968 - Executive Officer was served a "complaint" for declaratory relief and summons" Civil No. 1198 by the Sherriff's office.

3666

CABLE ADDRESS:
ATTGEN

WDYH:ai

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HAWAII STATE CAPITOL
HONOLULU, HAWAII 96813

March 3, 1970

RECEIVED
MAR 4, 1970
State of Hawaii
LAND USE COMMISSION

Mr. Wilburt Choy
Chairman, Land Use Commission
Department of Planning and
Economic Development
State of Hawaii
Honolulu, Hawaii

Re: Second Circuit Civil No. 1198,
Gillettes vs. Land Use Commission
of the State of Hawaii

Dear Mr. Choy:

Please be advised that Judge Fukuoka has ruled in favor of the Land Use Commission in the above case.

Enclosed for your information are copies of our Cross-Motion for Summary Judgment, and Judge Fukuoka's Order Granting Cross-Motion for Summary Judgment. Also enclosed is a copy of the Summary Judgment Order which I have prepared for Judge Fukuoka's signature, which upon the Judge's signing would formally close this portion of the proceedings.

The plaintiffs will have 30 days from the date that Judge Fukuoka signs the Summary Judgment Order within which to appeal, if they should so decide. I will keep you informed if an appeal should be taken to the Hawaii Supreme Court.

Yours truly,

Walton D.Y. Hong

Walton D. Y. Hong
Deputy Attorney General

Encs.

cc: Mr. Ramon Duran
Executive Officer
Land Use Commission

mr Hong

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant.

2ND CIRCUIT COURT
STATE OF HAWAII
WAILUKU, HAWAII
FILED
1970 FEB 10 AM 10 09
(SGD.) HELEN H. CORREA
CLERK

CROSS-MOTION FOR SUMMARY JUDGMENT

MEMORANDUM IN SUPPORT OF MOTION

and

NOTICE OF MOTION

I hereby certify that I served a copy of the within Cross-Motion, Memorandum & Notice on Sanford J. Langa, Esq., ___, Attorney for Plaintiffs, by depositing the same in the United States Post Office at Honolulu, Hawaii, properly addressed and postage prepaid, on the 9th day of February, 1970.

Walton D.Y. Hong
Deputy Attorney General

BERTRAM T. KANBARA 261
Attorney General
State of Hawaii
and
WALTON D. Y. HONG 890
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Attorneys for Defendant

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

CROSS-MOTION FOR SUMMARY JUDGMENT

The Defendant Land Use Commission of the State of Hawaii moves this Honorable Court to grant summary judgment in favor of the Defendant on the grounds that there is no genuine issue as to any material fact and that the Defendant is entitled to a judgment as a matter of law on the theories that:

a. The Plaintiffs' use of the property is a nonconforming use under section 205-8 of the Hawaii Revised Statutes;

b. Section 205-2(1) of the Hawaii Revised Statutes has no application to the instant action; and

c. The property was properly placed in the rural district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations.

This Motion is based on the following Memorandum in Support of Motion, and the files and proceedings of this case.

NOTICE OF MOTION

TO: SANFORD J. LANGA, ESQ.
207 Wailuku Townhouse Building
Wailuku, Maui, Hawaii 96793

Please take notice that the undersigned will bring the foregoing Motion on for hearing before the Honorable Judge S. George Fukuoka, in his Courtroom at Wailuku, Maui, Hawaii, on Thursday, the 19th day of February, 1970, at 9:30 o'clock A.M., or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawaii, February 9, 1970.

Walton D.Y. Hong

WALTON D. Y. HONG
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Attorney for Defendant

MEMORANDUM IN SUPPORT OF MOTION

I. The property is a nonconforming use under section 205-8, H.R.S., and section 205-2(1), H.R.S., has no application thereto.

The Defendant Land Use Commission of the State of Hawaii, hereinafter called the "COMMISSION", contends that the Plaintiffs Gillettes', hereinafter called the "GILLETTES", use of the property is a nonconforming use, that the property was not in urban use, that section 205-2(1) of the Hawaii Revised Statutes does not mandate that the property be placed in the urban district, and that to so hold would destroy completely the purpose of the nonconforming use provision of the Land Use Law.

Section 205-8 of the Hawaii Revised Statutes states, in pertinent part, that:

> "The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; . . ."

Section 2.3(t) of the Land Use Commission Regulations defines nonconforming use as:

> ". . . the use of a building or structure, or of a parcel of land, lawfully existing at the time of adoption of the State Land Use District Regulations and Boundaries or subsequent amendments made thereto, that does not conform to the State Land Use District Regulations and Boundaries."

The Commission contends that the use of the property is a nonconforming use and that section 205-2(1), H.R.S., has no application to the instant case.

The Gillettes contend that section 205-2(1), H.R.S., mandates that the property be placed in the urban district by reason that a multi-family dwelling, to wit, a duplex, was situated thereon prior to the establishing of the rural district boundaries in final form. The bases for the Gillettes' contention are that only a single-family dwelling is permitted in a rural district under section 2.16 of the Land Use Commission Regulations, that the property was never considered to be in agricultural or conservation use, and that therefore the property must have been in urban use. Therefore, the Gillettes conclude that section 205-2(1), H.R.S., which states in pertinent part, 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;" mandates that the Commission place the property in the urban district.

An analysis of the Gillettes' contention reveals that their conclusion is based on the premise that if a use does not conform to a rural, agricultural, or conservation use, as defined by Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations, it must, by the process of elimination, therefore be an urban use.

The Commission contends that such a premise cannot be upheld; to do so would result in the undermining of the purposes of the Land Use Law and would leave the nonconforming use provision meaningless.

At present, there are hundreds of parcels of property throughout the State in rural and agricultural

districts which have uses that are not in conformance with the uses prescribed for their respective districts. There are service stations, grocery stores, motels, and hospitals which have existed prior to the establishing of the rural and agricultural district boundaries in final form. Carried to its logical conclusion, the Gillettes' contention would mean that all of these pre-existing nonrural, nonagricultural, or nonconservation uses must result in the property being placed in an urban district. This would result in spot zoning throughout the State, clearly contrary to the need for logical and uniform development of the lands in the State.

Furthermore, the Gillettes' analysis would leave the nonconforming provision of the Land Use Law, section 205-8 of the Hawaii Revised Statutes, without any meaning whatsoever. The purpose of the nonconforming use provision was to permit continued uses of the property while classifying nonurban districts in final form, where such uses did not conform to the uses prescribed for the district where the property is situated. To hold that any nonrural, nonagricultural, or nonconservation use is therefore an urban use to be placed in an urban district would eliminate the nonconforming use.

However, the Commission acknowledges that section 205-2(1), H.R.S., must be reconciled with section 205-8, H.R.S. To carry the nonconforming use provision without restriction to its logical conclusion would

leave the mandate of section 205-2(1), H.R.S., meaningless, for it would give the Commission the authority to classify any land as rural or agricultural and determine that the uses thereon are nonconforming uses. Thus, the Commission could classify downtown Wailuku as rural and regard all the existing businesses as nonconforming uses.

Therefore, the Commission contends that the term "urban use", as used in section 205-2(1), H.R.S., must be defined as "any and all uses permitted by the counties, either by ordinances or regulations, and which are characterized by city-like concentrations of people, structures, streets and the like." Only in this manner can the apparently conflicting provisions of the Land Use Law, sections 205-2(1) and 205-8, H.R.S., be reconciled in a logical and reasonable manner.

While Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations do not define "urban use", the Commission's position is not without support. The original Land Use Law, Act 187, S.L.H. 1961, defined "urban" as ". . . areas characterized by 'city-like' concentrations of people, structures, street and other related land uses."

Furthermore, such a definition of "urban use" would afford a logical and reasonable reconciliation of sections 205-2(1) and 205-8 of the Hawaii Revised Statutes. It would prevent arbitrary and possibly capricious classification of

land, under the nonconforming use provision, into a rural or agricultural district where true urban uses exist, such as Wailuku. It would also prevent the undermining of the Land Use Law and the rise of spot zoning under section 205-2(1) where nonrural, nonagricultural and nonconservation uses existed prior to the establishment of nonurban district boundaries in final form.

II. The property was properly placed in the rural district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations.

The Commission contends that the property of the Gillettes under consideration was rightfully placed in the rural district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations.

Section 205-2 of the Hawaii Revised Statutes states that:

> "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 the 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."

Section 2.10 of the Land Use Commission Regulations sets forth the standards for the rural district classification as follows:

"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 [less?] 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.

(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."

The Commission concedes that the use of the Gillettes' property does not meet the density requirements of "(b)", above. However, the Commission contends that, as the existence of a duplex is a nonconforming use under section 205-8, H.R.S., this failure to meet the density requirements does not detract from the fact that the property meets the other standards for a rural district.

Furthermore, the Gillettes' property does not conform to the standards for the urban districts, as set forth in the Land Use Commission Regulations. Section 2.7 of the Land Use Commission Regulations states, in part, that:

> "In determining the boundaries for the 'U' Urban District, the following standards shall apply:
>
> (a) It shall include lands characterized by 'city-like' concentration of people, structures, streets and other related land uses.
>
> (b) It shall take into consideration the following specific factors:
>
> (1) Proximity to centers of trading and employment facilities.
>
> (2) Economic feasibility and proximity to basic services such as sewers, water, sanitation, schools and playground and police and fire protection.
>
> * * * * *
>
> (d) It shall include sufficient reserve areas for urban growth in appropriate locations, based on a 10 year projection. . . ."

The Commission contends that the area is not characterized by "city-like" concentrations of people, structures, streets and other related land uses, is not in close proximity to centers of trading and employment facilities, and is not needed as a reserve area for urban growth, there being sufficient undeveloped urban lands in the immediate area.

The Defendant Land Use Commission of the State of Hawaii therefore concludes that the property was placed

rightfully in the urban district classification in accordance with Chapter 205 of the Hawaii Revised Statutes and the Land Use Commission Regulations, and that this Honorable Court should grant its Cross-Motion for Summary Judgment.

Dated: Honolulu, Hawaii, February 9, 1970.

Walton D. Y. Hong
Deputy Attorney General

Attorney for Defendant

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant.	)

STATE OF HAWAII
WAILUKU, HAWAII
FILED
1970 FEB 26 AM 11 36
(SGD.) HELEN H. CORREA
CLERK

RECEIVED
ATTORNEY GENERAL
STATE OF HAWAII
1970 FEB 27 AM 10 49

ORDER GRANTING CROSS-MOTION

FOR SUMMARY JUDGMENT

I HEREBY CERTIFY that on February 26, 1970, I served a copy of this ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT by depositing the same in the U. S. Post Office at Wailuku, Maui, Hawaii, postage prepaid and properly addressed, upon SANFORD J. LANGA, ESQ., Attorney at Law, Wailuku Townhouse Bldg., Wailuku, Maui and HON. BERTRAM T. KANBARA, Attorney General, State of Hawaii, Hawaii State Capitol, 415 South Beretania Street, Honolulu, Hawaii 96813.

/sgd/ ETHEL M. MIYAHIRA

SEAL
COURT

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE, Plaintiffs, vs. LAND USE COMMISSION OF THE STATE OF HAWAII, Defendant.	)

ORDER GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT

IT IS HEREBY ORDERED that Plaintiffs' Motion for Summary Judgment be denied and Defendant's Cross-Motion for Summary Judgment be granted.

DATED: February 26, 1970.

/sgd/ S. GEORGE FUKUOKA

Judge of the Above-Entitled Court

SEAL
CCURT

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

SUMMARY JUDGMENT

The cross-motion of the Defendant Land Use Commission of the State of Hawaii for summary judgment pursuant to Rule 56 of the Hawaii Rules of Civil Procedure, having been presented, and the Court being fully advised,

The Court finds that the Defendant is entitled to a summary judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's cross-motion for summary judgment be granted, and judgment is hereby rendered in favor of the Defendant Land Use Commission of the State of Hawaii.

Dated: Wailuku, Maui, Hawaii, March ____, 1970.

Judge of the Above-Entitled Court

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

SUMMARY JUDGMENT

BERTRAM T. KANBARA 261
Attorney General
State of Hawaii

WALTON D. Y. HONG 890
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania St.
Honolulu, Hawaii 96813

Attorneys for Defendant

KULA *gardens*

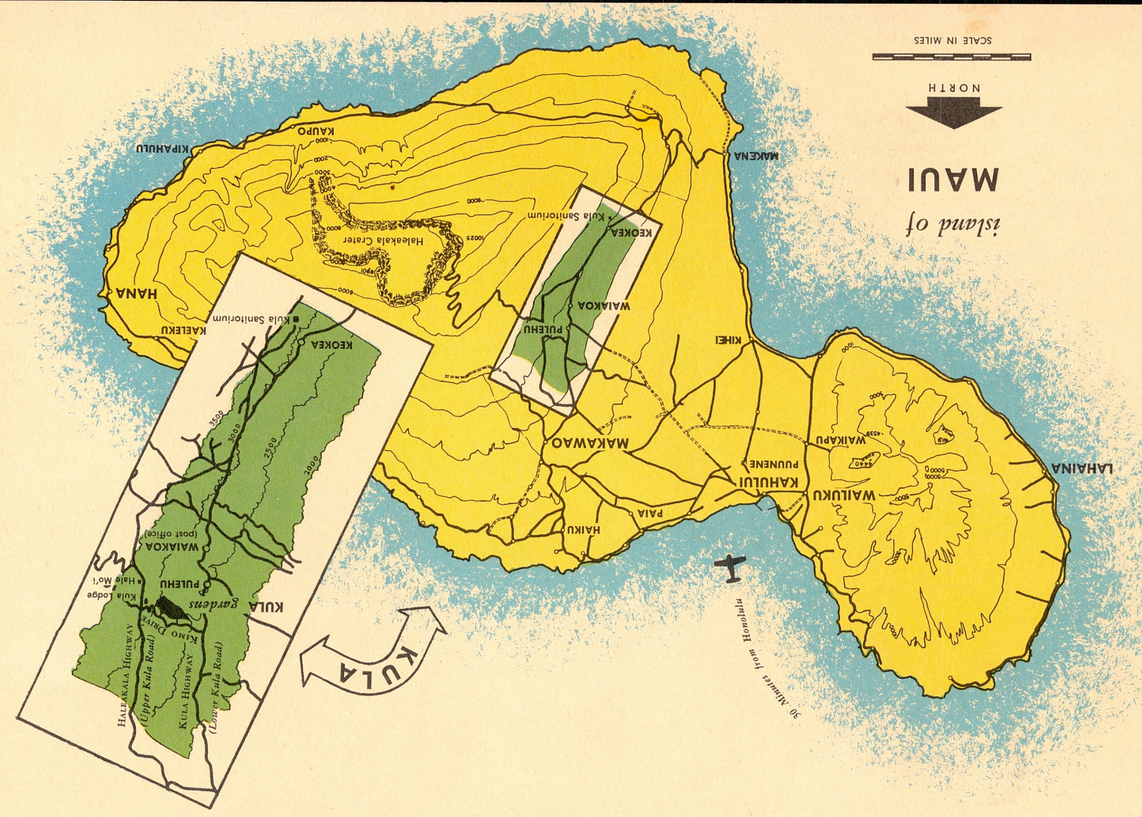
An exclusive residential park at Kula, Maui, on the slopes of majestic Haleakala . . . creatively designed for persons of discernment.

Planning and engineering by HARLAND BARTHOLOMEW & ASSOCIATES

Development by KULA DEVELOPMENT CORPORATION



Approaching Kula, Maui, in distance below the clouds.



THE CHARM OF KULA

WITH JUSTIFIABLE PRIDE, Maui folks repeat their slogan, "Maui no ka oi." Among the many reasons why they feel that "Maui is the best" are the serene Kula slopes of cloud-wreathed Haleakala.

Rising 10,000 feet above tropic seas, dome-shaped Haleakala creates the salubrious Kula climate by splitting the northeasterly trade winds. By the time the deflected trades reach the leeward slopes, their velocity and moisture have been spent; annual rainfall averages only 30 inches, and strong winds are a rarity. The crisp mountain air is usually still but for the singing of wild birds and occasional country sounds: a dog barking, a cock crowing, a tractor at work in the fields, a chain saw cutting wood.



Flowers flourish in Kula soil and climate.

The prime section of Kula is a belt between 2,500 and 3,500 feet elevation—above the heat and below the clouds, where rich volcanic soils support luxuriant growth and the panoramic view is one of Nature's most inspiring masterpieces. The pastoral Kula tapestry is woven of vast, sprawling ranches, interspersed with vegetable and flower farms, orchards, woodlots, and small ranches. In a quilt-like pattern, pineapple and sugar fields blanket the lower slopes and isthmus below. Distant West Maui mountains form a fleece-capped backdrop; to the left looms Lanai, a phantom island in a silver sea.

Utterly relaxing—with its pastoral character and panoramic view, yet briskly invigorating—with its equable, temperate-zone climate, Kula is ideal for an exhilarating respite from year 'round tropic living, a perfect place for retirement.



Typical Kula view of isthmus and West Maui.

Over the centuries, a few Kona rains each year have etched several major gulches and innumerable tributaries into the Kula mountainside. These dry rivers, with their cascading dry falls, add rugged beauty to the area and provide an unusual degree of privacy for home sites.

Pohakuokala Gulch, steep-sided and more than 300 feet across in many places, forms the southern boundary of Kula Gardens. Two tributary gulches form most of the northern boundary, and a Y-shaped gulch dominates the central area. Elevation of the 70-acre site ranges from 2,500 to 3,000 feet over a distance of about three-fourths of a mile. Median width of the site is about one-fourth of a mile.

Planning the development of this dissected mountain slope has proven both an exciting challenge and a stimulating opportunity. An exclusive residential park, tastefully complementing Nature's handiwork, has been creatively designed by Harland Bartholomew & Associates—a name which is nationally recognized as a hallmark of quality in community planning and engineering.

The Y-shaped interior gulch has been encompassed in an 11-acre private park which includes a centrally located recreation site. The park and both entrances to Kula Gardens will be landscaped, and two overlooks will avail all residents of the beauty of Pohakuokala Gulch. Kula Gardens Community Association will own and develop these community properties and will also determine architectural standards for homes in the subdivision. Membership in the Association will be limited exclusively to owners of Kula Gardens lots.

A CREATIVELY DESIGNED RESIDENTIAL PARK

AN ARTIST'S CONCEPT OF

KULA *gardens*

AFTER DEVELOPMENT

LOTS WITH INDIVIDUALITY

Because of the nature of the terrain, all of the 119 residential lots in Kula Gardens have their own individuality. There are lots to suit every preference: flat lots and steep lots, lots with deep stoneless soil and lots with beautiful moss-rock outcroppings, lots on the mainstream of traffic and lots on secluded cul-de-sacs, lots above the road and lots below the road, lots with a northwesterly view and lots with a southwesterly view.

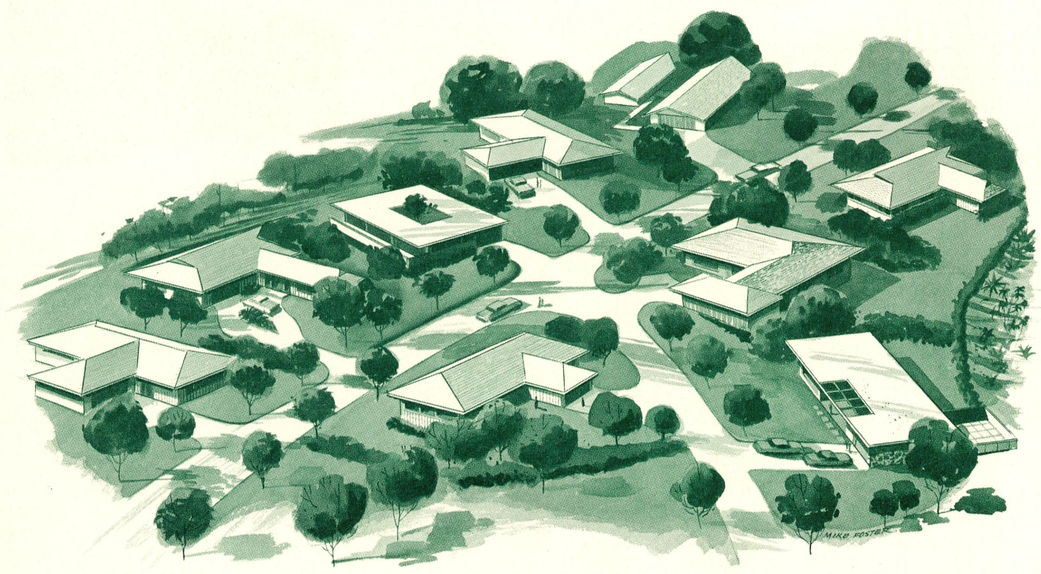
Frontage of the majority of lots is 100 feet or more, and most of the common boundaries are at right angles to the road to allow maximum utilization of the lot area. Roads have been designed to optimum engineering standards, with all intersections as nearly at right angles as possible and all curves based on desirable radii for safety and driving ease.

The value of Kula Gardens property, established by Nature and enhanced by superior design, will be preserved through deed covenants and Community Association regulations. For example, lots will be used solely for single-family dwellings and related buildings; they cannot be resubdivided for 20 years. With minor exceptions, obstruction of natural drainage channels will not be permitted, meaning that access to homesites within some lots will entail crossing an interior gulch. Compensating advantages for such lots are the exceptional privacy and the challenging opportunity offered for outstanding architectural and landscaping design.

The map reproduced here, derived from the preliminary map filed with the County of Maui, has been oriented according to slope rather than compass direction. Topography is indicated by contour intervals of 25 feet, plotted from a detailed survey of the site. In general, the closer the contours the steeper the terrain. Keeping in mind that one inch equals approximately 200 feet, you can roughly determine the degree of slope. Your broker has a more detailed map at a scale of 1″:100′ showing contours at intervals of 5 feet. Profiles of specific lots, at a scale of 1″:40′, will be prepared on request.



ARTIST'S CONCEPT OF TYPICAL NEIGHBORHOOD
PLAN VIEW



PERSPECTIVE VIEW OF TYPICAL NEIGHBORHOOD

CONSTRUCTION OF IMPROVEMENTS

The gracefully curving 40-foot roadway within Kula Gardens will be macadam-paved to 20 feet by Kula Development Corporation and deeded to the County of Maui. An 8-inch water main, hydrants, and a 100,000-gallon tank will also be constructed by the subdivider and conveyed to the County water department. Underground electric and telephone systems will be installed ~~by the Community Association~~.

~~Construction of the improvements will be timed to coincide with the anticipated availability of additional County water to serve the Kula area. In no event will the completion of improvements be deferred beyond December 31, 1966~~. The subdivider will assure construction of these improvements by providing a satisfactory guarantee to the Maui County board of supervisors in accordance with applicable ordinances.

~~In view of the deferred construction~~, Kula Gardens lots are being offered on easy terms~~, as an investment in "futures."~~ All payments will be handled by Bank of Hawaii, and all Community Association funds will be in the custody of a trust company to guarantee the security of your investment.

For retirement, for a vacation home site, or purely for a sound investment . . . see your broker to reserve your lot in Kula Gardens, an exclusive residential park creatively designed for persons of discernment by Hawaii's leading community planners, Harland Bartholomew and Associates.

***Developed by* KULA DEVELOPMENT CORPORATION**
Offices at 902 Nuuanu Avenue, Honolulu 17



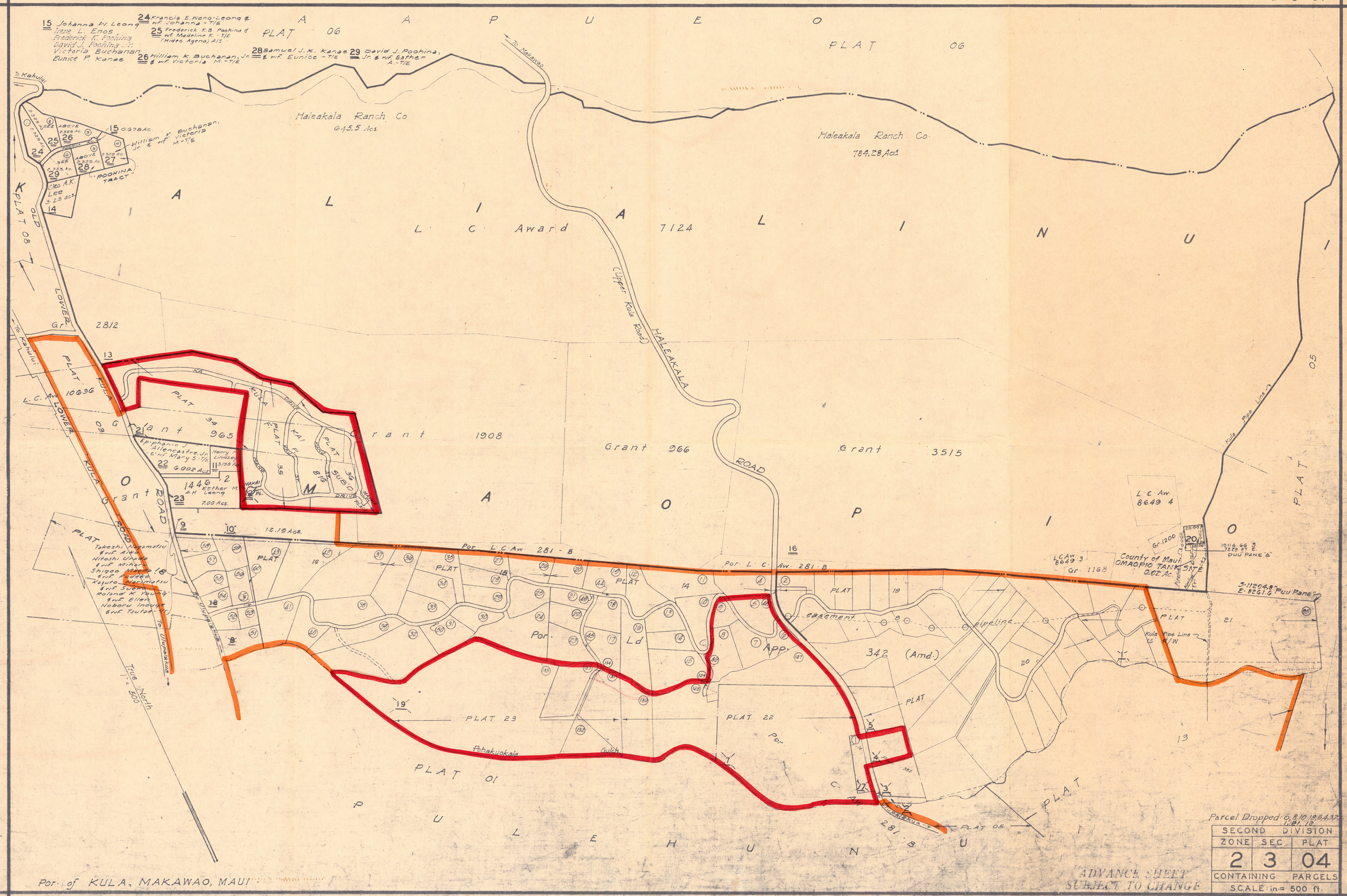
PRELIMINARY MAP OF

KULA *gardens*

AT OMAOPIO, KULA, MAUI
STATE OF HAWAII

HARLAND BARTHOLOMEW & ASSOCIATES
City Planners • Civil Engineers • Landscape Architects • Architects
925 Bethel Street, Honolulu 13

7617


2 3 04
15 Johanna W. Leong
Irene L. Enos
Frederick K. Poohina
David J. Poohina Jr.
Victoria Buchanan
Eunice P. Kanae
24 Francis E. Wong-Leong & wf. Johanna - T/E
25 Frederick K.B. Poohina & wf. Madeline K. - T/E (Hideo Agena) A/S
26 William K. Buchanan, Jr. & wf. Victoria M. - T/E
28 Samuel J.K. Kanae & wf. Eunice - T/E
29 David J. Poohina, Jr. & wf. Esther A. - T/E
A A P U E O
PLAT 06
To Kahului
To Makawao
Haleakala Ranch Co
645.5 Acs.
Haleakala Ranch Co
784.28 Acs.
William K. Buchanan, Jr. & wf. Victoria M. - T/E
"POOHINA TRACT"
Cleo A.K. Lee
3.25 acs.
A L I A L I N U I
L C Award 7124
Upper Kula Road
HALEAKALA ROAD
OLD LOWER KULA ROAD
PLAT 08
Gr. 2812
L.C. Aw. 10636
Grant 965
Grant 1908
Grant 966
Grant 3515
Epiphanio J. Allencastre, Jr. & wf. Mary S. - T/E
Henry P. Lindsey
Esther M. A.H. Leong
7.00 Acs.
12.19 Acs.
O M A O P I O
Por. L.C. Aw. 281 - B
Por. Ld. App. 342 (Amd.)
easement
pipeline
Kula Pipe Line
L.C. Aw. 8649 4
Gr. 1200
County of Maui OMAOPIO TANK SITE 0.02 Ac.
L.C. Aw. 8649 3
Gr. 1168
S-11204.8 E-8261.6 "Puu Pane"
Takeshi Nagamatsu & wf. Aiko
Hitoshi Urada & wf. Mihara
Shigeo Maeda & wf. Fudeko
Kazuto Narimatsu & wf. Sueko
Roland K. Young & wf. Ellen
Noboru Inouye & wf. Tsutae
To Ulupalakua
True North 1" = 500'
PLAT 23
PLAT 22
Pohakuokala Gulch
PLAT 01
PLAT 05
P U L E H U N U
Por. of KULA, MAKAWAO, MAUI
Parcel Dropped 6, 8, 10, 18, 5, 4, 3, 2, 1, 21, 12.
SECOND DIVISION
ZONE 2
SEC 3
PLAT 04
CONTAINING PARCELS
SCALE: in.= 500 ft.
ADVANCE SHEET SUBJECT TO CHANGE
PRINTED JAN 15 1968
7618
Revised to
Dwg No.
By: N.A. & D.S.C.
Source: Tax Maps Bureau

August 30, 1968
Honolulu, Hawaii

(CHOI) Rom, how long----------

(DURAN) I think we should hear from them next week.

(MURAKAMI) Have you had correspondence or contact with San Francisco?

(DURAN) Yes, I called them since I talked to you here and asked them what the dispositions of our contracts were. Also, I wanted to clarify this 12-month period. In other words, all federal contracts with State agencies are now for 12 months; and I discovered that the day ~~you~~ they approve your application request begins your time period which was back in May 6. Of course, as you know, we budgeted our money ~~it~~ in the pervious year for the following fiscal year beginning July 1. We entered into a contract for this study with the federal people on June 21 and negotiated then with the consultants and started the paper work on the contract but with the expectation of receiving our money July 1. So, we find out that "no" the contract actually began May 6 and ends May 6, 1969. So, I've been talking with the local people in San Francisco learned that we had to ask for an extension. So, I pointed out that your contract read July 1 for completion and August ~~3~~ 13 for completion of the reports. This would coincide with our public hearing schedule which has been tentatively set up to meet the statutory requirements for public hearings and actions. So, it appears not to be any problem. Our letter's already out there. They probably received it and there seems there will be an automatic extension of contract time. But, that's the thing that's holding up the signing of that contract right now. It should be resolved next week. We then have a valid contract and we can pay them because we already have State funds available. Well, we can expect monthly reports then?

(ECKBO) Oh, yes.

Gillette

(DURAN) You may recall this case of Mr. Gillette. He's up in the near the Silversword Inn. This is the Pukalani area. Kahului's ~~i~~ up this way, and this is the road up to Haleakala. And we have this vast area of rural with this Urban District in here this was a non-conforming subdivision that was zoned in the Urban District

and this other urban area. I guess we call it the Jamestown area. That's a sizeable area and it was due to a great deal of pressure on the part of Maui County that this was put in urban. Mr. Gillette asked that his property be zoned in the Urban District. The staff recommended against it because of all of the vacant areas within this existing Urban District. On May 17 in Lihue, Kauai, the Commission met and denied this petition by a 5 to 4 vote. Then, following our denial of his request, we received a letter from his attorney, Stanford Langa, and he inferred that according to the Land Use Law, the Commission was mandated to put his property in the Urban District because it already had an urban use on the property. On his 3 acres of land which incidentally was purchased at the time of the temporary district boundary dedicated all of this as urban. The purchase at that time was in the Urban District and he contends that since he had a duplex on his property that it was in urban use. Therefore, the Land Use Commission was mandated by law to put that in an Urban District. So, we--actually he asked for a reconsideration on his petition. The Commission deferred action on his request for a legal opinion from our attorney which we have received and I thought that perhaps George ought to read it now and decide what to do with this case.

(PAI) Well, it's kind of a wordy opinion. I'll just summarize it. I think there's another point that Rom didn't bring up and that is part of prior history that at the outset of Act 187 was passed, the Commission placed it in the temporary Urban District. Then, subsequently, it was placed in the Rural District. Then, of course, this petition came along for rezoning; and the Commission denied it. In reviewing the actionary thing, why we concluded here that as a matter of law, the Commission wasn't mandated to put that parcel in the Urban District as contended by Mr. Gillette. In other words, we thought that the actions of the Commission first in placing the land within the Rural District and also in denying the petition was not in consistent--------- It was perfectly in the powers of the Commission to the acts that we did.

(CHOI) Am I to understand that that was at one time Urban and not Rural?

(PAI) It was in a temporary district because your original Act 187 said you only had 3 districts--Urban, Agriculture, and Conservation. So, at the outset it was placed temporarily in the temporary Urban District. I don't know whether you recall, but at the outset everything was placed in temporary districts just to preserve the status quo until permanent districts could be adopted. This was as set out in the Act. Now, in between the establishment of the temporary district boundaries and the establishment of the permanent district boundaries, the Land Use Law was amended to provide for the Rural District. So, with this new rule category coming into play, the Commission in considering permanent district boundaries, placed this in the Rural District.

(CHOI) How do the Commissioners feel on this?

(INABA) Don't worry about the temporary districts because in Kona we have----------

(DURAN) I think the point he's trying to make is that when he bought it, it was in the Urban zone.

(NISHIMURA) I don't see much change because his land is such that------- I don't see how you can cut up into a smaller lot.

(MURAKAMI) I think that there's going to be some new owners for the Silversword Inn or already have new owners. So, if he figures that if it was in Urban, he could get a better price for that side. And, when they purchase that piece from him, they would be able to build some units. But, if Silversword purchased that instead, they could come back for a Special Permit for hotel rooms. Isn't that right?

(NISHIMURA) Do you think Silversword will expand their operation?

(MURAKAMI) Well, according to him and if Silversword have if new owners or are going to have new owners if with money, they will because that place is too small. But, the owners don't have money. They've been in financial problems for the last 3, 4, or 5 years I don't know.

(NISHIMURA) They're not making money that's why.

(MURAKAMI) I wouldn't say that. I would say poor management.

(CHOI) How do you feel on this Keigo?

(MURAKAMI) Well, my feeling is this Wilbert. The guy wants a rezoning so he can get a better price for his piece of property.

(NISHIMURA) I don't think that the Land Use Law is providing

(MURAKAMI) They didn't make the law for that. This is my feeling.

(CHOI) If I was him and bought a piece of propetty that was then in Urban, and subsequently it was taken away from me with a highly developed land use next door, I would feel that I deserve consideration.

(DURAN) There is some question in my mind as to whether or not this is still a valid petition that we've asked him for an extension of time for action on it, and he's granted that to us. In other words, if we had to revote on this thing. It was denied, right.

(PAI) It was extended merely to for the legal opinion.

(DURAN) Here's what happened. The action was taken, and it was denied but the time for action hadn't expired. We got a letter in before the time for actioning expired even though we did take action on it, and I thought we reactivated the petition then in lieu of a legal opinion on that matter because we actually asked the petitioner for an extension of time on the action portion, the 60 day period before additional action on it. Does it mean that we still have to vote on this issue?

(KIDO) I think a vote thereis only to determine whether or not we want to reconsider it. Isn't this what really. Not the petition itself the motion to reconsider it was deferred. They had asked us to reconsider.

(DURAN) Right.

(KIDO) That was held up pending the receipt of a -------

(DURAN) Okay. So, we asked for an extension of time to determine whether or not we want to reconsider. So, the question now is--Do we want to reconsider? So, we still have votes to take.

(CHOI) The chair will entertain a motion.

(NISHIMURA) I move that we do not reconsider this.

(CHOI) In other words, the action taken stands.

(CHOI) If this motion carries, this question is dead.

(INABA) I second.

(DURAN) Commissioners--	Napier	Aye
	Kido	Aye
	Inaba	Aye
	Wung	Aye
	Nishimura	Aye
	Murakami	Aye
	Chairman Choi	Aye

Motion not to reconsider is passed.

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

ERRATA SHEET FOR DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION

The Defendant requests leave to make the following correction of error in the Memorandum in Support of Motion it has filed in this case:

On page 8, line 1, change "urban" to "rural".

The Defendant's undersigned attorney apologizes to the Court and to opposing counsel for the error.

DATED: February 17, 1970.

WALTON D. Y. HONG
Deputy Attorney General
State of Hawaii
Attorney for Defendant
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs,	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

ERRATA SHEET FOR DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION

BERTRAM T. KANBARA 261
Attorney General
State of Hawaii

WALTON D. Y. HONG 890
Deputy Attorney General
State of Hawaii

Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Attorneys for Defendant

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

GP:dwf

12-a

CABLE ADDRESS:
ATTGEN

BERT T. KOBAYASHI
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU, HAWAII 96813

December 18, 1968

MEMORANDUM

TO: Mr. Ramon Duran, Executive Officer
Land Use Commission

FROM: George Pai
Deputy Attorney General

RE: Transmittal of Gillette File

Returned herewith please find your file on the Gillette case.

Very truly yours,

GEORGE PAI
Deputy Attorney General

encl.

CIVIL NO. 1198

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and
MARTHA T. GILLETTE,

Plaintiffs,

vs.

LAND USE COMMISSION OF THE
STATE OF HAWAII,

Defendant.

2ND CIRCUIT COURT
STATE OF HAWAII
WAILUKU, HAWAII
FILED & ISSUED
1968 OCT 22 PM 1 20
(SGD.) HELEN H. CORREA
CLERK

COMPLAINT FOR DECLARATORY RELIEF

AND

SUMMONS

RECEIVED
OCT 23 1968 2:10 p.m.
State of Hawaii
LAND USE COMMISSION

I hereby certify that this is a full, true and correct copy of the Original.

Helen H Correa
Clerk, Circuit Court, Second Circuit

SANFORD J. LANGA #808
207 Wailuku Townhouse Building
Wailuku, Maui, Hawaii

Attorney for Plaintiffs.

10-28-68
Copy mailed to Commissioners, G. Pai & E Davis.

CIVIL NO. _____

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PAUL C. GILLETTE and MARTHA T. GILLETTE,	)
Plaintiffs.	)
vs.	)
LAND USE COMMISSION OF THE STATE OF HAWAII,	)
Defendant.	)

COMPLAINT FOR DECLARATORY RELIEF

1. Plaintiffs are residents of Kula, Maui, Hawaii. Defendant is an agency of the State of Hawaii, as defined by Section 6C-1, R.L.H. 1955, as amended.

2. This action is brought under Section 6C-7, R.L.H. 1955, as amended, for a judicial declaration as to the validity of the rules and regulations promulgated by Defendant, to the extend that said rules and regulations have the effect of classifying Plaintiffs' land, hereinafter described, as a rural district within the provisions of Chapter 98 H, R.L.H. 1955, as amended.

3. Plaintiffs are owners of a parcel of land, approximately 3 acres in area, situated at Kula, Maui, Hawaii, and identified by tax map key 2-3-19-28.

4. Plaintiffs' land has, since prior to the enactment of Chapter 98 H, R.L.H. 1955, been used for residential

purposes of the kind known as multi-family dwelling, and Plaintiffs have since they purchased said property in June, 1962, maintained said property for said purpose, deriving rental income from tenants thereon.

5. Under the regulations promulgated by Defendant, specifically sub-part C of Part II of said regulations, Plaintiffs' use of their property is an urban land use.

6. At the time Plaintiffs purchased said property in 1962, Defendant's regulations then existing had established the area in which Plaintiffs' property is situated as an urban zone, pursuant to Section 98 H-2, R.L.H. 1955.

7. In 1964 Defendant amended its regulations and promulgated new maps which changed the classification of numerous areas, including Plaintiffs' property from urban classification to rural classification.

8. Plaintiffs allege that Defendant's regulations are illegal and void in that Section 98 H-2, R.L.H. 1955, as amended, requires that all land that was in urban use on the date of enactment of Act 205, S.L.H. 1963, is required by law to be included within urban districts.

WHEREFORE Plaintiffs pray that this honorable court enter judgment herein declaring that that portion of Defendant's regulations, which classifies Plaintiffs' land as a rural district is illegal and void and further declaring that Plaintiffs' land is and lies within an urban district pursuant to 98 H-2, R.L.H. 1955, as amended.

Dated at Wailuku, Maui, Hawaii, this 22 day of October, 1968.

Sanford J. Langa
Attorney for Plaintiffs

In the Circuit Court of the Second Circuit

STATE OF HAWAII

CIVIL NO. 1198

PAUL C. GILLETTE and
MARTHA T. GILLETTE
Plaintiffs

V.

LAND USE COMMISSION OF THE
STATE OF HAWAII,
Defendant

SUMMONS

State of Hawaii

To the above-named Defendant:

You are hereby summoned and required to serve upon SANFORD J. LANGA, ..., plaintiff's attorney, whose address is 207 Wailuku Townhouse Bldg, Wailuku, Maui, Hawaii, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(SGD.) HELEN H. CORREA
Clerk of Court

SEAL OF COURT

Dated Oct 22, 1968

RETURN ON SERVICE OF SUMMONS

I HEREBY CERTIFY and return that on the .....day of ....., 19.....

I served the within summons .....

on .....

.....

at ....., by delivering to ..... a certified copy hereof and of the complaint hereto annexed.

Dated .....

.....

☐ Police Officer
☐ Person specially appointed by the Court

SUBSCRIBED and sworn to before me

this ..... day of ....., 19.....

.....

NOTE: This summons is issued pursuant to rule 4 of the Hawaii Rules of Civil procedure. AFFIDAVIT required only if service is made by a person specially appointed by the court.

September 3, 1968

Mr. Paul Gillette
R. R. 1 - Box 381
Kula, Maui, Hawaii

Dear Mr. Gillette:

The Land Use Commission at a meeting in Honolulu on August 30, 1968, reviewed the attached memorandum from Deputy Attorney General, George Pai. After considering the legal opinion, the Commission voted not to reconsider your petition to rezone three acres from Rural to Urban on TMK 2-3-19: 28 at Kula, Maui. Therefore, the previous action by the Commission on May 17, 1968, to deny your boundary amendment petition is valid.

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

Very truly yours,

RAMON DURAN
Executive Officer

Enclosure

STATE OF HAWAII

LAND USE COMMISSION

VOTE RECORD

ITEM A67-171 P. GELLETTE DATE Aug 30

PLACE Honolulu TIME 5:30

	YES	NO	ABstain	Absent
CHOI	✓			
NAPIER	✓			
MARK				✓
KIDO	✓			
S INABA	✓			
WONG	~~✓~~			✓
M NISHIMURA	✓			
MURAKAMI	✓			
BURNS				✓

COMMENTS:

Not to Reconsider passed

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

GP:ai

12b

CABLE ADDRESS:
ATTGEN

BERT T. KOBAYASHI
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU, HAWAII 96813

RECEIVED
AUG 13 1968
State of Hawaii
LAND USE COMMISSION

August 8, 1968

MEMORANDUM

TO: Mr. Ramon Duran
Executive Officer
Land Use Commission

FROM: George Pai
Deputy Attorney General

SUBJECT: Petition of Paul Gillette (A67-171)

You have requested our opinion on a question raised by a Mr. Paul C. Gillette, Petitioner in A67-171, as to whether the Commission is mandated by Act 187, Session Laws of Hawaii 1961, as amended by Act 205, Session Laws of Hawaii 1963, to reclassify three acres of land owned by Mr. Gillette at Kula, Maui, from a rural to an urban designation. A two-story rental duplex occupies the northwest quadrant of the three-acre parcel.1/

Act 187 established the State Land Use Commission and conferred upon the Commission, among other zoning powers, the power to classify land into urban, agricultural, or conservation districts under standards set forth in the

1/ For the purpose of this opinion we have assumed that the duplex building was in existence on July 1, 1961, the effective date of Act 187, although there is nothing in the record on this point.

Act. Pursuant to Act 187 the Commission established the Gillette property within an urban district under temporary district boundaries which became effective on April 21, 1962. However, Act 205, which became effective on June 17, 1963, amended Act 187 and Chapter 98H, Revised Laws of Hawaii 1955, so as to provide for a new "rural" district.2/ Section 98H-2 was amended to provide that:

> ". . . (b) 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;"

The subsequent final district boundaries adopted by the Commission classified the Gillette property into the rural district designation, which is the current land use classification of the property.

2/ The reason for the creation of this new district is found in Standing Committee Report 656, Lands, on H.B. No. 1016, contained in the House Journal, General Session, 1963, at page 755:

> "The purpose of this bill is to amend Act 187, Session Laws of Hawaii 1961, to provide for a 'rural' district. The land use commission in establishing its recommended permanent district has found a problem in the districting of areas where a pattern of small farms intermixed with larger residential units exists. While many of these areas are in transition to urban uses, others particularly on the neighbor islands are likely and would be desirable to continue in this open country like atmosphere for indefinite periods. They do not need a full level of urban services and cannot bear a full level of urban costs . . ."

The question raised by Mr. Gillette involves a provision in Section 98H-2, Revised Laws of Hawaii 1955, as amended, which states that:

> "The commission shall set standards for determining the boundaries of each district provided that (a) in the establishment of boundaries of urban districts those lands that are now in urban use . . . shall be included."3/

Mr. Gillette contends that since the three-acre parcel has been used for "duplex rental housing, i.e., high density residential use" since before the Land Use law became effective, the Commission is mandated by Section 98H-2(a) to reclassify his land from the rural to the urban district classification. The contention is that the Commission, in adopting the final district boundaries, placed the land within the rural district in error. The specific question raised by these contentions is whether a duplex unit on three acres of land constitutes a high density residential use, such that the Commission was mandated to find the parcel to be in "urban use" at the time it adopted final district boundaries and to classify the same accordingly.

In determining the answer to this question certain statutory provisions and certain rules of the Commission are relevant. Section 2 of Act 187 defined "urban" as meaning "areas characterized by 'city like' concentrations of people, structures, streets and other related land uses."4/ Rule 2.7 of the Commission further requires that boundaries for "U" urban district "shall include lands characterized by city-like concentration of

---

3/ This provision has been in effect with no material change since the enactment of Act 187.

4/ Act 205 amended Act 187 so as to delete the definitions section of Act 187.

people, structures, streets and other related land uses." Section 98H-2 provides that "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."

In the light of the standards established in the foregoing provisions, we cannot say that the duplex dwelling on the three-acre lot of Mr. Gillette, previously or now, requires the Commission as a matter of law to classify the lot within the urban district. We think that whether or not the property of Mr. Gillette should have been classified according to the standards established for the urban district or the rural district as set forth above is a question which was within the power of the Commission to determine and that its actions in classifying the property within the rural district upon adoption of the final district boundaries and in denying the instant petition for reclassification were not inconsistent with law.

George Pai

GEORGE PAI
Deputy Attorney General

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Board of Supervisors Chambers
Wailuku, Maui

May 17, 1968 - 7:00 p.m.

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

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

The swearing in of persons planning to testify before the Commission tonight by Chairman Burns was followed by the adoption of the minutes of January 12, 1968, as circulated.

HEARING

PETITION OF MAUI PINEAPPLE COMPANY, LTD., ET AL (A68-174) TO RECLASSIFY APPROXIMATELY 3 ACRES PRESENTLY IN AN AGRICULTURAL DISTRICT INTO AN URBAN DISTRICT AT HALIIMAILE VILLAGE, MAKAWAO, MAUI

A recommendation for approval of the request was presented by Mr. Leong based on the need for additional urban lands in the area, the suitability of subject property for the proposed use, the availability of public facilities and utilities, etc. (see copy of report on file).

Mr. Robert Ohata, Maui Planning Director, apologized for having inadvertently approved a subdivision at Haliimaile Village within the State's Agricultural District. Upon learning of the error, Mr. Ohata immediately notified applicant that all activities, including transfer of land, be held in abeyance until the discrepancy could be corrected.

Mr. Ohata requested that the Commission consider the application only on the basis of its merit as it may relate to the proper classification of the area.

The hearing was closed since there was no further testimony.

2. In the last 7 years, there have been only 3 major subdivisions in the Pukalani area:

   a. Pukalani Terrace with over 300 lots in ½-acre size. There are 92 homes built.

   b. Pukalani Place with 35 lots in 10,000 square foot size. There are 25 homes, and all lots are sold.

   c. Pukalani Subdivision with 61 ½-acre lots has 44 homes already built. There are an additional 39 lots which were subdivided into 10-12,000 square foot lots and for which there are already 25 applicants.

   d. The above subdivisions have a total of 161 homes. This figure was arrived at by actual on the site count of existing homes.

3. The 2,500 people living in the 15 camps could not afford lands around Kahului. Instead they desire to move into the rural Pukalani area which they could finance through the Rural Housing Loan at 5% for 33 years, with an average monthly payment of $60 to $80. These people are eligible to buy into the Kahului Development. However, since they are unable to afford FHA monthly payments, they are buying the land at 58¢, the cost to plantation employees, and reselling it for 82¢ which is the going market price, and in turn buying into the Pukalani area, primarily because of the easy financing.

4. The 4th increment of Pukalani Terrace will open shortly. These again will be ½-acre lots. At an estimated 30¢ a square foot, it would cost close to $6,500, which would be beyond the buying ability of most of the plantation employees, pointing to the need for smaller sized lots at a lower cost. This would also enable them to qualify for a Rural Housing Loan.

In closing, Mr. Shimoda submitted that the foregoing data submitted by Mr. Covic clearly disproved staff's statement that only 152 dwellings will be needed over a period of 20 years. Insofar as farming was concerned, Mr. Shimoda stated that an on-site examination of the property will reveal to the Commissioners that it was not even suitable for pasturing. Mr. Covic added that the University of Hawaii Extension Service rated that land as "C" for truck farming.

The hearing was closed since there was no further testimony.

ACTION

PETITION BY PAUL & MARTHA GILLETTE (A67-171) TO AMEND THE LAND USE DISTRICT BOUNDARIES AT KULA, MAUI, FROM RURAL TO URBAN

In the absence of any significant evidence received since the public hearing, the staff maintained its original recommendation for denial of the petition (see copy of report on file).

Mr. Langa, attorney representing the petitioners, contended that a good portion of the undeveloped urban zoned land, colored in pink on the map, was

in fact not available for urban use because of litigation, that the amount of urban lands available were much less than appeared on the map. He added that the fact that the Commission felt some of the surrounding urban areas were improperly zoned had no bearing on the subject land which was next to the Silversword Inn and only a short distance from the Kula Lodge.

Mr. Gillette advised that his original plan to develop his land with the Silversword in 1962 did not materialize due to litigation and various other reasons. Mr. Langa qualified this with the statement that Mr. Gillette's failure to develop his land was due to differences with the management of the Silversword Inn and not with the character of the land.

A question of law was raised by Mr. Gillette. Since the statutes mandate that all land in urban use in 1963 be included in the Urban District, Mr. Gillette felt that an error had been committed in districting his land rural.

In response to the Chairman's query, Mr. Duran, Executive Officer, advised that the subject property was within the LUC's Urban District under the temporary districting when Mr. Gillette purchased the property.

Due to his advancing age, it was Mr. Gillette's intention to sell the property upon approval of the reclassification. He spoke again of the impracticability of restricting development on the land to ½ acre per house under the Rural zoning. He said he was not sure as this was an engineering problem because of the gulch, but he would estimate that 5 additional lots would be gained under the Urban District as compared to about 2 under the Rural District.

Commissioner Nishimura moved that the boundary change from rural to urban be approved in view of the fact that this land was previously under the urban zoning, seconded by Commissioner Choi. The motion was defeated by the following votes:

Ayes: Commissioners Choi, Nishimura, Murakami, Chairman Burns
Nays: Commissioners Mark, Kido, Inaba, Wung

PETITION BY HANA RANCH CO., LTD. (A68-173) TO RECLASSIFY 20 ACRES FROM AGRICULTURAL TO URBAN AT KAWAIPAPA, HANA, MAUI

Since there was no representative from the Hana Ranch Co., the Chairman dispensed with the presentation of the staff memo.

Commissioner Choi moved to approve the request as recommended by the staff report which was seconded by Commissioner Napier.

Commissioner Murakami expressed concern that this action was not merely a redistricting matter but involved moving families about. He felt it was important for the Commission members to inspect the property and also to hold a hearing in Hana to allow the families to express their views about the reclassification before taking action on the petition.

Chairman Burns reminded Commissioner Murakami that a hearing on the petition had been duly held and that the Commission was obliged by law to act on it within a prescribed period of time.

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Kahului Library
Kahului, Maui

March 8, 1968 - 1:00 p.m.

Commissioners Present:	Wilbert Choi, Chairman Pro tem Leslie Wung Goro Inaba Shiro Nishimura Keigo Murakami Alexander Napier Jim Ferry
Commissioners Absent:	C. E. S. Burns, Jr. Shelley Mark
Staff Present:	Ramon Duran, Executive Officer Ah Sung Leong, Planner III George Pai, Legal Counsel Dora Horikawa, Stenographer

Chairman Choi swore in persons planning on testifying before the Commission today.

ADOPTION OF MINUTES:

The minutes of December 15, 1967 were approved as circulated on a motion by Commissioner Nishimura, seconded by Commissioner Wung.

HEARINGS

PETITION OF PAUL GILLETTE (A67-171) TO RECLASSIFY 3 ACRES FROM RURAL TO URBAN AT OMAOPIO, KULA, MAUI

Staff report presented by Mr. Leong recommended disapproval of the petition since sufficient reserves have been set aside for foreseeable urban growth in the Kula area.

Mr. Leong stated that under the temporary district boundary the entire strip, including petitioner's land, was placed in the Urban District. The County General Plan has designated this entire area for rural usage. The Land Use Commission has zoned certain areas within the Urban District such as Waiakoa, Jamestown and Hunakai; however, most of these areas are vacant.

Mr. Sanford Langa, attorney representing Mr. Gillette, commented on the thorough analysis conducted by staff although petitioner disagreed with the

conclusions. Mr. Langa argued that the proper approach to this petition should be on the question of whether or not this particular parcel should have been zoned urban in the first place as it was during the temporary boundary, and not on the basis of the amount of undeveloped urban zoned land in the general area. Also, the land was in urban use as a duplex apartment at the time zoning maps were adopted, and the law specifies that lands in urban use be included in the Urban District. Moreover, the parcel is enclosed on three sides by lands of urban character--the Silversword Inn, the Kula Orchard Subdivision, and urban sized lots by Kimo Road. Logically, this whole strip should have been retained in the Urban District. Mr. Langa contended that inclusion of petitioner's land in the Rural District was an inadvertent error in view of the fact that it was in urban use at the time the boundary was established.

The ownership pattern, pending litigations and foreclosure actions were offered as some of the reasons for the vacant undeveloped urban lands in Kula by Mr. Langa. The lack of construction on the smaller lots was due to the fact that many of them were owned by non-residents.

Due to the topography of Mr. Gillette's land, it could not be properly developed under the rural zoning. His development plan called for clustering the houses close together on one side of the lot.

Mr. Langa said that no subdivision plans had been drawn pending action by the Commission on this petition.

Mr. Gillette spoke of the anticipated tourist trade on Maui and the need for reasonable sized lots at reasonable prices. His land could be effectively utilized affording an unlimited view to the south and west which is unattainable in the Kula Orchards development. It was his plan to sell this parcel to a prospective buyer who would then like to develop it under the urban classification.

Mr. Gillette stated that the two apartments on the property have been continuously rented since 1962 and during the last 2 to 3 years, Mr. Gillette has noted a marked increase in the inquiries regarding rental units in the area. At the time he purchased the property in 1962, the property was in the Urban District and he was under the impression that it could be developed similarly to the adjacent Silversword Inn.

Mr. Gillette had observed the gulley in the heaviest rain, at the peak of the storm, and submitted that the culvert did not fill up and therefore would not present any acute problem.

Mr. Howard Nakamura, representing the Maui Planning Commission, advised that the Maui General Plan, which they have been using as a guide in making recommendations for district boundary changes, designates the entire Kula area in the Rural District. Lots of predominantly half-acre or more in size characterized the area as being more rural than urban in nature, and Mr. Nakamura did not feel that the existence of a duplex on a 3-acre site constituted sufficient grounds for change from rural to urban.

The hearing was closed thereafter.

2442

LAW OFFICES OF
SANFORD J. LANGA

207 WAILUKU TOWNHOUSE BUILDING
WAILUKU, MAUI, HAWAII 96793
TELEPHONE 39-169

June 17, 1968

RECEIVED
JUN 19 1968
State of Hawaii
LAND USE COMMISSION

Land Use Commission
Department of Planning and
Economic Development
426 Queen Street
Honolulu, Hawaii 96813

Re: TMK: 2-3-19-28
Your letter of June 12, 1968

I hereby approve the extension of time as outlined in your letter to me.

Paul C. Gillette

Martha P. Gillette

June 12, 1968

Mr. Paul C. Gillette
R. R. 1 - Box 381
Kula, Maui, Hawaii

Dear Mr. Gillette:

The Land Use Commission, on June 7, 1968, received a letter from Mr. Sanford J. Langa, Attorney, requesting a legal opinion and the reconsideration of your petition to rezone 3 acres from Rural to Urban on Tax Map Key 2-3-19: 28 at Kula, Maui.

Please be advised that the Commission deferred action on your request for a maximum of 60 days pending advice from the Attorney General's office on this matter. Inasmuch as the statutory time limit for action on your petition expired on June 7, we would appreciate your written approval to a 60-day extension to September 10, 1968 for action by the Commission in the event the legal advice or additional evidence warrants a reconsideration of your petition.

Very truly yours,

RAMON DURAN
Executive Officer

cc: Sanford J. Langa

2421

Copy to Geo. Pai

LAW OFFICES
CROCKETT AND LANGA
38 SOUTH MARKET STREET
WAILUKU, MAUI, HAWAII 96793

W. F. CROCKETT 1861-1943
WENDELL F. CROCKETT
WILLIAM F. CROCKETT
SANFORD J. LANGA

P. O. BOX 336
PHONE 33-796

June 1, 1968

RECEIVED
JUN 3 1968
State of Hawaii
LAND USE COMMISSION

Land Use Commission
Department of Planning and
Economic Development
426 Queen Street
Honolulu, Hawaii 96813

Re: A67-171 - Paul C. Gillette
Petition to Amend Boundary

Subsequent to the meeting of the Commission of May 17, it has come to our attention that the Commissioners had not been advised prior to the meeting of the question of law raised by Gillette's petition. Under the circumstances, and since we believe that the statutory mandate for the inclusion in urban districts of all land in urban use in 1963 should control this case, we respectfully ask that the Commission reconsider Gillette's petition.

Although the Staff Memorandum submitted to the Commissioners at the May 17 meeting cited the legal issue involved, the Memorandum did not meet it, and we thought at the time that a legal opinion would be or had been presented by the Counsel to the Commission. The action of May 17 was taken, it appears, without such an opinion, and we submit that it would be appropriate for the Commission to reconsider Gillette's petition in order that the question of law may be decided.

Although this letter is directed to the legal question reviewed above, I would also like to bring to the Commission's attention a recent change of circumstances affecting the property. The Department of Taxation is currently advertising a notice of tax sale for the Silversword Inn property adjoining Gillette's.

The expectation that the Silversword Inn will be in new ownership after the June 12 tax sale makes it possible once again that Gillette will be able to pursue his original plans for use of his property.

It therefore becomes even more important to restore the urban zoining that existed at the time he purchased the parcel.

Sanford J. Langa

Sanford J. Langa
SJL:yf

cc: Paul C. Gillette

May 21, 1968

Mr. Paul C. Gillette
R. R. 1 - Box 381
Kula, Maui, Hawaii

Dear Mr. Gillette:

The petition by Paul C. and Martha T. Gillette (A67-171) for an amendment to the land use district boundaries from a Rural District to an Urban District for approximately 3 acres situated at Kula, Maui, Tax Map Key 2-3-19: 28, was denied by the Land Use Commission at its meeting on May 17, 1968.

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,

RAMON DURAN
Executive Officer

Encl.
cc: Maui Planning Commission

STATE OF HAWAII

LAND USE COMMISSION

VOTE RECORD

ITEM A67-171 - Paul & Martha Gillette DATE May 17, 1968

PLACE Bd. of Supervisors Chambers TIME 7:00 p.m.

Wailuku, Maui

NAME	YES	NO	ABSTAIN	ABSENT
CHOI, WILBERT	✓			
NAPIER, ALEXANDER	✓			
MARK, SHELLEY		✓		
KIDO, SUNAO ~~FERRY, JIM~~		✓		
INABA, GORO		✓		
WUNG, LESLIE		✓		
NISHIMURA, SHIRO	✓			
MURAKAMI, KEICO	✓			
BURNS, C. E. S.	✓			

S

M

COMMENTS:

approve because it was in the Temp. Urban Dist.

denied

DONALD WOLBRINK & ASSOCIATES, INC.
PLANNERS ENGINEERS LANDSCAPE ARCHITECTS

2 May 1968

Dear Mr. Duran:

I am writing on behalf of Mr. Paul C. Gillette to acknowledge receipt of your letter of 30 April 1968.

Mr. Gillette will attend the Land Use Commission meeting, and thanks you for your consideration.

Sincerely,
(Mrs.) Charlotte Atsuki

RECEIVED
MAY 3 1968
State of Hawaii
LAND USE COMMISSION

SUITE 2000 ALA MOANA BLDG. 1441 KAPIOLANI BLVD. HONOLULU, HAWAII 96814

STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM May 17, 1968

TO: LAND USE COMMISSION

FROM: STAFF

SUBJECT: A67-171 - PAUL C. & MARTHA T. GILLETTE

A public hearing was held on March 8, 1968 on this petition submitted by Mr. Paul Gillette to reclassify 3 acres of land situated next to the Silversword Inn at Kula, Maui, from a Rural to an Urban designation.

The Maui Planning Commission and the Land Use Commission staff both recommended that the petition be disapproved since extensive vacant lands presently exist in the adjacent urban district.

At the hearing and by letter dated March 22, 1968, Mr. Sanford Langa, attorney for the petitioner, contended that the material issue is not the adequacy of urban zoned lands but that the particular parcel owned by Mr. Gillette warrants urban districting by virtue of the following:

1- It was within the Land Use Commission's Urban District under Temporary Districting when Mr. Gillette purchased the property.

2- The use of the parcel for rental duplex purposes since 1962 constitutes urban usage.

3- The property is located between two commercial operations and is adjacent to small urban-sized lots.

4- The property is unsuited for agricultural use.

5- The land is needed for residential use of the sort that is only permitted in urban zones.

Mr. Langa also contends that it was an error not to include this parcel in the Urban District in the first place and points out the following section of Act 205 relating to the establishment of urban districts:

"provided that (a) in the establishment of boundaries of urban districts, those lands that are now in urban use .....shall be included..... (emphasis added)"

Mr. Gillette testified that when he purchased the property in 1962, he planned to use the property as an adjunct to the Silversword Inn with a swimming pool in the gulch and cottages and recreation areas in the higher areas. He also noted that storm run-off is not an acute problem.

Mr. Howard Nakamura, on the staff of the Maui Planning Commission, testified that the Commission's adverse recommendation is consistent with the Maui General Plan in that the plan recommends Rural usage for the subject area.

Besides the letter of March 22, 1968 submitted by Mr. Langa, no other evidence has been received to date.

Concerning Mr. Langa's contention that the issue is not the adequacy of urban zoned lands, the staff maintains that this is an issue directly bearing on the need for redistricting the subject parcel. In other words, the question of need is directly related to the adequacy of the supply. Therefore, the staff concludes that the abundance of vacant lands in the adjoining urban district does not warrant the further expansion of this district.

In the absence of any significant evidence received since the public hearing, the staff maintains its original recommendation for denial of the petition.

April 30, 1968

Mr. Paul C. Gillette
R. R. 1 - BOX 381
Kula, Maui, Hawaii

Dear Mr. Gillette:

The Land Use Commission next meets at 7:00 p.m. at the Board of Supervisors Chambers at Wailuku, Maui on May 17, 1968. At that time a decision on your petition (A67-171) will be rendered.

Although there is no requirement for you to be present, please feel free to do so if you wish.

Very truly yours,

RAMON DURAN
Executive Officer

7358

LAW OFFICES
CROCKETT AND LANGA
38 SOUTH MARKET STREET
WAILUKU, MAUI, HAWAII 96793

P. O. BOX 336
PHONE 33-796

W. F. CROCKETT 1861-1943
WENDELL F. CROCKETT
WILLIAM F. CROCKETT
SANFORD J. LANGA

RECEIVED
MAR 25 1968
State of Hawaii
LAND USE COMMISSION

March 22, 1968

Land Use Commission
Department of Planning and
Economic Development
426 Queen Street
Honolulu, Hawaii 96813

Re: A67-171-Paul C. Gillette
Petition to Amend Boundary
Post-hearing Memorandum

On behalf of Mr. and Mrs. Gillette, I submit the following comments regarding their application:

1. The Material Issue as we see it is whether boundary of the existing urban district should be amended to include Gillette's land. The Maui Planning Commission, according to the testimony of their representative, opposes the application because they oppose urban zoning altogether in Kula. The Staff of the Land Use Commission seems to have based their adverse recommendation solely on their judgment that there is already an adequate amount of land in urban zoning.

On the Staff's judgment Gillette does not express an opinion, because Gillette's application does not ask for an increase in the amount of urban zoning. We submit that even if there is too much urban zoning in Kula, Gillette's land should be in the urban zone.

If the Commission decides the urban zone should be reduced it should be reduced elsewhere, because Gillette's land is more properly urban than is much of the land already in the urban zone.

Gillette's application is based on the following facts, all of which are undisputed:

1. Gillette's land was in the urban zone under the Commission's original zoning; and at the time Gillette bought it.

2. Gillette's land has been in urban use at all times material.

3. On one side Gillette's land abuts land in the urban zone which is in commercial use; on the opposite side a short distance down the road is another commercial property also in the urban zone.

LAW OFFICES
CROCKETT AND LANGA

4. Gillette's land is not suited to agricultural use.

5. The land is needed by Gillette for residential use of the sort that is permissable only in urban zones.

While Gillette does not wish to quarrel with the Staff's finding that Kula has adequate urban-zoned land, we do strenuously object to the conclusion that his land should be excluded from the urban zone rather than the pasture and forest land that is now in urban zoning.

2. Under Act 205 (§98H-2, R.L.H., 1955, as amended), Gillette's land should have been included in the urban zone in the first place. That section of the law provides:

> "...provided that (a) in the establishment of boundaries of urban districts, those lands now in urban use...shall be included;..." (emphasis added)

It is undisputed that Gillette's land has been, since before the zoning, in urban use. It is used for duplex rental housing, i.e. high density residential use. Although the present use might be a "non-conforming" use even under county zoning, the land is needed by Gillette for housing, of the type that is permitted by county zoning. And the fact remains that it was error not to include this parcel in the existing urban zone. The error should now be corrected.

Sanford J. Langa

SJL:bjp

STATE OF HAWAII

LAND USE COMMISSION

Kahului Library
Kahului, Maui

March 8, 1968
1:00 P. M.

STAFF REPORT

A67 - 171 - Paul C. Gillette

A petition has been submitted by Mr. and Mrs. Paul Gillette to reclassify 3 acres of land situated at Omaopio, Kula, Maui, from a Rural to an Urban designation. The property is described by TMK 2-3-19 parcel 28 and fronts on Haleakala Highway immediately north of and adjacent to the Silversword Inn.

Background

Approximately 50% of the property in question abuts the Urban District which is immediately to the south and west. A 2-story rental duplex presently occupies the northwest quadrant of the subject property, while the remaining portion is extensively overgrown with wattle trees as is much of the surrounding area. Bordering the south, on Silversword Inn side of the parcel is a gully which is approximately 15' deep at the front of the lot and approximately 40' deep at the rear. The soil is rated fair on overall suitability for agricultural use. However, since the gully absorbs about half of the parcel in question, it is not logically suited for agricultural use. The average slope on this parcel is approximately 15%; however, the sides of the gully are in excess of 20%. The annual rainfall is approximately 30 inches and the elevation is approximately 3500' above sea level. Electricity, telephone and water are available to the site. The State General Plan designates the area for agricultural use while the County General Plan prescribes rural usage.

Truck farms, flower growing and grazing are the major agricultural activities in the surrounding Rural District. The blue shading on the tax

map on the wall shows lands that are dedicated to these uses for a period of 10 years. However, immediately to the north and in the Urban District across Haleakala Highway are extensive groves of black wattle trees. This pest apparently takes over any land in this area that is not developed for residential or agricultural use. Residential developments, shaded pink on the map, are concentrated in the urban pocket just north of Kula Lodge. A public school, post office and a commercial center serving the Kula area are located 3 1/2 miles to the southwest at Waiakoa.

The petitioners purchased the property in question in June, 1962 at which time it was in the temporary Urban District along with other properties along the highway.

To justify their request, the petitioners submit that:

1. Their property "is needed for development of residential lots of less than 1/2 acre in size in accordance with the neighborhood across Haleakala Road which is characterized by a large number of lots less than 1/2 acre in size and is zoned urban."
2. The terrain of the subject property is such that the development of at least 10 spacious view lots is possible. (This has since been amended to read 6 spacious lots.)
3. The land and terrain along this section of Haleakala Road is unsuitable for flower growing or agricultural purposes and is not in demand for such use.
4. The increased availability of water in Kula makes it highly advantageous for Kula's economy to encourage the development of residential lots.
5. The increased activities in Science City on Haleakala has also increased the demand for residences in the Kula area.

Mr. Gillette has also submitted a rebuttal to the Maui Planning Director's findings which brings out the following:

1. That Kula Development Corporation does not own half of the acreage in the adjacent Urban District of Jamestown as stated by the Maui Planning Director, but only a total of 9 lots which comprises a percentage substantially less than half of the total Urban District.
2. That although most of the parcels are at least 10,000 square feet in area, the majority are under 1/2 acre in size and have frontages of less than 100 feet.
3. That the statement by the Maui Planning Director referring to ample urban lands in the Kula area is not borne out by the facts since only 8 lots were listed for sale since 1966 and only 4 are now on the market.
4. That the statement referring to the rural character of the surrounding area including those lands designated urban would imply that the county planning staff would recommend approval of this petition since the character of the subject property is identical with large portions of the urban district across the highway.
5. That the county staff failed to mention two important factors impeding residential development in Kula—the extent and excessive rate of growth of the wattle trees and non resident ownership. In contrast, his property will have unobstructed views to the south and west when cleared off.
6. That a buyer interested in building a spacious home for his family with residences for relatives and business associates disclosed that the rural limitation of 1/2 acre per house eliminated the property from further consideration since the existing house requires

1/2 acre and the gulch absorbs approximately 1 acre, leaving less than 1 1/2 acre for his residential development.

County Recommendation

The Maui Planning Commission voted unanimously to recommend denial of the petition based on the director's findings which were as follows:

"At the present time, there appears to be an ample supply of lands in the Kula area classified as urban. Home construction in presently classified urban lands is not proceeding at a rate which would indicate any shortage of such lands within the near future. Kula Kai, with 50 lots sold over a 3 year period, has at the present time 17 homes completed or under construction.

In addition, the existing character of the surrounding area, even in those lands designated as urban, appears to be more rural in character. There is not a 'city-like concentration of people, structures, streets and other related land uses' as required by the State Land Use District Regulations for urban districts."

Analysis

Extensive vacancies and the lack of development in the adjoining Urban District do not substantiate the need for more urban lands. The staff estimates that of the total of approximately 145 acres comprising the Urban District, only 7% or approximately 10 acres are developed. In addition, approximately 67% of this Urban District is comprised of parcels which are over 2 acres in size. This is the minimum lot size for Agricultural Districts in Maui County. Therefore, the need for a detailed review of the Urban District boundaries in this area is obvious.

Recommendation:

The staff finds that sufficient reserves have been set aside for foreseeable urban growth in the Kula area. Since the Land Use Law requires proof that the land is needed for a use other than that for which it is districted, it is recommended that the petition be disapproved.

Note: Mr. Gillette owns 2 parcels within the U.D. across the Hwy which are presently vacant & undeveloped.

★ REAL ESTATE



NOTICE OF PUBLIC HEARING

TO CONSIDER PETITIONS FOR CHANGE OF DISTRICT BOUNDARY WITHIN THE COUNTY OF MAUI, BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

NOTICE IS HEREBY GIVEN of the public hearing to be held in the County of Maui by the Land Use Commission of the State of Hawaii to consider petitions for change of district boundary as provided for in Section 98H-4, Revised Laws of Hawaii, 1955, as amended.

TIME AND PLACE

At the Kahului Library, School Street and Kamehameha Avenue, Kahului, Maui, on March 8, 1968 at 1:00 p.m., or as soon thereafter as interested persons may be heard.

Docket Number and Petitioner:	Tax Map Key:	Change Requested
A67-171 Paul C. & Martha T. Gillette	2-3-19: 28	To incorporate 3 acres presently in a Rural District into an Urban District at Omaopio, Kula, Maui, Hawaii.
A68-173 Hana Ranch Co., Ltd.	1-3-04: portion of 1	To incorporate approximately 20 acres presently in an Agricultural District into an Urban District at Kawaipapa, Hana, Maui, Hawaii.

Maps showing the areas under consideration for change of district boundary, and copies of the Rules and Regulations governing the petitions above are on file in the offices of the Maui Planning Commission, County of Maui; and the Land Use Commission, and are open to the public during office hours, Monday through Friday.

All written protests and comments regarding the above petitions may be filed with the Land Use Commission, 426 South Queen Street, Honolulu, Hawaii, before the date of public hearing, or submitted in person at the time of the public hearing, or up to fifteen (15) days following the hearing.

LAND USE COMMISSION
C. E. S. BURNS, JR., Chairman
RAMON DURAN, Executive Officer

(MN: Feb. 7, 1968)

OWNER'S NOTICE OF COMPLETION OF CONTRACT

Notice is hereby given that pursuant to the Provisions of Section 193-42 of the Revised Laws of Hawaii, 1955, as amended, the construction by Arisumi Brothers, Inc. of that certain dwelling situated at Tax Key 3-4-45-08 Wailuku, Maui, State of Hawaii, has been completed.

Fusae Okuda
Owner

(MN: Jan. 31, Feb. 7, 1968)

CIRCUIT COURT, SECOND CIRCUIT, HAWAII

In the Matter of the Estate of VIRGINIA B. WELLS, Deceased.
Probate No. 5633

Final Account of SAMUEL A. B. LYONS, Ancillary Administrator with the Will-Annexed of the Estate of Virginia B. Wells, Deceased, and Petition for Allowance of same, and distribution of Estate, having been filed, all persons interested are notified that,

MONDAY, the 4th day of MARCH A.D., 1968, at 9:00 o'clock A.M., before the Judge presiding in Probate in his Court Room at Wailuku, Maui, Hawaii, is appointed the time and place for hearing said Petition.

Dated: Wailuku, Maui, Hawaii, Jan. 19, 1968.

BY THE COURT:
(Seal of Court)
HELEN H. CORREA
Ass't. Clerk

(MN: Jan. 24, 31, Feb. 7, 14, 1968)

SECOND CIRCUIT COURT NOTICE

In the Matter of the Estate of ROY YUKIO ISHIKAWA, Deceased.
Probate No. 5618

Final Account of JAMES H OMOTO, Administrator with the Will Annexed, and Petition for Allowance of Same, Determination of Trust and Distribution of Estate having been filed, all persons interested are notified that:

MONDAY, the 26th day of FEBRUARY, 1968, at 9:00 o'clock A.M., before the judge presiding in Probate in his Courtroom at Wailuku, Maui Hawaii, is appointed the time and place for hearing said Petition.

Dated: Wailuku, Maui, Hawaii, Jan. 15, 1968.

BY THE COURT
(Seal of Court)
HELEN H. CORREA
Ass't. Clerk

MEYER M. UEOKA
2121 Main Street
Wailuku, Maui, Hawaii
Attorney for Administrator with the Will Annexed.

(MN: Jan. 17, 24, 31, Feb. 7, 1968

Resolution No. 1239

RECEIVED
MAY 19 1964
State of Hawaii
LAND USE COMMISSION

Resolution

No 57 Introduced By Manuel S. Molina Supervisor

WHEREAS, Act 187, S.L.H. 1961, required that the Land Use Commission of the State of Hawaii establish district boundaries for existing urban areas throughout the state; and

WHEREAS, three communities in the upland climate zone of East Maui generally known as Kula were designated urban districts on interim land use classification maps adopted in April, 1962 by said Commission; namely, the communities of Waiakoa, Keokea, and that community (designated "Jamestown" for ease of reference) located in the mauka portion of the ahupuaa of Omaopio bounded approximately by Haleakala Highway and the old Kula Highway and flanking Kimo Drive; and

WHEREAS, the existing urban core of about 150 acres in the mauka section of Jamestown includes the 49-acre residential subdivision of Kula Orchards, completed in April, 1960; the approved 70-acre residential subdivision of Kula Gardens, the subdivision map for the mauka half of which is to be filed by January, 1968 and for the makai half by January, 1970; the existing hotel and restaurant facilities of Kula Lodge and Silversword Inn; an approved apartment-hotel development on 3.5 acres, to be completed by January, 1966; a tentatively approved cottage-duplex-apartment condominium development on 4.2 acres, to be completed by April, 1968; and 26 resubdivided residential lots of Kula Heights (James Tract); and

WHEREAS, the vested rights of the property owners in the exclusively commercial-residential character of said existing mauka urban core of Jamestown became established, for the most part, prior to the adoption of land use classification maps by the Land Use Commission, said property rights having been established in an orderly and reasonable manner by expanding and filling in an urban nucleus in the tradition of unfettered economic development; and

WHEREAS, the Land Use Commission now proposes to classify all of Jamestown, including the existing mauka urban core, as a rural district; and

WHEREAS, such classification of the existing mauka urban core disregards said core's established urban character, is illogical in the face of continuing urbanization in the area, is unduly restrictive of the use of said property, is inconsistent in comparison to the urban classification of the nearby communities of Waiakoa, Keokea, and Pukalani; and will cause hardship, inequities, and the stifling of economic development; and

WHEREAS, proposed rural classification of the existing mauka urban core of Jamestown would remove a major urban district from the exclusive jurisdiction of the County of Maui under the provisions of said Act 187, as amended, and would cause a dimunition of taxes in said existing urban core to the detriment of other taxpayers of the County of Maui; now, therefore,

BE IT RESOLVED by the Board of Supervisors of the County of Maui that it does hereby:

1. Oppose the proposed rural classification of the existing mauka urban core of Jamestown and favors its continued designation as an urban district on permanent land use classification maps, in accordance with the facts and intent of said Act 187, as amended;

2. Endorse that certain petition of Kula Development Corporation to the Land Use Commission, dated February 3, 1964 (amended February 6 and 19), relative to the continued urban classification of said existing mauka urban core, as defined therein; and

3. Endorse that certain communication of April 24, 1964, from Kula Development Corporation to the Land Use Commission requesting continued urban classification of said existing urban core of Jamestown; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the Land Use Commission and the Maui County Planning and Traffic Commission.

BOARD OF SUPERVISORS – COUNTY OF MAUI
WAILUKU, HAWAII

MEMBERS	TAM, CHM.	BULGO	CROCKETT	HOKAMA	LEE	MEYER	MOLINA	MORISAKI	TAGAWA
AYES		x	x		x	x	x	x	x
NOES					(Acting Chairman)				
AB.									
EX.	x			x					

Adopted on the 15th day of May, 1964.

/s/ C. N. Toshi Enomoto
COUNTY CLERK, COUNTY OF MAUI,
STATE OF HAWAII

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. 57, THE ORIGINAL OF WHICH IS NOW ON FILE IN THE OFFICE OF THE COUNTY CLERK, COUNTY OF MAUI, STATE OF HAWAII.

DATED THIS 18th DAY OF May, 1964.

COUNTY CLERK, COUNTY OF MAUI

2339

PAUL C. GILLETTE
PROFESSIONAL CIVIL ENGINEER
HAWAII AND NEW YORK
R.R.45A, WAIAKOA, MAUI, HAWAII
TELEPHONE 784-315

CIVIL-HYDRAULIC
LAND APPRAISALS
PRELIMINARY REPORTS
CONSTRUCTION
ESTIMATES
SPECIFICATIONS
SUPERVISION

February 12, 1968

RECEIVED
FEB 13 1968
State of Hawaii
LAND USE COMMISSION

Mr. Ramon Duran
Executive Officer
Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii

Dear Mr. Duran:

Subject: Application filed Nov. 27, 1967 to amend land use boundaries on tax map key - 2-3-19:28 at Kula, Maui, Hawaii

We thank you for your helpful letter of November 30, 1967, acknowledging subject application. Your offer to provide any additional assistance or information required, is much appreciated.

In reviewing the Maui County Planning Commission December 11, 1967 staff report on our application, which it is assumed was the basis for the Commission's denial, I noted some factual errors as well as incorrect conclusions. If the correct facts and conclusions based thereon, could have been presented to the Maui County Planning Commission before rendering their final decision; it is believed that the action taken would have been an affirmative one instead of a denial. As I was not advised in advance of the hearing held December 19, 1967, there was no opportunity to present to the Maui County Planning Commission the following correction of their staff report and my opinions on the issues involved.

The discrepancy and corrections of the conclusions are herewith submitted for your consideration.

First - Under "Kula Urban Lands" the Maui County Planning Commission staff report states that "In the Jamestown Kula Orchards area, almost half of the acreage in urban classification is owned by the Kula Development Corporation, the majority of which is undeveloped. Actually, the facts are that Kula Development Corporation owns only 6 lots in Kula Orchards and they are subject to foreclosure and 3 parcels in former Kula Gardens, also subject to foreclosure. The

2-3-22: 16 17 48 49 50 54

2-3-22: 7
2-3-23: 3 4

former comprise less than 5.0% of the total Kula Orchards area and only about 8.0% of the total lots. The latter development has been abandoned and as it is not in the immediate vicinity of our parcel, it is believed does not warrant further consideration.

Second - Under "Adjacent Land Use" the statement made that "Almost all parcels in this area are at least 10,000 square feet in area, with many one-half acre or more" is correct, inasmuch as only 3 lots are less than 10,000 square feet. However, a majority of the lots are under a half acre in size, and for the most part, the lot frontages are strictly urban in character, with most of them being approximately less than 100 feet.

Third - Under "Recommendation", the statement that there appears to be an ample supply of lands in the Kula area classified as urban is a conclusion not borne out by the facts: In the Kula Orchard Development of some 78 lots there are only 8 known to have been listed for sale since 1966 with only 4 now known to be actively on the market. It is of interest that all but one of those are over 19,000 square feet with 5 being over 25,000 square feet each in area.

The developer's broker informs me that purchases of lots in Kula Kai have not been for speculation but for home building as the owners are able to arrange financing. It is of interest that the first phase has been sold out and sales of the second, recently opened up, are progressing well, even though lot sizes are from 14,000 to 15,000 square feet each, with resultant higher prices.

Fourth - Under "Recommendation" the statement that "the existing character of the surrounding area, even in those lands designated as urban appears to be more rual in character", would imply that the staff would recommend changing the present urban classification of the adjoining parcel south of our property as well as all of the Kula Orchard lots across the highway. If that is not done, it would seem evident that the Maui County Planning Commission should agree to grant our application as the character of our property is identical to that of large portions of the areas adjoining and across the highway now classified as urban. In fact, the location of our property directly on the State highway adjacent to a commercial property would appear to further warrant the urban classification requested.

Fifth - A very important factor in the limited area of Kula in which our property is located and one that the staff report failed to cover is the extent of and the excessive rate of growth of the commonly called wattle or haole koa forest and its adverse effect upon the residential development of the area. Practically the entire area of Kula Orchard, former Kula Gardens and from the south boundary of our parcel to the parcels on the south side of Kimo Drive are completely covered with dense growth of the wattles. This and non-resident ownership has been a very major impediment to residential development in Kula area. In contrast to nearly all of the lots in Kula Orchard our lot, due to the unique location the gulch and the terrain, when cleared off, will have unobstructed views except to the north and east.

Sixth - Though the granting of our application, we believe should be based upon an extension of the urban classification on the adjoining and across the highway areas, as the character of ours is the same as those areas, the adverse effect upon possible development of our parcel due to the present rural classification is herewith presented.

Before doing so, a revision of my application should be made wherein it was stated in paragraph (a) "The land is usable and adaptable for the development of at least 10 fine view spacious lots if the reclassification from rural to urban is approved". Based on further detailed field inspection since November 27, 1967 of the general terrain and the extent and location of the gulch and assuming no extensive grading being required, it is concluded that not over 6 such spacious lots could be developed instead of the 10 originally estimated.

Though the property is not on the market, preliminary discussions with an interested buyer who is not a land developer but wishes to build a spacious home for his family with additional residences for relatives and or business associates, disclosed that the limitation of a minimum area of 1/2 acre per house eliminated the property from further consideration, in view of the present house near the front of the parcel requiring 1/2 acre area and the gulch reducing the usable area for residences by an additional approximate one acre leaving less than 1-1/2 acres for his residential development.

Sincerely,

Paul C. Gillette

Paul C. Gillette, P. E.

February 12, 1968

RECEIVED
FEB 13 1968
State of Hawaii
LAND USE COMMISSION

Mr. Ramon Duran
Executive Officer
Land Use Commission
State of Hawaii
426 Queen Street
Honolulu, Hawaii

Dear Mr. Duran:

Subject: Application filed Nov. 27, 1967 to amend land use boundaries on tax map key - 2-3-19:28 at Kula, Maui, Hawaii

We thank you for your helpful letter of November 30, 1967, acknowledging subject application. Your offer to provide any additional assistance or information required, is much appreciated.

In reviewing the Maui County Planning Commission December 11, 1967 staff report on our application, which it is assumed was the basis for the Commission's denial, I noted some factual errors as well as incorrect conclusions. If the correct facts and conclusions based thereon, could have been presented to the Maui County Planning Commission before rendering their final decision; it is believed that the action taken would have been an affirmative one instead of a denial. As I was not advised in advance of the hearing held December 19, 1967, there was no opportunity to present to the Maui County Planning Commission the following correction of their staff report and my opinions on the issues involved.

The discrepancy and corrections of the conclusions are herewith submitted for your consideration.

First - Under "Kula Urban Lands" the Maui County Planning Commission staff report states that "In the Jamestown Kula Orchards area, almost half of the acreage in urban classification is owned by the Kula Development Corporation, the majority of which is undeveloped. Actually, the facts are that Kula Development Corporation owns only 6 lots in Kula Orchards and they are subject to foreclosure and 3 parcels in former Kula Gardens, also subject to foreclosure. The

former comprise less than 5.0% of the total Kula Orchards area and only about 8.0% of the total lots. The latter development has been abandoned and as it is not in the immediate vicinity of our parcel, it is believed does not warrant further consideration.

Second - Under "Adjacent Land Use" the statement made that "Almost all parcels in this area are at least 10,000 square feet in area, with many one-half acre or more" is correct, inasmuch as only 3 lots are less than 10,000 square feet. However, a majority of the lots are under a half acre in size, and for the most part, the lot frontages are strictly urban in character, with most of them being approximately less than 100 feet.

Third - Under "Recommendation", the statement that there appears to be an ample supply of lands in the Kula area classified as urban is a conclusion not borne out by the facts: In the Kula Orchard Development of some 78 lots there are only 8 known to have been listed for sale since 1966 with only 4 now known to be actively on the market. It is of interest that all but one of those are over 19,000 square feet with 5 being over 25,000 square feet each in area.

The developer's broker informs me that purchases of lots in Kula Kai have not been for speculation but for home building as the owners are able to arrange financing. It is of interest that the first phase has been sold out and sales of the second, recently opened up, are progressing well, even though lot sizes are from 14,000 to 15,000 square feet each, with resultant higher prices.

Fourth - Under "Recommendation" the statement that "the existing character of the surrounding area, <u>even in those lands designated as urban</u> appears to be more rual in character", would imply that the staff would recommend changing the present urban classification of the adjoining parcel south of our property as well as all of the Kula Orchard lots across the highway. If that is not done, it would seem evident that the Maui County Planning Commission should agree to grant our application as the character of our property is identical to that of large portions of the areas adjoining and across the highway now classified as urban. In fact, the location of our property directly on the State highway adjacent to a commercial property would appear to further warrant the urban classification requested.

Fifth - A very important factor in the limited area of Kula in which our property is located and one that the staff report failed to cover is the extent of and the excessive rate of growth of the commonly called wattle or haole koa forest and its adverse effect upon the residential development of the area. Practically the entire area of Kula Orchard, former Kula Gardens and from the south boundary of our parcel to the parcels on the south side of Kimo Drive are completely covered with dense growth of the wattles. This and non-resident ownership has been a very major impediment to residential development in Kula area. In contrast to nearly all of the lots in Kula Orchard our lot, due to the unique location the gulch and the terrain, when cleared off, will have unobstructed views except to the north and east.

Sixth - Though the granting of our application, we believe should be based upon an extension of the urban classification on the adjoining and across the highway areas, as the character of ours is the same as those areas, the adverse effect upon possible development of our parcel due to the present rural classification is herewith presented.

Before doing so, a revision of my application should be made wherein it was stated in paragraph (a) "The land is usable and adaptable for the development of at least 10 fine view spacious lots if the reclassification from rural to urban is approved". Based on further detailed field inspection since November 27, 1967 of the general terrain and the extent and location of the gulch and assuming no extensive grading being required, it is concluded that not over 6 such spacious lots could be developed instead of the 10 originally estimated.

Though the property is not on the market, preliminary discussions with an interested buyer who is not a land developer but wishes to build a spacious home for his family with additional residences for relatives and or business associates, disclosed that the limitation of a minimum area of 1/2 acre per house eliminated the property from further consideration, in view of the present house near the front of the parcel requiring 1/2 acre area and the gulch reducing the usable area for residences by an additional approximate one acre leaving less than 1-1/2 acres for his residential development.

Sincerely,

Paul C. Gillette

Paul C. Gillette, P. E.

February 12, 1968

Mr. Paul C. Gillette
R. R. 1 - Box 381
Kula, Maui, Hawaii

Dear Mr. Gillette:

The Land Use Commission next meets on March 8, 1968, at 1:00 P. M., at the Kahului Library, Kahului, Maui. At that time your application (A67-171) to amend the land use district boundaries at Kula, Maui, will be heard.

Very truly yours,

RAMON DURAN
Executive Officer

ROBERT O. OHATA
PLANNING DIRECTOR

7310

EVA M. DUPONTE
ADMINISTRATIVE ASSISTANT

ASC

PLANNING COMMISSION
COUNTY OF MAUI

POST OFFICE BOX 1487
KAHULUI, MAUI, HAWAII 96732

December 20, 1967

DEC 26 1967
State of Hawaii
LAND USE

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

Gentlemen:

Re: Change in District Boundaries Application No. 33, from Paul C. and Martha A. Gillette, Kula, Maui, Hawaii

The Maui Planning Commission at its meeting of December 19, 1967, voted unanimously to recommend denial of application for change in district boundaries for Mr. and Mrs. Paul Gillette. The action of the Commission was based on the recommendation made by the staff which is attached herewith.

Very truly yours,

Robert O. Ohata

ROBERT O. OHATA
Planning Director

Encl.
cc Mr. and Mrs. Paul Gillette
cc Mr. Elmer F. Cravalho, County Chairman

December 1

RECEIVED
DEC 7 1967
State of Hawaii
LAND USE COMMISSION

TO: MAUI PLANNING COMMISSION

FROM: PLANNING DEPARTMENT

SUBJECT: CHANGE IN DISTRICT BOUNDARY APPLICATION #33, PAUL C. AND MARTHA T. GILLETTE

The applicants are seeking a change in land use district boundaries for their property located at Kula, Maui, from rural to urban classification. The parcel is identified as TMK 2-3-19:28, and is located on the mauka (easterly) side of Haleakala Highway or Upper Kula Road, immediately north of the Silversword Inn. Total lot area is 3.00 acres. At the present time, the only utilization of the property is a two-story duplex dwelling, which is used for rental purposes.

The applicants, in seeking a change in classification from rural to urban district, would like to develop a residential subdivision of approximately ten lots.

ADJACENT LAND USE: The subject property is bounded on the south by urban district (Silversword Inn), and on the north and east by rural district. Immediately across Haleakala Highway from the subject parcel is approximately 145 acres of urban-classified lands, extending down almost to the Lower Kula Road. Almost all parcels in this area are at least 10,000 square feet in area, with many one-half acre or more.

KULA URBAN LANDS: At the present time, there are approximately 264 acres of land classified as urban in the Kula area. This includes approximately 46 acres at Kula Kai, 149 acres in the Jamestown and Kula Orchards area (in the vicinity of the subject property), 49 acres at Waiakoa, and 20 acres at Keokea. Waiakoa and Keokea serve as commercial and public centers for the Kula region. Kula Kai, which will ultimately contain

135 lots, has nearly completed its first phase, with the majority of the 55 lots sold over a three-yeard period. In the Jamestown-Kula Orchards area, almost half of the acreage in urban classification is owned by the Kula Development Corporation, the majority of which is undeveloped.

DESCRIPTION OF PROPERTY: The major portion of the subject property is presently overgrown with trees. A 15-20 foot deep gully runs along the southerly side of the property. The lands have a slope of approximately 12 per cent, which would not pose a major barrier for residential use. The soil is classified by the Land Study Bureau of the University of Hawaii as "C", or fair, in over-all suitability for agricultural purposes. Access to the property is from Haleakala Highway, which is part of the Federal Aid Secondary System. The subject property is shown on the Maui General Plan as rural. This rural designation includes most of the Kula area, with the exception of Waialoa and Keokea.

RECOMMENDATION:

At the present time, there appears to be an ample supply of lands in the Kula area classified as urban. Home construction in presently classified urban lands is not proceeding at a rate which would indicate any shortage of such lands within the near future. Kula Kai, with 50 lots sold over a 3 year period, has at the present time 17 homes completed or under construction.

In addition, the existing character of the surrounding area, even in those lands designated as urban, appears to be more rural in character. There is not a "city-like concentration of people, structures, streets and other related land uses" as required by the State Land Use District Regulations for urban districts.

Therefore, it is the staff recommendation that the Planning Commission recommend denial of the request for change in district boundary from rural to urban district by the State Land Use Commission, in conformance with the General Plan for the island of Maui.

State Form B14

STATE OF HAWAII

OFFICIAL RECEIPT No. 227

Department of Planning and Economic Development
Department, Bureau or Commission

Dec. 8 19 67

RECEIVED from Paul C. Gillette

Fifty and no/100 ——— **DOLLARS**

L. U. C.

Filing fees - Paul C. Gillette
Lot 281-B Kula Maui

$ 50 00

Jean H. Kamitono
Public Accountant

November 30, 1967

Planning Commission
County of Maui
P. O. Box 1487
Kahului, Maui

Attention: Mr. Robert Ohata, Director

Gentlemen:

Pursuant to Section 98H-4, RLH 1955, as amended, and Act 32 SLH 1965, we are enclosing copies of petition for amendment to the land use district boundaries submitted by Paul C. and Martha T. Gillette, supporting data and maps for your comments and recommendations.

Act 32 provides that within 45 days after receipt of the petition, the Commission of the County wherein the land is located shall forward its comments and recommendations to the Land Use Commission. It also provides that upon written request by the County Planning Commission, the Land Use Commission may grant an extension of not more than 15 days for the receipt of such comments and recommendations.

Thank you for your cooperation.

Very truly yours,

RAMON DURAN
Executive Officer

Encls.

November 30, 1967

Mr. Paul C. Gillette
R.R. 1 - Box 381
Kula, Maui, Hawaii

Dear Mr. Gillette:

This is to acknowledge the receipt of your check in the amount of $50.00 and your petition to amend the land use district boundaries as shown on Tax Map Key 2-3-19: 28 at Kula, Maui.

In accordance with Section 98H-4, RLH 1955, as amended, and Act 32 SLH 1965, this Commission must schedule a public hearing on this 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 Maui. We will inform you of the date of the hearing as soon as it is determined.

Should you have any questions, please feel free to contact us. In the meantime, if we have any questions we will contact you.

Very truly yours,

RAMON DURAN
Executive Officer

Encl.
cc: Maui Planning Commission

State Form B14

STATE OF HAWAII

OFFICIAL RECEIPT No. 185

Land Use Commission
Department, Bureau or Commission

November 29 1967

RECEIVED from Paul C Gillette

Fifty & no/00 DOLLARS

Petition for Boundary Change

$ 50 00

Don Y Horikawa
Public Accountant

PAUL C. GILLETTE
PROFESSIONAL CIVIL ENGINEER
HAWAII AND NEW YORK
R.R. 1, BOX 381, KULA, MAUI, HAWAII
TELEPHONE 784-315

November 27, 1967

CIVIL-HYDRAULIC
LAND APPRAISALS
PRELIMINARY REPORTS
CONSTRUCTION
ESTIMATES
SPECIFICATIONS
SUPERVISION

RECEIVED
NOV 29 1967
State of Hawaii
LAND USE COMMISSION

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

Dear Sirs:

Enclosed is our petition for amendment to the Land Use Commission district boundary. My check of $50.00 to cover the fee required for your consideration and action is attached.

As early a decision as possible will be very much appreciated.

Sincerely,

Paul C. Gillette

Paul C. Gillette, P. E.

PCG:nu
Encls.

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

RECEIVED
NOV 29 1967
State of Hawaii
LAND USE COMMISSION

This space for LUC use

Date Petition & Fee received by LUC_____

Date forwarded to County for recommendation_____

Date Petition, & County recommendation received by LUC_____

A67-171

PETITION FOR AMENDMENT TO THE LAND USE COMMISSION DISTRICT BOUNDARY

We hereby request an amendment to the Land Use Commission District Boundary respecting the County of Maui, Island of Maui, map number and/or name Lot 281-B, Map 16 Land Court Application 342, Tax Map Key: 2-3-19:28 to change the district designation of the following described property from its present classification in a Rural district into an Urban district.

Description of property: Three acre parcel - west side (on Haleakala Road) 344.58 feet. On north side 473.81 feet. On east side 259.48 feet. On south side to Haleakala Road 439.14 feet.

Petitioner's interest in subject property:

Owners

Petitioner's reasons for requesting boundary change:

Petitioner's reason for requesting boundary changes is that:
The subject property is needed for development of residential lots of less than 1/2 acre in size in accordance with the neighborhood across Haleakala Road which is characterized by a large number of lots of less than 1/2 acre size and is zoned urban. The adjoining 4.0 acre parcel south of this parcel is also zoned urban and is used for commercial hotel operation.

The petitioner herewith submits evidence in support of the following statements:

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

The land is usable and adaptable for the development of at least 10 fine view spacious residential lots, if the proposed reclassification from rural to urban, is approved. The terrain of most of the parcel is such that a high utilization is possible. Due to the high price of land in this region, further residential development of the balance of the parcel, not occupied by the present two unit rental house, into minimum 1/2 acre lots is not financially feasible. No other use than commercial or residential has been able to be developed for this section along Haleakala Road as the land and terrain is unsuitable for flower growing or agricultural purposes and is not in demand for such uses.

(b) Increased availability of ample water supply has so changed since the present classification was adopted that it is now highly advantageous for the general economy of the Kula area to encourage development of residential units of such sizes that they can be sold at a price the average home owner can afford.

It should be considered that the additional personnel required to carry on the expanded operations in Science City on the summit of Haleakala has increased the demand for residences in the Kula area.

The following plans accompany this application:

(1) Tax Map Key 2-3-22 - general area indicating our parcel in red and area now designated "Urban" in yellow.

(2) Tax Map Key 2-3-19 - Area adjoining our parcel. Our parcel in red.

(3) Tax Map Key 2-3-19:28 - Large scale plan of our parcel.

Paul C. Gillette

Paul C. Gillette, P. E.

Martha T. Gillette

Martha T. Gillette

R.R. 1 - Box 381
Kula, Maui, Hawaii
Telephone No. 784-315

2 3 21

PLAT 04

GRANT

PLAT 05

3515

3412

PLAT 20

PLAT 13

PLAT 08

TRUE NORTH
SCALE: 1 INCH = 100 FT.

Wallace K. Kimura & wf. Beatrice S. - T/E
3.011 ac.
LD
512.48
509.27
372.74

Hitoshi Urada & wf. Miharu P. - T/E
2.084 ac.
372.74
503.11
120.88
677.04

Alexander L. Meruk & wf. Mary - T/E - 1/2
Frederick J. S. Gau & wf. Agnes C. - T/E - 1/2
394.46
392.43
2.033 ac.
568.12
0.677 ac.
133.73
1033.90
1122.60

Easement 8 & pipeline easement 15 ft. Wide

Adam Ventura & wf. Frances A. - J/T
38.512 ac.
(35.084 ac.)

Henry L. Alau & wf. Ellen T/E
2.384 ac.
(1.068 ac.)
(1.200 ac.)
PLAT 20
350.00
180.0
180.0
878.30
878.30

Arthur Ventura & wf. Bettye Ann - T/E
0.305 ac. see below
Arthur Ventura & wf. Bettye T/E
0.364 ac. see below
207.54
82.01
68.0
68.0
68.84
68.84
66.67
66.67
45.84
45.84
38.18
38.18
157.72
157.08
138.0
138.0
0.584 ac.
132.80
240
209.18
209.18
101.81

John Alapai & wf. Elizabeth - T/E
1.575 ac.
302.75
342.83

Jack E. Veckrodt & wf. Euphence F. - T/E
2.807 ac.
(2.528 ac.)
301.12
284.20

Easement 18 ft. Wide
& Kula Pipeline

HALEAKALA FILE PLAN ACRES 410

Parcel 8 & 10:
I Dan W. Green, M.D. & wf. Marjorie - T/E) H/s

POHAKUAKALA GULCH
1621.68
1080

Por. Omaopio, Kula, Maui, T. H.

Note: All lots owned by Frank Munoz & wf Jessie R. C/P unless otherwise noted.

Parcels Dropped: 2, 8,

SUBJECT TO CHANGE

TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
SECOND DIVISION

ZONE	SEC.	PLAT
2	3	21

CONTAINING PARCELS
SCALE = 1 IN. = 100 FT.

Dwg No: 3840
Source: Ld Ct App. 948 Map 21 & TMB
By: WD March, 1969

JAN 15 1968

7619

OCT 5 1945
OCT 6 1947
JAN 29 1951
NOV 29 '55



Dwg No: 3
By: D.S.C. & H.N. April 1934
Source: Tax Maps Bureau

Por. KULA, MAKAWAO, MAUI

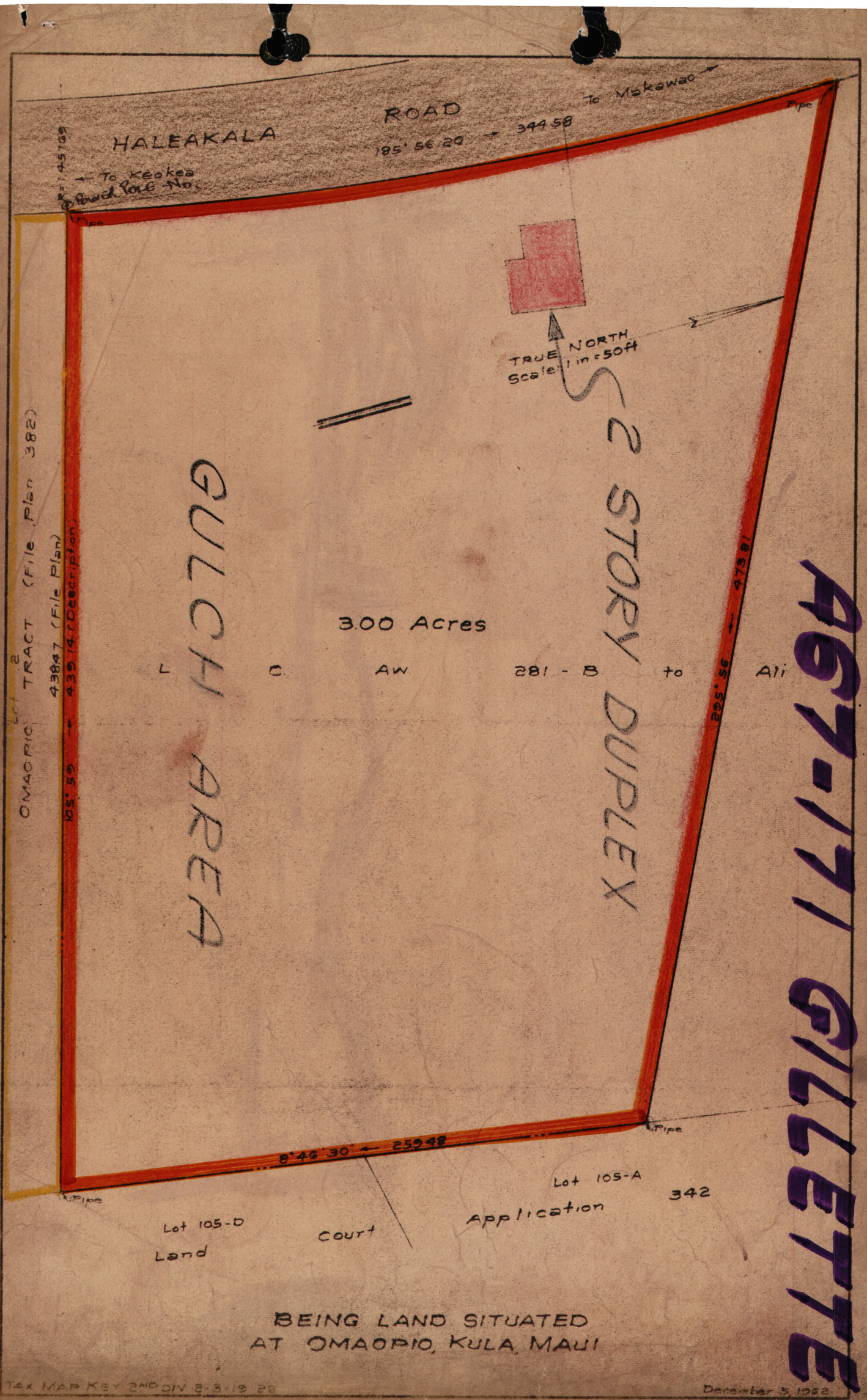
ADVANCE SHEET
SUBJECT TO CHANGE

SECOND DIVISION	
ZONE	SEC.
2	3
CONTAINING PLATS	
SCALE: 1" = 2000 FT.	

JAN 15 1958

PRINTED

7620


HALEAKALA ROAD
To Makawao
To Keokea
Power Pole No. 45709
185° 56' 20" → 344.58
Pipe
TRUE NORTH
Scale: 1 in = 50ft
2 STORY DUPLEX
GULCH AREA
3.00 Acres
L C Aw 281 - B to Ali
OMAOPIO TRACT (File Plan 382)
Lot 2
105° 59' → 439.14 (Description)
43847 (File Plan)
295° 56' → 473.81
8° 46' 30" → 259.48
Pipe
Pipe
Lot 105-A
342
Application
Court
Lot 105-D
Land
BEING LAND SITUATED
AT OMAOPIO, KULA, MAUI
TAX MAP KEY 2ND DIV. 2-3-12: 20
December 5, 1982
NAKAHATA KANESHIGE IMATA & ASSOC. LTD.
ENGINEERS & SURVEYORS
WAILUKU, MAUI, HAWAII
AG-171 GILLETTE

2 3 22

Rural Classification

Urban Classification.

Plat 14

KIMO DRIVE

HALEAKALA HIGHWAY

To Makawao

Plat 19

Plat 20

Plat 01

County of Maui

TRUE NORTH
This = 100 ft

APP. 3820

APP. 5230

AINAKULA ROAD

KULALANI DRIVE

KULALANI CIRCLE

KULA ORCHARDS SUBD.

KULA LODGE EXTENSION

PLAN 281-B

KULA FILE PLAN

United Development Corporation
7.678 Acs.

Harvey A. Welsh &wf Margaret L. -T/E

Various Owners See T.M.K. 3:1:99

Pacific Marine & Supply Co. Ltd.
2.223 acs.

Charles E. Hughes &wf Tillie B. -T/E
(David C. Anderson &wf Jeanne A. -T/E)
-A/S

6.642 acs.

Kula Development Corp.
4.199 acs.

Richard B. McGovney &wf Betty M. -J/T
5.344 acs.

Kula Ranch, Ltd

Harvey H. Meeker, Jr. &wf Janet G. -T/E

John H. McAuliffe, Jr. &wf Mary Jane -T/E

Paul R. Moore &wf Anneliese M. -T/E

Jerry L. Watson &wf Mary H. -T/E

Howard H. Warashina &wf Patsy K. & Shigeo Warashina -J/T

Emma Bertha Heeke

Ralph G. Riffenburgh &wf Angelyn K. -T/E

Lyle D. Meeker

Neal J. McAuliffe &wf Margaret R. -J/T

Paul C. Gillette &wf Martha T. -T/E

John R. Neece &wf Jane B. -T/E

John M. Fox, Jr.

William J. Morris &wf Kathleen N. -T/E

Roscoe W. Allen &wf Miriam B. -T/E

John Moodie &wf Lillie J. -T/E

Jack W. Reynolds &wf Ruth E. -T/E

Arthur T. Sato &wf Charlotte -T/E

Aoto &wf Grace H. -T/E

Griffith R. Conner &wf Virginia -T/E

Jack E. Yockreit &wf Eupheace R. -T/E-½
James E. Fleming &wf Elizabeth K. -T/E-½

Jack N. Johnston &wf Bertha -T/E

Theodore Summers &wf Eleanor J. -T/E

Edward C. Grosse &wf Amber S. -T/E

Alan Zahn &wf Janet -T/E-½ John T. Greany -T/E

Richard R. Hughes &wf Kamala -T/E

Louise M. Kartes

Philip Hirsch &wf Maybelle H. -T/E -A/S

Ellen S. Little

Wade Lucas

Albert Chang

Frank G. Schiff

Penny R. Wilson &wf Alice G.

Nancy M. H. Auna

Dorothy H. Giesellman

Chen-Chuan Tu &wf Yun T. -T/E

Louise M. Meyer &wf Margaret H. -T/E

Marie A. Lopez

Mary Mendevedo Yen

Manuel Perreira &wf Virginia G. -T/E

William K. Hansell &wf Margaret C. -T/E

Barbara Lois Barnes

PARCELS 73, 74, 78, owned by Frank L. James, E. wf. Marie A. -T/E

Parcel 10:
Francis J. P. James E. wf. Elizabeth M. -T/E

Por. 16 to 18, 48, 49, 50, 51, 54, 53, 64, 66, 68, owned by Kula Development Corporation unless otherwise noted.

Parcels 35, 41, 65 owned by Finance Factors unless otherwise noted.

Reproduced
1967

Parcels Dropped: 74,

SUBJECT TO CHANGE

Por. Omaopio, Kula, Maui

Drg. No.: 3847
Source: L.C. Apv. 342
By: J.H.H. & W.E.K. Date: May, 1949

L. C. A W.

P U L E H U N U I

TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP

SECOND DIVISION		
ZONE	SEC.	PLAT
2	3	22

CONTAINING PARCELS
SCALE : 1 IN = 100 FT.

2 3 19

PLAT 04

David C.U. Fung & wf. Doris Y. - J/T. (75) 1.993 Acs.

William Kaholokula & wf. Elizabeth - T/E (76)

Isao Yamashiro & wf. Lily H. - J/T. (77-B) 0.782 Ac.

Howard C. Marsh & wf. Winifred L. T/E (77-A) 1.270 Acs.

Toshio Watanabe & wf. Yoneko - T/E (78) 2.054 Acs.

Tadatsugu Endo & wf. Setsuko - T/E (79) 2.201 Acs.

Kenneth K. Takamura & wf. Fumie - T/E (80) 2.024 Acs.

Nobuyuki Jio & wf. Akio - J/T (81) 2.640 Acs.

Takeshi Nagamatsu & wf. Ayako - T/E (83) 2.172 Acs.

Hitoshi Urada & wf. Patsy M. - T/E (84) 2.054 Acs.

Jitsumi Kuniki (85) 2.135 Acs.

(86)

(87)

Joseph W. Perreira & wf. Mary C. - T/E (14) 1.843 Acs.

(82) 0.117 Ac. County of Maui - Road Ac.

Kiujiro Yamaguchi & wf. Kisano - T/E (114) 2.931 Acs.

Takichi Shishido & wf. Tokue - T/E (113) 1.687 Acs.

Yoshito Kagawa & wf. May A. - T/E (111) 2.158 Acs.

Joseph C. Wong & wf. Gladys L. - T/E (112)

Oscar M. Mauer & wf. Margaret H. - T/E (32) 23,950 sf

Oscar M. Mauer & wf. Margaret H. - T/E (31) 23,950 sf

SEE BELOW (30) 28,350 sf

(Joseph W. Tsuru & wf. Clea - 1/2) (36) 75,760 sf

(George M. Kimura & wf. Thelma A. T/E) N/O (35) 28,333 sf

Emma Bertha Heske 8.882 Acs. (6.241 Acs)

Kiujiro Yamaguchi & wf. Kisano - T/E (115) 2.092 Acs.

Mitsuo Morimoto & wf. Masayo - T/E 4.461 Acs. (2.876 Ac.)

Henry I. Hasseman & wf. Ingeborg M. - T/E 2.921 Acs.

PARCEL 30: Frank L. James & wf. Marie A. - 1/2, Oscar M. Mayer & wf. Margaret H. T/E - Rem.

Owners of Parcel 33: John W. Kelliher & wf. Lucile S. - T/E

Owners of Parcel 34: Louise V. Beyum, Jovana E. Beyum & wf. Katherine L. - J/T

(2.641 Acs)

Henry P. Lopes & wf. Mary G. - J/T 2.2 Acs.

Shigeki Tamura & wf. Fumiyo - T/E (Frank S. Corey & wf. Mary H.) Alo 3.178 Acs. (2.881 Acs)

(0.411 Ac)

(0.207 AC)

(1.174 Acs)

Frank Munoz & wf. Jessie C.

Clarence N. Overman & wf. Blanche B. - J/T 1.216 Acs.

Aw. Paul C. Gillette & wf. Martha T. - T/E 3.00 Acs. 281-B

FILE PLAN 382 TRACT OMAOPIO

Easement

Pipeline

To Makawao

To Keokea

HALEAKALA HIGHWAY

PLAT 14

PLAT 22

PLAT 20

TRUE NORTH

Por. Ld. Ct. App. 342 (Map-16) POR. OMAOPIO, KULA MAUI

Dwg. No: 3819
Source: Por. Ld. Ct. App. 342 Map-16 & TMS
By: H.N. & C.W. Date: January '49

Parcels Dropped: 8, 5.

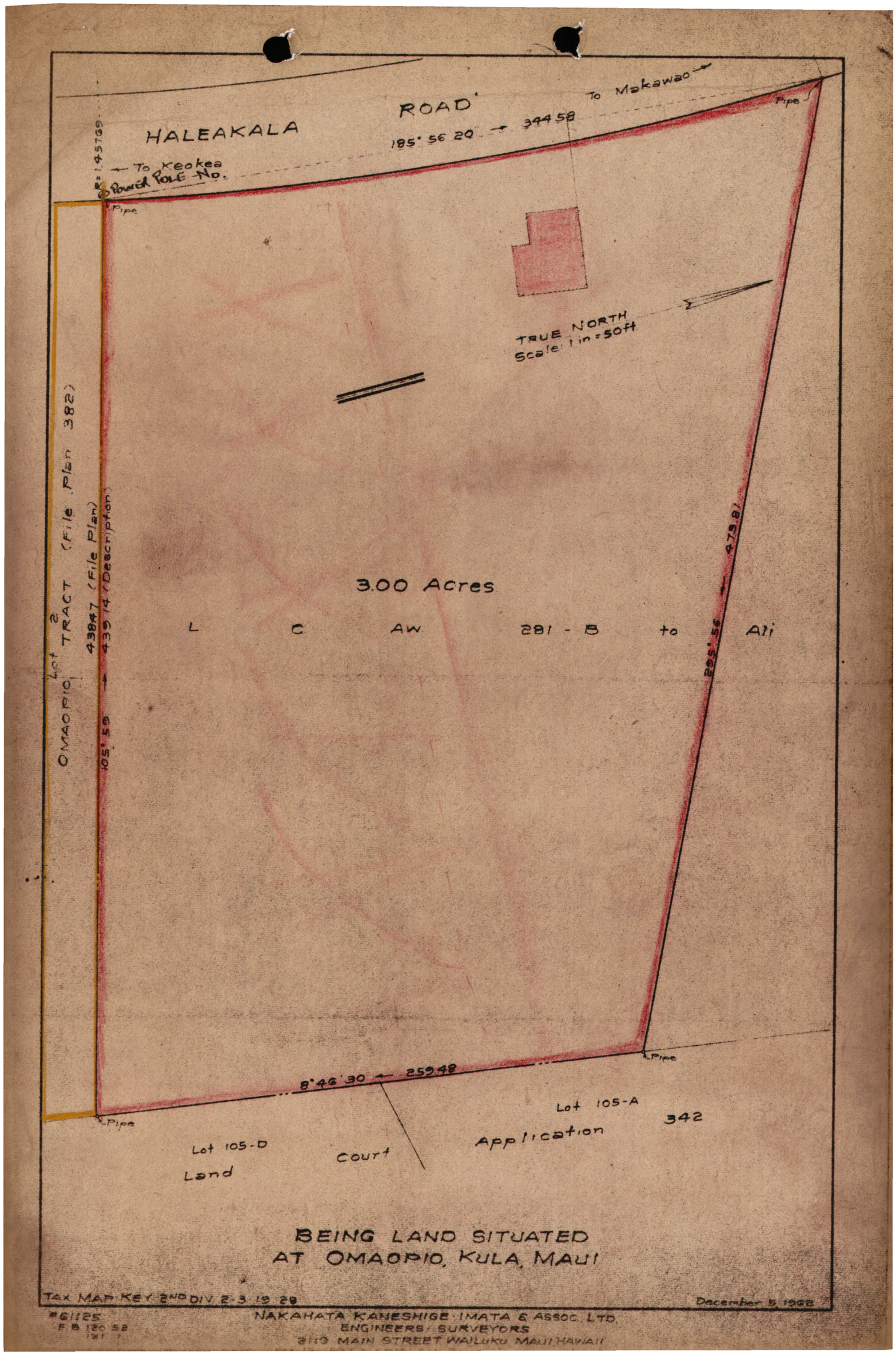
Reproduced 1967

SUBJECT TO CHANGE

TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
SECOND DIVISION

ZONE	SEC.	PLAT
2	3	19

CONTAINING PARCELS
SCALE:- 1 IN. = 100 FT.



BEING LAND SITUATED AT OMAOPIO, KULA, MAUI

TAX MAP KEY 2ND DIV. 2-3-19-28

December 5 1968

#6125
F.B. 180 52
181 1

NAKAHATA KANESHIGE IMATA & ASSOC. LTD.
ENGINEERS SURVEYORS
2113 MAIN STREET WAILUKU MAUI HAWAII

November 27, 1967

RECEIVED
NOV 27 1967
State of Hawaii
LAND USE COMMISSION

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

Dear Sirs:

Enclosed is our petition for amendment to the Land Use Commission district boundary. My check of $50.00 to cover the fee required for your consideration and action is attached.

As early a decision as possible will be very much appreciated.

Sincerely,

Paul C. Gillette

Paul C. Gillette, P. E.

PCG:nu
Encls.

Xtra set

STATE OF HAWAII
LAND USE COMMISSION

426 Queen Street
Honolulu, Hawaii

RECEIVED
NOV 29 1967
State of Hawaii
LAND USE COMMISSION

This space for LUC use

Date Petition & Fee received by LUC_____

Date forwarded to County for recommendation_____

Date Petition, & County recommendation received by LUC_____

PETITION FOR AMENDMENT TO THE LAND USE COMMISSION DISTRICT BOUNDARY

We hereby request an amendment to the Land Use Commission District Boundary respecting the County of Maui, Island of Maui, map number and/or name Lot 281-B, Map 16 Land Court Application 342, Tax Map Key: 2-3-19:28 to change the district designation of the following described property from its present classification in a Rural district into an Urban district.

Description of property: Three acre parcel - west side (on Haleakala Road) 344.58 feet. On north side 473.81 feet. On east side 259.48 feet. On south side to Haleakala Road 439.14 feet.

Petitioner's interest in subject property:

Owners

Petitioner's reasons for requesting boundary change:

Petitioner's reason for requesting boundary changes is that:
The subject property is needed for development of residential lots of less than 1/2 acre in size in accordance with the neighborhood across Haleakala Road which is characterized by a large number of lots of less than 1/2 acre size and is zoned urban. The adjoining 4.0 acre parcel south of this parcel is also zoned urban and is used for commercial hotel operation.

The petitioner herewith submits evidence in support of the following statements:

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

The land is usable and adaptable for the development of at least 10 fine view spacious residential lots, if the proposed reclassification from rural to urban, is approved. The terrain of most of the parcel is such that a high utilization is possible. Due to the high price of land in this region, further residential development of the balance of the parcel, not occupied by the present two unit rental house, into minimum 1/2 acre lots is not financially feasible. No other use than commercial or residential has been able to be developed for this section along Haleakala Road as the land and terrain is unsuitable for flower growing or agricultural purposes and is not in demand for such uses.

(b) Increased availability of ample water supply has so changed since the present classification was adopted that it is now highly advantageous for the general economy of the Kula area to encourage development of residential units of such sizes that they can be sold at a price the average home owner can afford.

It should be considered that the additional personnel required to carry on the expanded operations in Science City on the summit of Haleakala has increased the demand for residences in the Kula area.

The following plans accompany this application:

(1) Tax Map Key 2-3-22 - general area indicating our parcel in red and area now designated "Urban" in yellow.

(2) Tax Map Key 2-3-19 - Area adjoining our parcel. Our parcel in red.

(3) Tax Map Key 2-3-19:28 - Large scale plan of our parcel.

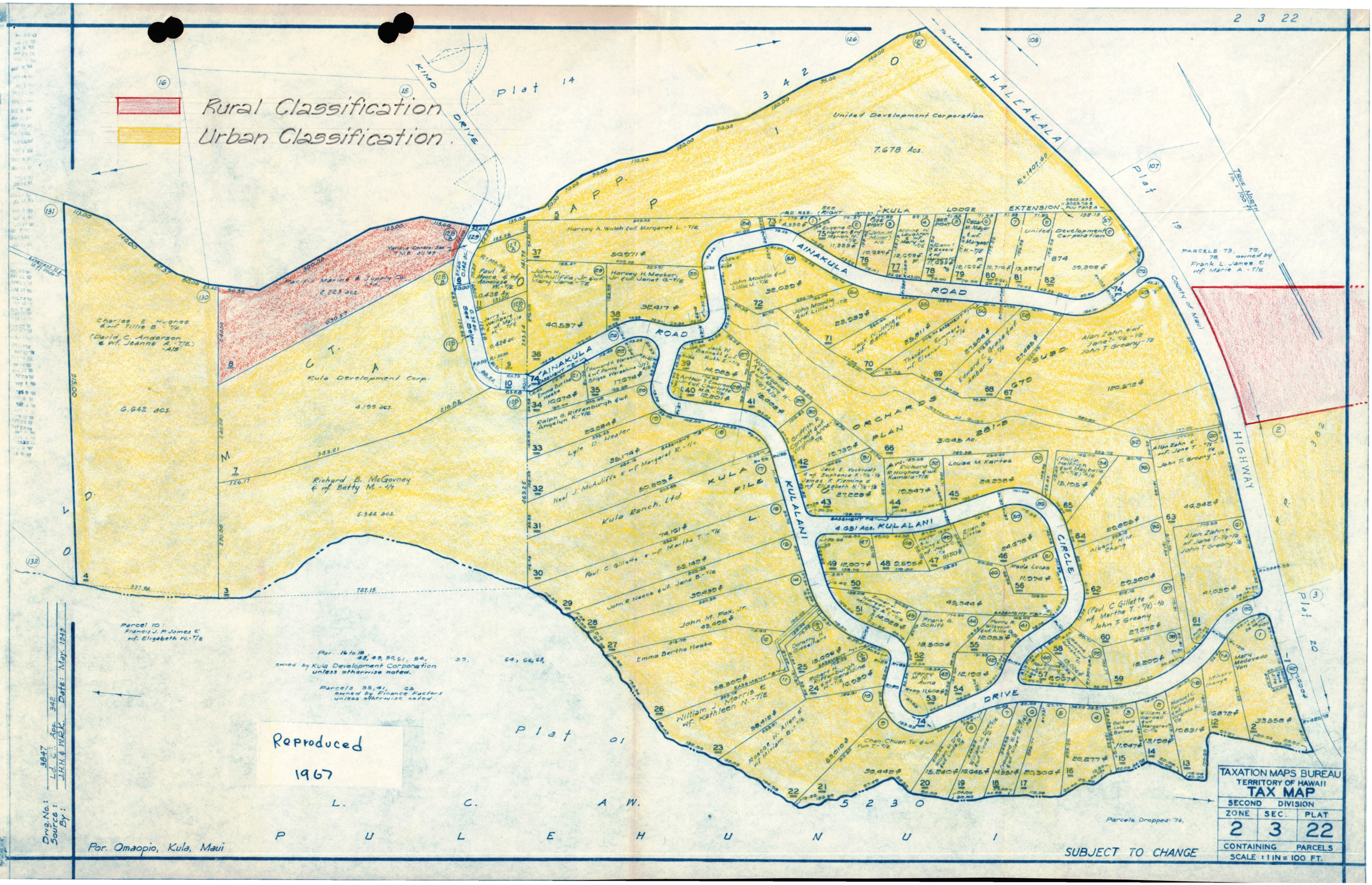
Paul C. Gillette

Paul C. Gillette, P. E.

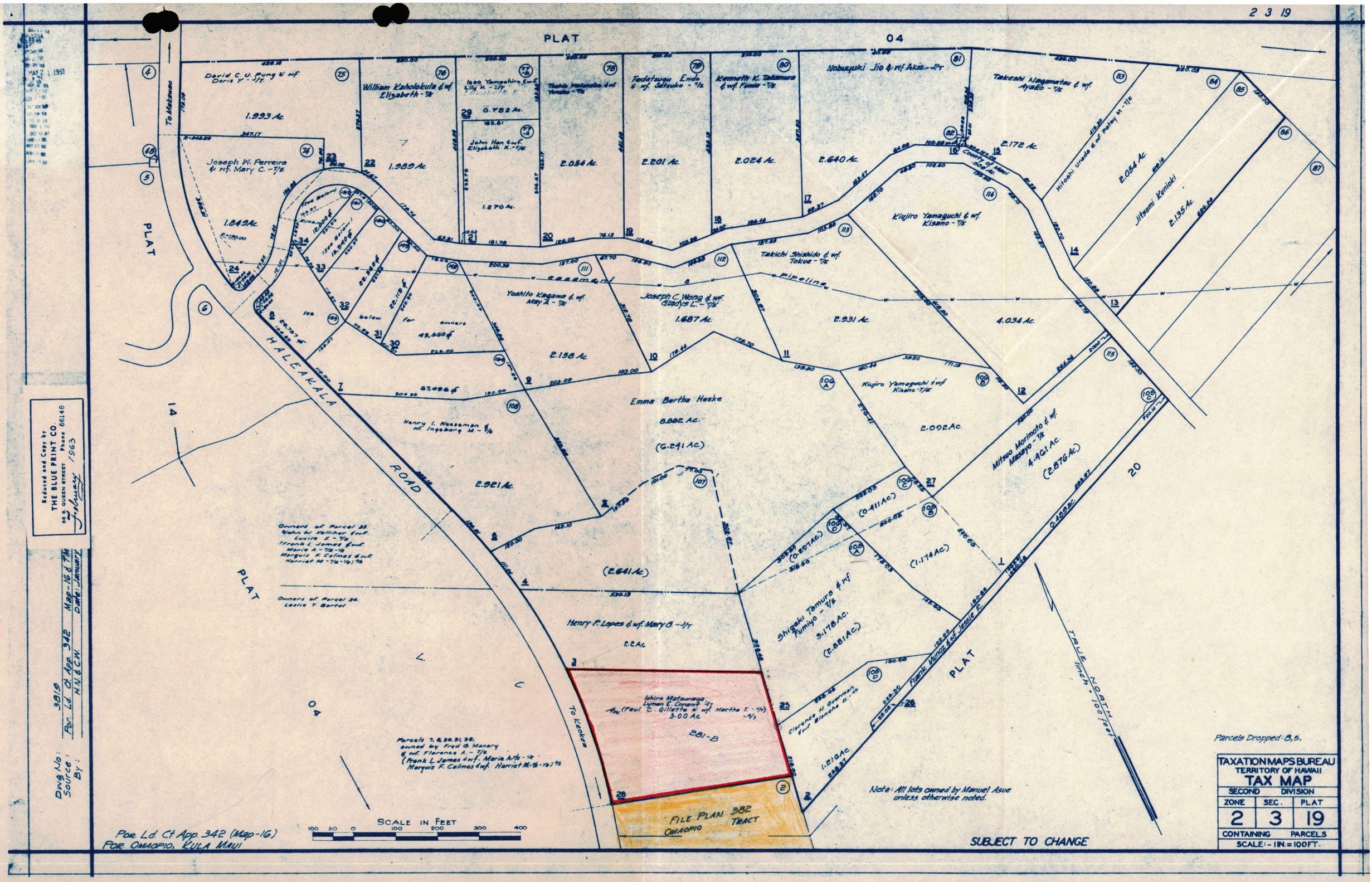
Martha T. Gillette

Martha T. Gillette

R.R. 1 - Box 381
Kula, Maui, Hawaii
Telephone No. 784-315



Rural Classification
Urban Classification
Plat 14
Plat 19
Plat 20
Plat 01
KIMO DRIVE
HALEAKALA HIGHWAY
To Makawao
County of Maui
TRUE NORTH 1 in. = 100 ft.
KULA LODGE EXTENSION
AINAKULA ROAD
ORCHARDS PLAN
KULALANI CIRCLE
KULALANI DRIVE
KULA FILE
Kula Development Corp.
Kula Ranch, Ltd
United Development Corporation
7.678 Acs.
Charles E. Hughes & wf. Tillie B. - T/E
(David C. Anderson & wf. Jeanne A. - T/E) - A/S
6.642 acs.
4.199 acs.
5.344 acs.
Richard B. McGovney & wf. Betty M. - J/T
Harvey A. Walsh & wf. Margaret L. - T/E
Harvey H. Meeker, Jr. & wf. Janet G. - T/E
Lyle D. Heater
Neal J. McAuliffe & wf. Margaret R. - J/T
Paul C. Gillette & wf. Martha T. - T/E
John R. Neece & wf. Jane B. - T/E
John M. Fox, Jr.
Emma Bertha Heake
William J. Morris & wf. Kathleen N. - T/E
Louise M. Kartes
Alan Zahn & wf. Jane T. - T/E - 1/2
John T. Greany - 1/2
Mary Medevedo Yen
Parcel 10: Francis J. P. James & wf. Elizabeth W. - T/E
Par. 16 to 18, 48, 49, 50, 51, 54, 59, 64, 66, 68, owned by Kula Development Corporation unless otherwise noted.
Parcels 35, 41, 65 owned by Finance Factors unless otherwise noted.
Parcels Dropped: 74,
Reproduced 1967
L. C. AW. 5230
PULEHUNUI
Por. Omaopio, Kula, Maui
Dwg. No.: 3847
Source: Ld. C. App. 342
By: J.H.H. & W.R.K. Date: May. 1949
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
SECOND DIVISION
ZONE 2
SEC. 3
PLAT 22
CONTAINING PARCELS
SCALE: 1 IN = 100 FT.
SUBJECT TO CHANGE



2 3 19
PLAT 04
PLAT 14
PLAT 20
PLAT 04
HALEAKALA ROAD
To Makawao
To Keokea
TRUE NORTH
1 inch = 100 feet
David C. U. Pung & wf. Doris Y. - J/T
1.993 Ac.
Joseph W. Perreira & wf. Mary C. - T/E
1.849 Ac.
William Kaholokula & wf. Elizabeth - T/E
1.989 Ac.
Isao Yamashiro & wf. Lily H. - J/T
0.782 Ac.
John Han & wf. Elizabeth K. - T/E
1.270 Ac.
Tadatsugu Endo & wf. Satsuko - T/E
2.054 Ac.
Kenneth K. Takamura & wf. Fumie - T/E
2.201 Ac.
Nobuyuki Jio & wf. Akio - J/T
2.024 Ac.
Takeshi Nagamatsu & wf. Ayako - T/E
2.640 Ac.
Hitoshi Urada & wf. Patsy M. - T/E
2.172 Ac.
Jitsumi Kunioki
2.135 Ac.
Kiujiro Yamaguchi & wf. Kisano - T/E
Takichi Shishido & wf. Tokue - T/E
Yoshito Kagawa & wf. May A. - T/E
2.158 Ac.
Joseph C. Wong & wf. Gladys L. - T/E
1.687 Ac.
2.931 Ac.
4.034 Ac.
Emma Bertha Heske
8.882 Ac.
(6.241 Ac.)
Kiujiro Yamaguchi & wf. Kisano - T/E
2.092 Ac.
Mitsuo Morimoto & wf. Masayo - T/E
4.461 Ac.
(2.876 Ac.)
Henry I. Heeseman & wf. Ingeborg M. - T/E
2.921 Ac.
(2.641 Ac.)
Henry P. Lopes & wf. Mary G. - J/T
2.2 Ac.
Shigeki Tamura & wf. Fumiyo - T/E
3.178 Ac.
(2.881 Ac.)
(0.411 Ac.)
(1.174 Ac.)
Ichiro Matsunaga
Lyman C. Conant J/T
Paul C. Gillette & wf. Martha T. - J/T
3.00 Ac
281-B
Clarence N. Overman & wf. Blanche D. - J/T
1.216 Ac.
Frank Munoz & wf. Jessie R.
Owners of Parcel 33. John W. Kelliher & wf. Lucile S. - T/E (Frank L. James & wf. Marie A. - T/E - 1/2 Marquis F. Calmes & wf. Harriet M. - T/E - 1/2) 1/3
Owners of Parcel 34. Leslie T. Bartel
Parcels 7, 8, 30, 31, 32, owned by Fred G. Manary & wf. Florence A. - T/E (Frank L. James & wf. Marie A. - T/E - 1/2 Marquis F. Calmes & wf. Harriet M. - T/E - 1/2) 1/3
Parcels Dropped: 8, 5.
Note: All lots owned by Manuel Asue unless otherwise noted.
FILE PLAN 382 OMAOPIO TRACT
SCALE IN FEET
100 50 0 100 200 300 400
Por. Ld. Ct App. 342 (Map-16)
Por. Omaopio, Kula Maui
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
SECOND DIVISION
ZONE 2
SEC. 3
PLAT 19
CONTAINING PARCELS
SCALE: - 1 IN. = 100 FT.
Reduced and Copy by THE BLUE PRINT CO. 88 S. QUEEN STREET Phone 66148 February 1963
Dwg No: 381.9
Source: Por. Ld. Ct. App. 342 Map-16 & TM
By: H.N. & C.W. Date: January