

CORREIA, Joseph, Jr.

SP(T)63.4

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP (T) 63-4 (Conceia)
DATE 1/17/63
PLACE LUC Hearing Room
TIME 2:15 pm.

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

COMMENTS: motion by Wung - sec - Ferry
Deny petition on basis of staff report.
motion is carried

Ref. No. LNU 42

January 21, 1964

Mr. Edgar Hamano
Planning Director
Planning & Traffic Commission
County of Hawaii
Hilo, Hawaii

Dear Mr. Hamano:

The Land Use Commission, in action taken on January 17, 1964, denied the petition for a special permit by Mr. & Mrs. Correia. The Commission's denial of the petition was based on the following:

1. The use petitioned for is common rather than unusual and does not meet the requirements of law in this respect.
2. The granting of this petition would constitute spot zoning and would be, in effect, the granting of a special privilege to an individual unless it is to be also made to all similar future petitions. Since the use and the circumstance is not unusual and hardship is not intimated (as has been true in other cases which have been denied), granting of this petition would set a precedence which would provide opportunity for scattered developments to occur.
3. Denial of the application is based in the interest of preserving the agricultural use and character of the Waialeale-Uka area and of keeping lot sizes there to a standard which will serve to foster agricultural pursuits.

If there are any further questions regarding this petition, please feel free to contact us.

Sincerely,

RAYMOND S. YAMASHITA
Executive Officer

cc: Mr. & Mrs. Joseph Correia
Mr. Myron Thompson
Mr. Roy Takayama

LAND USE COMMISSION
STATE OF HAWAII

Minutes of Meeting

LUC Hearing Room

Honolulu, Hawaii

1:00 P. M. - January 17, 1964

Commissioners

Present:

C.E.S. Burns
James P. Ferry
Goro Inaba
Shiro Nishimura
Charles S. Ota
Myron B. Thompson
Robert G. Wenkam
Leslie E. L. Wung

Absent:

Shelley Mark

Staff

Present:

Raymond Yamashita, Executive Officer
Roy Takeyama, Legal Counsel
Gordon Soh, Planning & Economic Development
Alfred Preis, Planning Coordinator
Richard Mar, Field Officer
Amy Namihira, Stenographer

Meeting was called to order by Chairman Thompson. Mr. Yamashita introduced Miss Amy Namihira, the new Stenographer for the Land Use Commission, to the Commissioners.

ADOPTION OF MINUTES FOR 11/30/63 MEETINGS AND HEARINGS ON KAUAI AND OAHU

1. Minutes of 11/30/63 Meetings and Hearings in Lihue, Kauai

Commissioner Wung moved to accept the minutes as circulated; seconded by Commissioner Nishimura. Motion carried.

2. Minutes of 11/30/63 Hearings in Honolulu and Kailua, Oahu

Commissioner Burns moved to accept the minutes as circulated; seconded by Commissioner Inaba. Motion carried.

LUC ACTIONS ON INTERIM BOUNDARY CHANGES AND SPECIAL PERMITS

Chairman Thompson raised the following question and opened it to the floor:

When the Commission makes a decision today, tomorrow, or within the next few months, is this decision binding in terms of the final district

boundaries, or is this decision alterable when the final district boundaries are determined?

Legal counsel stated that under the Law, there is no question this Commission may do so. He stated, however, that this would become a policy matter because once this Commission makes a grant, he could not see how this Commission could go against it in the final adoption of the district boundaries.

Commissioner Burns stated that this Commission should be building the permanent boundaries as it moves along. This Commission would not want to take action that it knows later is going to be reversed. The only reason that this Commission would change its decision would be either on the same evidence, new evidence or something that is unusual.

The general opinion of the Commission was that this Commission should be consistent in its decision and that whatever decision it makes from hereon in concerning the interim boundaries and special permits, it will be included in the establishment of the proposed final district boundaries.

SPECIAL PERMITS PENDING ACTION

The staff members who would be participating in the matters before the Commission were sworn in by the Chairman.

APPLICATION OF JOSEPH CORREIA, JR. (SP(T)63-4), FOR SPECIAL PERMIT TO SUBDIVIDE APPROXIMATELY 39.28 ACRES INTO TWO LOTS IN WAIAKEA HOMESTEADS, WAIAKEA, S. HILO, HAWAII: Described as TMK 2-4-05: 39.

Mr. Gordon Soh gave a background on the area and request involved, and pointed out the location of the area on the map. The staff recommendation was for denial of the request in the interest of preserving the agricultural uses in the Waiakea Uka area and to keep the lot sizes to a standard; and on the following bases:

1. that it was common and not unusual;
2. that it would constitute spot zoning; and
3. that it shows that it is not a hardship situation which would establish a precedence.

Chairman Thompson asked what was meant by the word "common" as stated in the staff's recommendation? The Executive Officer stated that it must first consider, What a Special Permit Is? As we examine this it is commonly known as a variance. A variance procedure is set up to take care of those situations that generally cannot be foreseen or thought of at the moment. A residential use is something that is considered in any kind of districting, because it is one of the most common of all urban land uses. It does not constitute a reason or use that could

not have been considered or could not have been aware of previously, so that it is not unusual.

The point which was raised that a hardship case would be created on the family if this request were denied was answered by the legal counsel. He stated that if the Commission approved this special permit on the basis that it would work a hardship because the applicant wants to give so many square footage to his daughter is not logical; and legally it would not meet the definition of an unusual and reasonable use under the Law.

Commissioner Wung moved to accept the staff's recommendation; seconded by Commissioner Ferry. The Executive Officer polled the Commissioners. Approval: Commissioners Wung, Inaba, Ota, Burns, Nishimura, Ferry, and Chairman Thompson. Disapproval: None.

APPLICATION OF SIDNEY WEINRICH (SP(T)63-5), FOR SPECIAL PERMIT TO SUBDIVIDE 93,000 SQ. FT. LOT INTO TWO LOTS FOR LAND IN NORTH KONA, HAWAII: Described as TMK 7-6-10: 21.

Mr. Soh gave a background on the area and request involved, pointing out the location of the area on the map. The staff's recommendation was for denial on the bases that: (1) it was common rather than unusual; and (2) it would constitute spot zoning which would set a precedence for scattered development.

Commissioner Ferry moved to deny the special permit based on the staff's recommendation; Commissioner Ota seconded the motion.

Discussion: Commissioner Inaba felt that the request before this Commission was a little different from the last request. He pointed out one definite factor which differed and that was the area was located near to an already existing urban area.

Mr. Preis contended that the area would not constitute scatteration. He stated that he felt it desirable to have a Rural area between an Urban area and an open land area.

Chairman Thompson felt that this was a serious problem and recognized that there were many similar problems of this nature throughout the various counties. He felt that this problem should be taken up for discussion later and with the proper authorities.

The Executive Officer polled the Commissioners. Approval: Commissioners Ota, Burns, Ferry, and Chairman Thompson. Disapproval: Commissioners Wung, Inaba, Nishimura. Motion not carried.

Commissioner Inaba moved to approve the Special Permit application; seconded by Commissioner Wung. Approval: Commissioners Wung, Inaba, Nishimura.

Disapproval: Commissioners Ota, Burns, Ferry, and Chairman Thompson. Motion not carried because of lack of majority votes.

The following were requested of the staff:

1. Write letter to Hawaii County Planning & Traffic Commission concerning present activity in area under question.
2. Write letter to Hawaii County Planning & Traffic Commission requesting for a vote count on each special permit grant submitted to the Land Use Commission.

APPLICATION OF CLARA KIM (SP(T)63-4), FOR SPECIAL PERMIT TO SUBDIVIDE LAND CONTAINING 22,466 SQ. FT. IN AREA IN KAPAA HOMESTEADS, KAPAA, KAUAI: Described as TMK 4-4-09: 8.

The staff was requested to write to Kauai Planning & Traffic Commission advising them that the matter for special permit by Clara Kim should not have been referred to the Land Use Commission and that the petitioner also be so informed.

APPLICATION OF WILLIAM AND MARION BRANDT (SP(T)63-2), FOR SPECIAL PERMIT TO CONSTRUCT A BEACH HOME TOGETHER WITH THE NECESSARY SUBDIVISION ON A 23,900 SQ. FT. LOT IN MAKENA, MAUI: Described as TMK 2-1-07: 61.

Mr. Richard Mar gave a background on the area and request involved, and pointed out the location of the area on the map. The recommendation of the staff was for denial to subdivide the present lot into separate parcels, and approval of one beach home.

The recommendation of the staff was discussed at length and it was resolved that the State had no jurisdiction in the matter concerning the building of the beach home in the area classified by the Land Use Commission as Agriculture.

The Executive Officer stated that the Commission may override the staff's recommendation on this request instead of the staff deleting portions of its recommendation.

Commissioner Ferry moved that the petitioners' request be denied in its entirety; seconded by Commissioner Ota. The Executive Officer polled the Commissioners. Approval: Commissioners Wung, Inaba, Ota, Wenkam, Burns, Nishimura, Ferry and Chairman Thompson. Disapproval: None.

ADMINISTRATIVE MATTERS

The following reports were given or asked of staff to do:

1. Request that the staff circulate all minutes to each County, two copies each - one for the Planning and Traffic Commission office and the other for the Board of Supervisors.
2. Request that the staff schedule Commission's meetings and hearings to meet the conference on Planning Commissions and Planning Directors in August on Kauai. (No definite date has been set as yet.)
3. Request that the staff write or communicate with the Counties concerning the Land Use district boundaries proposed for July 1964 at its earliest convenience.

The Chairman suggested the following as a possible communication:

"If you are ready to make decisions regarding your own planning and would like to consult with ours, we will be willing to do it, would you?"

4. Earlier follow-ups requested of staff:

- a. Have the staff notified all planning directors of each county concerning the criteria for selection on whether it would be a special permit or a boundary change?

Reply: No.

- b. Have the staff had an opportunity to write and mail letters to protestees as suggested on Kauai?

Reply: The staff has answered all letters being received at present, but has not written to those 500 or so that were already on file.

5. The Chairman reported that the Governor has okayed a writer for the Land Use Commission who has already been engaged and who is on the payroll of the Governor's Office. This writer is charged with the responsibility of reviewing all materials of this Commission and to consider all materials that would be useful for public information.
6. Commissioner Wenkam reported that the televised public hearing on the generalized proposed land use district boundaries is firmed up for March 7, 1964, from 8:00 a.m. to 10:00 a.m., at the KGMB TV studio. The program will be taped and rebroadcast. He stated that this is the first of its kind to occur in the United States and that the purpose of this T. V. program is to educate, explain and expose to the public what the Land Use Law is, how it functions and how it applies to a particular area.

(The Executive Officer informed the Commission that the present schedule as circulated will have to be revised to meet the new television public hearing schedule.)

Commissioner Wenkam suggested that the Chairman announce at the beginning of the program that this is only a generalized preview presentation of the major islands of the State, and that detailed hearings will be held on each island at a later time, which time and place will be announced later. He also suggested that the Chairman inform the people that this will be only a two hour show; that it will be continued after the T. V. program, and those who are not able to be heard can be heard then.

Commissioner Wenkam reported that there will be a meeting with the program director and producer of KGMB TV which is scheduled in two weeks, and at which time the Executive Officer, the Chairman and himself will be present.

The following program was outlined by Commissioner Wenkam:

- a. All islands will be included (major islands) and certain amount of time allocated. Maps will be displayed on wall. Motion picture showing particular areas on each island will be shown.
- b. All Commissioners and staff will be there and arranged sitting around a table.
- c. Commissioners are to make presentation of his own island, very briefly stated, and involving only those areas that the public would be familiar.
- d. Invite audience participation. Commissioners were encouraged to invite individuals from his own island to participate in this program and Chairman was instructed that he must be alert and able to recognize these people as participants. (Studio will hold approximately 100 persons.)
- e. Rehearsal will be held on the night of March 6, 1964, before the T. V. public hearing program.

Commissioner Wenkam was requested to write up an agenda and program for this T. V. hearing and have it circulated to everyone.

7. Commissioner Wenkam gave a brief report on what sort of things will be happening before the T. V. program.
 - a. Stories in the newspapers
 - b. T. V. programs
 - c. Radio, etc.

Commissioner Wenkam also informed the Commissioners that the public relations program on the outside islands were very poor, with the exception of Kauai. He encouraged Commission members to participate more in this area in his own county.

Meeting adjourned at 4:55 p.m.

STATE OF HAWAII
LAND USE COMMISSION

LUC Hearing Room
426 Queen Street, Honolulu, Hawaii

1:00 P.M.
January 17, 1964

STAFF REPORT

SP(T)63-4 - JOSEPH CORREIA, JR. Temporary District Classification: AGRICULTURAL

Background

The Planning and Traffic Commission of the County of Hawaii has forwarded a report on a special permit application by Joseph Correia, Jr. for the subdivision of approximately 39.28 acres "into two lots; one lot measuring about 1/2 acre, and the other measuring about 39.5 acres."

The property in question (TMK 2-4-05: 39) fronts Waikahe road, a short narrow farm road servicing a few properties just off Ainaola Drive. The surrounding area constitutes the Waiakea Uka Homesteads, chiefly used for grazing although large tracts of land are vacant.^{1/} Various diversified farm operations exist there such as small livestock farming, plant nurseries, etc. The Correia property itself appears to be pasture land with no homes on it - only a small, low shelter for cattle.

A little over a mile from the Correia property is the Waiakea-Uka Elementary School. A three inch county water line services residences along Waikahe.

The land varies from gentle rolling plain to flat land. The soils are rated as Class B.^{2/} Rainfall averages over 200 inches a year contributing

1/ A Plan for the Metropolitan Area of Hilo. Belt, Collins and Associates, Ltd. 1961

2/ A general soil classification survey conducted by Land Study Bureau in 1959.

in part to occasional flood problems in the lower Waiakea area between Four Mile Creek and Waiakea Pond.^{1/}

The applicant for special permit, Mr. Joseph Correia, Jr. has before applied for special permit to subdivide the particular lot in question except that the earlier application was made together with Margaret N. Correia and that the subdivision was to be made into two lots measuring 15,000 square feet and approximately 38.936 acres. At that time the applicants represented that their reason for requesting a special permit was to "Deed 15,000 sq. ft. of property to" their "daughter, Mrs. Roberta C. Costales, in fee simple, to construct a dwelling on the above property." The staff has subsequently been orally informed that the partition is sought solely to satisfy the wish of Mrs. Costales to be near her mother, the applicant's wife.

Analysis

The staff report on the earlier special permit application points out that the "Belt-Collins Plan for the Hilo Metropolitan Area^{2/} recommends that the subject parcel and surrounding area remain in diversified agriculture" and that the "State General Plan makes a similar recommendation." Staff review of these plans substantiates these observations.

In a letter dated October 24, 1962 the Planning and Traffic Commission of the County of Hawaii informed the Land Use Commission that it had "voted to recommend the granting of" the earlier application for special permit. Records show, however, that the Land Use Commission on December 19, 1962

^{1/} The entire homestead area is but a portion of a vast watershed area draining into Waiakea Pond. cf. Report to Division of Public Works, Department of Accounting and General Services on Waiakea-Uka District Flood Control.

Walter Lum Associates, June 1962.

^{2/} A Plan for the Metropolitan Area of Hilo. Belt, Collins & Associates, Ltd. 1961.

voted to deny the earlier application consistent with the staff recommendation for denial.

That particular recommendation observed "that the applicant could probably create more than one farm in accordance with County of Hawaii zoning regulations for agricultural areas, without applying to the Land Use Commission."

Regarding the present application presumably to create a 1/2 acre lot instead of a 15,000 square feet lot for the applicant's daughter, the Planning and Traffic Commission of the County of Hawaii has "decided to: Grant the Special Permit request on the basis of the following findings: (1) that the subdivision of one lot measuring in excess of one-half acre will not be materially detrimental to public health, safety and general welfare, nor be injurious to improvements or property rights related to property in surrounding area; (2) that the strict enforcement of the zoning regulation which would prohibit a one-lot subdivision would result in unnecessary hardship inconsistent with the intent and purpose of Act 205; (3) that there is no intention to further subdivide the above mentioned parcel and (4) that the one-half acre lot to be created is to be used for residential-agricultural purpose by the applicant's daughter; and (5) that the character of the surrounding area is one of open land and grazing with scattered dwellings in larger lots in excess of 10 acres along the road with water and power available to the site. The County agency would impose, however, the condition "that the single-family residential structure shall be built with a minimum of 30 feet front yard setback and adequately landscaped to blend the facility to the surrounding agricultural land."

A structure used for "residential-agricultural purpose" can be built under the Land Use Commission's Interim Regulations if accessory to permitted agricultural uses and if no subdivision is involved. The proposed lot size of 1/2 acre, however, is inconsistent with the three acre standard now being temporarily employed by the County of Hawaii for agricultural districts. The zoning ordinance now being considered by the County of Hawaii would lower this standard to one acre for this particular area. A large measure of relief will be available to the petitioner if the proposed regulations are adopted although the lot size will not be exactly that which is now desired.

Recommendation

Since the residential use petitioned for is common rather than unusual, it would not be unreasonable to anticipate many more similar petitions should this petition be granted. In addition, there is neither any uniqueness nor any intimation of hardship in this instant case which might justify special consideration. There would be little justification, if any, for denying similar future petitions should this particular petition be granted and effective control over scattered developments would be lost.

The granting of a special permit must be based upon an unusual or unique use or circumstance. Otherwise, the seed of scatteration will have been sown and in conflict with one of the basic tenets of the Land Use legislation.

The staff recommends denial of the petition for special permit on the following bases:

1. The use petitioned for is common rather than unusual and does not meet the requirements of law in this respect.

2. The granting of this petition would constitute spot zoning and would be, in effect, the granting of a special privilege to an individual unless it is to be also made to all similar future petitions. Since the use and the circumstance is not unusual and hardship is not intimated (as has been true in other cases which have been denied), granting of this petition would set a precedence which would provide opportunity for scattered developments to occur.
3. Denial of the application is also recommended in the interest of preserving the agricultural use and character of the Waiakea-Uka area and of keeping lot sizes there to a standard which will serve to foster agricultural pursuits.

COUNTY OF HAWAII
PLANNING AND TRAFFIC COMMISSION

RECEIVED

DEC 4 1963

State of Hawaii
LAND USE COMMISSION

Applicant Joseph Correia, Jr.
Date of Public Hearing September 16, 1963
Date of Decision October 21, 1963
Meeting Place Board Room, County Bldg.
Date Decision and Findings Forwarded
to LUC December 3, 1963

SPECIAL PERMIT

The Planning and Traffic Commission of the County of Hawaii pursuant to consideration required by the provisions of Act 204, SLH 1963, hereby transmits the decision and findings of the above special permit request to use the following described property:

Lot 1406, Grant 9588, Waiakea Homesteads, Second Series, Waiakea, South Hilo, Hawaii.

for the following purpose(s): To subdivide Lot 1406, a 40-acre parcel into two lots; one lot measuring about 1/2 acre, and the other measuring about 39.5 acres.

The Commission decided to: Grant the special permit request.

on the basis of the following findings: 1) that the subdivision of one lot measuring in excess of one-half acre will not be materially detrimental to public health, safety and general welfare, nor be injurious to improvements or property rights related to property in surrounding area; 2) that the strict enforcement of the zoning regulation which would prohibit a one-lot subdivision would result in unnecessary hardship inconsistent with the intent and purpose of ACT 205; 3) that there is no intention to further subdivide the above mentioned parcel and 4) that the one-half acre lot to be created is to be used for residential-agricultural purpose by the applicant's daughter; and 5) that the character of the surrounding area is one of open land and grazing with scattered dwellings in large lots in excess of 10 acres along the road with water and power available to the site.

subject to the following conditions: 1) that the single-family residential structure shall be built with a minimum of 30 feet front yard setback and adequately landscaped to blend the facility to the surrounding agricultural land.

(Signed)

Eugene A. Amason
Director, Planning and Traffic Commission

Ref. No. LUC 17

January 7, 1964

Mr. Joseph Correia, Jr.
62 Mauna Loa Street
Hilo, Hawaii

Dear Mr. Correia:

The Land Use Commission of the State of Hawaii will hold a meeting on the Island of Oahu on January 17, 1964 in the Land Use Commission hearing room, 426 Queen Street, Honolulu, Hawaii, at 1:00 p.m.

As prescribed by SECTION 98H-6 of Act 205/63, your application for Special Permit has been placed on the agenda for consideration by the Commission at this meeting. Final action may be taken at that time.

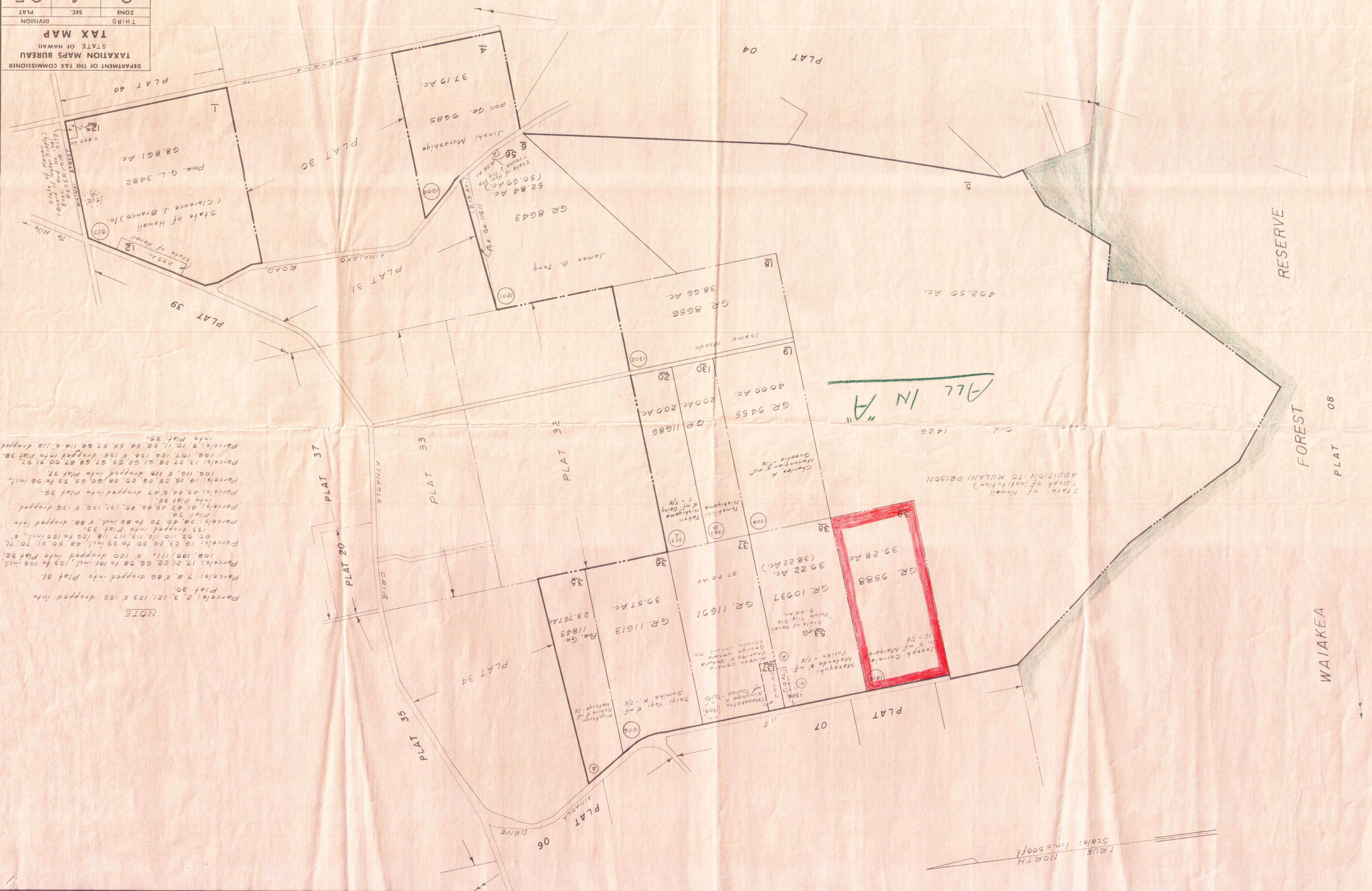
Very truly yours,

R. YAMASHITA
Executive Officer

FOR WAIAKEA HOMESTEADS, SOUTH, HILO, HAWAII

CONTAINING			PARCELS		
2	4	05	2	4	05
THIRD			DIVISION		
TAX MAP			TAXATION MAPS BUREAU		
STATE OF HAWAII			DEPARTMENT OF THE TAX COMMISSIONER		

SUBJECT TO CHANGE



NOTE
Parcels: 2, 3, 121, 123 & 122 dropped into Plat 30.
Parcels: 7, 8, & 86 dropped into Plat 31.
Parcels: 17, 21, 22, 66, 98 to 101 incl., 103 to 105 incl., 108, 109, 111, & 120 dropped into Plat 32.
Parcels: 16, 23, 24, 30 to 33 incl., 48, 50, 51, 70, 71, 89, 92, 110, 112, 113, 117, 118, 126 to 129 incl., & 133 dropped into Plat 33.
Parcels: 34, 40, 72 to 85 incl., & 88, dropped into Plat 34.
Parcels: 41, 42, 45, 46, 49, 131, 132, & 136 dropped into Plat 35.
Parcels: 43, 44, & 47 dropped into Plat 36.
Parcels: 14, 15, 25, 26, 29, 58, 60, 65, 93 to 96 incl., 106, 116, & 119 dropped into Plat 37.
Parcels: 13, 27, 28, 61, 62, 63, 67, 68, 87, 90, 91, 97, 102, 107, 124, 134, & 135 dropped into Plat 38.
Parcels: 9, 10, 11, 52, 54, 55, 57, 64, 114, & 115 dropped into Plat 39.