

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
HENRY H. SHIGEKANE REVOCABLE TRUST,)
JOANNE H. SHIGEKANE REVOCABLE TRUST,)
ROBERT R. MIDKIFF, and)
ELIZABETH M. MORRIS)
To Amend the Conservation Land)
Use District Boundary into the)
Urban Land Use District for)
Approximately 9.917 acres at)
Nuuanu, Honolulu, Hawaii, Tax)
Map Key No. 2-2-55: 02 and 04)
_____)

DOCKET NO. A89-635
HENRY H. SHIGEKANE
REVOCABLE TRUST, JOANNE
H. SHIGEKANE REVOCABLE
TRUST, ROBERT R.
MIDKIFF, and ELIZABETH
M. MORRIS

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LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

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HENRY H. SHIGEKANE REVOCABLE TRUST,)	HENRY H. SHIGEKANE
JOANNE H. SHIGEKANE REVOCABLE TRUST,)	REVOCABLE TRUST, JOANNE
ROBERT R. MIDKIFF, and)	H. SHIGEKANE REVOCABLE
ELIZABETH M. MORRIS)	TRUST, ROBERT R.
)	MIDKIFF, and ELIZABETH
To Amend the Conservation Land)	M. MORRIS
Use District Boundary into the)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

Henry H. Shigekane Revocable Trust, Joanne H. Shigekane Revocable Trust, Robert R. Midkiff and Elizabeth M. Morris (hereinafter sometimes collectively referred to as "Petitioners") filed a Petition on February 1, 1989, pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended, (hereinafter "Commission Rules") to amend the land use district boundary for approximately 9.917 acres of land at Nuuanu, Island of Oahu, State of Hawaii, Tax Map Key Numbers: 2-2-55: 02 and 04 (hereinafter the "Property") from the Conservation District to the Urban District for residential use. The Land Use Commission of the State of Hawaii (hereinafter the "Commission"), having heard and examined the testimony, evidence, and arguments of counsel presented during

the hearings, the proposed findings of fact, conclusions of law, and decision and order hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On February 1, 1989, Henry H. Shigekane Revocable Trust, Joanne H. Shigekane Revocable Trust, Robert R. Midkiff, and Elizabeth M. Morris filed a petition for amendment of land use district boundary and an environmental assessment (EA).

2. The Petition was served upon the Office of State Planning (OSP) by James T. Funaki, attorney for the Petitioner, of the law firm of Okumura Takushi Funaki & Wee.

3. By Findings of Fact, Conclusions of Law and Decision and Order of a Negative Declaration for a State Land Use District Boundary Amendment dated March 22, 1989, the Commission did not require an Environmental Impact Statement for the subject Petition, and accepted the Petition for filing as of February 23, 1989.

4. On July 11, 1989, a prehearing conference was held with all parties in attendance.

5. On July 27 and 28, 1989, the Commission conducted a hearing on the Petition pursuant to notice published in the Honolulu Star-Bulletin, a newspaper of general circulation, on June 14, 1989.

6. The Commission did not receive any requests for intervention.

7. The Commission received two timely written statements from the Nuuanu/Punchbowl Neighborhood Board No. 12, through its Chair, Sylvia Young, and from Elizabeth Ann Stone which were accepted into evidence on July 27, 1989.

8. The Commission received two untimely requests from Raj Puri and Kehaunani Keonig to testify as public witnesses. Mr. Puri and Ms. Keonig were allowed to testify on July 27, 1989 and July 28, 1989, respectively.

DESCRIPTION OF THE PROPERTY

9. The Property is situated in the Honolulu Forest Reserve Watershed Area of Upper Nuuanu at approximately 800 feet above mean sea level. The Property is located on Nuuanu Pali Drive, about a quarter of a mile beyond the existing Urban District.

10. The Property consists of two adjoining parcels of land identified by Tax Map Key Nos. 2-2-55: 02 and 04. Parcel 02 is approximately 5.104 acres, and Parcel 04 is approximately 4.813 acres.

11. The Property contains existing dwelling units. The area for the existing dwelling units and surrounding lawns and gardens are relatively level. The edge of the Property near Nuuanu Stream drops down toward the stream, and the topography can slope as much as 70 percent in certain areas.

12. Henry H. Shigekane and Joanne H. Shigekane are the holders of property interest with full use, control, income

and possession of Parcel 02 (hereinafter "Shigekane parcel") for and during their lives in their capacities as trustees and sole beneficiaries during their lifetimes under the Henry H. Shigekane Revocable Trust and Joanne H. Shigekane Revocable Trust, respectively. The remainder interests in the Shigekane parcel are held by Lauren Rebecca Shigekane, Lydia Shigekane Dougherty and Todd Holmes Shigekane, who are the children of Henry H. Shigekane and Joanne H. Shigekane, Trustees of the Shigekane Trusts.

The holders of the remainder interests in Parcel 02 have authorized Petitioners Trustees of the Shigekane Trusts to submit the Petition insofar as their interests are concerned.

13. Petitioner Elizabeth M. Morris is the owner in fee simple of an undivided one-half (1/2) interest in Parcel 04 (hereinafter "Midkiff/Morris parcel").

14. American Trust Co. of Hawaii, Inc., a Hawaii corporation, is the holder of the legal and equitable title to an undivided one-half (1/2) interest in the Midkiff/Morris parcel as trustee under a Land Trust Agreement dated July 28, 1980. The beneficiary under the Land Trust Agreement is Petitioner Robert R. Midkiff who is the holder of the power of direction pursuant to which the trustee acts under the Land Trust Agreement.

American Trust Co. of Hawaii, Inc. has authorized Petitioner Robert R. Midkiff to submit the Petition insofar as its interest in the Midkiff/Morris parcel is concerned.

15. The Shigekane parcel is located at 4121 Nuuanu Pali Drive, Honolulu, Oahu, and the Midkiff/Morris parcel is located at 4151 Nuuanu Pali Drive, Honolulu, Oahu. The Property is approximately a quarter of a mile from the existing Nuuanu residential area within the Urban District. The Property fronts onto Nuuanu Pali Drive and is situated across from the Board of Water Supply's reservoir no. 3.

16. According to the United States Department of Agriculture (U.S.D.A.) Soil Conservation Service, Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai (Soil Survey), the soils of the Property are of the Lolekaa Series. This series consists of well-drained soils, with slopes as much as 70 percent. Permeability is moderately rapid, runoff is slow to medium, and erosion hazard is slight to moderate. The Soil Survey also identifies these soils as susceptible to sliding.

17. The area's annual median rainfall is approximately 128 inches.

18. According to the United States Army Engineering District, Honolulu, the Property is located in Zone X, "Other Areas" determined to be outside the 500-year flood plain as shown on the Flood Insurance Rate Map (FIRM).

DESCRIPTION OF EXISTING AND PROPOSED USE OF THE PROPERTY

19. According to the Petition, the two parcels have been in residential use for over 100 years, and represent the Petitioners' respective family homes. The Petition states that

the Petitioners "...would like to provide homes for their children and to transfer their properties to their children and their families".

Shigekane Parcel

20. The Shigekane parcel presently consists of two residential dwelling units, and several ancillary structures. Of these two existing residential units, one is proposed to be maintained as is, and the other to be replaced with a new dwelling unit. A third dwelling unit--a duplex--on the Shigekane parcel was recently demolished due to its deteriorated and unsafe condition.

21. A Conservation District Use Application (CDUA) was approved by the Board of Land and Natural Resources (BLNR) on June 13, 1986 to replace the third dwelling unit. There were 10 conditions imposed upon the CDUA approval. Condition Number 6 states that replacement of this duplex was to be completed within three years of the CDUA approval. On June 5, 1989, a six-month time extension for the replacement unit was approved, extending the completion date to December 13, 1989.

22. Condition Number 10 of the CDUA states that the replacement dwelling must also be a duplex. The Petition states that "since the CDUA was granted, the Shigekane's have reconsidered the duplex and have concluded that separate dwellings would better meet the requirements of their family." The recently demolished duplex is now being proposed to be replaced with two separate single-family dwellings. Thus a

total of four separate dwelling units, rather than the initial three units, are being proposed for the Shigekane property at this time.

Midkiff/Morris Parcel

23. The Midkiff/Morris parcel presently consists of four residential dwellings. Petitioners Midkiff and Morris propose to relocate the four existing homes within their property and/or replace them with new dwelling units.

Future Plans for the Property

24. While the Petition states that the Petitioners have no plans for more units than above-proposed at this time, the Petition suggests further residential development of the Property may be considered in the future. According to the Petition, the Petitioners intend to request the City and County of Honolulu for an R-20 zoning designation, each parcel might be subdivided into about eight 20,000-square foot lots, or a total of 16 homes in the Property. The Shigekanes do not have any plans at this time for more dwelling units on the Shigekane parcel than the two existing units and the proposed third and fourth dwelling units for the family members.

25. The Petition states that "proposed uses appear to be consistent with Department of Land and Natural Resources (DLNR) standards based on recent CDUA approvals for the Shigekane property". However, the DLNR states that the DLNR practice for nonconforming residential uses (i.e., homes that

were established before Conservation District boundaries were established) has been to allow only one dwelling unit per lot of record.

PETITIONERS' FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

26. The balance sheet as of December 31, 1988 for Petitioner Henry H. Shigekane lists total assets at \$6,102,000. Total liabilities are listed at \$1,006,000 and net worth at \$5,096,000.

27. The financial statement for Petitioner Robert R. Midkiff (and Evanita S. Midkiff) lists total assets at \$4,806,394. Total liabilities are listed at \$140,400, and net worth at \$4,665,994. Petitioner Elizabeth M. Morris' balance sheet lists assets at \$1,161,036, with no debts.

28. The Petition does not include cost estimates for the proposed development. While the Petitioners do not know what kinds of development costs will be incurred at this point, sewage improvements are expected to cost approximately \$250,000. There will also be costs for water system improvements (including reservoir, booster pump, and transmission main), a storm drainage system, and park dedication requirements.

29. Petitioners assert that, based on Petitioners' financial capacity, Petitioners can reasonably obtain the financing for the homes proposed to be developed or replaced initially as well as for the infrastructure to be required by

the County when permits for the construction of homes in addition to those already existing are sought.

STATE AND COUNTY PLANS AND PROGRAMS

30. The Property is located within the State Land Use Conservation District, as reflected on the Commission's Official Land Use District Map O-13, Honolulu, and in the Honolulu Forest Reserve Watershed Area of Upper Nuuanu.

31. The Property has been in residential use for many years and such use predates the establishment of the forest and water reserve zones in 1957 now affecting the Property.

32. The Property is designated P-1 Restricted Preservation District under the existing City and County Land Use Ordinance (LUO).

33. The Property is not designated within the Special Management Area of the City and County of Honolulu or the Coastal Zone Management Area pursuant to Section 205A-1, Hawaii Revised Statutes, as amended.

NEED FOR THE PROPOSED PROJECT

34. The reclassification of the Property from the Conservation District to the Urban District will enable the Petitioners to subdivide the Property, construct both replacement and new houses on the Property, and make such other repair and improvements of the existing units in a manner ordinarily and customarily allowed for urban residential uses and thereby provide house lots or homes for their children.

35. Under current regulatory requirements affecting lands in the Conservation District, the proposed development on the Property, including new structures, relocation of existing structures, improvements to existing structures, landscaping changes, future sewer and water system expansion and the changes in plans and schedule normally attendant thereto would, require conservation district use approval.

36. Based on testimony of the State Board of Land and Natural Resources, no additional houses would be permitted on the Property under a conservation district use permit.

37. In order to provide reasonable assurance to the Commission that the proposed development is a family enterprise to provide housing for the family members and not a commercial enterprise for speculation, Petitioners have represented that they are willing to be subjected to a condition that members of the family of the Petitioners, respectively, would have a right of first refusal to purchase if any interest in the Property were sought to be sold.

38. The reclassification would assist towards providing housing and home ownership for the children of the Petitioner Shigekanes, Midkiff and Morris.

IMPACTS UPON THE RESOURCES OF THE AREA

Honolulu Watershed Forest Reserve Area

39. The Property is situated in the Honolulu Forest Reserve Watershed Area of Upper Nuuanu. According to §183-31,

the Hawaii Revised Statutes, "watersheds are areas (1) from which the domestic water supply of any city, town or community is or may be obtained, or (2) where water infiltrates into artesian or other groundwater areas from which the domestic water supply of any city, town or community is or may be obtained."

40. DLNR further states in its memorandum to OSP dated March 31, 1989, that its Division of Forestry and Wildlife "recommends denial of this petition." The memorandum explains that "the property is adjacent to a closed watershed, in the Conservation District and State Forest Reserve. Permitting a zone change would encourage subdivision and set a precedent for future requests. Although the proposal does not include reclassification to increase the number of structures at this time, the subdivision action could lead to this."

Water Quality

41. According to the Petitioner, both the Shigekane and Midkiff/Morris parcels are presently serviced by cesspools.

42. Additional cesspools or expansion of existing cesspools are not allowed in the area of the Property. No additional dwelling units can be built on the Property unless the existing sewer system is expanded and connected to such additional dwelling units built on the Property.

43. According to Petitioners' consultant Joseph Vierra, the existing cesspools have not resulted in any contamination of groundwater to date.

44. The Office of State Planning raised concerns that the proposed reclassification could adversely affect groundwater as well as stream water quality, due to the Property's location within a watershed area, and its proximity and juxtaposition to: 1) the Nuuanu Reservoirs Numbers 2 and 3, 2) the City and County of Honolulu Board of Water Supply (BWS) aerator and soon-to-be-constructed drinking water well, and 3) the Nuuanu Stream. The Property is situated within the Honolulu Forest Reserve Watershed Area, which contributes to the domestic water supply. The Nuuanu Reservoirs Numbers 2 and 3 are situated across the street and immediately downslope of the Property. These reservoirs are used primarily for flood control and groundwater infiltration, and as bird sanctuaries. The BWS aerator and the soon-to-be-constructed drinking water well would also be situated across the street and immediately downslope of the Property.

45. Petitioners' engineering consultant, Joseph Vierra of Belt Collins and Associates, states that he did not study the effect of herbicides, pesticides, and other residential uses on the Property.

46. The Department of Health is concerned that the wastewater to be generated from any future development of the Property may contribute to groundwater contamination, particularly because of the Board of Water Supply's intent to construct and utilize the drinking water well located across from the Property. Both the Board of Water Supply and

Department of Health share in the mutual concern of groundwater contamination especially in areas of high rainfall, such as the Property, where recharge is greater, causing contaminants to move through the soil more rapidly. The Department of Health has documented evidence that there have been instances in Upper Kalihi and Upper Nuuanu, the project area specifically, of coliform and fecal coliform in the water systems during periods of heavy rainfall. In its memorandum to OSP dated March 17, 1989, the Department of Health (DOH) states that the "subject property is located in the Board of Water Supply (BWS) 'No-Pass' area and also located above the Underground Injection Control (UIC) line established to protect the quality of the State's underground drinking water sources from pollution by subsurface disposal of fluids." The memorandum further states that "this area is proven to have underground sources of drinking water." In fact the BWS currently plans the Nuuanu Upper Aerator Facility Exploratory Well across the street from the subject property. The DOH states that it "strongly recommends that the petition be approved only on the basis that the homes be connected to the Nuuanu Valley Sewers, Section 3, Improvement District, along Nuuanu Pali Drive."

Historical/Archaeological Resources

47. The archaeological reconnaissance survey of the Property was conducted by Petitioners' archaeological consultant Hallett H. Hammatt, Ph.D.

48. The survey contains the following findings:

a. The Property is developed residential property with houses, landscaped gardens, driveways, modern terraces and walls. Most of the improvements were made by J. B. Artherton in this century.

b. The adjoining property to the north is the site of the Kamehameha III Summer Palace known as Kaniakapupu.

c. Along the north Property line there are two terraces, a short stone alignment and a few scattered historic artifacts (a stove part and bottles). Because of the possibility that the terraces, alignment and historic debris may have indicated a former structure or dump site, nine test pits were excavated to evaluate the possibility of buried cultural material. No buried material or sign of previous land disturbance was found, and the area is considered to be not significant.

d. There are no significant archaeological/historical remains present on the Property.

49. Petitioners state that should any archaeological features be uncovered during the course of constructing the proposed development on the Property, work will immediately cease and the Historic Sites section of the State Department of Land and Natural Resources will be notified.

Flora and Fauna

50. A survey of the avifauna and feral mammals on the Property was conducted by Petitioner's consultant Phillip L.

Bruner, Director of Natural History, Brigham Young University - Hawaii. One resident endemic bird, Common Amakihi, was observed on the Property. The survey also identified two other resident endemic birds, Apapane and Elepaio, as potentially occurring on the Property.

51. The survey did not reveal any unusual mammal activity, and the survey concluded that present mammal populations should not experience any significant change following the proposed development.

52. A botanical assessment was conducted by Petitioner's botanical consultant, Winona P. Char. The assessment determined that no listed, proposed or threatened candidate of endangered plant species designated by federal and/or State governments occur on the Property and that none of the native plants are considered rare. All those native species found on the Property were originally planted and occur elsewhere throughout the Hawaiian Islands.

Agricultural Resources

53. The State Department of Agriculture indicates in its memorandum to OSP dated March 28, 1989 that it "has reviewed the subject petition and has determined that its approval will not affect agricultural resources or the Department's plans, programs and activities."

Air and Noise Quality

54. The demolition of certain dwelling units, construction of the replacement dwellings and the renovation of

existing dwellings would cause short term impact on air quality and noise levels at and in the vicinity of the Property. Grading work in compliance with governmental requirements will mitigate erosion and dust problems. Petitioners believe that the relatively limited extent of the number of dwelling units involved and the long period of time for ultimate potential build-out of the proposed development indicate minimal and insignificant impact on air and noise quality.

Visual Impacts

55. The dwelling sites on the Property cannot be readily seen from Nuuanu Pali Drive and would not have any significant impact on public views. The existing residential use and character of the Property will be continued and maintained.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Sewage Treatment and Disposal

56. The wastewater to be generated by the proposed development (which assumes a maximum of 16 homes) is as follows: 1) average flow - 5,440 gallons per day; 2) maximum flow = 25,920 gallons per day; and 3) peak flow = 38,295 gallons per day."

57. The City and County of Honolulu's current sewer improvement project in Upper Nuuanu--referred to as Nuuanu Valley Sewers, Section 3, Improvement District--will extend the nearest city sewer line at the junction of Nuuanu Pali Drive

and the Old Pali Road to the mauka end of the existing residential zoned area (TMK: 1-9-04: parcels 1, 31). While the Property could be physically connected to this sewer improvement project for an estimated cost of \$250,000, the Property was excluded from the project because the City and County determined it was not cost-effective.

58. In its memorandum to OSP dated March 17, 1989, the State Department of Health states that it "strongly recommends that the petition be approved only on the basis that the homes be connected to the Nuuanu Valley Sewers, Section 3, Improvement District, along Nuuanu Pali Drive."

Drainage

59. The Nuuanu Pali Drive is a drainage divide that separates the lands on one side of it into one drainage basin and the lands on the other side of it into another drainage basin.

60. The proposed water well and the reservoirs are located on the opposite side of Nuuanu Pali Drive from the Property in a different drainage basin and are not affected by surface drainage on the property.

61. Runoff on the Property drains toward Nuuanu Stream. Impact of such runoff on Nuuanu Stream would not be significantly changed. Potential addition of four to eight homes over the Property would still leave a majority of the Property in grass and shrubs.

memorandum to OSP dated March 7, 1989 that "the boundary change should not have any student enrollment impact on our schools."

Parks and Recreational Facilities

68. The Petition does not address the potential impact of the proposed development on parks and recreational facilities. However, the City and County of Honolulu, Department of General Planning, indicates that the proposed development would be subject to the City Park Dedication Fees.

Police and Fire Protection

69. The Petition does not address the potential impact of the proposed reclassification on police and fire protection. However, according to a letter addressed to Petitioner Elizabeth M. Morris from Mayor Frank Fasi dated January 14, 1988, "the existing water main in the area cannot handle the water pressure required for fire protection purposes. The Fire Department is aware of this problem and they have a fire protection plan which can be implemented if necessary. The Board of Water Supply presently has no plans to install any new water mains in the area."

Electric and Telephone Services

70. The Petition states that the Property is "served from existing electrical and telephone lines on Nuuanu Pali Drive." The Petition does not address potential impact of the proposed development on electric and telephone services.

Water Services

62. The Petition indicates that the City and County of Honolulu Board of Water Supply (BWS) provides the domestic water to all of the existing dwelling units in the Property.

63. In estimating future water demand, the Petition assumes a maximum of eight lots on each property or a total of 16 lots in the Property. Based on this assumption, the Petition states that the average daily demand would be 6,400 gallons per day; maximum daily demand would be 9,600 gallons per day; and peak hour demand would be 19,200 gallons per day.

64. Petitioners indicate they will design and fund all water source and transmission improvements as may be required by the BWS.

Roadway and Highway Services and Facilities

65. The Petition states that the access for existing and future dwellings would be onto the Nuuanu Pali Drive. The Petitioners did not prepare a traffic impact study for the proposed development.

66. The State Department of Transportation indicates in its memorandum to OSP dated March 16, 1989, that "the proposed project will not adversely affect our State highway facilities."

Schools

67. The Petition does not address the potential impact of the proposed development on school facilities. However, the State Department of Education indicates in its

Solid Waste Disposal

71. Solid waste generated on the Property is disposed of by way of the County's waste disposal pickup service twice a week.

CONFORMANCE WITH THE HAWAII STATE PLAN

72. The proposed reclassification to allow the proposed development conforms to the Hawaii State Plan, Chapter 226 of the Hawaii Revised Statutes, as amended, including the following objectives and policies:

Objectives:

- §226-19(a) (1) Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, livable homes located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals.
- (2) The orderly development of residential areas sensitive to community needs and other land uses.

Policies:

- §226-19(b) (3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

- (4) Promote appropriate improvement, rehabilitation, and maintenance of existing housing.
- (5) Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.

73. The intended purpose of the proposed reclassification is to enable Petitioners to subdivide and construct both replacement and new houses on the Property in a manner ordinarily and customarily allowed for urban residential uses and thereby provide house lots or homes for their children.

74. The low density lot sizes sought to be developed by Petitioners will be consistent with the existing lot sizes of the Sheehan and Guard lots which adjoin the Property in the Resource (R) subzone and which lot sizes were established during the 1950's.

75. Some of the existing homes are in need of repair and removal or replacement, but the inordinate time and expenses required under the applicable Conservation District Use Application process for each such activity at various times discourage the promotion of appropriate and timely improvement, rehabilitation and maintenance of such existing homes.

CONFORMANCE TO STATE LAND USE DISTRICT STANDARDS

76. The Property has been in residential use from as early as the 1840's. The reclassification sought would maintain the residential use.

77. The Property is proximate to the Nuuanu urban residential area within the Urban District which is about 1,300 feet away.

78. The Property is reasonably close to centers of trading and employment and other urban services.

79. The Property abuts and is served by Nuuanu Pali Drive, a public highway. The Board of Water Supply has water pipelines to the Property. Electric and telephone lines serve the Property. The County provides waste disposal pick up service to the Property.

80. Currently under construction is a sewer improvement project, Nuuanu Valley #3 - Proposed Sewer Expansion, by the County to serve the upper Nuuanu area within the Urban District about 1,300 feet Makai of the Property. The sewer system can be physically extended to the Property at an estimated cost of \$250,000.

81. In the vicinity of the Property is the Department of Water Supply station which attracts urban type traffic of visitors and picnickers at the park like area with parking and trails.

82. The topography of the Property is relatively level except toward the Nuuanu Stream; the soil is well-drained and the Property is outside the flood plain.

83. The 9.917 acres of the Property represent a minor portion of the Conservation District of which it is now a part and would constitute a small Urban District if reclassified.

84. The existing residential use and the proposed R-20 designation under the city and County Land Use Ordinance map to be eventually sought by the Petitioners would allow subdivision of each of the Shigekane parcel and Midkiff/Morris parcel into about eight 20,000 square-foot lots.

85. The present residential use and the proposed 20,000 square-foot lots would be consistent with the intent of R-20 districts as follows:

"The intent of R-20 and R-10 districts is to provide areas for large lot developments. These areas would be located typically at the outskirts of urban development and may be applied as a transitional district between preservation, agricultural or county districts where residential use is desirable but some development constraints are present."

86. The Office of State Planning believes that further residential development of the Property (located immediately upslope of Nuuanu Reservoirs Numbers 2 and 3, the Board of Water Supply aerator and soon-to-be-constructed drinking water well, and adjacent to Nuuanu Stream) may detrimentally affect water quality and recharge functions.

RULING ON FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioners or the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Commission Rules, the Commission finds upon the preponderance of the evidence that the reclassification of approximately 9.917 acres from the Conservation District into the Urban District at Nuuanu, Oahu, Tax Map Key Numbers: 2-2-55:02 and 04, for a residential subdivision, subject to the conditions in the Order, conforms to the standards for the Urban District as established in the Commission Rules and is reasonable and nonviolative of Section 205-2, Hawaii Revised Statutes, and the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

The Commission notes that this decision is intended to specifically apply to this particular petition area based upon the unique facts, merits, circumstances, location and family

purposes existing herein and is not a declaration that similar projects will be routinely permitted when they affect conservation district lands.

ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 9.917 acres, being the subject of this Docket No. A89-635 by Henry H. Shigekane Revocable Trust, Joanne H. Shigekane Revocable Trust, Robert R. Midkiff and Elizabeth M. Morris, situate at Nuuanu, Honolulu, Island of Oahu, State of Hawaii, identified as Oahu Tax Map Key Nos. 2-2-55: 02 and 2-2-55: 04, for reclassification from the Conservation District to the Urban District, shall be and hereby is approved and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. Should any previously unidentified archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, the Petitioners shall immediately stop work and contact the State Historic Preservation Office.

2. Petitioners shall comply with all State Department of Health environmental health requirements.

3. Petitioners shall comply with the requirements for infrastructure necessary to serve the Property usually and customarily imposed by the City and County of Honolulu under its rezoning process in the rezoning of the Property.

4. That the Petitioners, Midkiff/Morris, shall agree to a covenant, said covenant to run with the land and in a form agreeable to the Office of State Planning that, with respect to the Midkiff/Morris parcel (TMK: 2-2-55:04), for a period of 20 years after the date of this Order, if Robert R. Midkiff or Elizabeth M. Morris desires to sell or convey all or portions of their ownership interest in said parcel, he or she shall first offer such interest each to the other or in the alternative convey such interest to any of his or her children, as the case may be; and if any of the children so acquiring said interest desires to sell or convey all or portion of their interest in said parcel, they shall first offer such interest in the parcel to their siblings and/or Robert R. Midkiff and Elizabeth M. Morris, as the case may be, however, provided that the holder of interest in the Midkiff/Morris parcel may mortgage the interest at any time.

5. That the Petitioners, Shigekane, shall covenant, said covenant to run with the land and in a form agreeable to the Office of State Planning that, with respect to the Shigekane parcel (TMK: 2-2-55:02), for a period of 20 years after the date of this Order, if any of the following persons: Henry H. Shigekane, as Trustee and or beneficiary of the Henry H. Shigekane Revocable Trust, Joanne H. Shigekane, as Trustee and/or beneficiary of the Joanne H. Shigekane Revocable Trust, Lauren Rebecca Shigekane, Lydia Shigekane Dougherty or Todd

Holmes Shigekane, desire to sell or convey all or portions of his or her ownership interest in said parcel, they shall first offer such interest in the Shigekane parcel to each other or to their parents as individuals or Trustees and may mortgage the interest at any time.

6. The Petitioners shall further covenant, said covenant to run with the land, and in a form agreeable to the Office of State Planning, that the subject parcels shall be subdivided into not more than 6 lots per parcel.

7. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

8. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.

DOCKET NO. A89-635 - HENRY H. SHIGEKANE REVOCABLE TRUST, JOANNE H. SHEGKANE REVOCABLE TRUST, ROBERT R. MIDKIFF, AND ELIZABETH M. MORRIS

Done at Honolulu, Hawaii, this 9th day of November 1989, per motions on October 19, 1989 and November 3, 1989.

LAND USE COMMISSION
STATE OF HAWAII

By *Renton L. K. Nip*
RENTON L. K. NIP
Chairman and Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Vice Chairman and Commissioner

By *Sharon R. Himeno*
SHARON R. HIMENO
Commissioner

By *Allen K. Hoe*
ALLEN K. HOE
Commissioner

By *Allen Y. Kajioka*
ALLEN Y. KAJIOKA
Commissioner

By *Eusebio Lapenia, Jr.*
EUSEBIO LAPENIA, JR.
Commissioner

By *James M. Shinno*
JAMES M. SHINNO
Commissioner

Filed and effective on
November 9, 1989

Certified by:

Esther Reed
Executive Officer

By (opposed)
ELTON WADA
Commissioner

By (absent)
FREDERICK P. WHITTEMORE
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A89-635
)	
HENRY H. SHIGEKANE REVOCABLE TRUST,)	HENRY H. SHIGEKANE
JOANNE H. SHIGEKANE REVOCABLE TRUST,)	REVOCABLE TRUST, JOANNE
ROBERT R. MIDKIFF, and)	H. SHIGEKANE REVOCABLE
ELIZABETH M. MORRIS)	TRUST, ROBERT R.
)	MIDKIFF, and ELIZABETH
To Amend the Conservation Land)	M. MORRIS
Use District Boundary into the)	
Urban Land Use District for)	
Approximately 9.917 acres at)	
Nuuanu, Honolulu, Hawaii, Tax)	
Map Key No. 2-2-55: 02 and 04)	
<hr/>		

CERTIFICATE OF SERVICE

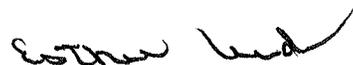
I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order for a State Land Use District Boundary Amendment was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

CERT. DONALD A. CLEGG, Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

CERT. JAMES T. FUNAKI, ESQ., Attorney for Petitioner
OKUMURA TAKUSHI FUNAKI & WEE
Grosvenor Center, Suite 1400
733 Bishop Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 9th day of November 1989.



ESTHER UEDA
Executive Officer