

**R. E. Stengle Associates
Management Consultants**

January 27, 1999

Esther Ueda, Executive Officer
State of Hawaii
Land Use Commission
P.O. Box 2351
Honolulu, Hawaii 96804

ORIGINAL

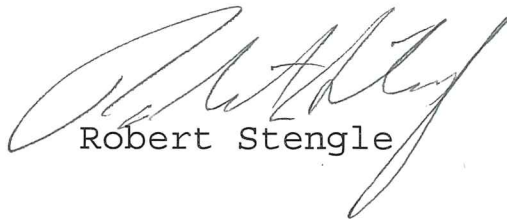
JAN 27 2 41 PM '99
LAND USE COMMISSION
STATE OF HAWAII

Subject: Petition for Declaratory Order

in accordance with our recent discussions, enclosed is a Petition For Declaratory Order for Review of Boundary Reclassification and Interpretation.

Please call me at 373-2661 if you have questions concerning this Petition, find it to be deficient in any manner, or have suggestions for supplemental information which could help clarify the Petition.

Thank You,



Robert Stengle

BEFORE THE LAND USE COMMISSION

ORIGINAL

OF THE STATE OF HAWAII

In The Matter of the Petition of)
)
ROBERT E. & CHRISTINE M.)
STENGLE)
)
for Review of Boundary)
Reclassification and Interpretation)
_____)

) Docket No. DR99-21

) **PETITION FOR DECLARATORY**
) **ORDER**

JAN 27 2 41 PM '99
LAND USE COMMISSION
STATE OF HAWAII

PETITION FOR DECLARATORY ORDER

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

Comes now, Robert E. and Christine M. Stengle ("Petitioners") for a declaratory order clarifying and correcting the boundary interpretations dated October 29, 1998 in Boundary Interpretation No. 98-36 and dated January 12, 1999 in Boundary Interpretation No. 98-50. This petition is brought pursuant to Sections 15-15-98 and 15-15-22(b) of the Land Use Commission Rules.

1. Name, Address, And Telephone Number of Petitioners.

The Petitioners' name, address and telephone number are as follows:

Robert E. Stengle
Christine M. Stengle
5436 Kirkwood Place
Honolulu, Hawaii 96821

Telephone Number: (808) 373-2661

2. Petitioners' Interest in The Petition, Reasons for Submission Of Petition, And Statement of Petitioners' Position.

A. Petitioners' Interest In The Property.

Petitioners are the owners in fee simple of that certain property located in Manoloa, North Hilo, Island of Hawai'i, State of Hawai'i, designated as Tax Map Key No. 3-2-03: 23 & 41 (the "Property"). The Property has an area of approximately 9.44 acres. A portion of the Property is designated as being in Agricultural District and a portion is designated as being in Conservation District. The Property is located at the twenty mile marker on Mamalaoa Highway along the Hamakua Coast in the village of Ninole. It was historically planted in sugar cane and converted to a macadamia orchard in 1982.

B. Reason For Submission of Petition.

Petitioners applied for an Agricultural / Conservation boundary determination on September 2, 1998 and reapplied on December 2, 1998. According to the October 29, 1998 Boundary Interpretation No. 98-36 the State Land Use Agricultural / Conservation District boundary generally follows the "Top of Pali." In order to determine a more precise location of the district boundary, a topographical survey map of the Property with contour lines and the "Top of Pali" delineated in metes and bounds was prepared and submitted. According to the subsequent January 12, 1999 Boundary Interpretation No. 98-50, the State Land Use Agricultural / Conservation District Boundary was determined to be substantially removed from the "Top of Pali" based on the Official Boundary Map. As a result of Boundary Interpretation No. 98-50, approximately 46,699 square feet of land planted

in macadamia is determined to be in Conservation District, while approximately 22,888 square feet of land containing stream beds and a waterfall is determined to be in Agricultural District.

The 1969 report State Of Hawaii Land Use Districts and Regulations Review, page 36, discusses Urban, Agriculture and Conservation District boundary changes for Hawaii County. Section II. Conservation Districts; Subsection C. The Shoreline; states “The steep pali coast east of Kohala is presently within the Conservation District. This District should be extended to include the sandy beach at Waipio and then to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line”. This interpretation was then drawn on U. S. Geographical Survey maps and adopted as the Official Maps. U. S. Geographical Survey Map H-59 titled “Papaalooa, Hawaii” pertains to the Property and was used in Boundary Interpretations 98-36 and 98-50.

C. Statement Of Petitioners’ Position.

The Partitioners’ position is that the Land Use Commission should interpret the boundary between the Agricultural and Conservations District at the ridge top as determined by the topographical survey map of the Property which shows contour lines and the ridge top delineated in metes and bounds. With this interpretation the 46,699 square feet of land planted in macadamia will be in Agricultural District and the 22,888 square feet of land containing stream beds and a waterfall will be in Conservation District. This interpretation would be in compliance with the 1969 report State Of Hawaii Land Use Districts and Regulations Review , would be consistent with the overall purpose of Chapter 205 of the Hawaii Revised Statutes, as amended, and more particularly consistent with the basis and

intent of the Commission when the District boundaries were established in 1969. Petitioners' memorandum in support of its position is attached to this Petition.

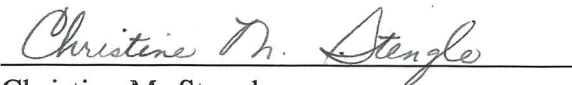
A declaratory order clarifying the Agricultural / Conservation District boundary as being "ridge top" defined by metes and bounds for Property Tax Map Key: 3-2-03:23 & 41 consistent with the intent upon which the Commission reclassified the boundary in 1969 is appropriate, is in the interest of public policy, and is necessary to enable the Petitioners to avoid uncertainty in their Property rights.

WHEREFORE, Petitioners respectfully request the issuance of a declaratory order providing that the Agricultural / Conservation District boundary for Property be interpreted and corrected to be "ridge top" as determined by a survey of metes and bounds.

DATED: Honolulu, Hawaii, January 27, 1999.



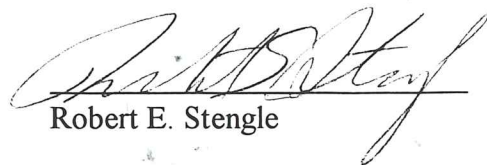
Robert E. Stengle
Petitioner

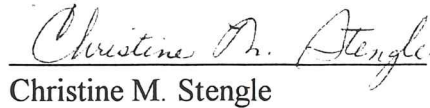


Christine M. Stengle
Petitioner

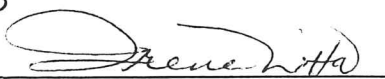
VERIFICATION

ROBERT E. STENGLE and CHRISTINE M. STENGLE, the persons named, being duly sworn on oath, depose and say that they are the Partitioners and owners of Property; that they have read the foregoing Petition and know the contents thereof; and that the same are true to the best of their knowledge, information and belief.


Robert E. Stengle


Christine M. Stengle

Subscribed and sworn to before me
this 27 Day of January, 1999

ls


Notary Public, State of Hawaii

My Commission expires: 9-1-2002

IRENE NITTA
NOTARY PUBLIC, FIRST JUDICIAL CIRCUIT
State of Hawaii
Commission Expires 9/1/2002

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter of the Petition of) Docket No. _____
)
ROBERT E. & CHRISTINE M. STENGLE) PETITIONERS' MEMORANDUM IN
) SUPPORT OF PETITION FOR
) DECLARATORY ORDER
for Review of Boundary)
Reclassification and Interpretation)
_____)

**PETITIONERS' MEMORANDUM IN
SUPPORT OF PETITION FOR DECLARATORY ORDER**

I. BACKGROUND.

Petitioners have filed with the Land Use Commission ("Commission") a petition for a declaration order clarifying and correcting the boundary interpretation dated October 29, 1998 in Boundary Interpretation No. 98-36 and dated January 12, 1999 in Boundary Interpretation No. 98-50.

Petitioners are the owners in fee simple of that certain property located in Manoloa, North Hilo, Island of Hawai'i, State of Hawai'i, designated as Tax Map Key No. 3-2-03: 23 & 41 (the "Property"). The Property has an area of approximately 9.44 acres. A portion of the Property is designated as being in Agricultural District and a portion is designated as being in Conservation District. The Property is located at the twenty mile marker on Mamalao Highway along the Hamakua Coast in the village of Ninole. It was originally planted in sugar cane and converted to a macadamia orchard in 1982. Exhibit "A" attached to the Petition is an aerial photograph of the Property.

II. BASIS FOR AGRICULTURAL / CONSERVATION BOUNDARY DETERMINATION.

There are two reference sources used in determining the location of District boundaries. These are the 1969 State Of Hawaii Land Use Districts and Regulations Review document and the accompanying U. S. Geographical Survey ("USGS") maps. The document details boundary changes made by the Land Use Commission for Hawaii County during the 1969 review. The USGS maps, having a scale of 1 inch = 2,000 feet, were used as a foundation for charting the changes stated in the document and are known as the "Official Maps."

The 1969 report State Of Hawaii land Use Districts and Regulations Review, page 36, discusses Urban, Agriculture and Conservation District boundary changes for Hawaii County. Section II., Conservation Districts; Subsection C., The Shoreline, states "The steep pali coast east of Kohala is presently within the Conservation District. This District should be extended to include the sandy beach at Waipio and then to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line". This interpretation was adopted and then drawn on USGS maps. USGS Map H-59 titled "Papaalooa, Hawaii" pertains to the Property and was used in Boundary Interpretations 98-36 and 98-50.

III. BASIS USED IN BOUNDARY INTERPRETATIONS NOS. 98-36 AND 98-50.

The Petitioners' request for determination dated September 2, 1998, which resulted in Boundary Interpretation No. 98-36, was submitted using Tax Plat Map 3-2-03. The Tax Plat Map was drawn on a scale of 1 inch = 300 feet and offered few details of the Property's characteristics. The Boundary Interpretation recorded on the returned Plat Map showed a line going through the Property which was identified as "The Approximate State Land Use

Agricultural / Conservation District Boundary (Follows "Top Of Pali")." The transmittal letter dated October 29, 1998 advised that a more precise location of the district boundary would require a topographical survey map of the Property with contour lines and the "Top of Pali" delineated in metes and bounds. Since the boundary as shown in Interpretation No. 98-36 appeared by the Petitioners to be well removed from "Top of Pali", the decision was made to resubmit the interpretation request.

A survey was conducted and the resulting topographical map of the Property with contour lines and "Top of Pali" delineated in metes and bounds was submitted with a second boundary interpretation request on December 2, 1998. In the subsequent January 12, 1999 Boundary Interpretation No. 98-50, the State Land Use Agricultural / Conservation District Boundary was determined to be substantially removed from the "Top of Pali" based on the Official Boundary Map. As a result of Boundary Interpretation No. 98-50, approximately 46,699 square feet of land planted in macadamia is determined to be in Conservation District, while approximately 22,888 square feet of land containing stream beds and a waterfall is determined to be in Agricultural District.

IV. DISCUSSION.

The stated intention of the Commission as a result of their 1969 boundary review was to extend the Conservation District "to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line". While this was their stated intention, as it relates to the Property, it was not reflected correctly on USGS Map H-59. This is understandable since the map scale of 1 inch - 2,000 feet reveals only limited details of the land's characteristics or the location of the 'ridge top'. The entire Property is presented on Map H-59 in less than an inch

square. See Exhibit "B" attached to the Petition.

Attached to the Petition as Exhibit "C" is the topographical survey map of the Property with contour lines and the "Top of Pali", or ridge top delineated in metes and bounds. This was submitted to the Commission and returned as Boundary Interpretation 98-50. The survey drawing incorporates a 1 inch = 40 feet scale which clearly shows the characteristics of the land and the location of the ridge top.

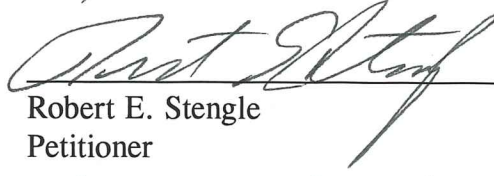
In addition to the details of the Property, Exhibit "C" shows the line resulting from Boundary Interpretation 98-50. Areas have been highlighted which are Agricultural or Conservation District under Boundary Interpretation 98-50 which would be in Conservation or Agricultural District using the ridge top interpretation as delineated by metes and bounds. Reviewing together Exhibit "C" and Exhibit "A", an aerial photograph of the Property, shows that the 22,888 square feet which are in Agricultural and would be Conservation under a ridge top interpretation are wooded areas containing stream beds and a waterfall while the 46,699 square feet which are in Conservation and would be Agricultural under a ridge top interpretation contain a macadamia orchard.

From a review of the above, it must be concluded that, although the "ridge top" statement adopted by the Commission in 1969 is in conflict with Official Map H-59, a ridge top boundary interpretation for the Property as delineated by metes and bounds is in keeping with their intent, is consistent with the overall purpose of Chapter 205 of the Hawaii Revised Statutes, as amended, and should be adopted.

V. CONCLUSION.

For the reasons stated above, the boundary between the Conservation and the Agricultural Districts for the Property should be interpreted and corrected in such a manner that the boundary is delineated by metes and bounds of the ridge top.

DATED: Honolulu, Hawaii, JANUARY 27, 1999.



Robert E. Stengle
Petitioner



Christine M. Stengle
Petitioner



