

July 8, 2021

2021 JUL 15 A 9:35

Mr. Daniel E. Orodenker
Executive Officer
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
from City & County of Honolulu's Designation as Important Agricultural Lands
Protest Re Procedure Designating Lands as Important Agricultural Lands

Dear Mr. Orodenker:

This letter refers to the request of A Charitable Foundation Corporation ("ACF"), a nonprofit corporation, to exclude the following parcels of land, of which ACF is the fee simple owner, from inclusion in the City and County of Honolulu's ("City") initiative to designate over 2,388 acres of land as "Important Agricultural Lands" ("IALs"):

TMK No.	Area	Zoning	Land Use District Boundary
(1) 5-9-033-002 ("Lot B")	9.237 acres	Agriculture-2	Agriculture
(1) 5-9-033-003 ("Lot C")	5.691 acres	Agriculture-2	Agriculture
(2) 5-9-033-004 (Lot "D") ¹	0.216 acre	Agriculture-2	Agriculture

(collectively "ACF's Properties")

ACF's Properties are situated on the Pupukea Ridge on the North Shore of Oahu. They are narrow oblong shaped "slivers" of land which are adjacent to a residential subdivision and are part of or surrounded by gulches. See: Subdivision Map bearing an approval date of May 5, 2017 which is attached hereto as Exhibit "1" and incorporated by reference. Lot B forms the upper part of a gulch. See: Pupukea Highlands Aerial View, which is attached hereto as Exhibit "2" and incorporated by reference.

Discussion

It is evident that the City broadly included ACF's Properties as IALs without taking into consideration their physical, topographical limitations and whether they are, in fact, capable of producing sustained high agricultural under the standards and criteria set forth in HRS Section 205-44.

¹ Lot D is an extension of Maulukua Road, a private road.

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In 2003 and after consultation with the Department of Land and Natural Resources of the State of Hawaii, ACF purchased 94.174 acres of land on the Pupukea Ridge on the North Shore from the developer of the adjacent residential subdivision in furtherance of the charitable purpose of subdividing out a 79.031-acre parcel (now Lot "A" as shown in the Subdivision Map - Exhibit "1") and donating it to the State of Hawaii for a State Park Reserve. The land/Lot A is in close proximity to the *Puu O Mahuka Heiau*, the largest *heiau* on Oahu, which is situated on land owned by State of Hawaii. Acquiring the land (now Lot A) and donating it to the State of Hawaii would be in furtherance of not only preserving the open space along the northern rim of Waimea Valley but also the historical landscape of the *heiau*.

ACF filed a Petition to amend the land use district boundary of 28.759 acres from the Agriculture Land Use District to the Conservation Land Use District and 5.129 acres in the Conservation Land Use District to the Agricultural Land Use District in Docket No. A05-758.²

In its Findings of Fact, Conclusions of Law and Decision and Order ("D & O") entered April 21, 2006, the Land Use Commission ("LUC") granted the Petition, which, among other conditions, required that the 94.174 be legally subdivided. It took ACF over 11 years and at considerable cost to subdivide the 94.174 acres into Lot A (79.031 acres), Lot B, Lot C and Lot D. The LUC is requested to take administrative notice of the record filed in Docket No. A05-758.

On January 24, 2019, almost 16 years after purchasing the property, ACF was able to convey Lot A to the to the State of Hawaii

In connection with a Petition for Land Use District Boundary Amendment, which ACF filed in Docket No. A05-758, Decision Analysts Hawaii, Inc. prepared a report involving ACF's Properties, now Lots B and C, entitled "Agricultural Suitability of Lands Proposed for Redistricting to Agriculture" (April 2005). The report made the following findings.

- ACF's Properties are situated on the Pupukea mountain ridge, which are densely vegetated and almost entirely forested. Roots penetrate to a depth of 5 feet or more.
- Where they follow the contour of the Pupukea Ridge, they have steep slopes of over 40-50% and upwards of 90%. Lot B is the upper part of a gulch. See: Slope Map, which is attached as Exhibit "3" and incorporated by reference.
- Under the University of Hawaii Land Study Bureau's Overall Productive Rating, the rating of the soils range from "C" to "E" (the lowest). Due to the slope, workability is difficult and runoff ranges from medium to very rapid and the erosion hazard is severe to very severe.

² The County participated in the proceedings before the LUC and supported the granting of the Petition.

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- There is no source of agricultural water. Irrigation water would presumably be provided by the Board of Water Supply, which is more expensive.
- ACF's Properties have a potential for raising flowers and nursery products. They could be used for grazing cattle but the acreage is too small to support a commercial ranch where it could support only about two cow-and -calf units. The land would be suitable for a small number of domestic farm animals such as horses, chickens, ducks and goats. However, where there is a residential subdivision adjacent, including residences adjacent to Lot B, nuisance issues (e.g., odors and/or noise) would limit such uses. See: Subdivision Map - Exhibit "1" and Pupukea Highlands Aerial View - Exhibit "2".
- Access is through Maulukua Road, which is privately owned. There are no roads over Lot B and Lot C.

Against the foregoing, in its D & O, the LUC made, inter alia, the following findings:

42. Petitioner currently has no specific plans for the development of the approximately 15.344 acres of land it will retain. Petitioner has represented that if Petition Area B is reclassified from the State Land Use Conservation District to the State Land Use Agricultural District, Petitioner will seek to consolidate and resubdivide the 15.144 acres of land into two Agricultural District parcels that will be limited to agricultural uses with the potential development of farm dwellings. Potential agricultural uses include low elevation crops that are grown commercially on small farms in Hawai'i, or which are grown in support of a country lifestyle. Such crops would include those that do well in the surrounding area, such as flowers and nursery products. In addition, the land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats.

44. In the absence of an agricultural plan, the OP (Office of Planning) believes that Petition Area B would be more appropriate for the State Land Use Rural District where residential uses are allowed with agricultural activity.

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ACF's Standing

ACF will be aggrieved where its rights and interests in ACF's Properties will be adversely affected if included as IALs where they are not capable of producing sustained high agricultural yields and do not meet the standards and criteria to be classified IALs. ACF protests the broad procedure, including manner of notice to ACF, pursuant to which the City designated lands as IALs without taking into consideration whether they in fact meet all of the standards and criteria for such designation.

ACF's Properties Do Not Meet the Standards and Criteria to be Classified IAL

The standards and criteria of for classification under HRS Section 205-44 are as follows:

- (1) Land currently used for agricultural production;

Response: ACF's Properties are unoccupied, undeveloped, densely vegetated and almost entirely forested. Any probable historical use was primarily as scrub "ranchland" in the early 1900s.

- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;

Response: Lot B and Lot C are not suitable for agricultural production of food, fiber, or fuel-and energy-producing crops. Crops would include those that do well in the surrounding area, such as flowers and nursery products. The land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats. However, where the closest residences are on adjacent properties, nuisance issues (e.g., odors and/or noise) would limit livestock uses.

- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;

Response: The topography of ACF's Properties is shown in the Slope Map - Exhibit "3".

Regardless of soils ratings, Lot B forms the upper part of a gulch, has steep slopes and severe erosions problems.

Not all of Lot C can be used for cultivation where Lot C also has steep slopes and related erosion problems which limit its use for agriculture purposes and certainly will not produce sustained high agricultural yields.

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Under USDA Natural Resources Conservation Service Soil Classification, the soils within Lot C are described as follows:

- 3.3 acres has adequate (but not good) soils and are rated IIIe (severe limitations that reduce the choice of plants, require special conservation practices, or both).
- 1.5 acres has soils are rated "VIe" (severe limitations that make them generally unsuitable for cultivation and limit use largely to pasture or range, woodland, or wildlife habitat).
- 0.4 acre has soils rated "VIIe" (very severe limitations that make them unsuitable for cultivation and restrict their agricultural use largely to pasture).

("e" indicates that the soils are subject to severe erosion if they are cultivated and not protected.)

Under the University of Hawaii Land Study Bureau Overall Productivity Rating, which classifies soils according to five levels, with "A" representing the class of highest productivity and "E" the lowest, about 4 acres of Lot C soils are rated "C" and the remaining 1.2 acres are rated "E." However, these lands have slopes that range up to 25% and are subject to erosion.

Under the State of Hawaii (ALISH) system, nearly all of Lot C is rated "Prime" based on former use of land in the area to the West, which ACF donated to the State of Hawaii for a State Park Reserve.

- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;

Response: The area was vacant pre-Contact and not associated with traditional Hawaiian agriculture or unique agricultural crops and uses. In the early 1900s, the area was most likely used to pasture cattle if at all where the terrain has steep slopes.

ACF's Properties may be suitable for flowers and nursery products. In addition, the land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats.

- (5) Land with sufficient quantities of water to support viable agricultural production;

Response: There is no source of agricultural irrigation water. (Potable) water for irrigation would presumably be provided by the Honolulu Board of Water Supply water, the cost of which would be substantially higher.

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- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;

Response: ACF's Properties are situated adjacent to a residential subdivision where the closest residential lots are contiguous to lot B.

ACF's Properties are in the "Ag-2" district under the City's Land Use Ordinances ("LUO"). Revised Ordinances of Honolulu ("RoH") Sec. 21-3.50 provides, in relevant part, as follows:

- "(d) The intent of the AG-2 general agricultural district is to conserve and protect agricultural activities on smaller parcels of land.
- (e) The following guidelines shall be used to identify lands which may be considered for the AG-2 general agricultural district:
- (1) Lands which are in the state-designated agricultural or urban district and designated agricultural by adopted city land use policies;
 - (2) Lands which are predominantly classified as other under the agricultural lands of importance to the State of Hawaii system; and
 - (3) Lands which are used or are suitable for agricultural purposes and where a substantial number of parcels are less than five acres in size."

In its D & O, the LUC also made, inter alia, the following finding due to ACF's Properties proximity to a residential subdivision:

"44. In the absence of an agricultural plan, the OP (Office of Planning) believes that Petition Area B would be more appropriate for the State Land Use Rural District where residential uses are allowed with agricultural activity."

- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and

Response: ACF's Properties have not been and continue not to be necessary to maintaining critical land mass important to agricultural operating productivity. They are on the Pupukea Ridge which is marked by steep slopes and physical limitations and which have not and would not support the cultivation of high yield crops.

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Further, nearby residences would limit the choice of activities in order to avoid potential nuisance problems.

- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

Response: Maulukua Road is a private road. Assuming that the owners of the residential lots served by it do not object to the use of Maulukua Road for commercial agricultural purposes, it would be a fairly long trucking distance to the Honolulu markets and to shipping terminals.

There are no utility lines (water and electricity) within Lot B and Lot C of ACF's Properties. Only more expensive potable water from the Board of Water Supply system and electrical power are available through Maulukua Road.

Request to Exclude ACF's Properties as IALs

Due to their location, land area and physical limitations, it would be unrealistic and not feasible for ACF's Properties to be used for agricultural production of food, fiber, or fuel- and energy-producing crops of the nature and magnitude contemplated by HRS Section 205-44.

On behalf of ACF, the LUC/County is respectively requested to exclude ACF's Properties from inclusion as IALs.

Very truly yours,

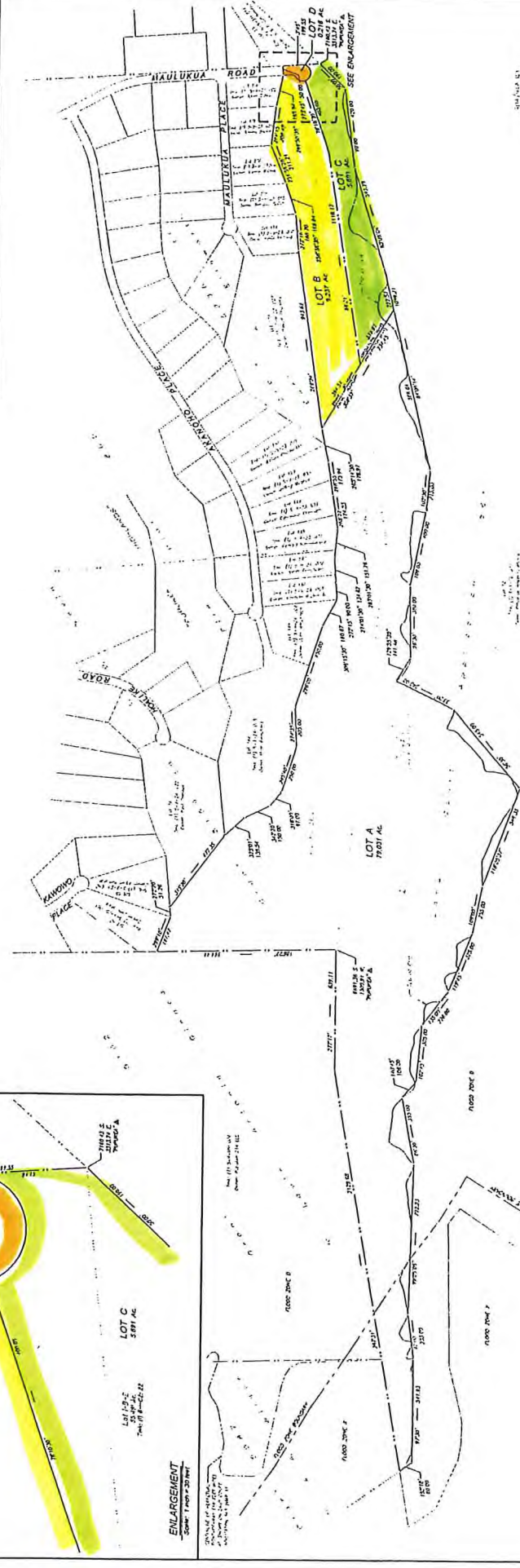
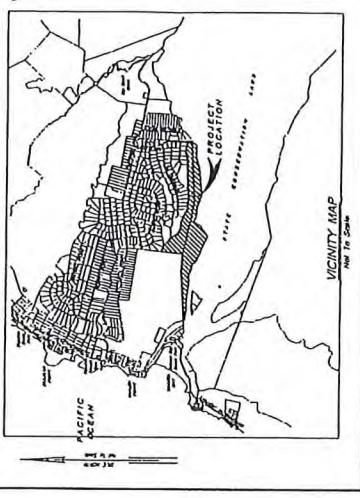
TAKUSHI WONG LEE & YEE
A Law Corporation

By: 

DICKSON C.H. LEE

cc: A Charitable Foundation Corporation

Attachments: Exhibit "1" Subdivision Map
Exhibit "2" Pupukea Highlands Aerial View
Exhibit "3" Slope Map



SUBDIVISION MAP SHOWING
CONSOLIDATION OF LOT 179 OF FILE PLAN 860
(BEING PORTIONS OF GRANT 5159 TO L. B. NEVIN AND
GRANT 5236 TO EARL K. ELLSWORTH) AND
LOT 1-B-2 OF LAND COURT APPLICATION 561 (MAP 8)
AND THE RESUBDIVISION OF SAID CONSOLIDATION
INTO LOTS A THRU D, INCLUSIVE
AT RURIKUA, MOOHAUKA OAHU, HAWAII
TAX MAP KEYS: (1) 5-9-23-081, 5-9-24-001 AND 6-1-02-027

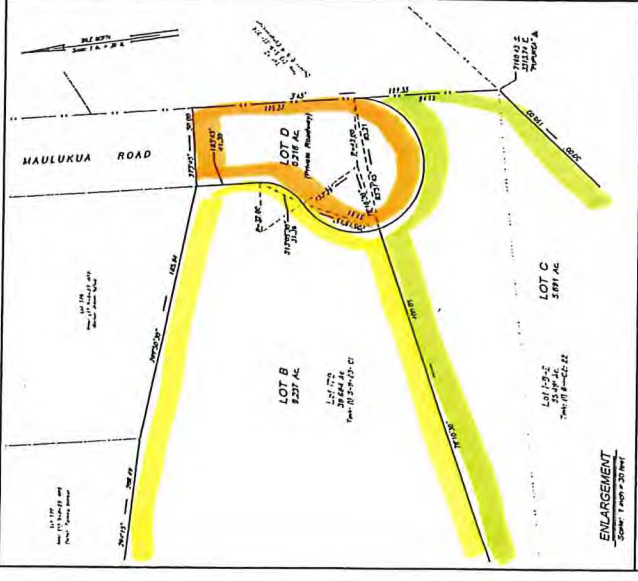
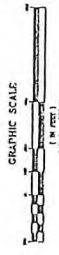
Final Consolidation Area

Lot 179-B-2	= 3,899 AC
Lot 179-A-2	= 2,327 AC
Total Area	= 6,226 AC

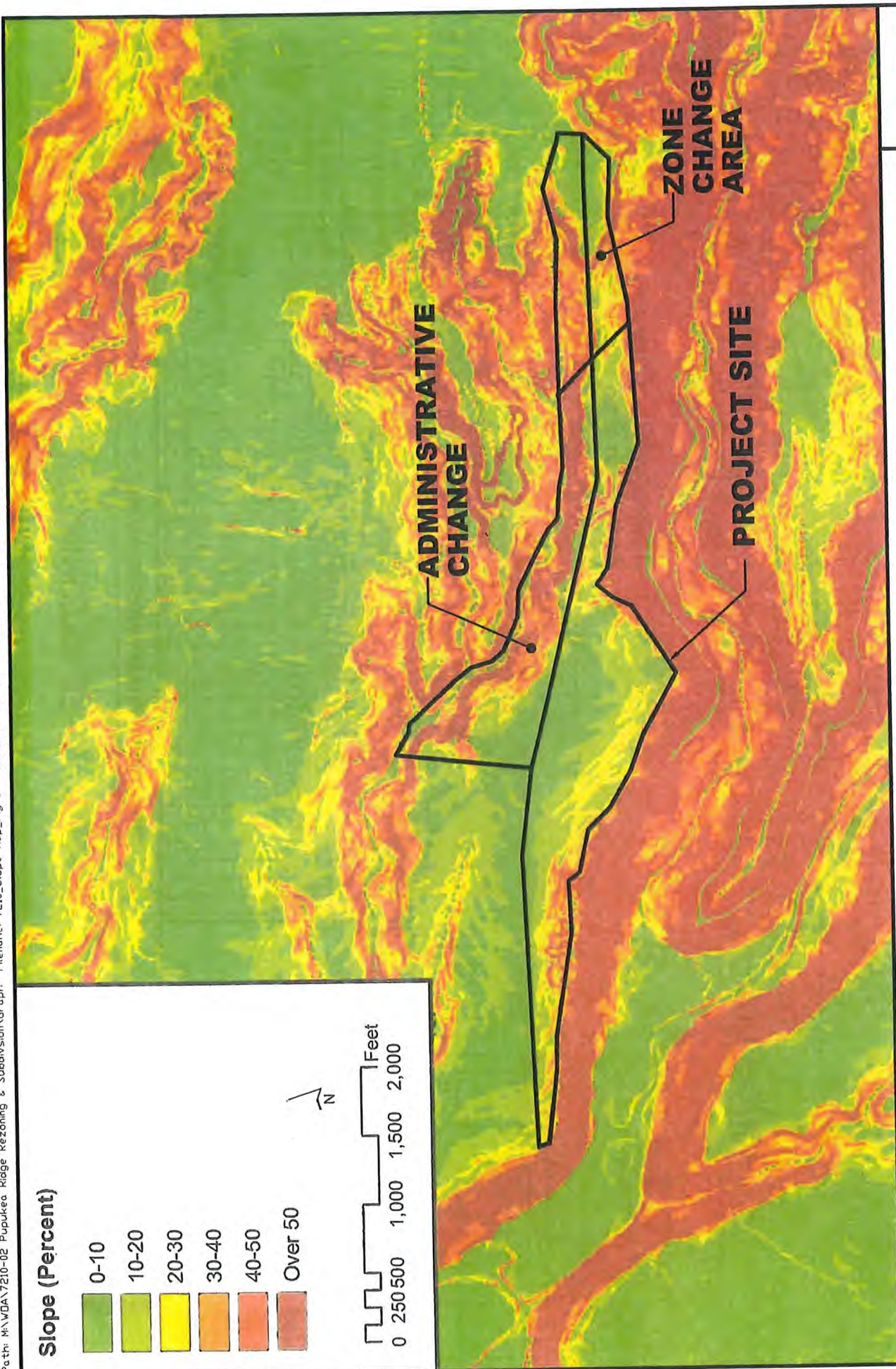
Resubdivision Area

Lot A	= 7,801 AC
Lot B	= 5,237 AC
Lot C	= 5,091 AC
Lot D	= 5,216 AC
Total Area	= 24,177 AC

OWNER: Lot 179-B-2, 081 and Lot 179-A-2, 001
 A CONSOLIDATED FIDUCIARY CORPORATION
 LOT 1-B-2 (MAP 8) (L-20-027)
 A CHARITABLE FOUNDATION CORPORATION



1. Survey and Computations prepared by Geomatrix Survey Technologies, Inc.
2. Survey data was obtained from the Bureau of Land Management, Department of the Interior, Office of the State Surveyor, Honolulu, Hawaii, dated November 20, 2009.
3. Lot A, B, C and D are owned 66-2/3 percent by the same person.
4. Lot D is a Public Roadway.
5. Owners and appropriate officers are hereby notified that this map is subject to the provisions of the Department of Planning and Permitting, City & County of Honolulu, Hawaii.



PUPUKEA RIDGE PRESERVATION PROJECT

SLOPE MAP

FIGURE

6

LAND USE COMM
 STATE OF HA

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Mr. Jonathan Likeke Scheuer
 Chair
 State of Hawai'i Land Use Commission
 Department of Business, Economic Development & Tourism
 P.O. Box 2359
 Honolulu, Hawai'i 96804-2359

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
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Dear Mr. Scheuer and Members of the Land Use Commission:

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(collectively "ACF's Properties")

ACF's Properties are situated on the Pupukea Ridge on the North Shore of Oahu. They are narrow oblong shaped "slivers" of land which are adjacent to a residential subdivision and are part of or surrounded by gulches. See: Subdivision Map bearing an approval date of May 5, 2017 which is attached hereto as Exhibit "1" and incorporated by reference. Lot B forms the upper part of a gulch. See: Pupukea Highlands Aerial View, which is attached hereto as Exhibit "2" and incorporated by reference.

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ACF filed a Petition to amend the land use district boundary of 28.759 acres from the Agriculture Land Use District to the Conservation Land Use District and 5.129 acres in the Conservation Land Use District to the Agricultural Land Use District in Docket No. A05-758.²

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² The County participated in the proceedings before the LUC and supported the granting of the Petition.

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Response: The topography of ACF's Properties is shown in the Slope Map - Exhibit "3".

Regardless of soils ratings, Lot B forms the upper part of a gulch, has steep slopes and severe erosions problems.

Not all of Lot C can be used for cultivation where Lot C also has steep slopes and related erosion problems which limit its use for agriculture purposes and certainly will not produce sustained high agricultural yields.

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- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;

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In its D & O, the LUC also made, inter alia, the following finding due to ACF's Properties proximity to a residential subdivision:

"44. In the absence of an agricultural plan, the OP (Office of Planning) believes that Petition Area B would be more appropriate for the State Land Use Rural District where residential uses are allowed with agricultural activity."

- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and

Response: ACF's Properties have not been and continue not to be necessary to maintaining critical land mass important to agricultural operating productivity. They are on the Pupukea Ridge which is marked by steep slopes and physical limitations and which have not and would not support the cultivation of high yield crops.

TAKUSHI WONG LEE & YEE

A LAW CORPORATION

Mr. Jonathan Likeke Scheuer
Chair

Land Use Commission of the State of Hawaii

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
from Designation as Important Agriculture Lands

July 8, 2021

Page 7

Further, nearby residences would limit the choice of activities in order to avoid potential nuisance problems.

- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

Response: Maulukua Road is a private road. Assuming that the owners of the residential lots served by it do not object to the use of Maulukua Road for commercial agricultural purposes, it would be a fairly long trucking distance to the Honolulu markets and to shipping terminals.

There are no utility lines (water and electricity) within Lot B and Lot C of ACF's Properties. Only more expensive potable water from the Board of Water Supply system and electrical power are available through Maulukua Road.

Request to Exclude ACF's Properties as IALs

Due to their location, land area and physical limitations, it would be unrealistic and not feasible for ACF's Properties to be used for agricultural production of food, fiber, or fuel- and energy-producing crops of the nature and magnitude contemplated by HRS Section 205-44.

On behalf of ACF, the LUC/County is respectively requested to exclude ACF's Properties from inclusion as IALs.

Very truly yours,

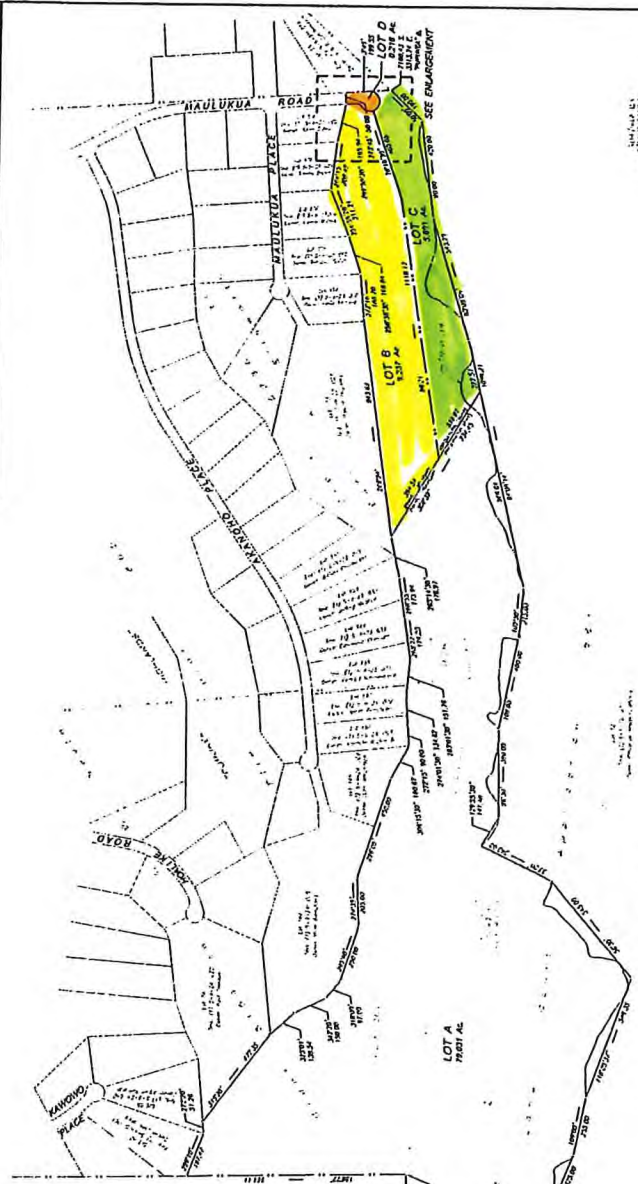
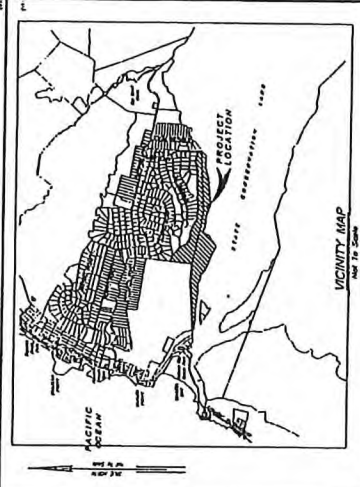
TAKUSHI WONG LEE & YEE
A Law Corporation

By: 

DICKSON C.H. LEE

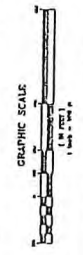
cc: A Charitable Foundation Corporation

Attachments: Exhibit "1" Subdivision Map
Exhibit "2" Pupukea Highlands Aerial View
Exhibit "3" Slope Map



SUBDIVISION MAP SHOWING
CONSOLIDATION OF LOT 179 OF FILE PLAN 869
(BEING PORTIONS OF GRANT 5159 TO L. S. NEVIN AND
GRANT 5236 TO EARL K. ELLSWORTH) AND
LOT 1-B-2 OF LAND COURT APPLICATION 561 (MAP 8)
AND THE RESUBDIVISION OF SAID CONSOLIDATION
INTO LOTS A THRU D, INCLUSIVE
AT PUPUNEA, KOOLAHOA OAHU, HAWAII
TAX MAP KEYS: (1) 5-1-20-081, 5-9-24-081 AND 6-1-02-022

Lot	Area (AC)	Area (SQ FT)
Lot A	7.801 AC	336,237 SQ FT
Lot B	8.237 AC	356,237 SQ FT
Lot C	3.891 AC	168,237 SQ FT
Lot D	3.878 AC	168,237 SQ FT



GRAPHIC SCALE:
 1" = 100'

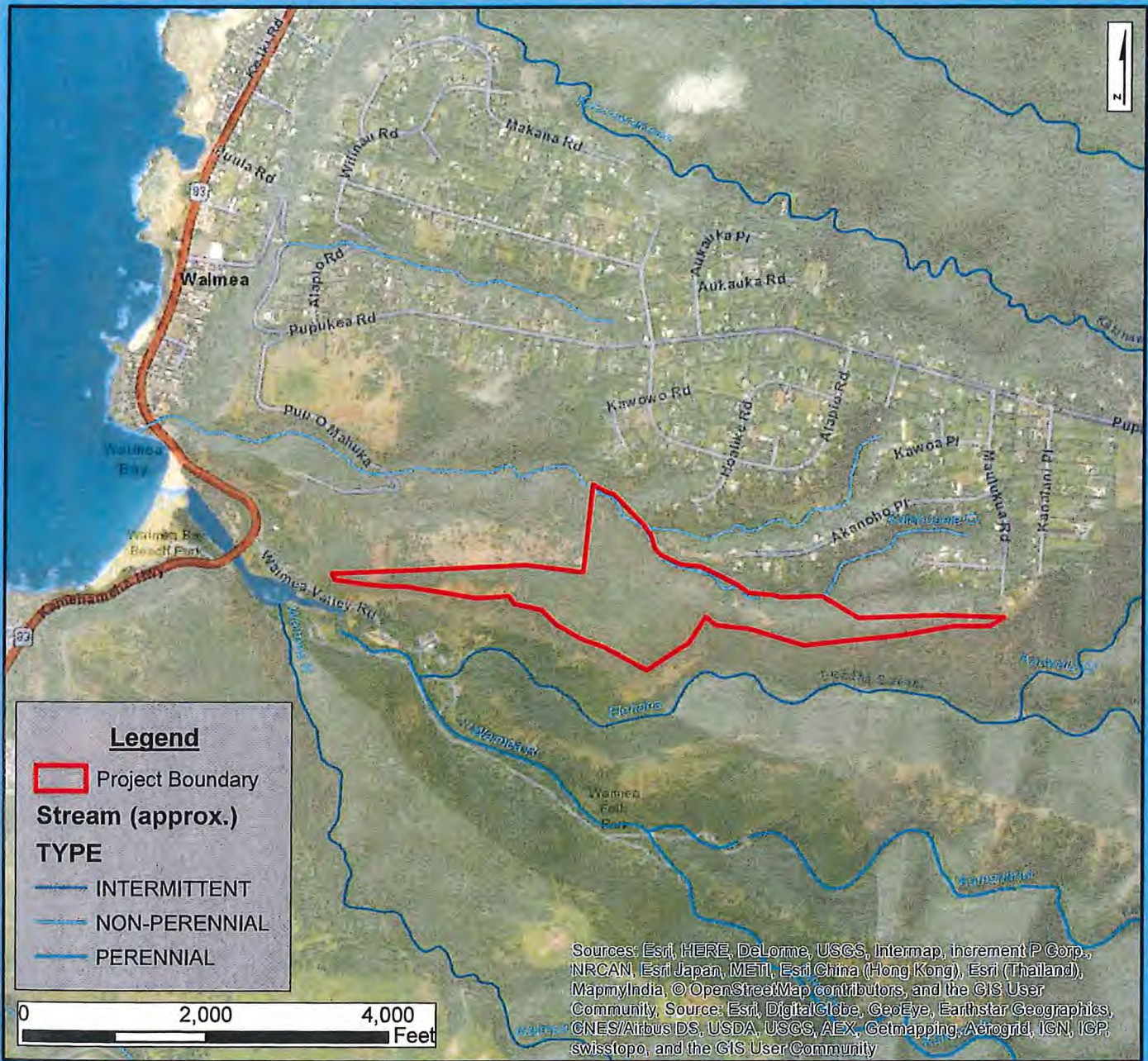
TOWELL, SPENCER & ASSOCIATES, INC.
 LAND SURVEYORS

Exhibit "1"

1. This map and description are prepared by the County of Honolulu.
2. Survey Lines are marked with their bearings and distances.
3. Lot A is a portion of the subdivision shown on the map.
4. Lot B is a portion of the subdivision shown on the map.
5. Lot C is a portion of the subdivision shown on the map.
6. Lot D is a portion of the subdivision shown on the map.

APPROVED FOR THE COUNTY OF HONOLULU
 COUNTY ENGINEER
 DATE: 02/27/17

Pupukea Highlands Petition Area



Sources: Esri, HERE, DeLorme, USCS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

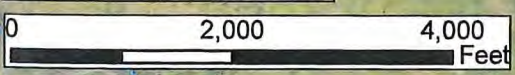
Legend

Project Boundary

Stream (approx.)

TYPE

- INTERMITTENT
- NON-PERENNIAL
- PERENNIAL



Project: 18705-001
 Approved: JR
 Drawn: RNH
 Date: January 2018

Notes:

1. Site boundary from City & County of Honolulu TMK layer. Retrieved May 2013 from Honolulu Land Information System (HoLIS) ftp site, <ftp://gisftp.hicentral.com/>. TMK boundary may be off by a several feet.
2. Streams layer source: Department of Land and Natural Resources (DLNR) Division of Aquatic Resources (DAR), 2004. Retrieved 2009 from Hawaii Statewide GIS Program website: <http://hawaii.gov/dbed/gis/>. Based in part on USGS Digital Line Graphs, 1983 version; locations are not precise.

Figure 1

Project Location Map

TMKs (1) 5-9-023:001 (portion), 5-9-024:001, and 6-1-002:022 Haleiwa, Oahu, Hawaii

M_FA MASA FUJIOKA & ASSOCIATES

ENVIRONMENTAL • GEOTECHNICAL • HYDROGEOLOGICAL CONSULTANTS

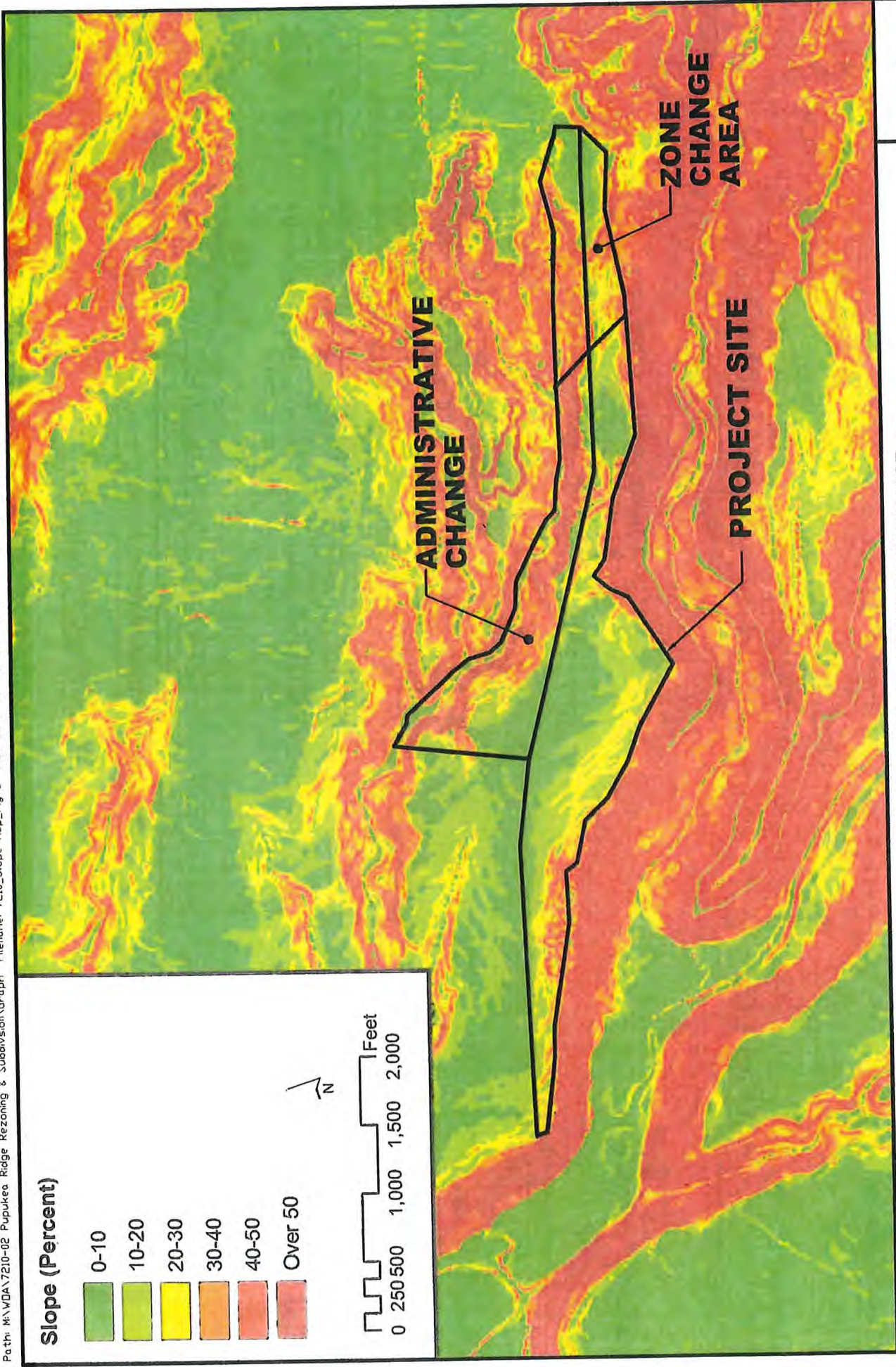


FIGURE 6

PUPUKEA RIDGE PRESERVATION PROJECT

SLOPE MAP



LAND USE COM
 STATE OF HA

July 8, 2021

2021 JUL 15 A 9:36

Ms. Dawn Takeuchi-Apuna
 Deputy Director
 Department of Planning and Permitting
 City and County of Honolulu
 650 S. King Street, 7th Floor
 Honolulu, HI 96813

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
 from City & County of Honolulu's Designation as Important Agricultural Lands
Protest Re Procedure Designating Lands as Important Agricultural Lands

Dear Ms. Takeuchi-Apuna:

This letter refers to the request of A Charitable Foundation Corporation ("ACF"), a nonprofit corporation, to exclude the following parcels of land, of which ACF is the fee simple owner, from inclusion in the City and County of Honolulu's ("City") initiative to designate over 2,388 acres of land as "Important Agricultural Lands" ("IALs"):

TMK No.	Area	Zoning	Land Use District Boundary
(1) 5-9-033-002 ("Lot B")	9.237 acres	Agriculture-2	Agriculture
(1) 5-9-033-003 ("Lot C")	5.691 acres	Agriculture-2	Agriculture
(2) 5-9-033-004 (Lot "D") ¹	0.216 acre	Agriculture-2	Agriculture

(collectively "ACF's Properties")

ACF's Properties are situated on the Pupukea Ridge on the North Shore of Oahu. They are narrow oblong shaped "slivers" of land which are adjacent to a residential subdivision and are part of or surrounded by gulches. See: Subdivision Map bearing an approval date of May 5, 2017 which is attached hereto as Exhibit "1" and incorporated by reference. Lot B forms the upper part of a gulch. See: Pupukea Highlands Aerial View, which is attached hereto as Exhibit "2" and incorporated by reference.

Discussion

It is evident that the City broadly included ACF's Properties as IALs without taking into consideration their physical, topographical limitations and whether they are, in fact, capable of producing sustained high agricultural under the standards and criteria set forth in HRS Section 205-44.

In 2003 and after consultation with the Department of Land and Natural Resources of the State of Hawaii, ACF purchased 94.174 acres of land on the Pupukea Ridge on the North Shore from the developer of the adjacent residential subdivision in furtherance of the charitable purpose of subdividing out a 79.031-acre parcel (now Lot "A" as shown in the Subdivision Map - Exhibit "1") and donating it to

¹ Lot D is an extension of Maulukua Road, a private road.

TAKUSHI WONG LEE  YEE

A LAW CORPORATION

Ms. Dawn Takeuchi-Apuna
Deputy Director

Department of Planning and Permitting
City and County of Honolulu

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
from Designation as Important Agriculture Lands

July 8, 2021

Page 2

Heiau, the largest *heiau* on Oahu, which is situated on land owned by State of Hawaii. Acquiring the land (now Lot A) and donating it to the State of Hawaii would be in furtherance of not only preserving the open space along the northern rim of Waimea Valley but also the historical landscape of the *heiau*.

ACF filed a Petition to amend the land use district boundary of 28.759 acres from the Agriculture Land Use District to the Conservation Land Use District and 5.129 acres in the Conservation Land Use District to the Agricultural Land Use District in Docket No. A05-758.²

In its Findings of Fact, Conclusions of Law and Decision and Order ("D & O") entered April 21, 2006, the Land Use Commission ("LUC") granted the Petition, which, among other conditions, required that the 94.174 be legally subdivided. It took over 11 years and at considerable cost to subdivide the 94.174 acres into Lot A (79.031 acres), Lot B, Lot C and Lot D. The City is requested to take administrative notice of the record filed in Docket No. A05-758.

On January 24, 2019, almost 16 years after purchasing the property, ACF was able to convey Lot A to the to the State of Hawaii

In connection with a Petition for Land Use District Boundary Amendment, which ACF filed in Docket No. A05-758, Decision Analysts Hawaii, Inc. prepared a report involving ACF's Properties, now Lots B and C, entitled "Agricultural Suitability of Lands Proposed for Redistricting to Agriculture" (April 2005). The report made the following findings.

- ACF's Properties are situated on the Pupukea mountain ridge, which are densely vegetated and almost entirely forested. Roots penetrate to a depth of 5 feet or more.
- Where they follow the contour of the Pupukea Ridge, they have steep slopes of over 40-50% and upwards of 90%. Lot B is the upper part of a gulch. See: Slope Map, which is attached as Exhibit "3" and incorporated by reference.
- Under the University of Hawaii Land Study Bureau's Overall Productive Rating, the rating of the soils range from "C" to "E" (the lowest). Due to the slope, workability is difficult and runoff ranges from medium to very rapid and the erosion hazard is severe to very severe.
- There is no source of agricultural water. Irrigation water would presumably be provided by the Board of Water Supply, which is more expensive.

² The County participated in the proceedings before the LUC and supported the granting of the Petition.

TAKUSHI WONG LEE & YEE

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Ms. Dawn Takeuchi-Apuna
Deputy Director

Department of Planning and Permitting
City and County of Honolulu

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
from Designation as Important Agriculture Lands

July 8, 2021

Page 3

- ACF's Properties have a potential for raising flowers and nursery products. They could be used for grazing cattle but the acreage is too small to support a commercial ranch where it could support only about two cow-and -calf units. The land would be suitable for a small number of domestic farm animals such as horses, chickens, ducks and goats. However, where there is a residential subdivision adjacent, including residences adjacent to Lot B, nuisance issues (e.g., odors and/or noise) would limit such uses. See: Subdivision Map - Exhibit "1" and Pupukea Highlands Aerial View - Exhibit "2".
- Access is through Maulukua Road, which is privately owned. There are no roads over Lot B and Lot C.

Against the foregoing, in its D & O, the LUC made, inter alia, the following findings:

42. Petitioner currently has no specific plans for the development of the approximately 15.344 acres of land it will retain. Petitioner has represented that if Petition Area B is reclassified from the State Land Use Conservation District to the State Land Use Agricultural District, Petitioner will seek to consolidate and resubdivide the 15.144 acres of land into two Agricultural District parcels that will be limited to agricultural uses with the potential development of farm dwellings. Potential agricultural uses include low elevation crops that are grown commercially on small farms in Hawai'i, or which are grown in support of a country lifestyle. Such crops would include those that do well in the surrounding area, such as flowers and nursery products. In addition, the land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats.

44. In the absence of an agricultural plan, the OP (Office of Planning) believes that Petition Area B would be more appropriate for the State Land Use Rural District where residential uses are allowed with agricultural activity.

ACF's Standing

ACF will be aggrieved where its rights and interests in ACF's Properties will be adversely affected if included as IALs where they are not capable of producing sustained high agricultural yields and do not meet the standards and criteria to be classified IALs. ACF protests the broad procedure, including manner of notice to ACF, pursuant to which the City designated lands as IALs without taking into consideration whether they in fact meet all of the standards and criteria for such designation.

Ms. Dawn Takeuchi-Apuna
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Department of Planning and Permitting
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RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
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July 8, 2021
Page 4

ACF's Properties Do Not Meet the Standards and Criteria to be Classified IAL

The standards and criteria of for classification under HRS Section 205-44 are as follows:

- (1) Land currently used for agricultural production;

Response: ACF's Properties are unoccupied, undeveloped, densely vegetated and almost entirely forested. Any probable historical use was primarily as scrub "ranchland" in the early 1900s.

- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;

Response: Lot B and Lot C are not suitable for agricultural production of food, fiber, or fuel-and energy-producing crops. Crops would include those that do well in the surrounding area, such as flowers and nursery products. The land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats. However, where the closest residences are on adjacent properties, nuisance issues (e.g., odors and/or noise) would limit livestock uses.

- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;

Response: The topography of ACF's Properties is shown in the Slope Map - Exhibit "3".

Regardless of soils ratings, Lot B forms the upper part of a gulch, has steep slopes and severe erosions problems.

Not all of Lot C can be used for cultivation where Lot C also has steep slopes and related erosion problems which limit its use for agriculture purposes and certainly will not produce sustained high agricultural yields.

Under USDA Natural Resources Conservation Service Soil Classification, the soils within Lot C are described as follows:

- 3.3 acres has adequate (but not good) soils and are rated IIIe (severe limitations that reduce the choice of plants, require special conservation practices, or both).

Department of Planning and Permitting
City and County of Honolulu

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003
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July 8, 2021

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- 1.5 acres has soils are rated "VIe" (severe limitations that make them generally unsuitable for cultivation and limit use largely to pasture or range, woodland, or wildlife habitat).
- 0.4 acre has soils rated "VIIe" (very severe limitations that make them unsuitable for cultivation and restrict their agricultural use largely to pasture).

("e" indicates that the soils are subject to severe erosion if they are cultivated and not protected.)

Under the University of Hawaii Land Study Bureau Overall Productivity Rating, which classifies soils according to five levels, with "A" representing the class of highest productivity and "E" the lowest, about 4 acres of Lot C soils are rated "C" and the remaining 1.2 acres are rated "E." However, these lands have slopes that range up to 25% and are subject to erosion.

Under the State of Hawaii (ALISH) system, nearly all of Lot C is rated "Prime" based on former use of land in the area to the West, which ACF donated to the State of Hawaii for a State Park Reserve.

- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;

Response: The area was vacant pre-Contact and not associated with traditional Hawaiian agriculture or unique agricultural crops and uses. In the early 1900s, the area was most likely used to pasture cattle if at all where the terrain has steep slopes.

ACF's Properties may be suitable for flowers and nursery products. In addition, the land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats.

- (5) Land with sufficient quantities of water to support viable agricultural production;

Response: There is no source of agricultural irrigation water. (Potable) water for irrigation would presumably be provided by the Honolulu Board of Water Supply water, the cost of which would be substantially higher.

- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;

TAKUSHI WONG LEE & YEE

A LAW CORPORATION

Ms. Dawn Takeuchi-Apuna
Deputy Director

Department of Planning and Permitting
City and County of Honolulu

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from Designation as Important Agriculture Lands

July 8, 2021

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Response: ACF's Properties are situated adjacent to a residential subdivision where the closest residential lots are contiguous to lot B.

ACF's Properties are in the "Ag-2" district under the City's Land Use Ordinances ("LUO"). Revised Ordinances of Honolulu ("RoH") Sec. 21-3.50 provides, in relevant part, as follows:

- "(d) The intent of the AG-2 general agricultural district is to conserve and protect agricultural activities on smaller parcels of land.
- (e) The following guidelines shall be used to identify lands which may be considered for the AG-2 general agricultural district:
 - (1) Lands which are in the state-designated agricultural or urban district and designated agricultural by adopted city land use policies;
 - (2) Lands which are predominantly classified as other under the agricultural lands of importance to the State of Hawaii system; and
 - (3) Lands which are used or are suitable for agricultural purposes and where a substantial number of parcels are less than five acres in size."

In its D & O, the LUC also made, inter alia, the following finding due to ACF's Properties proximity to a residential subdivision:

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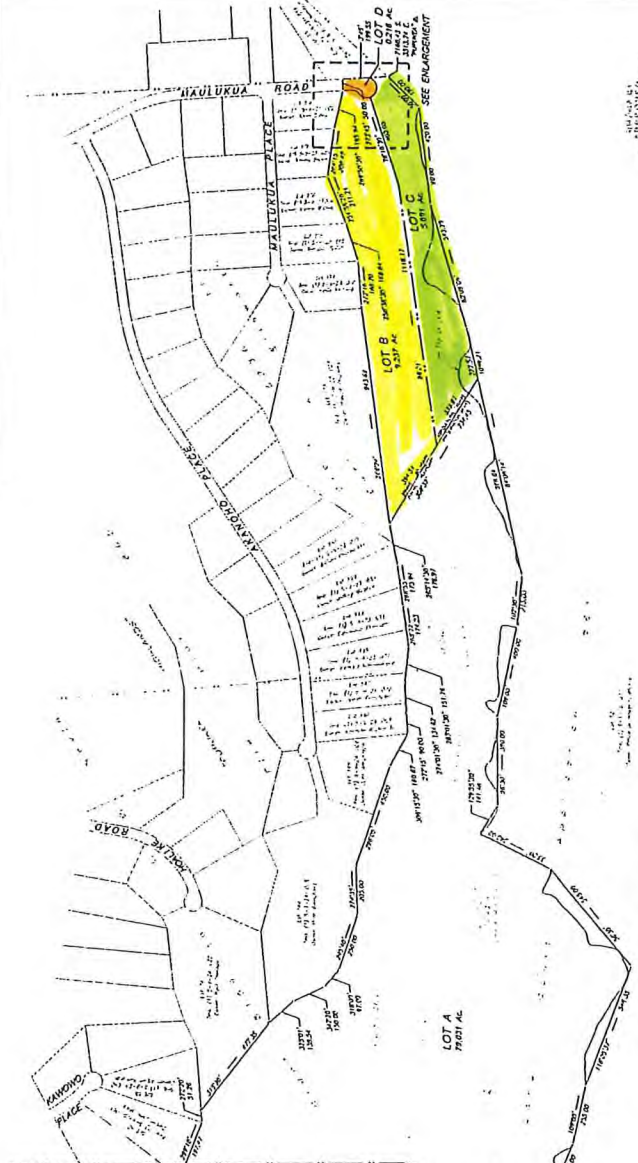
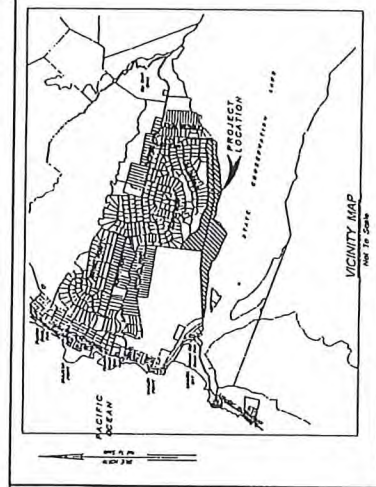
Very truly yours,

TAKUSHI WONG LEE & YEE
A Law Corporation

By: 
DICKSON C.H. LEE

cc: A Charitable Foundation Corporation

Attachments: Exhibit "1" Subdivision Map
Exhibit "2" Pupukea Highlands Aerial View
Exhibit "3" Slope Map



SUBDIVISION MAP SHOWING
 CONSOLIDATION OF LOT 179 OF FILE PLAN 860
 (BEING PORTIONS OF GRANT 5159 TO L. B. NEVIN AND
 GRANT 5235 TO EARL K. ELLSWORTH) AND
 LOT 1-B-2 OF LAND COURT APPLICATION 561 (MAP 8)
 AND THE RESUBDIVISION OF SAID CONSOLIDATION
 INTO LOTS A THRU D, INCLUSIVE
 AT PUPUNEA, HONOLULU, OAHU, HAWAII
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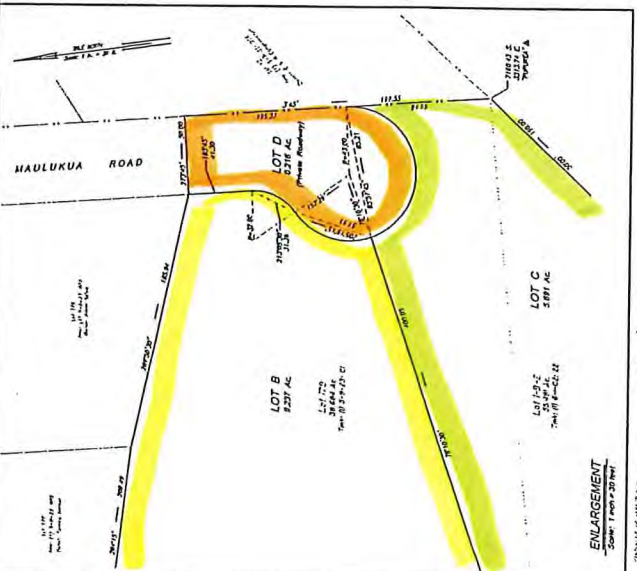
Approved Consolidation Area

Lot 179	= 38,694 AC.
Lot 1-B-2	= 1,125 AC.
Total Area	= 39,819 AC.

Proposed Subdivision Area

Lot A	= 7,000 AC.
Lot B	= 9,237 AC.
Lot C	= 3,691 AC.
Lot D	= 8,212 AC.
Total Area	= 18,179 AC.

ENGINEER
 JOHN W. HARRIS, INC.
 141 - 1423 (Phone: 641-453-023)
 A COMMERCIAL PROFESSION CORPORATION
 License No. 10000
 State of Hawaii
 Registered Professional Engineer
 License No. 10000



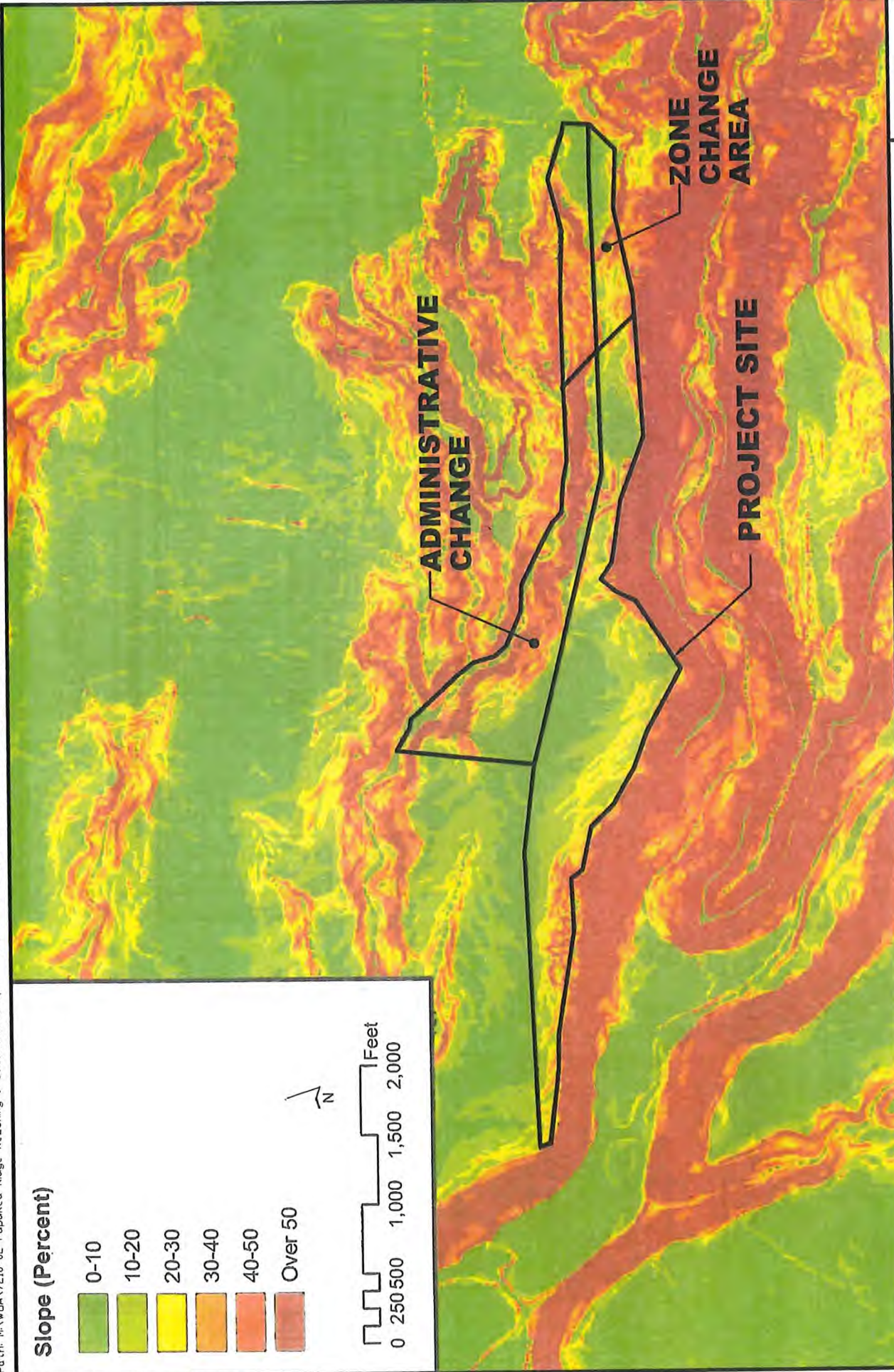
ENLARGEMENT
 Scale: 1" = 200' ±

- NOTES:**
1. All dimensions and bearings are as shown on this map.
 2. All proposed lots are subject to the provisions of the applicable zoning ordinance of the City and County of Honolulu, Hawaii, as amended, and to the provisions of the applicable subdivision ordinance of the City and County of Honolulu, Hawaii, as amended.
 3. Lot A, B, C and D are proposed to be zoned as follows:
 a. Lot A is a Private Roadway.
 b. Lot B is a Private Roadway.
 c. Lot C is a Private Roadway.
 d. Lot D is a Private Roadway.
 4. Owners and adjacent owners are urged to check with the Department of Planning and Planning, City & County of Honolulu, Hawaii, for zoning and subdivision ordinance requirements.



TOWELL, SHREVE & ASSOCIATES, INC.
 LAND SURVEYORS

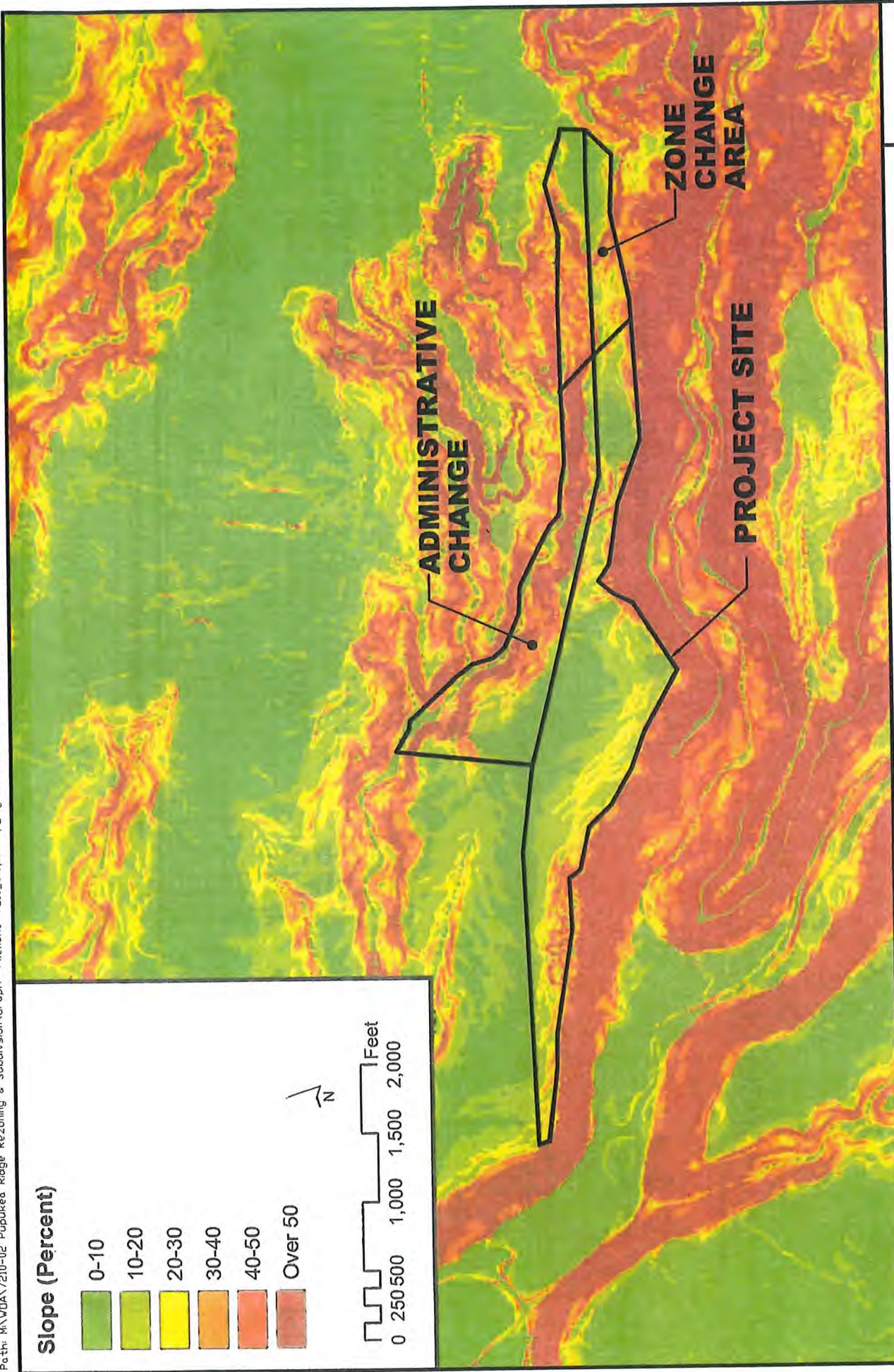
Exhibit "1"



PUPUKEA RIDGE PRESERVATION PROJECT

SLOPE MAP

FIGURE 6



PUPUKEA RIDGE PRESERVATION PROJECT

SLOPE MAP

FIGURE 6

