

**exhibit 1**

**DR99-21 Stengle  
Petition for a Declaratory Order File**

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Note: Various text sections have been highlighted for emphasis.

3 boundary interpretation maps included at the end of this Exhibit

**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**

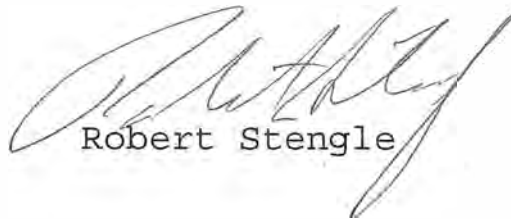
JAN 27 2 41 PM '99  
LAND USE COMMISSION  
STATE OF HAWAII

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 ) Docket No. DR99-21  
 )  
**ROBERT E. & CHRISTINE M.** ) **PETITION FOR DECLARATORY**  
**STENGLE** ) **ORDER**  
 )  
 for Review of Boundary )  
 Reclassification and Interpretation )  
 \_\_\_\_\_ )

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 Mamalao 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

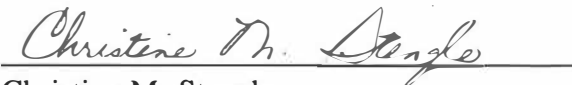
intent of the Commission when the District boundaries were established in 1969. Petitioners' memorandum in support of its position is attached to this Petition.

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.

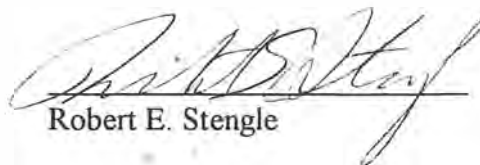
DATED: Honolulu, Hawaii, January 27, 1999.

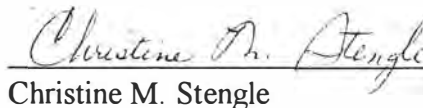
  
Robert E. Stengle  
Petitioner

  
Christine M. Stengle  
Petitioner

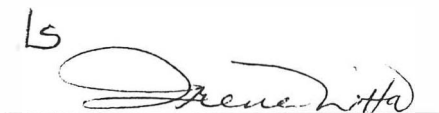
**VERIFICATION**

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. _____
	)
<b>ROBERT E. &amp; CHRISTINE M. STENGLE</b>	) <b>PETITIONERS' MEMORANDUM IN</b>
	) <b>SUPPORT OF PETITION FOR</b>
	) <b>DECLARATORY ORDER</b>
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 Mamalaoa 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.

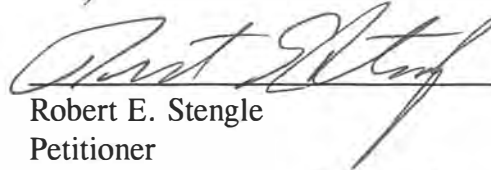
In addition to the details of the Property, Exhibit "C" shows the line resulting from Boundary Interpretation 98-50. Areas have been highlighted which are Agricultural or Conservation District under Boundary Interpretation 98-50 which would be in Conservation or Agricultural District using the ridge 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.

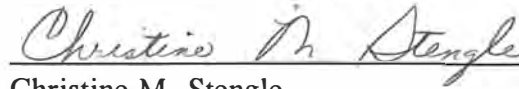
V. CONCLUSION.

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

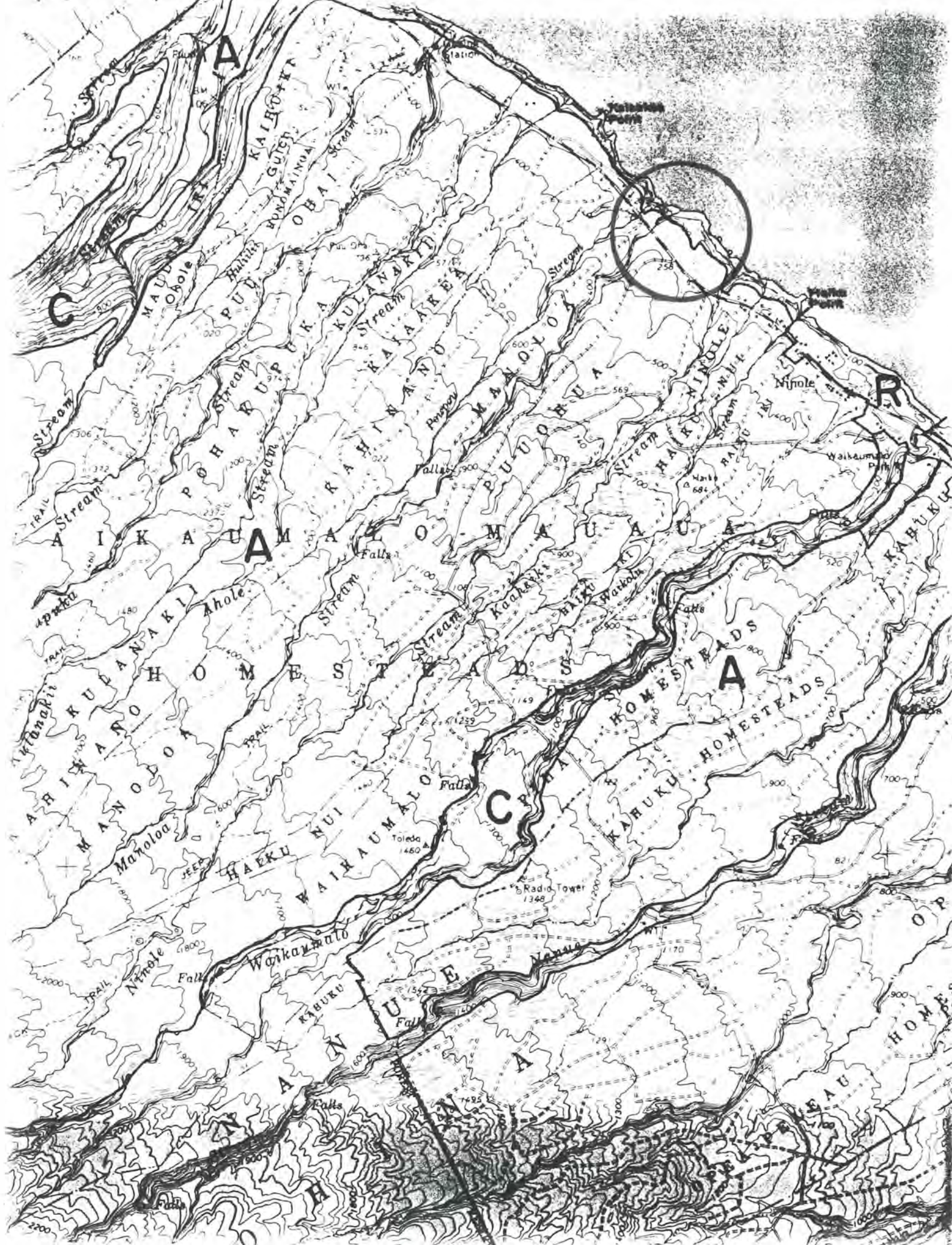
  
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Christine M. Stengle  
Petitioner











BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

ORIGINAL

In the Matter of the Petition of )  
 )  
ROBERT E. & CHRISTINE M. STENGLE )  
(HAWAII) )  
 )  
For a Declaratory Order Clarifying and )  
Correcting the Boundary Interpretations )  
of the Land Use Commission Under )  
Boundary Interpretation No. 98-36 )  
dated October 29, 1998, and Boundary )  
Interpretation No. 98-50 dated January 12, )  
1999. )  
\_\_\_\_\_ )

DOCKET NO. DR 99-21

FEB 24 11 51 AM '99  
LAND USE COMMISSION  
STATE OF HAWAII

TESTIMONY  
OF THE OFFICE OF PLANNING

The subject property is located at the twenty-mile marker makai of Mamalahoa Highway along the Hamakua Coast and is identified by Tax Map Key Nos. 3-2-03: 23 and 41.

According to the Tax Map, the property is bounded on the north by Manoloa Stream and to the south partially by Hualolo Stream. The Petition states that it was formerly planted in sugar cane and converted to a macadamia nut orchard in 1982.


The Petition states that a topographical survey map was submitted to the Land Use Commission with contour lines and the "Top of Pali" delineated in metes and bounds. The Land Use Commission Executive Officer issued Boundary Interpretation No. 98-50 overlaid on this map on January 12, 1999. The Petition claims that the State Land Use Agricultural/Conservation District Boundary was substantially removed from the "Top of Pali" and as a result, approximately 46,699 square feet of land planted in macadamia nuts is within the Conservation District while approximately 22, 888 square feet of land containing stream beds and a waterfall is within the Agricultural District.

The Petition is requesting a Declaratory Order clarifying the Agricultural/Conservation District boundary as being the "Top of Pali" to place 46, 699 square feet of land planted in

macadamia nuts in the Agricultural District and 22,888 square feet of land containing stream beds and a waterfall in the Conservation District.

Based upon the aerial photograph submitted as Petition Exhibit A and the Boundary Interpretation No. 98-50 map submitted as Petition Exhibit C, the Office of Planning has no objections to the Petitioners' request. This position is based on the information provided and should not be interpreted to mean that "Top of Pali" is public policy in the Agricultural/Conservation District Boundary in all cases.

DATED: at Honolulu, Hawaii, this 24<sup>th</sup> day of February, 1999.

  
\_\_\_\_\_  
DAVID W. BLANE  
Director  
Office of Planning



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Testimony was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service:

ROBERT E. STENGLE  
CHRISTINE . STENGLE  
5436 Kirkwood Place  
Honolulu, Hawaii 96821

VIRGINIA GOLDSTEIN  
Planning Director  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

OFFICE OF THE CORPORATION COUNSEL  
County of Hawaii  
101 Aupuni Street  
Hilo, Hawaii 96720

PLANNING COMMISSION  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 24<sup>th</sup> day of February, 1999.

  
\_\_\_\_\_  
DAVID W. BLANE  
Director, Office of Planning  
State of Hawaii

Minutes of Meeting

Conference Room 405  
State Office Tower, Leiopapa A Kamehameha  
235 South Beretania Street  
Honolulu, Hawaii

Approved  
3/18/99

February 25, 1999

COMMISSIONERS PRESENT: P. Roy Catalani  
Rupert K. Chun  
Pravin Desai  
Isaac Fiesta, Jr.  
Lawrence N.C. Ing  
Herbert Kaopua, Sr.  
Merle A. K. Kelai  
Peter Yukimura

COMMISSIONER ABSENT: M. Casey Jarman

STAFF PRESENT: Esther Ueda, Executive Officer  
Jon S. Itomura, Esq., Deputy Attorney  
General  
Bert Saruwatari, Staff Planner  
Teri Hee, Chief Clerk  
  
Susan Soderberg, Court Reporter

Chairperson Kelai called the meeting to order at 10:00 a.m.

ACTION

A98-726 - THE TRUSTEES UNDER THE WILL AND OF THE ESTATE  
OF JAMES CAMPBELL, DECEASED (Oahu)

Chairperson Kelai announced that the Commission would take action to consider reclassifying approximately 20 acres of land currently in the Agricultural District into the Urban District at Honouliuli, Ewa, Oahu for a commercial shopping center.

Appearances

Benjamin Kudo, Esq., Attorney for Petitioner

Lloyd Haraguchi, Community Development Manager for  
Petitioner

Gary Okino, Planning & Permitting Department, City and  
County of Honolulu

MINUTES - February 25, 1999

Page 2

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

David Blane, Director, Office of Planning

Arguments were heard from Mr. Kudo, Ms. Ogata-Deal, and Mr. Okino.

It was determined by Chairperson Kelai that all of the Commissioners present were eligible to participate in the action on the petition.

Commissioner Chun moved on Docket No. A98-726 - The Trustees Under the Will and of the Estate of James Campbell, Deceased that the Commission accept his Proposed Decision and Order subject to fourteen (14) conditions. The motion was seconded by Commissioner Kaopua and polled as follows:

Ayes: Commissioners Chun, Desai, Fiesta, Ing, Kaopua, Yukimura, Chun and Kelai

A98-725 - A & B PROPERTIES, INC. (Spreckelsville, Maui)

Vice Chairperson Ing chaired this portion of the proceedings.

Vice Chairperson Ing announced that the Commission would take up the matter to consider County of Maui's Motion to Continue A & B Properties, Inc. Petition for Reclassification of Lands currently in the Agricultural District into the Urban District at Spreckelsville, Wailuku, Maui for residential units, 9-hole golf course, and park.

Commissioner Kelai and Commissioner Catalani were excused from this proceeding due to a conflict of interest.

Appearances

Benjamin Matsubara, Esq., Attorney for Petitioner

Gary W. Zakian, Esq., Deputy Corporation Counsel, County of Maui

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Page 3

Clayton Yoshida, Deputy Director, Planning Department,  
County of Maui

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of  
Planning

David Blane, Director, Office of Planning

Arguments were heard from Mr. Zakian, with no objections  
from Mr. Matsubara and Ms. Ogata-Deal.

Commissioner Chun moved to grant the County of Maui's Motion  
to Continue A & B Properties, Inc. Petition for Reclassification  
of Lands. The motion was seconded by Commissioner Kaopua and  
polled as follows:

Ayes: Commissioners Chun, Desai, Fiesta, Yukimura, Kaopua  
and Ing

\* DR99-21 - ROBERT E. & CHRISTINE M. STENGLE (Hawaii)

Chairperson Kelai announced that the Commission would take  
action to consider Petitioners' Petition for Declaratory Order  
clarifying and correcting the boundary interpretations of the  
Land Use Commission under Boundary Interpretation No. 98-36 dated  
October 29, 1998 and Boundary Interpretation No. 98-50 dated  
January 12, 1999.

The County of Hawaii Planning Department notified the  
Commission that they would not be present to the proceeding.

On February 24, 1999, the Commission received Testimony of  
the Office of Planning and a fax transmittal letter from Timothy  
E. Johns, Chairperson of the Department of Land and Natural  
Resources.

Appearances

Robert E. Stengle, Petitioner

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of  
State Planning

David Blane, Director, Office of State Planning

Bert Saruwatari, staff planner, oriented the Commission to the petition area on the Land Use District Boundaries and tax maps.

Arguments on the declaratory ruling was heard from Mr. Stengle and Mr. Blane.

After hearing arguments, questions were asked by Ms. Ogata-Deal and the Commissioners.

Commissioner Fiesta moved to approve Petitioner's Motion for Declaratory Order. The motion was seconded by Commissioner Ing and polled as follows:

Ayes: Commissioners Fiesta, Desai, Ing, Kaopua, Yukimura, Catalani, Chun and Kelai

A lunch recess was taken at 11:00 a.m. to reconvene at 12:45 p.m.

#### MISCELLANEOUS

1. ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes for the meeting date of January 21, 1999. The motion was seconded by Commissioner Ing and unanimously approved by voice votes.

2. ADOPTION OF DECISION AND ORDER

Commissioner Chun moved to adopt the Order Granting Petitioner's Amended Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order Dated March 18, 1991 for Docket No. A90-658 - Amfac/JMB Hawaii, Inc. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.

Commissioner Chun moved to adopt the Order Granting Applicant's Request to Amend Condition No. 3 and Condition No. 12 for Docket No. SP92-381 - Waikoloa Development Company. The motion was seconded by Commissioner Fiesta and unanimously approved by voice votes.



3. LEGISLATIVE MATTERS

The Executive Officer briefed the Commission on the status of LUC related bills.

4. LITIGATION MATTERS

- a) A status report on the litigation matter on the following docket was given by the Executive Officer: Status of Molokai Ranch Circuit Court case; Civil No. 97-0383(1), 97-0258(1) (DR97-20) - The Executive Officer pointed out that there is a court hearing on this matter today.
- b) Attorney General Jon Itomura gave a briefing on the Hanapi Supreme Court Case No. 19746.

- 12:45 p.m. -

A92-684 - STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION,  
AIRPORTS DIVISION (Maui)

Chairperson Kelai announced that the Commission would take action to consider Petitioner's Motion to Resume Administrative Hearing to reclassify approximately 210.471 acres of land currently in the Agricultural District into the Urban District at Kahului, Maui for expansion of Kahului Airport and facilities.

Appearances

Lane Ishida, Attorney for Petitioner

Gary Zakian, Esq., Deputy Corporation Counsel, County of Maui

Clayton Yoshida, Deputy Director, Planning Department, County of Maui

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of Planning

David Blane, Director, Office of Planning

Isaac Hall, Esq., Attorney for Intervenor

MINUTES - February 25, 1999

Page 6

Arguments were heard from Mr. Ishida, Mr. Zakian and Ms. Ogata-Deal and Mr. Hall.

After hearing arguments, questions were asked by the Commissioners.

Commissioner Ing moved to approve Petitioner's Motion to Resume Administrative Hearing. The motion was seconded by Commissioner Fiesta and polled as follows:

Disclosures were made by Commissioner Kaopua, Commissioner Kelai, Commissioner Yukimura and Commissioner Desai.

Ayes: Commissioners Ing, Fiesta, Kaopua, Yukimura, Catalani, Chun, Desai and Kelai.

The meeting was adjourned at 1:15 p.m.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
ROBERT E. & CHRISTINE M. STENGLE )  
 )  
For a Declaratory Order Clarifying )  
and Correcting the Boundary )  
Interpretations of the Land Use )  
Commission under Boundary )  
Interpretation No. 98-36 Dated )  
October 29, 1998, and Boundary )  
Interpretation No. 98-50 Dated )  
January 12, 1999 )  
\_\_\_\_\_ )

DOCKET NO. DR99-21  
DECLARATORY ORDER

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

MAR 24 1999

by



Date

Executive Officer

DECLARATORY ORDER

1999 MAR 24 A 11:02

LAND USE COMMISSION  
STATE OF HAWAII



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. DR99-21
	)	
ROBERT E. & CHRISTINE M. STENGLE	)	DECLARATORY ORDER
	)	
For a Declaratory Order Clarifying	)	
and Correcting the Boundary	)	
Interpretations of the Land Use	)	
Commission under Boundary	)	
Interpretation No. 98-36 Dated	)	
October 29, 1998, and Boundary	)	
Interpretation No. 98-50 Dated	)	
January 12, 1999	)	
_____	)	

DECLARATORY ORDER

PETITIONERS' INTEREST

Robert E. and Christine M. Stengle ("Petitioners") filed a Petition for Declaratory Order, pursuant to sections 15-15-98 and 15-15-22(f), Hawai'i Administrative Rules ("HAR"). Petitioners are the owners in fee simple of approximately 9.44 acres of land located at the 20 mile marker on the Hawai'i Belt Road along the Hamakua Coast in the village of Ninole, North Hilo, Hawai'i, and identified as TMK 3-2-03: 23 and 41 ("Property").

Petitioner filed the instant Petition for Declaratory Order "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."

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On January 27, 1999, Petitioners filed their Petition for Declaratory Order and Petitioners' Memorandum in Support of Petition for Declaratory Order.

2. On February 24, 1999, the Office of Planning ("OP") filed its Testimony of the Office of Planning. OP commented that based on the information provided, it had no objections to Petitioners' request; however, OP noted that its position should not be interpreted to mean that "Top of Pali" was the public policy relative to the Agricultural and Conservation District boundary in all cases.

3. By letter dated February 22, 1999, received on February 24, 1999, the Department of Land and Natural Resources stated that it had no comments regarding the Petition for Declaratory Order.

### POSITION OF PETITIONERS

4. Petitioners contend that the Land Use Commission ("Commission") should interpret the boundary between the Agricultural District and Conservation District at the ridge (pali) top, as determined by Petitioners' topographical survey map of the Property. Petitioners argue that this would be in compliance and consistent with i) the 1969 Five-Year Boundary Review report entitled "State of Hawaii Land Use Districts and Regulations Review"; ii) the overall purpose of Chapter 205, Hawai'i Revised Statutes ("HRS"); and iii) the basis and intent

of the Commission when the district boundaries were established for the Property in 1969.

5. Petitioners state that using the ridge top as the basis for the location of the Agricultural and Conservation District boundary would place approximately 46,699 square feet currently designated within the Conservation District and containing a macadamia nut orchard into the Agricultural District and place approximately 22,888 square feet currently designated within the Agricultural District and containing stream beds and a waterfall into the Conservation District.

6. Petitioners state that a declaratory order clarifying the Agricultural and Conservation District boundary as being the ridge top is necessary to enable Petitioners to avoid uncertainty in their property rights.

#### DESCRIPTION AND BACKGROUND OF THE PROPERTY

7. The Property in question is currently identified as TMK 3-2-03: 23 and 41. Parcel 23 is approximately 1.36 acres and Parcel 41 is approximately 8.077 acres.

8. Parcel 23 is located within the Agricultural District and Parcel 41 is located within the Agricultural and Conservation Districts, as represented by the State Land Use District Boundaries Map, H-59 (Papaaloa). The Agricultural and Conservation District boundaries relative to the Property were established in the 1969 Five-Year Boundary Review. The Commission adopted the State Land Use District Boundaries Maps following the Review as the then official maps of the Commission, with an effective date of August 4, 1969.

9. The Property is located at the 20 mile marker on the Hawai'i Belt Road along the Hamakua Coast in the village of Ninole, North Hilo, Hawai'i.

10. The Property was historically cultivated in sugarcane. There is no evidence in the record indicating the specific areas within the Property that were cultivated in sugarcane. The Property was converted to a macadamia nut orchard in 1982.

11. By letter dated September 2, 1998, Petitioners requested a boundary interpretation to determine the location of the Agricultural and Conservation District boundary on the Property with the Commission. Boundary Interpretation No. 98-36 dated October 29, 1998, was subsequently prepared on Tax Map 3-2-03. Parcel 23 was determined to be located entirely within the Agricultural District and Parcel 41 was determined to be located within the Agricultural and Conservation Districts, with the boundary separating the two districts generally following the top of the ridge or pali.

12. Staff based its determination of the parcels' land use designation on an enlargement of the Commission's State Land Use District Boundaries Map, H-59 (Papaaloa), which represented the Agricultural and Conservation District boundary as following the 200-foot contour line, and upon review of the "State of Hawaii Land Use Districts and Regulations Review" prepared by Eckbo, Dean, Austin & Williams to document the recommendations and actions in the 1969 Five-Year Boundary Review. The report reflected that along the Hamakua Coast of the island of Hawai'i,

the Conservation District boundary was to follow the top of the ridge or pali. Areas in agricultural use at that time were excluded.

13. Staff informed Petitioners that for a more precise location of the Agricultural and Conservation District boundary, a topographical survey map with contour lines represented and the top of the pali identified in metes and bounds would be required.

14. By letter dated December 2, 1998, Petitioners requested another boundary interpretation for the Property. Boundary Interpretation No. 98-50 dated January 12, 1999, was subsequently prepared on Petitioners' topographical survey map, which delineated the top of the pali in metes and bounds and represented an approximate location of the 200-foot contour line. Staff determined that Petitioners' representation of the top of the pali did not conform with that shown on the Commission's State Land Use District Boundaries Map, H-59 (Papaaloa).

15. In order to be consistent with the location of the Agricultural and Conservation District boundary represented on the State Land Use District Boundaries Map, H-59, Staff delineated a boundary approximately following the 200-foot contour line as depicted on Petitioners' topographical survey map.

16. Petitioners originally purchased the Property in 1982 with the intention of building a house on the Property and retiring there. Petitioners now plan to sell the Property and retire on O'ahu.

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

#### CONCLUSIONS OF LAW

##### JURISDICTION

1. Jurisdiction of the Commission to consider the request of Petitioners is authorized under §§15-15-98 and 15-15-22(f), HAR.

##### REMEDY

1. Petitioners are requesting the Commission to issue 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.

##### APPLICABLE LEGAL AUTHORITIES

1. The "State of Hawaii Land Use Districts and Regulations Review" documented the Commission's process to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized four major conditions and provided recommendations based on these conditions for the Conservation District boundaries. Of relevance here is Condition No. 3, which states:

In cases where the shoreline is bounded by steep cliffs or a pali, the top of the ridge was used (p. 86).



2. The report further documented the Commission's actions with respect to the establishment of the Conservation District boundaries at the shoreline of the island of Hawai'i by stating:

The steep pali coast of east Kohala is presently within the Conservation District. This district should be extended to include the sandy beach at Waipio Valley and then to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line (p. 36).

3. Petitioners' topographical survey map of the Property prepared by a registered professional land surveyor delineates the top of the ridge or pali in metes and bounds.

4. Petitioners' request to place the approximately 22,888 square feet currently in the Agricultural District and containing stream beds and a waterfall into the Conservation District is not supported by the recommendations or actions documented in the report and is a matter more appropriately addressed through the district boundary amendment process, pursuant to Chapter 205, HRS.

A. DECLARATORY ORDER

FOR GOOD CAUSE APPEARING, the Commission hereby rules that the Boundary Interpretation No. 98-36 dated October 29, 1998, and Boundary Interpretation No. 98-50 dated January 12, 1999, are clarified and corrected to reflect that the Property mauka of the top of the ridge or pali, approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated within the State Land Use Agricultural District.

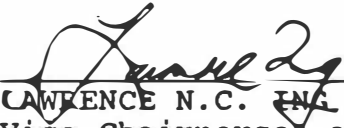
Accordingly, this Commission determines that State Land Use District Boundaries Map, H-59 (Papaaloa), be amended to reflect that the Property mauka of the top of the ridge or pali is designated within the State Land Use Agricultural District.




Done at Honolulu, Hawai'i, this 24th day of March 1999,  
per motions on February 25, 1999 and March 18, 1999.

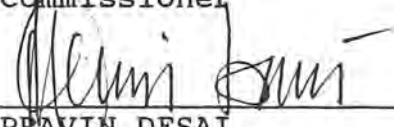
LAND USE COMMISSION  
STATE OF HAWAI'I

By (absent)  
MERLE A. K. KELAI  
Chairperson and Commissioner

By   
LAWRENCE N.C. ENG  
Vice Chairperson and Commissioner

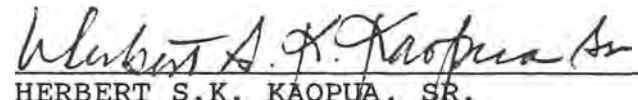
By (absent)  
P. ROY CATALANI  
Commissioner

By   
RUPERT K. CHUN  
Commissioner

By   
PRAVIN DESAI  
Commissioner

By (absent)  
ISAAC FIESTA, JR.  
Commissioner

By   
M. CASEY JARMAN  
Commissioner

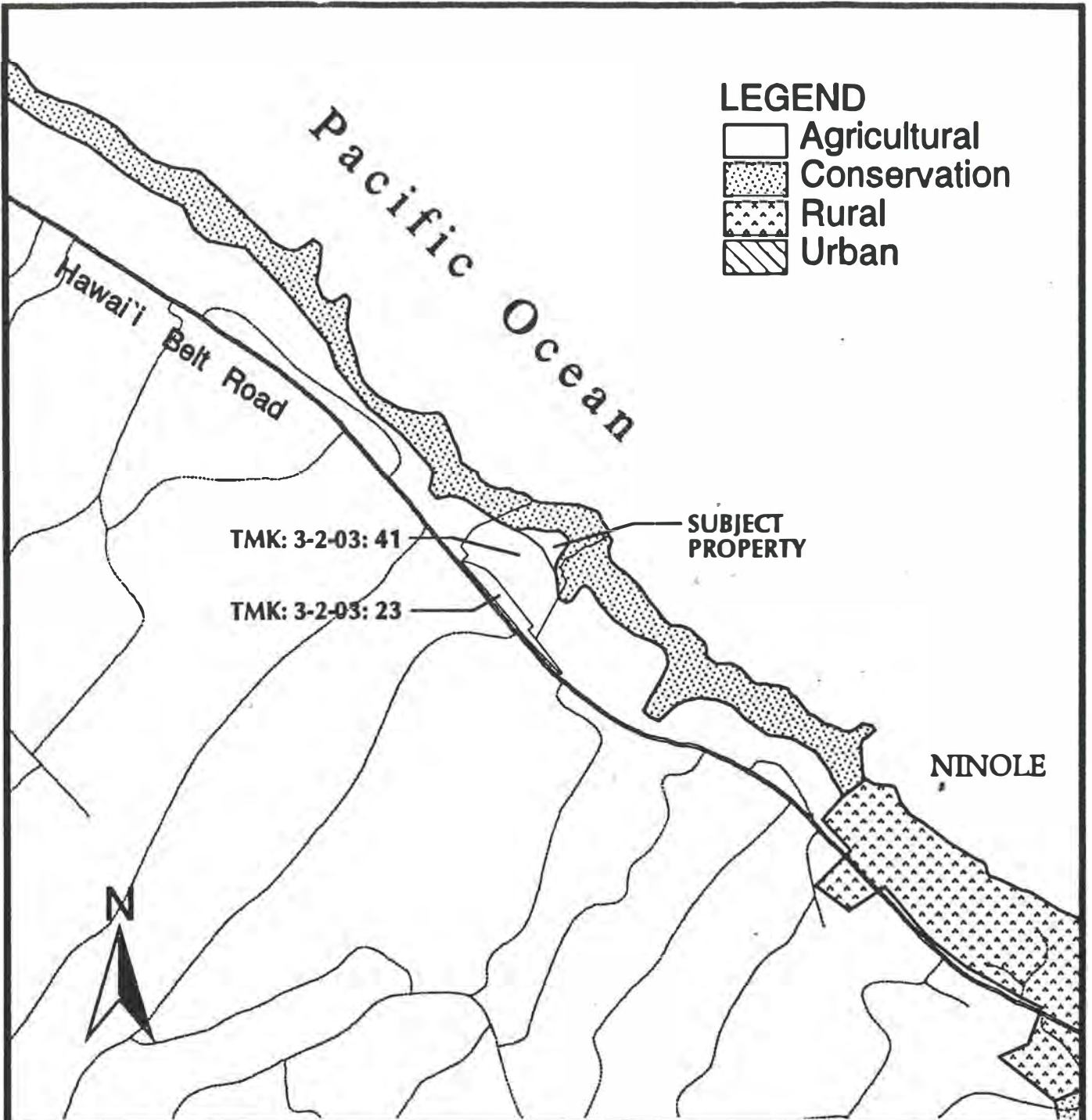
By   
HERBERT S.K. KAOPUA, SR.  
Commissioner

Filed and effective on  
March 24, 1999

Certified by:

  
Executive Officer

By   
PETER YUKIMURA  
Commissioner

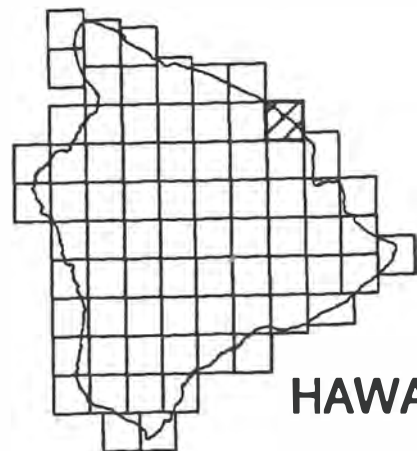


**DR99-21 / ROBERT E. AND  
CHRISTINE M. STENGLE**

**LOCATION MAP**

**TMK: 3-2-03: 23 & 41  
NINOLE, NORTH HILO, HAWAI'I**

**EXHIBIT " A "**



**HAWAI'I**

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of ) DOCKET NO. DR99-21  
ROBERT E. & CHRISTINE M. STENGLE ) CERTIFICATE OF SERVICE  
For a Declaratory Order Clarifying )  
and Correcting the Boundary )  
Interpretations of the Land Use )  
Commission under Boundary )  
Interpretation No. 98-36 Dated )  
October 29, 1998, and Boundary )  
Interpretation No. 98-50 Dated )  
January 12, 1999 )

---

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. DAVID W. BLANE, Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

CERT. VIRGINIA GOLDSTEIN, Planning Director  
Planning Department, County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

CERT. RICHARD D. WURDEMAN, ESQ.  
Corporation Counsel  
County of Hawaii  
The Hilo Lagoon Center  
101 Aupuni Street, Suite 325  
Hilo, Hawaii 96720

CERT. TIMOTHY E. JOHNS, Chairperson  
ATTENTION: Dean Uchida, Land Division  
Board of Land and Natural Resources  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813

CERT. S. KAOLIN SACHET, Deputy Finance Director  
County of Hawaii  
Real Property Tax Division, Mapping Section  
865 Pi'ilani Street  
Hilo, Hawaii 96720

CERT.        ROBERT E. STENGLE, Petitioner  
              5436 Kirkwood Place  
              Honolulu, Hawaii 96821

DATED:      Honolulu, Hawaii, this 24th day of March 1999.



---

ESTHER UEDA  
Executive Officer



STATE OF HAWAII  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
LAND USE COMMISSION  
P.O. Box 2359  
Honolulu, HI 96804-2359  
Telephone: 808-587-3822  
Fax: 808-587-3827  
March 25, 1999

MEMORANDUM

TO: All Parties  
FROM: *Esther Ueda*  
Esther Ueda, Executive Officer  
Land Use Commission  
SUBJECT: Declaratory Order for LUC Docket No. DR99-21/Robert E.  
& Christine M. Stengle

Please substitute the attached amended pages 3 and 7 in the Declaratory Order of the subject docket issued on March 24, 1999.

The amendment to page 3 is shown in ramseyer format as follows:

5. Petitioners state that using the ridge top as the basis for the location of the Agricultural and Conservation District boundary would place approximately 46,699 aeres square feet currently designated within the Conservation District and containing a macadamia nut orchard into the Agricultural District and place approximately 22,888 aeres square feet currently designated within the Agricultural District and containing stream beds and a waterfall into the Conservation District.

The amendment to page 7 is shown in ramseyer format as follows:

4. Petitioners' request to place the approximately 22,888 aeres square feet currently in the Agricultural District and containing stream beds and a waterfall into the Conservation

District is not supported by the recommendations or actions documented in the report and is a matter more appropriately addressed through the district boundary amendment process, pursuant to Chapter 205, HRS.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. DR99-21
	)	
ROBERT E. & CHRISTINE M. STENGLE	)	CERTIFICATE OF SERVICE
	)	
For a Declaratory Order Clarifying	)	
and Correcting the Boundary	)	
Interpretations of the Land Use	)	
Commission under Boundary	)	
Interpretation No. 98-36 Dated	)	
October 29, 1998, and Boundary	)	
Interpretation No. 98-50 Dated	)	
January 12, 1999	)	
<hr/>		

CERTIFICATE OF SERVICE

I hereby certify that a copy of Amended Pages 3 and 7 in the Declaratory Order issued on March 24, 1999 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL.        DAVID W. BLANE, Director  
            Office of Planning  
            P. O. Box 2359  
            Honolulu, Hawaii 96804-2359

CERT.       VIRGINIA GOLDSTEIN, Planning Director  
            Planning Department, County of Hawaii  
            25 Aupuni Street  
            Hilo, Hawaii 96720

CERT.       RICHARD D. WURDEMAN, ESQ.  
            Corporation Counsel  
            County of Hawaii  
            The Hilo Lagoon Center  
            101 Aupuni Street, Suite 325  
            Hilo, Hawaii 96720

CERT.       TIMOTHY E. JOHNS, Chairperson  
            ATTENTION: Dean Uchida, Land Division  
            Board of Land and Natural Resources  
            1151 Punchbowl Street, Room 130  
            Honolulu, Hawaii 96813

CERT.       S. KAOLIN SACHET, Deputy Finance Director  
            County of Hawaii  
            Real Property Tax Division, Mapping Section  
            865 Pi'ilani Street  
            Hilo, Hawaii 96720

CERT.        ROBERT E. STENGLE, Petitioner  
              5436 Kirkwood Place  
              Honolulu, Hawaii 96821

DATED:      Honolulu, Hawaii, this 25th day of March 1999.



---

ESTHER UEDA  
Executive Officer





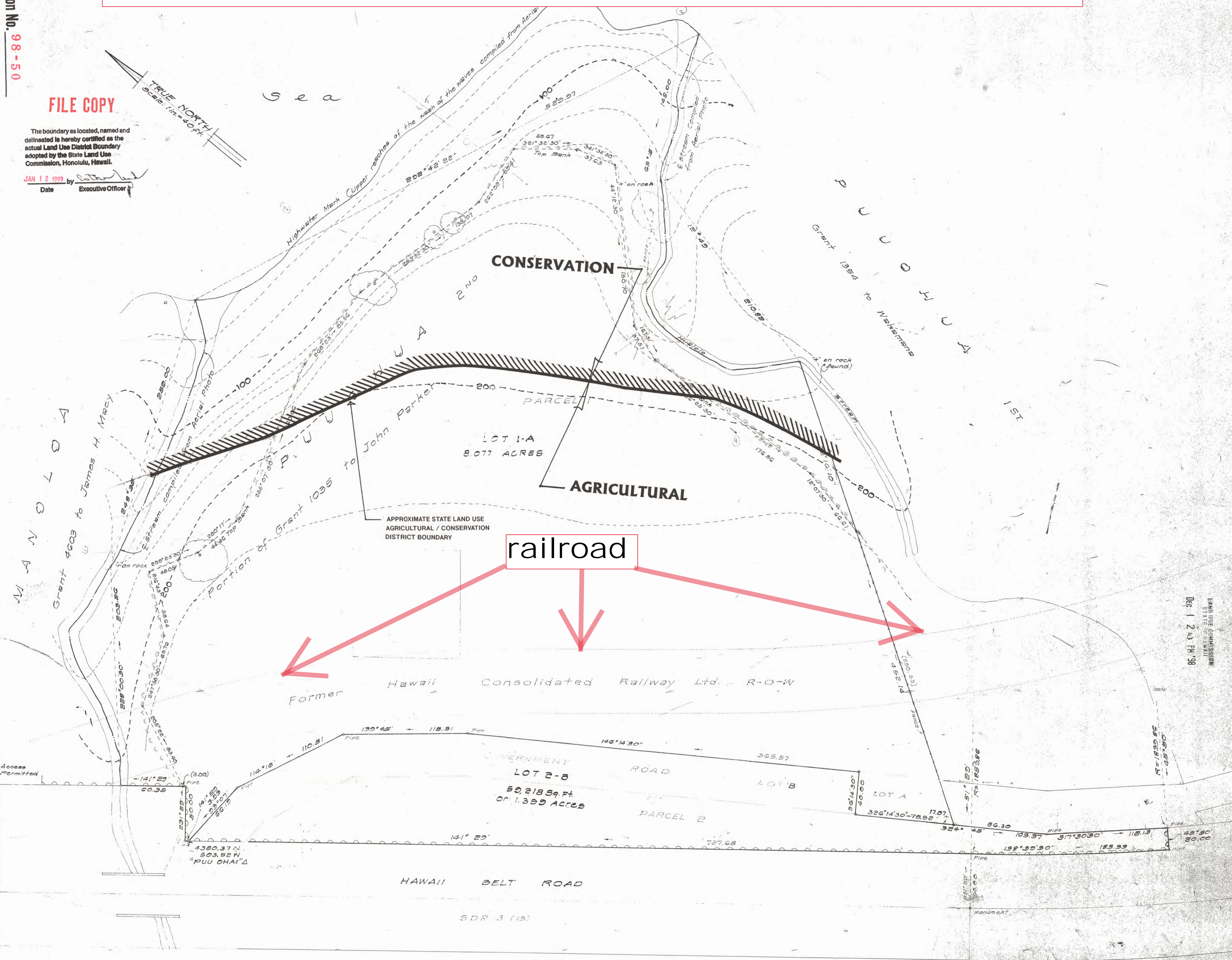
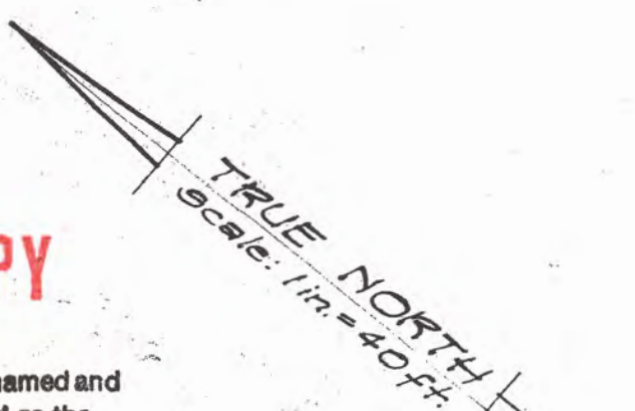


second boundary interpretation 98-50 (note: former railroad)

FILE COPY

The boundary as located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

JAN 12 1999 by [Signature] Date Executive Officer



LAND USE COMMISSION STATE OF HAWAII Dec 12 4:37 PM '98

- NOTES:
1. Contours compiled from U.S.G.S quad map and added November 25, 1998.
  2. Ties along top bank are from actual 1983 ground survey and added November 25, 1998.

Survey and Plan by: Island Survey, Inc. P.O. Box 337, Hilo, Hawaii July 18, 1983

PLAN SHOWING  
SUBDIVISION OF ROAD REMNANT  
INTO LOTS "A" AND "B"  
AND CONSOLIDATED WITH EXISTING LOTS AS FOLLOWS:  
LOT "A" CONSOLIDATED WITH PARCEL 1 AND DESIGNATED  
AS LOT 1-"A"  
LOT "B" CONSOLIDATED WITH PARCEL 2 AND DESIGNATED  
AS LOT 2-"B"  
PUUOHUA 2ND, NORTH HILO  
ISLAND OF HAWAII, HAWAII



[Signature]

LEGEND:  
--- Denotes No Vehicle Access Permitted

owner: Bob Stangle  
5430 Kirkwood Place  
Honolulu, Hawaii 96811

Boundary Interpretation No. 98-50



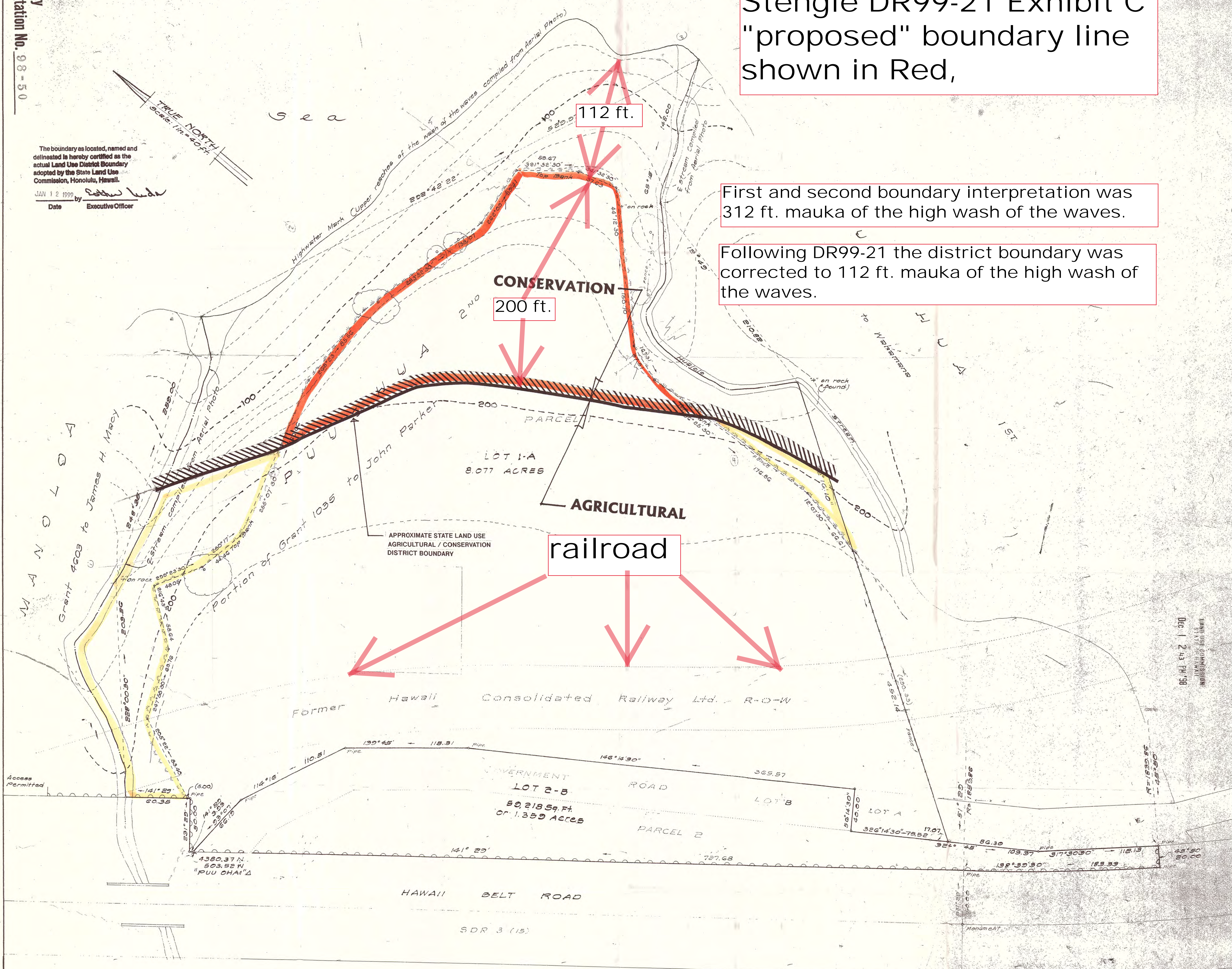
The boundary as located, named and delineated is hereby certified as the actual Land Use District Boundary adopted by the State Land Use Commission, Honolulu, Hawaii.

JAN 12 1999 Date by *Edward Lude* Executive Officer

Stengle DR99-21 Exhibit C "proposed" boundary line shown in Red,

First and second boundary interpretation was 312 ft. mauka of the high wash of the waves.

Following DR99-21 the district boundary was corrected to 112 ft. mauka of the high wash of the waves.



- NOTES:
1. Contours compiled from U.S.G.S quad map and added November 25, 1988.
  2. Ties along top bank are from actual 1983 ground survey and added November 25, 1988.

PLAN SHOWING  
 SUBDIVISION OF ROAD REMNANT  
 INTO LOTS "A" AND "B"  
 AND CONSOLIDATED WITH EXISTING LOTS AS FOLLOWS:  
 LOT "A" CONSOLIDATED WITH PARCEL 1 AND DESIGNATED  
 AS LOT 1-"A"  
 LOT "B" CONSOLIDATED WITH PARCEL 2 AND DESIGNATED  
 AS LOT 2-"B"  
 PUUOHUA 2ND, NORTH HILO  
 ISLAND OF HAWAII, HAWAII



LEGEND  
 --- Denotes No Vehicle Access Permitted  
 Owner: Bob Stengle  
 5436 Kinkwood Place  
 Honolulu, Hawaii 96821