

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

IN THE MATTER OF THE)
APPLICATION OF THE ESTATE)

OF)

SOPHIE JUDD COOKE,)

Deceased.)
_____)

MEYER M. UEOKA
2121 Main Street
Wailuku, Maui, Hawaii

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FINDINGS AND DECLARATION OF PURPOSE OF THE LAW
CREATING THE STATE LAND USE COMMISSION

"Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. Inadequate basis for assessing lands according to their value in those uses that can best serve both the well-being of the owner and the well-being of the public have resulted in inequities in the tax burden, contributing to the forcing of land resources into uses that do not best serve the welfare of the State. Scattered subdivisions with expensive, yet reduced, public services; the shifting of prime agricultural lands into nonrevenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action.

"Therefore, the Legislature finds that in order to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare and to create a complementary assessment basis according to the contribution of the lands in those uses to which they are best suited, the power to zone should be exercised by the State and the methods of real property assessment should encourage rather than penalize those who would development these uses. "

DEFINITION OF "RURAL"

"Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentration of people, structures, streets and urban level of services are absent, and where small farms are intermixed with such low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics."

(Sec. 98 H-2, Revised Laws of Hawaii 1955, as amended)

APPLICATION FOR REZONING

By letter dated February 12, 1966, a petition for amendment to the Land Use Commission, district boundary from agricultural to urban was filed for that parcel of land described on the Tax Map of the Second Taxation Division as Tax Key 5-2-13-17, situate at Kahanui (Kalae), Island of Molokai, County of Maui, State of Hawaii.

On June 17, 1966, the staff submitted its report, recommending denial of the application. The report of the staff was mailed three days before the public hearing.

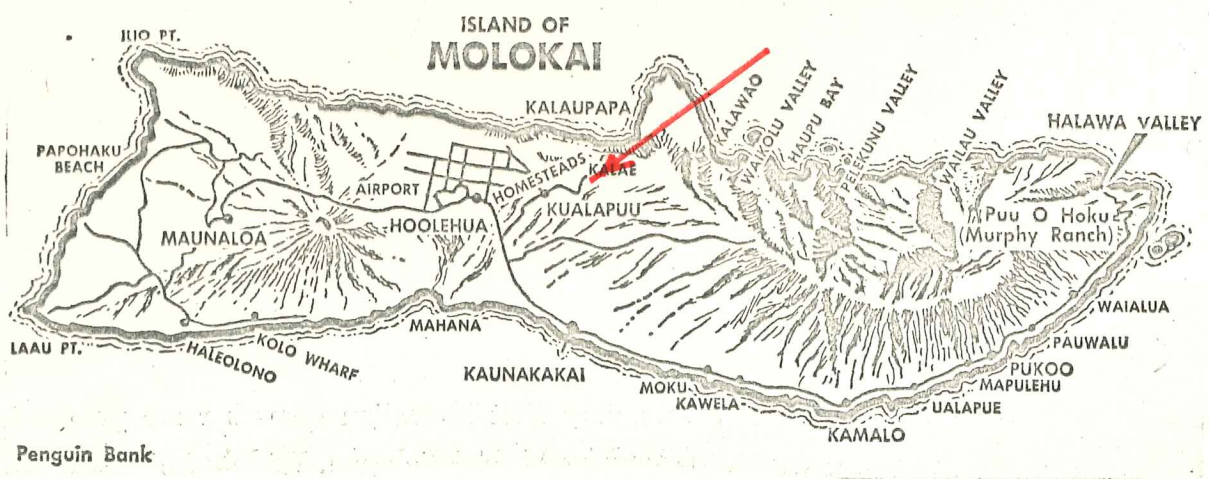
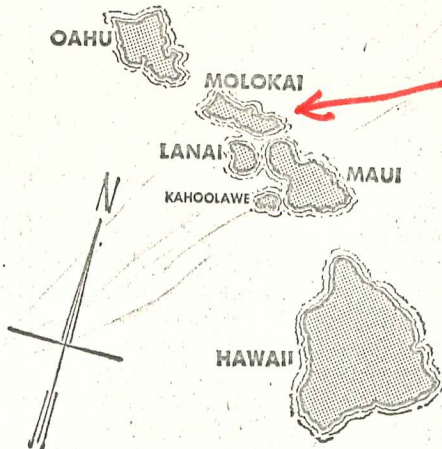
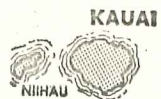
On July 25, 1966, a second petition was filed for amendment to Land Use Commission, district boundary from agricultural to rural for the subject land. By filing this second petition, the original petition for amendment to urban district was withdrawn.

On August 5, 1966, the Land Use Commission accepted

the withdrawal of the original petition.

On November 23, 1966, at 2:00 o'clock P.M., the second petition was heard.

HAWAII



MAP OF MOLOKAI SHOWING GENERAL LOCATION OF KALAE

CLASSIFICATION OF MOLOKAI LANDS

The subject land is classified Class C or D

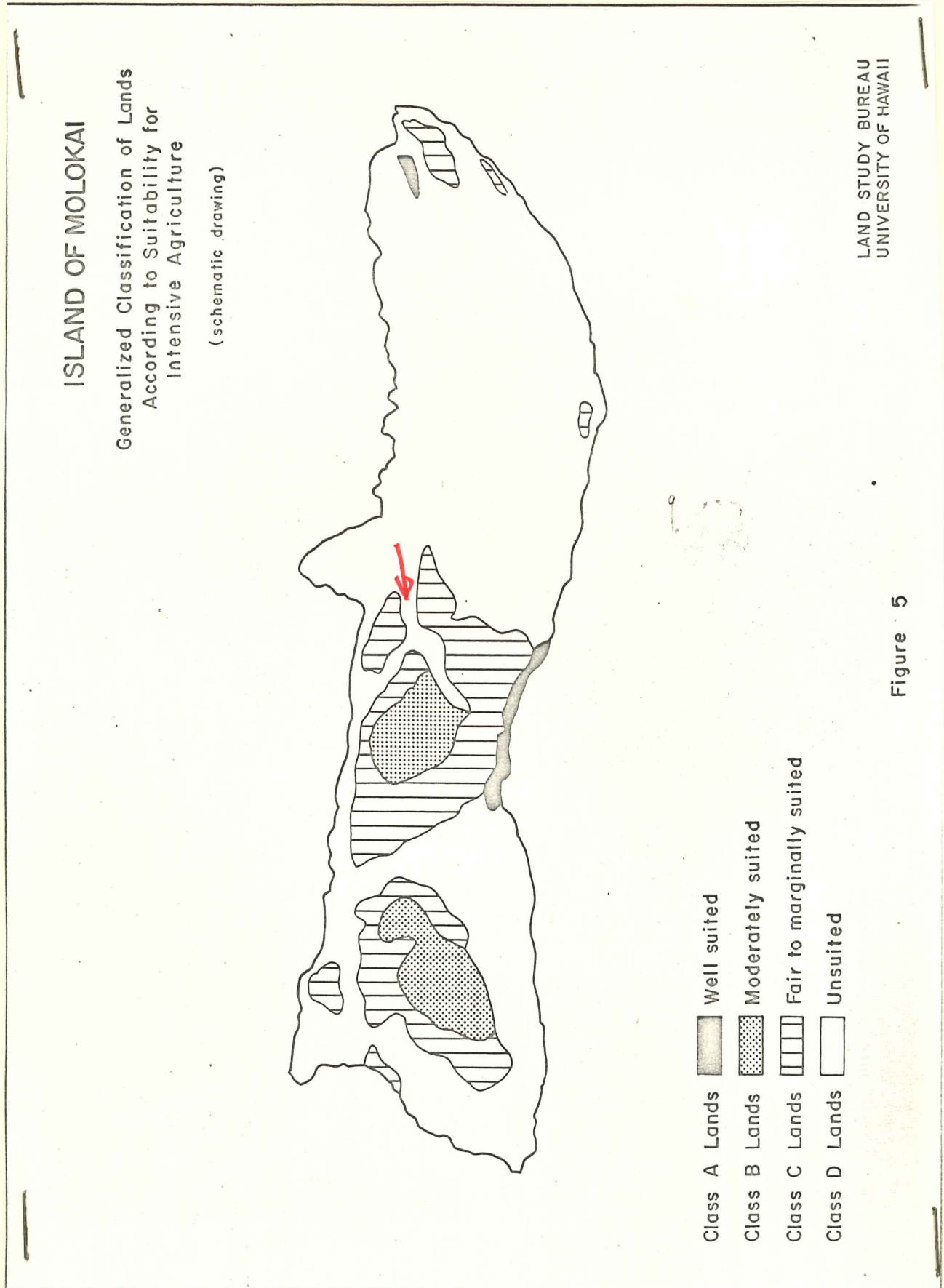


Figure 5

GENERAL DESCRIPTION OF SUBJECT LAND

certain parcel of land, being a portion of R. P. 6824, L. C. Aw. 7755, Apana 1 to Kaluaokamano, and a portion of School Grant 23, Apana 8 to Board of Education, situated on the northerly side of Kamehameha V Highway at Kahanui, Molokai, Hawaii, and being more particularly described as follows:

Beginning at a pipe at the west corner of this piece of land and on the northeasterly side of Kamehameha V Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Middle Hill" being 1,896.47 feet north and 12,044.15 feet east, and running by true azimuths measured clockwise from south:

1. 254° 41' 287.35 feet to a pipe;
2. 346° 15' 59.17 feet to a pipe;
3. 256° 49' 470.86 feet to a pipe;
4. 169° 00' 91.34 feet to an old pipe;
5. 252° 07' 108.20 feet along Reservoir Lot to an old pipe;
6. 205° 52' 30" 116.96 feet along Reservoir Lot to an old pipe;

ANDERSON, WRENN & JENKS
ATTORNEYS AT LAW
BANK OF HAWAII BLDG.
HONOLULU, HAWAII

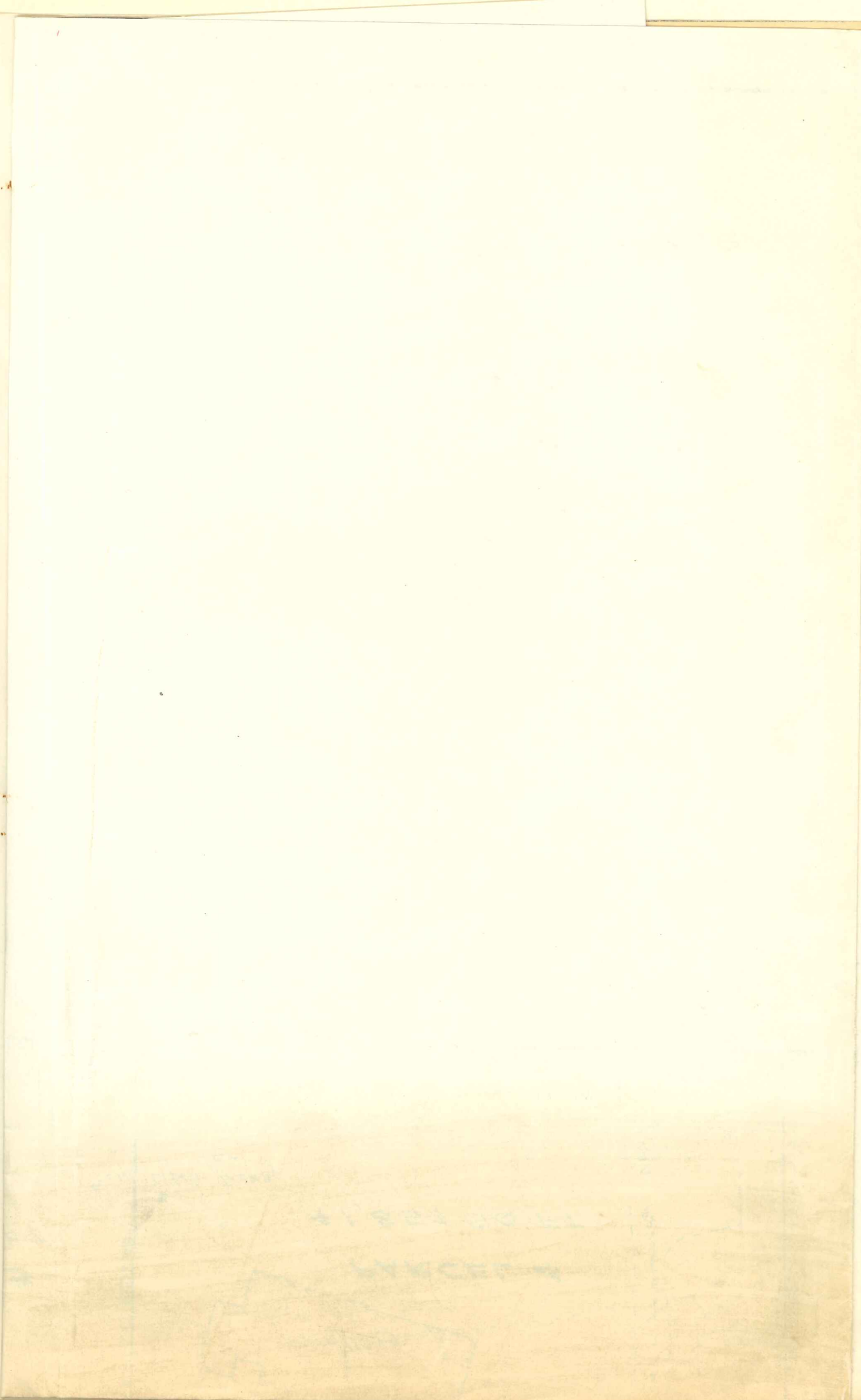
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JJC

12. 111° 27' 52" 114.12 feet to a pipe;
13. 117° 26' 30" 282.11 feet along the northeasterly side of Kamehameha V Highway to the point of beginning;

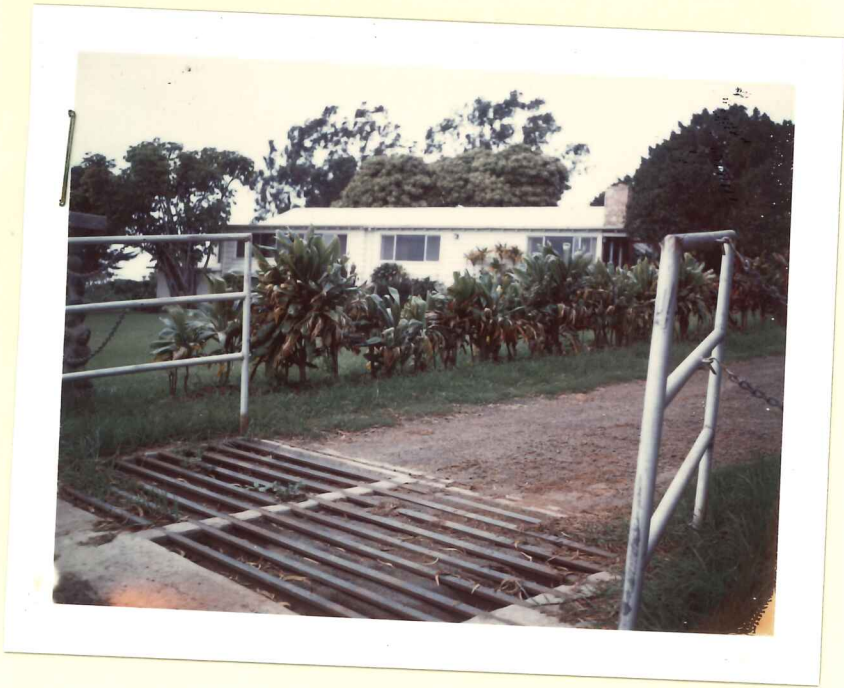
Containing an area of 211,856 square feet;

MAP SHOWING PROPOSED SUBDIVISION



PHOTOGRAPHS SHOWING THE SCATTERED RESIDENCES







LAST WILL AND TESTAMENT OF SOPHIE JUDD COOKE, DECEASED

Presented for Probate

FEB 2 1966

V. Ching

Clerk

P. No. 27757

K N O W A L L M E N B Y T H E S E P R E S E N T S :

That I, SOPHIE JUDD COOKE, of Honolulu, State of Hawaii, being of sound mind and memory, do hereby make, publish and declare this as a Second Codicil to my Last Will and Testament dated August 5, 1960 and my First Codicil thereto dated July 14, 1965:

FIRST: I give, devise and bequeath to COOKE TRUST COMPANY, LIMITED, a Hawaii corporation having its principal office and place of business in said Honolulu, the sum of FIVE THOUSAND DOLLARS (\$5,000.00) and that certain parcel of land, being a portion of R. P. 6824, L. C. Aw. 7755, Apana 1 to Kaluaokamano, and a portion of School Grant 23, Apana 8 to Board of Education, situated on the northerly side of Kamehameha V Highway at Kahanui, Molokai, Hawaii, and being more particularly described as follows:

Beginning at a pipe at the west corner of this piece of land and on the northeasterly side of Kamehameha V Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Middle Hill" being 1,896.47 feet north and 12,044.15 feet east, and running by true azimuths measured clockwise from south:

- | | | | |
|----|------|---------|---|
| 1. | 254° | 41' | 287.35 feet to a pipe; |
| 2. | 346° | 15' | 59.17 feet to a pipe; |
| 3. | 256° | 49' | 470.86 feet to a pipe; |
| 4. | 169° | 00' | 91.34 feet to an old pipe; |
| 5. | 252° | 07' | 108.20 feet along Reservoir Lot to an old pipe; |
| 6. | 205° | 52' 30" | 116.96 feet along Reservoir Lot to an old pipe; |

REASONS SUPPORTING THE PETITION

1. The subject lands are classified Class C or D lands and are not considered prime agricultural lands.
2. The area has been used for scattered residential purposes by the Cooke family for many years.
3. It was the intent, as expressed in the Will of Mrs. Cooke, to leave this property to her six children.
4. The subdivision, in the manner proposed, is unauthorized. Consequently, the property is needed for use other than that for which the district is classified.
5. The low density residential nature of the parcel and surrounding area, absence of urban environment, and sub-marginal value of the land for agriculture all indicate that a rural classification is proper.
6. The land is usable and adaptable for rural use.

The staff report substantiates the petition that the present use on the subject land and the immediate vicinity consists of low density weekend and summer residences. The areas surrounding the subject parcel of land is not in pasture, on the contrary, it is surrounded by the Kahanui residence, comprising of 23 acres of land which was given by the Cookes to the Queen's Hospital of Honolulu, with no strings attached. Subsequently, the said parcel of land was sold to a private

party. At one time there were reports that the Kahanui residence would be converted for resort purposes, however, this has not materialized.

We agree that the mere desire to effect distribution to heirs not in conformance with the Land Use district regulations alone should not be accepted as a justification for a boundary amendment, however, if the other factors and circumstances are consistent with the definition describing rural zones as herein provided, the granting of the petition would not violate the intent and spirit of the Land Use Law.

The children of the late Mrs. Cooke do want to continue their residences, and if it need be, to construct homes on the said parcel of land in the event the petition is granted.

Land classified as rural are not available in the Kalae area. The argument that Class C and Class D lands, such as those involved in the petition, actually have agricultural potential, although they are not prime agricultural lands, cannot be sustained. In the December 1959 report of the Land Study Bureau of the University of Hawaii, under the Title of "Molokai's Land Situation", it states:

'Molokai with about 1% of the State's population, embraces 4% of the State's land areas. In size and population, Molokai constitutes one of the smaller segments of the 50th State, however the potential contribution of this isle to the agricultural and total economy of the State is great. Development of this potential will depend upon land availability, irrigation, windbreak establishments, marketing and transportation improve-

ment and farm operator availability."

While the State has constructed a tunnel to transport water from the Waikolu area, such water is being made available only to the Hawaii Homes Commission area in Hoolehua. The private water system of Molokai Ranch, Ltd. furnishes domestic water in this area. Only limited irrigation of pineapples is possible with waters from the Ranch's system.

It is unfortunate that the staff report now states when an amended petition for rezoning of the said parcel of land to a rural district cannot be considered because the Maui County Planning and Traffic Commission recommended that such area be classified as urban. Why is it that the staff recommended when the petitioners sought for an urban classification that such petition be denied, if the staff believes that the said area should be classified as urban.

SUMMARY

Based on the facts and surrounding circumstances we submit that the said parcel of land should be reclassified into a rural district.