

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
of)

PARADISE HUI HANALIKE)
ASSOCIATION, ET AL.,)

For Reclassification of)
Certain Lands Situated at)
Keaau and Waikahekahe Nui,)
Puna, Island of Hawaii.)

DOCKET NO. A76-419

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

8/17/77

Date

by


Executive Officer

DECISION AND ORDER

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DECISION

This matter, being a proceeding pursuant to Section 205-4 of the Hawaii Revised Statutes to consider a Petition to amend District Boundaries and reclassify from Conservation to Agricultural approximately 65.54 acres of land situated at Keaau and Waikahekahe Nui, Puna, Island of Hawaii, was heard by the Land Use Commission on January 20, 1977, in Hilo, Hawaii. Paradise Hui Hanalike Association, the County of Hawaii Planning Department, and the Department of Planning and Economic Development of the State of Hawaii, were admitted as parties in this Docket. The Commission having duly considered the record in this Docket, the proposed Findings of Fact And Conclusions of Law submitted by the Petitioner, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The property which is the subject of this Petition for reclassification from Conservation to Agricultural is approximately 56.82 acres of land situated at Puna, Hawaii, identified by the following Tax Map Key Numbers:

1-5-31: 57, 58, 60, 61, 62, 63, 64, 66, 67,
68, 69, 70, 71, 72, 73

1-5-32: 31, 33, 34, 35, 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47, 48, 49,
50, 51, 52, 53, 54, 55, 56, 57, 58,
59, 60

1-5-57: 02, 03, 04, 05, 06, 67, 68, 69, 70,
71, 72, 73, 74, 75, 76, 77, 78, 79,
80, 81, 82, 83, 84, 85, 86, 87, 88,
89, 90, 91, 92

1-5-58: 40, 41, 42, 43, 44, 45, 46, 47, 48,
49, 50, 51, 52, 53, 54

1-5-59: 48, 49, 50, 51, 52, 53, 54, 55, 56,
57, 58, 60, 61, 62, 63, 64, 65, 66,
67, 68

2. The original Petition was for the reclassification of approximately 65.54 acres but was amended because several property owners could not be contacted to join in the Petition.

3. The site is within the State Conservation District as shown on Land Use District Boundary Map H-71, Pahoia North, Hawaii. Land Use Commission records reflect that the subject properties have been in the Conservation District since 1969. Prior to 1969, the properties were in the Agricultural District.

4. The Hawaii County General Plan Land Use Pattern Allocation Guide Map designates the area for Orchard use. The area is zoned AG-1. The properties are also within

the Special Management Area but construction of single family residences not part of a larger development are exempt from the provisions of the Special Management Area under Hawaii County Planning Commission's Rule No. 9 of the Rules and Regulations Relating to Environmental Shoreline Protection.

5. The subject properties are part of the Hawaiian Paradise Park Subdivision of Keaau, Puna, Hawaii. The subdivision is located approximately 5 miles southeast of Keaau Town and lies makai of Pahoa Road. The subdivision was established in 1959. It contains a total of 8,840 lots and covers an area of 9,470 acres extending from the coastline to mauka of Pahoa Highway. Most of the lots are approximately 1/2 acre in size. There are two (2) future County park sites located along the shoreline (TMK: 1-5-57:1 - 4.51 acres and 1-5-59:47 - 1.53 acres). These sites, however, were not included as part of the request. The County has preliminary plans to improve a portion of the 4+ acre site. The proposed improvements will include two (2) picnic shelters, a comfort station, water tank and landscaping.

6. The subject properties lie at the makai end of the subdivision, between the coastline and the old government road which runs parallel to the shoreline. The major subdivision access roads to the shoreline are the privately-owned Makuu, Paradise, and Kaloli Drives. These gravel roadways have right-of-way widths of sixty (60) feet. The old government beach road running roughly parallel to the shoreline has a right-of-way width of fifty (50) feet. This roadway is not paved.

7. There are electrical and telephone services to the shoreline from Makuu Drive. The other areas, however,

are not provided with such services. No public water system is available and therefore a roof catchment system is being used in the subdivision.

8. Coastal areas on either side of the properties are within the Conservation District General Use Subzone. Areas mauka of the shoreline road are within the Agricultural District.

9. The subject properties are vacant with the exception of three lots which have homes on them.

10. The Land Study Bureau report, "Detailed Land Classification - Island of Hawaii", reflects that soils of the area have a master productivity rating of "E". The area contains pahoehoe lava flows, no soil materials, and is unsuited for machine tillability. Vegetation consists of scrubby trees.

11. The USDA Soil Survey Report for the Island of Hawaii also reflects that the area contains pahoehoe lava flows and is unsuited for cultivation. The area is classified as subclass VIIIs soils, having very severe limitations which restrict their use for wildlife habitat or recreation. Annual precipitation varies between 100 and 125 inches.

12. The subject properties and adjoining shoreline areas were placed in the Conservation District during the Land Use Commission's 1969 Five Year Boundary Review. At the time of the Land Use Commission's decision in 1969, the properties were already subdivided lots and part of the Paradise Park Subdivision. The County zoning at that time was AG-1, which permitted residential and agricultural uses of the properties.

13. Many of the property owners represented by the Petitioner purchased lots when the subject property was within the Agricultural District. Subsequent to the area being placed in the Conservation District, seven property owners have attempted to obtain Conservation District Use permits from the Department of Land and Natural Resources for residential use of the properties. The Department of Land and Natural Resources granted administrative approval for five requests on a non-conforming use basis. The Board of Land and Natural Resources then changed its policy, denied two other property owners, and referred those property owners that are represented by the Petitioner to this Commission.

14. The Department of Land and Natural Resources indicates that the area does not have any particular conservation values which would necessitate that the area be protected by Conservation District status. The Department of Land and Natural Resources further points out the area is within the County's Special Management Area. This designation would require strict controls on developments in the area to minimize aesthetic and environmental impact to the coastline areas.

15. The subject property does not have any significant agricultural, natural, environmental, scenic, historic, archaeological or other resource value. The only resource of the area is its scenic coastal features. In terms of the subject property being an example of recent lava flows to the sea, there are numerous examples of this land type in the Puna area.

16. Based on the Soil Survey Report and Land Study Bureau soil ratings for the area, the area has little

agricultural potential. However, HRS Section 205-2 and Section 2-2(3) of the Land Use Commission Rules and Regulations, "Standards for Agricultural Districts", state that "lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District." The subject property is contiguous to lands in the Agricultural District.

17. The petition represents approximately 85 landowners who own properties within the Hawaiian Paradise Park Subdivision. The landowners are requesting the reclassification from the Conservation to the Agricultural District so that they may use their properties for residential purposes. Residential use of the subject property unrelated to agricultural activity may not, however, be a permitted use within the Agricultural District. Rule 3-3(4) of the State Land Use District Regulations permits "farm dwellings, farm buildings, or activities or uses related to farming and animal husbandry." Rule 1-4(10) of the District Regulations defines "farm dwelling" to mean "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling." The landowners represented by the Petitioner do not intend to use their property for any agricultural purpose. The subject property has little agricultural value. Much of the land in the Puna District has little agricultural value, but most of that land is classified as within the Agricultural District. The Hawaii County Planning Department

is in the process of preparing a development plan for the Puna District which will consider the possibility of reclassifying portions of the area into the Rural District in order to permit low density residential uses as well as agricultural uses.

18. The subject property is a 300-foot wide strip of land along the coast which was reclassified from Agricultural to Conservation by this Commission in 1969 in order to protect the shoreline from development. Since then, the Hawaii State Legislature has enacted the Coastal Zone Management Act, Chapter 205 A, HRS, to accomplish the same purpose. In that the surrounding land is within the Agricultural District, in that the subject property has no special conservation value, and in that the Coastal Zone Management Act now provides the protection for Hawaii's shoreline that the Commission intended to provide by classifying the subject property as within the Conservation District, the Commission finds that it would be unjust and inequitable to cause those landowners represented by the Petitioner to continue to suffer limitations on their use of their property that other landowners within the same subdivision and throughout the Puna District are not subject to and which are no longer necessary for the protection of the shoreline.

19. The Petition is supported by the State Department of Planning and Economic Development and the County of Hawaii Planning Department.

CONCLUSIONS OF LAW

Reclassification of the subject property, approximately 56.82 acres of land, situated at Keaau and

Waikahekahe Nui, Puna, Island of Hawaii, from Conservation to Agricultural, and amendment of the District Boundaries accordingly, is reasonable, not violative of Section 205-2, HRS, and consistent with the interim policies and criteria established pursuant to Section 205-16.1, HRS.

ORDER

IT IS HEREBY ORDERED:

That the property which is the subject of the Petition in this Docket No. A76-419, approximately 56.82 acres, situated at Keaau and Waikahekahe Nui, Puna, Island of Hawaii, identified by Tax Map Key Nos. 1-5-31:57, 58, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73; Tax Map Key Nos. 1-5-32:31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60; Tax Map Key Nos. 1-5-57:02, 03, 04, 05, 06, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92; Tax Map Key Nos. 1-5-58:40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54; and Tax Map Key Nos. 1-5-59:48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, shall be and hereby is reclassified from Conservation to Agricultural and the District Boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 12th day of August, 1977, by motion passed by the Commission on July 6, 1977, in Honolulu, Hawaii.

LAND USE COMMISSION
STATE OF HAWAII

By Stanley Sakahashi
STANLEY SAKAHASHI, Chairman and
Commissioner.

By James R. Carras
JAMES CARRAS, Commissioner

By Charles Duke
CHARLES DUKE, Commissioner

By Colette Machado
COLETTE MACHADO, Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO, Commissioner

By Shinichi Nakagawa
SHINICHI NAKAGAWA, Commissioner

By Mitsuo Oura
MITSUO OURA, Commissioner

By Carol B. Whitesell
CAROL WHITESELL, Commissioner

By Edward Yanai
EDWARD YANAI, Commissioner