

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition ) DOCKET NO. A82-534  
                                  ) )  
                                  of ) )  
                                  ) )  
                                  ALMA M. CHUNG ) )  
                                  ) )  
To Amend the Conservation ) )  
Land Use District Boundary ) )  
to Reclassify Approximately ) )  
0.855 Acre, Tax Map Key ) )  
6-8-08: 24, at Waialua, Oahu, ) )  
into the Agricultural Land Use ) )  
District. ) )  
\_\_\_\_\_ ) )

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A82-534
	)	
of	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
ALMA M. CHUNG	)	DECISION AND ORDER
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Land Use District Boundary	)	
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FINDINGS OF FACT,  
CONCLUSIONS OF LAW, DECISION AND ORDER

This proceeding was initiated by the petition of ALMA M. CHUNG, pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure and District Regulations of the Land Use Commission, State of Hawaii, to amend the land use district boundary and reclassify the above captioned lands (hereinafter referred to as the "subject property") from the Conservation District to the Agricultural District. The Land Use Commission (hereinafter "Commission"), having heard the testimony and examined the evidence presented at the hearing on December 3, 1982, and having considered the total record, including the proposed findings of fact and conclusions of law submitted by parties, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. ALMA M. CHUNG (hereinafter "Petitioner") filed the petition on June 16, 1982, to amend the land use district

boundary at Waialua, Oahu, City and County of Honolulu, State of Hawaii, for reclassifying the subject property from the Conservation District into the Agricultural District.

2. The Petitioner holds fee simple title to the subject property.

3. The Commission held a hearing on the petition on December 3, 1982, at Honolulu, Hawaii, pursuant to a notice published in the Honolulu Star-Bulletin on October 28, 1982.

4. Pursuant to Section 205-4(e)(1), Hawaii Revised Statutes, the City and County of Honolulu Department of General Planning (DGP) and the State Department of Planning and Economic Development (DPED) appeared as parties to the proceeding. As there were no petitions for intervention, no additional parties were admitted.

5. The Commission allowed Mr. Douglas Meller to testify as a public witness.

6. On December 3, 1982, the Commission determined that no significant environmental impacts would result from the proposed reclassification and voted to file a negative declaration with the Environmental Quality Commission pursuant to Chapter 343, Hawaii Revised Statutes.

7. On December 3, 1982, the Commission heard testimony concerning the petition filed by the DPED for a declaratory ruling as to whether or not a private beach dwelling and accessory boat equipment storage structure (improvements as they exist on the subject property) qualify as permissible uses in the Agricultural District pursuant to Section 3-3, Subsection (6) of the Commission's Land Use District Regulations which allows public and private "open area" types of recreational uses; and voted to take the matter under advisement.

8. On December 3, 1982, the Commission conducted and completed the hearing on the Petitioner's request to reclassify the subject property from the Conservation District into the Agricultural District.

9. On January 19, 1983, the Commission voted to issue declaratory ruling DR82-7 in favor of the petition of the DPED that a private beach dwelling and accessory boat equipment storage facility (as they exist on the subject property, with no use related to agriculture) are not permissible uses within the Agricultural District under Section 3-3(6) of the Land Use Commission's District Regulations.

DESCRIPTION OF THE SUBJECT PROPERTY

10. The subject property is located at Waialua, Island of Oahu, across from the Dillingham Airfield between Farrington Highway and the shoreline. It consists of approximately 0.855 acre of land identified by Tax Map Key 6-8-08: 24. Farrington Highway provides vehicular access to the subject property.

11. The subject property has been under ownership of the Petitioner's family since September 22, 1949.

12. The subject property is currently improved with a single family dwelling and a boat and fishing equipment storage shed.

13. The land within the subject property is basically flat, with an elevation differential of approximately three feet between the higher portion fronting the beach and the lower portion fronting Farrington Highway. The vegetation line along the beach frontage is elevated approximately ten feet above the (mean) level of the ocean.

14. The U.S. Department of Agriculture's Soil Conservation Service (SCS Soil Survey, August 1972) classifies the soil of the subject property as Jaucus sand (JaC). In representative

profile, this sand is single grain, pale brown to very pale brown in color, and is more than 60 inches deep. Permeability is rapid, and runoff is slow. The water erosion hazard is slight, but wind erosion is severe where vegetation has been removed. This sandy soil usually occurs as narrow strips on coastal plains and is typically used for pasture, sugar cane, truck crops, and urban development.

15. The climate of the area is warm and semi-tropical, with mild seasonal changes in temperatures varying from 60 to 80 degrees Fahrenheit. Surface winds are gusty, averaging greater than thirteen miles per hour, and are often salt-laden from an ENE direction over 34 percent of the time. Annual rainfall averages 20 inches.

16. The Federal Insurance Administration's Flood Insurance Study for Oahu describes the subject property as being in an area of undetermined but possible flood hazards of Zone D designation.

#### PROPOSAL FOR RECLASSIFICATION

17. The Petitioner has improved the subject property with a single family dwelling and a boat and fishing equipment storage shed pursuant to Conservation District use permits granted by the State Board of Land and Natural Resources. The Petitioner proposes no further improvements to the subject property under this petition.

18. The Petitioner states an intent to continue using the subject property as a private, non-commercial, family-owned, open-air recreational facility.

#### STATE AND COUNTY PLANS AND PROGRAMS

19. The subject property is situated within the State Land Use Conservation District as reflected on Land Use Commission District Boundary Map 0-1 (Kaena). Adjacent lands

to the East and West are also classified within the Conservation District. Lands to the South of the subject property across Farrington Highway are classified within the Agricultural District. The subject property has been classified Conservation by the Commission since the beginning of the state land use districting in 1964.

20. The State Board of Land and Natural Resources classifies the subject property within the Limited Subzone of the Conservation District. The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities, as on lands susceptible to soil erosion, flooding, or tsunami inundation.

21. The Board of Land and Natural Resources has granted permits allowing the improvements that exist on the subject property. Construction of the single family dwelling is subject to the condition that it be used only as an occasional beach house, and not for rental purposes.

22. The subject property is not classified under the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. The State Department of Agriculture and the University of Hawaii Land Study Bureau ratings of the soil indicate very poor suitability and severe limitations for agricultural use of the subject property.

23. The City and County of Honolulu's proposed North Shore Development Plan designates the subject property as Preservation.

24. Current City and County zoning for the subject property is P-1, Preservation.

25. The subject property is situated within the City and County's Special Management Area.

NEED FOR THE PROPOSED RECLASSIFICATION

26. The Petitioner states that no improvements are proposed for the subject property in the foreseeable future. The current use as an occasional beach front retreat for leisure and open space recreation are to continue and remain unchanged under the proposed Agricultural classification.

27. The Petitioner acknowledges that the subject property is poorly suited for agricultural use, and states that no agricultural uses are currently being pursued nor any proposed under the petition.

28. The Petitioner requests that the reclassification be allowed pursuant to Part III, Section 3-3(6) of the Commission's State Land Use District Regulations which lists, among the permissible uses within the "A" Agricultural District:

"(6) Public and private 'open area' types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps."

29. The Petitioner acknowledges that the current uses which are to continue can be pursued under the existing Conservation District classification, but states that restrictions, information requirements, processing time and costs would be reduced if the subject property is reclassified into the Agricultural District and jurisdiction transferred to the City and County.

30. The Petitioner describes other real property in the vicinity which have soils similar to the subject property and were reclassified from Conservation to Agricultural during the District Boundary Review of 1974.

31. The Petitioner states that real property taxes on the subject property would be reduced by the City and County Tax

Office, which currently assesses the subject property at an Urban rate, if it is reclassified into the Agricultural District.

#### IMPACTS UPON RESOURCES OF THE AREA

##### Agricultural Resources

32. The subject property is not currently used for agricultural purposes. The Petitioner acknowledges that the soils of the subject property are poorly suited for agricultural use and states that no agricultural use is intended through the proposed reclassification.

33. Approval of the proposed reclassification would create an Agricultural District for a beach dwelling and private recreation uses with no attending or related agricultural uses. Such a precedence of creating Agricultural Districts for non-agricultural purposes could adversely impact agricultural lands throughout the State and undermine the integrity of the land use classification system.

##### Archaeological and Historical Resources

34. The subject property contains no known archaeological or historic resources.

##### Environmental and Natural Resources

35. Other lands along the shoreline in the vicinity of the subject property are being preserved as parklands and beach reserves. No adverse effects on the environmental and natural resources of the area are anticipated because the Petitioner does not propose any improvements or changes of use on the subject property.

36. There are no known rare or endangered flora or fauna present on the subject property.

### Recreational and Scenic Resources

37. The sandy beach and ocean adjacent to the subject property are both a recreational and a scenic resource. The proposed reclassification poses no adverse impacts since no improvements nor changes in use of the subject property are proposed.

### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

#### Electrical and Telephone Services

38. Electrical service ends approximately 330 feet to the East, and is not available to the subject property.

39. Telephone service is available at the subject property.

#### Fire and Police Protection

40. Fire fighting services are available from the station at Waialua, approximately 5 miles to the East of the subject property.

41. Police patrols originate from the substation at Wahiawa, approximately 15 miles to the Southeast of the subject property.

#### Roadway Services and Facilities

42. Farrington Highway, a two-lane roadway, provides vehicular access to the subject property.

43. Street lighting terminates approximately 6,000 feet East of, and is not available fronting the subject property.

#### Sewage

44. A cesspool is used to dispose of sewage on the subject property.

#### Water

45. The U.S. Army's water system at Dillingham Military Reservation provides domestic water to the subject property. The Petitioner is authorized to purchase 2,000 gallons per month from the Army system. The City and County of Honolulu's

public water system does not service the area.

46. The State Department of Land and Natural Resources (DLNR) regulates the development of groundwater within the Waialua Ground Water Control Area in which the subject property is located.

COMPLIANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

47. The subject property does not meet the land use districting standards for classification into the Agricultural District.

- a. The subject property does not have a high capacity for agricultural production nor potential for grazing or other agricultural uses due to its poor soil characteristics, limited water supply, and small size.
- b. No agricultural activities are currently conducted or proposed on the subject property; its reclassification into the Agricultural District will not benefit or promote agriculture in the area.
- c. The subject property is less than one-acre in size. Its reclassification would result in the creation of a non-conforming agricultural lot, contrary to Chapter 205-5, HRS, which provides that the minimum lot size in Agricultural Districts shall not be less than one acre.
- d. Agricultural District lands nearest the subject property (Farrington Highway and the Dillingham Airfield) are not in agricultural uses. Adjacent lands to the East and West are in the Conservation District. The subject property does not merit reclassification into the Agricultural District

based on being surrounded or contiguous to agricultural lands.

- e. The private beach dwelling and accessory boat equipment storage shed--as they exist on the subject property with no use related to agriculture--do not qualify as permissible uses with the Agricultural District.

48. The subject property conforms to standards for its current classification in the Conservation District.

- a. The subject property is contiguous to other Conservation District lands.
- b. The subject property is in an area of storm wave and tsunami hazard.
- c. The subject property is in an area being preserved for shoreline parks and beach reserves.
- d. The subject property is designated as Preservation on the City and County of Honolulu's proposed North Shore Development Plan.

49. The proposed reclassification from Conservation to Agricultural is not reasonably necessary to accommodate growth and development.

#### RULING ON PROPOSED FINDINGS OF FACT

The Commission hereby rejects any of the proposed findings of fact submitted by the Petitioner or the other parties to this proceeding not already ruled upon by adoption herein or rejected by clearly contrary findings of fact herein.

#### CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Commission finds upon the clear

preponderance of the evidence that the proposed reclassification is not reasonable necessary, would not be in the interest of the public welfare, would not conform to the standards established by the State Land Use District Regulations, and would be violative of Section 205-2 and Chapter 226, Hawaii Revised Statutes.

DECISION AND ORDER

IT IS HEREBY ORDERED that the petition of ALMA M. CHUNG in Docket No. A82-534 to reclassify approximately 0.855 acre of land at Waialua, Oahu, City and County of Honolulu, State of Hawaii, more particularly identified as Tax Map Key 6-8-08: 24, into the Agricultural District is hereby denied, and the subject property shall remain in the Conservation District.

DONE at Honolulu, Hawaii, this 29th day of April, 1983, per motion on March 15, 1983 and April 14, 1983.

LAND USE COMMISSION  
STATE OF HAWAII

By William W. Yuen  
WILLIAM W. L. YUEN  
Chairman and Commissioner

By Richard B. F. Choy  
RICHARD B. F. CHOY  
Vice Chairman and Commissioner

By Lawrence F. Chun  
LAWRENCE F. CHUN  
Commissioner

By Everett L. Cuskaden  
EVERETT L. CUSKADEN  
Commissioner

By *Shinsei Miyasato*  
SHINSEI MIYASATO  
Commissioner

By *Winona E. Rubin*  
WINONA E. RUBIN  
Commissioner

By *T. Tacbian*  
TEOFILO PHIL TACBIAN  
Commissioner

By *Robert S. Tamaye*  
ROBERT S. TAMAYE  
Commissioner

By *Frederick P. Whittemore*  
FREDERICK P. WHITTEMORE  
Commissioner

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
ALMA CHUNG ) DOCKET NO. A82-534  
To Amend the Conservation Land )  
Use District Boundary to Reclassify )  
Approximately 0.855 Acre, )  
TMK: 6-8-08: 24, at Waialua, )  
Oahu, into the Agricultural Land )  
Use District )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

KENT KEITH, Director  
Department of Planning and Economic Development  
State of Hawaii  
250 South King Street  
Honolulu, Hawaii 96813

WILLARD T. CHOW, Chief Planning Officer  
Department of General Planning  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

DONALD H. CHUNG  
1236 Elizabeth Street  
Honolulu, Hawaii 96816

DATES: Honolulu, Hawaii, this 4th day of May, 1983.

  
GORDAN Y. FURUTANI  
Executive Officer

DOCKET NO. A82-534 - ALMA CHUNG

A certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on May 4th, 1983:

ANNETTE CHOCK, Deputy Attorney General  
Department of Attorney General  
Capital Investment Building  
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Honolulu, Hawaii 96813

STEVEN LIM, Corporation Counsel  
Department of Corporation Counsel  
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