

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Classification)
and Districting of Certain Lands) Docket No. A76-419
at Keaau and Waikahekahe Nui,)
Puna, Island of Hawaii) Paradise Park Hui Hanalike
_____)

TESTIMONY IN SUPPORT OF PETITIONER

The County of Hawaii Planning Department recommends approval of the petition by Paradise Park Hui Hanalike for redistricting of certain lands at Keaau and Waikahekahe, Puna, Island of Hawaii, from a State Land Use Conservation to an Agricultural District based on the following findings:

GENERAL INFORMATION

The petition filed by Paradise Park Hui Hanalike is to reclassify approximately 56.82 acres of land from the State Land Use Conservation to an Agricultural District.

The area under consideration is located in the land divisions of Keaau and Waikahekahe Nui, Puna, Hawaii. More specifically, the properties involved are located along the coastline within the Hawaiian Paradise Park Subdivision (herein referred to as HPPS) situated between the villages of Keaau and Paho.

The request involves the reclassification of 110 parcels owned by various individuals. The following is the list of affected properties by Tax Map Keys:

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.

The subject area was reclassified by the State Land Use Commission during its 1969 boundary review from an Agricultural to a Conservation District.

The County of Hawaii General Plan Land Use Pattern Allocation Guide Map designates the area as Orchard. (Exhibit A) The Orchard designation applies to lands though rocky in character and content can support productive macadamia nuts, papaya, citrus and other similar agricultural products. The General Plan Land Use Pattern Allocation Guide Map also designates the shoreline fronting the affected properties as Open. In accordance with Chapter 205A of the Hawaii Revised Statutes, shoreline is defined as "the line at the seashore along the upper reaches of the wash of the waves, usually evidenced by the vegetation line or, if there is no vegetation line, then by debris left by the wash of the waves."

The County's zoning designation for the subject properties is Agricultural 1-acre (A-1a). (Exhibit B)

According to the United States Department of Agriculture Soil Conservation Service's Soil Survey Report issued in December of 1973, the affected lands are classified as Lava Flows, Pahoehoe. This lava has a billowy, glassy surface that is relatively smooth. Some areas are rough and broken. Annual precipitation varies between 100 to 125 inches per year. (Exhibit C)

The Soil Conservation Service states that "Degree of limitation for this soil is severe for septic tanks and filter fields. Much of the area is immediately adjacent to the ocean and could be subject to tsunami or tidal waves." (Exhibit D)

The Land Study Bureau's overall master productivity rating for agricultural use is Class E or Very Poor. (Exhibit E)

There are presently three (3) single family dwellings within the subject area. One (1) of these dwellings, situated on TMK: 1-5-31:68, was constructed in 1967 when the land was still within the State Land Use Agricultural District. The other dwellings on TMK: 1-5-31:66 and 1-5-57:82, however, were allowed under a Conservation District Use Permit by the State of Hawaii Board of Land and Natural Resources (herein referred to as Board) on February 23, 1973 and November 1, 1972. (Exhibit F and F-1) There were also two (2) other dwellings within the HPPS allowed by the Board, but which are not included in this petition. (Exhibits G and H)

According to its June 10, 1976 letter (Exhibit I) to the Board, the Department of Land and Natural Resources (herein referred to as Department) stated that "since the adoption of Departmental Regulation No. 4 in 1964, a total of six (6) applications for single family residential use involving coastal lots of the Hawaiian Paradise Park Subdivision have been processed by the Department . . . and that four applications were approved as non-conforming uses. The remaining two were processed in the normal manner, and by Board action, one was approved and the other denied." (Exhibit J - previous denial - letter of January 29, 1976 to Orr)

As a matter of correction, on page 3 of the Department's June 10, 1976 letter, it is stated that in July of 1959, the County's zoning designation of the area was Unplanned (U). In 1959, there were no County zoning for the Puna area. All uses were allowed by an Interim Zoning Variance Permit.

On June 10, 1976, the Board denied another request to construct a single family dwelling on property identified as TMK: 1-5-32:35 situated within the HPPS (Exhibit K). The reason for the denial

was ". . . that the proposed use is more appropriately compatible with agricultural zoning, considering its present use as well as the surrounding land use." As was the case of other similar requests in the area, the Planning Department recommended approval of this request. (Exhibit L) This lot has been included in this boundary amendment request.

The remaining parcels within the affected are vacant of any structures. The average size of the lots is about one-half (1/2) acre.

Within the HPPS, there are approximately 8,840 lots consisting of about 9,470 acres. This subdivision was created in 1959, prior to the adoption of the State Land Use Law (1961) and the County's Zoning Code (1967). The remainder of the 8,730 lots within the HPPS consisting of about 9,310 acres are classified Agricultural.

There are two (2) future County park sites located along the shoreline (TMK: 1-5-57:1 - 4.51 acs and 1-5-59:47 - 1.53 acs). 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 (Exhibit M). There are also five (5) other lots interspersed within the requested area which are not included as part of this boundary amendment. According to the petitioner, the individuals owning these lots did not respond to the query of having their lots reclassified. The petitioner had sent out a letter to all affected property owners within the HPPS whose land is situated within the Conservation District asking if they wanted to have their lands reclassified. Only those lots included in this request have met with the consent of the individual property owners. Thus, the other lands were excluded from this petition.

The major subdivision access roads to the shoreline are the privately-owned Maku'u, Paradise, and Kaloli Drives. These gravel roadways have right-of-way widths of sixty (60) feet. Since the roadways within the HPPS are privately-owned, any improvements of the roadways to County dedicable standards (20-foot pavement) would have to be done through an Improvement District. There is also an old government beach road which has a right-of-way width of fifty (50) feet. This roadway also is not paved.

There are electrical and telephone services to the shoreline from Maku'u Drive. The other areas, however, are not provided with such services. No public water system is also available; thus, a roof catchment system is being used.

In regards to the water situation, the Department of Water Supply stated the following: (Exhibit N)

"We have no objections to the requested State Land Use Boundary Amendment from a conservation to an agricultural district. For your information, the Department of Water Supply has no water system in this area. The applicants should be made aware that further subdividing in the area shall require a water system in accordance with our Standards and Rules and Regulations."

The Fire Department commented that there is "No fire protection provided in this subdivision. Nearest fire station located at Keaau, located 6 miles distant. Trafficability poor but passable." (Exhibit O)

The Police Department stated that "The application for SLU Boundary Amendment - Conservation to Agriculture by the Paradise Park Hui Hanalike has been reviewed and from the police standpoint, we can foresee no adverse effects from the requested change." (Exhibit P)

The State Department of Health stated that "Private sewage disposal systems to be approved by the Department of Health's Registered Sanitarian." (Exhibit Q)

The Department of Public Works had no comments to offer. (Exhibit R)

No historical or archaeological sites and features appear to be within the petitioned area.

The subject properties are situated within the County of Hawaii's Special Management Area (SMA), established in December of 1975. The County of Hawaii Planning Commission's Rule No. 9, Rules and Regulations relating to Environmental Shoreline Protection, however, allows the construction of a single family residence which is not part of a larger development without an SMA Use Permit.

"In the interest of fairness and equity, we respectfully request your prompt attention and favorable action in changing the zoning for these parcels back to Agriculture from Conservation."

ANALYSIS

Upon careful review of the requested amendment from a State Land Use Conservation to an Agricultural District, the County of Hawaii Planning Department has found that it is not violative of Section 205-2, Hawaii Revised Statutes, and is consistent with the State Land Use District Regulations and the Interim Statewide Land Use Guidance Policies established pursuant to Section 205-16.1, Hawaii Revised Statutes.

The County General Plan Land Use Pattern Allocation Guide Map designates the area for Orchard. Orchard-designated lands are those though rocky in character and content may support productive macadamia nuts, papaya, citrus and other similar agricultural products. As such, the reclassification of the subject properties from a Conservation to an Agricultural District will complement the County's General Plan document. Part II, Section 2-1 of the Commission's District Regulations adopted in December of 1975 and the Interim Statewide Land Use Guidance Policy (Section 205-16.1, Hawaii Revised Statutes) state that "In establishing the boundaries of the districts in each County, the Commission shall give consideration to the General Plan of the County." Furthermore, the County's zoning designation is Agricultural 1-acre (A-1a); thus, the reclassification will also be in conformance with the County's Zoning Code.

Although the lots within the affected area are less than the minimum building site area requirement of one (1) acre as stipulated in Section 205-5(b) of the Hawaii Revised Statutes, as well as the County's A-1a zoned district, they were created prior to the adoption of the State Land Use Law and the County's Zoning Code; thus, are considered to be non-conforming relative to size. According

to Part IV, Section 4-3(1) of the Commission's District Regulations (relating to non-conforming areas and parcels), "A lot of record may be occupied by any use permitted by these regulations, including a single-family dwelling; provided, however, this exception shall not apply to subdivisions that have not received proper approval by the Counties." The Commission's Regulations further state that "Any proposed subdivision of land which is not in conformity with these regulations, but which has received approval by the County having jurisdiction on or before the date of adoption of these regulations, shall be permitted as a non-conforming area subject to the ordinances and regulations of the County. All lots within the non-conforming area shall be considered as non-conforming parcels." The HPPS was approved by the County in 1959. Therefore, although the lots will be less than the minimum building site area requirement as stipulated under the Agricultural Districts of both the State and County, these lots will not be contrary to the above stated District Regulations and the County's Zoning Code. In fact, the granting of this particular request would make the area more compatible to the County's ordinance and regulations.

It should be pointed out, however, that although the lots within the subject area are basically one-half (1/2) acre in size, and thus, less than the minimum requirement of one (1) acre for the Agricultural District, we have nevertheless concluded that the Agricultural classification is more appropriate than the Urban District for this particular area. Aside from the lot size characteristic, we recently went on record supporting an Urban classification for a portion of land within the Hawaiian Beaches, Parks and Shores Subdivision (Commission's Docket No. A75-406 on file).

The distinguishing factor there was the urban-like character of that area. The number of homes, infrastructural facilities, and lot size were factors lending support to its urban-like character. In the subject area, however, we note that with the exception of the non-conforming lot size, the characteristics vary. Then, too, the General Plan did not consider the subject area to be an alternate urban expansion area unlike the Hawaiian Beaches area. As such, we submit that there are sufficient basis to justify a different district classification.

The Commission's District Regulations are intended "to preserve, protect, and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii." It is therefore determined by allowing the requested reclassification to an Agricultural District, the affected landowners will be able to construct their homes in accordance with the requirements of the County.

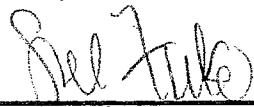
Furthermore, Part II, Section 2-2(2)(c) states that "Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District." The requested area does meet with this criteria.

Land uses within the Conservation District are administered by the Board; thus, the establishment of any use within this district must be approved by that body.

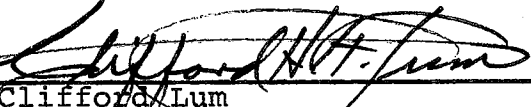
From a practical and realistic standpoint, by reclassifying the lands to an Agricultural District, the affected landowners will be able to construct single family dwellings on their properties in accordance with the County's as well as the Commission's regulations.

In light of the foregoing reasons, the County of Hawaii Planning Department is recommending approval for the reclassification of the affected properties from a State Land Use Conservation to an Agricultural District.

COUNTY OF HAWAII-STATE OF HAWAII
PLANNING DEPARTMENT



Raymond H. Suefuji
Planning Director



Clifford Lum
Corporation Counsel