

STATE OF HAWAII
LAND USE COMMISSION

3:00 p.m. Meeting

April 11, 1968

Kailua-Kona, Hawaii

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LAND USE COMMISSION

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CHAIRMAN:

In order to expedite the giving of testimony and so forth, I would like those of you that are to give testimony that are not lawyers, please stand and be sworn in. So those of you that are not lawyers and intend to give testimony, please stand up and raise your right hands. Do you solemnly swear the statements you are about to give before the Land Use Commission is the truth and nothing but the truth, so help you God?

RESPONSE:

I do.

CHAIRMAN:

Alright. We'll start off with action on A67-166, Olohana Corporation.

UNIDENTIFIED:

Mr. Chairman and the . . . (inaudible due to excessive noise near the tape) . . . this is the parcel owned by . . . (inaudible) . . . the areas are indicated on our district map and the Kawaihae area is . . . (inaudible) . . . (Obvious that individual is pointing out specific items on maps as to colored areas, etc.).

CHAIRMAN:

The memo on Olohana Corporation: (the April 11, 1968 memorandum to the Land Use Commission from Staff re: A67-166 - Olohana Corporation, was read verbatim. See report in file.)

Did any of the Commissioners have any questions?

COMMISSIONER:

Would you indicate on the map where the Queen's Hospital lands and the Richard Smart lands . . .

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(These areas were indicated on the map.)

CHAIRMAN:

Do any of the Commissioners have questions? If not, thank you very much.

If the petitioner would care to make any statement in addition to what's already presented . . . Is there anybody representing the petitioner here? (Response, but inaudible.) Thank you.

COMMISSIONER:

Mr. Chairman, I move that we accept staff recommendations and zone the area urban, 425 acres as requested in the staff report.

COMMISSIONER:

Seconded.

CHAIRMAN:

Are you ready for the question?

STAFF:

Commissioner Choy.

COMM. CHOY:

Aye.

STAFF:

Napier.

COMM. NAPIER:

Aye.

STAFF:

Mark (?).

COMM. MARK:

Aye

STAFF:

Murray.

COMM. MURRAY:

Aye.

STAFF:

Inaba.

COMM. INABA:

Aye.

STAFF:

Woolen.

COMM. WOOLEN:

Aye.

STAFF:

Nishimura.

COMM. NISHIMURA:

Aye.

STAFF:

Murakami.

COMM. MURAKAMI:

Aye.

STAFF:

Chairman Burns.

COMM. BURNS:

Aye.

STAFF:

Motion is carried unanimously, Mr. Chairman.

CHAIRMAN:

Thank you. We now go on to A67-16, George Sims.

STAFF:

The records and proceedings of a special permit application by Daniel
. . . (inaudible) . . . subdivide a parcel into two lots have been transmitted

STAFF (Cont'd.)

by the Hawaii County Planning Commission.

COMMISSIONER:

I asked for Sims. Is there any reason why . . . ?

STAFF:

Oh, I'm sorry. Sims has been deferred, Mr. Commissioner. The petitioner asked that it be deferred until further notice, primarily because the petitioner is in the hospital and is not able to appear before the Commission.

COMMISSIONER:

Is there any action necessary on our part?

STAFF:

If you agree to accept this and . . . If you recall, we already asked the petitioner to give us an extension of time because we weren't sure of getting the Commission together before the deadline, so we have that in the file plus the request that it not be heard today. So I don't think any answer is necessary on the part of the . . .

COMMISSIONER:

Alright. Will you go on then?

STAFF:

Alright. This is a special permit request of Daniel Moniz. (Read Staff Report dated April 11, 1968 on SP68-52 - Daniel Moniz, verbatim. See report.)

CHAIRMAN:

Are there any questions?

COMMISSIONER:

Who owns the conservation area? Is that under state, in front, on the beach side?

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

THE CASE OF CONSPIRACY: IN THIS CASE, THE COURT OF APPEALS HAS
CONCLUDED:

was open in diameter.

017-1524:

... (00 20504)

REVIEW:

YOUNG: I'm not sure we have any more.

RECEIVED:

ATTN: THE DIRECTOR OF LABORATORY AND THE BUREAU OF CHEMISTRY

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some of them are confidential informants, others are not. As far as

NOTES: THE INFORMATION IS GIVEN AS AN SUMMARY OF DATA RECEIVED BY PERSONS

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19. Diebstahl eines Geldes (Kassenschieber) am 1. April 1934

DATE: 09/11/15:

SECRET

THE INFORMATION IS NOT BE PROVIDED AND IS NOT BEING PROVIDED TO ANY OTHER AGENCY

ПРОЩЕ ЗАРЪКЪТ БУДЕ ДА СЕ ЧУВАЕТОСЪ СЪЩЕТО ЧЕЛОВЕЧЕСТВО! ЗАДЪЛЖАМЕ СЕ НА НЕГО

Q. Now, did you see any other people in the room?

I cannot get clear of these men and their work. . . .

COMMITTEE ATTORNEY:

DA ERG ZWISCHEN DEN BEIDEN BEWERTUNGSSTADIEN:

2500Z (CONT.)

STAFF:

State land, yes.

CHAIRMAN:

Are there any other questions?

COMMISSIONER:

As shown on the map here, all of those lots are about 7,500 square feet?

STAFF:

Right.

COMMISSIONER:

And you have a piece of property right in the midst of this that you will have to subdivide into 2 lots? Wouldn't it . . . (inaudible) . . . having this strip in the midst of all this subdivision?

STAFF:

Not particularly a nuisance value. If it were subdivided, the street still would not go through. And I agree with you that logically, subdividing that lot would conform to the surrounding area. My contention is that the existing law prohibits the Commission from taking this action by virtue of its wording. In other words, a special permit can be issued only for an unusual use, and we're not talking about an unusual use here. This is a matter of subdividing a piece of property to a size less than what the law specifically requires in a district.

COMMISSIONER:

But the law grants a 2% . . .

STAFF:

The law does not provide for any variances here. It may very well in the County but not within our state land use law. It specifically requires a minimum half acre area and above. So actually, the lot conforms because

STAFF (Cont'd.)

it is more than a half acre right now, but to subdivide it, one or both lots would be less than a half acre.

COMMISSIONER:

Is the petitioner here?

STAFF:

I'm sorry, I don't know if the petitioner is here.

COMMISSIONER:

Is the petitioner here or a representative of the petitioner (to general group).

(No response.)

COMMISSIONER:

I sort of sympathize with the petitioner with a strip like that, you know. I was asking (inaudible) if he could give them that 1,000 strip of the conservation land and cut it right in half.

STAFF:

Well, if he were able to acquire the additional land, then there would be no problem. Unfortunately, the state is the only possible course.

COMMISSIONER:

Is it true he is asking for a special permit to divide it into 2 lots?

STAFF:

That is correct.

COMMISSIONER:

And if he came in for a boundary change where he could subdivide it to lots the same size as the neighbor lots, would that be possible?

STAFF:

It's possible for him to request a boundary change to urban; however,

STAFF (Cont'd.)

we would be singling out one parcel for spot zone urban usage.

COMMISSIONER:

You can't call that a spot zone.

STAFF:

On the district map, it would amount to spot zoning. In other words, the nearest urban district is 10 miles away.

COMMISSIONER:

Well, you mean this would be a non-conforming . . . What opportunity does he have to clear up this situation?

STAFF:

Through the surveyor, I guess. One alternative, Mr. Chairman, as I see it, is that in our boundary review next year, perhaps it might be possible to include a provision whereby variances could be granted under certain conditions, and this may even mean a change in the law. I've discussed this with our new attorney. The original decision was rendered by our past attorney general representative. And he claims that there is no way we can do this under our existing law.

COMMISSIONER:

In other words, if we approve this request, it would be unique.

STAFF:

You couldn't defend it in court.

CHAIRMAN:

Do any of you have any questions or suggestions? If not, the chair . . . (inaudible) . . .

COMMISSIONER:

Mr. Chairman, I move that we accept staff report.

COMMISSIONER:

Second it.

CHAIRMAN:

Are you ready for the question? Please poll the Commissioners.

STAFF:

Commissioner Murakami.

COMM. MURAKAMI:

Aye.

STAFF:

Woolen.

COMM. WOOLEN:

Aye.

STAFF:

Inaba.

COMM. INABA:

Aye.

STAFF:

Mark.

COMM. MARK:

Aye.

STAFF:

Murray.

COMM. MURRAY:

Aye.

STAFF:

Choy.

COMM. CHOY:

Aye.

STAFF:

Napier.

COMM. NAPIER:

Aye.

STAFF:

Nishimura.

COMM. NISHIMURA:

Aye.

STAFF:

Chairman Burns.

COMM. BURNS:

Aye.

STAFF:

The motion is carried, Mr. Chairman.

COMMISSIONER:

Mr. Chairman, is there any way we can communicate with . . (inaudible due to plane passing overhead) . . with a suggestion as to what he can do? I think it would be . . (inaudible) . . to take a look at his property.

STAFF:

We can send him a very sympathetic letter and suggest that situations of this type can be reviewed later.

(Some discussion but totally inaudible due to speaker distance from the microphone and noise near microphone.)

COMMISSIONER:

Is that the Tamura case? There are extenuating circumstances there, however. Much different than this.

STAFF:

Do you recall the decision rendered by Judge Felix on that? And he

STAFF (Cont'd.)

referred them to what was contained in the . . . (inaudible) . . . And it's a different set up.

UNIDENTIFIED:

(Totally inaudible due to distance of speaker from microphone.)

STAFF:

Yes, but in the absence of total definitive action, you cannot speculate, right? We can only act on the best information available to us, and this is how we are reacting. The door is always open for the applicant to come back again.

CHAIRMAN:

We'll move on to A67-170 then.

STAFF:

This is Kealakakua Ranch, Ltd., action meeting, and let's review our map again for orientation. The property in question is shown in yellow here on our district map. This is the Kealakakua Bay beginning in green, with the existing conservation district. The areas shown in pink are the urban districts up here along the . . . (inaudible) . . . There is a 20-acre parcel above the road and about a 255-acre area below the highway. This is a new map that the petitioner has submitted. . . (inaudible) . . .

(The April 11, 1968 memorandum to the Land Use Commission from Staff re: A67-170 - Kealakakua Ranch, Ltd. was read verbatim. See report.)

We're going to add, Mr. Chairman, that we have been in receipt of additional information regarding this request since the writing of this report. I have a letter from Leigh Devine, Blacksher and Devine, Realtor, stating that they have been in contact with Holiday Inn regarding possible hotel development on this site, and that most of the conversation has been by telephone so that they have nothing concrete to present in terms of

STAFF (Cont'd.)

letters and commitments at this time. There is also a letter on file supporting this request from the Filipino clubs and organizations from the district of south and north Kona. These letters have been circulated to you gentlemen, incidentally, and I just want to put this into the record. There is also a letter from American Equipment Company, Inc. signed by (name inaudible), Manager, and they have agreed to do the land clearing, road work, utilities, without payment in cash but negotiating for a number of lots. So they are in support of this request. Ramada Inns, Inc. . . . another letter signed by B. Frank Morris, Franchise Division. This one says, "we would certainly have interest in discussing this area further on a franchise basis." So this is in support of the request. A letter to Mr. Greenwell from Herb (name inaudible). It's a rather lengthy letter, gentlemen, and perhaps Mr. Greenwell would care to elaborate on it. Here's another letter received by Mr. Greenwell, copy to us, from Stanley Taylor, Jr., from McDonald and Company: "I've seen your development plan for Kealahakua and would be extremely interested in financing a hotel on your property to be operated by a major Mainland hotel chain."

This about concludes the record to date, Mr. Chairman.

CHAIRMAN:

Do any of the Commissioners have any questions?

COMMISSIONER:

Yes. Ron, clear up something for me please. On page 4 of the report you refer to 92 acres. I presume you are identifying the urban district mauka of Napoopoo Road as consisting of that amount. Right?

STAFF:

(Staff member was indicating something on map and was too far from microphone to be audible.) This is the urban district along Maunaloa

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(иногда может быть признано, наоборот, что это не так, но это не

суть).

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был принят в 1917 году, в соответствии с этим законом, который

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STAFF (Cont'd.)

Highway and this area is proposed for low income housing. This area we're speaking of; about 74 acres. Then above Maunaloa Highway, just about this location, abutting the urban district is this area where a shopping center is proposed and . . . (inaudible) . . .

COMMISSIONER::

So then the staff's recommendation is for urban designation for 92 acres of property.

STAFF:

That is correct.

CHAIRMAN:

Any other questions?

COMMISSIONER:

Yes. That green area on the map, is that . . . (inaudible due to vehicular noise outside building) . . . Is that low income housing proposed?

STAFF:

I think that this is excluded from the development plan. It's not a part of the proposal.

COMMISSIONER:

But does that include the 92 acres?

STAFF:

No, it does not. The 92 acres is above this road.

CHAIRMAN:

Any other questions? Would the petitioner like to make a statement or would you prefer to wait and have the Lieutenant Governor make his presentation? It's up to you.

(Response from petitioner was inaudible.)

CHAIRMAN:

Lieutenant Governor Gill.

LT. GOV. GILL:

Mr. Chairman, if it's alright with you and this honorable Commission, I would like to first give you a brief statement or an outline of what our presentation is, and further on the gentlemen who have come over here with me to give you further information on their portion of the report, answer any questions you may have and, in the process, give you our idea of what we understand the amended plan to be.

Mr. Chairman, we have made available to the Commission a manila folder, if all of you have it. In this manila folder you will find on the left side a Memorandum of Agreement between the State of Hawaii and the County of Hawaii signed by the Governor and the Chairman of the County which outlines certain items to be included in a detailed historic site scenic and recreation plan to be entered into by the County and the State with the help of the Federal government and cooperation of private parties. So that you may be better oriented, we have a map on the board here which will help you see what we're talking about. (Lt. Gov. Gill apparently moved to map to continue speaking and distance from microphone was too great to pick up voice audibly.) I think we've outlined this before, but I thought it would be good to run over it for those of you who were not here at the last meeting.

Mr. Chairman, if I may run through the statement very quickly. At the hearing held by the Commission on this matter on January 12, 1968, we promised you more detailed information on the plans for the Kealahou-Hoonainai historic site and recreation area, and we also promised you some

LT. GOV. GILL: (Cont'd.)

specific recommendations on the proper disposition of the lands on the cliff above Kealakekua Bay. We're now prepared to do this.

Since your last meeting on the petition, we've accomplished the following. We have completed the archeological survey on the lands above the cliff on Kealakekua Bay. Copies of this study were done by Mr. . . . (inaudible due to traffic noises from outside building) . . . I hope that you have had an opportunity to look at it. The studies show, among other things, the alignment of a 19th Century horse trail and numerous agricultural terraces related to the ancient village of (inaudible). These are found on the cliffs above the bay. (Lt. Gov. Gill returned to map for designation of areas and his voice was again inaudible.)

We also received the recommendations of the consultant Belt Collins & Associates Ltd. as to the maintenance of the corridor of 1,000 feet within which to position a (inaudible) highway through the area. A copy of this letter is attached, and I think the tab is number 3.

The Governor of the State and the Chairman of Hawaii have agreed to jointly plan the detailed historic site recreation development of this area. A copy of this memorandum is on the left side of your folder.

The capital improvements project budget, as approved by the Legislature, includes in it this spring an item of \$55,000 for the planning of this particular project. Further, we have consulted with the staff at the University of Hawaii on how to maintain the ecology of Kealakekua Bay. This may not be of concern to the people in Kona, but it sure is to people on Oahu after they've seen what they've done over there. And the University is willing to undertake the necessary surveys and experimentation to recommend means of keeping the present marine life in the

LT. GOV. GILL (Cont'd.)

bay from being destroyed or seriously altered. Summary letter is attached; the cap number in your folder is number 4.

Next, we have viewed the area with a planning team from the National Park Service from the Bureau of Outdoor Recreation and have been assured that our plans in this area will compliment the plans developed by the National Park Service for the City of Refuge and the proposed scenic highway over the Hoolailai-Moanaloa saddle. It is likely that there will be Federal recreation money involved in State and County development in the area that we are concerned with here today.

Next, we have consulted with the Federal highway people in regard to scenic road construction under the Federal aid secondary system in the project area. Mr. Chairman, this would involve the realignment of the current Hoonau-Napoopoo Road and the connection to the present Napoopoo Road above the village of Napoopoo, and it seems likely that this could be included in the Federal aid secondary system just as soon as some agreement was made on alignment, rights of ways and so on were cleared up.

Next we have the consultant on the statewide comprehensive outdoor recreation plan as Captain Fong and the developments I described to you, and they will take them into consideration in their final report due this summer. A letter to this effect is attached to our exhibit and is numbered number 5.

Next, the State Department of Planning and Economic Development has been involved in a number of discussions on the preservation development of this area. The Department's position in favor of the preservation of the bay area is stated in an attached letter that is numbered 6.

In view of the foregoing, we are now ready to proceed with detailed

LT. GOV. GILL (Cont'd.)

plans for preservation development of the various historic and recreation sites within the Kealahou-Hoonaunau project area. This planning should be completed during the current calendar year and hopefully, any development and acquisition money needed will be made available by the Legislature. This detailed plan will then allow the Commission to review its boundaries in this area with accurate data on State and County development projects. You're required to conduct this review during 1969 in any case. At that time, you can also consider the other rezoning petitions involving other lands in the south Kona area which have been announced and are likely to be filed in the months to come. I believe there is another (inaudible) petition on the way.

In view of the foregoing, I recommend that the Land Use Commission staff report be approved. This recommendation is and is quoted here and I'm sure you're familiar with it. Implementing the staff report will give the land owner the chance to move now on the most developable part of this land. It will help stimulate housing and commercial development in the Captain Cook and Kealahou area. It will not prevent the land owners from applying for permission from the County to start planning a golf course on the lower land now zoned for agriculture. It will also give the State, the County, the Federal government and the other private owners in the area a chance to produce a comprehensive and interrelated development of the Kealahou-Hoonaunau area in particular and the south Kona Coast in general, which will be a point of pride in the years to come. If the areas below Napoopoo Road and down to and including the cliffs and the areas near the foot of the cliffs near the (inaudible) heiau are left in their current zoning, the State and the County can proceed with their

LT. GOV. GILL (Cont'd.)

development and acquisition plans without the handicap of artificially inflated land prices caused by the act of rezoning. Should the Commission find it advisable between now and the state-wide review of boundaries which is mandated for 1969 to change the zoning of any part of the area above the cliffs of Kealahakua, I would strongly recommend that there be no change in status for the lands within 1,000 feet of the bow of the cliff. This corridor will allow the alignment of the scenic highway which, in turn, could become the lower limit of any permissible urban use. While the scenic highway itself would probably be closer to the cliff than 1,000 feet for most of its length, it would need to be properly contoured and such a corridor would allow this to be done. In any case, Mr. Chairman, the lands up to and including the 19th Century horse trail across the top of the bluff should eventually be included in a state park and the trails properly restored across the entire area and down to the old Kealahakua Village site and Napoopoo. Related sites such as the Puhino Olono and some of the agricultural terraces near the horse trail should all be included in the park area. I would suggest strongly that the careful and artful development of the public recreation and scenic areas of this coast and the preservation of historic sites is good business. It will enhance the value of private holdings. It will give south Kona a chance to become a destination area rather than merely a place where tour buses drive by. Spot zoning with our plan is likely to result in little, but the artificial inflation of land values and the scouring of Kona's natural scenic assets beyond hope of repair. I'm sure the Commission will act for the ultimate good of the entire area.

In short, Mr. Chairman, we hope the action taken will allow us to proceed with the project that will enhance the long range use of the total

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LT. GOV. GILL (Cont'd.)

area and provide a pleasing and authentic attraction for visitors and residents alike.

Mr. Chairman, I think it is well to add at this point that I don't happen to hold the theory that the slow moving processes of government should get in the way of active private development of assets which they own. I think perhaps we've been remiss in this in the past.. It's my hope that with the interest that's been shown here that for once we can lead the way instead of dragging our feet along behind. I think we have the assets here, we have the movement, we have the agreement to do it, and we intend to do so.

Mr. Chairman, if I might comment briefly, subject to correction by the petitioner, as I understand this amended petition, it would put a scenic highway right on the edge of the cliff, if this is the correct alignment - the pink stripe (referring to map). I would just raise the question as to whether engineering can do this without dropping into the bay, but nevertheless, this type of cut would undoubtedly change the contour of the cliff, and I don't think it is aesthetically the thing you're looking for. We're also faced with the problem of running over the old horse trail which is roughly 200, 300 to 400 feet back from the cliff, depending on where are in any particular area. The horse trail should be left in public ownership and should be developed as a historic site and not as part of any private holding. It's too much to ask the private owner, I think, to maintain it.

A further problem which comes up, and I wasn't aware of it during our last hearing, is the inevitable problem of changing the structure of the water. Some of you are familiar with what's happened at Kaneohe Bay, at

LT. GOV. GILL (Cont'd.)

one time a very fine stretch of water. The addition of pollution of commercial fertilizers in the land around it have completely changed the ecology in a good part of Kaneohe. I am told by the University people that the same thing can happen here very easily. You will note in the exhibit that we have given you, their estimation that the addition of nitrogen, either through sewage disposal plants dropping into the bay or leaking into it or of just plain commercial fertilizers that might say be put on a golf course or in a growing area, washing in during heavy rain or percolating in, would tend to change very rapidly the ecology of the surrounding water. Once this happens, you have then gone down the pipe, which is the thing we are hoping to avoid. I think it can be done, certainly with proper planning and certainly with proper engineering.

In short, Mr. Chairman, all we're saying is we think the staff recommendation is adequate at this period of time and that in any case, there should be an adequate corridor here within which the proper scenic highway can be placed and enough time for us to do the acquisition of a state park land and the development that is necessary. We think that all of this can move in phases. Kealahou Ranch has adequate opportunity now, under the staff report, to move ahead on the upper areas where the road and the water is now, where their access is now. By the time we finish the bottom area, perhaps their plans could then be implemented in some other form in that particular portion of the petition.

Are there any questions, Mr. Chairman, or would you like me to call some of the others?

COMMISSIONER:

Are you reasonably certain you can get this plan completed in a year, as so stated. I know this gives or takes a month, but is this something

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COMMISSIONER (Cont'd.)

that there is sufficient funds for in the capability of this community?

LT. GOV. GILL:

Yes. The amount of money available for the planning, I think is more than adequate -- \$55,000. I think that's quite generous. The amount of time I don't believe is as pressing because we have a good part of the work done already. Basically, what we need to do at this point is to get the fellows out there to make the actual alignments, to calculate the actual acreages and the meets and bounds of some of the projects that we are contemplating including here. Acquisition of some of the land, if indeed this is called for, may take a bit longer, obviously, because it will depend on the cooperation of the private owners in the area and certainly on the availability of funds. We should hope that we would have a considerable amount of this money available from the state next spring and we have already money available from the County and from the Bureau of Outdoor Recreation for some of the recreation developments which are included in this plan.

CHAIRMAN:

Do any of the Commissioners have any questions?

COMMISSIONER:

I'd like to know the location of the parcel to be developed . . .

(inaudible) . . .

LT. GOV. GILL:

(The question was answered by Lt. Gov. Gill from the map and the distance between he and the microphone made his response inaudible.)

COMMISSIONER:

And the horse trail would be approximately where from there?

LT. GOV. GILL:

(Response was again inaudible due to reasons stated above.) . . . I don't think that is really the question. The problem here is if you're going to put in a scenic highway that we hope will connect Keauhou all the way to Hookena, it would have to come through this area because you can't do it on the ocean side here. If that highway would be able to follow the contours in some fashion across the top of the cliffs . . . without scarring the edge . . . if you get too close to the edge, you're going to fall into the bay anyway. And this highway, if properly aligned, could serve as the bottom rim of the development very well.

CHAIRMAN:

Are there any other questions?

COMMISSIONER:

If that highway was above the horse trail, does this meet with your approval?

LT. GOV. GILL:

This is the point we're making, that the highway should be above it. I don't think you can engineeringly construct it this close anyway. It should be up here in some fashion to take it all the way around the coast in some proper lines. I really don't know where the precise alignment is. Belt Collins & Associates, as you'll notice from your exhibit there, has recommended a 1,000 foot corridor within which to align. Once it is aligned, the drafting can become the boundary.

CHAIRMAN:

Any other questions?

COMMISSIONER:

Do you anticipate that the alignment will be fixed in this study that will be completed in a year?

LT. GOV. GILL:

I don't see any reason why it can't be. We would have to make some sort of application to the Bureau of Public Roads. To do this, you have to come in with a fairly precise alignment before they'll talk business.

CHAIRMAN:

Are there any other questions? (No response.) Alright, thank you.

LT. GOV. GILL:

Mr. Chairman, if it's alright, we can ask some of the other gentlemen who have come here to make their presentations at this point. I believe Mr. Price from the Commission on Arts and Humanities has a further statement to make. Would you like to take over?

MR. PRICE:

I had the privilege to testify before here in January, and I would like not to repeat if it's alright. I would like to answer questions in such areas as you may have questions. There are 3 points on which I would like to expand the statements which I have made in January.

First let me, as an introductory point, say that I am speaking here as the Director of the State Foundation Culture of the Arts. The State Foundation is the administrator and I am the project director for a state-wise research branch under which we are making a study on environmental and other design. Belt Collins is the consultant to us in this particular area. When we were here the last time, we promised that we were going to say where the highway or the scenic road ought to be. As the Lieutenant Governor read in his report, the recommendation is to prepare a corridor of 1,000 feet. To substantiate that will take me only one or 2 minutes now.

First, it is understood that in the public interest, a scenic drive

MR. PRICE:

is justified and desireable. This is not in order to conflict or contradict the (inaudible) to have a development above it. Kealahou Bay is a historic bay which has been recognized that has not been read by the way during this immediately past Legislature . . . (inaudible) . . . resolution determining Kealahou Bay as one of the state monument areas and requesting that the Department of Land and Natural Resources would make a statewide plan for the determination of other similar state monuments to be administered with the counsel. So legally now, Kealahou Bay as a historic area is recognized.

The second one, among the very few other resolutions and laws which this session passed, is a bill, a senate concurrent resolution, requesting the Department of Transportation to prepare a scenic road and arcway study. Now this study also includes a drive mauka of the block of Kealahou, so these points have now been legally answered. Some action will take place, in addition to the action the Lieutenant Governor mentioned, action which will be done, I suppose, under the Parks Division of the Department of Land and Natural Resources.

As to these 1,000 feet, the recommendation is to reserve a corridor of 1,000. Now what is a corridor? The road, as such, will, of course, not have to be 1,000 feet wide, but in order to find the most appropriate location, the criteria has to be observed. How steep should it be? How wide should the pavement be? Should the embankments be on each side in order to avoid ugly and visuable cut and fill? We know now that the entire area under consideration is in view Aliamanu Point as well as from Captain Cook's area and from the bay. It's very important, therefore, that a right-of-way location be found which will fit the grade, which will

MR. PRICE (Cont'd.)

not conflict with the grade. In addition to this, a very large number of historic archeologic objects - walls, foundations, houses, grave sites - exist. The report from the Bishop Museum shows that the uneven quality and condition of preservation is one of uneven value. Nevertheless, they do exist and are of value and have been recognized to be of value. So, therefore, a corridor which will be, if it allows for proper embankment on each side, and which also will provide for proper tree planting and other planting in order to screen the highway as such and to screen a potential urban development above the highway. It would have to be, our report says, not less than 350 feet. I'm speaking of the right of way that would allow on each side of the highway a strip of 150 feet for landscape treatment for slope appropriation, to restore, to keep trees and to plant trees. In order to save some of the trees, to by-pass important grave sites and historic elements, approximately 7 or 8 alternate sites would have to be found. The one site which would be the best should be chosen. We do not have the authority now to determine the final highway for the roadway. That has to be left up to those people who will make the final committee drawings under contract with the Department of Transportation or with the Federal Bureau of Roads. So, therefore, we do not know which of the 7 sites would be the best. We know that the uppermost of these rights of way is approximately 1,000 feet away from the bluffs. We recommend, therefore, that we retain 1,000 feet under all circumstances in reserve, untouched, until the final road location can be determined.

Are there any questions? I will try to answer them.

COMMISSIONER:

Will this be a service road or a scenic road?

MR. PRICE:

It will be a service road. It will be serviceable and will be, of course, a useable road. Whether you have in mind that it will be an access road to the subdivision, our consultant to the State Foundation recommends that it will be a limited access road. Again, this is a determination which we would not want to make now. We are making only recommendations.

CHAIRMAN:

Are there any other questions? O.K. Thank you.

LT. GOV. GILL:

Mr. Chairman, we have Mr. Renauld from the State Parks Division. Since your last meeting with the State Parks, they have put together several possible development plans on these areas. I think Mr. Renauld can give you a brief description of them and if you care to go into detail, you can do that, too.

MR. RENAULD:

Mr. Chairman and members of the Commission: We have made some very preliminary planning studies of the park historic site development of the area in question. This, to go back further, has been a proposed state park or historical park since something before 1959 and has been in various planning studies on a state-wide basis. It is classed as a very unique combination of scenic, recreational, historical and archeological values, making it of unquestionable state-wide importance. I don't know whether I can add much to what Mr. Souza said last time, because details of the development of this area will depend on the planning studies it's been referred. A careful planning analysis will be required of all of the scenic, archeological, recreational, historical values as they relate to each other and as the highway and other uses relate to each other in this

MR. RENAULD: (Cont'd.)

area. In a very general way, we, of course, considered the heiau area. Maybe I can best refer to the photograph area. (Mr. Renauld moved to the map area and the distance between him and the microphone made his comments inaudible.)

CHAIRMAN:

Are there any other questions? Thank you.

LT. GOV. GILL:

Mr. Chairman, the County of Hawaii has, of course, participated in the conversations all along the way, and the memorandum which is in your folder is a result of conversations with officials of the County of Hawaii and the Chairman. I understand Mr. Suefuji of the Planning Director is here to answer any questions that you may have as to the County's role in this matter.

MR. SUEFUJI:

The County of Hawaii recommended the change from agricultural to urban in zoning and they further stated that they would like . . . (inaudible) . . . The number of feet was to be determined by further study. (The speaker has again moved to map area and is inaudible.)

COMMISSIONER:

What is set up in the way of coordinating the planning? We've heard a number of different people speaking of planning. As for my own limited experience in this field, this can go on indefinitely. And I realize that this certainly has to be planned and thoroughly planned, but there has to be some termination as to when it will be finished. How are you going to coordinate this between the County and the State and the National Park

COMMISSIONER (Cont'd.)

Service and still come out with an answer in a reasonable period of time.

MR. SUEFUJI:

(Response again inaudible due to reasons as stated above.)

LT. GOV. GILL:

I think Mr. Suefuji has put his finger on the approach, and in our conversations with both the Governor and the Chairman of the County of Hawaii, this is precisely what we intend to do. That the County and the State will designate a planner to do the work within a set period of time, come back with the answer, and then we proceed. I think that the elements that we have outlined to you, or merely the main points, in the plan on which we have agreed as being desirable at this point.

Only one final thought, and that is a very simple one. What the Commission does on this petition, and I speak not to the merits of the petition or demerits, will determine pretty much what you're going to have to do on the next block of land and the next block of land and the next block of land, all of which are right in the sense of being ready for some sort of development. I think you've already seen announcements in the paper that another one of the Greenwell plan and Mr. Richards are interested in a development a little further up the coast, running down from Kealahou. These may be all very desirable things, and we hope they will come about. They look to be done by responsible people. Our only hope is that they will make some kind of a viable unit in south Kona so that the historic sites, the recreation, the scenic value, and the commercial development are all in accord. This is our only point.

CHAIRMAN:

Are there any other questions?

UNIDENTIFIED:

Commissioners, Mr. Chairman. On behalf of Kealahou Ranch Limited, I would like to thank you for your consideration and deliberation on our petition and I ask that you accept the recommendation of your staff on the areas above the Napoopoo Road, and I ask that the area below be deferred until we're able to . . . (inaudible) . . . And also, I would like to defer any action on this petition until the plans and development of the County planning . . .

COMMISSIONER:

In other words, the first part of the recommendation of the staff, and then you wish delaying action on the remaining part until the plan appears completed and you have a chance to review it?

COMMISSIONER:

Question. Would it create a hardship for you if we entertained accepting the staff's proposal or the staff recommendations in granting the 92 acres, and of course, after a study has been complete, you could come back with a petition at that time?

UNIDENTIFIED:

Except I'd much rather prefer if we could defer this now and delay it until . . . (inaudible) . . . What you're doing is you're approving one and accepting the denial of this.

COMMISSIONER:

Any denial still gives you the right to come back with additional proof and go the route again. You think from the standpoint of time, you would be better off . . .

UNIDENTIFIED:

No, I think from a standpoint of . . . (inaudible) . . . financing

UNIDENTIFIED: (Cont'd.)

hotels, those who have indicated an interest in . . . If we got a denial, I don't think we could . . . (inaudible) . . .

COMMISSIONER:

You're concerned then with the fact that a denial would set you back much more so than just . . .

COMMISSIONER:

Mr. Chairman, I would like to direct a question to our legal counsel. Can we react to a petition, granting approval to a portion and then not deciding at that same time what to do with the balance of the petition? Would that not constitute a full action, by granting its approval?

LEGAL COUNSEL:

I believe that . . . (inaudible) . . . grant a portion of the petition and defer the balance . . . (inaudible) . . .

COMMISSIONER:

For any limited period of time?

LEGAL COUNSEL:

There could be a limit on the extended period. I would say 6 months to a year sounds reasonable.

CHAIRMAN:

The information that you have received today we hadn't an opportunity to look over either, and we first realized what the information was when we read the papers last night.

COMMISSIONER:

With the pending review of the boundaries in 1969, and possibly by then we would have a final plan established for the protection of the historic sites in the area, would you not think it prudent then on your part

COMMISSIONER (Cont'd.)

to ask for a withdrawal of this portion of the land from the petition and then we can cover it possibly at the review of boundaries?

LEGAL COUNSEL:

Yes, I realize that, but I'm hoping that Mr. Suefuji's . . . the planning company will come up with something before that time.

COMMISSIONER:

Before that time? It would have to be by August 23rd or 24th, 1969.

LEGAL COUNSEL:

What we want to do is leave the door open a little bit on this, and we feel that asking for the delay is the resort that's open. If we can make amendments during that period of time, then . . .

COMMISSIONER:

I don't think you can do it this way.

COMMISSIONER:

I'm afraid of the precedent it might establish for future cases where a staff recommendation might be similar to that which is being presented on your petition.

PETITIONER:

Hasn't Mr. Sims' been deferred?

COMMISSIONER:

Not where it calls for a portion granted, or where we've dealt with a large tract of land like this.

PETITIONER:

May I request a 60 day extension and let's cut it off at that? O.K.?

COMMISSIONER:

Mr. Chairman, I so move, as requested by the petitioner, approval of

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COMPLETION (CONT.)

COMMISSIONER (Cont'd.)

a 60 day extension as recommended by staff, with the lower portion being held for 60 days. Right?

LT. GOV. GILL:

The motion is to approve the staff recommendation; that is to say, approve above Napoopoo Road and defer action for 60 days on the lower portion?

COMMISSIONER:

Right.

COMMISSIONER:

I second the motion.

CHAIRMAN:

Are you ready for the question?

COMMISSIONER:

I wonder if I might ask a question, and that is, what will we have accomplished by waiting 60 days on this lower portion? In other words, we have been talking about completion of a comprehensive plan for this area and the lease will take 6 months. Now I'm wondering if within this 60 days, there is going to be a significant change in all of the facts presented today that will permit the Commission to take action on the lower portion. I fail to see what can be accomplished by postponing the lower action for 60 days unless something definite is going to happen within this 60 days.

COMMISSIONER:

He's asked for that 60 days. If the Commission wants to give him more, we can always give him more.

COMMISSIONER:

I have a question. Legally, can we defer it more than 60 days?

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ОБЕДИТЕЛНИК (ОБЕДИТЕЛНИК)

LEGAL COUNSEL:

My response previously, Mr. Murakami, was that I saw no law that would limit the power of this Commission to defer this thing indefinitely. However, I think that there should be some limits. This should not go on indefinitely, say for a period of 5 years. I think that in this situation here where a plan being formulated by a government agency can take up to 6 months to a year. So I don't think that the delay in this decision is unreasonable. Now would 60 days be sufficient for any plan to be finished?

PETITIONER:

No.

COMMISSIONER:

That's one of the reasons why I would like to go along with the petitioner on his request. I do not agree with counsel that 6 months to a year is a reasonable period of time in which to defer action and if this was going to be in a motion as made before this body, I certainly would not vote for that motion. But as long as it is for 60 days based upon the request of the petitioner, I can see it. That, to me, is reasonable.

CHAIRMAN:

Any other discussion?

COMMISSIONER:

Question.

CHAIRMAN:

Will you poll the Commissioners please?

STAFF:

Commissioner Nishimura.

COMM. NISHIMURA:

Aye.

STAFF:

Napier.

COMM. NAPIER:

Aye.

STAFF:

Choy.

COMM. CHOY:

Aye.

STAFF:

Murray.

COMM. MURRAY:

Aye.

STAFF:

Mark.

COMM. MARK:

Aye.

STAFF:

Murakami.

COMM. MURAKAMI:

Aye.

STAFF:

Woolen.

COMM. WOOLEN:

Aye.

STAFF:

Inaba.

COMM. INABA:

Aye.

STAFF:

Chairman Burns.

COMM. BURNS:

Aye.

STAFF:

Motion is carried.

(Chairman called 10 minute recess.)

COMMISSIONER:

Mr. Chairman, I move that the motion made denying the (inaudible) of Bishop Trust action that was taken by the Commission be reviewed at this time.

CHAIRMAN:

This is the Austin . . .

COMMISSIONER:

Bishop Trust.

CHAIRMAN:

Is it the combination application? It's the Austin-Bishop? I think we have to take these separately, do we not?

COMMISSIONER:

The other is Bishop Estate. This is the Austin-Bishop Trust.

COMMISSIONER:

I second.

CHAIRMAN:

Gentlemen, as you know, I must refrain from taking action on both of these petitions because of possible conflict of interest, so it is necessary that I remove myself and Mr. Choy will continue as Chairman. So you have before you a motion and a second.

(From this point on in the transcript, Commissioner Choy will be referred to as "Chairman" rather than Commissioner Burns.)

CHAIRMAN:

Are you ready for the question? Any discussion?

COMMISSIONER:

We'd like to discuss it first. What grounds would be opening the case?

CHAIRMAN:

I feel that on the basis that I have voted, denying this, knowing that these areas were previously used for urbanization . . . I have gone only on the point that I have wanted both areas to be voted in on (inaudible.) I have spoken with people that if I would call now, granting this, approving it, that they would go along on the other (inaudible). I have always felt since the beginning that both parcels should go or none at all. On that basis alone, I make this motion.

COMMISSIONER:

Basically, what you're talking about then is that we're not dealing with just the Austin-Bishop Estate, but we're really taking into consideration both the Bishop Estate petition and the Austin Estate petition.

CHAIRMAN:

Yes. That is the new evidence that I know. I feel that both parcels will go. I move that we grant this request.

COMMISSIONER:

Is that a request for a rehearing or a request for . . . ?

COMMISSIONER:

Urbanizing the area for approval. But you know, the action that we took on this thing was urbanizing 700 acres.

COMMISSIONER:

No. I'm voting on the basis that . . .

COMMISSIONER:

Five ninety-six.

COMMISSIONER:

No. It goes all the way up.

COMMISSIONER:

Basically what you're talking about is the area which they propose to develop. Not the total area which they requested but just that which they propose to develop.

CHAIRMAN:

My motion is on the basis of the total portion.

COMMISSIONER:

Well, actually, you've asked . . . The motion is not to discuss the case and approve it. You've asked to reconsider the case, not to pass or approve the request.

COMMISSIONER:

Now, what about your past policy decision that the Commission agreed to insofar as the 24 hour review? Is it necessary to take a vote to rescind that policy or . . . ?

CHAIRMAN:

We were not on the board at that time. You weren't on, I wasn't on, Napier wasn't on, a lot of people weren't on. I don't think we should be subject to an agreement that somebody else made if we were not there.

CHAIRMAN:

We discussed it on Maui, and that was 30 days after, so it was past the 24. And he said there was no law subjecting us to any past policies.

COMMISSIONER:

I agree. Let me say this further statement. Cushing says that the

COMMISSIONER (Cont'd.)

effect of adoption of a reconsideration is to abrogate the old statement.

In other words, it's as if you had never taken that prior action.

COMMISSIONER:

Where are we on that time limitation thing? You know, must act within a certain period of time.

COMMISSIONER:

The deadline was the 26th.

COMMISSIONER:

That has expired. The 26th of March. That was the extension that expired.

COMMISSIONER:

They will have to revise the petition.

CHAIRMAN:

Then my motion is out of order.

COMMISSIONER:

To me, the only saving grace would be some kind of a concurrence between the parties that would have extended that time period, you see, in which the Commissioners could act. And since that has expired . . .

CHAIRMAN:

I think the party would be in concurrence.

COMMISSIONER:

He has not concurred to date.

COMMISSIONER:

May I ask you one question? If the Planning Commission denies the petitioner any urban change of boundaries . . . if they are denied, they cannot come to the Land Use Commission?

LEGAL COUNSEL:

Oh, yes. Theirs is only advisory to this Commission in terms of a boundary change. It's only in the case of a special permit where they deny the request that it stops. But when it comes to a boundary change, whether they approve or deny, they still can come back.

COMMISSIONER:

Assuming that we denied then we think it out and approve, they have final say as to how the development will have to come about. In other words, they can disapprove some development plan?

LEGAL COUNSEL:

Right.

COMMISSIONER:

But now that they have approved on the City and County levels, they would probably follow their development plan.

LEGAL COUNSEL:

Probably would, yes.

COMMISSIONER:

Do you think that they have any new evidence to offer?

CHAIRMAN:

No. This is . . . this action is not being done by the petitioner. It's being done by the Commission. We are on the opposite side of the fence, and I am initiating it.

Do we have the privilege of changing our minds at any time? That is the legal opinion you have to give.

LEGAL COUNSEL:

At any time. I think it's . . .

COMMISSIONER:

Are you saying we can go ahead and do what we are thinking of doing and you will decide . . . Right now you cannot say one or another, whether we can legally do it or not. So rather than not take any action at all, take the action then come back and tell us whether the action was legal or not.

CHAIRMAN:

I think this would be a bad policy, because we could bring this up at the next meeting again with legal counsel.

LEGAL COUNSEL:

After I've had an opportunity to look at it.

COMMISSIONER:

So why don't you leave it this way, that we'll bring it up at the next meeting?

CHAIRMAN:

We would ask that you would advise us prior to the next meeting, if we can take this action.

LEGAL COUNSEL:

For reconsideration at this stage . . .

CHAIRMAN:

. . . by the Commission.

LEGAL COUNSEL:

At any time, the Commission can institute a petition for boundary renewal or boundary changes.

COMMISSIONER:

But I think he's talking about the formalities. If this isn't a true initiation, then you've got to have another public hearing, and it's got to go back through the County Planning Commission . . .

CHAIRMAN:

No. It's the petitioner's duty to do that, but in this case, we are . . . The Commissioners are initiating this review.

COMMISSIONER:

I think that on a boundary change initiated by the Commission, the public hearing aspects are still there. Now, if you're talking about a state reconsideration, this is something else.

COMMISSIONER:

I do believe very firmly that there is a right to reconsider within the time set by law to act, but beyond that stage, I'm . . .

COMMISSIONER:

I, for one, don't believe in time limits. I think the Commission has all the power whatsoever.

CHAIRMAN:

But there is a set time of 45 or 60 days set by law to act. They have 15 days to present new evidence; we have to give them an answer within 45 to 90 days.

COMMISSIONER:

But this is a Commission action. This is not a petition action.

LEGAL COUNSEL:

It prescribes a time within which you must take that action. Eighty or 90 days. Or it could be 120 days if the Commission decides to defer action . . . But only on mutual consent between the petitioner and the Commission can you go beyond the deadline limitations. And they did agree with the consent of the Commission for an extension of time, which also has expired.

COMMISSIONER:

We have 90 days actually to expedite all the petitions. This is the

COMMISSIONER (Cont'd.)

law that the Commission decided on to shorten our procedures. We go on a 90 day basis.

LEGAL COUNSEL:

After 60 days but within 120 days of the original receipt of a petition, the Commission shall advertise the public hearing, but now you're talking about after the public hearing. Now between 45 and 90 days after the public hearing, it says here that the Commission shall act upon the petition for change.

COMMISSIONER:

Well, we've acted on it. And the time is expired.

COMMISSIONER:

What about actions beyond that 90 day period? I mean, are they valid and binding? Now you take the Converse situation; what if you gave the guy favorable consideration within that 90 day period, can you after that 90 day period actually deny it? Clearly, in that situation, I don't think so. So it is a close thing as to whether you can re-open it favorably.

COMMISSIONER:

I think on that point, we've got to set some time limit. Otherwise,

. . .

LEGAL COUNSEL:

That's why a 24 hour policy rule has been a good one. It took the pressure off of you guys, and you've stuck with it. How many times have you told petitioners, sorry, you know, you've extended beyond the 24 hour period. Sure, it's a policy and it's a good one, and I think it ought to be a regulation whether it's 24 hours, 48 hours or a week, but it's your protection more than it is anything else.

COMMISSIONER:

The reason I asked on a new evidence basis is because the original basis in the laws here that really mandate a Commission to re-hear a case on new evidence . . .

CHAIRMAN:

We've run into a snag in that time has expired. We were to act in 45 to 90 days. According to legal counsel, the 90 days period has expired so we . . . he could see if the motion is in order legally and, if so or not, he will advise Ramon. Ramon will let us know. Since there is some difference of opinion as to legality, we should not make a motion. We can just as well do it next meeting. Ramon will advise the Commission.

COMMISSIONER:

I wonder whether we ought to hold to a time limit in terms of a decision being final, to take the pressure off the Commissioners. We certainly don't want this pressure for the next 5 years. At one time we had a 24 hour . . . or at least within the same day. I'm just wondering whether we ought to discuss that further or . . .

COMMISSIONER:

Within a 24 hour day would make it really hard.

CHAIRMAN:

How about one week?

COMMISSIONER:

What about one month?

COMMISSIONER:

Assuming we take a 24 hour period, the Commissioners vote against a petition but they want to reconsider . . . can we call and ask for a meeting tomorrow?

COMMISSIONER:

Yes. Get 6 members together . . .

COMMISSIONER:

And what if we couldn't? Just like we're talking about the next meeting now. Are we certain we're going to have enough members?

LEGAL COUNSEL:

I would suggest that we let (inaudible) determine as to whether or not there is legal base to consider, even our entertaining your motion, and then take discussion at next meeting, rather than to discuss it today as to what might be the best time in which to undertake . . .

COMMISSIONER:

We're not up against the problem of making a decision on whether 24 hours, a week or a month at the moment, it seems to me, and I think it would be wise at our next meeting to come to a conclusion.

LEGAL COUNSEL:

And we could do a little bit of research into this. Roberts is the one doing it.

COMMISSIONER:

O.K. If you could check as to the legality and then also if you could report to us as to what are the normal methods employed in the time that exists so that a rational reason could . . .

COMMISSIONER:

Let's talk about schedule. We have Friday, May 17th, set up for a Maui meeting.

(Discussion as to who could attend meeting and who could not, but not all entirely audible.)

We will have two actions to consider so . . .

COMMISSIONER (Cont'd.)

We have 8 members? Anybody else have a conflict?

COMMISSIONER:

Why not the 16th?

COMMISSIONER:

No reason why.

COMMISSIONER:

What's wrong with the 17th? Oh, the 17th is advertised. Well, we can still stop it, can't we, and change it to the 16th?

COMMISSIONER:

What is this? A public hearing?

(Positive response.)

Oh, you haven't run the paper yet. So you can still change it?

(Positive response.)

Why don't we do it the 16th then, or is that a bad day?

COMMISSIONER:

That seems to be a bad day, but with only one guy out, we can go all right, if it's just a public hearing.

COMMISSIONER:

No, there's an action. Is the 17th O.K. with the exception of Alec?

(There was no further recording on the tape after this discussion, even though the meeting was not formally adjourned as yet.)

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