

Adopted  
February 17, 1966

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Public Hearing  
and Meeting

Kahului Library  
Kahului, Maui

November 23, 1966

Commissioners

Present:

Robert G. Wenkam, Chairman Pro Tempore  
Shelley Mark  
Goro Inaba  
Leslie Wung  
Shiro Nishimura

Absent:

Myron B. Thompson  
C. E. S. Burns  
Jim P. Ferry

Staff Present:

George S. Moriguchi, Executive Officer  
Roy Takeyama, Legal Counsel  
Ah Sung Leong, Draftsman  
Dora Horikawa, Stenographer

Mr. Robert Wenkam, Chairman Pro Tempore, opened the hearing and meeting with an introduction of the staff and Commissioners, which was followed by a swearing in of persons who would be testifying during the hearings.

PUBLIC HEARINGS

PETITION OF THE ESTATE OF SOPHIE JUDD COOKE (DEC'D) (A66-135) TO AMEND THE DISTRICT BOUNDARY FOR APPROXIMATELY 4.9 ACRES OF LAND FROM AN AGRICULTURAL DISTRICT TO A RURAL DISTRICT AT KAHANUI, MOLOKAI

Mr. Moriguchi presented the staff report recommending denial of the petition since the need for rural districting in the area had not been substantiated. However, it was suggested that the special permit approach be indicated to the petitioner. (See report on file)

Mr. Meyer Ueoka, attorney for the petitioner, called upon Mr. Soon Oak Lee, a member of the Board of Supervisors of the County of Maui from the Island of Molokai, to answer a few pertinent questions relating to the subject petition.

Mr. Lee testified that he was familiar with the surrounding areas of the land under petition and that a reclassification to a half-acre rural classification would not in any way be contrary to good planning or mar the aesthetics of the area. During his 13 years' residence on Molokai, Mr. Lee had never observed these lands engaged in any agricultural pursuit.

Mr. Frederick P. Whittemore, formerly with the Cooke Trust and presently with the First National Bank of Hawaii, presented background information of the subject parcel. Approximately 50 years ago, Mr. George P. Cooke, then Manager of the Molokai Ranch, received 14 acres of land from the shareholders of Molokai Ranch. Subsequently, Mr. Cooke and his wife gifted the Queen's Hospital with a portion of the land containing the main residence and retained for themselves that part of the parcel under consideration in this petition, to be distributed among the 6 living children in the manner outlined in the subdivision plan submitted to the Land Use Commission. The property has been in residential use for approximately 50 years and had never been used for agricultural purposes.

It was reported by the Executive Officer that most of the surrounding lands were owned by the Molokai Ranch and that lands between the Cooke property and Kalani Urban District were mostly in pasture.

Mr. Robert Ohata, Planning Director of Maui, elaborated on the reasons for the Maui Planning Commission's recommendation for an Urban classification rather than a Rural classification as requested by the petitioner. The Planning Commission was reluctant to introduce a third land use classification in this area which already contained the Urban and Agricultural Districts. Despite the existence of agricultural lands between subject parcel and the Kalani Urban District, it was anticipated that this property in between would fall in line and become a natural extension of the Urban District in the near future, creating a contiguous urban area.

Mr. Ueoka suggested that perhaps the Maui Planning Commission could envision half-acre estates in the area since this met with the minimum requirements of an Urban District.

Mr. Ueoka also pointed to the fact that the first petition by the Cooke Estate for reclassification to an Urban District for the subject parcel had been denied by the Land Use Commission. Mr. Ohata commented that the Molokai Planning Advisory Committee had also recommended a rural classification for the area but the Maui Planning Commission maintained its prior recommendation for an Urban District.

Mr. Ohata felt that the Molokai Ranch might agree to an urban classification for that property in between if subject lands were changed to urban, and this would obviate the possibility of spot zoning. He also added that under the concept of the Molokai General Plan, this area could be considered urban. The whole outlook for Molokai's growth had changed drastically following the overwhelming success of the first hotel, and the trend was towards urbanization of this whole area.

In answer to Chairman Wenkam's referral to a special permit approach, Mr. Ohata replied that the proposed use did not fall under the category of "unusual and reasonable use" as stipulated in the regulations. Chairman Wenkam offered that the special permit route could be employed for unusual circumstances, such as in this instance, where a residential land use pattern had been set up for many years in an Agricultural District.

Mr. Lee justified his committee's stand for a rural classification on the basis that the surrounding areas were predominantly half-acre tracts and from

the standpoint of aesthetics, this would be more acceptable. He thought that anything less than 12,000 square feet should not be considered.

Mr. Whittemore, as Vice President and Trust Officer of the First National Bank representing the Molokai Ranch, thought that there would be no objection to reclassifying their in-between lands to a Rural District.

With respect to the petitioner's lands, Mr. Whittemore commented that they would have no objection to a special permit as long as it resulted in an acceptable solution.

The tax burden that would be equitably borne by the heirs of the Cooke Estate and the resultant contribution to the economy of the Island of Molokai, which would follow subdivision of subject parcel, were suggested by Mr. Ueoka.

With reference to the Maui County Commission's recommendation for an Urban classification, Mr. Ueoka argued that the requested rural classification would be more consistent with the existing general use of the area and with the intent of the late Mrs. Sophie Cooke. He added that although water service was not available, the Molokai Ranch Company would supply this and that the County would not be burdened with additional costs.

Mr. Ohata advised that the matter of water availability had been checked out with the Manager and Chief Engineer of the Water Division and that these facts had been elicited.

1. There was no water shortage for the present.
2. Extensive urbanization would create a water shortage.
3. However, the source could be expanded and developed to accommodate further urbanization.

There being no further discussion, the hearing was closed.

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PETITION OF MAUI VENTURES (A66-134) TO AMEND THE DISTRICT BOUNDARY FOR APPROXIMATELY 49 ACRES OF LAND FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT AT MAKAWAO, MAUI

Approval of the entire 49 acres under petition from agricultural to urban was recommended by the staff on the basis that the proposed development would be greatly superior to any that might be developed in the many small lots within the Urban District that are presently used for agricultural pursuits (see copy of report on file). The staff felt that development of this area, which is more centrally located and closer to urban facilities, would create a better community.

Mr. Ohata, Maui Planning Director, clarified the position taken by the Maui Planning Commission in recommending two classifications for the lands under petition. The general planning concept for Maui in the Makawao area for that rear portion, presently occupied with a mixture of farms planted in pineapple and small lots, was for a rural classification. Mr. Ohata wholeheartedly agreed that the entire area could be reclassified to urban--however,

it was a question of whether to urbanize all at once or to do it in stages. The Maui Planning Commission favored the incremental approach. It would also allow the property owners in the rear portion an option to either retain the agricultural use in a rural classification, or to develop it in accordance with the County General Plan.

Commissioner Inaba raised the propriety of such a plan inasmuch as this would constitute mixed and non-conforming uses. Mr. Ohata argued that what was conforming in the Rural District was conforming in the Urban District, although the reverse was not true. He added that the Maui subdivision regulations were specific in their requirement that rural type subdivisions maintain urban standards.

Mr. Ohata agreed that it did appear as though good planning concepts were being violated under their recommendation. However, their concept of a Rural District was for a residential type of use, wherein raising of pigs, bees, etc. would only be by a special permit. The Maui Planning Commission's recommendation for dividing the parcel into two districts was based on the fact that the rear portion was planted in pineapple and development in stages seemed a more acceptable plan.

Mr. Takeyama, legal counsel, advised that unless an amendment to the petition were filed by the petitioner, the Commission could not entertain the recommendation for a rural classification since the petition specifically requested an urban classification and the legal notices had been published on that premise.

Mr. Ohata agreed that the demand for urban lands was not critical in this area--however, due to the reliability and competence of the developers, they did not want to preclude the development in toto and therefore had recommended as they did.

Commissioner Mark requested that Mr. Ohata comment on the staff's recommendation to reclassify the northern and southern extremities from urban to agricultural.

Mr. Ohata suggested that since the Land Use Commission was mandated by law to review the district boundaries every 5 years, this matter could be considered at that time.

Mr. Michael McCormack, petitioner, commended the staff for an accurate and comprehensive analysis of a peculiar situation. The significant point in connection with their petition was that 76% of their perimeter boundary was bounded by urban lands. Contrary to testimony presented earlier, only 25% of the mauka portion was planted in pineapple and there were other areas in the proximity of petitioner's lands which were available for pineapple fields.

Mr. McCormack submitted that a \$375,000 community center building was presently under construction directly across from petitioner's lands and it seemed incongruous that the area across from a community facility should be zoned agricultural.

With reference to the demand for urban-type development, Mr. McCormack cited the successes enjoyed by the Pukalani Subdivision and the Dream City

Subdivision. He added that the supply could not meet the demand.

Mr. Dan Ostrow, also petitioner, was duly sworn in. He testified that petitioners were also a construction company and that they had received commitments from the Bank of Hawaii and bonded by American Factors to build two model homes.

Referring to the tight money situation, Mr. Ostrow submitted that "tight money was not tight money" as long as the home was of substantial construction in a favorable location. They had not encountered any difficulty in this respect. Mr. Ostrow added that there were already potential buyers for the type of homes he proposed to build.

Mr. McCormack brought out that their plans for the proposed subdivision called for  $\frac{1}{4}$  to  $\frac{1}{2}$  acre lots, with 1-acre lots at the top.

Commissioner Wenkam voiced his concern over arbitrarily rezoning an area presently planted in pineapple and felt that a broader picture of the pineapple cultivation in this area was desirable.

Mr. McCormack advised that he had submitted with this petition, data relating to the availability of approximately 100 acres of agricultural lands, that are not now in harvest, for pineapple growing purposes. The present pineapple grower on their property has 3 years remaining on his lease and he had indicated that he was agreeable to moving his operations to another location.

In Mr. McCormack's opinion, the principles of good planning concept would be best served by lining up the entire parcel with the already abutting urban boundaries, rather than to rezone it into two classifications as recommended by the Maui Planning Commission. He thought the 125-lot proposed subdivision would probably be marketed within  $2\frac{1}{2}$  years.

Since there was no further testimony, the hearing was closed thereafter.

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PETITION OF WAILUKU SUGAR COMPANY (A66-136) TO AMEND THE DISTRICT BOUNDARY OF APPROXIMATELY 0.8 ACRES OF LANDS FROM AN AGRICULTURAL DISTRICT TO AN URBAN DISTRICT AT WAILUKU, MAUI

In view of the fairly tight urban scene in the Main Street area and in view of the community facilities available, it was recommended by staff that the petition be granted (see copy of report on file).

Mr. Ohata made a strong plea for approval of the petition since this would alleviate the traffic congestion by providing additional parking spaces for the mortuary and best serve the public welfare.

Mr. Alex Butchart, Superintendent of Wailuku Sugar Company, submitted that they would be gaining good cane lands in exchange for a parcel that was both hazardous and difficult to utilize for cane cultivation. Better cane could also be grown in this exchange which would result in 2 plus acres of cane land for  $\frac{8}{10}$ 's acre to the Nakamura Mortuary. The hearing was closed thereafter.

PETITION OF KAUPU RANCH (A66-138) TO AMEND THE DISTRICT BOUNDARY FOR APPROXIMATELY 2 ACRES OF LAND FROM CONSERVATION TO AGRICULTURE AT KAAPAHU, HANA, MAUI

Based on the availability of several thousand acres of agricultural lands in the immediate area of the subject conservation lands, and on the basis that the proposed use was intended to resolve a personnel problem rather than a land use problem, it was the staff's recommendation that the petition be denied (see copy of report on file).

Mr. Robert Ohata offered a detailed account of the unusual topography in and around the subject parcel, pointing out the location of the stream, roads, and the boundaries of the Agricultural and Conservation Districts. He advised that it was the Maui Planning Commission's contention that the road more properly should have been the dividing line between the Agricultural and Conservation Districts, rather than the stream.

Commissioner Wenkam reflected that during the boundary deliberations by the Land Use Commission, it was their decision to place all shorelines which embraced scenic values into the Conservation District. Mr. Ohata countered that the shoreline in this area was dotted with small ranches and homes right down to the sea and that the Land Use Commission had zoned it as agricultural lands. The point under debate here was the precise boundary between the Conservation and Agricultural Districts.

Mr. Ohata did not feel that the subject parcel represented any scenic value since it sloped back towards the stream and offered no view. Therefore, it was not appropriate as a lookout for the pali.

Mr. Richard Schulze, attorney for the petitioners, submitted that this was an extremely important request to the Kaupo Ranch. He referred to stipulations cited in the Land Use District Regulations and justified petitioner's position as follows:

1. "The petitioner has submitted proof that the land is usable and adaptable for the use it is proposed to be classified."

Mr. Schulze stated that he had shown proof from the Department of Agriculture that the land was ideally suited to agriculture.

2. "Petitioner has submitted proof that the area is needed for a use other than that for which the District in which it is situated is classified."

Mr. Schulze maintained that there were two parts to the question of need--the need of the petitioner and the need for conservation. If the land were marginal and not absolutely essential for conservation purposes, then perhaps a lesser need could be considered. In terms of petitioner's needs, Mr. Schulze explained that he wished to correct the impression suggested in the staff report that their request was a plea in behalf of Dr. Burgess. Instead, their request was for a real desperate need of the Kaupo Ranch to provide suitable housing for a highly trained young manager, capable of taming the wild lands to develop the ranch to its full potential. It was extremely important

to build this home within a reasonable distance from medical, dental, school facilities, since there were little children involved. It was also important from the standpoint of attracting and keeping the caliber of talent required for this job.

It was the petitioner's intent to deed this parcel to Dr. Burgess, who would undertake the construction of the home at his own expense. The ranch would retain the right to purchase the home back from Dr. Burgess upon the termination of his services.

Dr. Russell Burgess, manager and veterinarian of Kaupo Ranch, advised that he and his family presently resided approximately two miles from Kaupo Village, which could only be reached by traversing over extremely rough dirt roads. Kaupo Village itself consisted of an abandoned school house and a small store which operated for 3 hours a day. Since the discontinuance of Kaupo School, the children have been attending Hana School which involved 11 hours a day from the time they arose in the morning until they reached home in the afternoon. Dr. Burgess felt that this was much too long a day for the little children. During the rainy season, the roads occasionally became totally impassable. They were also isolated from medical assistance. He added that water was presently available and electricity will also become available in the vicinity of the parcel under petition.

Mr. Schulze submitted that notwithstanding the fact that Kaupo Ranch owned vast acres of lands, the whole eastern end was extremely hilly on the mauka side of the road and there was not a single site suitable for building a home except the parcel presently under petition.

In reply to Chairman Wenkam's inquiry as to why petitioners had not sought the special permit approach, Mr. Schulze asserted that he did take the initial steps to do so but he had had the distinct feeling his request would be denied by the Department of Land and Natural Resources. Also, the protection to Dr. Burgess in his ownership of the land for as long as he stayed with Kaupo Ranch could not be accomplished under the special permit approval.

Chairman Wenkam commented that it was his understanding of the law that a special permit could be granted to subdivide one lot. Mr. Takeyama, legal counsel, refrained from commenting on this matter since he was not familiar with the subdivision provisions of Regulation 4 of the Department of Land and Natural Resources.

Mr. Schulze argued that if the special permit to subdivide one lot were granted by the Department of Land & Natural Resources, the petitioner's request with the Land Use Commission would not be any more injurious to the land for the proposed use. Chairman Wenkam commented that under a special permit, the construction and design of the building would fall under the purview of the Department of Land & Natural Resources, thereby providing the State with some control over any harmful effects that might befall the Conservation District.

The hearing was closed thereafter.

## ACTION

It was reported that action on the petitions by Lihue Plantation Co., Ltd. (A66-124) and Alvin Badenhop (A66-129) would not take place today based on the petitioners' request for a deterral since only 6 Commissioners had indicated attendance at this meeting and a minimum of 6 votes would be required to obtain approval. They expressed their preference for action on their petitions when the attendance of more than 6 Commissioners could be assured.

Commissioner Wung moved to postpone action on the two petitions until the next meeting, seconded by Commissioner Inaba. The motion was carried.

## ADOPTION OF MINUTES

Commissioner Nishimura moved to approve the minutes of the meeting of August 26, 1966 as circulated, seconded by Commissioner Wung. The motion was carried unanimously.

## DIAMOND HEAD STAFF REPORT

Mr. Moriguchi, Executive Officer, informed that staff had presented its recommendation of the Diamond Head Boundary on October 2, 1965, following instruction by the Commission to prepare such a study. Mr. Moriguchi summarized staff's recommendation as follows:

1. In the Fort Ruger area, it was recommended that the present Conservation District indicated by the red line which lies above the 50% slope be moved down to the blue line just mauka of the Cannon Club.
2. In the area of the State's subdivision as shown by the blue line, it was proposed that the Conservation line be moved down to coincide with the mauka lot line of the subdivision. The present Conservation line was mauka of the subdivision.
3. The major change recommended was for the Diamond Head Park to be entirely reclassified into the Conservation District, including several smaller parcels.

Chairman Wenkam warned that there will be considerable urban pressures placed on Diamond Head. He felt it would be appropriate for the Land Use Commission to be very specific in its delineation of the Conservation District boundary lines to include all areas in the Conservation District that are not presently in urban use.

Commissioner Inaba raised the question of pinpointing these boundary lines on the ground to avoid any controversies at a later date. Mr. Moriguchi advised that this could generally be accomplished since the boundaries were coincident with the road lines.

In response to Commissioner Mark's concern over any conflict with the City Planning Commission's action on the subject matter, Chairman Wenkam informed that the City's plans only involved lands in the Urban District.



Commenting on the historical monument plan presently under study by the Department of Land & Natural Resources, Chairman Wenkam observed that a public hearing on Diamond Head would help to pin the matter down. Any information Commissioner Ferry might contribute with respect to the monument at the time of the hearing should be reflected in the Conservation line.

Commissioner Nishimura moved that the Land Use Commission direct the Executive Officer to initiate a petition to hold a public hearing in Honolulu on the Diamond Head Conservation District, at a time agreeable to the Department of Land & Natural Resources. The motion was seconded by Commissioner Inaba and carried.

#### NEXT MEETING SCHEDULE

It was announced that the next meeting date had been set for December 16 and 17, 1966, with the continuation of the hearing of the Hirai petition to be held on Saturday. Mr. Moriguchi advised that staff was in receipt of a letter from the Moanalua Garden Community Association requesting that the continuance of the hearing on the Hirai petition be held at the Moanalua School cafeteria. It was Mr. Takeyama's opinion that in fairness to all parties concerned, the hearing should be held in a neutral area away from the grounds of controversy.

The Commission was in general agreement with Mr. Takeyama's views and directed staff to determine a suitable meeting place that would accommodate a large gathering.

The meeting was adjourned at 4:50 p.m.