

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
THE STATE OF HAWAII, DEPARTMENT) DOCKET NO. A78-448
OF PLANNING AND ECONOMIC DEVELOPMENT,)
) THE STATE OF HAWAII,
on behalf of) DEPARTMENT OF PLANNING
) AND ECONOMIC DEVELOPMENT
)
THE STATE OF HAWAII, DEPARTMENT OF)
LAND AND NATURAL RESOURCES and THE)
DEPARTMENT OF TRANSPORTATION,)
)
to Amend the Conservation Land Use)
District Boundary to Reclassify)
Approximately 7.745 Acres of Land,)
Tax Map Key No. 7-3-43: 4, at)
Kalaoa, North Kona, Island and)
County of Hawaii, into the Urban)
Land Use District)
_____)

DECISION AND ORDER

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DECISION

THE PETITION

This matter arises from a petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations by the DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT, STATE OF HAWAII, who is requesting that the designation of the subject property which is owned by the State of Hawaii, be amended from the Conservation to the Urban district. The requested change consists of property comprising approximately 7.745 acres, situated at Kalaoa, North Kona, Island and County of Hawaii. The subject property is more particularly identified as Tax Map Key No. 7-3-43: 4.

PURPOSE OF PETITION

The subject parcel is a portion of a 329.545 acre area, being established by the Natural Energy Laboratory of Hawaii, for an energy research facility at Ke-ahole Point.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on November 21, 1978. Due notice of the hearing on this Petition was published on February 2, 1979, in the Hawaii Tribune Herald and the Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on February 22, 1979. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on March 9, 1979, in Kailua, Kona, Hawaii.

The Department of Planning and Economic Development, the Petitioner herein, was represented by Tatsuo Fujimoto and the County of Hawaii was represented by Deputy Corporation Counsel, Sandy Pechter.

The witnesses presented by the aforementioned parties were as follows:

Petitioner

Abe Mitsuda - Planner with the Department of Planning and Economic Development

County of Hawaii

Duane Kanuha - Deputy Planning Director for the County of Hawaii Planning Department

Norman Hayashi - Staff Planner with the County of Hawaii Planning Department.

POSITION OF THE PARTIES

County of Hawaii - Approval.

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District is found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- "(1) 'U' Urban District. In determining the boundaries for the 'U' Urban District, the following standards shall be used:
- (a) It shall include lands characterized by 'city-like' concentrations of people, structures, streets, urban level of services and other related land uses.
 - (b) It shall take into consideration the following specific factors:
 - 1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
 - 2. Substantiation of economic feasibility by the petitioner.
 - 3. Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection.
 - 4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.
 - (c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects.
 - (d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on State or County General Plans.

- (e) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State and County General Plans.
- (f) Lands which do not conform to the above standards may be included within this District:
 - 1. When surrounded by or adjacent to existing urban development; and
 - 2. Only when such lands represent a minor portion of this District.
- (g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.
- (h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape."

FINDINGS OF FACT

The panel of the Land Use Commission, after having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein, makes the following findings of fact:

- 1. The subject property, owned in fee simple by the State of Hawaii, is located at Ke-ahole, North Kona, Island and County of Hawaii, and consists of approximately 7.745 acres, more particularly described as Tax Map Key No. 7-3-43: 4. Title to the property was acquired by the State of Hawaii pursuant to a Deed dated October 31, 1962, and recorded at Liber 4407, Page 406, after the prior owner, the United States of America, determined that the land was

no longer needed for lighthouse purposes. The subject property is administered by the Department of Land and Natural Resources, State of Hawaii, pursuant to Chapter 171 of the Hawaii Revised Statutes.

2. The existing State Land Use classification of the subject property is Conservation.

3. The subject property is located on the west coast of the Island of Hawaii at approximately 7 miles from the town of Kailua, Kona. The property is located Makai of the Queen Kaahumanu Highway and Ke-ahole Airport, adjacent to the Ke-ahole Point lighthouse.

4. The Land Use Pattern Allocation Guide Map of the County of Hawaii General Plan designates the area for industrial uses. The County Zoning designation is Open (O). The subject property is also situated within the County's Special Management Area. An amendment to the County General Plan will not be required if the Urban district boundary change is approved for the subject property.

Hawaii County Planning Commission has granted the Natural Energy Laboratory of Hawaii a Special Management Area Permit in 1977 and 1978 to allow ocean research and baseline data collections and temporary support facilities within the area. The 1978 Permit was subject to the following conditions:

a. That the proposed development shall conform substantially to the plans submitted and the representations made by the petitioner.

b. That construction of the proposed phase one improvements shall commence within one (1)

year from the effective date of the SMA Use Permit and be completed within two (2) years thereafter. Prior to commencing construction of any of the proposed structures, the petitioner or its authorized representative shall submit plans for plan approval and shall be responsible for receiving final plan approval.

c. That the petitioner or its authorized representative shall obtain a grading permit prior to construction of the access road from the Queen Kaahumanu Highway to the OTEC test site and the grading of the OTEC test site.

d. That intensive archaeological surveys consisting of detailed mapping and documentation shall be conducted on all areas scheduled for construction or grading. Reports of these surveys shall be submitted to the Planning Department and the State Historic Preservation Office. Said reports shall be submitted prior to the issuance of a grading permit.

e. That salvage archaeological excavations shall be conducted in Area 4 and Area 6 of the Bishop Museum Report dated May, 1978 and in Locality 4 of the Bishop Museum November, 1975 report if these areas are to be disturbed by the proposed access road corridor. Reports shall be submitted to the Planning Department and the State Historic Preservation Office prior to the issuance of a grading permit. If, however, these areas are not to be disturbed by the access road corridor, protective measures, as approved by the Planning

Department, shall be undertaken to prevent disturbance to these areas.

f. That should any unanticipated archaeological sites or remains be found during construction and/or land preparation activities, they shall not be disturbed until a review and clearance has been obtained from the Planning Department.

g. That construction of the proposed phase two facilities, identified as the Sea Coast Test Facility, shall commence within three (3) years of the effective date of approval of the SMA Use Permit and be completed within two (2) years thereafter. The petitioner or its authorized representative shall submit plans for plan approval prior to construction and shall be responsible for obtaining final plan approval.

h. That the access road connection at the Queen Kaahumanu Highway shall meet the requirements and standards of the Land Transportation Facilities Division of the State Department of Transportation.

i. That all other applicable rules, regulations and requirements, including those of the Department of Health and the Department of Water Supply, shall be complied with.

5. On February 17, 1978, the State Land Use Commission approved a boundary amendment to redistrict 822.66 acres of land from Conservation to an Urban district. The lands involved in Docket No. A77-430 are situated adjacent to and Mauka of the subject property. Of the total area redistricted under Docket No. A77-430, 500.86 acres are devoted to the existing

Ke-ahole Airport, with the surplus being held for future airport development. The remaining 321.80 acres are being used to establish the Natural Energy Research Laboratory. The subject 7.745 acre parcel was not included in the Petition filed by the Department of Transportation, State of Hawaii in Docket No. A77-430, inasmuch as the subject parcel was not under the jurisdiction of the Department of Transportation at the time. Subsequently, on May 12, 1978, the Board of Land and Natural Resources approved and set aside the subject property to the Department of Transportation. On October 27, 1978, the Board of Land and Natural Resources, State of Hawaii, approved the issuance of a direct lease of approximately 321.8 acres at Ke-ahole, including the subject property, to the Research Corporation of the University of Hawaii for the establishment of the Natural Energy Laboratory of Hawaii.

6. The Natural Energy Laboratory of Hawaii was established by Act 236 of the 1974 State Legislature for the purpose of conducting research and developing alternate energy resources such as solar energy, ocean thermal energy conversion, and biomass conversion. Act 236 also provided that the Laboratory be located in the area under consideration because of the availability of cold deep ocean water; a warm ocean surface layer, not subjected to strong seasonal cooling; high annual solar radiation; and adequate quantities of undeveloped land suitable for mariculture and aquatic bioconversion. Natural Energy Laboratory of Hawaii will be acting as a landlord for the subject property and be responsible for providing the access road and basic utilities (electricity, sewer, water and telephone) to various interested

research organizations utilizing the area for their projects. The three major natural energy research programs being considered for the site are as follows:

a. Ocean Thermal Energy Conversion: This project proposes to install a plant that would utilize the thermal difference between the surface and deep ocean waters to generate electrical power.

b. Biomass Conversion (Aquaculture): This project would utilize the cultivation and harvesting of plant and animal forms either as a food source or for thermal conversion of the material to produce energy.

c. Solar: This project proposes to test various direct solar energy systems that will be developed in the future.

6. The subject property is presently being used by the Natural Energy Laboratory of Hawaii under a Conservation District Use Permit to conduct alternate energy research projects and has been graded to some extent to accommodate its existing facilities.

7. The property and facilities surrounding the subject property include the unmanned Ke-ahole Point lighthouse, Ke-ahole Airport and barren lava fields.

8. The United States Department of Agriculture Soil Conservation Service's Soil Survey Report issued in December of 1973, classifies the subject property soil as Pahoehoe Lava Flows. The Land Study Bureau's overall master productivity rating for agricultural use is "E" or Very Poor.

9. The subject property slopes Mauka to Makai (east to west) and the largest percentage of the property are of a 1% slope or less.

10. The property is located at approximately mean sea level elevation of 20 feet.

11. Average annual rainfall for the subject property is between 16 to 17 inches per year and the natural drainage system consists of rainwater percolating through the layers of highly permeable lava to the water table below. Runoff, if any, is into the ocean.

12. The subject property is located favorably in respect to tsunamis and has not experienced severe damage from prior tsunamis. The coast line is characterized by low cliffs from 5 to 10 feet high with pockets of sand and cobble beaches.

13. Access and utilities will be provided to the subject property as follows:

a. Highway: Access to the Natural Energy Laboratory of Hawaii site will be provided by a two-lane, 24-foot wide road leading from Queen Kaahumanu Highway.

b. Electricity and Telephone: Electrical system will connect to the existing system at the Ke-ahole Airport Electrical Utility Building. Telephone communication capability of 21 channels will be made available from the telephone line on Queen Kaahumanu Highway through an underground duct to be installed adjacent to the new access road.

c. Water: Two alternative water systems have been arranged for the Natural Energy Laboratory

of Hawaii site. The first alternative involves tapping into the County water system. But in the event the County water system is unable to satisfy the water needs for the research center, provisions have been made to tap into the airport supply system and through use of a 300,000 gallon storage tank, provide needed water for the subject site.

d. Sewerage: Sewage disposal will be through a collection in a 200 gallon wet well and then pumped through a force main into a sewer manhole located near the airport control tower. The manhole in turn will tie into the airport sewage treatment plant which has a capacity of handling foreseeable sewage requirements.

14. Development of the subject property will affect the environment as follows:

a. Land: Construction will result in a change in the land use from natural to improved land thereby causing an unavoidable adverse impact on the aesthetics of the natural land.

b. Vegetation: A certain small amount of natural vegetation will be destroyed; however, the environmental effects are expected to be minimal. No endangered plant species are known to exist in the area.

c. Wildlife: There will be minimal impact on the small number of birds, feral goats and Hawaiian hoary bats that inhabit the area.

d. Archaeology: Archaeological sites will be avoided wherever possible. Where avoidance is not practical, archaeological surveys will be conducted to determine the proper site disposition.

e. Drainage: Developments within the subject property should not alter the natural drainage pattern or substantially increase runoff.

f. Employment: Permanent employment is expected to be generated from the development of the subject property. The hiring of skilled technicians and office workers to augment the highly trained specialists at the Natural Energy Laboratory of Hawaii is a definite possibility. The aforementioned job openings will probably be drawn from the Kona work force.

g. Agriculture: There will be no impact on agriculture since the area is not zoned as agriculture and is blanketed with lava with limited agricultural potential.

h. Recreational Activities: The development of the Natural Energy Laboratory of Hawaii site will have a definite impact on the recreational use of the Ke-ahole Point area. Construction of the access road will foster improved hiking, fishing, and diving. These opportunities will be available to local residents and to the visitor industry.

i. Environmental Impact Statement: The Environmental Impact Statement for the Natural

Energy Laboratory of Hawaii Phase I development has been completed and accepted by the Governor to be adequate in form and content.

15. Based upon the review of the Petition, the evidence adduced at the hearing, and the materials and documents contained in Docket No. A77-430, which were incorporated by reference by the Petitioner, and the policies and criteria of the Interim Statewide Land Use Guidance Policy, the County of Hawaii Planning Department has recommended that the reclassification be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 7.745 acres of land, situated at Kalaoa, North Kona, Island and County of Hawaii, from Conservation to Urban, and an amendment to the District boundaries accordingly is reasonable, non-violative of Section 205-2 of the Hawaii Revised Statutes, and is consistent with the Interim Statewide Land Use Guidance Policy established pursuant to Section 205-16.1 of the Hawaii Revised Statutes, as amended.

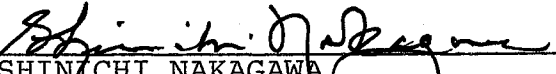
ORDER

FOR GOOD CAUSE appearing, it is hereby ordered that the property, which is the subject of the Petition in this Docket No. A78-448, consisting of approximately 7.745 acres of land, situated at Kalaoa, North Kona, Island and County of Hawaii, identified as Tax Map Key No. 7-3-43: 4, shall be and the same is hereby reclassified from the "Conservation" district to the "Urban" district classification, and the district boundaries are amended accordingly.

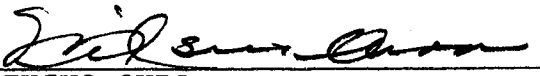
DONE at Honolulu, Hawaii, this 12th day of July, 1979, per Motion on June 26, 1979.


LAND USE COMMISSION

By 
C. W. DUKE
Chairman and Commissioner


By 
SHINICHI NAKAGAWA
Vice Chairman and Commissioner

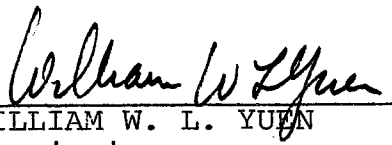
By 
SHINSEI MIYASATO
Commissioner

By 
MITSUO OURA
Commissioner

By 
GEORGE R. PASCUA
Commissioner

By 
CAROL B. WHITESELL
Commissioner

By 
EDWARD K. YANAI
Commissioner

By 
WILLIAM W. L. YUEN
Commissioner

BEFORE THE LAND USE COMMISSION
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Map Key No. 7-3-43: 4, at)	
Kalaoa, North Kona, Island)	
and County of Hawaii, into)	
the Urban Land Use District)	
)	
)	

CERTIFICATE OF SERVICE

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

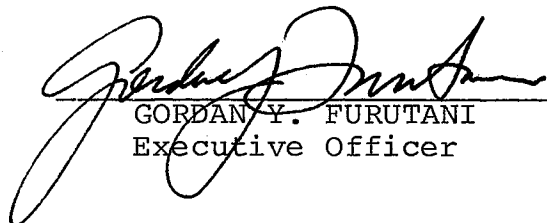
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DATED: Honolulu, Hawaii, this 17th day of July, 1979.



GORDAN Y. FURUTANI
Executive Officer