

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A80-479
FRANCES H. LINDSEY)
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To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 1.0 Acre, TMK:)
5-7-3: 81, at Waialua, Molokai,)
County of Maui, State of Hawaii,)
into the Rural 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 fee owner of the property who is requesting that the designation of the subject property be amended from the Agricultural to the Rural District. The requested change consists of property comprising approximately 1.0 acre of land situated at Waialua, Molokai, County of Maui. The property is more specifically identified as Tax Map Key No. 5-7-3: 81.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Agricultural to Rural is so that Petitioner can subdivide the property into two (2) lots and convey one of the lots to her daughter so that she may have the opportunity of building her own

residence on the subject property. Petitioner will continue to reside on the other lot in her existing personal residence.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on February 4, 1980. Due notice of the hearing on this Petition was published in the Maui News and The Honolulu Advertiser on June 13, 1980. Notice of the hearing was also sent by certified mail to all parties herein on June 10, 1980, and no timely application for intervention or request to appear as a witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on July 17, 1980, in Kaunakakai, Molokai, Hawaii.

The Petitioner herein and her husband appeared on their own behalf; the County of Maui was represented by Deputy Corporation Counsel Lee Ohigashi; and the Department of Planning and Economic Development was represented by Ms. Esther Ueda.

POSITION OF THE PARTIES

Maui County Planning Department - Approval.

Department of Planning and Economic Development - Approval.

APPLICABLE REGULATION

Standards for determining the establishment of a Rural District are found under Part II, Section 2-2(4) of the State Land Use Commission's District Regulation. Said regulation provides in pertinent part that:

"(4) 'R' Rural District. In determining the boundaries for the 'R' Rural District, the following standards shall apply:

(a) Areas consisting of small farms; provided that such areas need not be included in this District if their inclusion will alter the general characteristics of the areas.

(b) Activities or uses as characterized by low density residential lots of not less than one-half (1/2) acres and a density of not more than one single-family dwelling per one-half (1/2) acre in areas where 'city-like' concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low density residential lots.

(c) Generally, parcels of land not more than five (5) acres; however, it may include other parcels of land, which are surrounded by, or contiguous to this District and are not suited to low density residential uses or for small farm or agricultural uses."

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 Petitioner herein, is located at Waialua, Molokai, County of Maui, State of Hawaii, and consists of approximately 1.0 acre, more particularly described as TMK: 5-7-3: 81. The subject property is located mauka of Kamehameha Highway, approximately .6 mile east of Waialua Stream, and approximately 20 miles east of Kaunakakai.

2. The existing State Land Use classification of the subject property is Agricultural as set forth on the Land Use District Boundary Map MO-5 (Halawa). The existing Molokai Island Land Use Plan, as adopted in 1969, specifies "rural use" as being appropriate for the Waialua area. The subject property is unzoned by the County of Maui. The property is also situated within the County's Special Management Area.

3. The subject property is presently utilized for residential purposes and has upon it a single family dwelling, garage, and workshop area. The remaining portion of the subject property is vacant and maintained with scrub vegetation.

4. Lands makai of the subject property and across from Kamehameha Highway are situated within the State Land Use Conservation District. All other adjacent lands to the subject property are designated Agricultural. The closest Rural District lands to the subject property are situated approximately .25 mile southwest along Kamehameha Highway.

5. The land use of the immediate surrounding area can be characterized as a predominantly Rural-Residential community as evidenced by scattered residential developments, small farms, and large open space areas. The area surrounding the subject property is characterized by non-intensive agricultural open space uses and there are two other residences located near the subject property.

6. The subject property slopes moderately in a mauka (north) to makai (south) direction. The subject property is not situated within the tsunami inundation area of the 100-year flood prone areas as defined by the U. S. Department of the Interior, Geological Survey Map of Flood Prone Areas, 1973.

7. The Land Study Bureau's Overall Master Productivity Soil Rating for Agricultural Use is Class "E" or "Very Poor" for soils of the subject property. There is presently no active agricultural use of the subject property. The subject property is not classified as Prime, Other Important or Unique agricultural lands under the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

8. The subject property contains no known significant natural, scenic or recreational resources. No known archeologic or historic sites are present on the subject property. No significant adverse and environmental impacts are expected to result from this project.

9. The Petitioner has represented that the reclassification is being requested to permit a subdivision of the subject property into two (2) one-half acre lots as permitted under the Rural District classification. The Petitioner stated that they intend to convey one of the lots to her daughter who in turn will construct a single family residence for her own personal use. The Petitioner presently occupies the single family dwelling located on the remaining parcel of the subject property.

10. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

(a) Access - Access is available along Kamehameha Highway.

(b) Utilities - Electrical and telephone utilities presently service the subject property.

(c) Sewage disposal - Sewage will be handled through a private cesspool system.

(d) Water - Domestic water is available from the County water system.

(e) Police and fire protection - Police and fire protection services for the subject property will be provided from Kaunakakai.

11. The reclassification of the subject property to Rural will be in keeping with the character of the existing use of surrounding lands consisting of scattered single family dwellings, vacant lands and small farms.

12. Reclassification of the subject property does not constitute an action for which an Environmental Impact Statement is required under Chapter 343, Hawaii Revised Statutes.

13. Based on a review of the Petition, the evidence adduced at the hearing, and the policies and criteria of the Interim Statewide Land Use Guidance Policy, the Department of Planning and Economic Development and Maui County Planning Department have recommended that the reclassification be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 1.0 acre, situated at Waialua, Molokai, County of Maui, from Agricultural to Rural 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.

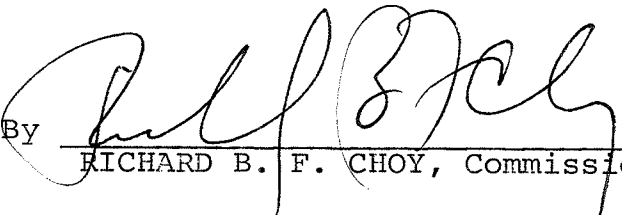
ORDER

FOR GOOD CAUSE appearing, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A80-479, consisting of approximately 1.0 acre, situated at Waialua, Molokai, County of Maui, State of Hawaii, identified as Tax Map Key No. 5-7-3: 81 shall be and hereby is reclassified from Agricultural to Rural and the District boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 16th day of September, 1980, per Motion on September 3, 1980.

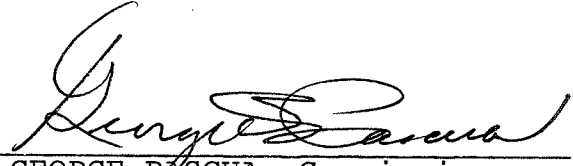
LAND USE COMMISSION
STATE OF HAWAII

By 
C. W. DUKE, Chairman and
Commissioner

By 
RICHARD B. F. CHOY, Commissioner

By 
SHINSEI MIYASATO, Commissioner

By 
MITSUO OURA, Commissioner

By 
GEORGE PASCUA, Commissioner

By 
CAROL B. WHITESELL, Commissioner

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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:

HIDETO KONO, Director
Department of Planning & Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813


ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
State of Hawaii
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TOSH ISHIKAWA, Planning Director
Planning Department
County of Maui
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PAUL MANCINI, Corporation Counsel
Office of the Corporation Counsel
County of Maui
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FRANCES H. LINDSEY
P. O. Box 153
Waialua, Molokai, Hawaii 96748

DATED: Honolulu, Hawaii, this 19th day of September, 1980.



GORDAN Y. FURUTANI
Executive Officer