

FINDINGS OF FACT

PROCEDURAL MATTERS

1. John A. Harvey, III (hereinafter "Petitioner") filed his petition on August 20, 1980, requesting that the Land Use Commission amend the Agricultural District Boundary at Puaa 1st and 2nd, North Kona, Island of Hawaii by reclassifying the subject property into the Urban District.

2. The Land Use Commission (hereinafter "Commission") scheduled a hearing on this matter for January 21, 1981 at 10:00 a.m. in the Resolution Room, Kona Hilton Hotel, Kailua-Kona, Hawaii. Notice of this hearing was published in the Hawaii Tribune Herald and the Honolulu Advertiser on December 12, 1980 and was also served upon the parties by mail. The Commission subsequently continued the scheduled hearing at the Petitioner's request. On January 28, 1981, the Petitioner moved to continue the hearing for a period of 180 days from January 27, 1981. On February 25, 1981, the Commission denied the Petitioner's Motion to Defer Hearing.

3. The Commission rescheduled the hearing for May 5 and 6, 1981 at 10:00 a.m. in the Resolution Room, Kona Hilton Hotel, Kailua-Kona, Hawaii. Notice of this hearing was published in the Hawaii Tribune Herald and the Honolulu Advertiser on March 30, 1981 and was also served upon the parties by mail.

4. Patrick V. Kirch of the Bishop Museum's Department of Anthropology and Elizabeth Ann Stone of Captain Cook, Hawaii, filed timely written requests to appear as public witnesses, but neither was present at the public hearing. The Commission permitted Rose Schilt of the Bishop Museum's Department of Anthropology to testify in place of Patrick V. Kirch.

DESCRIPTION OF THE SUBJECT PROPERTY

5. The subject property is situated at Puaa 1st and 2nd, North Kona, Island of Hawaii, State of Hawaii, and is further identified as Hawaii TMK: 7-5-10: 4 and 5. The area of the subject property is 130.945 acres. Parcel 4, area 64.945 acres, is owned in fee by the Petitioner. Parcel 5, area 66 acres, is owned by the Bernice Pauahi Bishop Estate and the Petitioner holds a vendee's interest under an unrecorded agreement of sale. The Trustees of the Bishop Estate have authorized John A. Harvey, III to petition for a boundary amendment to reclassify parcel 5 from the Agricultural to the Urban District.

6. The subject property is located along the east side of Hualalai Road, adjacent and to the south (Ka'u side) of Pacific Basin Resort's Kailua View Estates Subdivision, Puaa 1st and 2nd, North Kona, Island of Hawaii.

7. The U.S.D.A., Soil Conservation Service, in its Soil Survey Report published December 1973, classifies the land in the Waiaha, Punaluu and Kainaliu soil Series.

8. The Waiaha Series consists of shallow, well-drained silty loams that have been formed in volcanic ash. The surface layer is extremely stony silt loams about 4 inches thick, and the subsoil is about 14 inches thick. The substratum is pahoehoe lava bedrock. Permeability is moderately rapid, runoff is slow, and the erosion hazard is slight.

9. The Punaluu Series consists of well-drained, thin organic soils over pahoehoe lava bedrock. The surface is black peat of about 4 inches thickness. The peat is

rapidly permeable, although water moves rapidly through the cracks. Runoff is slow, and the erosion hazard is slight.

10. The Kainaliu Series consists of well-drained stony silty clay loams that have been formed in volcanic ash. The surface layer and subsoil are about 10 and 16 inches thick, respectively. The subsoil is underlain by fragmented Aa lava. Permeability is rapid, runoff is slow, and the erosion hazard is slight.

11. The elevation of subject property ranges from 300 feet above sea level at its makai boundary to 700 feet at its mauka boundary. The slope ranges from 5 to 25 percent.

12. The subject property receives 30 to 50 inches of rainfall annually.

13. The Land Study Bureau's Overall Master Productivity Ratings for agricultural use of the subject property are "C" (Fair), "D" (Poor), and "E" (Very Poor).

14. The subject property is not classified on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map.

15. The adjacent lands to the south of the subject property are basically vacant or are in limited grazing activity.

PROPOSAL FOR DEVELOPMENT

16. The Petitioner has requested the Urban reclassification in order to develop the subject property into a 386-lot single family residential subdivision consisting of 10,000+ square foot sized lots. The Petitioner intends to develop and sell vacant lots and others as house-and-lot packages. The Petitioner estimates the selling price for

lots at \$70,000, and the selling price for house and lot packages between \$150,000 - \$180,000. The Petitioner intends to market the lots to both residents of the State, as well as to out-of-State residents.

17. Although the Petitioner has acknowledged that there is a housing demand for low and moderate income families in North Kona, he does not intend to provide either housing or lots within the proposed development at prices which low and moderate income families can afford to pay. The Petitioner proposes to sell lots to upper and upper middle income families.

18. The Petitioner proposes to phase the development in six increments of 50 units per increment. The Petitioner represented that he would complete development within five years after obtaining all governmental approvals and permits, by the Spring of 1985.

STATE AND COUNTY PLANS

19. The Land Use Pattern Allocation Guide Map (hereinafter "LUPAG Map") component of the County of Hawaii General Plan (hereinafter "General Plan") designates the makai portion of the subject property along Hualalai Road for Medium Density Urban Development. The remaining area is designated Orchard and Extensive Agricultural/Alternate Urban Expansion. The Medium Density Urban Development designation may allow single family residential uses at a maximum density of 5.8 units per acre. The Orchard designation applies to those lands which, though rocky in character and content, may support productive macadamia nuts, citrus, and other similar agricultural products. The Extensive Agricultural designation refers to those lands which are basically pastoral and range lands. The Alternate Urban Expansion designation allows for the consideration of

possible urban development when designated urban areas are largely developed or are developing too slowly. It also applies to potential urbanizing areas in which development is in abeyance due to inadequate infrastructure, demand, or in areas where the urban form of a community has not yet been firmly established. In order to consider such areas for urban-type uses, the applicable goals, policies, and standards of the County General Plan must also be met. The Petitioner has not made such a showing.

20. The County zoning designation is Unplanned (U). This zoning applies to areas for which there was not sufficient information to support a more specific district classification when the initial zoning studies for the area were made in 1967.

21. The subject property is not situated within the Special Management Area (SMA).

22. A small portion of parcel 5 along Hualalai Road is situated within the Kailua Village Special District.

NEED FOR GROWTH AND DEVELOPMENT

23. Since 1979, the Land Use Commission has approved approximately 564 acres into the Urban District in North Kona for a total development capacity of approximately 874 residential lots and 180 residential units. The Commission has additionally approved the incremental reclassification of 228 acres for the development of 425 lots.

24. The Department of Planning and Economic Development has estimated that nearly 50 percent of the total amount of land in the Urban District or approximately 3,957 acres, in North Kona are presently vacant. Between 30 to 40 percent of this is designated for residential use.

25. The Petitioner has not demonstrated that the proposed development will fulfill the actual housing needs of North Kona. The State Hawaii Housing Authority has indicated that the demand for housing in North Kona is especially critical for moderately priced units to provide permanent housing for local residents. The Petitioner has introduced no evidence of demand or need for the proposed development or any analysis of that housing market in North Kona for the income range of persons who could afford to purchase lots in the proposed development.

IMPACTS ON RESOURCES OF THE AREA

Agricultural Resources:

26. The subject property is used by an adjacent landowner for grazing 7 to 10 cattle during the wetter summer months. Portions of the subject property mauka of the Hienaloli-Kahului Road (Old Railroad) are in grazing and/or coffee production.

27. The subject property possesses a reasonable potential for agricultural use. The Mauka portion, comprised of the Kainaliu soils, is suitable for cultivational orchard crops such as coffee and macadamia nuts, as well as pasture use. This portion of the subject property receives a higher annual rainfall (40 to 60 inches) than the Makai portion, comprised of the Waiaha soils, suitable for pasture use.

Archaeological Resources

28. The Petitioner submitted no archaeological report, and the Petitioner conducted no archaeological reconnaissance survey on the subject property.

29. The subject property is part of the prehistoric Kona Field System, a vast complex of prehistoric remains

extending from Kailua to Kealahou Bay from elevations of 300 feet to 2,500 feet above sea level. The likely presence of historical, cultural, architectural and/or archaeological resources on properties within this area have made them eligible for inclusion on the National Register of Historic Places. The Historic Sites Section of the State Department of Land and Natural Resources has recommended that an archaeological reconnaissance of the project area be conducted by a qualified archaeologist, and that the final report of this research be forwarded to their office for review and evaluation. Petitioner has stated that he is willing to perform whatever archaeological surveys and salvage may be required.

Natural Resources

30. The flora on the subject property are exotic, and not considered rare or endangered. The Hawaii Bat, the Hawaiian Owl and the golden plover are the only endangered mammals known to inhabit the subject property.

PUBLIC SERVICES AND FACILITIES

Fire Fighting and Police Services

31. Fire protection and police services are provided by the Kailua and Captain Cook stations, respectively.

Schools

32. The Petitioner has adduced no evidence of the availability or adequacy of public schools to serve this proposed residential development.

33. The State Department of Education (DOE), in evaluating the proposed project's impact upon public educational facilities and services in the area, has projected that the development would generate between 200 - 270 students in grades K-8 and between 60 - 100 students in grades 9-12,

a school population that would require 8 to 11 additional classrooms at Kealakehe Elementary/Intermediate School alone. The Kealakehe Elementary/Intermediate School and Konawaena High School, which presently serve the area, are currently operating over capacity, and cannot accommodate children living on the subject property. Kahakai Elementary School is scheduled to open in September 1982 in the Kailua-Keauhou area, but will be filled by children residing in other developments.

Electrical and Telephone Services

34. The Hawaii Electric Light Company, Inc. (HELCO) maintains an existing main transmission line along Hualalai Road, but there is no evidence that it has available sufficient power capacity to serve the proposed subdivision.

35. Telephone service is available to the area.

Sewage Treatment and Disposal

36. The Petitioner has proposed to use cesspools until the Petitioner or the County construct a sanitary sewer system available for use by the proposed development. The Petitioner has represented there is no indication that leachate from cesspools now being used in the area is contaminating the ground water supply or coastal waters, without introducing evidence of any studies or tests to determine the impact of sewage discharge upon groundwater resources.

37. The State Department of Health and the State Department of Land and Natural Resources have expressed concerns regarding the possibility of cesspools contaminating the ground water basin, and have recommended that new urban developments accommodate sewage disposals through an acceptable sewerage treatment system.

Solid Waste Disposal

38. The Petitioner has stated that solid wastes will be disposed by commercial refuse collectors or that residents of the proposed development will be responsible for disposing solid waste at approved disposal sites.

Roadway and Highway Facilities

39. Neither the Petitioner nor his consulting engineer prepared a traffic analysis to determine the effect of the proposed residential project upon existing or proposed roadways.

40. Hualalai Road would serve as the primary access to the proposed development. Hualalai Road has a right-of-way varying from forty (40) to fifty (50) feet. This roadway was recently improved in the vicinity of the subject property by providing a pavement width of twenty (20) feet with 3-foot wide shoulders. The secondary access to the proposed development will serve as the Hienaloli-Kahului Road (Old Railroad). This roadway has a right-of-way of forty (40) feet, and is unimproved. The lateral subdivision roads within the proposed development will be connected with those of the adjacent Kailua View Estates Subdivision. The Petitioner has not analyzed the adequacy of these roadways to serve the proposed development.

41. The proposed Kuakini Highway Realignment (Queen Kaahumanu Highway Extension) scheduled for completion in the mid-1980's, will traverse through the makai end of the subject property. The State Department of Transportation has recommended that the Petitioner should set aside a 300 foot wide corridor for this future road construction; and that access from this highway extension to the upper portion of

the proposed residential project be afforded by way of the main road serving the adjacent Kailua View Estates. Access from the new highway to the lower (makai) portion of the proposed project would be restricted.

Drainage

42. During periods of heavy rainfall, the shallow intermittent stream channels on the property, as well as the low lying lands along these channels are subject to flooding.

Water Service

43. There is no available source of water to serve the proposed project. The rapid growth experienced in Kona has resulted in the depletion of available domestic groundwater resources. The Hawaii County Department of Water Supply has testified that it will not be able to supply water to the proposed development until a new deep well water source is developed and adequate booster pumps and a transmission system is installed to serve the growing area. In its September 8, 1980 letter, Department of Water Supply has recommended that this boundary amendment request be deferred or denied until such time that a definite time schedule is prepared and sufficient funding is assured for future water source development.

44. The Petitioner has indicated a willingness to provide, at the expense of the lot purchasers, a reservoir, booster pump, and transmission facilities. He is not willing to develop the required well source, and has adduced no evidence that any source development would generate the required water.

CONTIGUITY OF DEVELOPMENT

45. On its northern boundary, the subject property abuts lands within the existing Urban District and County's

Single Family Residential - 15,000 square foot (RS-15) zoned district. The subject property is also reasonably close to a principal employment center, Kailua Village.

STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

46. The subject property possesses the capacity for agricultural production. Mauka portions of the site are suitable for orchard crops such as coffee and macadamia nuts, while makai portions of the site are suited for pasture use.

47. In the absence of evidence to the contrary, the Commission concludes that development of the proposed project would require development of new water sources, additional major highway improvements, additional school facilities to accommodate the anticipated school enrollment, and new sewerage treatment facilities. The Petitioner has adduced no evidence of the availability of such public facilities to serve the proposed development.

48. The Petitioner has presented no evidence of the need for the proposed project at the present time. Thus, reclassification of the subject property is not reasonably necessary to accommodate Urban growth in Kona.

RULING ON PROPOSED FINDINGS

Any of the proposed findings of fact submitted by the Petitioner or the other parties to this proceeding not already ruled upon by the Land Use Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW


Pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the State Land Use Commission, the Commission concludes that the proposed boundary amendment does not conform to the standards established for the Urban District by the State Land Use District Regulations and is not consistent with Section 205-2 Hawaii Revised Statutes, as amended, and by State Land Use guidelines.

DECISION AND ORDER

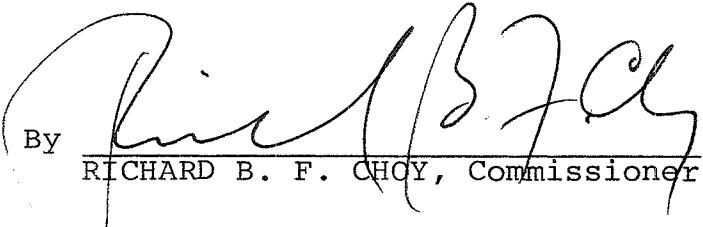
IT IS HEREBY ORDERED that the subject property consisting of 130.945 acres at Puaa 1st and 2nd, North Kona, Island and County of Hawaii, more particularly described as Tax Map Key 7-5-10: 4 and 5, be denied and that the subject property remain in the Agricultural District.

DONE at Honolulu, Hawaii, this 13th day of November,
1981, per motion on August 20, 1981.

LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN, Chairman and
Commissioner


By 
CAROL B. WHITESELL, Vice Chairman
and Commissioner

By 
RICHARD B. F. CHOY, Commissioner

By 
EVERETT L. CUSKADEN, Commissioner

By 
SHINSEI MIYASATO, Commissioner

By 
TEOFILO TACBIAN, Commissioner

By 
ROBERT TAMAYE, Commissioner

By 
EDWARD K. WANAI, Commissioner

