

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A81-511
)	
MAUI LAND AND PINEAPPLE COMPANY, INC.)	MAUI LAND AND
)	PINEAPPLE COMPANY,
To Amend the Agricultural Land Use)	INC.
District Boundary to Reclassify)	
Approximately 8.5 Acres, TMK:)	
2-3-07: portion of 8, at Kukuiaeo)	
and Kailua, Makawao, Island and)	
County of Maui, into the Urban)	
Land Use District)	
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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 Maui Land and Pineapple Company, Inc., which 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 8.5 acres of land, situated at Kukuiaeo and Kailua, Makawao, Island and County of Maui. The subject property is more particularly identified as Tax Map Key No. 2-3-07: portion of 8.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioner can subdivide and develop the 8.5-acre site into 36 houselots for sale in fee simple to employees of Maui Land and Pineapple Company, Inc.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on July 9, 1981. Due notice of the hearing on this Petition was published on October 9, 1981, in the Maui News and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on October 6, 1981. The Hawaii Chapter of the Sierra Club filed a timely application to appear as a witness in this proceeding and its spokesperson, John Bose, II, Maui Group Chairman of the Hawaii Chapter of the Sierra Club, appeared and testified on behalf of the organization. During the course of the hearing, Mrs. Rose Blaker requested permission to testify and there being no objections by the parties to the proceeding, was granted permission to present her testimony in the subject proceeding.

THE HEARING

The hearing on this Petition was held on November 19, 1981, in Wailuku, Maui, Hawaii.

Maui Land and Pineapple Company, Inc., the Petitioner herein, was represented by William F. Crockett, Esq.; the County of Maui was represented by Corporation Counsel Guy P. D. Archer; and the Department of Planning and Economic Development was represented by Mr. Tatsuo Fujimoto.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Joseph W. Hartley - President of Maui
Pineapple Company

County of Maui:

Clyde Murashige - Staff Planner

Department of Planning and Economic Development:

Abe Mitsuda - Land Use Division Planner

POST HEARING PROCEDURE

Petitioner's counsel, during the course of the hearing, requested and was given the right to submit a legal memorandum in opposition to Maui County's recommendation in their written testimony that an anti-speculation clause be imposed on the subject property. Petitioner's counsel was to file their memorandum by December 4, 1981, with responses, if desired, to be filed by the Department of Planning and Economic Development and Maui County by December 18, 1981. Petitioner's memorandum was received by the Land Use Commission on December 1, 1981. Maui County and the Department of Planning and Economic Development did not respond to Petitioner's memorandum and the hearing in this docket was closed on December 18, 1981.

POSITION OF THE PARTIES

County of Maui - Approval with the following conditions:

1. That approval of the subject district boundary amendment shall not be considered as a commitment to any further urban expansion adjacent to the subject site.
2. That should approval be granted, the applicant shall apply to the County of Maui for R-2 (7,500 sq. ft. minimum lot size) within six months of Land Use Commission approval.
3. That all lots be sold in fee to employees of Maui Land and Pineapple Company.
4. That an anti-speculation clause be incorporated into all sales agreements.
5. That all Federal, State and County requirements shall be rendered.

Department of Planning and Economic Development -
Approval with the condition that the lots in the proposed
subdivision be sold to Maui Land and Pineapple Company, Ltd.,
employees.

APPLICABLE REGULATION

- (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 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 adduced herein, makes the following findings of fact:

- 1. The subject property, owned in fee simple by the Petitioner herein, is located at Kukuiaeo and Kailua, Makawao, Island and County of Maui, and consists of approximately 8.5 acres, more particularly described as Tax Map Key No. 2-3-07: portion of 8. The subject property lies approximately 10 miles southeast of Kahului and is bounded on the north by Makawao Avenue and 3 residential lots, on

the east by Kailua Gulch and on the west and south by pineapple fields owned by the Petitioner. The subject property was previously used as a plantation village known as "Old Filipino Camp" which was phased out of active use in 1964. Residents of the "Old Filipino Camp" and another housing area (Cornmill Camp) moved to newer housing at Haliimaile Camp.

2. As reflected on the Land Use District Boundary Map M-10 (Haiku), the subject property lies within the State Land Use Agricultural District. Lands to the northeast and west of the subject property are classified Urban and lands to the north lie within a 241.53-acre residential subdivision which is classified Rural.

3. The Maui County zoning designation of the subject property is Agriculture and under Maui County's Makawao-Pukalani-Kula General Plan, the subject property is designated "General Agriculture." However, Maui County is currently completing a Community Development Plan Study for the Makawao-Pukalani-Kula area which is scheduled to come before the County Council in January of 1982. Said Community Plan designates the subject property as Urban and single family residential. The subject property is not situated within the County's Special Management Area.

4. Land uses of the area surrounding the subject property are a mixture of residential and agricultural uses. To the north lie residential houselots, Makawao Avenue, and the Makawaolani rural subdivisions; to the east lie Kailua Gulch and pineapple fields; to the south lie pineapple fields and the Makawao Fire Station; and to the west lie more pineapple fields.

5. At present, approximately 1,500 square feet of the subject property are in pineapple cultivation. Another portion of the subject property is on a month-to-month lease and is used as a pasture for grazing horses. The remainder of the subject property is vacant and covered predominantly with kikuyu grass. Other vegetation on the subject property includes eucalyptus, monkeypod, norfolk island pine, avocado and mango trees.

6. Elevation of the subject property ranges from approximately 1,660 feet above sea level at the eastern border to approximately 1,604 feet at a drainage way along the northwest border to approximately 1,590 feet along Makawao Avenue. The subject property has an estimated slope of 6% to 10%, dropping towards Makawao Avenue. Kailua Gulch which borders the subject property on the east is approximately 60 feet deep at that point and contains an intermittent stream. The subject property is designated Zone C by the U. S. Army Corps of Engineers and on the Flood Insurance Map Study for the Island of Maui prepared by the Federal Insurance Administration and it is not situated within any special flood hazard or flood plain area.

7. The U.S.D.A. Soil Conservation Service, Soil Survey classifies the soils of the subject property as belonging to the Haliimaile Series which consists of well-drained soils on uplands. These soils developed in material weathered from basic igneous rock. More specifically, the subject property consists of Haliimaile silty clay loam (HgB) with 3% to 7% slopes and Haliimaile silty clay loam (HgC) with 7% to 15% slopes. The annual rainfall ranges from 30 to 50 inches.

8. The Land Study Bureau has rated the productivity of the soil of the subject property as "C." According to the Agricultural Land Of Importance to the State of Hawaii (ALISH) system, two-thirds of the subject property is identified as Prime and the remaining one-third is Other Important Agricultural Land. However, the presence of the fungus Phytophthora sp., a very serious pineapple disease which persists in the soil, currently limits the use of the subject property for pineapple cultivation. Because of a highly basic soil (pH 8.5), due in large part to concrete residue (concrete flumes and foundations) from earlier structures on part of the subject property, Phytophthora sp. thrives and cannot be controlled with fungicides. For this reason pineapple cultivation was terminated on most of the subject property.

Reclassification of the 1,500 square feet presently in pineapple cultivation will result in a small loss to the pineapple industry--a production loss of less than 1 ton a year. The Petitioner processed approximately 160,000 tons of pineapple during 1981. The 1,500 square feet are needed to adjust the intersection at Makawao Road in order to make it safer.

9. A surface reconnaissance of the subject property was conducted by two archaeologists on May 19, 1980, and they reported that the former employee house sites were very efficiently removed from the study area. The absence of cultural material such as porcelain and glass leads to their recommendation that no further archaeological study need be done.

A field reconnaissance conducted in May of 1980, indicated that none of the plants or animals observed on the subject property were rare or endangered species.

10. The Petitioner and its predecessor, Baldwin Packers, have, since their inception at the turn of the century, provided a housing program for their employees which has been viewed as a necessity for the viability of the Company's agricultural activities. The Petitioner was involved in housing construction in the Haliimaile area until the mid 1930's. In the mid sixties, the Haliimaile Village was subdivided and sold to employees who occupied the existing homes. In the seventies, the Petitioner developed the Napilihau project to relieve the problems of the old structures on the Old Honolulu Village. Also, in the 1970's, the Petitioner in a joint venture with the State of Hawaii, under Act 105, developed the Honolulu Village. In 1977, the Petitioner developed a Housing Assistance Plan for its supervisory employees. The Petitioner is presently tearing down old housing on a parcel adjacent to Haliimaile Village and will develop a 15-lot residential subdivision for its employees. Construction on the subject site is scheduled to begin in mid 1982. The subject property is the current project being focused on by the Petitioner to provide its employees with suitable housing.

11. The Petitioner herein, intends to subdivide the 8.5-acre subject property into 36 houselots. The 7,500 square foot lots will be improved with roads, water, electricity and drainage. Of the 8.5 acres, approximately 1.6 acres are proposed for a new 44-foot wide access road to serve the development. The lots of the subdivision will

then be sold in fee simple to employees of Petitioner who primarily work in Kahului and Haliimaile. The Petitioner estimates construction costs of the development at \$480,000, in 1979 dollars, with overhead electrical and telephone lines and \$560,000 with underground lines. To complete the development, the Petitioner expects to incur \$193,723 in additional costs for engineering fees, off-site water storage, a parks/playground fee, and a subdivision permit fee. Each lot price will be based on its proportion to the total development cost. The Petitioner proposes to assist employees in the development of construction plans and in obtaining a suitable contractor to perform the construction requirements. The Petitioner further intends to provide financial consulting advice to prospective employee purchasers in order to assist said purchasers in obtaining the most favorable loan agreements available. Petitioner estimates that the cost to develop each lot will range between \$18,700 to \$20,000.

Petitioner estimates that it will obtain all governmental approvals, complete planning and commence construction within three years. Petitioner estimates that it will complete construction of subdivision improvements within six months after receiving all governmental approvals.

As Petitioner's assets and liabilities were listed as \$91,348,000 for 1980, it appears that Petitioner possesses the requisite financial standing to undertake the proposed development.

The Petitioner represented during the course of the hearing that it would sell the homes in the proposed subdivision only to its employees and that it would initiate its application for appropriate and necessary County approvals

with the Maui County Planning Department within six months following the Land Use Commission's approval.

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

a. Access - Petitioner plans to locate the subject property's access point at Makawao Avenue to specifically improve traffic safety considerations regarding ingress and egress. In a letter dated August 31, 1981, the Department of Public Works requested that a current traffic impact study and master plan be submitted as one entry to the subdivision may be insufficient in view of the possibility of the proposed and future developments taking place. Petitioner has represented that it will redesign the road and remove a street plug as it has no intention of using the plug for future expansion into pineapple growing land.

b. Schools - In a letter to the Department of Planning and Economic Development dated October 21, 1981, the State Department of Education stated that the proposed project is expected to generate an approximate enrollment of 15 to 25 students in grades K-8 at Makawao School and approximately 4 to 8 students in grades 9-12 at Maui High School. As a new intermediate school is scheduled to open in 1984, much of the demand on the existing elementary/intermediate school will be relieved.

c. Sewage - Petitioner intends to install cesspools at the same time the residential units are being built.

d. Water - As development plans to install new 6-inch and 8-inch waterline connections to an existing 16-inch waterline are likely to cause a few of the upper lots to be without water during peak hours, the Department of Water Supply, in a letter dated August 31, 1981, has stated that the situation could be corrected by the construction of a storage facility with a capacity of 156,000 gallons above the proposed subdivision at an elevation of approximately 1,800+ feet.

e. Drainage - Drainage improvements proposed by the Petitioner include relocation of a ditch running through the site and utilization of two culverts running under the proposed roadway. Four curb inlet catch basins will be installed along the internal roadways and a drainage system will be installed to discharge runoff from the lower portion of the development. The Department of Public Works, in a letter dated August 31, 1981, indicated that at the time subdivision begins, it will require that drainage improvements be in conformance with the County's Subdivision Ordinance.

f. Electrical and Telephone Services - Electrical and telephone services will be provided by existing lines located along Makawao Avenue.

g. Police and Fire Protection - One of Central Maui's ten police beats will service the subject

development. The Makawao Fire Station is located one-quarter mile southeast of the subject property.

h. Solid Waste Disposal - Refuse collection within the proposed development will be provided by the County of Maui. Refuse collection services will be provided once a week, and will be disposed of at the nearby County-operated Makawao Sanitary Landfill.

13. During the course of the hearing, Maui County raised, for purposes of discussion, the imposition of an anti-speculation clause in the title documents for the proposed subdivision. The Petitioner strongly opposed the imposition of an anti-speculation clause because (a) it may lead to difficulty in obtaining the requisite financing, (b) it would continue the paternalism between the company and its employees, and (c) it would in effect penalize employees in one of their major investments. The Commission finds that the anti-speculation clause need not be imposed as a condition of the boundary amendment because basic factors inherent in the development of this project, i.e., size, nature, location of the project, and for reasons cited by the Petitioner.

14. The County of Maui and the Department of Planning and Economic Development believe that agricultural employee housing is a crucial aspect of the continued viability of the agricultural industry.

15. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the County of Maui and the Department of Planning and Economic Development have

recommended that the reclassification of the subject property be approved with the conditions previously referenced herein.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 8.5 acres of land, situated at Kukuiaeo and Kailua, Makawao, Island and County of Maui, from Agricultural to Urban and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

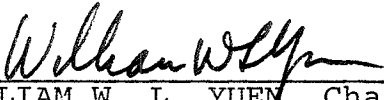
ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in Docket No. A81-511, consisting of approximately 8.5 acres, situated at Kukuiaeo and Kailua, Makawao, Island and County of Maui, identified as Tax Map Key No. 2-3-07: portion of 8, shall be and hereby is reclassified from Agricultural to Urban and the district boundaries are amended subject to the condition that following subdivision approval, all of Petitioner's subdivided lots and/or house and subdivided lot packages from the subject property shall be offered for sale in fee to Maui Land and Pineapple Company employees. The foregoing condition may be fully or partially released by the Land Use Commission as to all or any portion of the subject property upon timely motion and provision of adequate assurance of satisfaction of this condition by the Petitioner.

DOCKET NO. A81-511 - MAUI LAND AND PINEAPPLE COMPANY, INC.

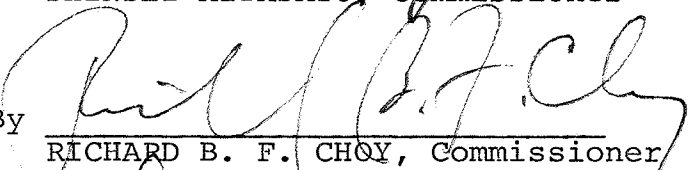
DONE at Honolulu, Hawaii, this 27th day of
May, 1982, per Motion on April 21, 1982.

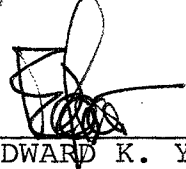
LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN, Chairman

By 
CAROL B. WHITESELL, Vice Chairman

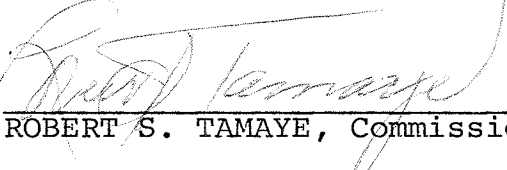
By 
SHINSEI MIYASATO, Commissioner

By 
RICHARD B. F. CHOY, Commissioner

By 
EDWARD K. YANAI, Commissioner

By 
EVERETT L. CUSKADEN, Commissioner

By 
TEOFILO PHIL TACBIAN, Commissioner

By 
ROBERT S. TAMAYE, Commissioner

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Portion of 8, at Kukuiaeo and Kailua,)
Makawao, Island and County of Maui,)
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 Services by certified mail:

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

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Capital Investment Building
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

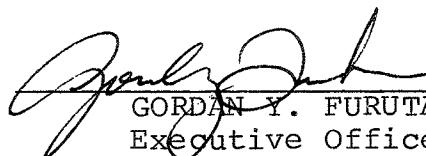
Tosh Ishikawa, Planning Director
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H. RODGER BETTS, Corporation Counsel
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WILLIAM F. CROCKETT, Esquire
P. O. Box NNN
Wailuku, Hawaii 96793

HULU NAKASONE, Properties Administrator
Maui Land and Pineapple Company, Inc.
P. O. Box 187
Kahului, Hawaii 96732

DATED: Honolulu, Hawaii this 12th day of July, 1982.



GORDAN Y. FURUTANI
Executive Officer