

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A84-587
214142 HOLDINGS, LTD.)	214142 HOLDINGS, LTD.
To Amend the Conservation Land)	
Use District Boundary into the)	
Urban Land Use District for)	
Approximately 15.8 acres, at)	
Kapalaoa, Puuanahulu, North)	
Kona, Hawaii, Tax Map Key)	
Nos.: 7-1-03: 5, 6, 11)	
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSION
OF LAW, AND DECISION AND ORDER

214142 Holdings, Ltd. (hereinafter the "Petitioner"), an Alberta, Canada, corporation, filed this Petition on November 19, 1984, pursuant to Hawaii Revised Statutes Section 205-4, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundaries of approximately 15.8 acres of land, situate at Kapalaoa, Puuanahulu, North Kona, County and State of Hawaii, Hawaii Tax Map Key Nos.: 7-1-03: 5, 6, 11,(hereinafter the "Property"), from the Conservation District to the Urban District for a multi-family residential development. The Land Use Commission (hereinafter the "Commission"), having heard and examined the testimony, evidence and argument of counsel presented during the hearings, and the proposed findings of fact and conclusion of law, hereby makes the following findings of fact and conclusion of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Commission conducted hearings on the Petition on May 14, 15, 1985, pursuant to notice published in the Hawaii Tribune Herald and the Honolulu Star-Bulletin on April 10, 1985.

2. Jerry Rothstein filed a Petition to Intervene on April 25, 1985, and withdrew his Petition on May 14, 1985.

3. Jerry Rothstein and Alan White testified as public witnesses on May 14, 1985.

DESCRIPTION OF THE PROPERTY

4. The Property is located at Kapalaoa, Puuanahulu, North Kona, Island and County of Hawaii, and is approximately 17 miles southwest of Waimea town and 25 miles north of Kailua-Kona.

5. The Property consists of approximately 15.8 acres and is identified as Hawaii Tax Map Key Nos.: 7-1-03: 5, 6, and 11.

6. Petitioner is the fee owner of the Property.

7. The Property is presently vacant, with the exception of a small, old wooden home along the beach. The area is principally used by campers and fishermen for recreational purposes. There is no improved vehicular access to the Property.

8. The United States Department of Agriculture's Soil Conservation Service classifies the soils of the Property as

Beaches (BH) and Lava Flows Pahoehoe (rLW) in its Soil Survey.

Beaches (BH) are mapped as a land type and include long, narrow, sloping areas of sand and gravel along the coastline. The sand and gravels vary in color according to the material in which they formed. This land type is used for recreation, is subject to tidal action, and is sometimes covered by waves during storms or high tide, and as a result, exhibits severe limitations for septic tank filter fields or building foundations.

Lava Flows Pahoehoe (rLW) are mapped as a miscellaneous land type. This lava has a billowy, glassy surface that is relatively smooth. In some areas the surface is rough and broken, and there are hummocks and pressure domes. Pahoehoe lava has no soil covering and is typically bare of vegetation except for mosses and lichens. Pahoehoe lava is severely limited in suitability for use as a septic tank filter field.

9. The Property's elevation ranges from one to thirteen feet above mean sea level, with slopes ranging between zero to five percent.

10. Rain gauges within several miles of the Property indicate approximately seven inches of annual rainfall.

11. The Federal Insurance Administration Flood Insurance Study conducted for the County of Hawaii designates a portion of the Property as being subject to tsunami inundation

(Zone VII and A4) where the approximate 100-year tsunami elevation is seven to eight feet above mean sea level. The 100-year event has a one percent chance of being equalled or exceeded in any given year.

12. The Property is not classified on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

PROPOSAL FOR DEVELOPMENT

13. Petitioner proposes to develop a luxury multi-family condominium project consisting of approximately 86 to 120 2-bedroom two and one-half bath apartment units in a series of 3-story structures to be distributed throughout the Property. Petitioner proposes to include the following on-site amenities: swimming pools, tennis courts, pavilion, lounge, and open space areas.

14. Petitioner intends to sell at least 75% of the apartment units to high income, elderly Canadian citizens as winter retirement homes to be occupied primarily during the months of November to May at prices ranging between \$550,000 and \$755,000 per unit in 1983 dollars.

15. Petitioner estimates that the proposed condominium development and all necessary on-site and off-site infrastructure will cost approximately \$30,000,000.00 to construct.

16. Petitioner proposes to complete all improvements within one year after obtaining all governmental approvals.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

17. Petitioner has obtained a verbal, nonbinding commitment from Northland Bank, a Canadian corporation, to finance construction of the project. Petitioner's balance sheet as of October 31, 1984, lists total assets and liabilities of \$6,683,650.00 (including a shareholders' equity of \$2,000.00). Absent financing, Petitioner does not have adequate capitalization to undertake a project of this magnitude.

STATE AND COUNTY PLANS AND PROGRAMS

18. The Property is situate within the State Land Use Conservation District as reflected on Land Use District Boundary Map H-5 (Anaehoomalu).

19. The Property is entirely surrounded by Conservation District lands, most of which are owned by the State of Hawaii.

20. The State Department of Land and Natural Resources (DLNR), pursuant to its Regulation No. 4, designates the Property in the Resource Subzone. The Resource Subzone include lands necessary for providing future parkland and lands presently used for National, State, County or private parks, and lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping and picnicking.

21. The County of Hawaii's General Plan Land Use Pattern Allocation Guide Map designates the Property for Medium Density Urban development.

22. The County of Hawaii zones the Property as Open. The Property is situate within the County of Hawaii Special Management Area (SMA).

PAST LAND USE COMMISSION ACTIONS INVOLVING THE PROPERTY

23. The Property was the subject of prior petitions for Urban classification filed by Kapalaoa, Inc. in Docket A80-500 by Kapalaoa, Inc. and Walter Filipek in Docket No. A83-559. Both petitions proposed the same development 214142 Holdings, Ltd. now proposes in this Petition.

24. The Commission denied the Petition by Kapalaoa, Inc. on November 18, 1981, and the Commission dismissed the Petition by Walter Filipek for lack of standing to file a petition for land use boundary amendment on May 25, 1984, following the then fee owner's withdrawal of authority to file that petition.

NEED FOR THE PROPOSED DEVELOPMENT

25. Petitioner states that the proposed development will complement the South Kohala resort area and also contribute to the economy of the County of Hawaii through the generation of employment opportunities. In addition, Petitioner anticipates that existing real property taxes derived from the Property will substantially increase with the development of the project.

26. The proposed development will not contribute significantly to providing housing opportunities for residents of South Kohala to North Kona.

27. The State Department of Planning and Economic Development (DPED) estimates there are approximately 3,543 acres of vacant Urban land in the North Kona District, of which 816 acres are zoned for residential use.

DPED also estimates there are approximately 5,430 acres of vacant Urban District land in the South Kohala District, of which 2,503 acres are vacant and zoned for residential use. This inventory of vacant land is to satisfy the projected demand for housing in the South Kohala and North Kona Districts.

28. Petitioner has not established a demand to support its projected absorption rate of 20 to 25 dwelling units per year.

Petitioner's marketing consultant, Peat, Marwick, Mitchell & Co., has indicated that comparable luxury resort units have experienced low sale rate due to an oversupply of resort units.

Furthermore, Petitioner's projected demand for the proposed luxury resort units can be accommodated within other nearby resort areas such as the Waikoloa Resort development located just North of the Property which plans to develop

approximately 3,400 to 3,500 condominium units, the Mauna Kea Resort which is currently constructing 40 luxury residential units, and the Mauna Lani Resort which plans to develop 3,200 luxury condominium units.

IMPACTS UPON RESOURCES OF THE AREA

29. On December 18, 1984, the Commission accepted Petitioner's Final Environmental Impact Statement (EIS) prepared for the County General Plan Amendment Process.

Agricultural Resources

30. The Property is not presently used for any agricultural activity.

31. The Land Study Bureau's Overall Master Productivity Rating for the Property for agricultural use is Class "E" or Very Poor.

Archaeological Resources

32. Chiniago, Inc. conducted an archaeological survey for the Property and found nineteen sites and site complexes, including petroglyphs, burials, platforms, midden deposits, cave shelters, and a trail. Chiniago, Inc. recommended preservation of the petroglyphs (not necessarily in situ), salvage excavations on some of the other sites and reinterment of the burials. The proposed development would result in a loss of these historical and cultural resources.

33. Petitioner's proposed 4,000-foot access roadway for the project over State-owned lands would require a separate archaeological survey.

Natural Hazards

34. A portion of the Property is susceptible to tsunami inundation. The approximate tsunami elevation is 7 to 8 feet above mean sea level based upon the Flood Insurance Study for the Island of Hawaii prepared by the Federal Insurance Administration. Structures within this area would be subject to additional building restrictions to be determined by the County of Hawaii Department of Public Works.

Offshore and Nearshore Waters

35. The State Department of Health designates the offshore waters along the Property as Class AA. The objectives and uses of Class AA waters are as follows:

"The uses to be protected in this class of waters are oceanographic research, propagation of shellfish and marine life, conservation of coral reefs and wilderness areas and aesthetic enjoyment. It is the objective of this class of waters that they remain in as nearly their natural, pristine state as possible with an absolute minimum of pollution from any sources. To the extent possible, the wilderness character of such areas shall be protected. No zones of mixing will be permitted in these waters."

Petitioner's proposed evapotranspiration wastewater disposal method poses a potential danger to the quality of the nearshore waters and on-site ponds.

Petitioner's proposal to inject up to 50,000 gallons per day of high salinity brine into the groundwater at the Property also poses a threat to the quality of nearshore waters.

Biological Resources

36. Petitioner proposes to preserve several anchialine pools on the Property. Several types of animals and plants live in the pools, but none are listed as a rare or endangered specie.

Recreational Resources

37. The Petitioner proposes to provide public access to the shoreline and cooperate with the County of Hawaii in maintaining such access.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Sewage Treatment and Disposal

38. Petitioner estimates that the project will generate an average daily flow of 30,000 gallons and a maximum daily flow of 250,000 gallons. Since there is no public sewage disposal system available, Petitioner proposes to develop a secondary sewage treatment plant facility to process all the domestic wastewater or only the black water (toilet effluent), with the grey water (kitchen, laundry, bathing effluent) used for irrigation.

Upon completion of secondary sewage treatment facility, Petitioner proposes to dispose of sewage effluent via an evapotranspiration (ET) system. This process would distribute

the effluent from the treatment plant over a two-acre porous planter field lined with an impervious liner. Petitioner proposes to cover the planter field with topsoil and vegetation to absorb the nitrates from the sewage effluent.

39. Petitioner proposes to site the two-acre evapotranspiration field on adjoining State-owned lands, but has not obtained State Board of Land and Natural Resources ("BLNR") approval for the use of its proposed site .

Water Service

40. The County of Hawaii Department of Water Supply's public water system does not serve the Property. The County Department of Water Supply's water system facilities extend only to Puako in South Kohala (North of the site) and Keahole Airport in North Kona (South of the site).

Petitioner proposes to provide potable water to the project by using brackish groundwater made potable by an on-site reverse osmosis plant.

Petitioner proposes to drill a well on State owned lands along Queen Kaahumanu Highway to provide brackish water with acceptable levels of salinity, for feed water. Petitioner has not obtained State BLNR approval to drill the well on State lands.

41. Petitioner will need to provide additional water systems to meet irrigation and fire flow needs.

Roadway and Highway Services and Facilities

42. Petitioner estimates that the project will generate approximately 480-500 vehicular trips per day.

43. Petitioner proposes to acquire a 100-foot wide vehicular access easement over State-owned lands to connect Queen Kaahumanu Highway to the Property. Petitioner proposes to construct a two-lane roadway within the 100-foot wide easement. The length of the proposed easement and roadway would be approximately 4,000 feet.

44. Petitioner has not obtained approval from the State Board of Land and Natural Resources or the State Department of Transportation for the access roadway easement.

Solid Waste Disposal

45. Petitioner proposes to collect and dispose solid waste generated by the project by contracting with a private refuse company.

Schools

46. Petitioner anticipates that the proposed development will have a negligible enrollment impact upon the Waimea Elementary-Intermediate and Honokaa High Schools which serve the area.

Police and Fire Protection Services

47. Petitioner's proposes to supplement county police and protection service by providing on-site personnel to

perform security and nightwatch duties. Existing police and fire protection services are inadequate because they are located at Waimea and at Kailua-Kona resulting in a call and recovery time of approximately 15 to 30 minutes or longer.

Electricity and Telephone Services

48. Electrical and telephone services are not available to the Property. Petitioner cannot obtain services without roadway easements across State-owned land from the State BLNR.

Drainage

49. Petitioner believes that the present natural drainage system is adequate and has not proposed drainage improvements.

CONTIGUITY OF THE PROPOSED DEVELOPMENT

50. Petitioner's proposed reclassification from the Conservation District into the Urban District would result in the creation of a non-contiguous, spot Urban District. A development on the Property would also be isolated and non-contiguous, because the Property does not abut any existing urban development or activity.

51. The isolated nature of the proposed development is reflected in the unavailability of public facilities and services to the Property. Electrical and telephone services, as well as public potable water and sewage systems are unavailable to the project site. Petitioner can only make such

services available by using expensive, technically unproven methods, at excessive cost to the public. Petitioner's proposed development would require the use of approximately 8.4 acres of State-owned lands for access, water, and evapo-transpirator facilities otherwise available for recreation or other public use. Petitioner has not demonstrated that the public would benefit from the diversion of state-owned land for such use. The closest police, fire and medical facilities are located at Waimea, approximately 17 miles Northeast of the Property.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT POLICIES AND OBJECTIVES

52. The Proposed development does not comply with the following Hawaii Coastal Zone Management (CZM) objectives and policies relative to the subject project:

Preserve and improve shoreline open space and scenic resources; preserve recreational resources and promote recreational opportunities along the shoreline; preserve coastal ecosystems of significant biological or economic importance; control development in coastal hazard areas and ensure compliance with the federal flood insurance plan.

Scenic and Open Space Resources

53. Petitioner's proposed reclassification will be for Conservation land not contiguous with existing Urban lands. Historic, and archaeological sites are present on the Property. Petitioner will need to obtain easements for access and sewerage disposal on public lands that would be

inconsistent with current land use policies for resource protection.

Coastal Ecosystems

54. Petitioner's proposal to dispose brine waste into nearshore injection wells could disrupt the coastal, near and on shore ecosystems and degrade adjacent Class AA waters.

STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

55. The Property does not conform to the standards for classifying lands into the Urban District:

(a) It is not within an area characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses; it is isolated from other urban-designated areas, and is not in close proximity to basic services such as sewers, water, police and fire protection.

(b) Petitioner's proposed development would be in conflict with CZM objectives and polices as described in Findings of Fact No. 52.

(c) The Property is not reasonably necessary to accommodate growth and development. In the North Kona District there are an estimated 3,543 acres of vacant Urban Land. In the South Kohala District there are an estimated 5,430 acres of vacant Urban District land. Of this total, 2,503 acres are vacant and zoned for residential use.

These vacant urban lands provide a sufficient reserve for future urban growth.

CONFORMANCE WITH THE HAWAII STATE PLAN

56. Petitioner's Proposed reclassification and development of the Property would not comply with the following objectives, policies and priority directions of the Hawaii State Plan and as previously described in Findings of Fact Nos. 50, 51, 55; 20; 32; 38, 39, 27, 28 and 55(c):

Encourage urban developments in close proximity to existing services and facilities;

Preserve and improve shoreline open spaces and scenic resources and promote greater accessibility and prudent use of the shoreline for public recreational, educational, and scientific purposes;

Promote the preservation and restoration of significant natural and historic resources;

Encourage the adequate development of sewer systems that complement planned growth; and

Facilitate the use of available urban lands to accommodate the housing needs in various communities.

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 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 and District Regulations of the State Land Use Commission, the Commission finds upon a preponderance of evidence that the reclassification of the Property, which is the subject of the Petition, Docket No. A84-587 by 214142 Holdings, Ltd., consisting approximately 15.8 acres at Kapalaoa, Puuanahulu, North Kona, Hawaii, State of Hawaii, Hawaii Tax Map Key Nos.: 7-1-03: 5, 6, 11, does not conform to the standards established for the Urban District by the State Land Use District Regulations, is violative of Section 205-2 Hawaii Revised Statutes, as amended, and the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes.

ORDER

IT IS HEREBY ORDERED that reclassification of the Property, which is the subject of the Petition Docket No. A84-587 by 214142 Holdings, Ltd., consisting approximately 15.8 acres situate at Kapalaoa, Puuanahulu, North Kona, Hawaii, State of Hawaii, and identified by Hawaii Tax Map Key Nos.: 7-1-03: 5, 6 and 11, shall be and hereby is denied and the Property shall remain in the Conservation District.

DOCKET NO. A84-587 - 214142 HOLDINGS, LTD.

Done at Honolulu, Hawaii, this 10th day of February
1986, per motions on October 17, 1985 and December 10, 1985.

LAND USE COMMISSION
STATE OF HAWAII

By *T. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By *Toru Suzuki*
TORU SUZUKI
Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner

By *Richard B. F. Choy*
RICHARD B. F. CHOY
Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Commissioner

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_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission 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:

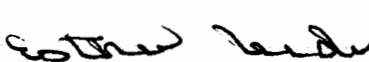
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Suite 1250, Central Pacific Plaza
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Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 10th day of February 1986.



ESTHER UEDA
Executive Officer

DOCKET NO. A84-587 - 214142 HOLDINGS, LTD.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on February 10, 1986.

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