

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) Docket No. A92-674
)
LANAI RESORT PARTNERS) FINDINGS OF FACT,
) CONCLUSIONS OF LAW, AND
) DECISION AND ORDER
To Amend the Land Use District)
Boundary to Reclassify Approximately)
319.447 Acres of Land from the)
Agricultural District and Rural)
District into the Urban District)
at Manele, Lanai, Maui, State of)
Hawaii, Tax Map Key No.: 4-9-02:)
Por. 49)
_____)

APPROVED FOR THE COMMISSION
BY THE CHAIRMAN
APR 15 11 41 AM '94

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

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

Lanai Resort Partners ("Petitioner"), a California general partnership registered to do business in the State of Hawaii, whose partners are MK Development, Inc., a Hawaii corporation, and Lanai Company, Inc., a Hawaii corporation, filed this petition on February 7, 1992, which was amended pursuant to section 15-15-43, Hawaii Administrative Rules ("HAR") on April 30, 1992 (hereinafter collectively referred to as "Petition"). The Petition was filed pursuant to chapter 205, Hawaii Revised Statutes ("HRS"), and chapter 15-15, HAR, to amend the land use district boundary of certain lands at Manele, Lanai, Hawaii, Tax Map Key No.: 4-9-02: portion of 49, covering approximately 174.462 acres of land from the Rural District to the Urban District, and approximately 144.985 acres of land from the Agricultural District to the Urban District situated at Manele, Lanai, Hawaii, Tax Map Key No.: 4-9-02: portion of 49

(collectively referred to herein as "Property") for residential development of the Property. The Land Use Commission of the State of Hawaii ("Commission") having heard and examined the testimony, evidence, and argument of all counsels representing the various parties during the hearings, the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order ("Petitioner's Proposed Decision and Order"), the Proposed Findings of Fact, Conclusions of Law, Order filed by Lanaians for Sensible Growth ("Intervenor"), the Office of State Planning's ("OSP") Response to Petitioner's Proposed Decision and Order, the Intervenor's Memorandum in Response to Petitioner's Proposed Decision and Order, Petitioner's Response to Intervenor's Proposed Findings of Fact, Conclusions of Law, Order, and Maui County Planning Department's ("County") Exceptions to Petitioner's Proposed Decision and Order, and upon consideration of the entire records and files in this proceeding, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

1. On June 3, 1992, a prehearing conference was conducted at the conference room of the Department of Business, Economic Development and Tourism, Central Pacific Plaza, in Honolulu with representatives of the Petitioner, County, and OSP present. At the prehearing conference, the lists of exhibits and lists of witnesses of the parties as of that date were reviewed by the parties.

2. On June 16, 1992, the Commission received an untimely Petition For Leave To Intervene in this proceeding filed by the Lanaians For Sensible Growth. By Order dated July 2, 1992, the Commission, after having heard and considered the Petition For Leave To Intervene on June 18, 1992, allowed the Lanaians For Sensible Growth ("Intervenor") to intervene in this proceeding; provided that its intervention was limited to the issues of water quality, access to the ocean, and social impacts.

3. The Commission conducted hearings on this Petition on June 18 and 19, 1992, September 9 and 10, 1992, February 11 and 12, 1993, May 12 and 13, 1993, August 12 and 13, 1993, December 15 and 16, 1993, February 10, 1994, and March 2 and 3, 1994, pursuant to the notices published on May 7, 1992 in the Maui News and the Honolulu Advertiser.

4. The following persons appeared and testified as public witnesses and/or submitted written comments:

Carlson Young
Mario Bandalan
Bernie Hanog
Lisa Kaniho
Harry Yamamoto
Kurt Matsumoto
Steve Snow
John Ornellas
Rick Hokama
Elizabeth Stone
Goro Hokama
Edward K. Sowers
James Bartell
Jerry Knight
Matthew Bailey
Lunakanawai Hauanio
Lehua Matsuoka
Elaine Kaopuiki
Martha Evans

5. On July 9, 1993, the Commission issued Order (Re: Submission Of Exhibits And Identification Of Witnesses) pursuant to which subsequent motions to supplement testimony, exhibit list and witness list were filed from time to time by certain parties and which motions were heard and approved by the Commission.

6. On December 15, 1993, at the Commission's hearing in Lanai City, Lanai, Intervenor filed a Motion To Compel Provision Of Information which was granted by the Commission on said date and by its Order Granting Intervenor's Motion To Compel Provision Of Information filed January 31, 1994.

7. On January 27, 1994, Petitioner filed its Response To Order For Provision Of Information pursuant to the Commission's Order Granting Intervenor's Motion To Compel Provision Of Information. On March 3, 1994, Petitioner filed Petitioner's Exhibits 80 and 81 in further response to the Commission's Order. On March 21, 1994, Petitioner filed affidavit of Tammy Sanches and affidavit of Mary Manuel covering clarification and amendment to prior responses made by Petitioner to the Commission's Order.

8. On February 10, 1994, Intervenor filed a Motion For Order To Compel Petitioner To Supplement Its Environmental Impact Statement. Upon hearing the motion on March 2, 1994, the Commission issued its Order Denying Intervenor's Motion For Order To Compel Petitioner To Supplement Its Environmental Impact Statement filed on March 28, 1994.

9. The hearings on the Petition were closed on March 3, 1994.

10. On May 2, 1994, Intervenor filed a Motion to Supplement Record, or Alternatively, to Reopen the Hearings and to Take Official Notice. On June 17, 1994, the Commission heard said Motion at its meeting in Lanai City, Lanai, and orally granted a portion of said motion to supplement the record and denied the request to reopen the hearing.

11. On June 17, 1994, at the Commission's meeting at Lanai City, Lanai, a motion was made by Commissioner Nip, and seconded by Commissioner Mattson, to approve reclassification, subject to twenty-four conditions, of approximately 174.462 acres of the Property from the State Land Use Rural District to the State Land Use Urban District, and incremental reclassification of approximately 144.985 acres from the State Land Use Agricultural District to the State Land Use Urban District pursuant to section 15-15-78, HAR. The motion included proposed findings of fact and conclusions of law.

12. The four Commissioners voting in support of the motion were Commissioners Renton Nip, JoAnn Mattson, Delmond Won, and Elton Wada.

13. The three Commissioners voting against the motion were Commissioners Trudy Senda, Lloyd Kawakami, and Allen Hoe.

CONCLUSIONS OF LAW

Sections 205-1 and 205-4, HRS, provides that "[s]ix affirmative votes shall be necessary for any boundary amendment."

Section 205-4(h), HRS, also provides that "[n]o amendment of a land use district boundary shall be approved unless the commission finds upon a clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17."

Having failed to receive the six affirmative votes required to effectuate a boundary amendment, the Petition is denied.

DECISION AND ORDER

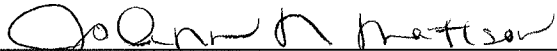
IT IS HEREBY ORDERED that the portion of the Property, consisting of approximately 174.462 acres of land situate at Manele, Lanai, Hawaii, Tax Map Key No.: 4-9-02: portion of 49, shall hereby remain in the State Land Use Rural District.


IT IS HEREBY FURTHER ORDERED that the portion of the Property, consisting of approximately 144.985 acres of land situated at Manele, Lanai, Hawaii, Tax Map Key No.: 4-9-02: portion of 49 shall hereby remain in the State Land Use Agricultural District.

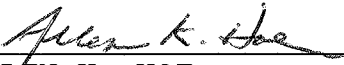
DOCKET NO. A92-674 - LANAI RESORT PARTNERS

Done at Honolulu, Hawaii, this 15th day of August 1994,
per motions on June 17, 1994 and August 10, 1994.

LAND USE COMMISSION
STATE OF HAWAII

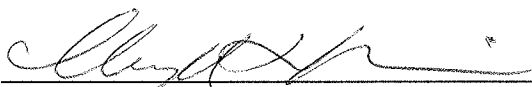
By 
JOANN N. MATTSO
Chairperson and Commissioner

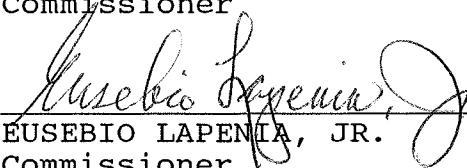
By 
TRUDY K. SENDA
Vice Chairperson and Commissioner


By 
ALLEN K. HOE
Commissioner

By (absent)
M. CASEY JARMAN
Commissioner

By (absent)
ALLEN Y. KAJIOKA
Commissioner

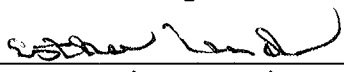
By 
LLOYD F. KAWAKAMI
Commissioner

By 
EUSEBIO LAPENIA, JR.
Commissioner

By 
RENTON L. K. NIP
Commissioner

Filed and effective on
August 15, 1994

Certified by:


Executive Officer

By 
ELTON WADA
Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and 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:

DEL. HAROLD S. MASUMOTO, Director
 Office of State Planning
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CERT. RON MCOMBER, President
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486 Akolu Place
Lanai City, Hawaii 96763

DATED: Honolulu, Hawaii, this 15th day of August 1994.



ESTHER UEDA
Executive Officer