

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
OFFICE OF STATE PLANNING, )  
STATE OF HAWAII )  
To Amend the Land Use District )  
Boundary of Certain Lands Situated )  
at Honouliuli, Ewa, Oahu, State of )  
Hawaii, Identified by Tax Map Key )  
Numbers of the First Division: )  
9-1-16: por. 25 and 9-1-17: por. 4, )  
Consisting of Approximately 1,300 )  
Acres from the State Land Use )  
Agricultural District to the State )  
Land Use Urban District )

DOCKET NO. A94-708  
MOTION TO RE-OPEN  
HEARING; MEMORANDUM  
IN SUPPORT OF MOTION;  
EXHIBIT 1; CERTIFICATE  
OR SERVICE

JUN 28 12 59 PM '95  
LAND USE COMMISSION  
STATE OF HAWAII

MOTION TO RE-OPEN HEARING


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MOTION TO RE-OPEN HEARING

Comes now, Benjamin M. Matsubara, Hearing Officer in the above-entitled proceeding, on his own motion moves to re-open the hearing in this proceeding. This Motion is made pursuant to Section 15-15-70, Hawaii Administrative Rules, and is supported by the attached Memorandum in Support of Motion.

Dated: Honolulu, Hawaii, June 28, 1995.

  
\_\_\_\_\_  
BENJAMIN M. MATSUBARA  
Hearing Officer

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MEMORANDUM IN SUPPORT OF MOTION

I. BACKGROUND

The Office of State Planning, State of Hawaii ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on September 19, 1994, and a First Amended Petition on October 26, 1994 (collectively referred herein as "Petition"), to reclassify approximately 1,300 acres of land situated at Honouliuli, Ewa, Oahu, State of Hawaii, identified by Tax Map Key Numbers of the First Division: 9-1-16: por. 25 and 9-1-17: por. 4, from the State Land Use Agricultural District to the State Land Use Urban District.

The purpose of the Petition was to implement Act 177, Session Laws of Hawaii ("SLH") 1994, which authorizes a land exchange between the George Galbraith Estate and the State of Hawaii involving approximately 2,200 acres of private agricultural lands north of Wahiawa, Oahu, for approximately 500 acres of public

lands north of Wahiawa, Oahu, for approximately 500 acres of public lands within the subject property at Kapolei, Oahu.

Act 177, SLH 1994, states that the land exchange is to be accomplished by June 30, 1995. Senate Bill No. 1650 entitled, "A Bill for an Act Relating to Land Exchange" proposed to extend the repeal date of Act 177, SLH 1994, from June 30, 1995, to June 30, 1996. The bill was approved by the Legislature in the 1995 session and sent to the Governor for his signature.

By the Governor's Statement of Objections to Senate Bill No. 1650, dated June 19, 1995 See, Statement of Objections to Senate Bill No. 1650, attached as Exhibit 1, the Governor returned the bill to the Legislature without his approval, citing the need for the Legislature to re-examine the exchange in light of the designation of the Galbraith Estate lands as a Superfund site by the U.S. Environmental Protection Agency.

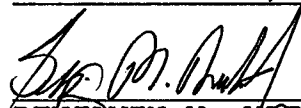
## II. PURPOSE OF MOTION

The purpose of this Motion is to re-open the hearing on the Petition to obtain information relative to the impact of the Governor's veto of Senate Bill No. 1650 upon the proposed reclassification of the subject property.

## III. CONCLUSION

Based on the record and evidence provided hereto, the Hearing Officer believes there is good cause to re-open the hearing on the subject Petition.

Dated: Honolulu, Hawaii, June 28, 1995.

  
BENJAMIN M. MATSUBARA  
Hearing Officer

EXECUTIVE CHAMBERS

HONOLULU

June 19<sup>th</sup>, 1995

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1650

Honorable Members  
Eighteenth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1650, entitled, "A Bill for an Act Relating to Land Exchange."

The purpose of Senate Bill No. 1650 is to expedite the exchange of about 2100 acres of Galbraith Trust land in Wahiawa for 500 acres of state-owned land in Kapolei acquired from the Campbell Estate. This bill would extend the repeal date of Act 177, Session Laws of Hawaii 1994, from June 30, 1995 to June 30, 1996, thereby extending legislative pre-approval of the exchange and exempting it from the usual procedure for BLNR and legislative review pursuant to section 171-50(b), Hawaii Revised Statutes.

On December 16, 1994, the U.S. Environmental Protection Agency (EPA) created Hawaii's fourth Superfund site, called the Del Monte Superfund Site, which includes the 500 acres of Galbraith Trust lands which the State has been planning to acquire in the exchange. Superfund is a federal law, formally called the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which governs the clean-up of toxic waste sites. The Del Monte Superfund Site is now one of the priority 1,242 sites in the nation listed on the National Priorities List (NPL) for investigation and clean-up because of known or threatened releases of hazardous substances and pollutants.

If the State were to proceed with the exchange, as the new owner of part of the Del Monte Superfund site, it would be liable under the Superfund law for the costs of clean-up. Region IX of EPA has already begun enforcement action against other

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 1650  
Page 2

potentially responsible parties, Del Monte Fresh Produce (Hawaii), Inc., Del Monte Corporation, Dow Chemical Company, and RJR Nabisco Holdings.

The value of the Galbraith Estate land is unquestionably lessened because of its new status as a Superfund site; proceeding with the exchange can no longer be done consistent with the legislative intent of Act 177, that the exchanged lands be of substantially equal value. Instead, the exchange would expose the State to enormous liability. It would only be fair to allow the Legislature to look at the exchange again, in light of the changed circumstances and new information.

For the foregoing reasons, I am returning Senate Bill No. 1650 without my approval.

Respectfully,

  
BENJAMIN J. CAYETANO  
Governor of Hawaii

P R O C L A M A T I O N

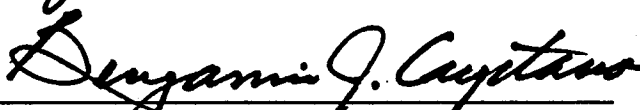
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of his plan to return with his objections any bill presented to him less than ten days before adjournment sine die or presented to him after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 1650, entitled "A Bill for an Act Relating to Land Exchange," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 1650 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 1650 with my objections thereon to the Legislature as provided in said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,  
State of Hawaii, this 19<sup>th</sup> day  
of June, 1995.



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BENJAMIN J. CAYETANO  
Governor of Hawaii

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Re-open Hearing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

GREGORY G.Y. PAI, PH.D., Director  
Office of State Planning  
P.O. Box 3540  
Honolulu, Hawaii 96811-3540  
Attention: Mary Lou Kobayashi

CERT. RICK J. EICHOR, ESQ., Attorney for Petitioner  
Department of the Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813

CERT. CHERYL SOON, Chief Planning Officer  
Planning Department  
City and County of Honolulu  
650 South King Street  
Honolulu, Hawaii 96813

CERT. ROBERT SCHNEIDER, ESQ.  
Case, Myrdal, Bigelow & Lombardi  
Suites 2500 & 2600  
Grosvenor Center, Mauka Tower  
737 Bishop Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 28th day of June 1995.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer