

Henry Ross Department

THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

HENRY A. ROSS,)	CIVIL NO. 92-93
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
)	MOTION FOR PARTIAL SUMMARY
vs.)	JUDGMENT
)	
COUNTY OF HAWAII, et al.,)	
)	
Defendants,)	

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff's Motion for Partial Summary Judgment or Summary Judgment having come on for hearing on April 10, 1992 before the Honorable Ernest Kubota, with Henry Ross appearing pro se and Anson Lee appearing on behalf of the County of Hawaii, and the Court having considered the arguments of counsel and the records and files herein, Plaintiff's Motion for Partial Summary Judgment is hereby granted based on the following findings of fact and

I hereby certify that this is a full, true and correct copy of the original on file in this office

[Signature]
Clerk, Third Circuit Court, State of Hawaii

conclusions of law:

FINDINGS OF FACT:

1. Plaintiff is one of those persons who has requested written notification of Hawaii County council meetings.'

2. On October 14, 1991, Plaintiff wrote a letter to the Planning Commission objecting to the notice being provided for county council meetings.

3. A copy of Plaintiff's letter was received by the county council and on October 30, 1991 was discussed at a Planning Committee meeting.

4. On November 14, 1991, the agenda for a November 20, 1991 council meeting was posted on the bulletin board outside the county council room at approximately 10:00 a.m. and was placed on the public counter in the county council office between 9:50 and 10:00 a.m.

5. On November 15, 1991 an announcement of the November 20, 1991 council meeting was made and notice of the November 20, 1991 meeting was mailed to Plaintiff.

6. At the November 20, 1991 county council meeting at 10:00 a.m. the first reading of Bills 91-506 through 91-513, 91-515 and 91-516 occurred.

7. On November 29, 1991 an announcement was made that a second reading of Bills 91-506 through 91-513, 91-515 and 91-516 would take place at a regular council meeting on December 4, 1991.

8. On December 4, 1991 the county council meeting for that day was cancelled due to insufficient notice of the meeting. And Council Chairman Russell Kokubun announced a special meeting to be held on December 10, 1991.

9. On December 4, 1991, the agenda for the December 10, 1991 special meeting was mailed to Plaintiff, was posted on the bulletin board outside the county council room, and at approximately 7:46 a.m. was placed on the public counter in the county council office. The agenda was also published in the Hawaii-Tribune Herald and the West Hawaii Today on December 8, 1991.

10. Notice of the December 10, 1991 special meeting was not posted on the Hawaii County Building bulletin board which is located at the first floor entrance of the Hawaii County Building.

11. On December 10, 1991 the special meeting scheduled for that day commenced at 9:00 a.m. Plaintiff addressed the council and stated that the meeting should not proceed because:

1) Notice of the meeting had not been posted on the county building bulletin board as required by Article XIII, Section 13-20(c) of the county charter, and

2) the six calendar day notice requirements of HRS 92-7, as amended, has not been complied with.

12. The county council discussed Plaintiff's objections and consulted with a deputy corporation counsel who informed the council that six days notice had been provided for the meeting and that he was not aware of any requirement that notice be mailed to persons requesting such notice.

13. In response to Plaintiff's objection that the notice of the meeting should have been posted on the county building bulletin board as required by the county charter, the council chairman stated that agendas of meetings have always been posted on the bulletin board outside the county council room.

14. The council chairman further stated that if notices of council meetings should be posted on the county building bulletin board then all county council action taken over the last 25 years would be null and void.

15. The county council proceeded with the special meeting over Plaintiff's objections and the second reading of Bills 91-506 through 91-513, 91-515 and 91-516 occurred and the bills were adopted.

16. Bills 91-506 through 91-513, 91-515 and 91-516 have now become Ordinances 91-124 through 91-131, 91-133 and 91-134.

17. Plaintiff filed his Complaint for Declaratory Judgment and Injunctive Relief on March 5, 1992 and an Amended Complaint for Declaratory Judgment and Injunctive Relief on March 16, 1992.

CONCLUSIONS OF LAW :

1. The Circuit Court of the Third Circuit has jurisdiction over the parties and subject matter of the instant action.

2. The Hawaii County Council is a "board" as defined in HRS. 92-2(1). as amended, and as such must comply with the notice requirements of HRS. 92-7, as amended, in conducting county council meetings.

3. Pursuant to HRS. 92-7, as amended, the Hawaii County Council must file notice of any regular, special or rescheduled meeting in the office of the lieutenant governor or the appropriate county clerk's office, and in the county council office for public inspection, at least six calendar days before the meeting.

4. Notice of county council meetings must also be mailed to those persons requesting such notice no later than six calendar days before each meeting.

5. A calendar day for purposes for HRS. 92-7 as amended, is 24 hours. Therefore, six calendar days, of 144 hours, is required between the filing and mailing of notice of county council meetings, and the commencement of the meetings.

6. Pursuant to Article XIII, Section 13-20(c) of the Hawaii County Charter, notice of special meetings shall be conspicuously posted on the bulletin board of the Hawaii County Building which is located at the first floor entrance of the Hawaii County Building.

7. Pursuant to Article XIII, Section 13-20(d) of the Hawaii County Charter, business conducted by the council during a meeting which does not conform to Article XIII, Section 13-20(c) is null and void.

8. Article III, Section 3-11(a) of the Hawaii County Charter states: "ordinances shall be initiated as bills which shall be passed only after two readings on separate days."

9. The County did not comply with the notice requirements of HRS 92-7, as amended, with respect to the November 20, 1991 council meeting. Although there were six calendar days between the filing of the notice in the county council office and the commencement of the the meeting, there were, at most, only five calendar days between the mailing of the notice to Plaintiff and the commencement of the meeting.

10. This court need not address the effect of the above notice violation on the validity of the first reading of Bills 91-506 through 91-513, 91-515 and 91-516 since this court finds that the second reading and adoption of the bills are null and void.

11. The notice requirements of HRS 92-7, as amended, were satisfied with regard to the December 10, 1991 special meeting since:

a) there were six calendar days between the filing of the notice in the county council office and the commencement of the meeting, and

b) there were six calendar days between the mailing of the notice to Plaintiff and the commencement of the meeting.

12. However, since notice of the special meeting was not posted on the Hawaii County Building bulletin board as required by Article XIII, Section 13-20(c) of the Hawaii

County Charter, the second reading and adoption of Bills 91-506 through 91-513, 91-515 and 91-516 are null and void pursuant to Article XIII, Section 13-20(d) of the Hawaii County Charter.

DATED: Hilo, Hawaii

1953 11 10

ERNEST KUBOTA

HONORABLE ERNEST KUBOTA
Judge of the Above-Entitled Court

COUNTY OF HAWAII STATE OF HAWAII

BILL NO. 513

ORDINANCE NO. 91 131

AN ORDINANCE AMENDING THE COUNTY OF HAWAII GENERAL PLAN AS ADOPTED BY ORDINANCE NO. 89-142 AND AS AMENDED BY ORDINANCE NOS. 90-71, 91-48 and 91-72.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map is hereby amended to redesignate approximately 110± acres and 90± acres of land on the mauka and makai, respectively, side of Kukuihaele Village, identified by Tax Map Key Section 4-8 located at Puopaha, Keaa, Waikoekoe, Kanahonua, Kukuihaele and Lalakea, Hamakua District, Island of Hawaii from "Intensive Agricultural and Extensive Agricultural" to "Urban Expansion Area." All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. The County of Hawaii General Plan Land Use element is hereby amended to add Kukuihaele to the list of Urban and Rural Centers.

SECTION 3. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of

applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall take effect upon its approval.

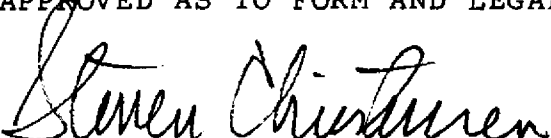
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

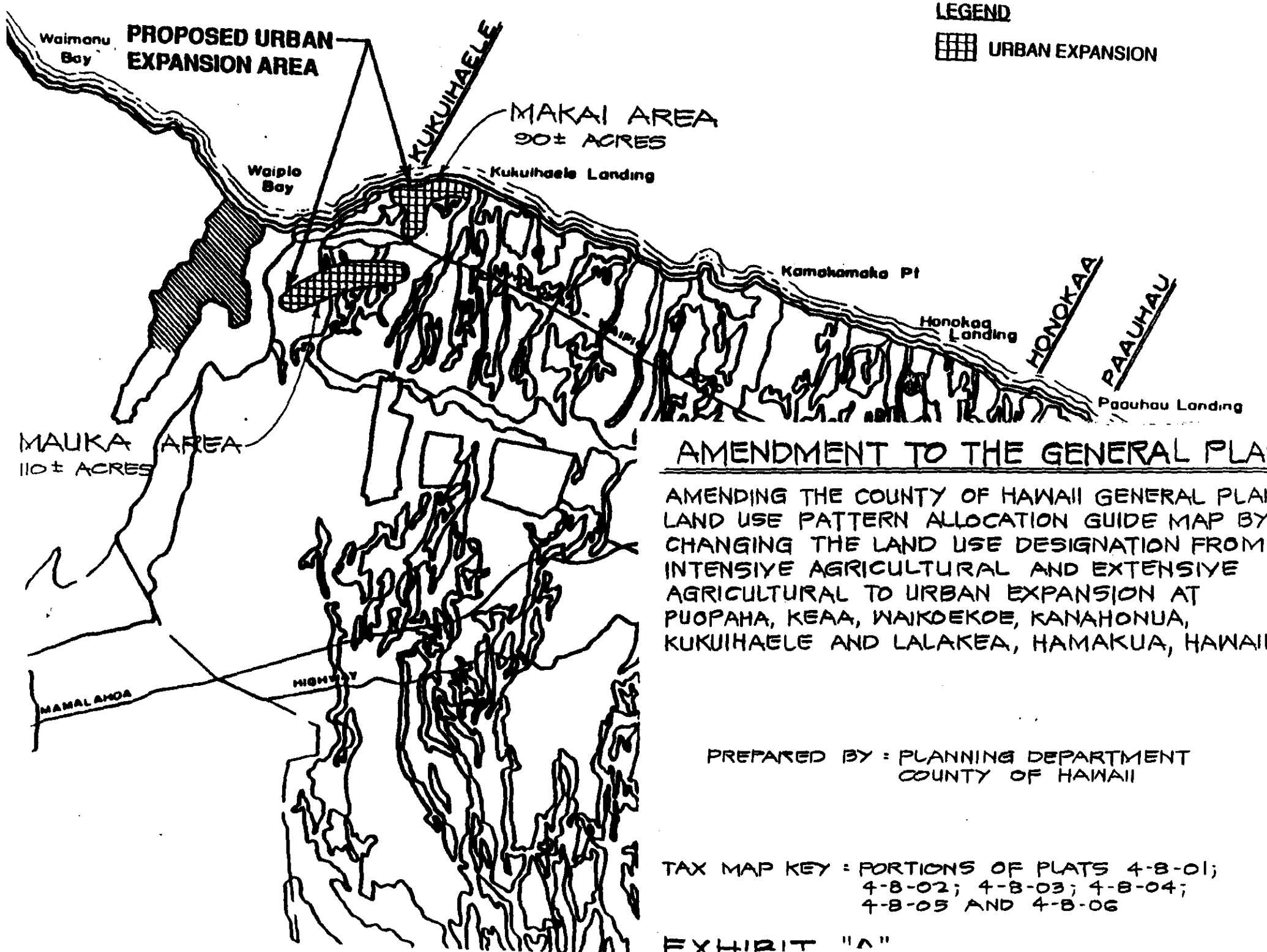
Hilo, Hawaii

Date of Introduction: November 20, 1991
Date of 1st Reading: November 20, 1991
Date of 2nd Reading: December 10, 1991
Effective Date: December 26, 1991

APPROVED AS TO FORM AND LEGALITY:


CORPORATION COUNSEL

DATED: OCT 23 1991



LEGEND

 URBAN EXPANSION

AMENDMENT TO THE GENERAL PLAN

AMENDING THE COUNTY OF HAWAII GENERAL PLAN LAND USE PATTERN ALLOCATION GUIDE MAP BY CHANGING THE LAND USE DESIGNATION FROM INTENSIVE AGRICULTURAL AND EXTENSIVE AGRICULTURAL TO URBAN EXPANSION AT PUOPAHA, KEAA, WAIKOEKOE, KANAHONUA, KUKUIHAELE AND LALAKEA, HAMAKUA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT
COUNTY OF HAWAII

TAX MAP KEY : PORTIONS OF PLATS 4-8-01;
4-8-02; 4-8-03; 4-8-04;
4-8-05 AND 4-8-06

EXHIBIT "A"