STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM

March 30, 1973
10:00 a.m.

TO: Land Use Commission

FROM: Staff

SUBJECT: A72-347 - JOHN M. MAHI, ET AL

A duly advertised public hearing was held on this request on January 19, 1973 to reclassify 3.3 acres of land at Kalaoa, North Kona, Hawaii, from an Agricultural to a Rural classification.

It was reported at the public hearing that the Hawaii County Planning Commission voted to recommend approval of this petition based on the finding that local families owning lands under multiple ownership should be permitted to subdivide their land, provided that the rezoning would not change the basic character of the land. However, this action was contrary to the Hawaii County Planning Department's recommendation for denial of the request since it found that there are ample rural sized lots within the general area and since the net effect would contribute to residential sprawl in the area.

Since the hearing, Mr. Mahi, in a letter dated January 19, 1973, urged favorable consideration of his petition since:

1. The 4 owners have no desire to sell the land but merely wish to build homes for themselves.

2. The "surrounding areas of large property owners have been approved by the County and the State for urban development (such as Kona Highlands, Pacific Palisades, etc.)". It is unfair to the small property owners to be denied rezoning since their property contains the same poor soil and has even less room for agricultural activities than the larger properties.

ANALYSIS

Since the permanent district boundaries were established by the Land Use Commission in August of 1964, there have been numerous requests involving subdivision of land within the Agricultural or Rural District below the allowable minimum lot size in order that those lands may be conveyed to relatives for residential use. A total of 15 such requests were processed under the boundary amendment procedure and a total of 7 requests came under the special permit procedure.

Of the 15 boundary amendment requests, 8 were approved primarily because the subject areas abutted the existing Urban District. Of the remaining petition, 5 were disapproved and 2 were withdrawn.

Of the 7 special permit requests, 3 were approved and 4 were disapproved. Of the 3 special permits which were approved, 2 contained conditions that the old dwelling be demolished, and the 3rd petition involved homes that were existing before the establishment of the Land Use Law.

It can readily be seen from the above that all of the boundary change and special permit requests which were approved contained mitigating circumstances which prompted favorable consideration by the Commission.

An evaluation of the present petition shows the following:

1. The petitioner's contention that the "surrounding areas of large property owners have been approved by the County and the State for urban development (such as Kona Highlands, Pacific Palisades, etc.)", is not entirely true in that the State has not designated the area for urban development. The petitioner's reference to Kona Highlands and the Kona Palisades subdivisions relates only to County subdivision approvals given prior to the establishment of the Land Use Law, thus placing these and other nearby subdivisions in a non-conforming category. The petitioner's reference to these non-conforming subdivisions should not be used as a lever to establish a 3.3 acre Rural spotzone in the middle of an Agricultural District.

2. If such spotzones are allowed to be established in districts designated for agricultural use throughout the State, the planning programs of both State and County governments to provide capital improvements and public services and facilities would become an impossible task. Those services and facilities already existing would become overloaded and inadequate, thus forcing premature extension and expansion of these amenities in widely scattered areas which were previously designated for agricultural use.

3. The random rezoning of small non-contiguous parcels to Rural or Urban uses would pose insurmountable problems to the Department of Taxation in its attempts to assess land equitably. Landowners surrounding the property rezoned who intend to continue agricultural uses would be subjected to higher assessments and economic hardship and would eventually be forced to abandon agricultural pursuits in favor of short-term

gains from urban development, thus starting a vicious circle which will significantly lessen the role that agriculture plays in the State's economy.

4. The regulatory and zoning powers of an agency must apply equally to everyone concerned and must never be used to discriminate or grant special privileges to a few. If this petition is approved, other similar petitions requesting subdivision for co-owners or conveyance to relatives would have to be given the same favorable consideration. Such a prospect would be contrary to the purpose and intent of land use controls and regulations and weaken the implementation of the State Land Use District Boundaries and Regulations.

5. Staff would suggest that an in-depth analysis be conducted during the 5 year review to explore alternative solutions to these kinds of problems and its impact on land use planning.

In conclusion, the staff finds that approval of this request would be contrary to fundamental concerns expressed in Act 187 relating to inadequate controls on Hawaii's limited lands which result in long term loss of income and growth potential of our economy; inadequate bases for assessing lands; scattered subdivisions with expensive, yet reduced, public services, and the shifting of lands into residential uses when other lands are available to serve the urban needs.

Therefore, based on the above discussion, the staff has no alternative but to recommend that this petition be disapproved.