

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
))
 KAPALAOA, INC.))
))
To Amend the District Boundary))
of Certain Lands Situated in))
the Land Division of Puuanahulu,))
North Kona, Island of Hawaii))

)

DOCKET NO. A80-500

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of))
KAPALAOA, INC.)	DOCKET NO. A80-500
))	
To Amend the District Boundary)	FINDINGS OF FACT,
of Certain Lands Situated in)	CONCLUSIONS OF LAW, AND
the Land Division of Puuanahulu,)	DECISION AND ORDER
North Kona, Island of Hawaii)	
_____)	

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

The above-captioned land use boundary amendment proceeding was initiated by the petition of KAPALAOA, INC., pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the Land Use District Boundary of certain lands consisting of approximately 15.5 acres, and identified by Tax Map Key 7-1-03: 5, 6 and 11 (hereinafter referred to as the "subject property") situated at Puuanahulu, North Kona, Island of Hawaii, from the Conservation District to the Urban District. The Land Use Commission, having heard the evidence presented on the matter during the hearing held on April 8 and May 5, 1981, in Kailua-Kona, Hawaii, and having duly considered the record in this Docket, the proposed findings of fact and conclusions of law submitted by parties, and the responses and comments made thereto hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Kapalaoa, Inc. filed the petition on October 28, 1980, to amend the Conservation District Boundary at Puuanahulu,

North Kona, Island of Hawaii by reclassifying approximately 15.5 acres of land identified as Tax Map Key 7-1-03: 5, 6 and 11 into the Urban District.

2. The Petitioner is a Hawaii corporation with its principal place of business and post office address being P. O. Box 102, Kailua-Kona, Hawaii, 96740. The president of this corporation is Walter Filipek.

3. The Petitioner has a vendee's interest in the subject property under an Agreement of Sale.

4. Arnold T. Abe, Esq., and Kazuhisa Abe, Esq., of the law firm of Abe & Abe are the attorneys for the Petitioner.

5. On January 20, 1981, the Petitioner filed a Motion to Defer Hearing.

6. Notice of the hearing scheduled for April 8, 1981, at 10:00 a.m. in the Resolution Room, Kona Hilton Hotel, Kailua-Kona, Island of Hawaii was published in the Hawaii Tribune Herald and the Honolulu Advertiser on March 4, 1981, and served by mail on the parties. There were no applications to intervene as a party or appear as a public witness.

7. A prehearing conference was held on March 30, 1981 in Honolulu. The hearing was conducted in Kailua-Kona on April 8 and on May 5, 1981.

DISCRIPTION OF THE SUBJECT PROPERTY

8. The subject property is located at Puuanahulu Makai, North Kona, Island and County of Hawaii, and is approximately 17 miles southwest of Waimea town and 25 miles north of Kailua-Kona.

9. The subject property consists of approximately 15.5 acres and is more particularly identified as Hawaii TMK: 7-1-03: 5, 6 and 11. The developer, KAPALAOA, INC., is a

subsidiary of 214142 Holdings Ltd., a Canada corporation which holds the vendee's interest in the property under an agreement of sale.

10. The owners of fee simple title to the subject property are Julius and Mamie Walton, James and Agnes Benedetto, Harry K. Brown, Jr. and Nat and Christel Wolozin as tenants in common to an undivided one-half interest; and Robert Romer, Richard Beamish, Ronald Diggins and Curci-Turner Co., as tenants in common as to the other undivided one-half interest.

11. The subject property is situated along the west shore of Anaehoomalu Bay at the boundary between the North Kona and South Kohala Districts, approximately 1,200 feet south of the Transcontinental Development Corporation's Waikoloa Beach Resort development and about 3,000 feet makai of the Queen Kaahumanu Highway.

12. The subject property is presently vacant, with the exception of a small, old wooden house along the beach. The property south of the site also contains one or two houses along the shore and a family cemetery. Campers and fishermen use the area, but there is no improved vehicular access to the subject property.

13. The U.S. Department of Agriculture Soil Conservation Service classifies the soil of the subject property as Beaches (BH) and Lava Flows Pahoehoe (rLW). Beaches (BH) include long narrow, sloping areas of sand and gravel along the coastline. The sand and gravel vary in color according to the material from which they formed. According to Soil Conservation Service, this land type is used for recreation and is sometimes washed by waves during storms or high tide. These lands are not suitable for building foundations or septic tank filter fields.

14. Lava Flows, Pahoehoe (rLW) is a miscellaneous land type. This lava type has a billowy, glassy surface that is relatively smooth. In some areas, the surface is rough and broken, interspersed with hummocks and pressure domes. Pahoehoe lava has no soil covering and is typically bare of vegetation except for mosses and lichens. According to the Soil Conservation Service, pahoehoe lava exhibits severe limitations for septic tank filter fields.

15. The topography of the subject property ranges from 1 to 13 feet above mean sea level, with slopes ranging between 0 to 5 percent.

16. Rainfall on the subject property is approximately 5 to 8 inches annually.

17. The subject property is not classified under the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system, because it is classified in the Conservation District.

PROPOSAL FOR DEVELOPMENT

18. The Petitioner requests reclassification to the Urban District in order to accomplish the development of approximately 120 to 130 luxury condominium units.

19. The petition proposes a multi-family residential development of 120 2-bedroom, 2½ bath units, having an area of 2400-2500 square feet, in a series of 3-story structure scattered throughout the 15.5 acre site. On-site amenities proposed for the project include swimming pools, tennis courts, a pavilion, a lounge, a general store and open space areas.

20. The Petitioner proposes to sell seventy-five percent (75%) of the units to Canadian citizens, offering units initially to its business associates, and remainder of the units to mainland and Hawaii residents. Petitioner anticipates that

elderly Canadian buyers would purchase units for use as winter retirement homes. The Petitioner does not intend to provide a balanced housing supply for all economic and social groups.

21. The Petitioner estimates the construction cost of the project to be approximately \$100 per square foot or \$240,000 per unit, for a total construction cost of \$28.8 million.

22. The Petitioner has not set anticipated selling prices for the residential units. However, the Petitioner proposes to price the proposed units at the upper end of the market ranging between \$500,000 and \$800,000 in today's dollars.

23. The Petitioner proposes to complete construction of all improvements within one year after all governmental approvals are obtained. The Petitioner will undertake the actual development of the property.

24. The Petitioner proposes to consolidate the three existing parcels into one lot of approximately 15.5 acres.

25. The Petitioner would not permit time sharing condominium units nor offer units for sale at prices affordable by low or moderate income families.

STATE AND COUNTY PLANS AND PROGRAMS

26. The subject property is classified in the State Land Use Conservation District as reflected on Land Use District Map H-5 (Anaehoomalu). Adjacent lands are also in the Conservation District. The subject property is classified in the Resource Subzone, as established by Regulation No. 4 of the State Department of Land and Natural Resources. Lands within 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. The State Board of Land and Natural Resources

recommends that the area be retained in the Conservation District.

27. The nearest existing Urban District occupies the northern half of Anaehoomalu Bay. This urban area is clearly delineated from the conservation area in which the subject property is located, in that the land use district boundary separating Urban and Conservation Districts coincides with the boundary between the South Kohala and North Kona Districts.

28. The Land Use Pattern Allocation Guide Map (hereinafter referred to as "LUPAG Map") component of the County of Hawaii General Plan (hereinafter referred to as "General Plan") designates the subject property and surrounding area as Conservation.

29. In December 1980, the Petitioner filed a petition with the County of Hawaii to amend the General Plan designation of the subject property from Conservation to a Medium Density Urban Development. As required under Chapter 343, Hawaii Revised Statutes, the County of Hawaii Planning Department prepared an Environmental Assessment for the General Plan amendment request. On February 3, 1981, the County determined that an Environmental Impact Statement is required for this proposed amendment. The General Plan amendment request will not be determined by the County until the Environmental Impact Statement is completed, and the preparation and governmental approval procedure may take one year.

30. The County's zoning designation for the subject property is Open (O). This zoning designation is applied to areas that contribute to the general welfare, full enjoyment, and the economic well-being of open land type uses which have been established or are proposed. The object of this zone designation is to encourage development such as a golf course,

country club or park; to protect investments which have been or shall be made in reliance upon the retention of such open type uses; to buffer an otherwise incompatible land use or zoned district; or to preserve a valuable scenic vista or an area of special historical significance.

31. The subject property is situated within the County's Special Management Area (SMA).

NEED FOR GROWTH AND DEVELOPMENT

32. The Petitioner stated that the growing importance of the West Hawaii area as a tourist destination has created a demand for luxury, retreat-type vacation homes; and that the subject property is ideal for this kind of use.

33. The Petitioner represents that the project would contribute to the economy of the State and County of Hawaii by the initial expenditure necessary to construct the project; subsequent expenditures to maintain the units and grounds, and for goods and services purchased by residents. Creation of an additional 120 condominium units would also increase the real property tax revenues of the County of Hawaii.

34. This luxury development would not contribute toward reducing the shortage of housing for lower and moderate income residents of the County of Hawaii and particularly of the North Kona District. The petition has introduced no evidence of the need or demand for the proposed development at this particular site. At the present time, there exists adequate amounts of vacant Urban District lands for residential use in the South Kohala and North Kona Districts. Nearly 50 percent of the land in the North Kona Urban District, approximately 3,957 acres, is presently vacant. Between 30 to 40 percent of this land is designated for residential use. In the South Kohala District, there are an estimated 5,430.5 acres

of vacant Urban District land. Approximately 2,503 acres of this land is vacant and zoned for residential use. These vacant urban lands provide a sufficient reserve of land for future urban growth.

35. There are plans to expand the Waikoloa Beach Resort development located North of the site at Anaehoomalu Beach by the construction of approximately 3,400 to 3,500 condominium units. Any need for the type of units proposed by the Petitioner can be accommodated within this existing Urban District at Anaehoomalu.

IMPACTS ON RESOURCES OF THE AREA

Archaeological Resources

36. Chiniago Inc. conducted an archaeological survey of the subject property in February 1980. Chiniago Inc. found nineteen (19) sites/site complexes on the subject property. These complexes include petroglyphs, burials, platforms, midden deposits, cave shelters, and a trail. The sites "possess value not only for the specific information which they contain, but also because they represent manifestations of the widespread human exploitation of the island of Hawaii."

37. The State Board of Land and Natural Resources recommends that the subejct property remain in the Conservation District because of its archaeological value. However, if development is permitted, the Board recommends that archaeological salvage research should be done in coordination with its Historic Preservation office. The Board is also concerned about the petroglyphs and the proposed Na Ala Hele Shoreline Trail System in the area. The Petitioner has not fully addressed the impact of the proposed development on the archaeological sites on the subject property.

Environmental and Natural Resources and Hazards

38. Several anchialine ponds are located within the subject property. These naturally-occurring brackish-water ponds are the habitat of unique organisms. The impact of the proposed development upon the ponds and their fauna and flora cannot be assessed without further study.

39. The State Department of Health designates the coastal waters at Anaehoomalu Bay as Class AA. Class AA waters should remain in their natural, pristine state with an absolute minimum of pollution from any source. No zones of mixing will be permitted in these waters.

Natural Hazards

40. The U.S. Army Corps of Engineers has stated that the subject property is susceptible to tsunami inundation and the Federal Insurance Administration has preliminarily designated the subject area as a Coastal High Hazard area on the draft Flood Insurance Rate Map (FIRM) April 1980. The expected inundation is 7 to 8 feet above mean sea level.

41. On U.S. Geological Survey "natural hazards" maps, the project site is within an area designated "E" or of second highest risk to lava flows.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Electrical and Telephone Services

42. Electrical and telephone services are not immediately available to the subject property. The closest transmission lines are about 2,000 linear feet from the subject property. The Petitioner proposes to obtain from the State of Hawaii a road and utility right-of-way from the Queen Kaahumanu Highway for access and electrical and telephone transmission lines.

Police and Fire Protection

43. The closest police and fire stations are located

at Waimea, approximately 17 miles northeast of the subject property.

Water Service

44. There is no public water system available to serve the subject site. The County Department of Water Supply's closest water system facilities extend to Puako in South Kohala and Keahole Ariport in North Kona, and the County will not extend water service unless extensive water system improvements are made.

45. The Petitioner proposes to obtain a water supply for the development from brackish groundwater to be made potable by a reverse osmosis process, using a reverse osmosis plant to be constructed on-site. Petitioner estimates the proposed project's domestic water demand to be 40,000 gallons per day. In addition to domestic household requirements, as much as 200,000 gallons of purified water would be needed per day for irrigation purposes.

46. Assuming that the proposed reverse osmosis derives 80 percent of supply volume as drinking water, 20 percent will become high salinity brine. Therefore, in satisfying total water needs of the proposed project, approximately 50,000 gallons of high salinity brine would be produced daily as a by-product of the reverse osmosis process. The Petitioner intends to dispose of this brine through an injection well.

47. The success of the reverse osmosis process is questionable. The Petitioner's engineer testified that the proposed reverse osmosis system works most efficiently when the feed water contains less than 1,500 milligrams per liter of chloride. Feed water at the project site presently contains approximately 2,200 milligrams per liter of chloride at the surface of the sale water table and approximately 19,000 milligrams per liter of chloride at elevation of minus 40 feet.

The Petitioner proposes to drill a feed water well along Queen Kaahumanu Highway in the vicinity of the project site. The quality of the feed water at this location has not yet been determined nor has the Petitioner obtained a well site from the State of Hawaii.

Sewage Treatment Services

48. There is no public sewage system available to serve the subject site.

49. The Petitioner proposes to construct a conventional secondary sewage treatment plant to accommodate sewage generated by the proposed project. Treated wastewater would be disposed through an evapo-transpiration system (ET). Effluent from the treatment plant would be distributed to a porous planter field approximately 2 acres in size. The Petitioner has not obtained a site from the State of Hawaii for a sewage treatment plant.

Roadway and Highway Services and Facilities

50. The subject property is separated from Queen Kaahumanu Highway by approximately 3,000 feet of State-owned lands. There is presently a jeep trail over State land to the subject property. The Petitioner has not obtained a right-of-way for access from the State.

Solid Waste Disposal

51. The Petitioner has not proposed any means to dispose of solid wastes generated by the project.

Drainage

52. The Petitioner has indicated that the present natural drainage system on the subject property is adequate; and thus has proposed no improved drainage system.

Schools

53. The development of 120 luxury condominium units is expected to have a negligible enrollment impact upon Waimea Elementary-Intermediate and Honokaa High Schools, which schools

are approximately 17 and 32 miles, respectively, from the subject property.

SCATTERIZATION AND CONTIGUITY OF DEVELOPMENT

54. The subject property is surrounded by lands within the Conservation District; thus, approval of the petition would result in the creation of a spot Urban District. The closest State Land Use Urban District and urban-designated lands on the General Plan LUPAG Map are approximately 1,200 feet north of the subject property. The isolation of the proposed development is also reflected in the unavailability of public or private facilities and services to serve the proposed development. Electrical and telephone services, as well as potable water and sewage systems are unavailable to the project site. The closest police, fire, and medical and school facilities are located at Waimea, approximately 17 miles Northeast of the subject property.

STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

55. The subject 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; 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) The subject property is not within an area designated for urban uses on any County or State plan. The LUPAG map of the County General Plan designates the subject area as Conservation. This designation, in addition to reflecting the need for retaining the open space character of the subject property and surrounding areas, is intended

to reinforce the concentration and containment of the high-density developments being implemented in other areas already designated as urban centers within the region.

(c) The proposed development would be in conflict with the following objectives and policies of the Hawaii Coastal Zone Management (CZM) program: to preserve and improve shoreline open space and scenic resources; to preserve recreational resources and promote recreational opportunities along the shoreline; to preserve coastal ecosystems of significant biological or economic importance; to control development in coastal hazard areas and ensure compliance with the federal flood insurance plan.

(d) Reclassification of the subject property for urban use is not reasonably necessary to accommodate growth and development. The impacts of the proposed development upon natural, environmental, recreational, scenic, historic, and other resources of the area have not been fully addressed.

46. The subject property does conform to standards for land in the Conservation District.

(a) The subject property is susceptible to floods and tsunami inundation. It contains archaeological sites, and ponds and tide pools that are the habitat of unique marine organisms.

(b) Portions of the site contain natural beach, which would qualify for consideration as a beach reserve, perhaps in conjunction with a

shoreline trail system proposed by the State for the area.

(c) The subject property fronts coastal waters designated Class AA by the State Department of Health.

57. Based on review and analyses of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, both the County of Hawaii Planning Department and the State Department of Planning and Economic Development have recommended that the reclassification to Urban not be approved.

RULING OF 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 Land Use Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

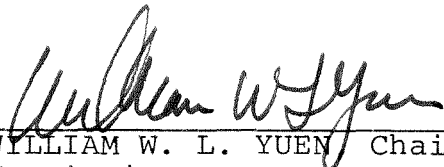
Pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the State Land Use Commission, the Commission concludes that the proposed boundary amendment does not conform to the standards established for the Urban District by the State Land Use District Regulations and is not consistent with Section 205-2 Hawaii Revised Statutes, as amended, and by State Land Use District Regulations 6-1.


DECISION AND ORDER

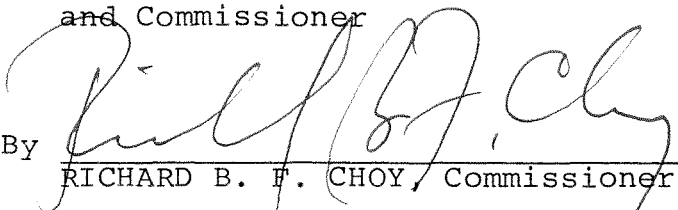
It is hereby ordered that the subject property consisting of approximately 15.5 acres at Puuanahulu, North Kona, Island and County of Hawaii, more particularly identified as Tax Map Key 7-1-03: 5, 6 and 11 be denied, and the subject property remain in the Conservation District.

Done at Honolulu, Hawaii, this 13 th day of November, 1981,
per motion on August 20, _____, 1981.


LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN, Chairman and
Commissioner

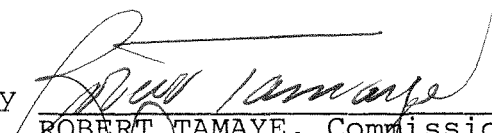
By 
CAROL B. WHITESELL, Vice Chairman
and Commissioner


By 
RICHARD B. F. CHOY, Commissioner

By 
EVERETT L. CUSKADEN, Commissioner

By 
SHINSEI MIYASATO, Commissioner

By 
TEOFILO TACBIAN, Commissioner

By 
ROBERT TAMAYE, Commissioner

By 
EDWARD K. YANAI, Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
 KAPALAOA, INC.) DOCKET NO. A80-500
)
 To Amend the Conservation Land Use)
 District Boundary to Reclassify)
 Approximately 15.5 Acres, at)
 Kapalaoa, North Kona, Island)
 and County of Hawaii, into the)
 Urban Land Use District)
)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's 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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DATED: Honolulu, Hawaii, this 18th day of November, 1981.



GORDAN Y. FURUTANI
Executive Officer