

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)	DOCKET NO. A78-440
)	
of)	KOBAYASHI DEVELOPMENT &
)	CONSTRUCTION, INC.
KOBAYASHI DEVELOPMENT &)	
CONSTRUCTION, INC.)	
)	
To Amend the Conservation)	
Land Use District Boundary to)	
Reclassify Approximately)	
90 Acres, TMK 7-3-09: portion)	
of Parcel 1, at Kaloko, North)	
Kona District, Island and)	
County of Hawaii, into the)	
Urban Land Use District.)	
)	

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
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In the Matter of the Petition)	DOCKET NO. A78-440
)	
of)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
KOBAYASHI DEVELOPMENT &)	DECISION AND ORDER
CONSTRUCTION, INC.)	
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_____)	

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

The above-captioned land use boundary amendment proceeding was initiated by the petition of KOBAYASHI DEVELOPMENT & CONSTRUCTION, 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 (hereinafter referred to as the "subject property") situated at Kaloko, North Kona District, Island and County of Hawaii, from the Conservation to the Urban District, and the Commission, having heard and examined the testimony and evidence presented during the hearing held on September 27, 1978, in the Meeting Room of the First Hawaiian Bank, Kona Branch, Kailua, Kona, Hawaii, and on November 15, 16, and 28 in the Holualoa Community Center, Holualoa, Kona, Hawaii, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Procedural Matters

1. The petition was filed on May 31, 1978, by KOBAYASHI DEVELOPMENT & CONSTRUCTION, INC., to amend the Conservation District Boundary at Kaloko, North Kona District, Island and County of Hawaii, to reclassify approximately 214 acres into the Urban District.

2. Notice of the hearing scheduled for September 27, 1978, at 10:00 a.m., was published in the Honolulu Advertiser and the Hawaii Tribune Herald on August 16, 1978.

3. On September 18, 1978, a request to appear as a public witness was received from Mrs. Howard J. Gilb, representing the Kona Outdoor Circle.

4. On September 19, 1978, a request to appear as a public witness was received from Ms. Elizabeth Stone and children.

5. On September 20, 1978, at 10:30 a.m., a pre-hearing conference on the petition was held in the DPED Conference Room, Kamamalu Building, Honolulu, Hawaii.

6. On September 27, 1978, a motion was filed by the Petitioner requesting a continuance of the September 27, 1978 hearing.

7. On September 27, 1978, the Land Use Commission heard Petitioner's motion for continuance of the hearing and the continuance was granted until further notice of the Land Use Commission.

8. On October 3, 1978, the Petitioner amended the petition to reduce the petition area from 214 acres to 90 acres.

9. On November 8, 1978, a second pre-hearing conference on the petition was held in the DPED Conference Room, Kamamalu Building, Honolulu, Hawaii.

10. Notice of the continued hearing scheduled for November 15, 1978, at 10:00 a.m., was published in the Honolulu Advertiser and the Hawaii Tribune Herald on November 12, 1978.

11. Public witnesses who had made a timely request to appear were accepted on November 15, 1978. Mr. William S. Kawahara was not permitted to testify as a public witness; however, he was called by and testified as a witness for the Petitioner.

12. Notice of the continued hearing scheduled for November 28, 1978, at 10:00 a.m., was published in the Honolulu Advertiser and Hawaii Tribune Herald on November 22, 1978.

Description of Subject Property

13. The subject property consists of approximately 90 acres of land and is a portion of a parcel identified as TMK 7-3-09: 01, containing a total area of 1,211.086 acres. The subject property, located at Kaloko, North Kona District, County of Hawaii , is owned in fee simple by Petitioner.

14. The subject property fronts and lies mauka (east) of Queen Kaahumanu Highway and is approximately four miles north of Kailua, one mile north of the Honokohau Small Boat Harbor and four miles south of Ke-ahole Airport.

15. The property is presently vacant and undeveloped.

16. Topography of the subject property is gently sloping, mauka to makai (east to west). Average slope is 8 percent or less. Elevation ranges from approximately 100 feet

above sea level along the makai boundary (Queen Kaahumanu Highway) to 200 feet along the mauka boundary. Natural drainage consists of percolation through the layers of very porous lava to the water table below. Rainfall averages 25 inches per year.

17. The subject property is not within the flooding or tsunami inundation areas shown on the Map of Flood-Prone Areas prepared by the United States Army Corps of Engineers.

18. The Soil Survey of the Island of Hawaii issued in December, 1973 by the United States Department of Agriculture, Soil Conservation Service shows that the subject property consists of both pahoehoe and 'a'a lava flows. The lava of the subject property is generally unweathered and has not developed into soil due to the geologic age and low level of rainfall of this area of the island. The Soil Conservation Service classifies lava as a miscellaneous land type until soil is formed. The Land Study Bureau's master productivity soil rating of the subject area is "E", or "Very Poor" in terms of overall agricultural productivity.

19. The subject property is not known to be the habitat of any rare or endangered species of animals nor is it known to have rare or endangered plant species.

20. Vegetation on the subject property is relatively sparse due to the presence of unweathered lava and the level of rainfall. It consists primarily of grasses and small shrubs associated with leeward lava flows.

21. The subject property is directly across the highway from the site of the proposed Kaloko-Honokohau National Historical Park which contains numerous archaeological and historical sites. The proposed national park site is on

the Register of Historic Places as a National Historic Landmark, and one of its fishponds has been identified as a significant habitat for endangered water bird species. By letter of August 3, 1978, the State Department of Land and Natural Resources states that based on earlier survey results, it is highly probable that archaeological or historical sites do exist within the subject property.

Proposal for Development

22. The Petitioner proposes to develop the subject property as a subdivision of approximately 74 one-acre lots to be sold in fee simple for light industrial purposes including, but not limited to, warehousing, wholesale operations, construction yards, and other similar uses that are permitted within industrial-zoned land. Petitioner proposes to construct necessary on-site improvements at its own cost and in accordance with all applicable government regulations. These improvements would include roadways, water, street lighting, and electric and telephone connections. The Petitioner proposes to use landscaped berms and setbacks between Queen Kaahumanu Highway and the proposed development to minimize the adverse visual impact of the development.

23. Waste material from grading and grubbing of the site would be disposed of at an "approved location." Approximately 50,000 cubic yards of earthwork would be shifted within the project site. Roadways will be 24 feet wide with 8-foot shoulders, designed for 30-mile-per-hour traffic.

24. A drainage system of swales, drywells, catch basins, and drainlines is planned to handle runoff from the subdivision by utilizing the very porous natural drainage characteristics of the area.

25. Petitioner's development schedule calls for completion of the 74 lots in three increments of 25 lots each over a period of five years.

26. Sales prices for the proposed industrial lots are projected to start at approximately \$60,000 per acre.

27. The on-site and off-site construction costs for the proposed development are estimated to be \$2,537,000, together with approximately \$200,000 for landscaping, electrical power lines and substations, and waterline improvements, making a total of approximately \$2,737,000.

28. The Petitioner has not established its financial ability to carry out the project. Petitioner's financial statement indicates that the company has suffered net operating losses since 1973. The accumulated net loss to 1978 was \$6,599,637. The financial statement also reflects that the Petitioner has numerous large outstanding liabilities and unpaid notes and a pending suit by Mauna Kea Sugar Co., Inc. The Petitioner has also had to obtain an extension on a mortgage payment for the subject property.

Federal, State, and County Plans

29. Establishment of a Kaloko-Honokohau National Historical Park has been proposed for the land directly across from the subject property on the makai side of Queen Kaahumanu Highway. The proposed historical park comprises approximately 1,300 acres of land and water area adjacent to the shoreline and Honokohau Small Boat Harbor.

30. The State Department of Land and Natural Resources is developing a proposal to create industrial lots on approximately 52 acres of State lands in the Kealakehe Tract. The plan for such use was originally conceived in 1962 and was

included in the Honokohau Development Plan. No action was taken to develop the area for industrial purposes between the years 1962-1977. No firm proposal has yet been made, but the Department of Land and Natural Resources is now pursuing the idea more actively because of a land exchange possibility.

31. The proposed development is not consistent with the County of Hawaii General Plan. The Land Use Pattern Allocation Guide Map (LUPAGM) component of the County of Hawaii General Plan, adopted as Ordinance 439 in December, 1971, designates the subject area as Conservation. For North Kona, the LUPAGM of the General Plan encourages the centralization and concentration of urban activities and discourages the continuation of linear as well as scattered development. The LUPAGM sets the proposed Kealakehe Sports Complex as a northerly boundary of urban development surrounding the Kailua Village anchor. Proposed General Plan amendments under the ongoing General Plan Revision Program reinforce the policy of concentrating urban activities that are currently reflected in the LUPAGM for North Kona.

32. County zoning maps show the subject property to be within the open-zoned district.

Need for Growth and Development

33. A market survey conducted by Kona Realty, Inc. and Gold Coast Realty on behalf of the Petitioner revealed a very strong demand for industrial-zoned lots in this area. This is supported by the submission of approximately 70 letters of intent to purchase lots in the proposed subdivision, submitted by residents and business firms in the North Kona area.

34. Study also revealed that at present, industrial lots in the area are controlled by one estate, creating a

monopolistic situation. There is a lack of industrial lots available for purchase in fee, and leasehold lots controlled by the estate can only be acquired by paying premiums. Based on the foregoing information, the Petitioner estimates that 175 industrial lots will be needed over the next 12-15 years in Kona. The Petitioner estimates an immediate demand for at least 50 lots, with 12-15 lots per year being capable of absorption thereafter.

35. A survey conducted by the County of Hawaii Department of Research and Development in November, 1977 indicates that there is a small demand for additional industrial properties in the Kailua-Kona area.

36. Within the North Kona district, there are approximately 224+ acres of land now zoned for industrial uses. Of this total area, approximately 39.6 acres are vacant. These figures do not take into consideration areas in Kona that are general planned, but not zoned, for industrial uses, and areas currently being proposed for industrial designation in the County's General Plan Revision Program.

Agricultural Resources

37. The subject property is poorly suited for agricultural uses. However, the State Department of Agriculture points out that the subject property may have a potential for certain types of agricultural pursuits, as evidenced by the State's planned Ke-ahole Agricultural Park development.

Natural and Environmental Resources

38. There are no known endangered or threatened plant species on the subject property.

39. Two species of endemic Hawaiian birds are known to frequent the general area: the Hawaiian owl, and the

endangered Hawaiian stilt which is found in the pond areas along the shore.

40. The Department of Land and Natural Resources has no objections to the proposed reclassification from a purely wildlife standpoint.

41. A historic resource of the area, the site of the proposed Kaloko-Honokohau National Historical Park, is situated across the Queen Kaahumanu Highway from the subject site. The fishponds and other smaller pools within the site of the proposed Kaloko-Honokohau National Historical Park intercept the freshwater lens that underlies the area. Purity of that water source is essential to the interpretation of Hawaiian lifestyle on the site, as well as to the maintenance of endangered water birds.

a. The Petitioner plans to handle on-site run-off water through a system of catchbasins, drywells, and drainlines that will ultimately empty into swales leading to culverts under Queen Kaahumanu Highway. This drainage system depends on filtration of contaminants as water percolates vertically through the ground. According to the Petitioner's engineer, effective filtration of contaminants can be expected from water percolating a minimum of 80' vertically through the various layers of rocks, cinders and soils, a distance which the elevation of the site provides. However, no percolation tests have been conducted.

b. Lateral movement of run-off water may occur if a lava tube or void exists below the

surface. It is a relatively easy task to detect lava tubes or voids by such methods as proof rolling, loading or use of a magnetometer. Although no tests have been conducted to determine the presence of lava tubes or voids, the Petitioner has stated that all voids and lava tubes found in constructing catchbasins and drywells will be filled.

c. Cesspool liquids from the proposed industrial park may percolate through the soil and eventually find their way to the ocean and the fishpond areas. This is not likely to cause a problem unless there is a direct connection via a void or lava tube. Individual lot owners can be required by deed restrictions or Department of Public Works' regulations to seal voids or lava tubes found when digging cesspools. Moreover, the Department of Health sanitarian has stated that: "the one acre size lots and the location of over a mile distance from near shore waters pose minimal concerns."

42. The impact of the proposed development on air quality and noise level will depend on the specific activities located there.

Scenic Resources

43. Any adverse visual impact of the proposed subdivision can be minimized by construction of a landscaped berm along the road frontage. Provisions for maintenance would have to be placed in covenants imposed in the deeds.

Recreational Resources

44. The proposed development will not have a significant adverse impact on the recreational resources of the surrounding area, if adverse impacts on fishponds and coastal waters can be prevented.

Historical Resources

45. No archaeological survey has been conducted on the subject property. No conclusion can be made regarding significant archaeological or historical sites until such an archaeological survey has been conducted. Based on surveys taken for other projects in the vicinity of the subject area, it is highly probable that archaeological or historical sites do exist within the petition area. The significance of such sites can only be determined by a survey conducted by professional archaeologists. The Petitioner proposes to conduct an archaeological survey after the Commission's action on the petition.

Public Services and Facilities

Firefighting Services

46. Fire stations are located in Captain Cook and Kailua and are able to service the subject property.

Police Services

47. The police station servicing the area and the entire Kona District is located at Captain Cook. Development of a police substation at Kailua is contemplated.

Electrical and Telephone Utility Services

48. Electrical power for the project site will be provided by the Hawaii Electric Light Co. The existing electrical substations at Kealakehe or Ke-ahole Airport may be utilized. In the event such sources cannot be adequately or practically utilized, the Petitioner states that it will

construct a substation of appropriate size within the proposed industrial subdivision.

49. Telephone lines extend from Kailua-Kona to the Ke-ahole Airport complex along Queen Kaahumanu Highway and telephone services are available to the subject property.

Water

50. The County of Hawaii Department of Water Supply states that both the existing water source and transmission system for the area are inadequate to service the subject development. Completion of the first phase of the Kahului Shaft Project (State Project No. 8-HW043) scheduled for April, 1979, will provide additional source water into the system. There is, however, a bottleneck in the existing 8" waterline along Kuakini Highway which restricts further large scale development. The Petitioner proposes to make improvements to portions of the existing transmission system to provide water requirements for the project. Construction plans for these improvements must be submitted to the County Department of Water Supply for approval. If improvements are made to the water transmission system, it would appear that adequate water service would be provided to the subject site. When the water supply source and transmission lines are completed, it appears that adequate water will be available to serve the subject site.

Sewage Treatment and Disposal Services

51. The existing sanitary sewage treatment plant that serves Kailua has a limited capacity and is reportedly operating beyond its capacity at the present time. Petitioner proposes to require individual lot owners to provide an acceptable private sewage system in compliance with State and County regulations.

52. Individual landowners or tenants will arrange for the collection and disposal of their industrial type solid waste.

Roadway and Highway Services

53. Access to the subject property is directly off of the Queen Kaahumanu Highway, which has a 300 foot right-of-way. It is a two-lane, limited access highway and serves as the major connector between Kona and northern and northeastern parts of the island.

54. The State Department of Transportation, through its Land Transportation Facilities Division's Hawaii District Office, pointed out that if the project were approved, a channelized intersection with acceleration, deceleration, and left-turn storage lanes would be required for access off of the Queen Kaahumanu Highway.

Scatterization and Contiguity of Development

55. The development proposed by the Petitioner would require improvements to the County Water System.

56. The subject property is four (4) miles (nearly equidistant) from the existing or proposed industrial areas at either Kailua-Kona or the Ke-ahole Airport.

57. The proposed development is not a "self-contained urban center."

58. Although the subject property is contiguous to an existing Urban District on the makai side of the Queen Kaahumanu Highway, this Urban District has not been developed since its reclassification in 1969.

Conformity to Interim Statewide Land Use Guidance Policies

59. The proposed land use boundary amendment is not reasonably necessary to accommodate growth and development.

Although there is evidence of demand for industrial lots, there is presently approximately 39.60 acres of vacant, industrial-zoned land in North Kona, and other areas are being proposed for industrial designation in the County's General Plan Revision Program. Urbanization of the subject property would be in direct conflict with the County of Hawaii General Plan and its proposed revisions, which seek to avoid scattered and linear development and to centralize and concentrate urban activities around urban nodes.

60. The Petitioner has shown that the proposed development will not have significant adverse effects on most resources of the area. There will be no adverse impact on agricultural resources. Adverse impacts on natural, environmental, recreational, and scenic resources can be mitigated. No conclusion can be drawn concerning the impact on archaeological or historic sites of the property, since no survey has been done.

61. Public services are available to the subject property, with the exception of water and sewers. The subject property does not now have an adequate water supply and the Petitioner has not established that it has the financial ability to pay for the cost of providing water services. The Petitioner plans to require individual lot owners of the industrial subdivision to provide cesspools in compliance with State and County requirements.

62. Reclassification of the subject property would clearly contribute to scattered urban development, which must be avoided. Although the subject property is contiguous to an existing Urban District, the District is not developed as an urban area and the subject property would not constitute all or part of a self-contained urban center.

Reclassification of the subject property may lead to further pressure for urban development along the Queen Kaahumanu Highway, particularly between the subject property and Kailua-Kona, which is in direct conflict with the County's General Plan. Although the Petitioner has represented that it will pay for the associated costs of providing essential services and facilities to its development, other associated infrastructural costs may be incurred by the County should additional urban development along the highway be proposed.

63. The proposed land use boundary amendment is not in conformance with the County's General Plan or with the County's General Plan Revision Program.

64. It has not been shown that it is practicable to reclassify the subject property from the Conservation to the Urban District.

Standards for Determining District Boundaries

65. The subject property is four (4) miles (nearly equidistant) from the existing proposed industrial areas at Kailua-Kona and the Ke-ahole Airport.

66. Most public services are available to the subject property with the exception of water transmission and sewer lines.

67. There are sufficient areas designated for industrial growth. The subject property is not an appropriate area for urban growth.

68. The subject property is not an appropriate location for a new urban concentration, as it is not shown as an area of urban growth on the County's General Plan.

69. The subject property is not surrounded by or adjacent to existing urban development.

70. Urbanization of the subject property would clearly contribute towards scattered spot urban development.

RULING ON PROPOSED FINDINGS

Any of the proposed findings of fact submitted by the Petitioner or the Department of Planning and Economic Development, not already ruled upon by the Land Use Commission by adoption herein, or rejected by clearly contrary findings of fact herein, is hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure, and the State Land Use District Regulations of the Land Use Commission, the Commission concludes that the proposed boundary amendment does not conform to the standards established for the Urban Land Use District by the State Land Use District Regulations and is not consistent with Sections 205-2, Hawaii Revised Statutes, or with the Interim Statewide Land Use Guidance Policies established pursuant to Sections 205-16.1, Hawaii Revised Statutes, and by State Land Use District Regulation 6-1.

ORDER

IT IS HEREBY ORDERED that the property which is the subject of the petition by KOBAYASHI DEVELOPMENT & CONSTRUCTION, INC., in Docket No. A78-440, approximately 90 acres, Tax Map Key 7-3-09: portion of Parcel 1, at Kaloko, North Kona District, Island and County of Hawaii, continue to be classified as Conservation and remain in the Conservation District.

DONE at Honolulu, Hawaii, this 17th day of July, 1979, by failure of the motion heard by the Land Use Commisison on May 23, 1979, in Honolulu, Hawaii.

LAND USE COMMISSION

By Shinichi Nakagawa
SHINICHI NAKAGAWA
Vice Chairman and Commissioner

By James R. Carras
JAMES R. CARRAS
Commissioner

By Carol B. Whitesell
CAROL B. WHITESELL
Commissioner

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CERTIFICATE OF SERVICE

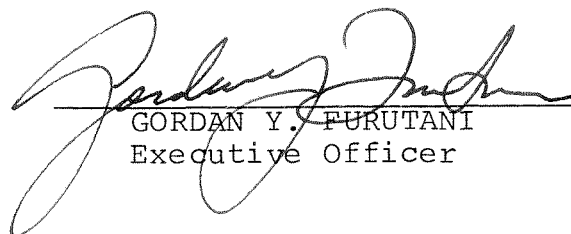
I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 17th day of July, 1979.


GORDAN Y. FURUTANI
Executive Officer