

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
)
 of)
)
KUAKINI INVESTMENT, INC., ET AL,) DOCKET NO. A80-484
)
To Amend the Agricultural Land)
Use District Boundary to)
Reclassify Approximately 29)
Acres of Land at Laaloa 1st and)
2nd and Kapalaalaea 1st, North)
Kona, Island of Hawaii into the)
Urban Land Use District)
_____)

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)	Docket No. A80-484
)	
of)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
KUAKINI INVESTMENT, INC., ET AL.,)	DECISION AND ORDER
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To Amend the Agricultural Land)	
Use District Boundary to)	
Reclassify Approximately 29 Acres)	
of Land At Laaloa 1st and 2nd and)	
Kapalaalaea 1st, North Kona,)	
Island of Hawaii into the Urban)	
Land Use District)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER

The above-captioned land use boundary amendment proceeding was initiated by the petition of KUAKINI INVESTMENT, INC., ET AL., 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 land consisting of approximately 29 acres, as amended, and identified by Tax Map Key 7-7-07: portion of 30, (hereinafter referred to as the "subject property"), situated at Laaloa 1st and 2nd, Kapalaalaea 1st, North Kona, Island of Hawaii, from the Agricultural District to the Urban District. The Land Use Commission, having heard the evidence presented on the matter during the hearings held on July 29, 1980, October 29 & 30, 1980, and November 7, 1980, in Kailua-Kona, and Hilo, Hawaii, and having duly considered the record in this Docket, including the proposed findings

of fact and conclusions of law submitted by parties, and the responses and comments of parties made thereto, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The original petition was filed on May 5, 1980, by KUAKINI INVESTMENT, INC., ET AL., (hereinafter referred to as "Petitioner"), to amend the Agricultural District Boundary at Laaloa 1st and 2nd and Kapalaalaea 1st, North Kona, Island of Hawaii by reclassifying approximately 48.9 acres of land identified as Tax Map Key 7-7-07: 18 and 30 into the Urban District.

2. An amended petition was filed on August 12, 1980, by the Petitioner to reduce the land area to approximately 29 acres and identified as Tax Map Key 7-7-07: portion of 30.

3. The Petitioner owns the subject property in fee. The subject property is owned by Kuakini Investment, Inc. (50%) and the following persons who are all shareholders of Kuakini Investment, Inc.: (a) Anthony F. Gouveia (12.5%), (b) JoAnn Zembiec (12.5%), (c) Mary Lou Bean (12.5%), (d) Pauline G. Amarino (12.5%).

4. Notice for the hearing scheduled for July 29, 1980, at 10:00 a.m. in the Kealakehe School Cafetorium, North Kona, Hawaii, was published in the Hawaii Tribune Herald and the Honolulu Advertiser on June 20, 1980, and served by mail on the parties.

5. Notice of the continued hearing on the amended petition scheduled for October 21, 1980, at 10:00 a.m. in the Resolution Room, Kona Hilton Hotel, Kailua-Kona, Hawaii,

was published in the Hawaii Tribune Herald and the Honolulu Advertiser on September 24, 1980, and served by mail on the parties.

6. On July 7, 1980, an application for intervention by Mr. and Mrs. David Nottage, Mr. and Mrs. Herbert Ching, and Mr. Kunio Yokoyama (hereinafter referred to as "Intervenors") was received by the Commission. The application for intervention was timely filed under Commission Rule of Practice and Procedure 6-7.

7. On July 29, 1980, the Intervenors' application for intervention was heard. By motion passed on said date, the application for intervention was accepted by the Commission, and the Intervenors were granted leave to intervene as parties to the petition.

8. A request to appear as a public witness was received by the Commission from Elizabeth Ann Stone, President of the Honest Environmental Citizens Against Progress. The request was timely filed with the Commission. Elizabeth Ann Stone, having been permitted to be heard, failed to appear as a public witness at any time during the hearings.

9. A request to appear as a public witness was received by the Commission from James R. Sutherland. The request was untimely filed with the Commission. Although the request was untimely filed, by motion on October 29, 1980, Mr. Sutherland was granted leave to be a public witness.

DESCRIPTION OF THE SUBJECT PROPERTY

10. The subject property is located in the land divisions of Laaloa 1st and 2nd and Kapalaalaea 1st, North Kona, Island of Hawaii; consists of approximately 29 acres,

and is identified by Tax Map Key 7-7-07: portion of 30, Third Taxation Division.

11. The subject property is situated mauka of and adjacent to the Kuakini Heights Unit II Subdivision, between the Old Mamalahoa Highway and Kuakini Highway.

12. The subject property has a 6 to 20 percent slope.

13. The area surrounding the subject property receives about 40 to 50 inches of rainfall annually.

14. According to the Soil Survey Report published by the U.S.D.A., Soil Conservation Service (December 1973), the soils of the subject property consist of the Honuauulu, Kainaliu and Punaluu Series. The Honuauulu and Kainaliu Series consist of well drained, extremely stony silty clay loams that formed in volcanic ash. The surface layer and subsoil are about 9 and 28 inches thick, respectively. The substratum is Aa lava. The Punaluu Series consists of well drained, thin organic soils over pahoehoe lava bedrock. The surface layer is extremely rocky peat about 4 inches thick. The pahoehoe lava is very slowly permeable, although water moves rapidly through the cracks. Generally, permeability is rapid, runoff is slow, and the erosion hazard is slight.

15. The Land Study Bureau's Overall Master Productivity Ratings for the subject property are Class "C" (Fair) and Class "D" (Poor).

16. The subject property is not included in the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. However, lands in the near vicinity are designated both Unique and Other Important Agricultural Land.

17. The petitioner represents that the subject property is presently used as a pasture.

PROPOSAL FOR DEVELOPMENT

18. The Petitioner proposes to develop a single-family residential subdivision consisting of approximately ninety-one (91) 10,000 square foot lots.

19. The Petitioner represents that it may develop the property or may enter into a joint venture agreement or other agreement with third parties for the development of the subject property.

20. The Petitioner represents that the estimated unit cost of improvements for the development based on cost estimates is \$11,822.00 per lot.

21. The Petitioner has not yet determined the selling price of the lots, but represents that prices would be competitive with other lots of similar size offered for sale in subdivisions of similar quality in the area.

22. The Petitioner does not plan to offer house-and-lot packages as part of the proposed development.

23. The anticipated completion time for development of the subject property would be two (2) to five (5) years.

STATE AND COUNTY PLANS

24. The Land Use Pattern Allocation Guide (LUPAG) Map component of the County of Hawaii General Plan designates the area for Extensive Agricultural/Alternate Urban Expansion. The Extensive Agricultural designation refers to those lands which are basically pastoral and range lands. The Alternate Urban Expansion designation may allow for the consideration of possible urban development when designated urban areas are largely developed or are developing

too slowly. It also applies to potential urbanizing areas where development is not imminent due to inadequate infrastructure, demand; or in areas where the urban form of a community has not yet been firmly established. However, in order to consider Alternate Urban Expansion areas for urban-type uses, the applicable goals, policies, and standards of the General Plan must also be met.

25. The County zoning designation for the mauka portion of the subject property is Agricultural 1-acre (A-1a) and the makai portion is zoned Unplanned (U).

26. The subject property is not situated within the Special Management Area (SMA) nor within the boundaries of the Kailua Village Special District.

NEED FOR GROWTH AND DEVELOPMENT

27. The Petitioner contends that there has been a significant increase in the demand for houselots in the Kailua-Kona area, and has stated that the development of the subject property will satisfy the demand for lots which earlier development has been unable to satisfy. The Petitioner, however, has not substantiated the need or demand for the proposed residential development.

IMPACTS ON RESOURCES OF THE AREA

Agricultural Resources

28. The Land Study Bureau's Overall Master Productivity Ratings for agricultural use for the subject property are Class "C" (Fair) and Class "D" (Poor). Since there are no Class "A" soils on the Island of Hawaii, the Class "C" soils are the second highest rating given to soils on the island. Therefore, although the rocky character of the soil imposes some limitations on the machine tillability

of the land, climatic conditions, including elevation, rainfall, and soil content combine to make the area reasonably suitable for orchard or related crops.

29. The subject property is presently used as a pasture for the grazing of cattle. The land was formerly used to raise coffee.

30. Although the subject property is not presently used for the cultivation of crops, there may be a potential for other agricultural uses because of the area's climatic and soil conditions. The Petitioner's archaeologist Lloyd Soehren, reported on September 19, 1980, that the area was used for sugar cane by the Honualoa Sugar Company until 1924, and subsequently for grazing.

31. Some of the surrounding properties, particularly along the mauka end of the subject property and along the old Mamalahoa Highway, are in coffee and macadamia nut cultivation as well as pasture. While the present agricultural activity on the subject property may appear to be limited, the reclassification of the subject property to an Urban District will adversely impact the existing agricultural uses in the surrounding area.

Archaeological and Historical Resources

32. According to a report prepared by Lloyd Soehren for the Petitioner, there are no known historic sites revealed on the subject property through a visual reconnaissance.

33. The subject property is located within the Kona Agricultural Field System. This field system has been declared eligible for placement on the National Historic Register for its high density of significant historic and prehistoric features.

Scenic Resources

34. The Petitioner represents the subject property's location on slopes of Mount Hualalai mauka of Kuakini Highway makes the scenic impact of the proposed development negligible.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Electrical

35. Hawaii Electric Light Company has stated that due to the size of the proposed development there is a possibility that an electrical substation may have to be provided by the Petitioner.

Police and Fire Protection

36. Both police and fire protection will be made available to the subject property from the Captain Cook and Kailua stations, respectively.

Sewage Treatment Facility

37. The Petitioner has proposed to serve the subject property through the use of cesspools. The State Department of Health has stated that a municipal sewerage system should be requested since the impact of the proposed cesspools upon ground water resources has not been established.

Water Services

38. The Department of Water Supply has stated that without major improvements to the existing water system facilities, only twenty (20) lots can be serviced from an extension of the existing Kuakini Heights Subdivision up to an elevation of 700₊ feet. The remaining lots must therefore obtain water from Mamalahoa Highway. However, water availability from Mamalahoa Highway is contingent

upon the installation of an additional booster pump at the existing Kahaluu pump site.

Drainage

39. The Petitioner has represented that no flooding has been observed in the area of the subject property over the past forty (40) years, despite instances of sudden and heavy rainfall.

40. Testimony from a resident of the Kuakini Heights Subdivision, however, indicates that there is presently sheet flow of water from the subject property into the existing Kuakini Heights Subdivision. This flow of water has eroded the shoulder area of roadways within the existing subdivision.

41. Residents of the existing subdivision have experienced drainage problems with the streets.

42. Petitioners have not studied the cost of resolving drainage problems which would arise from increased runoff from any improvements to be made on the subject property.

Roadway and Highway Facilities

43. The State Department of Transportation, Highways Division has stated that the proposed development will result in an increase of traffic congestion along Kuakini Highway, and that certain improvements would be required to alleviate the problem. The County Department of Public Works has also indicated that certain roadway improvements would be required.

44. The quality of the principal road serving this area (Walua Road, also known as the Kailua-Keauhou Middle Road) is substandard. The southern end of Walua Road near the area of the subject property has an existing

eight (8) to twelve (12)-foot wide pavement, and its average right-of-way is only forty (40) feet. Along this sector of Walua Road, there are two (2) major connectors to the Kuakini Highway. One is from the Kamehameha III Road area to the south, and the other is Akoni Drive to the north. Akoni Drive has a grade ranging between fifteen (15) to twenty (20) percent. Akoni Drive also has an existing right-of-way of forty (40) feet with an 18 to 20-foot wide pavement. The minimum standard right-of-way width and pavement width for these types of roads are fifty (50) and twenty (20) feet, respectively. Since the principal roadway access to the subject property is already inadequate, approval of the proposed development and any subsequent County zoning amendment and subdivision permit would exacerbate the existing condition.

45. Since the County has no plans or fiscal appropriation to improve the roads, the Petitioner would therefore be required to provide the necessary improvements. The necessary improvements include the widening of the existing rights-of-way by way of acquisition of the adjoining lots; increasing the pavement widths, reducing or cutting down the existing grade of the roadways; and making improvements to the road shoulder. The costs of these improvements will be substantial.

46. The Petitioner has not committed to provide the necessary roadway improvements and has indicated that a commitment will depend on the ultimate cost of such improvements. The Petitioner has not included these off-site roadway improvements in its development cost analysis. The Petitioner has indicated that it may seek a variance from providing these improvements from the County.

SCATTERIZATION AND CONTIGUITY OF DEVELOPMENT

47. The subject property is contiguous to an existing Urban area on its makai side; however, it is surrounded by lands in the Agricultural District on the remaining three sides.

CONFORMANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES AND DISTRICT REGULATIONS

48. The petition does meet some, but not all of the standards, guidelines and regulations for classification in the Urban District. The subject property is contiguous to an existing Urban District, and is situated within reasonable proximity to centers of trading and employment.

49. The subject property is reasonably free from the danger of flood and unstable soil conditions. However, the evidence indicates that the development of the subject property as proposed would aggravate rain run-off and soil erosion problems in adjacent downhill residential areas.

50. The proposed development could utilize certain existing public services and facilities; but the proposed project would require expansion and improvement of others, such as access roadways, drainage facilities, and the County water system. The principal access to the subject property is already inadequate to serve the existing subdivision. The County has no immediate plans or fiscal appropriation to improve the substandard roadways in this area. Since the County is unable to improve the roadways, the Petitioner would be required to provide the necessary improvements. The Petitioner has not estimated the ultimate cost of these improvements, which may be

substantial, nor has the Petitioner committed itself to providing the necessary improvements. The proposed development is premature in time and would unreasonably compound and aggravate existing substandard roadway conditions in the general area of the subject property. To include these lands in the urban district would require an unreasonable investment in public supportive services.

51. The subject property is presently being used for grazing cattle. While the present agricultural activity on the subject property appears to be limited, its reclassification to the urban district may jeopardize the protection and preservation of important "Kona Coffee Belt" agricultural lands located in the areas adjoining the subject property along the above Mamalahoa Highway. Within the immediately vicinity of the subject property there is a substantial amount of acreage of land in some form of agricultural use. There are alternatives within the North Kona District for residential and general urban development which would have less of an impact on agricultural lands and which would aid the preservation and maintenance of important agricultural land.

52. Land Use Commission District Regulation Section 2-2(2)(c) provides that lands surrounded by or contiguous to agricultural lands and not suited for agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District. While the Petitioner has represented that the subject property is in very limited agricultural use, the mauka portion has been classified as "C" or "Fair" agricultural land by the Land Study Bureau. The Land Study Bureau's rating of Class "C"

or "Fair," is the second highest agricultural rating given to any land on the Island of Hawaii, which does not have any Class "A" lands. Although the rocky character of the soil places some limitations on the machine tillability of the soil, climatic conditions including elevation, rainfall, and soil quality combine to make the subject property reasonably suitable for orchard or related crops.

RULING ON PROPOSED FINDINGS

Any of the proposed findings of fact submitted by the Petitioner or the other parties 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 inconsistent with Section 205-2 Hawaii Revised Statutes, as amended, and by State Land Use District Regulation 6-1.

DECISION AND ORDER

IT IS HEREBY ORDERED that the petition to reclassify the subject property consisting of approximately 29 acres at Laaloa 1st and 2nd and Kapalaalaea 1st, North Kona, Island and County of Hawaii, more particularly described as Tax Map Key 7-7-07:portion of 30, be denied and that the subject property remain in the Agricultural District.


Done at Honolulu, Hawaii, this 6th day of
July, 1981, per motion on April 9, 1981.

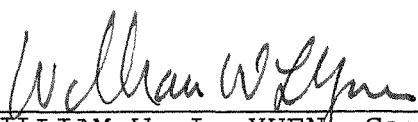
LAND USE COMMISSION
STATE OF HAWAII

By 
C. W. DUKE
Chairman and Commissioner

By 
RICHARD CHOY, Commissioner

By 
CAROL B. WHITESELL, Commissioner

By 
EDWARD K. YANAI, Commissioner

By 
WILLIAM W. L. YUEN, 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:

HIDETO KONO, Director
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State of Hawaii
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Honolulu, Hawaii 96813

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Capital Investment Building
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

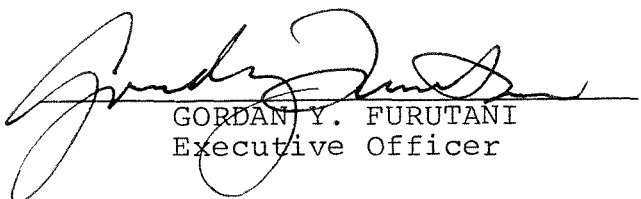
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DATED: Honolulu, Hawaii, this 7th day of July, 1981.


GORDAN Y. FURUTANI
Executive Officer