

of Fact and Proposed Conclusions of Law and Proposed Order submitted by Shoreline Protection Alliance hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Petitioner, Dr. Edwin Tu-Kuei Kam, is the settlor and individual Trustee of the Edwin T. K. Kam Trust which is the owner in fee simple of the property which is the subject matter of this petition. As managing and individual trustee, petitioner has standing to seek reclassification for a change in the boundary of a district under Section 205-4, H.R.S., as amended and the State Land Use Commission Rules of Practice and Procedure and District Regulations.

2. The subject property is located in the County of Maui, Island of Maui, and consists of two parcels of land identified by Tax Map Key designations and containing areas as follows:

TMK 2-1-06-30	84.32 Acres
TMK 2-1-06-33	3.73 Acres

Parcel 30 is the larger and southernmost, containing a 360 foot cinder cone commonly referred to as "Puu Olai", and is bounded on the mauka or East side by the Keoneoio-Makena Road, on the makai or West side by property owned by the State of Hawaii, the South side by an adjoining property owner and the shoreline, and on the North by lands of the State of Hawaii and the shoreline. Parcel 33 is located

directly to the North of Parcel 30 and is bounded by the shoreline on the West side and by various property owners including the State of Hawaii. The total area of the three parcels proposed for reclassification is approximately 88.05 acres.

3. Approximately 25 acres of parcel 30 and all of parcel 33 are within the Rural Land Use District, with the remaining acreage of the subject property, approximately 59.32 acres, being classified within the Conservation Land Use District. The proposed development site is approximately 4 miles from the Wailea Development which is classified as Urban, and currently undergoing the various processes prior to construction. Property bordering the mauka boundary along the Keoneoio-Makena Road form part of the Seibu development project and is classified Urban. Parcel 33, the northernmost parcel is separated from an urban district by approximately 200 feet.

4. The Maui General Plan adopted by the County of Maui in 1969 and amended in 1975, designates the subject property as "Park and Open Space." Parcel 33 has a General Plan designation of "Proposed Park" and Parcel 30 has a split designation; the mauka portion being "Proposed Park" and the remainder designated "Open Space."

5. The Petitioner proposes to develop the subject property by constructing a 494-unit comprehensive development consisting of a single lot, including 136 town houses, 108 condominiums, and 250 hotel rooms. The two proposed 6-story hotel buildings will rise approximately

90 feet above sea level against the background of the 360-foot cinder cone Puu Olai. All other structures will be built at 2-story heights on the surrounding low-lying areas. The development will be supported by swimming pools, tennis courts, a cocktail bar, dining room, boutiques and meeting rooms. Approximately 7.5 per cent of the total land area will be used for the proposed structures. Density calculations show 5.6 units per acre, or conversely, a total of 7,778 square feet of land for each unit built. Puu Olai will be left untouched and in its natural state. Should the State acquire Puu Olai, one of its purposes, among others, would be to preserve and conserve it in its present condition. The developer has committed himself to this "non-use" of Puu Olai itself without direct cost to the government.

6. The intended market for the project is upper middle income groups. Such groups from Canada and the mainland will be the prime sales target. These groups will be mainly investor, vacationer types with substantial disposable income and great geographical mobility. Sales to retired families and corporate entities may also be a factor in the marketing strategy.

7. Prices for each type of unit will vary according to location within the project, proximity to facilities, and general desirability of the unit. Estimates show the selling prices ranging from \$100,000 for a 933 square feet type B apartment to \$175,000 for a 1705 square feet two-story townhouse. Type A apartments which contain 1150 square feet will sell for approximately \$135,000. Room

rental rates in the hotel will be kept competitive with comparable facilities on Maui.

8. The overall development timetable will require approximately 5-1/2 years from start to completion, and cost approximately \$40 million. Anticipated increases in costs of labor and materials can raise the cost of the project by about fifty (50) percent by completion. Twenty months will be needed for detailed planning, architectural and engineering studies. Site work phases, including offsite utility construction and connection would involve another 12 to 18 months and be dependent upon coordination with the various branches of government and private developers presently committed to the area. Condominium construction will be completed in phases of approximately 50 units, with overlapping of the phases and each 50-unit phase encompassing about 24 months. The construction of the proposed hotel is expected to take 20 to 22 months. Petitioner's consolidated financial statements support and establish his financial capability to undertake and to complete the described development. Actual development will be undertaken by a Canadian group, however, East Greenwood Corporation.

9. The proposed development will have little or no effect on the agriculture of the area. The subject property is not being used for any agricultural purpose as it is heavily overgrown with kiawe, koa haole, sour grass, basil and other noxious weeds. Ulupalakua Ranch, Inc., an adjoining landowner, has stated that parcel 33 has no

known agricultural potential. Parcel 30, the larger parcel, has very limited agricultural potential. Ulupakalua Ranch, Inc. is of the opinion that approximately 25 of the 84 acres could be cleared of kiawe growth and cultivated if sufficient water were available. The remaining 59 acres of Parcel 30 have no known agricultural potential.

10. The soil on approximately one-half of the proposed project site is "Makena loam, stoney complex, 3 to 15% slopes (MSC) and the Puu Olai Cinder cone is rated as cinder land (rCL)." That part of the site which is Makena loam was rated as Class VI and the cinder land as Class VII -- both indicative of lands having very severe agricultural limitations.

11. In the "Detailed Land Classification, Island of Maui," Land Study Bureau Bulletin No. 7 of May 1967, the overall productivity rating for the majority of the acreage on the subject lands is "E", representing the lowest productivity possible. For selected crops, the ratings are "d", or poor for grazing, and "e", or very poor for pineapple, vegetable, sugar cane, orchard and forage crops. Class "d" rated grazing is estimated as having a carrying capacity of 10-30 acres per animal unit year (AUY), or an estimated live beef gain of 27-29 pounds per acre per year.

12. No offshore dredging or shoreline modifications are called for by present plans and no construction is planned for beach areas.

13. The inaccessibility of the state property, landlocked by the developer's lands, hinders its present

use as a recreational area. Rubbish, garbage, litter and abandoned automobiles spoil the public lands. Unauthorized persons have taken residence in the area. Beaches adjacent to the property include "Big Beach", "Little Beach" and Naupaka Beach. Petitioner will provide public access to the beaches and to Parcel 29. Parcel 29 (TMK 2-1-6-29) is 26.88 acres, located makai of the subject property and owned by the State of Hawaii and designated as Makena State Park under Executive Order No. 258. The Petitioner has offered to provide access to the other State-owned beaches as well as access to and use of the developed beach fronting Parcel 33. A dirt road, hardly accessible by car, currently attempts to serve the beach and the proposed Makena State Park. In addition to the aforesaid accessibility to the beaches, the developer has proposed to provide joint parking facilities for the public and guests of the development as well as toilet and shower facilities for the public at no direct cost to government, and has proposed to construct these facilities and make them available for public use prior to construction of any major or substantial portion of his own development.

14. The subject property is located in a drainage basin which begins at the 5300 foot elevation and extends to sea level. Storm runoff usually settles in the low lying areas where it evaporates or is absorbed into the ground. Petitioner has agreed to conduct hydrologic and hydraulic studies to ascertain the optimum drainage plan.

15. There may be historic sites located at or near the subject property. The Petitioner has stated that every effort will be made to preserve all portions of the property containing historic significance. The Department of Land and Natural Resources has stated that Petitioner's property and adjoining parcels in the area contain archaeological features consisting of rock walls, enclosures, and a possible burial mound. Officials at Bishop Museum have not performed a survey on the project site.

16. Common wildlife inhabitants of the area include the mynah, white-eye, English sparrow, rats, mice, mongoose, and fox gecko. The Hawaiian blacknecked stilt, which is an endangered species, is found in two small brackish water areas to the south of Puu Olai and north of Paako Point. The Department of Land and Natural Resources has stated that it seeks to protect the wildlife of the area, and the Petitioner has stated that he is willing to cooperate to preserve and conserve the historic and unique wildlife species of the area without cost to government.

17. County sewage facilities are currently unavailable. The present Kihei Sewage Treatment Plant facilities end at the Wailea Development. A complete wastewater collection, treatment and effluent disposal system will be constructed on-site by the developer in accordance with County standards. Sub-surface investigation will be made to determine the number and size of emergency injection wells necessary. After construction, Petitioner proposes to offer the entire system to the County of Maui for dedication.

18. Water service is not available to the subject property at this time. The County of Maui intends to bring a 12-inch waterline to the area in the future. Such a waterline will be funded jointly by the County and developers in the Kihei-Makena area. The waterline as currently proposed is not intended to serve the subject property and would have to be significantly redesigned to accommodate the proposed development. The collection of solid waste generated from the project will be handled by private agencies meeting the County's sanitation codes.

19. The Hawaii Telephone Company and Maui Electric Company, Ltd. have both indicated that their facilities in the area will be upgraded to meet the needs of the area when firm development commitments are made.

20. The present road from Wailea to Makena is a dirt road. The County of Maui, Department of Public Works and the State of Hawaii, Department of Transportation have indicated that there are no plans to improve the road at the present time. The Petitioner is willing, however, to pay a prorata share of roadway improvement costs, along with other developers of the area. Upon completion of the roads to government standards, they would be offered for dedication to government.

21. The public schools servicing the Puu Olai area are Kihei School and Baldwin High School. Kihei School (Kindergarten thru 8th grade) is located about 10 miles from the subject property. In September of 1977, Kihei

School will be relocated to a site 8 miles from Puu Olai. Grade 9 thru 12 students attend Baldwin High School which is approximately 21 miles from the subject property in Kahului.

22. Adequate police and fire protection services are presently unavailable to the subject property because they are dependent upon roads and water service to the area. The County of Maui Fire Department states that presently they have a poor response time to the area because of the dirt road and lack of water. Currently, the County of Maui Police Department has two officers servicing the area from 7:00 a.m. to 11:00 p.m. and one officer from 11:00 p.m. to 7:00 a.m. Service and response time would be greatly increased with the completion of adequate roads and water system.

23. An important area of concern relates to the economic impact of development of Puu Olai. According to the Governor's Economic Advisory Task Force Phase I report (August 1975), "The travel industry appears to be the only area in which there is a distinct substantial growth potential. The Alternative Economic Futures for Hawaii data indicates that, in 1985 the visitor count, on a conservative basis, will approach five million and this should produce employment about double that of 1972." Tourism is now the primary employment generator on Maui and it is clear that the County's future depends on the health of the travel industry.

24. In every recent year, there has been a steady increase in the number of visitors to Maui. This

trend continues and will require that additional hotel units be built in the future to accommodate this growth. The HVB's Visitor Plant Inventory report of June 1976 indicates that there are presently 7,153 existing hotel accommodations on the island of Maui and that 1,154 additional units are planned for future construction. Some of these units will be in the Wailea area where Wailea and Seibu project a possible total of 22,000 residents and 15,600 daily visitors by 1990.

25. This project at Puu Olai could also accommodate some of the anticipated increase in visitors. The proposed development would include 244 residential units and a 250-room hotel, or a potential of 540 residents and approximately 335 daily visitors. When the project is operational, approximately 150 permanent jobs would be filled, including employment related to management and maintenance of the units as well as the supervision and upkeep of recreation and open space areas. These jobs would be a ready source of employment to residents of Kihei and other nearby areas. Presently, the majority of permanent employment opportunities are in the Wailuku-Kahului area (22 miles from Puu Olai). The Wailea development is about 4 miles from Puu Olai and will provide a source of permanent employment. Other job opportunities in hotels, condominiums, small businesses and public services are also located in the vicinity of Kihei within 10 miles of the project site.

26. It is apparent that hotel and condominium development produces economic benefits to the residents of the area and to the County. In "Hotel Employment and

the Community in Hawaii" William D. Merrill recently found, by actual survey, a ratio of 1.56 persons in the community who derived their primary or secondary support from each hotel room. Thus, for each 100 hotel rooms developed there are approximately 156 residents of the community who derive part or all of their income or support from the hotel. These jobs, and the resulting income, would in turn yield increased tax revenues to the County and the State.

27. The County of Maui Planning Department and the Department of Planning and Economic Development of the State of Hawaii opposes this Petition to reclassify the subject property from the Rural and Conservation Districts to the Urban District. The Intervenor, Shoreline Protection Alliance opposes this Petition for reclassification unless the Petitioner is required to dedicate all except 12 acres of the subject property to the State for establishment of a park. The Department of Planning and Economic Development opposes reclassification on the bases that there are inadequate roads and inadequate water and sewage facilities, that the Maui General Plan designates the subject area for Parks and Open Space, that the Petitioner has failed to show a need for additional Urban lands in the area, and that the Petitioner proposed development conflicts with the State's proposed Makena-La Perouse Bay State Park project.

28. In 1975 the Parks Division of the Department of Land and Natural Resources hired a consultant to develop

a plan for a park in the Makena-La Perouse area of Maui. Although the consultant's plan has not yet been finalized, he expects to complete it by February of 1977. The plan encompasses the Makena-La Perouse State Park Study Area which extends from the boundary line of the Hana District to Makena and includes Kalulu, Waiakapuhi, Cape Hanamaioa, the land adjoining La Perouse (Keoneoio) Bay, Cape Kinau, and the land adjoining Ahihi Bay including all of the subject property and Puu Olai. The plan currently proposes an integrated park system with two centers of activity; the La Perouse Historical and Recreational Complex to be located at La Perouse (Keoneoio) Bay and the Puu Olai Recreational Complex to be located on the subject property. The proposed park uses of the subject property include: parking areas; concession and service buildings; comfort station; picnicking, fishing, and sun-bathing areas; swimming, body surfing, and scuba diving. The proposed park uses of the adjoining property also considered for inclusion in this State Park include: a natural area reserve; a historical park; a nature demonstration park; a storm shelter anchorage; camping, swimming, snorkling, skin diving, and fishing areas; and hiking along the historic Hoapili Trail.

29. The beach adjoining the subject property, Big Beach, is an important element of this proposed park and its recreational system, because of its size, the direction it faces, and because of its AA waters. The subject property is essential for access to the beach and

for location of support services for the recreational system. In addition, the subject property adjoining Big Beach is an environmentally sensitive area which acts as a settling pond for surface run-off waters from Haleakala, allowing the run-off waters to settle and filter through the sand, thereby removing silt and other impurities, before entering the ocean and creating AA waters off of Big Beach although adjoining waters are of an A purity and clarity only. Moreover, all of the subject property except Puu Olai and the area immediately mauka of it is within the Tsunami Inundation Zone.

30. If the consultant's recommendation for this proposed State Park are accepted as planned, both the County of Maui and the Park Division of the Department of Land and Natural Resources would like to begin development by 1978. The Legislature of the State of Hawaii has already appropriated \$1,235,000 for the "incremental acquisition of land," including the subject property. Approximately two-thirds of the area considered for inclusion for this Makena-La Perouse State Park already belongs to the State. It is possible, however, that if acquisition proceeds on an incremental basis, the \$1,235,000 appropriation will not be sufficient to acquire all of the private property considered for inclusion. The assessed value of the subject property with its existing Rural and Conservation classification, as determined by the State of Hawaii Department of Taxation, for the 1976-77 year was \$658,756 (\$421,987, and \$236,769 for parcels 30 and 33, respectively), which represents a 560 per cent increase over the prior

assessed valuation of the subject property at \$117,460. If the State proceeds to acquire this private property on an incremental basis, the value of those portions not acquired in the earlier increments will very likely increase in value as time passes and may possibly render the amount of this appropriation inadequate for its purpose. The Petitioner argues, therefore, that because this appropriation may be insufficient and because the Petitioner proposes to provide public access to the beaches, public parking facilities, and public toilet and shower facilities at no cost to the government, the Commission should reclassify the subject property to permit the proposed development and thereby assure the improvement of the recreational potential of, as well as public access to, this area.

31. Although the Petitioner seems sensitive to these recreational and environmental concerns, the Commission finds, however, that the park and recreational potential of this area is too significant, and that the subject property is too environmentally sensitive and too essential to this comprehensive proposal for a State Park from Makena to La Perouse Bay, for it to reclassify this property from the Rural and Conservation Districts to the Urban District in order to permit the proposed development.

32. In addition, although the economic growth of Maui depends upon the health of the travel industry, there are already two very large projects underway in adjoining and nearby areas, the Seibu and Wailea developments,

and condominiums are not selling well in the Kihei area. The Petitioner has failed to show that the proposed development with its 244 residential units and 250 room hotel is reasonably necessary to accommodate growth and development. Moreover, no state or county plan calls for further development in this area.

CONCLUSIONS OF LAW

Reclassification of the subject property, approximately 88.05 acres situated at Makena, Island of Maui, from Rural and Conservation to Urban and amendment of district boundaries accordingly to permit the proposed development is not reasonable, would violate Section 205-2, HRS, and is not consistent with the interim policy and criteria established pursuant to Section 205-16.1, HRS, particularly subsection (1) thereof which provides that land use amendments shall be approved only as reasonably necessary to accommodate growth and development, provided there are no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic or other resources of the area, and subsection (6) thereof which provides that in establishing the boundaries of the districts in each county, the Commission shall give consideration to the general plan of the county, and subsection (7) thereof which provides that insofar as practicable conservation lands shall not be reclassified as urban lands.

RULING ON PROPOSED FINDINGS

Any proposed findings submitted by a party and not already ruled upon by the Commission by adoption herein or rejected by a clearly contrary findings of fact herein, is ruled upon as follows: The last sentence of Petitioner's Proposed Findings of Fact No. 3 is rejected as not presenting a finding of fact but a conclusion which is unwarranted and not controlling for this Commission's decision.

2. The first sentence of Petitioner's Proposed Findings of Fact No. 14 is rejected as not having been established by a clear preponderance of the evidence inasmuch as the subject property is an environmentally sensitive area and of significant recreational importance.

3. The last three sentences of Petitioner's Proposed Findings of Fact No. 29 are rejected as not having been established by a clear preponderance of the evidence.

4. Petitioner's Proposed Findings of Fact Nos. 40, 41, 43, 45, 46 and 48 are rejected as presenting conclusions of law and not findings of fact.

5. Petitioner Proposed Findings of Fact Nos. 42, 44 and 47 are rejected as presenting findings which have already been adequately dealt with by these Findings of Fact.

ORDER

IT IS HEREBY ORDERED:

That the property which is the subject of this Petition in Docket No. A76-416, approximately 88.05 acres

situated in Makena, Island of Maui, identified by Tax Map Key Nos. 2-1-06-30 and 2-1-06-33, shall remain in the Rural and Conservation Districts within which they are classified.

DONE at Honolulu, Hawaii, this 16th day of February, 1977, by Motion passed by the Commission on the 6th day of January, 1977, in Honolulu, Hawaii.

LAND USE COMMISSION
STATE OF HAWAII

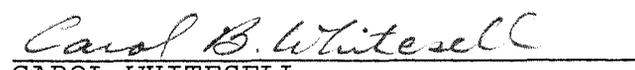

STANLEY SAKAHASHI
Vice Chairman and Commissioner

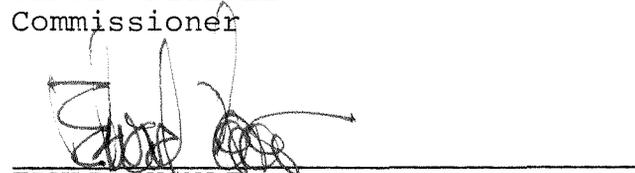

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