

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the ) DOCKET NO. A77-429  
Petition of )  
 )  
MAKAWAO, INC., )  
 )  
For Reclassification of )  
Certain Land Situated )  
at Makawao, Island of )  
Maui. )  
\_\_\_\_\_ )

DECISION AND ORDER

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DECISION

This matter, being a proceeding pursuant to Section 205-4, of the Hawaii Revised Statutes to consider a Petition to amend District Boundaries and reclassify from Agricultural to Rural approximately 241.53 acres of land situated at Makawao, Island of Maui, was heard by the Land Use Commission in Kahului, Maui, on May 12, 1977. Makawao, Inc., the Maui County Planning Department, and the Department of Planning and Economic Development of the State of Hawaii, were admitted as parties in this Docket. The Commission having duly considered the record in this Docket, the proposed Findings Of Fact, Conclusions Of Law submitted by the Petitioner and the comments and objections thereto submitted by the Maui County Planning Department and the Department of Planning and Economic Development, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The subject property is identified as Lot 4 of Land Court Application 1320 (Map 2), contains an area of

241.53 acres, and is identified by Tax Map Key 2-4-01:1. The subject property is bounded by Apana Road on the southwest; Makani Road on the west and north; an area approximately parallel to Makawao Avenue on the east and Laie Drive on the east and a portion of Makawao Avenue on the southeast.

2. The property is presently located within an Agricultural District, and Makawao, Inc. seeks to have the property reclassified as "Rural" and the District Boundaries amended to include the property within a Rural District. The property is presently being used to graze a small number of livestock.

3. Makawao, Inc., a Hawaii corporation, holds a vendee's interest in the subject property pursuant to an agreement of sale dated February 16, 1973, filed with the Assistant Registrar of the Land Court of the State of Hawaii, as Document No. 620856 and noted on Transfer Certificate of Title No. 92635.

4. The Petitioner proposes to subdivide the subject property into 409 one-half acre lots. Development will proceed in three phases with the initial increment of 171 lots to be constructed in that portion of the property adjacent to and to the northeast of the Kilauea Gulch. A second increment will consist of 143 lots and will be constructed on that remaining portion of the property between phase one and Makani Road. The final increment of 95 lots will be constructed on that portion of the subject property situated between the Kilauea Gulch and Apana Road. Makani Road will be improved by the developers as required by the County of Maui and Apana Road will be brought up to County standards by the developers.

5. The proposed development will have an impact on traffic volumes due to the additional families living in the proposed subdivision. The State Department of Transportation indicates that Haleakala Highway will be improved with construction to be completed within five years. The improved highway will have sufficient capacity to handle the additional traffic load from the development. The existing and planned and educational facilities are adequate to accommodate the anticipated increases due to the proposed development.

6. The Land Study Bureau has classified the subject property as "Class C" land, moderately suited for agriculture. The subject property is not in intensive agricultural use. The Soil Conservation Service has classified the soil in the Haliimaile group of silty to gravelly clay. Natural drainage of the subject property is by percolation and sheetflow. The State Department of Agriculture is not opposed to the reclassification, subject to guarantees for the protection and preservation of neighboring agricultural operations.

7. The Makawao-Pukalani-Kula General Plan which was adopted on October 1, 1976 is the primary land use guide for the area within which the subject planned property is situated. Unlike the static land use map approach, this General Plan takes a policy approach which is aimed at specifying a set of desired statements and methods to implement the objectives of the General Plan. The policy approach of the General Plan serves to guide without restricting and provides a flexible tool to manage the complex and everchanging issues and needs of land use.

The County of Maui Planning Department testified that proposed development conforms to the standards, objectives and policies of the Makawao-Pukalani-Kula General Plan and that no General Plan Amendment is necessary.

8. The resident population of Makawao district has increased from a population of 9,979 in 1970 to 12,300 in 1975, an increase of 23 percent. Within the "up-country" area of Makawao-Pukalani-Kula, lands classified "Rural" can be found in Pukalani-Kokomo. A development comparable to the proposed project is Pukalani Terrace, which comprises a total of 427 lots. The last of those lots was sold by the developers in 1968. There is no other land classified "Rural" in Makawao with the exception of a small area in Kokomo approximately one mile north of Makawao. Nearly 75 percent of these lots are not sub-dividable and the largest parcel is 6.25 acres in size. There are only 8 lots listed for sale in Pukalani Terrace at prices ranging from \$33,500 to \$38,000 and since January of 1973 a total of only 24 land transactions have been recorded for Pukalani Terrace. The County of Maui, Makawao-Pukalani-Kula General Plan establishes a projected housing range in 1990 from 4,500 to 6,000 units for the Makawao-Pukalani area. It is estimated that the current housing stock is approximately 1,800 units.

9. The County of Maui, Department of Water Supply indicates that the existing water supply source is adequate to serve the additional use demands anticipated from this project, and states that the applicant will be required to construct a 400,000 gallon water storage tank and other off-site and on-site waterline improvements, pursuant to

the County of Maui's Subdivision Ordinance and the Department of Water Supply's Rules and Regulations. They further point out that there are problems in meeting the bacteriological and turbidity standards of a Federal Safe Drinking Act, but the County of Maui, Department of Water Supply is using its best efforts to comply with the requirements of that Act.

10. The principal stockholders of the Petitioner are experienced in both the financing and the development of residential subdivisions.

11. North of the subject property, across Makani Road, is an 8 acre commercial poultry farm operated by the Ige Family. Mr. Douglas Ige, Vice President of Operations, pointed out their concern that the proposed development would not be compatible with their existing poultry farm operation in that noise, dust, and odors emanating from the farm would cause complaints from the residents of the development, which in turn could create problems for their poultry operation. Mr. Ige further pointed out that they are planning to expand the poultry farm operation in the near future. Presently, the poultry farm produces over 50% of the eggs in the Maui market. The Petitioner stated that it would be willing to impose a restrictive covenant on the subject property, which would be included in the deed of conveyance to purchasers of the subdivided lots, and would acknowledge the existence of the poultry operation and preclude them from objecting to future expansion of the poultry operation or from complaining to regulatory authority as long as the poultry operations are conducted lawfully. If such a restrictive covenant is imposed upon the subject property for the benefit of all the surrounding agricultural

activity, the proposed development will have no significant adverse effect upon the agricultural resources of the area.

12. The proposed development will have no known significant adverse effect upon the natural, environmental, recreational, scenic, historic, or other resources of the area.

13. The County of Maui Planning Department supports this Petition for reclassification of the subject property. The Department of Planning and Economic Development of the State of Hawaii conditionally supported the Petition subject to clarification of certain concerns and to the receipt of additional information. At the conclusion of the hearing held in this Docket, the Department of Planning and Economic Development stated that it was satisfied that these areas of concern had been adequately covered by the Petitioner, and that it had no objections to reclassification of the subject property.

#### CONCLUSIONS OF LAW

Reclassification of the subject property, approximately 241.53 acres situated at Makawao, Island of Maui, from Agricultural to Rural and amendment of the District Boundaries accordingly to permit the proposed development, is reasonable, not violative of Section 205-2, H.R.S., and is consistent with the interim policies and criteria established pursuant to Section 205-16.1, H.R.S.

ORDER

IT IS HEREBY ORDERED:

That subject to the following conditions, the property which is the subject of the Petition in this Docket No. A77-429, approximately 241.53 acres of land situated at Makawao, Island of Maui, identified by Tax Map Key 2-4-01:1, shall be and hereby is reclassified from Agricultural to Rural, and the District Boundaries are amended accordingly:


1. That Petitioner impose a restrictive covenant upon the subject property which expressly recognizes the existence of adjoining agricultural activity, including the Ige Poultry Farm, and precludes all subsequent purchasers from objecting to the expansion or intensification of that agricultural activity and from complaining to any regulatory authority about those agricultural operations so long as they are conducted lawfully.

2. That the foregoing restrictive covenant shall run with the land, shall not be limited in time, shall be filed with the Land Use Commission and the Bureau of Conveyances, and shall be contained in the deed of conveyance for each lot subdivided from the subject property.

DONE at Honolulu, Hawaii, this 12<sup>th</sup> day of August 1977, by Motion passed on June 28, 1977 in Wailuku, Maui.

LAND USE COMMISSION  
STATE OF HAWAII

By

  
STANLEY SAKAHASHI

Chairman and Commissioner



By James R. Carras  
JAMES CARRAS  
Commissioner

By Charles Duke  
CHARLES DUKE  
Commissioner

By Shinsei Miyasato  
SHINSEI MIYASATO  
Commissioner

By Shinichi Nakagawa  
SHINICHI NAKAGAWA  
Commissioner

By Edward Yanai  
EDWARD YANAI  
Commissioner