

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A80-499
)	
CLIFFORD JOSEPH SOARES, CAROLYN MAY)	CLIFFORD JOSEPH SOARES,
SOARES, RAYMOND E. MILLER and)	CAROLYN MAY SOARES,
FLORENCE T. MILLER)	RAYMOND E. MILLER and
)	FLORENCE T. MILLER
To Amend the Agricultural Land Use)	
District Boundary to Reclassify)	
Approximately 1.235 Acres, TMK:)	
5-4-01:58, at Kawela, Island of)	
Molokai, County of Maui, into the)	
Rural Land Use District)	
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DECISION AND ORDER

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Molokai, County of Maui, into the)
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_____)

DECISION

THE PETITION

This matter arises from an Amended Petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations by Clifford Joseph Soares, Carolyn May Soares, Raymond E. Miller and Florence T. Miller who are requesting that the designation of the subject property be amended from the Agricultural to the Rural District. The requested change consists of property comprising approximately 1.235 acres of land, situated at Kawela, Island of Molokai, County of Maui. The subject property is more particularly identified as Tax Map Key No. 5-4-01:58.

PURPOSE OF PETITION

Petitioners' stated purpose for requesting the reclassification of the subject property from Agricultural to Rural is so that Petitioners can subdivide the subject property into two residential lots consisting of 24,674

square feet and 28,880 square feet respectively. The Soares family will have the smaller lot containing the existing single-family dwelling and the Miller family will have the larger lot on which they propose to construct a single-family dwelling.

THE PROCEDURAL HISTORY

The original Petition was received by the Land Use Commission on October 17, 1980. Due notice of the hearing on this Petition was published on November 17, 1980, in the Maui News and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on November 11, 1980. Although no timely application to intervene as a party or appear as a witness was received by the Land Use Commission, during the hearing on the subject Petition, a Thomas Iveson requested and was permitted to testify as a public witness on the subject Petition. The subject Petition originally requested reclassification of the subject property from the Agricultural District to the Urban District, however, at the hearing on December 19, 1980, the Petition was amended, without objection, to reclassify the subject property from the Agricultural District to the Rural District.

THE HEARING

The hearing on this Petition was held on December 19, 1980, in Kaunakakai, Molokai, Hawaii.

Clifford Joseph Soares, Carolyn May Soares, Raymond E. Miller and Florence T. Miller, the Petitioners herein, were represented by Lawrence N. C. Ing, Esq., and the Department of Planning and Economic Development was represented by Abe Mitsuda, Division Planner. The Maui County Planning Department was not

present since inclement weather grounded all scheduled flights between Maui and Molokai. Since all other parties were present, the Hearing Officer opened the hearing with the consensus and understanding of all parties that Maui County would be permitted to submit their written testimony at a later date with service upon all other parties and in the event any party desired to reopen the hearing for purposes of cross-examination, said right would be granted upon timely request made to the Hearing Officer.

During the course of the hearing, the Petitioners requested that the Petition be amended to request a Rural rather than an Urban reclassification. There being no objection, said oral amendment was granted by the Hearing Officer with the understanding that all references to Urban in the Petition were to be changed to Rural. The Department of Planning and Economic Development requested and was granted the right to submit at a later date their written testimony in regard to the requested Rural change with the same procedures regarding reopening of the hearing being extended to their testimony. The Hearing Officer received Maui County's written testimony on December 31, 1980 and the Department of Planning and Economic Development's testimony on January 22, 1981. Since no requests to reopen the hearing were received, the Hearing Officer closed the hearing on February 6, 1981.

The witnesses who testified at the hearing were as follows:

Petitioner:

Clifford Joseph Soares

Raymond E. Miller

Public Witness:

Thomas Iveson

Department of Planning and Economic Development:

Abe Mitsuda, Land Use Division Planner

POSITION OF THE PARTIES

County of Maui - Approval.

Department of Planning and Economic Development -
Approval.

APPLICABLE REGULATION

Standards for determining the establishment of a Rural District are found under Part II, Section 2-2(4) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- "(4) 'R' Rural District. In determining the boundaries for the 'R' Rural District, the following standards shall apply:
- (a) Areas consisting of small farms; provided that such areas need not be included in this District if their inclusion will alter the general characteristics of the areas.
 - (b) Activities or uses as characterized by low density residential lots of not less than one-half (1/2) acres and a density of not more than one single-family dwelling per one-half (1/2) acre in areas where 'city-like' concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low density residential lots.
 - (c) Generally, parcels of land not more than five (5) acres; however, it may include other parcels of land, which are surrounded by, or contiguous to this District and are not suited to low density residential uses or for small farm or agricultural uses."

FINDINGS OF FACT

The Panel of the Land Use Commission, after having duly considered the record in this docket, the testimony of the witnesses and the evidence adduced herein, makes the following findings of fact:

1. The Petitioners herein, Clifford Joseph Soares and Carolyn May Soares, hold a vendee's interest in the subject property which is located at Kawela, Island of Molokai, County of Maui, and consists of approximately 1.235 acres, more particularly described as Tax Map Key No. 5-4-01:58. The fee owner of the property, Ms. Cecelia Kamakana, has consented to the subject application. The subject property is located on the mauka side of Kam V Highway, approximately 4 miles east of Kaunakakai and about 5,000 feet west of Kawela Stream. Kanoa Fishpond lies beyond Kam V Highway, directly makai of the subject property.

2. The subject property is presently within the State Agricultural District. Lands to the north, east, and west are also within the Agricultural District, while lands to the south of the subject property across Kam V Highway are in the Urban District. The subject property is located within an area characterized by a combination of scattered, single-family residential, agricultural and open space uses.

3. The subject Petition does not conflict with the provisions of the General Plan of the County of Maui (1980) (Ordinance 1052), which lays out broad policies for the long range development of the County of Maui. On the proposed Molokai Land Use Plan, the Molokai Regional Development Plan by MKGK/Yamamoto, Incorporated, dated December 1979, designates the subject property and a large amount of

the area directly mauka of Kamehameha Highway on the southeastern portion of Molokai as A² for "2 acres farm." The land makai of Kamehameha Highway and the subject property, bordering Kanoa Fishpond, is proposed for "Rural Settlements." The boundaries of the "Rural Settlements" designation correspond to the existing Urban Land Use District.

4. The subject property is not classified under the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system and is not within the County of Maui Special Management Area (SMA). Makai portions of the subject property, however, do lie within the Potential Tsunami Inundation Limit established by the Hawaii Institute of Geophysics Tsunami Research Program.

5. The U.S.D.A., Soil Conservation Service has classified the soil of the subject parcel into two (2) types:

- "-Very stony land, eroded (rVT2) on the mauka portion of the subject property, and
- Mala silty clay (MmA) which covers the makai portion of the subject property."

"About 50 to 75 percent of the surface of Very stony land, eroded (rVT2) is covered with stones and boulders. Dominant vegetation is keawe, ilima, piligrass and fingergrass. These areas are used for pasture and wildlife habitat. Improvement for pasture is difficult because of the many stones and gullies and in unimproved areas, carrying capacity is low. Mala silty clay (MmA) which covers the central area of the subject property is found on farms along the coastal plains. Permeability is no more than slight. In low areas, this soil is subject to flooding for short periods during heavy rains. This soil is used for pasture, alfalfa, truck crops, orchards,

and wildlife habitat." According to the Detailed Land Classification -- Island of Molokai (1968), the Land Study Bureau has assigned the subject parcel an overall agricultural rating of "E," indicating the lowest rating on a scale of "A" to "E" for productive agricultural capacity.

6. The subject property is presently being used for residential purposes and has not been in agricultural use for many years. In regard to potential agricultural productivity, the State Department of Agriculture, in a letter dated November 28, 1980, stated that due to shallow and rocky soil conditions, the subject property would not be economically feasible to farm even if water were made available for irrigation.

7. According to the State Department of Natural Resources, records of the Hawaii Register and/or the National Register of Historic Places do not indicate the presence of historical, cultural, architectural and/or archaeological resources on the subject property. As there is a possibility that as yet unidentified archaeological sites may exist in the proposed areas of development, Petitioners have agreed to contact the State Department of Natural Resources if any remains are found during construction or during any kind of field inspection.

8. Petitioners propose to subdivide the subject property into two (2) residential lots consisting of 24,674 square feet and 28,880 square feet respectively. The Soares family intends to keep the smaller lot containing the existing single-family dwelling and the Miller family will have the larger lot on which they propose to construct a single-family dwelling for their own use. If the subject Petition

is approved, Petitioners propose to file a request for zoning and subdivision of the subject property with the County of Maui. Petitioners Raymond and Florence Miller maintain they have the financial resources necessary to finance surveying and building costs which are estimated to be \$51,500.00.

9. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

a. Access - Road access to Petitioners' property subdivision is available along Kam V Highway, an 80-foot-wide State right-of-way.

b. Schools - Subdivision of the parcel into two lots will have no significant effect on the schools in the area.

c. Sewage - Sewage needs will be handled through the use of cesspools.

d. Water - Petitioners intend to tap a County water line which is running along side the subject property.

e. Drainage - Drainage will be handled by sheetflow as there are drainage culverts under Kam Highway to channel storm water run-off into the ocean.

f. Electrical and Telephone Utilities - Electrical and telephone services are available in the area.

10. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the County of Maui and the Department

of Planning and Economic Development have recommended that the reclassification of the subject property be approved. The Department of Planning and Economic Development, however, qualified their recommendation in this docket on the basis that the subject request concerns a two-lot project which is similar in character to the development pattern in the area and because it involved only 1.235 acres with negligible impact to public facilities and resources.

CONCLUSIONS OF LAW


Reclassification of the subject property, consisting of approximately 1.235 acres of land, situated at Kawela, Island of Molokai, County of Maui, from Agricultural to Rural and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

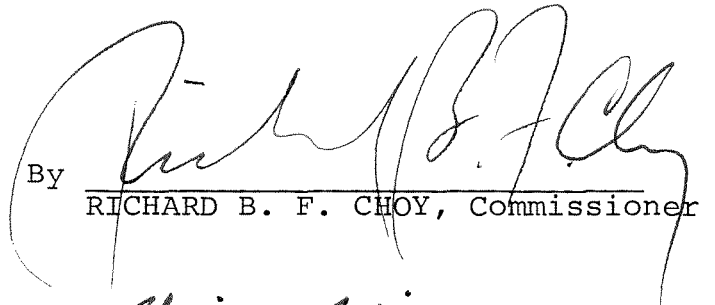
ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A80-499, consisting of approximately 1.235 acres, situated at Kawela, Island of Molokai, County of Maui, identified as Tax Map Key No. 5-4-01:58, shall be and hereby is reclassified from Agricultural to Rural and the district boundaries are amended accordingly.

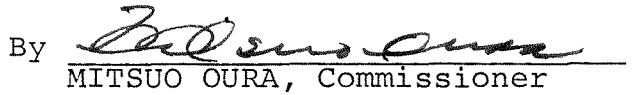
DONE at Honolulu, Hawaii, this 6th day of May, 1981, per Motion on April 9, 1981.

LAND USE COMMISSION
STATE OF HAWAII


By 
C. W. DUKE, Chairman and
Commissioner

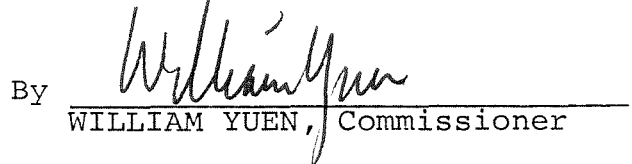
By 
RICHARD B. F. CHOY, Commissioner

By 
SHINSEI MIYASATO, Commissioner

By 
MITSUO OURA, Commissioner

By 
CAROL B. WHITESELL, Commissioner

By 
EDWARD YANAI, Commissioner

By 
WILLIAM YUEN, Commissioner

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Approximately 1.235 Acres at Kawela,)
Island of Molokai, County of Maui,)
into the Rural 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:

HIDETO KONO, Director
Department of Planning & Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

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

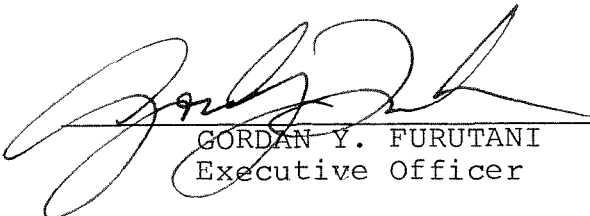
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CECILIA K. KAMAKANA
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190 South King Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 8th day of May, 1981.



GORDAN Y. FURUTANI
Executive Officer