

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition) DOCKET NO. A84-568
))
) MAUD VAN CORTLANDT HILL
) SCHROLL TRUST
MAUD VAN CORTLANDT HILL)
SCHROLL TRUST)
)
To Amend Urban Land Use)
District Boundary to)
Reclassify Approximately)
32.910 acres, TMK: 5-7-07:)
18, 19, 20 and 21 at Pukoo,)
Island of Molokai, County of)
Maui, State of Hawaii, into)
the Rural Land Use District)
.....))

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.
APR 18 1985 by *[Signature]*
Date Executive Officer

DECISION AND ORDER

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OF THE STATE OF HAWAII

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Maui, State of Hawaii, into)
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DECISION

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed on May 30, 1984, 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 the Maud Van Cortlandt Hill Schroll Trust, a trust registered under the laws of the State of Minnesota, to amend the designation of property comprising approximately 32.910 acres of land situate at Pukoo, Island of Molokai, County of Maui, State of Hawaii, Maui Tax Map Key No. 5-7-07: 18, 19, 20, and 21, (the "Property") from the Urban to the Rural Land Use District.

PURPOSE OF THE PETITION

The Petitioner requests the reclassification of the Property from Urban to Rural for the purpose of developing a four-lot subdivision for residential use and a private roadway lot for public access. Petitioner proposes to construct single-family residences on three of the four lots and to develop the fourth lot for recreational use. Members of the Schroll family will be the initial owners of the three residential lots and will own the lots as tenants in common.

THE HEARING

Benjamin Matsubara, Esq., duly appointed hearing officer, conducted hearings on this Petition in Kaunakakai, Molokai, Hawaii, on September 11, 1984, and October 22, 1984, pursuant to notice published on August 3, 1984, and September 28, 1984, in the Honolulu Advertiser and the Maui News. The hearing officer granted a Petition to Intervene filed on August 16, 1984, by George Peabody, individually, and George Peabody on behalf of the Citizens Right of Way Dedication at Pukoo Committee, "CROWD". The Petitioner herein was represented by Benjamin A. Kudo, Esq., and Gary G. N. Wong, Esq.; the Planning Department of the County of Maui was represented by John Min; the Department of Planning and Economic Development was represented by Deputy Attorney General Annette Chock and Intervenors George Peabody and CROWD were represented by Boyce R. Brown, Jr., Esq. The

witnesses presented by the parties were as follows:

Petitioner

Joseph Vierra, Jr., - Civil Engineer, Belt Collins
and Associates.

Laurence Dorcy - Co-Trustee of Schroll Trust

Kila Demello - Liason and Property Manager

County of Maui

John Min - Maui County Planning Department staff
planner

Department of Planning and Economic Development

Abe Mitsuda - staff planner

Intervenors

George Peabody

POSITION OF THE PARTIES

The Department of Planning, County of Maui -
Approval upon the condition that: (1) the Petitioner shall
provide public beach access or accesses on the Property; and
(2) the Petitioner shall file an Application for Change In
Zoning with the County of Maui Planning Department to repeal
the H-M Hotel District Zoning currently established for the
Property.

The Department of Planning and Economic Development
- approval with the condition that public access to the
shoreline shall be provided as required by government
agencies.

Intervenor Peabody and CROWD - approval with the condition that public access to the property for boat launching and related facilities be provided.

APPLICABLE REGULATIONS

Standard 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:

"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, structure, 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 Land Use Commission, having duly considered the record in this docket, the testimony of the witnesses and the

evidence introduced herein, makes the following findings of fact:

1. The Property is located on the ocean approximately 15 miles from Kaunakakai, the principal town on Molokai and the island's only commercial and population center. The Property consists of approximately 25 acres of useable land and a lagoon comprising approximately 8 acres. The Subject Property is vacant except for a caretaker's dwelling and a canoe shelter.

2. The Property is located within the State Land Use Urban District as reflected on Land Use District Boundary Map MO-5, Halawa, Molokai, Hawaii. The Molokai Community Plan adopted in January 1984, designates the Property for Rural/Residential Use. The present county zoning is H-M Hotel District. The Petitioner has filed a County Special Management Area Assessment Application to consolidate and re-subdivide the Property, to provide public beach access, easements, and to install water service lateral and utility hookups. By letter dated January 9, 1984, The County of Maui Planning Department advised Petitioner to file a Petition with the State Land Use Commission, to reclassify the Property to the Rural District before Maui County acts on the SMA Application.

3. The Property was formerly an ancient Hawaiian fish pond. Between 1972 and 1973, previous owners of the

Property dredged the coral fill from the site and offshore waters to create fast land and clover leaf-shaped lagoon. The 25 acres of useable fast land is relatively level and has an average elevation of approximately 6 feet above sea level. Rainfall on the Property averages approximately 40 inches per year and winds are primarily from the northeast and parallel to the coastline. The State Department of Agriculture did not classify the Property in the Agricultural Lands Of Importance To The State of Hawaii (ALISH) system. The U.S.D.A Soil Conservation Service has no classification for the Property because the site was created after the Soil Conservation Service Soil Study was completed. The Federal Insurance Administration, in its flood insurance study for Maui County classified the Property as land subject to the 100-year tsunami and riverine flood hazards.

4. The Land Use Commission originally classified the Property in the Urban Land Use District on June 12, 1970. Pukoo Properties, Inc., and Keoni Apeka Holdings, Inc., associated as a joint venture under the name "Canadian-Hawaiian Developers", and Shell Pacific Properties, Inc., filed a Petition to reclassify the Pukoo fish pond and adjoining land comprising approximately 30 acres on December 23, 1969. Canadian-Hawaiian Developers proposed a project to include filling a portion of the fish pond and creating the

lagoon to develop three condominiums containing 500 condominium units and two hotel sites containing 450 hotel rooms with the addition of an offshore boat basin. Following the Land Use Commission's reclassification of the Property to the Urban District, Canadian-Hawaiian Developers obtained the necessary permits and licenses for the initial dredging and filling operations. On October 27, 1970, Canadian-Hawaiian Developers submitted an application for a Conservation District Use Permit, in order to use the submerged public lands fronting Pukoo fish pond for a boat basin. The State Board of Land and Natural Resources approved the application. The State Department of Transportation Harbor Division issued a shorewaters construction permit (No. 1475), which allowed the Developer to excavate and dredge approximately 214,000 cubic yards of material from the Pukoo fish pond to create a clover leaf lagoon. On July 23, 1971, the Land Board issued Land License S-195 allowing Canadian-Hawaiian Developers to excavate and remove dredge material from the submerged lands fronting Pukoo fish pond and the adjacent Panahaa fish pond. On June 30, 1971, the U.S. Army Corp of Engineers issued Canadian-Hawaiian Developers a permit to excavate approximately 214,000 cubic yards of material to create public beaches, a boat anchorage basin, and approach channels. Developers

completed the excavation and dredging of public submerged lands fronting the pond-lagoon pursuant to the permits in 1973.

Canadian-Hawaiian Developers sold the Property in 1979 to Petitioner. On October 6, 1982, the State Land Use Commission issued an Order To Show Cause to the Petitioner as to why the Commission should not reclassify the Property from the Urban District back to the Rural and Conservation Districts for failure to comply with Section 6-3, of the State Land Use Regulations Performance Time. On December 19, 1983, the Commission determined that Canadian-Hawaiian Developers and its successor, Petitioner, had made substantial progress to develop the Property pursuant to Section 6-3 of the Commission's Regulations and issued an Order Determining That Maud Van Cortlandt Hill Schroll Trust Is In Compliance With Section 6-3 Of The State Land Use Commission's Regulations.

5. The Petitioner proposes to consolidate and re-subdivide the Property into four parcels ranging in size from 2.6 to 4.2 acres for three residential lots and 22.1 acres for the commonly owned parcel. Each parcel will have access to Kamehameha V Highway. The recreational use proposed for the common parcel will consist of a private boat storage facility and open space for passive recreational activities such as picnicking and family gatherings. The boat storage

facility will include three storage structures for personal property belonging to the owners of the Property. The proposed facilities will be for private use only. Petitioner does not intend to construct a pier on the lagoon. Petitioner also proposes to provide two public beach accesses as follows:

(a) A six-foot wide pedestrian easement from an existing public road on the west side of the Property to a public beach situate on the southwest side of the Property; and

(b) A twenty-foot wide roadway on the east side of the Property connecting to a six-foot wide pedestrian access easement to the public beach on the southeast side of the Property. Petitioner proposes to provide eight public parking stalls near the mauka or makai end of the proposed roadway.

6. Reclassification of the Property is not anticipated to have any adverse impact upon the agricultural, archaeological, environmental and visual resources in the area.

7. The reclassification of the Property will not unreasonably burden public agencies to provide necessary amenities, services, and facilities in that the reclassification involves a reduction of proposed density from 950 residential units to three units and because:

(a) Highway access - a 30-foot wide right-of-way with two paved travel lanes provides access onto Kamehameha V Highway;

(b) Water service - Petitioner will provide each parcel with water service from an existing line along Kamehameha V Highway. The existing systems include a four- and twelve-inch water lines which are part of the Ualapue water system;

(c) Sewer service/solid waste - Petitioner will serve the Property with individual sewage disposal units consisting of cesspools and septic tanks. Subdivision residents will take solid wastes to a public ten acre land fill west of Kaunakakai;

(d) Schools - the State Department of Education has stated in a letter dated June 20, 1984, that the project will have a negligible impact on the school servicing the Pukoo Molokai area;

(e) Electrical and telephone services - electrical power and telephone lines are located along Kamehameha Five Highway and are available to serve to the Property.

The Petitioner has timber assets with the approximate value of \$5,000,000.00 and has no liabilities. Petitioner is financially able to complete the proposed development.

8. The Commission has considered the question of the nature and extent of the public beach access or accesses to be provided under the proposed development of the Property. The position of the parties on this issues are as follows:

(a) Petitioner - the Petitioner's proposal for the development of the Property provides for the provision of two public beach accesses.

(b) Maui County Planning Department - Because the Property is located within the County's Special Management Area as defined on boundary maps approved on December 28, 1979, construction of the proposed residential subdivision and related improvements would be subject to the permit requirements of Article II of the Special Management Area Rules and Regulations of the County of Maui, as amended.

A Molokai Community Plan policy statement encourages the adoption of "a beach/mountain access dedication ordinance pursuant to Chapter 46, HRS, and County acquisition of an improvement of public access at" the Pukoo Beach Day Park. The County contemplates a foot trail access at Pukoo Beach. Currently, there are no established public beach access easements, lots or improvements on the Property.

The County of Maui Planning Department has indicated that the Commission should act on petition prior to County action on the SMA Application.

Maui County Planning Department is recommending approval of the Petition subject to a condition that Petitioner shall provide public beach access or accesses on the property. The County prefers a pedestrian beach access that ". . . may include a driveway, roadway, parking lot, and any other kinds of facilities as well as a paved or minimally improved walkway to the beach area."

Maui County will not determine whether proposed public beach access satisfies its concerns until Petitioner subsequently files SMA and subdivision applications.

(c) DPED - The DPED has recommended approval of the Petition ". . . with the condition that public access to the shoreline shall be provided as required by government agencies."

The DPED would accept the provision of access to be approved by Maui County.

The U.S. Army Corps of Engineers is presently studying potential boat launching sites for East Molokai for the State Department of Transportation. The Corps is considering four sites: Kamalo, Kaluaaha, Pukoo, and Honouliwai. The Corps has not made a final determination as to its preferred site.

The State Department of Transportation has indicated that it could not nominate the Property as an acceptable site unless the necessary lands for supporting facilities are dedicated in fee or offered on a long-term lease with a nominal rental fee. The supporting facilities would include parking area for trailers, turnaround areas and land area sufficient to meet State and Federal standards for public boat ramps. The State would require approximately three acres.

(d) Intervenors - Intervenors support the reclassification from Urban to Rural but recommend conditioning approval upon dedication of public right of way for boating purposes at the Property.

There is presently no public boat launching ramp between Kaunakakai and Halawa, a distance of approximately 25 miles. The only public boat launching area is a one-lane launch at Kaunakakai, 15 miles from Pukoo. Because the prime fishing area for the East end of Molokai is from Kamalo (west of Pukoo) to Honouliwai Bay (east of Pukoo), fishermen would have to travel approximately 11 miles from Kaunakakai to prime fishing grounds.

Intervenor Peabody testified that Pukoo was once the center of activity for Molokai, the location of residences, a post office, courthouse, and the island's

small harbor. The harbor was utilized to transport passengers, freight, milk from Mapulehu Dairy and sugar cane from the area.

Intervenor Peabody indicated that the proposed beach access along the east boundary of the Property would not be appropriate for boat launching because the water is too shallow. The Army Corps of Engineers has indicated that the strong wind make the area a dangerous place to launch boats. In order to reduce the dangers, Petitioner would be required to widen the roadway 60-70 feet, to devote additional land for turnaround areas and related boating facilities, and to dredge the beach area up to 75-100 feet in order for boat launching or to construct a boat ramp.

The Commission rejects Intervenor's contention that the Coastal Zone Management Act mandates the Commission to require Petitioner to dedicate and improve a separate access for boat launching purposes and another access for other public recreational purposes so that boating activities would not conflict with swimmers, divers and picnickers. The Land Use Commission does not believe it must, as a matter of policy, require a land owner to dedicate and develop a significant community shoreline recreational area for public use as a condition of subdividing its property for personal use.

9. Based upon a review of the Petition, the evidence adduced at the hearing, and the provision of Chapter 205 of the Hawaii Revised Statutes, the County of Maui Planning Department, the State Department of Planning and Economic Development, and the Intervenors have recommended the reclassification of the Property from Urban to Rural be approved with their aforementioned conditions.

CONCLUSIONS OF LAW

Hawaii Revised Statutes, Section 205A provides that no development shall be allowed in the special management area without obtaining a permit from the County. Hawaii Revised Statutes Chapter 205A authorizes the Maui County Planning Commission to implement the objectives and policies of the Coastal Zone Management Act by conditioning approval of any development and use within the Special Management area upon provision of adequate measures to ameliorate adverse impacts on the environment.

The Commission believes that public beach access should be provided as part of the proposed development.

The Commission will not impose conditions with respect to nature and extent of access to shoreline because the Planning Commission may consider any required access as a part of the total development during the SMA process, and may impose conditions to assure completion of the access improvements.

The Commission, therefore, finds that the reclassification of the Property consisting of approximately 32.910 acres of land situate at Pukoo, Island of Molokai, County of Maui, State of Hawaii, from Urban to Rural and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 and 205A of the Hawaii Revised Statutes provided that public beach access be provided as part of the development of said property subject to the conditions set forth below.

ORDER

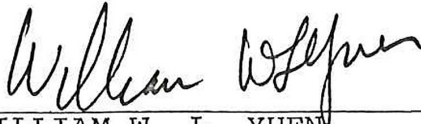
IT IS HEREBY ORDERED:


That the property which is the subject of this Petition in Docket No. A84-568, consisting of approximately 32.910 acres of land situated at Pukoo, Island of Molokai, County of Maui, State of Hawaii, identified as TMK 5-7-07: 18, 19, 20, and 21, shall be and hereby is reclassified from Urban to Rural and the district boundaries amended accordingly on the condition that public beach access be provided in a manner required by the County of Maui.


DOCKET NO. A84-568 - MAUD VAN CORTLANDT HILL SCHROLL TRUST


Done at Honolulu, Hawaii, this 18th day of April,
1985, per motions on January 29, 1985 and March 19, 1985.

LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN
Chairman and Commissioner

By 
TEOFILO PHIL TACBIAN
Vice Chairman and Commissioner

By 
RICHARD B. F. CHOY
Commissioner

By 
ROBERT S. TAMAYE
Commissioner

By 
FREDERICK P. WHITTEMORE
Commissioner

By 
TORU SUZUKI
Commissioner

DOCKET NO. A84-568 - MAUD VAN CORTLANDT HILL SCHROLL TRUST

By Lawrence F. Chun
LAWRENCE F. CHUN
Commissioner

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OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A84-568
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MAUD VAN CORTLANDT HILL SCHROLL TRUST) MAUD VAN CORTLANDT HILL
) SCHROLL TRUST
To Amend the Urban Land Use District)
into the Rural Land Use District for)
approximately 32.810 acres at Pukoo,)
Molokai, County of Maui, Tax Map)
Key: 5-7-07: 18, 19, 20, 21)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission 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:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

TOSH ISHIKAWA, Planning Director
Planning Department
County of Maui
200 South High Street
Wailuku, Hawaii 96793

BENJAMIN A. KUDO, Esq.
GARY G. N. WONG, Esq.
Kobayashi, Watanabe, Sugita & Kawashima
745 Fort Street, 8th Floor
Honolulu, Hawaii 96813

BROWN & DURANT, Attorneys at Law
222 Merchant Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 18th day of April, 1985.



ESTHER UEDA
Executive Officer