

subject property is more particularly described as Tax Map Key No. 5-7-07: 18, 19, 20, and 21.

PURPOSE OF THE PETITION

The Petitioner's stated purpose for requesting the reclassification of the subject property from Urban to Rural is for purposes of developing a 4-lot subdivision for residential use and a private roadway lot for public access. Three of the four lots will each be occupied by a single-family residence, and the fourth lot will be developed for recreational use and will be owned in common by the three residential lot owners. The three lots are intended to be owned by members of the Schroll family.

PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on May 30, 1984. Due notice on the hearing of the Petition was served on the parties on August 3, 1984. Notice of the hearing was also published on August 3, 1984, in the Maui News and the Honolulu Advertiser. Pursuant to said notice, a Petition To Intervene in this docket was filed by George Peabody, Individually, and on behalf of the Citizens Right Of Way Dedication at Pukoo Committee (CROWD) on August 16, 1984. No other timely application to intervene as a witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held in Kaunakakai, Molokai, Hawaii, on September 11, 1984, and October 22, 1984. There being no objections raised by the parties to the proceeding, Intervenors George Peabody and CROWD were granted intervention prior to the taking of evidence in this proceeding on September 11, 1984. 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 Boyse R. Brown, Jr., Esq. The witnesses presented by the aforementioned 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 subject property; and (2) the Petitioner shall file a Change In Zoning Application 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 under 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.

PROPOSED FINDINGS OF FACT

The Hearing Officer, having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein, makes the following proposed findings of fact:

1. The subject property, which is owned in fee simple by the Petitioner herein, a registered trust under the laws of the State of Minnesota, is located at Pukoo, Island of Molokai, County of Maui, State of Hawaii, and consists of approximately 32.910 acres, more particularly described as Tax Map Key No. 5-7-07: 18, 19, 20, and 21. The subject property is located approximately 15 miles from Kaunakakai, the principal town on Molokai which is the

nearest commercial and population center. The oceanfront property is immediately makai of Kamehameha V Highway and consists of approximately 25 acres of useable land and a lagoon comprising approximately 8 acres. Existing improvements on the subject property presently consists of a caretaker's dwelling and a canoe shelter. (Petition pages 3, 4 and 8; County of Maui Testimony, page 1; DPED Testimony, page 2)

2. The subject 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 subject 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 subject property to provide to public beach access, easements, and to install water service lateral and utility hookups. The County of Maui Planning Department by letter dated January 9, 1984, has requested that the Petitioner should file a Petition with the State Land Use Commission, obtain reclassification of the subject property before Maui County acts on the SMA Application. (Petition, pages 4, 11-14, ex. 5; Maui County Testimony, page 1; DPED Testimony, page 5)

3. The subject property was formally an ancient Hawaiian fish pond. Between 1972 and 1973, coral-fill was dredged from the site and offshore waters to create the riparian land and clover leaf-shaped lagoon. The 25 acres of useable riparian land is relatively level and has an average elevation of approximately 6 feet. Rainfall on the subject property averages approximately 40 inches per year and winds are primarily from the northeast and parallel with the coastline. The subject property is not classified according to 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. According to the flood insurance study for Maui County prepared by the Federal Insurance Administration, the subject property is subject to the 100-year tsunami and riverine flood hazards. (Petition, ex. 7 and 9; Maui County Testimony, page 2; DPED Testimony, page 2)

4. The subject property was originally classified into the Urban Land Use District on June 12, 1970. The original Petition was filed by Pukoo Properties, Inc., Keoni Apeka Holdings, Inc., and Shell Pacific Properties, Inc., on December 23, 1969. Pukoo Properties, Inc., and Keoni Apeka Holdings, Inc. were associated as a joint venture under the

name "Canadian-Hawaiian Developers" and owned the Pukoo fish pond and adjoining land comprising approximately 30 acres. Canadian-Hawaiian Developers proposed project included filling a portion of the fish pond and creating the lagoon to develop three condominiums and two hotel sites. A total of 500 condominium units and 450 hotel rooms were proposed 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, requesting use of the submerged public lands fronting Pukoo fish pond for a boat basin. The application was approved by the State Board of Land and Natural Resources. The Land Board's approval was followed by the State Department of Transportation Harbor Division's issuance of 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 permitting them to excavate approximately 214,000 cubic yards of material to create public beaches, a boat anchorage basin, and approach channels. The excavation and dredging of public submerged lands fronting the pond-lagoon pursuant to the permits described was completed in 1973.

Canadian-Hawaiian Developers sold the subject property in 1979 to the Petitioner herein, the Maud Van Cortlandt Hill Schroll Trust. 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 subject property from the Urban District back into the Rural and Conservation Districts for failure to comply with Section 6-3, Performance Time, of the State Land Use Regulations. Pursuant to the Order To Show Cause hearing, the Commission on December 19, 1983, issued an "Order Determining That Maud Van Cortlandt Hill Schroll Trust Is In Compliance With Section 6.3 Of The Land Use Commission's Regulations" due to its determination that Canadian-Hawaiian Developers and its successor, the Petitioner, had made substantial progress to develop the subject property pursuant to Section 6.3 of the Commission's Regulations and that there was no cause to initiate a reclassification of

the subject property. (Petition, ex. 9; DPED Testimony, page 4 and 5)

5. The Petitioner is proposing to develop a 4-lot subdivision for residential use and a private roadway lot for public access. Three of the four lots will each be occupied by a single-family residence and the fourth lot will be developed for recreational use and owned in common by the three residential lot owners. The three lots are intended to be owned by members of the Schroll family. The Petitioner proposes to consolidate and re-subdivide the subject 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 picnicing 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 subject

property to a public beach situated on the southwest side of the subject property; and

(b) A twenty-foot wide roadway on the east side of the site connecting to a six-foot wide pedestrian access easement to the public beach on the southeast side of the subject property. A stall public parking area will also be provided along the proposed roadway for public use.

The Petitioner has timber assets with the approximate value of \$5,000,000.00 and has no liabilities. (Petition, page 4,5, 14-15, ex. 4; Maui County Testimony, pages 3 and 4; DPED Testimony, page 3; Hearing Transcript, October 22, 1984, page 5)

6. Reclassification of the subject property is not anticipated to have any impact upon the agricultural, archeological, environmental and visual resources in the area. (Petition, ex. 7; Maui County Testimony, pages 4 and 5; DPED Testimony, page 6)

7. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary amenities, services, and facilities 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 - each parcel will be provided with a water lateral 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 - the subject property will be serviced by individual sewage disposal units consisting of cesspools and septic tanks. Solid wastes will be taken by the subdivision residents to a public ten acre land fill west of Kaunakakai;

(d) Schools - the State Department of Education has stated by letter dated June 20, 1984, that the subject 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 subject project.

(Petition, page 5-7, ex. 7; Maui County Testimony, page 3; DPED Testimony, pages 6 and 7)

8. A major issue arising during the course of the hearing concerned the nature and extent of the public beach access or accesses to be provided under the proposed deve-

lopment of the subject property. The position of the parties on this issues are as follows:

(a) Petitioner - the Petitioner's proposal for the development of the subject property provides for the provision of two public beach accesses running along the eastern and western boundary of the subject property. The western public access consists of a 6-foot wide pedestrian easement running from an existing public road to the public beach situated on the southwest side of the subject property. The eastern public beach access consists of a 20-foot wide roadway running from Kamehameha V Highway to a 6-foot wide pedestrian access easement to the public beach on the southwest side of the subject property. (Petition, page 1, ex. 4)

The Petitioner has requested approval for both accesses from the Board of Land and Natural Resources and the Maui County Planning Department. The Maui County Planning Department has requested this Petition be concluded before final action is taken by the County on Petitioner's SMA Application. (Petition, ex. 5 and 9)

Petitioner has also taken the position that the individual Counties of the State of Hawaii have the primary responsibility and implementation authority under the Hawaii Coastal Zone Management Program to review and approve

development within the Special Management Area. Petitioner contends that if the reclassification is granted, they must continue through the SMA process administered by the Maui County Planning Department and receive permits from them before any improvements can be constructed upon the subject property. Petitioner, therefore, contends that specific conditions relating to the public beach access should be reserved for the Maui County Planning Department during the SMA Application process. (Petitioner's Supplemental Memorandum In Support Of Petition For Land Use District Boundary Amendment filed November 21, 1984).

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

The Molokai Community Plan contains a policy statement regarding the adoption of "a beach/mountain access dedication ordinance pursuant to Chapter 46, HRS, and acquire or improve public access at" the Pukoo Beach Day Park. The type of access envisioned for Pukoo Beach is a proposed foot trail. Currently, there are no established

public beach access easements, lots or improvements on the subject property. (Maui County Testimony, page 4)

The County of Maui Planning Department has indicated that the subject petition should be acted upon by the Land Use Commission prior to County action on the SMA Application. (Petition, ex. 5)

Maui County Planning Department is recommending approval of the subject Petition with conditions, one of which is that ". . . the petitioner shall provide public beach access or accesses on the subject property." (Maui County Testimony, page 5). The public beach access desired under the requested condition would be 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." (Transcript, October 22, 1984, Testimony of John Min, page 7)

Maui County has not established a position as to whether the proposed public beach access satisfies their concerns. The County will establish its position during subsequent SMA and subdivision approvals when they will conduct an in-depth review of the detailed plans for the improvements for the total project. (Transcript, October 22, 1984, Testimony of John Min, page 11)

(c) DPED - The DPED has recommend approval of the Petition ". . . with the condition that public access to the shoreline shall be provided as required by government agencies." (DPED Testimony, page 9)

The DPED would be satisfied with Maui County's determination of public beach access required for the subject property. (Transcript, October 22, 1984, Testimony of Abe Mitsuda, page 16 and 17)

The U.S. Army Corp. of Engineers is presently conducting a study for the State Department of Transportation on potential boat launching sites for East Molokai. Four sites are being studied and include Kamalo, Kaluaaha, Pukoo, and Honouliwai. A final determination has not yet been made and there is presently no indication as to when the study will be concluded. (Transcript, October 22, 1984, Testimony of Abe Mitsuda, page 17)

The State Department of Transportation has indicated, however, that unless the necessary lands for supporting facilities are dedicated in fee or offered on a long-term lease with a nominal rental fee, it would be difficult to nominate the subject property as the primary site. (DPED Testimony, page 8). 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 area necessary could be approxi-

mately 3 acres. (Transcript, October 22, 1984, Testimony of Abe Mitsuda, page 18 and 19)

(d) Intervenors - Intervenors are in support of the reclassification from Urban to Rural but seek to secure a public right of way for boating purposes at the subject site.

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 which is 15 miles from Pukoo. (Transcript, October 22, 1984, Testimony of George Peabody, page 26)

The prime fishing area for the East end of Molokai is from Kamalo which is west of Pukoo to Honouliwai Bay which is east of Pukoo. (Transcript, October 22, 1984, Testimony of George Peabody, page 25 and 26). Therefore, if the launching facilities at Kaunakakai are utilized, fishermen would have to travel approximately 11 miles over rough water to the prime fishing grounds. (Transcript, October 22, 1984, Testimony of George Peabody, page 27 and 28). Honouliwai was used for launching boats until Pukoo was dredged. (Transcript, October 22, 1984, Testimony of George Peabody, page 26 and 27)

Intervenor Peabody testified that based upon his historical research, he has determined that Pukoo was once the center of activity for Molokai. In earlier times, there were residences, a post office, courthouse and shopping facilities. All the major shipping occurred at Pukoo. The harbor there was utilized to transport passengers, freight, milk from Mapulehu Dairy and sugar cane from the area. (Transcript, October 22, 1984, Testimony of George Peabody, page 28-43)

Intervenor Peabody indicated that the proposed beach access on the east side of the subject property would not be appropriate for boat launching because the water depth off the beach is extremely shallow and the Army Corp. of Engineers has indicated that the strong wind in the area makes it a dangerous place to launch boats. (Transcript, October 22, 1984, Testimony of George Peabody, page 45-47). Considering all conflicting factors, the best boat launching access would be along the west side of the subject property along the existing 15-foot public roadway. The roadway would have to be widened to 60-70 feet and additional land would be required for turnaround areas and related boating facilities. The beach area, however, would still have to be dredged up to 75-100 feet to get the proper depth needed for launching or the area could be filled and a boat ramp con-

structed. (Transcript, October 22, 1984, Testimony of George Peabody, pages 55-61)

Intervenors feel two accesses should be provided - one for boat launching purposes and another for other public recreational purposes so that boating activities would not conflict with swimmers, divers and picknickers. (Transcript, October 22, 1984, Testimony of George Peabody, pages 77-78)

Intervenors contend that the Coastal Zone Management Act (Chapter 205A, HRS) provides as its objective and policies that recreational resources be accessible to the public and that reasonable dedication of land to preserve the Act's objectives and policies should be encouraged by agencies in granting discretionary approval for development in Special Management Areas. Intervenors argues that the LUC is required, as a matter of policy, to encourage reasonable dedication of shoreline areas with recreational value for public use as part of its discretionary approvals. (Transcript, October 22, 1984, Opening Statement, Boyce Brown, Esq., pages, 20-23; Transcript September 11, 1984, Offer Of Proof, Boyce Brown, Jr., Esq., pages 68-71)

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 Maui

Planning, Department, the Department of Planning and Economic Development, and the Intervenors have recommended the reclassification of the subject property from Urban to Rural be approved with their aforementioned conditions.

PROPOSED CONCLUSIONS OF LAW

Chapter 205A of the Hawaii Revised Statutes imposes upon the Maui County Planning Commission the full and complete authority to implement the objectives and policies of said Act. Section 205A provides that no development shall be allowed in the special management area without obtaining a permit from the County.

That as part of the regulatory application process, the Petitioner will be required, following the action of the LUC, to provide with its SMA Application with Maui County wherein the specific details of the planned development, including public beach access will be examined.

That public beach access must be considered as a part of the total development in regard to its location and extent of use under the SMA-type process and is, therefore, a matter as to it's specifics which should be left to Maui County.

The broad objective of public beach access, however, is an issue which the Commission in its discretion chooses to address to the extent that it believes that

public beach access should be provided as part of the proposed development.

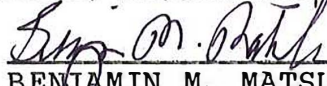
The Commission, therefore, finds that the reclassification of the subject property consisting of approximately 32.910 acres of land situated at Pukoo, Island of Molokai, County of Maui, State of Hawaii, from Urban to Rural and an amendment to the district boundaries accordingly is reasonable and non-violative 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.

PROPOSED 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 as required by Maui County or any other governmental agency having jurisdiction over this matter.

Dated: Honolulu, Hawaii, January 15, 1985.


BENJAMIN M. MATSUBARA
Hearing Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition) DOCKET NO. A84-568
)
 of) 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)
_____)

CERTIFICATE OF SERVICE

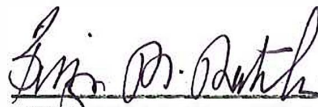
I hereby certify that a copy of the foregoing
Hearing Officer's Report was duly hand delivered and/or
mailed via Certified Mail, Return Receipt Requested, to the
to the following at their respective addresses on
January 15, 1985.

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Hearing Officer