

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A85-589
A & B PROPERTIES, INC.)	A & B PROPERTIES, INC.
To Amend the Agricultural Land)	
Use District Boundary into the)	
Urban Land Use District for)	
Approximately 218.5 acres at)	
Koloa, Kauai, Tax Map Keys:)	
2-6-04: 44, portion of 16,)	
portion of 38, and portion)	
of 45)	
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND ORDER

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FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND ORDER

A & B Properties, Inc., a Hawaii corporation (hereinafter the "Petitioner"), filed this Petition on January 9, 1985, and an amendment to the Petition on April 19, 1985, pursuant to Chapter 205-4, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundary of approximately 218.5 acres of land, situate at Koloa, Kauai, Hawaii, identified as Kauai Tax Map Key Nos. 2-6-04: 44, portion of 16, portion of 38, and portion of 45, (hereinafter the "Property") from the Agricultural District to the Urban District for residential, recreational, and commercial use. The Land Use Commission (hereinafter the "Commission"), having heard and examined the testimony, evidence, argument of counsel, the proposed findings of fact

DOCKET NO. A85-589 - A & B PROPERTIES, INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on December 13, 1985.

EVERETT KANESHIGE, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

MAX GRAHAM, County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766

and conclusions of law, presented at the hearing, hereby makes the following findings of fact and conclusion of law:

PROCEDURAL MATTERS

1. The Commission held public hearings on the Petition at Kauai Community College, Puhī, Kauai, on June 18, 19, 1985, pursuant to notice published in the Honolulu Advertiser and in the Garden Island on May 3, 1985.

2. On June 18, 1985, the Commission permitted Paul Sandifur and Raymond Aki to testify as public witnesses.

DESCRIPTION OF THE PROPERTY

3. Alexander & Baldwin, Inc. owns the Property in fee simple. Petitioner has an option agreement to purchase and develop the Property.

4. The Property is located on the mauka side of Lawai Road between Kukuiula Bay and Waikomo Stream. Approximately 24 acres of the Property are in sugarcane cultivation and approximately 195 acres are used for pasture.

5. The elevation of the Property varies from 5 feet to 75 feet above mean sea level with slopes mostly less than 10 percent.

6. The United States Department of Agriculture Soil Conservation Service, Soil Survey Report for the Island of Kauai classifies the soil within the Property as Waikomo stony silty clay (Ws) and Waikomo very rocky silty clay (Wt).

Waikomo stony silty clay (Ws) is a very dark grayish-brown soil about 14 inches thick. The subsoil is reddish brown and about 6 inches thick. The substratum is hard

rock. Permeability is moderate, runoff is slow, and the erosion hazard is slight. This soil is appropriate for sugarcane, pasture, wildlife habitat, and homesites.

Waikomo very rocky silty clay (Wt) covers most of the Property and is similar to Waikomo stony silty clay (Ws), except that rock outcrops cover 3 to 25 percent of the surface. This soil is appropriate for pasture, wildlife habitat and homesites.

7. The Land Study Bureau in its Detailed Land Classification for the Island of Kauai, classifies approximately 90 percent of the Property "E" and the remaining 10 percent "B".

8. The State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system, classifies 10 percent of the Property as "Other Important Agricultural Land". The remaining 90 percent is unclassified.

9. The Federal Insurance Administration's Flood Insurance Study for Kauai designates a majority of the Property within Zone C or area of minimal flooding. A small portion of the Property, TMK: 2-6-04: portion of 44, is designated in Zone A, or 100 year flood zone.

PROPOSAL FOR DEVELOPMENT

10. Petitioner proposes to develop the Property for a single-family residential lot subdivision consisting of approximately 810 lots including open space, recreation, utility, roadways, and a commercial support facility (hereinafter the "Project") in seven phases. Petitioner

proposes to provide lots at a density of 4 lots per acre ranging in size from 6,000 to 10,000 square feet with an average size of approximately 8,000 square feet. Petitioner proposes to sell the residential lots for \$60,000 to \$65,000. Selected premium lots commanding bluff views will be priced from \$80,000 to \$100,000.

11. Petitioner proposes to provide a public park as designated in the County General Plan in conformance with the provisions of the Park Dedication Ordinance of the County of Kauai.

12. Petitioner proposes to provide approximately 2.5 acres of commercial facilities to serve the residents of the Project as well as the neighboring communities.

13. The proposed Project's land uses are summarized as follows:

<u>Use</u>	<u>Acres</u>
Residential	177.7
Park	1.5
Recreation	3
Open Space	16
Commercial	2.5
Major Streets	13.8
Utilities	4
	<hr/>
	218.5

14. Petitioner estimates that the cost for all on-site and off-site improvements for the Project is approximately \$26,000,000.00 in 1984 dollars.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED PROJECT

15. Petitioner's balance sheet as of December 31, 1983

lists total assets of \$12,885,000.00 and total liabilities of \$12,885,000.00.

STATE AND COUNTY PLANS AND PROGRAMS

16. The Property is classified Agricultural on the State Land Use District Boundary Map K-8, Koloa.

17. The County of Kauai (hereinafter the "County") classifies the Property as follows:

<u>Kauai General Plan</u>	<u>Koloa-Poipu-Kalaheo Development Plan</u>	<u>Kauai Comprehensive Zoning Ordinance</u>
Urban Residential and Agriculture	Project District, Agriculture, Open Cultural-Historical	Agriculture (A) and Open (O)

18. The proposed Project is consistent with the Kauai General Plan except for that portion approximately 3 acres in size, designated Agriculture and presently in sugarcane cultivation. An amendment to the General Plan and Comprehensive Zoning Ordinance will be required.

19. The Koloa-Poipu-Kalaheo Development Plan designates the Property "Project District" and requires the review of Petitioner's master development plan at time of General Plan and Zoning Ordinance amendments.

20. Approximately one-half of the Property is situated within the Kauai Special Management Area (SMA).

21. The Property contains "Open" and "Cultural-Historical" designated lands reflecting areas of Hawaiian archaeology located north of the Kuhio Memorial Park.

NEED FOR GROWTH AND DEVELOPMENT

22. Peat, Marwick, Mitchell & Co. (PMM), conducted a market study for the Property in August 1981, and a supplement to the study in October 1984. PMM indicated that the Property has the potential to be developed as one of the major residential communities of Kauai, given its proximity to Lihue and the rapidly developing Koloa district.

PMM predicts that the Project will have a market share of about 20 percent of the annual increase in demand for residential lots from 1987 to 1994 and increase to about 30 percent of the market share from 1995 to 2000. PMM anticipates the primary demand for residential lots will come from residents living in the Koloa-Kukuiula area and from Lawai, Kalaheo, Omao and Lihue. PMM further estimates that the Project could supply approximately 500 residential lots from 1987 to 1994 and 800 additional residential lots from 1995 to 2000.

23. PMM projects that the proposed Project would be developed and sold, assuming a 60 percent market capture rate, within five years of obtaining necessary governmental approvals. PMM projects that at a market capture rate of 30 percent the Project would be 60 percent sold within five years of obtaining government approvals.

PMM anticipates that a market capture rate of 60 percent is attainable based on lot sales for eighteen representative subdivisions on Kauai from 1976 to 1980.

ECONOMIC IMPACTS

24. Petitioner's proposed Project will generate temporary employment opportunities during construction and permanent employment opportunities from maintenance and commercial activities.

Petitioner estimates the Project, when completed, will provide real property tax revenues of approximately \$597,000.00 in 1984 dollars.

IMPACT UPON RESOURCES OF THE AREA

Agricultural Resources

25. Petitioner does not expect the development of the Property to adversely impact productive agricultural lands since the Property is primarily in open and pasture use. Approximately 90 percent of the Property is unsuited for cultivation due to a very thin layer of topsoil over pahoehoe lava which prohibits root penetration. McBryde Sugar Company, a subsidiary of Alexander & Baldwin, Inc., utilizes approximately 24 acres of the Property for cane production (Field 529). This field is being recommended for termination at the end of the current planting cycle in 1989.

Environmental Resources

26. Air Quality - Petitioner does not anticipate the Project will produce significant adverse air pollution. However, the proposed Project will be a source for additional air pollutants due to increased vehicular emissions and construction activities. Petitioner will implement mitigative

measures to lessen construction impacts during all phases of development.

27. Noise - Petitioner does not anticipate the proposed Project will produce significant adverse noise problems. However, it will result in some increase in noise due to increased vehicular traffic.

Petitioner will coordinate its development with the County and McBryde Sugar Co. to mitigate adverse impacts from noise and dust.

Archaeological/Historical Resources

28. Bernice P. Bishop Museum conducted an archaeological reconnaissance of the Property from October 15 to 19, 1984, and identified 37 archaeological and historic features ranging in type from small, common, simple, stone structures to larger, fairly elaborate stone structures ranging in function from agricultural clearing mounds to habitation sites and ceremonial-religious structures. An intensive traditional agricultural system of pond fields, irrigation ditches, and walls were also evident.

None of the archaeological sites found were on or nominated to be on the Hawaii Register or the National Register of Historic Sites.

29. Petitioner proposes a phasing program to preserve the archaeological resources of the area.

30. The State Department of Land and Natural Resources recommends a complete archaeological survey of the Property prior to ground disturbance or development activities.

Flora and Fauna

31. Petitioner's consultant conducted a vegetation survey in June and July of 1984, and found that the majority of plant species in the Property are exotic species commonly found in similar lowland habitats throughout the islands. Only two endemic and five indigenous species were observed and all are known to occur commonly in Hawaii. No listed or proposed endangered plant species were encountered within the Property.

32. Petitioner conducted a vertebrate animal survey for the Property and found no listed or proposed endangered animals.

Marine Resources

33. Petitioner does not anticipate adverse environmental impacts to local marine resources since the Property does not abut the shoreline. Petitioner will comply with the State Department of Land and Natural Resources' (DLNR) recommendations of applying mitigative measures to minimize the amount of silt from being discharged into Kukuiula Bay.

Recreational Resources

34. Petitioner will dedicate a park for passive and recreational activities to the County as designated in the General Plan.

35. There are no known scenic resources on the Property nor is the Property considered a scenic resource of the area. The nearest scenic resource in the area is the Spouting Horn Park located approximately one-half mile west of the Property. Development of the Project would have no effect

upon this resource.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Water Service

36. The County Department of Water (DOW) uses a demand standard of 500 gallons of potable water per unit per day for new residential developments. The Project's water requirement will be approximately 405,000 gallons per day or 0.405 MGD.

Petitioner proposes to build a new water transmission line to be connected to the existing water line on Lawai Road and to build a one million gallon storage tank in coordination with the DLNR's recommendations for the Koloa-Poipu area. Petitioner will develop additional new water sources to supplement the existing sources of water. All water facilities will be built to County standards and be dedicated to the DOW for their operation.

37. Petitioner will pay for all on-site and off-site improvements needed to provide potable water to the Property.

Sewage Treatment and Disposal

38. Kukuiula has a network of privately-owned sewage treatment plants (STP) and cesspools. Three sewage treatment plants generally serve the high density developments of Kuhio Shores, Prince Kuhio/Waikomo Villas, and Poipu Village.

A preliminary Sewage Treatment Facility Plan for Poipu-Koloa prepared by M & E Pacific, Inc. for the County in August 1984 recommends that a regional STP be located within the mauka portion of the Project with a capacity of 1.5 MGD. The location of the regional STP is different from that planned

by the Petitioner. Petitioner proposes to work with the County to determine the most appropriate site for the STP.

39. Petitioner anticipates that the regional STP may not be available for several years and has proposed an interim solution to treat a portion or all of the 324,000 gallons of wastewater projected to be generated per day by the Project. Petitioner has initiated discussions with the owner of the STP at the Prince Kuhio apartments to use the existing available capacity of 34,400 gallons per day (GPD) for the initial phases of the Project until the regional STP is in operation.

40. Petitioner proposes to construct a gravity sewage transmission line system and other infrastructure as required to County standards to be connected to the regional STP and dedicated to the County upon completion.

Drainage

41. Storm runoff passing through the proposed Project results primarily from two drainage basins located mauka of the Property. These basins are currently used for pasture and sugarcane.

42. Petitioner proposes to construct an off-site drainage system consisting of secondary grass-lined ditches and a main interceptor drainage channel to be used in conjunction to direct storm runoff from the two drainage basins into Kukuiula Bay.

43. Petitioner will construct an on-site drainage system which will discharge runoff partially into Hoai Bay and Waikomo Stream with the remaining runoff to be discharged into

the main interceptor drainage channel and ultimately into Kukuiula Bay.

Roadway and Highway Services and Facilities

44. Petitioner's traffic study projects that approximately 600 cars would enter and exit the Project during the AM peak hour and approximately 800 cars would enter and exit during the PM peak hour if the proposed Project is fully developed and occupied by permanent residents in the year 1995. The study concludes that Petitioner's proposed site plan configuration would provide adequate capacity with minor improvements.

45. Petitioner proposes to construct an east-west road along the mauka boundary of the Property, a new connector between the mauka east-west road and the existing Lawai Road, and to re-align Hoonani Road in providing access to the proposed Project.

46. The State Department of Transportation recommended that Petitioner make improvements to the Kaumualii Highway/Maluhia Road intersection north of the Project to mitigate the adverse impacts from additional traffic generated by the Project on this intersection. Petitioner's traffic consultant pointed out that there would be adverse traffic impacts to the Kaumualii Highway/Maluhia Road intersection with or without the Project.

Schools

47. The State Department of Education indicated that the following student enrollment would be generated by the Project:

<u>School</u>	<u>Grade</u>	<u>Approximate Enrollment</u>
Koloa Elementary	K-6	50 - 100
Kauai High/Intermediate	7-12	30 - 60

The Department of Education will accommodate the additional students generated by the Project through their projected facility improvements which will include additional classrooms.

OTHER PUBLIC SERVICES AND FACILITIES

Electrical/Telephone Service

48. Kauai Electric Company will provide electricity to the Property.

49. Hawaiian Telephone Company will provide telephone service to the Property.

Solid Waste Disposal

50. Petitioner will work with the County Public Works Department in providing solid waste disposal to the Project.

Fire and Police Services

51. The Waimea substation of the Kauai Police Department will provide police service to the Project. Response time is estimated at five to seven minutes.

52. The Kauai Fire Department from the Koloa Town station will provide fire protection service to the Project. With proposed road improvements, the estimated response time is three to seven minutes.

SCATTERIZATION AND CONTIGUITY OF THE PROPOSED DEVELOPMENT

53. The reclassification of the Property will result in an expansion of the Poipu and coastal Urban Districts.

COMPLIANCE WITH STANDARDS FOR
DETERMINING DISTRICT BOUNDARIES

54. Petitioner's proposed Project situates in an area characterized by city-like concentrations of people, structures, streets, urban level of services, and other related land uses, and does not contribute to scattered, spot urban development.

55. The Property is recognized as a logical direction for future urban residential growth and is generally consistent with the land use patterns established by the Kauai General Plan.

56. The Property is physically appropriate for single-family residential development and reasonably free from adverse environmental effects.

57. Petitioner has substantiated the market demand for the proposed Project.

58. Petitioner's financial statement demonstrates a financial capacity to undertake and complete the proposed Project.

CONFORMANCE WITH THE HAWAII STATE PLAN

59. Petitioner will satisfy the following policies of the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes:

Section 8(b) (5) "Ensure that visitor facilities and destination areas are carefully planned and sensitive to existing neighboring communities and activities."

Petitioner's proposed Project will complement the existing development of hotels, condominiums and beachfront

homes that have been constructed at a relatively low density to the west of Poipu Road as compared to the Poipu Resort area to the east.

Section 19(b)(3) "Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

Petitioner will offer residential lots affordable to a significant portion of Kauai residents.

INCREMENTAL DISTRICTING

60. Petitioner proposes to develop all of the on-site and off-site improvements for the Project within five years of obtaining all governmental approvals.

RULINGS ON PROPOSED FINDINGS

Any of the proposed Findings of Fact submitted by the Petitioner or other parties to this proceeding not already ruled upon by the Land Use Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

CONCLUSION OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Commission finds upon the preponderance of the evidence that the reclassification of approximately 218.5 acres, Kauai Tax Map Key Nos.: 2-6-04: 44, portion of 16, portion of 38, and portion of 45, situate at Koloa, Kauai, Hawaii, from the Agricultural District to the Urban District for residential, recreational and commercial

use, subject to the conditions stated in the Order below, conforms to the standards established in the State Land Use District Regulations; is reasonable; is not violative of Section 205-2 Hawaii Revised Statutes, as amended; and is consistent with the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property, being the subject of the Petition Docket No. A85-589 by A & B Properties, Inc., consisting of approximately 218.5 acres, situate at Koloa, Kauai, Hawaii, and identified as Kauai Tax Map Keys: 2-6-04: 44, portion of 16, portion of 38, and portion of 45, the approximate location of which is identified on Exhibit A attached hereto and incorporated by reference herein, shall be and the same is hereby reclassified from the Agricultural District to the Urban District and the State Land Use District Boundaries are amended accordingly subject to the following conditions:

1. Petitioner shall develop and market 10 percent of the proposed 810 residential lots on or off the subject property for residents of the State of Hawaii commonly known as gap group and moderate income households by standards promulgated by the State of Hawaii Housing Authority and the County of Kauai or as an alternative, contribute to the County of Kauai Revolving Housing Fund an amount to be agreed upon by the State of Hawaii Housing Authority and the County of Kauai.

2. Petitioner shall coordinate the proposed development with the State Historic Preservation Office to insure that all necessary mitigative actions are taken to remove, protect, or preserve where necessary, the historic, archaeological, and paleontological resources of the area before development occurs.

3. Petitioner shall coordinate development of its sewer treatment plant, new water source and related improvements to service the proposed project with the State Department of Health and the County's Public Works and Water Departments.

These conditions may be fully or partially released by the Commission as to all or any portion of the Property upon timely motion and the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

DOCKET NO. A85-589 - A & B PROPERTIES, INC.

Done at Honolulu, Hawaii, this 13th day of December
1985, per motions on September 24, 1985 and November 5, 1985.

LAND USE COMMISSION
STATE OF HAWAII

By *J. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

By *Everett L. Cuskaden*
EVERETT L. CUSKADEN
Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Commissioner

By *Toru Suzuki*
TORU SUZUKI
Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner

By *Richard B. F. Choy*
RICHARD B. F. CHOY
Commissioner

By *Winona E. Rubin*
WINONA E. RUBIN
Commissioner

BEFORE THE LAND USE COMMISSION
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218.5 acres at Koloa, Kauai,)
Tax Map Key: 2-6-04: 44, Portions)
of 16, 38 and 45)
_____)

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

AVERY H. YOUN, Planning Director
Planning Department
County of Kauai
4280 Rice Street
Lihue, Kauai, Hawaii 96766

PAUL R. MANCINI, Attorney for Petitioner
Case, Kay & Lynch
33 Lono Avenue, Suite 470
Kahului, Maui, Hawaii 96732

DATED: Honolulu, Hawaii, this 13th day of December 1985.



ESTHER UEDA
Executive Officer

DOCKET NO. A85-589 - A & B PROPERTIES, INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on December 13, 1985.

EVERETT KANESHIGE, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

MAX GRAHAM, County Attorney
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