

Bishop Estate, Developer Still at Odds

1. Bishop Estate

SB OCT 1 1 1982

By Christopher Long
Star-Bulletin Writer

WITH their contract dispute headed for a state Supreme Court hearing, Bishop Estate and its master developer for Hawaii Kai also remain at odds over the city's growth design for East Honolulu.

By siding with city planners rather than their Mainland-based rivals, and fighting in court for an early end to Kacor's development rights, the estate's quiet but politically influential trustees have raised serious questions

about Kacor's ability to carry out its blueprint for Hawaii Kai, including a controversial resort complex planned for Queen's Beach.

Responding to a recent inquiry from the Star-Bulletin, the state's largest private landowner disavowed much of Kacor's stalled development plans for Hawaii Kai, one of the city's oldest suburb.

Instead, Bishop Estate is giving its qualified support for an alternative program put forward earlier this year by Mayor Eileen Anderson, and now awaiting City

Council action.

With time a key factor for Kacor, Bishop Estate has applied pressure in the courts as well, and will be arguing against a 1991 termination date for its development contract with Kacor before the state's high court next month.

THE AGREEMENT dates back to 1961, when the estate's trustees granted the Kaiser Aluminum & Chemical Corp. and its development arm — Kacor — development rights to 3,000 acres on the Island's pristine south coast, then commonly known as Maunalua.

The original contract for what Kacor dubbed "Hawaii Kai" had a 10-year term, with provisions for two five-year extensions if Kacor hit unavoidable snags in developing the area according to plan. In 1980, the developer won another 10-year extension by convincing an arbitration panel that numerous obstacles — including the Bishop Estate — had combined to render its construction timetable unworkable.

The arbitration case came up at about the same time a serious dis-

Turn to Page A-3, Col. 1

Bishop Estate Agrees with

Continued from Page One

pute was developing between the two camps about the first East Honolulu Development Plan proposed by the city, this one in 1979 under the auspices of the Frank Fasi administration.

Kacor, anxious to build more single-family homes, was vehemently opposed to that plan, which designated significant acreage for multifamily and industrial use, and preservation. But the trustees of the estate felt otherwise, and when Kacor said it was prepared to go public with its views early last year, Bishop Estate tried without success — and without publicity — to get a state court order muzzling the developer.

MEANWHILE, the trustees had appealed the arbitration decision of Kacor's development rights to Circuit Court, lost there, and lodged a final appeal to the Supreme Court. The case has now been fully briefed by attorneys for both sides and is ready for oral arguments Nov. 24.

Against this backdrop of discreet bickering, the Star-Bulletin last week asked Bishop Estate officials for their views on Kacor's current development plans for East Honolulu and, specifically, their position on a topic of heated debate at recent public hearings sponsored by City Council — Queen's Beach.

Not surprisingly, John Peterson, the estate's assistant area development manager, said the Bishop Estate prefers the city's 1966 Detailed Land Use Map over its proposed successors. The trustees took that same position in their lawsuit against Kacor last year.

Hoping to retain most of those earlier land use designations in the updated maps now before City Council, Bishop Estate officials have attempted — thus far without success — to convince the administration to retain Queen's Beach between Waimalu Beach Park and Makapuu Point as a resort destination, rather than preservation land, Peterson said.

BUT THE TRUSTEES would still rather go along with the mayor's program, hoping Queen's Beach will be returned to resort status later, than accept Kacor's development plan that would eliminate the "town center" concept favored by Bishop Estate in favor of more single-family residential development.

"While we favor the portion of Kacor's development plan proposal related to resort use in Queen's Beach, we do not agree on many other portions of Kacor's proposal since they deviate dramatically from the original master plan," Peterson said in a written statement.

"Since we are contending with essentially an all or nothing proposition, we support the city's plan over Kacor's with the expectation that all land temporarily designated preservation in the city's plan will ultimately be returned to its master plan use and developed accordingly," Peterson said.

Contacted routinely for a response to Peterson's statement, Kacor vice president and assistant general manager Kenneth D.H. Chong was apparently shocked.

"It doesn't make sense to expect to have the resort (designation) resurrected. I just have a hard time understanding that concept," Chong said in apparent

disbelief during an interview at the Star-Bulletin newsroom.

Chong subsequently added to his response after conferring with Kacor executives at the company's home offices in Oakland, Calif.

"WE disagree with the position they (Bishop Estate) have taken, but that may well be because we have different legal interests. We approach this from the standpoint of a developer with limited time. They approach it from the standpoint of the landowner in perpetuity," Chong said later by phone.

According to papers filed in Circuit Court in the arbitration appeal, Kacor has long believed that Bishop Estate has been a principal factor in delaying the company's development plans, particularly for the Queen's Beach area.

In the court file is Kacor's 1976 application to the trustees for a second, five-year extension on their development, complaining — among other things — that Bishop estate had refused to give the go-ahead for a Queen's Beach resort in the 1960s, when Kacor saw the time as right for construction.

As early as 1963, the letter explains, the company was trying to get hotel and commercial development at Queen's Beach started, and in February 1964 notified the trustees it was negotiating with a group of investors proposing to join in building a 1,600-acre "master resort" complex there.

The company believed a "major resort development of this kind could well anchor the east side of Hawaii Kai and make more developable, attractive and financially rewarding, those lands lying westward of Queen's



If Kacor, the master developer for Hawaii Kai, can win city approval, a resort complex could be built along this stretch of Queen's Beach on Oahu's south coast. This is a view from Kaloko Point, looking toward Makapuu Pass. The land is owned by the Bishop Estate. —Star-Bulletin Photo by Ken Sakamoto.

th City, Fights Developer

Beach," the Kacor letter said.

BISHOP ESTATE rejected the plan, and a scaled-down version that followed from Kacor that same year. In 1967, after the city had adopted its Detailed Land Use Map for East Honolulu, the company proposed a 400-acre resort complex in line with the city's growth map. Again, the trustees demurred.

"Throughout this period (the company) initiated ideas, showed flexibility and a willingness to explore new avenues for solutions, expended, at risk, time and monies in anticipation of reaching agreement, but despite all this was crowned with failure," according to the Kacor letter.

By the time the trustees agreed to Kacor's plans for Queen's Beach in 1971, and the company went ahead with zoning change requests for the development, community opposition to the project was widespread, and court decisions had complicated the zoning approval process. The company was forced to withdraw its re-zoning applications in 1972, and has not reapplied since.

The tensions caused by this and other disputes between Kacor and the trustees came to a head in 1979 and remain unresolved today.

In mid-1979, the Fasi administration, as required by the 1977 General Plan for the city's growth, made public a new development plan for East Honolulu that would have "down-zoned" to preservation status about two-thirds of the undeveloped real estate remaining under Kacor's contract.

AN irate Kacor wanted to fight the administration publicly, but the trustees of the estate invoked a section of the contract that required them to agree on land use and development. The trustees said the city's map was "basically acceptable" to them, and threatened to terminate Kacor's development rights if the company went public with its opposing view.

At the time the two sides also were preparing to go to arbitration on Kacor's request for a 17-year contract extension — until 1998 — because of delay factors beyond its control. The list of factors included Bishop Estate.

The trustees denied Kacor's argument, proposing that any extension be limited to an additional five years. But in November 1980, a three-man arbitration panel handed down a split decision for Kacor, awarding the company a 10-year extension. The trustees have been appealing that order since.

Meanwhile, while Council and the public were debating the city's new development plan for Hawaii Kai, Kacor was bucking the Bishop Estate's refusal to permit the company to speak out against the project. Kacor demanded the issue be put to arbitration, but the two sides couldn't agree on a mutually acceptable panel.

In March 1981, after Kacor served notice it could wait no

longer to take its case before the public, Bishop Estate filed suit in state court. Complaining that Kacor was threatening breach of contract, the trustees asked for a preliminary restraining order against public statements by Kacor on the city's plan. The suit also sought court-ordered arbitration, or, as a last alternative, termination of the contract.

AMONG PAPERS filed with the court was a November 1979 letter from the Bishop Estate's Peterson to Kacor's Chong, professing surprise at Kacor's inability to appreciate the trustees' determination to avoid public debate.

Peterson's letter noted that the trustees were required by the Internal Revenue Service to maintain a "very passive posture on development in order not to jeopardize our tax-exempt status."

Peterson added that he considered it "unwise" for the two sides to join in public debate "as we then run a mutual risk of contradicting one another in public statements with all the attendant problems this might bring."

In its reply brief to the trustees' lawsuit, Kacor contended that the estate's "real purpose in attempting to muzzle Kacor is to permit the 1980 development plan for East Honolulu or something akin to it to be adopted.... Perhaps Bishop Estate finds this approach advantageous to it but it is economically disastrous for Kacor."

If two-thirds of Kacor's undeveloped acreage were to be reclassified as preservation, "it is unlikely that Kacor will be able to obtain governmental approvals to develop this area during the 10-year extension of the agreement," Kacor argued.

"In what must indeed be the first such attempt ever made by a responsible entity, Bishop Estate is trying to twist a land use provision in a development agreement into a waiver of an otherwise legitimate exercise of a

constitutional right (to free speech)," Kacor argued.

"A party does not forego its constitutional rights just because it executes an agreement with Bishop Estate," the company declared.

THE trustees' bid for a restraining order was speedily denied, and in September the lawsuit was dismissed with the understanding the trustees were free to file it again if they chose. In November, Fasi's successor in the mayor's office, Eileen Anderson, vetoed the Council's amended version of the East Honolulu development plan.

With the Council now considering maps drafted by the Anderson administration, Peterson believes it's important to keep in mind the long-range nature of development plans.

In a telephone interview, Peterson responded to suggestions that the Bishop Estate is supporting a city plan that would effectively rule out resort development at Queen's Beach.

"If you're talking about the next 12 months, that may be right. But in the next 30 years maybe we've got a chance," he said. "Hopefully sooner, maybe later, the city will come to its senses and let the area be developed according to the (1966) master plan."

And will Kacor be the developer?

"Hopefully," Peterson replied.

The city's deputy chief planner, Ralph Portmore, said he was aware of the Bishop Estate's support for the administration plan but saw no reason for the trustees to suppose that Queen's Beach, once given preservation status, would ever be reclassified.

"They have no basis for that. It could be regarded by them as a holding zone beyond the development plans, but that is purely speculation on my part," he said.



Kacor artist's sketch of the developer's latest concept for a 2,000-room resort on 89 acres of Bishop Estate land fronting Queen's Beach. Kaloko Point is at lower left.