

LAND USE COMMISSION
MEETING MINUTES

May 20, 2004

Conference Room 405
Leiopapa A Kamehameha
235 S. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Bruce Coppa
Pravin Desai
Isaac Fiesta
Kyong Su Im
Lawrence Ing
Steven Montgomery
Randall Sakumoto
Peter Yukimura

STAFF PRESENT: Russell Suzuki, Deputy Attorney General
Anthony Ching, Executive Officer
Caroline Lorenzo, Secretary
Holly Hackett, Court Reporter

Presiding Officer Catalani called the meeting to order at 10:11 a.m.

A03-744 HILUHILU DEVELOPMENT, LLC (Hawaii)

APPEARANCES

Alan Okamoto, Esq., represented Petitioner
Bobbie Leithead Todd, Esq., represented the County of Hawaii Planning Department
John Chang, Esq., represented the State of Hawaii, Office of Planning
Abe Mitsuda, State of Hawaii, Office of Planning
Judith Henry, State of Hawaii, Office of Planning

Preliminary Matters

Commissioner Sakumoto moved to enter into executive session to consult with counsel on legal matters. Vice Chair Coppa seconded the motion. The motion was unanimously

approved by voice votes. The Commission entered into executive session at 10:15 a.m. and returned to the proceedings at 10:55 a.m.

Commissioner Desai was present to the proceedings at this time.

PUBLIC WITNESS

1. Matthew Meyers, Office of Hawaiian Affairs (OHA)

Mr. Meyers stated that he was not here to provide public testimony and submitted two letters to be included in the record.

Commissioner Montgomery expressed his concerns regarding the untimely submission of OHA's letter.

Presiding Officer Catalani indicated that the Commission would be addressing the following legal issues:

- Whether or not the Petitioner's motion at the April 1, 2004 action meeting was a withdrawal or deferral of its environmental impact statement (EIS).
- Whether the changes were substantive that it would require the EIS to be resubmitted in draft form to OEQC.
- Whether the EIS was sufficient on its merits.

Mr. Okamoto clarified its motion that was made on April 1, 2004 and indicated that its motion was to withdraw its EIS from the agenda

Presiding Officer Catalani entertained questions by the Commission. The Commission also provided their comments and concerns.

Commissioner Fiesta referred to pages 143 and 144 of the LUC transcript of April 1, 2004 and stated that it was his opinion that the motion clearly indicated that it was a motion to withdraw the EIS and that he doesn't want a precedent to be set in the future.

Mr. Okamoto stated that it had been the Petitioner's intent to withdraw the motion from the agenda and resubmit the EIS immediately after some changes were made as suggested in the staff's report.

Commissioner Montgomery referred to Petitioner's May 12th letter regarding OHA's untimely letter and asked for Petitioner's comments on the untimely letter and the impact on the EIS process. Mr. Okamoto indicated that under the rules, the Petitioner was not obligated to respond to untimely comments but did respond to OHA's letter in the interest of complete disclosure.

The County's counsel indicated that substance rather than form was sought, that it seemed the substance of discussion on the part of the LUC that Petitioner would be reformatting the EIS into final form and had asked to be put back on the LUC's agenda.

The State agreed with the County of Hawaii and understood Commissioner Sakumoto's concerns. However, as evidence of its understanding, the State had suggested at the LUC's April 1st meeting that the Petitioner provide a supplement to the EIS instead of a rewrite.

Commissioner Desai indicated that he understood that the motion made by the Petitioner at the LUC's April 1st meeting was a withdrawal of the EIS.

Commissioner Fiesta moved to reconfirm that the Commission approved the withdrawal of the EIS. Commissioner Desai seconded the motion. Presiding Officer Catalani then asked for discussion by the Commission.

Commissioner Sakumoto stated that it was important to understand what a third party would understand when reading the transcript. He felt that in reading the language in the transcript, it clearly stated that the EIS was withdrawn. Should this matter go to court, this transcript would be read in the exact position as was recorded verbatim.

Vice Chair Coppa expressed his appreciation to Petitioner's counsel and indicated that Mr. Okamoto demonstrated that it was not his intent to withdraw the EIS and that there may be a financial impact, and that Mr. Okamoto knew there was no option for deferral.

Commissioner Ing indicated that he would be voting for the motion with reservations and suggested that Petitioner's receive public input on changes of the EIS.

Commissioner Im felt that it was unclear to him whether or not Mr. Okamoto knew the difference between withdrawal of the EIS versus the withdrawal of the EIS from the agenda.

Commissioner Yukimura agreed with the County and indicated that it was clear of Mr. Okamoto's statement to withdraw the EIS from the agenda and come back to the Commission at a later date.

Mr. Ching restated that the motion was to reconfirm that the Petitioner withdrew the EIS as made at the April 1, 2004 action meeting. The Commission was polled as follows:

Ayes: Commissioners Fiesta, Desai, Im, Ing, and Sakumoto

Nays: Commissioners Coppa, Montgomery, Yukimura, and Catalani

The motion passed with 5 ayes and 4 nays.

A recess break was taken at 11:50 a.m. The Commission reconvened at 12:01 p.m.

Presiding Officer Catalani clarified that the Petitioner would be notifying the OEQC of the withdrawal of the EIS and submit a new EIS. There were no questions. Presiding Officer Catalani then stated that the action item on this docket was deemed closed.

APPROVAL OF MINUTES

Commissioner Fiesta moved to approve the minutes of the April 1, 2004 LUC meeting. Commissioner Ing seconded the motion. The motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching provided the following:

- June 3-4, 2004 - Docket No. A88-634 Alexander & Baldwin, Inc.; Action on the City & County's Sphere landfill special permit application; and receive status report on the Waimanalo landfill in the form of a written report
- June 3, 2004 - Oahu Service Recognition Dinner for Lawrence Ing and Bruce Coppa; June 24 Maui Dinner for Lawrence Ing
- June 24-25, 2004 – Status report on Docket No. DR02-26 Kuleana Ku'ikahi, LLC from the parties
- July 8-9, 2004 - Kona hearing; arrangements not yet finalized subject to availability
- July 22-23, 2004 - Hearing on Waikapu 28 Investment docket
- August 5-6, 2004 – Proposed that this meeting be cancelled
- August 19-20, 2004 meeting will be moved up to **August 12-13, 2004** and held on Maui.

Commissioner Sakumoto moved to adjourn the meeting. Commissioner Ing seconded the motion. The motion was unanimously approved by voice votes.

The meeting was adjourned at 12:00 p.m.

(Please refer to LUC Transcript of May 20, 2004 for more details on the above matters.)