

LAND USE COMMISSION  
MINUTES OF MEETING

July 8, 2004

Hau/Lehua Room  
Hapuna Beach Prince Hotel  
62-100 Kaunao`a Drive  
Kohala Coast, Hawaii 96743

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Pravin Desai  
Isaac Fiesta  
Kyong-Su Im  
Lisa Judge  
Randall Sakumoto  
Peter Yukimura

COMMISSIONERS ABSENT: Steven Montgomery

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter

Presiding Officer Catalani called the meeting to order at 10:20 a.m.

NEW COMMISSIONER

Presiding Officer Catalani welcomed new commissioner Lisa Judge whose term was effective July 1, 2004 and ends in 2008. She represents the island of Maui.

MOTION

Commissioner Fiesta moved to amend the agenda to act first on Docket No. A04-751 Maui Land & Pineapple Company, Inc. – Pulelehua before hearing Docket No. A04-747 Kamehameha Investment Corporation. Vice Chair Coppa seconded the motion. Said motion was unanimously approved by voice vote.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION (Hawaii)

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner  
Bobbie Leithead-Todd, Esq., represented the County of Hawaii Planning Department  
John Chang, Esq., represented the State Office of Planning  
Abe Mitsuda, State Office of Planning  
Lorene Maki, State Office of Planning

Presiding Officer Catalani asked if the parties had no objections to the change in the agenda. There were none.

MOTION

Commissioner Fiesta moved to amend the agenda to include the Election of Officers. Commissioner Yukimura seconded the motion. Said motion was unanimously approved by voice vote.

ELECTION OF OFFICERS

Commissioner Fiesta moved to nominate P. Roy Catalani as chairman of the Commission, Bruce Coppa as first vice chair, and Randall Sakumoto as second vice chair. Commissioner Yukimura seconded the motion. Said motion was unanimously approved by voice vote.

Commissioner Fiesta moved to close nominations. Commissioner Yukimura seconded the motion. Said motion was unanimously approved by voice vote.

A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (MAUI)

Chair Catalani announced that this was an action meeting to determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 312 acres of land currently in the Agricultural District to the Urban District at Mahinahina and Kahana, Lahaina, Maui, Hawaii, and to determine whether an Environmental Impact Statement Preparation Notice is warranted pursuant to Chapter 343, Hawaii Revised Statutes.

## APPEARANCES

William Yuen, Esq., represented Petitioner  
Robert McNatt, Maui Land & Pineapple Company, Inc.  
John Chang, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning  
Lorene Maki, State Office of Planning

Chair Catalani indicated that the Commission received correspondence from the County of Maui stating that they will not be present to the proceedings.

The Petitioner made its presentation. Mr. Yuen indicated that Petitioner's proposed affordable housing project in this docket was to satisfy the affordable housing condition for Kapalua Mauka (Docket No. A04-741 Maui Land & Pineapple Company, Inc.) and the need for employee housing in West Maui. Mr. Yuen provided an overview of the petition area. He stated that the project will substantially affect the economic and social welfare of West Maui.

Mr. Chang indicated that the significant issues raised in the development would be better served by an Environmental Impact Statement.

There were no questions by the Commission.

Vice Chair Coppa moved that the Land Use Commission agree to be the accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the EIS relating to the reclassification of approximately 312 acres of land currently in the Agricultural District to the Urban District at Mahinahina and Kahana, Lahaina, Maui, Hawaii, and directed the Petitioner to proceed with the Environmental Impact Statement Preparation Notice. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Coppa, Fiesta, Desai, Im, Judge, Sakumoto, Yukimura, and Catalani

The motion passed with a vote of 8 ayes and 1 absent.

A recess break was taken at 10:35 a.m. The meeting reconvened at 10:42 a.m.

## MINUTES

Commissioner Fiesta moved to approve the minutes of the June 24, 2004 Land Use Commission meeting. Vice Chair Coppa seconded the motion. Said motion was unanimously approved by voice vote.

## TENTATIVE MEETING SCHEDULE

Mr. Ching reported that there will be three field trips tomorrow, July 9, 2004, and that this was an opportunity for the Commission to receive geographic orientation to the particular petition areas. No issues will be discussed and no witnesses or testimony will be taken at that time. Mr. Ching also reported on the following:

- July 22, 2004 – Two field trips to view the Pulelehua and Kaanapali 2020 projects on Maui. Kuleana action to be taken up at 2:00 p.m.
- July 23, 2004 – Hearing on Waikapu 28 Investment.
- August 12-13, 2004 – The Commission will return to the Big Island to continue hearing on Kamehameha Investment Corporation, and also to receive a status report on the Kamehameha Schools East Hawaii special permit.
- September 2004 – The September meetings would be devoted to Maui and will include a fast track affordable housing docket as well as hearings on other projects in the Maui region.

## A04-747 KAMEHAMEHA INVESTMENT CORPORATION (Hawaii)

Chair Catalani announced that this was a hearing to reclassify approximately 487.246 acres of land currently in the Agricultural District into the Rural District at Keauhou I and II and Kahaluu, North Kona, Hawaii, for the development of a single-family residential subdivision.

## APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner  
Norman Hayashi, County of Hawaii Planning Department  
Bobbie Leithead-Todd, Esq., represented County of Hawaii Planning Department  
John Chang, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning  
Lorene Maki, State Office of Planning

Chair Catalani indicated that untimely applications for intervention were filed for this matter, and that the Commission will be taking up these untimely applications

for intervention prior to formally opening the hearing on this docket. Chair Catalani then asked the movants to identify themselves for the record.

Ms. Mikahala Roy stated that she was the Executive Director of Kulana Huli Honua, Foundation of the Search for Wisdom, a 501c-3 non-profit organization.

Mr. Jim Medeiros, Sr. stated that he was Chief Executive Officer of Protect Keopuka Ohana Organization in Kona. He further stated that he represented his organization, as well as himself as an individual of the community.

Chair Catalani indicated that Ms. Roy had some communication with Executive Officer, Anthony Ching, on the intervention, and further indicated that in an untimely application, there must be good cause for the intervention be granted.

Mr. Tsukazaki objected to the application because they were untimely and were not in compliance with Chapter 15-15-52(b) of the LUC rules, subsections e, f, g, and h.

The County of Hawaii indicated it had no position on this matter.

The State Office of Planning (OP) indicated that if the applicants can show good cause for the intervention, the Commission has the ability to allow for the intervention, and OP would agree with the Commission's decision.

Chair Catalani commented that should the Commission grant the applicant's request for intervention, this would cause a delay in the proceedings so that the parties can exchange materials and the like.

Ms. Roy made a presentation on her oral application for intervention. Ms. Roy indicated that she has made calls to LUC staff to determine dates for timely submittal of notice of intent to intervene by her organization. She further indicated that a number of issues and other matters regarding burials had arisen, which kept her organization from filing a timely application for intervention. Ms. Roy then read a letter written by her father, Mr. David Roy, and president of Kulana Huli Honua, which was addressed to the Commission. It stated its opposition to the project, and favored the maintenance of the agricultural aspect of Bishop Estate Lands and preservation of its cultural and burial sites.

Both Ms. Roy and Mr. Medeiros indicated that they were filing separate applications for intervention.

Mr. Medeiros stated that he didn't make a timely application because he did not receive information of this hearing. He indicated his concerns regarding burial issues and the process and protocol with the Island Burial Counsel. Mr. Medeiros indicated that he met with Mr. Francis Kauhane of the Kamehameha Investment Corporation approximately two weeks ago to discuss issues and to review development plans.

The parties were asked for comments. Mr. Tsukazaki asked Mr. Medeiros if he had any family buried in the Petition Area. Mr. Medeiros responded in the affirmative and stated that it has been certified for all of Keauhou. Mr. Tsukazaki asked if Mr. Medeiros has reviewed the archaeological work report in the Environmental Impact Statement. Mr. Medeiros answered in the negative. There were no questions or comments by the County and State.

The Commission was asked for any comments or questions of the applicants. Vice Chair Coppa asked Ms. Roy if she had any record or written correspondence that she had made phone call to the Commission. Vice Chair Coppa also asked if she read the Environmental Impact Statement, prepared in March 2004, where it addressed the Hawaiian customary and legal rights. Ms. Roy responded in the negative on both questions.

Vice Chair Sakumoto asked Ms. Roy questions regarding the history of her phone calls and her attempts to contact the LUC staff about her intention to intervene. Vice Chair Sakumoto then indicated that under the LUC rules, the Commission needs to assess potential intervenors as parties which could render the proceedings inefficient and that petition for intervention must be filed timely, and further indicated that the Commission realizes the hardship for those who are understaffed.

Commissioner Im expressed his sympathy toward Ms. Roy, and asked if she had any discussion with a representative of the Petitioner prior to last month. Mr. Medeiros stated that he had a meeting with a representative of Kamehameha Investment Corporation. Ms. Roy indicated that she received notice from Mr. Tsukazaki, and had also received notices from the LUC staff.

Mr. Tsukazaki indicated the notice was sent out on or about March 9, 2004 and the notice was served to those persons and organizations on the list to receive notices.

Vice Chair Coppa expressed his concerns that Mr. Medeiros indicated that he received notice only last week, but had met with a representative approximately two weeks ago, and knew about the proposed project.

Commissioner Im expressed his concerns that the applicants may not have had the full understanding of the process for filing an application for intervention. He further expressed that there needs to be a balance with the written process and that there needs to be a precedent that the Commission is to follow.

Mr. Tsukazaki argued that focus must be upon good cause initially and to determine that good cause exists for this untimely intervention. He agreed that the applicants have not satisfied the requirements.

Commissioner Judge noted that there would be other opportunities for public input on this docket.

The State stated that the Petition Area represents unique Hawaiian interest and would leave it up to the Commission to make a determination whether the applicants were allowed to intervene.

Commissioner Fiesta moved that the Commission enter into executive session to discuss with its Deputy Attorney General the legal aspects of intervention in this docket. Vice Chair Coppa seconded the motion. Said motion was unanimously approved by voice votes.

Chair Catalani announced that the meeting would reconvene at 1:45 p.m.

The Commission entered into executive session at 12:16 p.m.

The meeting reconvened at 1:50 p.m.

Mr. Tsukazaki requested an opportunity for a very short examination from a representative of Kamehameha Investment Corporation as to the allegations of the applicants whether the Petitioner had made attempts to contact the applicants. The Commission granted Mr. Tsukazaki's request. Mr. Tsukazaki then called Mr. Francis Kauhane, Vice President of the Kamehameha Investment Corporation to the witness stand.

Mr. Kauhane stated that he had known Mr. David Roy since 1969, lost contact over the years, and was able to meet Mr. Roy again approximately in or about 1996. Mr. Kauhane indicated that Mr. Roy was a member of the cultural advisory committee focusing on the treatment of agricultural issues, burials, mitigation plans, etc. He further provided the history of Mr. Roy's lease of property in the Petition Area, and also his attempts to contact Ms. Mikahala Roy. Mr. Tsukazaki then asked if there were any

burial violations or enforcement issues. Mr. Kauhane indicated that the State approved a burial treatment plan, following approval of a mitigation plan.

The County and State had no questions.

Ms. Roy indicated that she had not received any calls from the Petitioner. She finally contacted Mr. Kauhane and expressed her concerns.

### Deliberation

Vice Chair Sakumoto indicated that his questions are based on the LUC rules, Chapter 15-15-52(e). He indicated that there may be excusable neglect because someone missing a deadline was physically unable to make the deadline. He believed that both of the applicants knew of the proceedings at different points in time.

Mr. Tsukazaki informed the Commission that both Mr. David Roy and Ms. Mikahala Roy were on the list of people who were served the notice which is attached to the Affidavit of April 29, 2004.

Vice Chair Sakumoto commented that regardless of the outcome of both applications, he felt that the issues raised were important. He further commented that the Commission listens to the applicants openly and takes what was said seriously, and listens to testimony very carefully. The question was whether there was good cause established to grant intervention.

Vice Chair Sakumoto moved that the motion filed by Kulana Huli Honua be denied because the application filed was untimely and good cause had not been established. Vice Chair Coppa seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Coppa, Desai, Fiesta, Im, Judge, Yukimura, and Catalani

The motion passed with a vote of 8 ayes and 1 absent.

Vice Chair Sakumoto expressed his concern that Mr. Medeiros had the opportunity to find out about the Petitioner's proposed development during his meeting approximately two weeks earlier and had the opportunity at that time to file an intent to intervene.

Vice Chair Sakumoto moved to deny Mr. Medeiros' application on the grounds that it was filed late and that the Commission did not hear sufficient basis to establish good cause of the application. Vice Chair Coppa seconded the motion.

Commissioner Im expressed his concerns that the two situations were somewhat different, that Mr. Medeiros was not formally notified but had known about the development. It also seemed that Mr. Medeiros had not had any notification of this meeting. He also expressed his sympathy for organizations that do not have the resources to respond quickly.

Vice Chair Coppa expressed his concerns that Mr. Medeiros pointed out that his family was in touch with the Keauhou lands, and that there was a meeting between Mr. Medeiros and a representative of KIC.

Commissioner Fiesta expressed that he was torn with the discussion made, but that the Commission must comply with the LUC rules. He indicated to the applicants that their concerns would be heard when given the opportunity to testify during the hearing.

Commissioner Yukimura indicated his favor to allow Mr. Medeiros to intervene on the project.

Commissioner Desai indicated that he felt he was participating in a family dispute. He further indicated that even if the Commission denies intervention, the Commission would not deny the issues of the Hawaiians and are obliged by law to protect the interest of the Hawaiian people.

Chair Catalani indicated he favored granting Mr. Medeiros intervener status because he did establish good cause for being timely.

On the motion made to deny Mr. Medeiros' application for intervention, on behalf of himself and Protect Keopuka Ohana, the Commission was polled as follows:

Ayes: Commissioners Sakumoto, Coppa, Desai, Fiesta, and Judge

Nays: Commissioners Im, Yukimura, and Catalani

The motion passed with a vote of 5 ayes, 3 nays, and 1 absent.

A recess break was taken at 2:49 p.m. The meeting reconvened at 3:08 p.m.

## PUBLIC WITNESSES

### 1. Jerry Halverson

Mr. Halverson indicated that he found that Figure 4 of KIC's exhibit was inconsistent with the agreement with KIC (Exhibit 1) and inconsistent with the County Planning Commission's order of December 26, 2000. He stated that he communicated with KIC, and that the amended exhibit was filed and contained the same discrepancy. He then received a July 7, 2004 letter from KIC which resolved the concerns he had.

Mr. Halverson requested that his June 28, 2004 letter to the Commission be part of the record. Chair Catalani so ordered.

Mr. Halverson also indicated that he will submit to the Commission the council's July 7<sup>th</sup> letter to him to be made part of the record. He then expressed his appreciation toward Mr. Tsukazaki for his assistance.

There were no questions by the parties and the Commission.

### 2. Jane Bockus

Ms. Bockus indicated she was surprised that the Office of Planning was in support of project without hearing testimony from the public. Ms. Bockus also indicated that she has read the amended petition and it contains errors. She provided a history of her communications with the KIC regarding the buffer area surrounding the property. She stated that on July 7, 2004, the KIC would give the Bockus' a 100-foot buffer on the north and south boundaries of their land and 50 feet on the makai side due to topography. After a discussion she had with Mr. Kauhane yesterday, there would be no buffer on the makai side.

Mr. Tsukazaki indicated that a map that was provided to the Commission today was not faxed to Mrs. Bockus. KIC's final proposal was to expand the buffer on the north and south boundaries to 100 feet and the makai side to 50 feet.

### 3. Deborah Wichmann

Ms. Wichmann expressed her concerns relating to the noise and dust that will occur during the period of construction, and that a noise and dust control plan would be required.

There were no questions by the parties or the Commission

4. Richard Stewart

Mr. Stewart and stated he was an attorney. He also stated that he and his mother lived in the first and second houses on Puuloa Road. He expressed his concerns that instead of developing its originally proposed golf course, the Petition Area will become a high-density residential area.

Vice Chair Coppa excused himself from the proceedings at 3:53 p.m. and returned at 3:57 p.m.

Vice Chair Sakumoto excused himself from the proceedings at 3:58 p.m. and returned at 4:05 p.m.

The State and County had no questions.

5. Jim Medeiros, Sr.

Mr. Medeiros stated that he represented Protect Keopuka Ohana. He stated that KIC had not filled the requirement to meet with them and has not shown itself to be good stewards of cultural sites, graves, and trails. He also urged that the land not be changed from agricultural to rural. He noted that the KIC will be dissolved by the end of the month and that private contractors will be taking its place, and that the Commission will be making a decision without KIC present.

There were no questions by the parties or the Commission.

6. Harold Olinger

Mr. Olinger stated that he represented the Royal Order of Kamehameha I, and was in favor of the master plan of which the Petition Area is a part. He indicated that the Order asked the KIC to consider helping them find a home. The connection was the Lekeleke burial ground which allowed the partnership, and the Order became the stewards of the burial ground. The Order's intent was to maintain security in the area. There were no questions by the State and County. There were questions by the Commission.

Commission's Reimbursement Policy

Mr. Ching reported that the Commission established a policy where hearing notices and court reporter fees would be reimbursed by the Petitioner for their specific

docket, and that there would be opportunity for Petitioner to be heard prior to the start of the hearing.

After receiving clarification from the Executive Officer, Mr. Tsukazaki indicated that Petitioner agreed to reimburse the Commission for publication and court reporting fees.

Chair Catalani instructed the LUC staff to implement the April 1, 2004 policy.

#### Admission of Exhibits into the Record

Petitioner introduced Exhibits 1-21 for the record. Petitioner indicated that a new Exhibit 18 substitutes for the existing Exhibit 18. The County and State had no objections. Exhibits 1-21 were admitted into the record.

The County indicated that it had only one exhibit, which was the County's written testimony. There were no objections by the Petitioner and the State. The County's exhibit was admitted into the record.

The State introduced Exhibits 1-3. The Petitioner and the County had no objections. Exhibits 1-3 were admitted into the record.

#### Miscellaneous

Mr. Tsukazaki mentioned that during the prehearing conference, there was mention of an issue that has been raised by the parties and the staff in this matter, the permissibility of golf courses in the State Land Use Rural District. The LUC has previously issued a declaratory ruling that golf courses are not permitted in the rural district. Mr. Tsukazaki stated that there are two county permits that allow golf courses to be built in this petition area.

Mr. Tsukazaki requested that if the parties choose to submit a brief on the issue, that it be submitted by July 22, 2004.

Mr. Ching indicated that tomorrow's field trip would begin at 10:00 a.m. and that formal quorum was not required.

The meeting was adjourned at 4:39 p.m.