

LAND USE COMMISSION  
MEETING MINUTES

Maui Beach Hotel  
Elleair Ballroom

January 13, 2005

COMMISSIONERS PRESENT: P. Roy Catalani  
Michael Formby  
Kyong Su Im  
Lisa Judge  
Steven Montgomery  
Randall Sakumoto  
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta, Jr.

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Caroline Lorenzo, Secretary  
Holly Hackett, Court Reporter  
Kanani Wong, Audio/Visual Technician

Chair Catalani called the meeting to order at 10:13 a.m.

ADOPTION OF MINUTES

In reference to the December 10, 2004 minutes, Mr. Ching indicated that on Page 8, the witness' name should be corrected to Robert Mist. Commissioner Yukimura then moved to adopt the minutes of the December 10, 2004 with correction made, and Vice Chair Sakumoto seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Mr. Ching reported the following:

1. That staff has not yet received the document relating to HELCO's FEIS. Tentative action meeting will be scheduled for the March meeting to

allow for greater opportunity for staff and commission to review the document.

2. There will be a continuation of the hearing on Docket No. A04-747 Kamehameha Investment Corporation in March.
3. Petitioner for the Waimanalo Gulch Landfill special permit has indicated a desire to appear before the Commission to provide a status report in late February or March. Staff will confirm details with Petitioner.
4. For the February meeting on Oahu, there are three (3) new petitions expected to be filed by the end of January regarding 1) Pacific Ohana, 2) Pupukea Ridge (conversion of lands from agricultural to conservation); and 3) a Big Island docket.
5. March 3-4, 2005 is tentatively scheduled for Maui, while March 17-18, 2005 meeting is tentatively scheduled for the Big Island.
6. There could potentially be a filing on the Hokulia docket in February. Action meeting could take place on March 17-18, or the first April meeting date that would occur on the Big Island.

### LEGISLATIVE UPDATE

Mr. Ching reported that he provided a briefing before the Senate Ways and Means Committee, and met with subject area chairs for both house and senate, and alerted them of current budget restraints and unbudgeted items.

Mr. Ching also reported that the Commission expects a number of legislative proposals and will be focusing on the provisions relating to rural and agricultural districts. Mr. Ching indicated that he will be looking for guidance in testimony and will be forwarding copies of testimonies and any substantive legislative bills to the Commissioners.

Chair Catalani commented that in regards to the Affordable Housing Task Force report, there should be a specific agenda item for the Commission to respond and discuss the issue regarding making the LUC a policy-making body rather than a quasi-judicial one.

A88-634 ALEXANDER & BALDWIN, INC. (MAUI)

Chair Catalani announced that this was a hearing and action meeting on Docket No. A88-634 Alexander & Baldwin, Inc., to consider Petitioner's Application to Approve Phase II for Incremental Redistricting from Agricultural to Urban classification consisting of approximately 33.530 acres of land currently in the Agricultural District to the Urban District at Kahului, Maui, Hawaii.

APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner

Curtis Tabata, Esq., represented Petitioner

Dan Yasui, Alexander & Baldwin, Inc.

Sally Raisbeck, Intervenor, Maui Affordable Housing Association

Jane Lovell, Deputy Corporation Counsel, represented County of Maui Department of Planning

Clayton Yoshida, County of Maui Department of Planning

John Chang, Deputy Attorney General, represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

PUBLIC WITNESSES

1. DeGray Vanderbilt

Mr. Vanderbilt stated that he was from Molokai and was present on behalf of the Maui Affordable Housing Alliance. He expressed his concern that land was needed to build affordable housing.

Ms. Raisbeck asked for Mr. Vanderbilt's opinion on housing on Maui. Mr. Vanderbilt responded that housing was getting better, and that he was an advocate of smart growth. He further stated that he was working with Molokai Properties Ltd., and that they have agreed to donate 100 acres for affordable housing near each of three towns on Molokai. Vice Chair Montgomery also asked related questions regarding Mr. Vanderbilt's opinion and concerns on affordable housing for the County of Maui.

Chair Catalani asked the witness if he had reviewed Alexander & Baldwin's September 2004 housing study report. Mr. Vanderbilt responded in the negative. Mr. Ching then indicated that staff would provide a copy of the housing study report to Mr. Vanderbilt.

Chair Catalani asked Mr. Matsubara if he has reviewed the Commission's policy regarding reimbursement of hearing expenses. Mr. Matsubara responded that he has reviewed the policy and his client had no objections.

## Submittal of Materials

Mr. Matsubara indicated that he submitted Exhibit 5 and pages 1 and 10 of Exhibit 6 in a timely manner to the Commission.

Ms. Lovell indicated that the County mailed out its Exhibit and Witness Lists to the Commission on January 5, 2005, and that the Written Testimony of Michael Foley was an untimely submittal. She also indicated that County's Exhibits C2-C6 were sent out to the Commission on January 5, 2005.

Commissioner Im expressed his concern regarding the late submittals of documents to the Commission by the parties. He felt that the Commission should not receive late filings and would appreciate that all parties submit future filings in a timely manner. Ms. Lovell asked if the Commission would accept electronic filings. Chair Catalani responded that the Commission would allow electronic filings followed up by hard copies to the Commission.

A recess break was taken at 11:15 a.m. The meeting was reconvened at 11:29 a.m.

Mr. Matsubara presented Petitioner's eight (8) listed exhibits. The Commission admitted Petitioner's exhibits into the record.

Ms. Lovell presented the County of Maui's Exhibits C1-C6. The Commission admitted County's exhibits into the record.

Ms. Raisbeck indicated that she received both Petitioner's and County's exhibits

Mr. Chang indicated that the State has two proposed exhibits: 1) Testimony of the Office of Planning, and 2) Location Map. There were no objections to these exhibits. Said exhibits were admitted into the record.

Bert Saruwatari, staff planner, provided a map orientation of the petition area using LUC maps. Mr. Saruwatari also provided the Commission with staff's recommendations.

Ms. Lovell asked the Commission to allow Ms. Alice Lee, Department of Housing and Human Concerns, to be taken out of order. The parties had no objections. The Commission granted Ms. Lovell's request.

## COUNTY'S WITNESSES

### 1. Ms. Alice Lee

Ms. Lee stated that she was the Director of the Department of Housing and Human Concerns for the County of Maui. Ms. Lee provided the Commission with her concerns regarding the affordable housing situation for the County of Maui and whether the situation has changed in the past two (2) years. She also provided the Commission with a brief summary of projects currently in progress for the County of Maui. Ms. Lee indicated that the County is in a very good position, and that the administration and other departments have worked with developers to plan and develop over 3,000 units in the next several years. She also indicated that the County in concert with its review of SMA applications had solicited the cooperation of developers to make either monetary contributions or build units. She further indicated that the continuing challenge was infrastructure development.

Ms. Lovell offered into evidence Ms. Lee's memorandum to Clayton Yoshida as Exhibit C-5.

Mr. Chang asked if there were any other requirements that would provide some infrastructure for the 13 acres that the Petitioner proposes to donate for affordable housing. Ms. Lee indicated that the County would be discussing infrastructure with Petitioner.

The Petitioner had no questions.

Ms. Raisbeck raised questions concerning the number of units that will be provided for affordable housing, the number of people interested in purchasing affordable homes, and where land can be obtained for affordable housing. She also asked questions regarding SMA approvals and its new policy.

Commissioner Judge raised concerns regarding the County's existing policy on commercial and industrial uses.

Vice Chair Sakumoto raised questions regarding monies collected by the County from developers to comply with the County's affordable housing requirement, and how the monies are being used and the results have been. Ms. Lee indicated that the County would link a developer with a nonprofit organization, and that the monies would be directed to the nonprofit organization. Ms. Lee also indicated that the County would prefer cash in lieu of land, and felt that land contributions are not the answer to the problem of not having enough land for affordable housing.

Commissioner Im raised questions regarding the affordable housing problem. He expressed concerns regarding lands being contributed and that the County would prefer cash over lands. He also expressed that he hoped the County would follow through with the conditions the Commission imposes.

A break was taken at 12:54 p.m. The meeting reconvened at 2:10 p.m.

A88-634 ALEXANDER & BALDWIN, INC. (MAUI) (continued)

Commissioner Judge was not present at the proceedings at this time.

Mr. Michael Foley, Director of the County of Maui Department of Planning was present at the proceedings at this time.

Mr. Matsubara made his presentation before the Commission. He provided a brief background on previous LUC actions regarding this docket, and referenced Petitioner's Exhibit 4. He also provided information regarding the burden under section 15-15-78, HAR, regarding incremental redistricting. He indicated that the Petitioner was obliged to satisfy all conditions. He also indicated that he would present a witness who will discuss applicable conditions and satisfaction of conditions.

Commissioner Judge entered the proceedings at this time.

PETITIONER'S WITNESS

1. Dan Yasui

Mr. Yasui stated that he is the project manager for A&B Properties, Inc., and was familiar with the actions undertaken by this application. Mr. Yasui summarized the conditions applicable to Maui Business Park Phase 1 and the basis of contention that conditions have been satisfied. He also provided a background on Phase 1, and included that Phase 1 has been sold out to date. Thereafter, Mr. Yasui provided an update of all 15 conditions.

Mr. Chang raised questions regarding the breakdown of retail versus commercial industrial use within the property.

Vice Chair Sakumoto referred to the matrix on Petitioner's Exhibit 6. He then raised questions regarding drainage improvements for phase 1a. Mr. Yasui stated that improvements were made to alleviate flooding at the intersection of Dairy Road and Hana Highway. Mr. Yasui further stated that in accordance with Condition 8, there were no findings of archaeological resources. Vice Chair Sakumoto's concern was that

there may be potential for archaeological findings discovered once the lots are turned over to the buyer.

Chair Catalani expressed concerns relating to flood control and related issues and drainage runoff to the ocean.

Mr. Mitsuda indicated that the State's main concern had been related to the water flowing into and negatively impacting Kana'a Pond. He indicated that the runoff currently flowed into the ocean. He further indicated that there would be a witness from the Department of Transportation to answer any questions the Commission and the parties may have.

Ms. Raisbeck raised questions regarding the current state of the water supply in Central Maui, and plans for how much was needed and where it would come from.

There were no further witnesses by the Petitioner. Ms. Raisbeck also indicated that she had no witnesses to present.

#### COUNTY'S WITNESSES (continued)

##### 2. Michael Foley

Mr. Foley provided a brief summary of his testimony, which was provided to the Commission as Exhibit C-1. He stated that the County supported Petitioner's application, and that the Petitioner has substantially complied with conditions. Mr. Foley further stated that the County was concerned with stormwater runoff issues.

Ms. Lovell's questions were related to whether the County had standard conditions regarding archaeological findings. Mr. Foley indicated that if any artifacts were discovered, construction would stop and special protocols would occur, and there were standard procedures required for all changes in zoning and SMA applications, and all building permits in the County of Maui.

The State had no questions.

Mr. Matsubara presented Exhibit 5a, Proposed Findings of Fact, Conclusions of Law, and Decision and Order. The County did not have any objections.

Ms. Raisbeck expressed concerns regarding the need for light industrial. Mr. Foley indicated that there was extensive testimony on this issue, and that the County was very interested in protecting the majority of areas zoned for light industrial in that use. Mr. Foley also indicated that there were numerous housing projects being

constructed and reviewed and significant progress had been made over the past six months in developing needed affordable housing.

Ms. Raisbeck asked questions regarding overcrowding. Ms. Lovell objected to the form of questioning.

Vice Chair Sakumoto asked for confirmation that there has been substantial completion for the project from the County's planning perspective. Mr. Foley responded in the positive.

Commissioner Judge asked how the department would handle light industrial zoning as stated in the County's testimony. Mr. Foley indicated that the County planning department is in the process of modifying its industrial and commercial zoning rules, and these changes would clarify what was commercial and what was industrial.

Chair Catalani expressed concern regarding the adequacy of operation of filters and surface water directed toward limited number of drainage receptacles that have to be cleaned periodically. Ms. Lovell objected to the Chair's questioning calling it a hypothetical question.

Mr. Foley indicated that he was not familiar with the current existing drainage system.

The County had no redirect questions. There were no other questions.

#### STATE'S WITNESS

##### 1. Abe Mitsuda

Mr. Mitsuda stated that he was the administrator of the Land Use Division for the Office of Planning (OP), and that OP's position remained in support as indicated in OP's written testimony. He also provided a brief summary of OP's testimony.

Mr. Chang's asked if the condition dealing with containing of spills and preventing materials from leaching into the storm drain system had been satisfied. Mr. Mitsuda indicated that if Best Management Practices are followed, he felt that this condition would be satisfied. Mr. Mitsuda further indicated that around many of those storm drains, there have been stenciling signs on them to keep people from dumping things down into the drains, and sometimes there are things that look like sandbags at these storm drains that actually clog the drains, which is a difficult thing to police.

Mr. Matsubara asked for clarification that it was normal practice for OP to circulate the Petition to other state departments, and if Mr. Mitsuda had reviewed Exhibit 5a. Mr. Mitsuda indicated that he had no objections to Exhibit 5a.

There were no questions by the County.

Vice Chair Sakumoto suggested that OP provide copies of the Petition to the agencies who did not receive a copy of the Petition and who may still want to respond and provide comments.

Chair Catalani asked if DOH had any strong position. Mr. Mitsuda responded in the negative. Ms. Mary Alice Evans, staff planner of OP, stated that OP did not receive any comments from DOH. Mr. Mitsuda then indicated that he would solicit further comments.

Mr. Chang indicated that because the individual lot owners determine what occurs on their property, the state only gets involved to ensure that other chemicals do not get into the storm drain. Mr. Chang also indicated that there was a representative from the Department of Transportation Highways Division present in the audience and would be available for questions.

There were no further witnesses.

A break was taken at 4:02 p.m. The meeting reconvened at 4:15 p.m.

#### A84-583 MAUNA LANI RESORT (HAWAII)

Steven Lim, Esq., represented Petitioner  
John Chang, Deputy Attorney General, represented State Office of Planning  
Abe Mitsuda, State Office of Planning  
Mary Alice Evans, State Office of Planning

As new counsel for the Petitioner, Mr. Lim provided a status report update on Petitioner's development plans for a portion of the petition area and an update on the compliance with the seven conditions of approval as ordered by the Commission.

Chair Catalani acknowledged receipt of Mr. Lim's correspondence indicating that he was the new counsel and representative of the Petitioner.

Commissioner Im requested clarification that the lot purchased by the petitioner was designated for single-family development. Mr. Lim responded that it was designated for single-family and multi-family residential use.

## EXECUTIVE SESSION

Vice Chair Sakumoto moved to enter into executive session pursuant to §92-4 and §92-5(a)(2) and (4) to consult with legal counsel as to LUC personnel and the Commission's powers, duties, privileges, immunities and liabilities with respect to executive directives and LUC decision-making and the requirements of Act 234, 2004 Session Laws of Hawaii. Commissioner Formby seconded the motion. Said motion was unanimously approved by voice votes. The Commission then entered into executive session at 4:33 p.m.

The Commission adjourned from executive session and reconvened the regular meeting at 5:36 p.m.

## PANEL PRESENTATION

Mr. Ching indicated that this presentation had been cancelled and will seek clarification from the Governor's office if the item was to be rescheduled.

Chair Catalani indicated that the hearing for January 14, 2005 will begin at 8:30 a.m. and will start with Docket No. A04-748 Consolidated Baseyards LLC, followed by Docket No. A05-755 Hale Mua Properties, LLC, and Docket No. A03-745 Hanohano LLC. Chair Catalani also indicated that hearing on Docket No. A88-634 Alexander & Baldwin, Inc. will be continued at the next Maui meeting.

The meeting was adjourned at 5:43 p.m.

*(Please see LUC Transcript of January 13, 2005, for additional details on all above matters.)*