

LAND USE COMMISSION  
MINUTES OF MEETING

April 7, 2006

Maui Beach Hotel  
Elleair Ballroom  
170 Kaahumanu Avenue  
Kahului, Maui, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades  
Michael Formby  
Kyong-su Im  
Lisa Judge  
Steven Montgomery

COMMISSIONERS ABSENT: Duane Kanuha  
Ransom Piltz  
Randall Sakumoto

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Presiding Officer Judge called the meeting to order at 8:40 a.m.

DOCKET NO. A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui)  
PULELEHUA

Presiding Officer Judge stated that this was an action meeting on Docket No. A04-751 Maui Land & Pineapple Company, Inc. – Pulelehua for the reclassification of approximately 310.437 acres of land currently in the Agricultural District to the Urban

District at Mahinahina, West Maui, Hawaii for multi- and single-family residential homes and retail commercial activities.

### APPEARANCES

William Yuen, Esq., representing Petitioner

Robert McNatt, Executive Vice President, Maui Land & Pineapple Company

Jane Lovell, Esq., represented the County of Maui Department of Planning

Michael Foley, Director, County of Maui Department of Planning

Ann Kua, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

### Public Witnesses

#### 1. Dick Mayer

Mr. Mayer stated his objection to the project and urged the LUC to consider the reclassification of agricultural lands for urban uses. However, Mr. Mayer also offered a list of conditions, should the LUC decide to approve the petition.

Vice Chair Montgomery discussed Mr. Mayer's condition 2, a delay of the Kapalua Mauka project until the affordable housing units at Pulelehua are completed, and discussed his proposed condition regarding the development of a regional park.

Commissioner Formby discussed Mr. Mayer's condition number 4, commenting that all the representations indicated that the school would not be located near the runway. Commissioner Formby also discussed issues of water quality and the affordable housing units.

Vice Chair Montgomery raised a few questions on the minimal percentage of market units per affordable units.

After a brief discussion, there were no further questions posed by the parties and the Commission.

#### 2. Robyn Knox

Ms. Knox stated that she is a water quality professional with over 20 years of experience and previously was a state regulator in Louisiana. Ms. Knox noted that she is relatively new to West Maui, but has reviewed the EIS and discussed issues of water quality and impairments. Ms. Knox suggested the following aspects:

- To conduct a water quality assessment of the potentially impacted inland waters and coastal segments in accordance with the DOH's 305 (b) Clean Water Act methodology.
- To conduct risk assessments for land contamination since agricultural chemicals will remain in the land or in the soils.
- Discrepancies in the wastewater treatment design and capacity.
- Having experiencing Hurricane Katrina, the one way in and one way out of West Maui makes the airport critical for flying equipment and medical supplies in and out, but increases the risk of an accident with the increase in flights and the residents living nearby.

Mr. Yuen commented that this was the fifth hearing on this petition and noted that Dr. Dollar has previously testified on water quality and the expansion of the regional wastewater facility. Mr. Yuen asked if Ms. Knox was present at any of the previous hearings. Ms. Knox replied that she has not attended any previous meetings but has read the minutes and the EIS.

Vice Chair Montgomery discussed chemical pollution, and alternative solutions such as using a hard sand to form physical barriers, bio swale functions, and detention basins.

Commissioner Im discussed issues related to Ms. Knox's public testimony related to the Clean Water Act, the need for a water quality assessment, the EIS, and the state's Clean Water Branch.

Commissioner Im commented that at previous hearings, he has raised numerous safety and emergency concerns related to the location of this project, with only one way in and one way out. Commissioner Im asked Ms. Knox if she knew of a better location in this area with fewer impacts to the natural water system, since the area was once heavily used in agricultural farming.

Ms. Knox stated that she has not looked at alternative locations and have not followed up with the state to determine whether they have made an assessment or not, but would be happy to do that.

Presiding Officer Judge discussed issues of restoring the eco system, bio swales, pervious pavement, gulches and the water flow, and the removal of sediments in the retention basins.

Commissioner Formby commented that Ms. Knox has testified today as a citizen, not as an expert, yet she has raised genuine concerns, and it is disappointing that this information comes at a point where the LUC has already heard testimony from the qualified experts on facts that the LUC needs to decide the issues in this docket.

A recess break was taken at 9:45 a.m. The meeting reconvened at 10:00 a.m.

Presiding Officer Judge noted that there are three additional public witnesses for this docket and allowed a request to change the order due to time constraints by one of the witnesses.

3. Lindsay Ball

Mr. Ball stated that he is the Principal of King Kamehameha Elementary School and expounded on the need for a new school in West Maui due to major overcrowding. Mr. Ball also noted that re-districting would be helpful. To have an elementary school where the students could live and attend school would also reduce the number of children being driven and bused to and from their neighborhoods and in the valley.

There were no questions posed by the parties or the Commission.

4. Carmen Schillaci

Ms. Schillaci stated that her family currently resides in Kahului, is employed by MLP in West Maui, and would like the opportunity to own their own home.

There were no questions posed by the parties or the Commission.

5. Sharyn Matin

Ms. Matin discussed issues of disaster response, small plane crashes, aviation litigation, disaster evacuation, dam failure, the Horner, Waihikuli, and Hanakao`o reservoirs, and the Corps of Engineer's inspection of the three dams in the Honokowai corridor, sewer lines, and the affordable housing crisis.

There were no questions posed by the parties or the Commission.

States Witness

1. Laura Thielen

Ms. Thielen summarized the position of the OP and discussed issues relative to the County's plan for the region, the West Maui Plan, drinking and ocean water quality, affordable housing, regional West Maui traffic improvements and project impacts, education and concerns for a turnkey school, the dam assessment, and the DOT's request for the ability to approve the TIAR.

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:30 a.m.

Mr. Yuen raised questions relative to the DOT's request to approve the TIAR.

Ms. Lovell posed a few questions regarding OP's written testimony (page 19 last paragraph) that indicated that there would be 450 affordable residences in the project.

Commissioner Im raised questions regarding DOH approvals on water quality, and the timeline and limitations of the affordable housing units coming on line simultaneously with the market units.

Commissioner Im also posed questions relative to the construction of the elementary school, the DOE's budget approvals and the allocation of funding.

Vice Chair Montgomery commented that previous public testimony noted that this is the right project in the wrong time, and now the testimony is saying that this is the right project in the wrong place. Vice Chair Montgomery raised questions on the FAA guidelines, pesticide contamination, the DOH recommendations, and the advantage and economic benefits of salt termite barriers in new construction.

Vice Chair Judge posed a few questions regarding the bio swales, pervious pavement, and best management practices.

Vice Chair Judge commented on the need for the elementary school to open concurrently with the occupancy of the homes. Vice Chair Judge posed a few questions

regarding the capitol improvements allocation, turnkey construction, and the burden of public facilities by the addition of the 450 home development.

Vice Chair Montgomery stated that he had just returned from New Orleans, where he saw presentations regarding climate change scenarios and the increased use of greenhouse gases. Vice Chair Montgomery asked if the State of Hawaii has planned or taken steps to reduce these global warming impacts.

Ms. Thielen noted that the state is moving significantly towards innovative energy and encourages alternative energy resources in Hawaii.

### Admission of Additional Exhibits

Mr. Yuen described and offered Petitioner's exhibit 52, 53, and 54. There were no objections by the parties. Said exhibits were admitted into evidence.

### Petitioner's Witness

1. Robert McNatt

Presiding Officer Judge noted that Mr. McNatt had been sworn in at a previous hearing and was still under oath.

Mr. McNatt discussed the affordable housing selection preference criteria, adding that the criteria has been changed slightly as previously described on page 32 in the EIS. The change was intended to: 1) give preference to MLP employees; 2) Kapalua and related business employees; 3) resident police officers, fire fighters, teachers, etc.; 4) residents who currently work in West Maui; and 5) West Maui residents.

Mr. McNatt also discussed gap housing and defined the Petitioner's concept for keeping the affordable units affordable in perpetuity. The affordable "for sale" units will remain affordable for 30 years and the rental units will remain in perpetuity for the life of the buildings. Pulelehua will also include a police substation in the commercial area.

Mr. McNatt summarized MLP's position on making necessary improvements to meet FAA requirements and the progress of negotiating an educational agreement with the DOE. Mr. McNatt stated that the MLP will dedicate 5 acres of land for the

elementary school and pay a fee of 2.4 million dollars, which is MLP's fair share amount requested by the DOE. In regards to the phasing of the school, the DOE intends to build the school in 2011, but MLP would prefer to move that date up to 2009.

Mr. McNatt also discussed the County's condition regarding the concurrent development of the market units at Kapalua Mauka and the 40 affordable units to be built on an existing MLP site.

Ms. Lovell raised a few questions on the draft agreement between MLP and the DOE related to Petitioner's exhibit 53, the donation of a 13-acre site plus a payment of cash.

Mr. McNatt noted that the original plan was to set aside the 13-acre site, then negotiate with the DOE who would determine what any further fair share contribution is to be.

Mr. Yee posed questions regarding the Petitioner's exhibit 52, the FAA letter that indicates an expiration date of September 30, 2007 unless extended. Mr. Yee also discussed the potential sale of the property in the future and the navigation easement agreement.

Commissioner Formby raised a few questions related to the on-site police substation agreement with the County, DOT restrictions and an agreement regarding the number of access points, and the concept for keeping units affordable for 30 years.

Commissioner Im posed questions regarding the area designated for the DOE fair share requirement and asked for clarification on the actual amount of acreage the DOE will be receiving from the Petitioner for the school.

Mr. McNatt replied that 5.8 acres is the amount determined by the DOE as MLP's fair share to dedicate to this community plus 2.4 million dollars. Mr. McNatt added that MLP is willing to set aside 13 acres and are willing to sell the remaining land to the DOE at fair market value. This remaining 6.2 acres will be restricted in use through CC&R for the future expansion of the school in perpetuity.

Commissioner Im also raised questions related to the County's requirement for affordable housing.

Mr. McNatt stated that the County requirement is that 40 units be available before an occupancy of Kapalua Mauka is allowed. The 40 affordable units will not be located on this project site and will be available to the MLP employees first. There will be 325 affordable units for sale and 125 rentals plus 100 gap units at Pulelehua. When combined with other offsite units, there will be a total of 550 units.

Commissioner Im commented that he believes that the affordable housing requirement will directly benefit the MLP and its affiliates in satisfying the requirement and that there is much economic gain for the MLP by providing affordable housing to its employees. Commissioner Im asked if MLP has run numbers as to this employee benefit.

Mr. McNatt replied that they have not run any numbers and added that the key value is to attract and maintain their employees.

Commissioner Im commented that he believed this fair share value that the Petitioner is providing to the community at large is also benefiting itself and not just the community at large. By providing subsidy to their employees and increasing the infrastructure demand of the region, whereas other projects have affordable housing requirements not directly targeted to their employees but to the general public. Commissioner Im added that MLP is treating their employees differently from the general public.

Vice Chair Montgomery raised a few questions regarding the regional park in West Maui, neighborhood parks, and responding to the challenges of local warming in the community.

Vice Chair Judge sought to determine the status of the proposed hospital on the project site.

Mr. McNatt stated that the concept is still being studied and that Hawaii Health Systems Corporation has recently hired a consultant. There are two potential sites and MLP is supportive and will cooperate to see that it gets done. They will make a decision on the hospital site in 6 months.

Mr. Yuen stated that he had nothing further and asked if the LUC had received all exhibits from petitioner, including exhibit number 50, the PowerPoint presentation.

Vice Chair Judge noted that the LUC has received all exhibits including exhibit 50.

Vice Chair Judge read the post hearing instructions and stated that should the parties decide to stipulate, the proposal should be filed with the LUC no later than close of business May 12, 2006.

The meeting was adjourned at 1:10 p.m.

*(Please refer to LUC Transcript of April 7, 2006 for more details on this matter.)*