

LAND USE COMMISSION  
MINUTES OF MEETING

December 8, 2006

Hapuna Beach Prince Hotel  
62-100 Kaunao'a Drive  
Kohala Coast, Hawaii 96743

COMMISSIONERS PRESENT: Michael Formby  
Kyong-su Im  
Lisa Judge  
Duane Kanuha  
Steven Montgomery  
Ransom Piltz  
Reuben Wong

COMMISSIONERS ABSENT: Thomas Contrades  
Nicholas Teves

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

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

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of November 16 and 17, 2006. The motion was seconded by Commissioner Wong. The minutes of November 16 and 17, 2006 were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- January 4-5 on Oahu;
- January 17-18 on Maui for action on the Hale Mua docket;
- February 1-2 will open hearings on Oahu;
- February 16-17 will open hearings on Kauai.

Vice Chair Montgomery entered the meeting at this time.

There were no questions posed by the Commission.

## EXECUTIVE SESSION

Commissioner Im moved to go into executive session to consult with legal counsel pursuant to § 92-5(a)(4), HRS, on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to § 15-15-95 (e), HAR. Vice Chair Montgomery seconded the motion. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 8:45 a.m.

The open meeting reconvened at 9:06 a.m.

### A06-770 THE SHOPOFF GROUP, L.P. (Hawaii)

Chair Judge stated 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 127.94 acres of land from the state Land Use Agricultural District to the state Land Use Urban District for residential and park uses at North Kona, Hawaii; and to determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

## APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner

Jesse Souki, Esq., represented Petitioner

Bobbie-Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Ms. Kuwaye briefly described the project and stated that the petitioner believed that the LUC is the appropriate accepting authority under Chapter 343, HRS. Ms. Kuwaye also noted that the proposed project will have a significant effect to the environment and that the preparation of an EIS is warranted, as the project proposes to connect to state and county lands.

Ms. Leithead-Todd stated that the county had no opposition to the preparation of an EIS, adding that this information could also assist the county on other developments in the area.

Mr. Yee noted that the state had no opposition.

Vice Chair Formby moved that the LUC be the accepting authority for the reclassification of approximately 127.94 acres of land. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Commissioners Formby, Kanuha, Im, Piltz, Wong, Judge, and Montgomery.

The motion passed with 7 yes, 2 absent.

Vice Chair Formby moved that the proposed action will have a significant effect to warrant the preparation of an EIS. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Commissioners Formby, Kanuha, Im, Montgomery, Piltz, Wong, and Judge.

The motion passed with 7 yes, 2 absent.

A recess break was taken at 9:15 a.m. The meeting reconvened at 9:25 a.m.

SP06-400 WILLIAM HORNEMAN on behalf of Hawaiian Cement (Maui)

Chair Judge stated that this was an action meeting for the amendment of the order.

APPEARANCES

William Horneman, Vice President, Hawaiian Cement  
Bryan Yee, Esq., represented state Office of Planning  
Abe Mitsuda, state Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Ching stated that the County of Maui was not in attendance. He added that during a phone conversation with Ms. Lovell, she indicated that they were to make an appearance today and had no objections on the action that the LUC would take on the amendment.

Commissioner Wong moved that the order be amended to provide that the time limitation be modified to the date set by the county. Commissioner Piltz seconded the motion.

Commissioner Wong commented that it was questionable whether the LUC had the power to set the date of the special permit application. Commissioner Wong added that the LUC order be amended in consistency with the date set forth by the county.

Commissioner Piltz noted that his previous action was offered to save time for the applicant.

Chair Judge questioned if staff had the exact date of expiration.

Mr. Ching noted that the date is December 15, 2009.

Mr. Horneman indicated that he had no comments.

Mr. Yee noted that the state had no position on this matter.

On the motion for an amendment to the time limitation to be consistent with the time period of the county as December 15, 2009.

The Commission was polled as follows:

Ayes: Commissioners Wong, Piltz, Montgomery, Kanuha, Im, Formby, and Judge.

The motion passed with 7 yes, 2 absent.

A recess break was taken at 9:15 a.m. The meeting reconvened at 9:25 a.m.

#### SP92-380 HAWAIIAN CEMENT (Maui)

Chair Judge stated that this was an action meeting to consider the expansion of an existing rock quarry and concrete aggregate operation on approximately 66.444 acres of land within the state Land Use Agricultural District at Pulehunui, Wailuku, Maui, Hawaii.

#### APPEARANCES

William Horneman, Hawaiian Cement

Jeff Hunt, county of Maui Department of Planning

Bryan Yee, Esq., represented state Office of Planning

Abe Mitsuda, state Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Hunt began his presentation and noted a few clarifications on the LUC's staff report.

Commissioner Wong raised a few questions regarding restricted or appropriate hours of operation.

Mr. Hunt noted that the county has not restricted the hours of operation since there are no residences adjacent to the quarry and added that there is a speedway in the area. Mr. Hunt commented that the county would not oppose to any reasonable hours of operation.

Commissioner Im posed questions and concerns regarding the county's reasons why there is no commencement date with an expiration date of 2017.

Mr. Hunt explained that the county routinely puts a condition of approval on new permits to help administer the permits. However, in this case, the operation is ongoing. Mr. Hunt also believed that the LUC could impose a commencement date on the application.

Chair Judge raised questions and concerns regarding the termination date of July 2018, the CDU permit approved by the Planning Commission, and wondered if there were any other pertinent conditions that the LUC should be aware of.

Mr. Hunt noted that his analysis indicated no conflict with the county and the state's conditions.

Mr. Horneman commented that the first 60-acre permit area is running out and will need to continue on the additional 60-acre site, as he provides aggregate and concrete for the entire island of Maui.

Commissioner Im posed questions related to the construction start date on the new acreage and commencement dates.

Mr. Horneman stated that he would start work on the new area as soon as the LUC would approve the application. Mr. Horneman added that they use anywhere between 5 to 7 acres per year and have been mining the area since 1990.

Vice Chair Formby raised questions regarding the existing use of the area and the time period for the permit's approval and processing. Vice Chair Formby also had questions and concerns related to the existing restoration plan.

Mr. Horneman noted that they have a schedule to turn the mined areas back to the HC & S and have done so in the past. Mr. Horneman added that the obligation to restore the lands are upon Hawaiian Cement.

Mr. Horneman also briefly discussed the solid waste management plan and the intended hours of operation.

Chair Judge posed a few questions regarding the county's presentation which indicated that a grading permit was not needed, the recommendation for approvals from the DOT, DOH, and an archaeological survey.

Mr. Horneman stated that he had no problems with the county's recommendations and is willing to conduct a survey, if needed.

Mr. Yee stated that the DOT had expressed their concerns at the county levels and that the state had no opposition to this matter.

Commissioner Piltz asked if petitioner was a party to mitigate the traffic signal installed at Mokulele Highway.

Mr. Horneman replied in the affirmative.

Commissioner Piltz commented that the applicant has made a contribution and that the traffic light is in operation at this time.

Mr. Yee clarified that the DOT's concern is not for traffic, but that the aggregate is spilled on the road.

Chair Judge asked if the product from this quarry is different from the Puunene quarry.

Mr. Horneman explained that the quarry product is different. Mr. Horneman discussed the type of rock from A grade to B and F grades which service different areas on the island.

A recess break was taken at 10:00 a.m. The meeting reconvened at 10:15 a.m.

Vice Chair Formby had a few questions regarding the drainage report and the solid waste management plan.

Mr. Horneman stated that these matters were included in his annual report filed with the county on August 10, 2006 and will also address it in future reports. Mr. Horneman added that the solid waste management plan will be amended or supplemented to include the additional 60-acre extension.

After a brief discussion, Commissioner Piltz moved to approve the expansion of an existing rock quarry and concrete aggregate operation on approximately 66.444 acres of land and to include all the conditions provided by the county and the LUC amendments as discussed. The motion was seconded by Vice Chair Formby.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Formby, Im, Kanuha, Montgomery, Wong, and Judge.

The motion passed with 7 yes, 2 absent.

A recess break was taken at 10:25 a.m. The meeting reconvened at 10:45 a.m.

A87-617 BRIDGE AINA LE`A, LLC and BANTER, INC. (Hawaii)

Chair Judge stated that this was an action meeting to hear a status report from the petitioner.

APPEARANCES

Barney Bays, Esq., represented Petitioner

Mike Carroll, Bridge Aina Le`a, LLC

Bobbie-Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Bays began his presentation and noted that they had distributed an Index of Documents containing 11 exhibits. Mr. Bays then briefly summarized the outline of progress as submitted:

1. Agreement between the Water Board and Bridge Aina Le`a, LLC;
2. Grant of Easement between Mauna Kea Development Corp. and Bridge Aina Le`a, LLC;

3. Proposal from Hawaii Electric Co. for development of off-site electrical infrastructure;
4. Contract with Hawaii Electric Co.;
5. Contract for Architectural Conceptual Master Planning Services for golf course;
6. Contract documents for development of non-potable wells 2 and 3;
7. Contract documents for development of potable wells at Ouli wells 2, 3, and 4;
8. Contract with Tom Nance for consulting services;
9. Preliminary agreement with SSFM for engineering services;
10. Department of Public Works Grubbing Permit No. 91604.

Ms. Leithead-Todd stated that the county had no comments.

Mr. Yee stated that this case is an example of why the OP is recommending that automatic reversion requirements be placed in the LUC's decision and orders. Mr. Yee discussed the state's concerns of the mass grading contract and joint venture agreement, development financing, and Westwood as a joint venture partner.

A lunch recess was taken at 11:30 a.m. The meeting reconvened at 12:40 p.m.

### EXECUTIVE SESSION

Commissioner Wong moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Kanuha seconded the motion. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 12:40 p.m.

The open meeting reconvened at 12:55 p.m.

Mr. Bays continued his discussion and stated that they have two copies of the final SSFM engineering contract and have a letter that was executed by them yesterday. Mr. Bays continued to discuss the status of financing for the project.

Vice Chair Montgomery questioned if the county had knowledge of when these affordable homes would become available.

Ms. Leithead-Todd stated that she is familiar with the lengthy process and that she believed it to be extremely optimistic for construction to take place after the previous LUC approval.

Vice Chair Formby asked if Mr. Bays could clarify the relationship between Bridge Aina Le`a, LLC and Bridge Capital.

Mr. Bays stated that they share the same five individual owners but are not related from a corporate standpoint.

Vice Chair Formby commented that he had serious concerns regarding the time limitations on the affordable housing component and that the encouragement to reduce the affordable housing requirement was for the petitioner to deliver the homes to the community on time. Vice Chair Formby added that he would like more time to review the exhibits presented today and to possibly fashion more questions.

Commissioner Piltz posed a few questions related to the mass grading permit and the Goodfellows contract, and the list of about 19 to 20 potential joint venture partners.

Commissioner Kanuha commented that Mr. Bays indicated two components that constrained them from progressing: 1) the water agreement and 2) the Community Facilities District Resolution. Commissioner Kanuha noted that he did not see anything on the record regarding these constraints during the previous LUC meeting.

Mr. Bays stated that it was all a misconception with Westwood, the process, and what the county had required.

Commissioner Wong commented that the LUC is concerned that things are not moving along and questioned if the petitioner had any concrete documents to demonstrate that they are making progress.

Mr. Bays noted that in the next three months they will be progressing on design and development of well sites.

Commissioner Wong questioned how much of the money spent has actually been put in the ground.

Mr. Bays was unsure of this amount but that most of the money will be going to the design work and consultants. Mr. Bays added that within the next 90 days, they will be spending approximately 2 million dollars for groundwork.

After a discussion, Chair Judge noted that this matter will need to be continued at another LUC meeting.

A recess break was taken at 1:30 p.m. The meeting reconvened at 1:45 p.m.

Vice Chair Formby left the meeting at this time

#### A06-769 1250 OCEANSIDE PARTNERS (Hawaii)

Chair Judge stated that this was an action meeting to determine whether the preparation of a Supplemental Environmental Impact Statement is warranted pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 1,418.739 acres of land from the state Land Use Agricultural District to the state Land Use Rural District and approximately 16.016 acres of land from the state Land Use Agricultural District to the state Land Use Conservation District at Honauino 3 and 4, Hokukano 1 and 2, Kanaeue 1 and 2, Halekii, Keekee, Ilikahi, Kanakau, Kalukalu, and Onouli 1, North and South Kona, Hawaii for residential, golf course with related improvements, and park uses within the Hokulia development; and to determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, in the event a Supplemental Environmental Impact Statement is warranted.

#### APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner

Bobbie-Jean Leithead-Todd, Esq., represented county of Hawaii Planning Department

Norman Hayashi, county of Hawaii Planning Department

Bryan Yee, Esq., represented state Office of Planning

Abe Mitsuda, state Office of Planning

#### Public Witness

1. Koalani Kaulukukui

Ms. Kaulukukui stated that she was speaking on behalf of OHA. Ms. Kaulukukui summarized their written testimony and encouraged the LUC to require an SEIS and also believed that the LUC is the proper approving agency. Twenty-five copies of OHA's written testimony was received and distributed to the Commissioners and parties.

Mr. Tsukazaki posed questions regarding the FEIS accepted in 1993, the SEIS, and §11-200-26, HRS.

Ms. Leithead-Todd stated that the county had no questions for Ms. Kaulukukui.

Mr. Yee questioned if Ms. Kaulukukui believed that the changes in the petition posed an additional adverse environmental impact.

Ms. Kaulukukui stated that she believed it was possible.

#### EXECUTIVE SESSION

Commissioner Im moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Kanuha seconded the motion. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 2:15 p.m.

The open meeting reconvened at 2:55 p.m.

Chair Judge noted that there has been a change in the Commissioner's flight schedules and that they will lose quorum at 3:30 p.m.

Mr. Tsukazaki briefly summarized his memo and described the project background and the obligations of this body on this particular matter.

Ms. Leithead-Todd stated that the county has reviewed the documents filed and are familiar with the history of this project. Ms. Leithead-Todd added that the SEIS is not warranted in this matter and that the county agrees that the LUC is the appropriate authority to make the ultimate determination.

Mr. Yee noted that the state concurs with the county that the SEIS is not warranted in this case.

Commissioner Im referenced §11-200-27 and asked Mr. Tsukazaki what was his interpretation to the new circumstances as the laws have been changed.

Mr. Tsukazaki stated that there are no new mitigation measures that have been implemented on this property and that all the mitigation that has taken place are the measures disclosed in the 1993 EIS.

Commissioner Kanuha referenced page 4 of the OHA testimony and posed questions regarding the specific findings related to pristine waters, etc. in relationship to a runoff situation.

Mr. Tsukazaki noted that the original EIS identified potential storm water runoff as an impact and that the mitigation design will require all local runoff to be kept on site. Mr. Tsukazaki added that the additional or improved methods of handling these impacts would be admitted into the record in lieu of doing the supplemental EIS.

After a brief discussion, Commissioner Kanuha moved that the LUC find that the project described has not changed substantially in size, scope, location, or timing from the FEIS accepted by Hawaii County and that based on the record, which includes the concurrence of the County's Planning Department, there is no change in the proposed project in the individual or cumulative impacts not disclosed in the 1993 EIS. Based on the findings and the representations made today, additional information regarding how the impacts to the project have been handled will be entered into the record. The LUC determined that the SEIS is not required. The motion was seconded by Commissioner Piltz.

Commissioner Im commented that although he did not necessarily disagree with the motion, he believed that it was too early to take a vote on this matter today. Commissioner Im added that the LUC has some legal issues that their counsel needs to review and would like the opportunity to further review OHA's letter of concerns.

Commissioner Kanuha stated that he acknowledges Commissioner Im's concerns and withdrew his motion.

Commissioner Piltz concurred with Commissioner Kanuha and withdrew his second.

Chair Judge noted that the LUC will continue this matter upon a response from their counsel.

Mr. Tsukazaki questioned if the continued meeting would need to be in Hawaii.

Chair Judge noted that this matter could be heard on any island.

Commissioner Im commented that this is such an important issue and that the project has been ongoing for a long time. Commissioner Im asked if their council could expedite research on the legal issues in question and to accommodate the petitioner as soon as possible. Commissioner Im also suggested that their counsel research for any case law or guidance to support her position.

Chair Judge noted that the LUC will continue this matter on the January 4 and 5 meetings on Oahu.

The meeting adjourned at 3:30 p.m.

*(Please refer to LUC Transcript of December 8, 2006 for more details on this matter.)*