

LAND USE COMMISSION  
MINUTES OF MEETING

February 21, 2008

Leiopapa A Kamehameha  
2nd Floor  
Conference Room 204  
235 So. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: Kyle Chock  
Thomas Contrades  
Vladimir Devens  
Lisa Judge  
Duane Kanuha  
Normand Lezy  
Nicholas Teves  
Reuben Wong

COMMISSIONERS ABSENT: Ransom Piltz

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Rodney A. Maile, Interim Executive Officer  
Bert Saruwatari, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Victor Bautista, Audio Technician

Chair Judge called the meeting to order at 10:45 a.m.

## ADOPTION OF MINUTES

Commissioner Contrades moved to adopt the minutes of February 7 and 8, 2008. Commissioner Lezy seconded the motion. The minutes were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Chair Judge noted that the schedule had been circulated and reminded the Commissioners to let Sandy know of any conflicts that they may have.

## A07-773 EMMANUEL LUTHERAN CHURCH OF MAUI (Maui)

Chair Judge stated that this was a meeting on Docket No. A07-773 Emmanuel Lutheran Church of Maui to adopt the form of the order.

On February 7, 2008 the Commission voted to grant the district boundary amendment requested by the petitioner, and to adopt the stipulated proposed Findings of Fact, Conclusions of Law, and Decision and Order, filed by petitioner on November 9, 2007, as amended, during deliberations on February 7, 2008.

On February 20, 2008, the Commission received notice from Blaine Kobayashi, Esq., representative for the petitioner, indicating that he would not attend today's proceeding.

On February 21, 2008, the Commission received email correspondence from Jane Lovell, Deputy Corporation Counsel, indicating that the County of Maui would not be sending a representative for the Emmanuel Lutheran matter today.

Chair Judge stated that the Commission had reviewed the form of the order incorporating the amendments adopted on February 7, 2008 and the technical non-substantive amendments.

Commissioner Contrades then moved to adopt the form of the order. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Contrades, Teves, Chock, Devens, Judge, Kanuha, Lezy, and Wong.

The motion passed with 8 yes, 1 absent.

Chair Judge noted to the public that the special permit application matter would be taken up after the lunch break.

A83-562 KO`OLINA DEVELOPMENT LLC, KO`OLINA COMMERCIAL LLC, KO`OLINA BEACH LAGOON ESTATES LLC, KO`OLINA GOLF CONDOMINIUMS LLC, KO`OLINA GOLF ESTATES LLC, KO`OLINA OCEAN MARINA LLC, KO`OLINA OCEAN MARINA ESTATES LLC, AND KO`OLINA TOWNHOMES LLC (Oahu)

Chair Judge stated that this was a meeting on Docket No. A83-562 Ko`olina Development, LLC, et al for a status report and action, if appropriate.

Commissioner Wong recused himself from this matter and noted that his firm is involved with Ko`olina Development. Commissioner Wong then left the meeting at this time.

#### APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner  
Wyeth Matsubara, Esq., represented Petitioner  
Bryan Yee, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning

#### Public Witness

1. James Manaku, Sr.

Mr. Manaku noted his concerns regarding the public's beach access, problems with public parking at Ko`olina, the closed boat ramp, and an access road that was part of the agreement for the development. Mr. Manaku requested that the LUC help the people to access the water and fishing there.

There were no questions posed for Mr. Manaku.

2. Creighton Chang

Mr. Chang stated that it has been about a year since the last update and since then, it was his intent to work with Mr. Nelson of Ko`olina. Mr. Chang added that it has been 3 years since the closure of the boat ramp and to date, the applicant has not made any visual improvements for public access to the boat facility. Mr. Chang noted that the applicant knew of this condition and built the ramp to comply with it, then took it away. Mr. Chang asked that the LUC do what is right and re-open the ramp to the public.

Mr. Mitsuda questioned where Mr. Chang usually launches his boat.

Mr. Chang stated that he launches his boat from the Waianae boat harbor because the ramp at Phoenicians is too dangerous. Mr. Chang commented that he fishes with his wife and dog and to avoid any injuries, he would not launch his boat at the Phoenicians. Mr. Chang added that the ramp at Phoenicians is a dry dock ramp, unsafe for recreational boaters, and is not equal to the former ramp at Ko`olina.

Commissioner Lezy posed questions regarding the number of members in the fishing coalition, and the status of meetings with Ko`olina.

Mr. Chang stated that their group is called the Coalition for Public Access with Carroll Cox of Envirowatch. A meeting at Mililani High School totaled approximately 150 fishermen, although their core group has about 15-30 members. There may not be another organized group; however, there are many other individuals who are interested in this matter. Mr. Chang noted that he was speaking for himself as a fisherman today. Mr. Chang added that previous correspondence with Mr. Nelson was not satisfactory and that the Phoenicians ramp would not be safe and acceptable even with the proposed improvements.

Mr. Matsubara noted that a meeting was held with Mr. Morioka and Mr. Stone of Ko`olina to discuss improvements to the Phoenicians ramp. Mr. Morioka then sent an email to all the interested parties.

Mr. Chang stated that Mr. Morioka had no right to speak for the fishermen and that although he and Mr. Morioka are mutual friends, Mr. Chang believed that the only alternative is to re-open Ko`olina or to create a new one in the harbor marina.

There were no further questions for Mr. Chang.

3. Sean Omatsu

Mr. Omatsu stated that he was a fisherman and expressed his disappointment on the Phoenicians ramp as a substitute for the Ko`olina boat ramp. Mr. Omatsu asked that the LUC request for a new one to be built in the marina or re-open the former one at Ko`olina.

Mr. Mitsuda questioned where Mr. Omatsu normally launches his boat.

Mr. Omatsu stated that they launch at Waianae or Sand Island.

Commissioner Lezy asked whether anything could be done to the Phoenicians ramp to make it satisfactory for use.

Mr. Omatsu replied that he did not think of anything that could be done to Phoenicians to make it safe.

4. Warren Von Ards wandt

Mr. Von Ards wandt stated that he is 73 years old, a retired police officer, fisherman, and a board member of the Waialua Boat Club. Mr. Von Ards wandt stated that half of their members live on the Leeward side of the island and have used the Ko`olina boat ramp for years. Mr. Von Ards wandt currently uses the Phoenicians ramp about three times a year since it is too dangerous to launch there. Mr. Von Ards wandt noted his concerns about safety issues at the Phoenicians ramp, the money spent to modify his trailer in order to launch at the Phoenicians, problems with trailer parking, problems waiting to launch, the combination of land/pole fishermen in the harbor versus the boaters/fishermen, and security problems.

Mr. Matsubara noted that there is a dry dock haul-out schedule posted at Phoenicians and a phone number to call ahead.

Commissioner Lezy asked if Mr. Von Ards wandt knew of any improvements to the Phoenixians ramp that would make the ramp feasible for boaters.

Mr. Von Ards wandt stated that he would not know of anything that they could do to improve the ramp and make it feasible. Mr. Von Ards wandt added that lowering the sides of the pier at Phoenixians as proposed would make it difficult to haul out the large boats for dry dock. In addition, he believed that they could not alter the pier since it is in a State harbor.

There were no further questions for Mr. Von Ards wandt.

Chair Judge noted that there were no other public witnesses.

Mr. Matsubara began his presentation and discussed the entitlement process at the state and county levels. Mr. Matsubara noted that after meeting with the Mayor and other representatives of the community, it was urged that a facility with 24-hour access was proposed and an alternate launch at Kalaeloa (Phoenixians) was pursued. The applicant filed their applications for building permits using that alternative location. The concerns raised during the entitlement process reflected the concerns that existed at that time. Additional concerns came up after the funds were spent for improvements at Kalaeloa.

Mr. Matsubara described the proposed improvements to make the ramp more user-friendly. Mr. Matsubara added that the applicant has hired a consultant from California to recommend improvements to make the ramp operational and safe. However, during his investigation, the consultant learned that it would be difficult to control the harbor surges.

Mr. Mitsuda questioned if the applicant had previous discussions with the state's DOT Harbors, and whether the applicant believed that the ramp, with the proposed improvements, would be equal to the Ko`olina ramp.

Mr. Matsubara noted that they had discussions only with Marisco and the Corps of Engineers and that they believed that the proposed improvements would make the ramp at Phoenixians operationally safe.

Mr. Mitsuda posed questions related to the hired consultant, the surges that could not be mitigated, and the recommended improvements.

A recess break was taken at 11:50 a.m. The meeting reconvened at 12:05 p.m.

Mr. Mitsuda continued to raise questions regarding the fees at Phoenicians and Ko`olina, and whether there was some resolution to put the ramp back at Ko`olina. Mr. Mitsuda added that the state would like Ko`olina to work with the DOT as they improve the ramp.

Commissioner Contrades raised questions regarding the State DOT's approval, the City's entitlement process, and condition number 13 related to the petitioner's substantial compliance with the representations made. Commissioner Contrades added that his concern was that the condition clearly states that the petitioner should be in substantial compliance and that the LUC makes that determination. However, the petitioner relocated the ramp adjacent to the deep draft harbor without the approval of the LUC. The public sits outside with no one to protect his or her rights. Commissioner Contrades noted that as a Commissioner, he made a promise to make sure that the public's rights are being protected. Commissioner Contrades added that as he stated in the last meeting, he did not believe that anything could be done to make this safe enough and it is something that he could not agree to.

Commissioner Lezy questioned whether a compromised decision could be reached between the petitioner, the Coalition for Public Access group, and the individual fishermen. Commissioner Lezy also wondered if the improvements were the same as the proposed improvements of the prior update.

Mr. Matsubara stated that it has been difficult to find which voice to listen to. Since the last status update, these improvements were proposed and the petitioner had been reluctant to undertake any of the improvements. Mr. Matsubara added that it would take approximately one and a half to two years to complete. In addition, the cost has increased significantly to four hundred thousand dollars.

Commissioner Teves referenced exhibit 17 the DOT letter and raised questions regarding the City's entitlement process and the 24-hour access. Commissioner Teves added that Kalaeloa harbor is a deep draft harbor and he had concerns regarding the safety for the small boaters. Commissioner Teves also noted that he understood that the DOT would be expanding the harbor for commercial uses and he had concerns of mixing the smaller boats with the larger ships, tugs, barges, and freighters in the harbor.

#### Petitioners Witness

1. Mike Nelson

Mr. Nelson stated that he is the Vice-President of Ko`olina and have been working with members of the boating community for the past couple of years. Mr. Nelson discussed the deep draft harbor, the harbor master's watch, and the schedule of the commercial uses.

Commissioner Teves had a few questions and concerns regarding the increase of commercial uses by the larger ships in the deep draft harbor, and the limited use for the small fishermen. Commissioner Teves also questioned the use and access of the Ko`olina ramp and the type of surge there, if any.

Commissioner Devens posed questions regarding the timeline for the improvements and whether there was a short term solution so that the public could enjoy the area now.

Vice Chair Kanuha raised questions related to the 24 hour access and whether that was the main issue regarding the closure of the Ko`olina ramp.

Mr. Matsubara replied in the affirmative.

Vice Chair Kanuha questioned if the Kalaeloa ramp could presently be used without any of the improvements and whether the petitioner would consider re-opening the marina ramp and keeping Kalaeloa open 24/7 when the marina is closed.

Mr. Matsubara replied that the 24 hour access was not the sole issue. The marina was not in a safe location as it is at the end of the public parking area for the beach and park users, and Ko`olina tried to avoid any incidences of pedestrians crossing the trailer paths.

Vice Chair Kanuha commented that it would appear to be easier to resolve these conflicts rather than trying to resolve it by putting more resources in a facility that would not accomplish anything for the users.

Chair Judge noted that she now understood that it was not the 24-hour access but more of a zoning standpoint and wondered if Mr. Matsubara could explain further.

Mr. Matsubara discussed the limited hours of operation due to noise in the residential resort. Mr. Matsubara added that there were no legal requirement to remain open for 24 hours and no zoning requirement to prevent it from remaining open for 24

hours if the developer desired to. The major voices of the community at that time wanted the 24 hour access and seemed willing to accept Kalaeloa.

Commissioner Contrades commented that back in 1985, the petitioner represented that the ramp would be built and it was fine, until they closed the ramp and shifted them to another place that is unsafe, with problems in parking, water and security. Commissioner Contrades noted that as a Commissioner, he had concerns that the petitioner just does not want these boaters in the area. Commissioner Contrades added that this matter would have been easily taken care of by the petitioner if they provided 24-hour access and security instead of moving the ramp off of the property.

### EXECUTIVE SESSION

Commissioner Chock moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Teves.

The Commission entered into executive session at 12:50 p.m.

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

Commissioner Lezy questioned the number of permitted users for the Ko'olina ramp.

Mr. Matsubara noted that there were several hundred, approximately two to three hundred users.

A recess break was taken at 1:00 p.m. The meeting reconvened at 1:05 p.m.

Commissioner Contrades moved to place on the next appropriate agenda the consideration of issuing an order to show cause in this docket because there appears to be an issue of noncompliance with the conditions. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Contrades, Teves, Chock, Devens, Judge, Kanuha, and Lezy.

The motion passed with 7 yes, 2 absent.

Mr. Matsubara noted that he understood that the LUC was contemplating the issuance of an order to show cause. Mr. Matsubara added that he was willing to file a petition for decretory relief, which would provide the issues and support in regards to whether or not the action undertaken at Kalaeloa was permissible. Mr. Matsubara added that they would take the initiative and file something soon.

Chair Judge stated that the LUC would still schedule a meeting, unless they receive such filing.

A lunch recess was taken at 1:05 p.m. The meeting reconvened at 1:40 p.m.

SP87-362 DEPT. OF ENVIRONMENTAL SERVICES, CITY & COUNTY OF HONOLULU – WAIMANALO GULCH (Oahu)

Chair Judge stated that this was a meeting to consider the Amendment to Special Use Permit File No. 86/SUP-5 to Extend Deadline Requiring Cessation of Waste Acceptance at Waimanalo Gulch Sanitary Landfill (WGSL) Tax Map Key 9-2-3: Por. 72 and Por. 73, Honouliuli, Ewa, Oahu.

Commissioner Contrades disclosed that his daughter is a recent employee of the City and County's Corporation Counsel and that he had not discussed this matter with his daughter and would be able to participate with no prejudice.

Ms. Hanabusa stated that she had no objections to the participation of Commissioner Contrades.

Mr. Takeuchi stated that the City had no objections to the participation of Commissioner Contrades and noted that Ms. Contrades had recently joined their office and had been completely "walled off" in this matter.

Chair Judge noted that because of the new filings received after the agenda had been posted, the LUC could not discuss these matters today and would need to have them on the agenda for the next scheduled meeting on March 6 and 7 in Honolulu. Chair Judge then noted that the LUC would only be receiving public testimony for today.

Ms. Hanabusa stated that one of the filings requested that she be a party in this matter today with the ability to ask questions to the witnesses and to effectively participate in this process.

### EXECUTIVE SESSION

Commissioner Lezy moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Contrades.

The Commission entered into executive session at 1:45 p.m.

The open meeting reconvened at 2:40 p.m.

Chair Judge stated that although the LUC had not decided whether Ms. Hanabusa was a party to this proceeding today, they would allow her to question the witnesses. Chair Judge added that the LUC had not decided the jurisdictional issues. The LUC is restricted to the record that was made before the City and County of Honolulu's Planning Commission.

### Public Witnesses

1. Lincoln Naiwi

Mr. Naiwi stated that he was the President of the Iron Workers Local 625 and in support of the special permit. Mr. Naiwi added that the only other landfill on Oahu is the PVT in Nanakuli, located next to an existing residential community.

Ms. Hanabusa commented that in all fairness, those coming forward and testifying about PVT should be made aware that the LUC would not consider testimony regarding PVT.

Chair Judge noted that under the Sunshine Law, the LUC is required to allow public witnesses to comment on an agenda item. However, the LUC cannot take the testimony into consideration and are bound by the record that has been submitted. Should the LUC ultimately take action on this matter, they are restricted to the record.

2. Beverly Munson

Ms. Munson stated her opposition to the extension and noted her concerns of public safety and health issues.

Mr. Takeuchi noted an objection to issues outside of the application before the Planning Commission.

After a brief discussion, there were no questions for Ms. Munson.

3. Lee Munson

Mr. Munson noted his objection to the extension because of the previous commitment by the City. The waste management company did not abide by the rules and have extraordinary fines by the DOH.

There were no questions for Mr. Munson.

4. Mel Kahele

Mr. Kahele stated that his primary concern was the disposal of the MSW (municipal solid waste) should the Waimanalo Gulch landfill close. He opposed the MSW going to the Nanakuli PVT. Mr. Kahele asked that the LUC approve the 2-year extension and have the City resolve where they will put the MSW in the future.

After a brief discussion, there were no questions.

5. Ron Amemiya

Mr. Amemiya stated that Mr. George Paris, Managing Director of the Iron Workers Stabilization Fund, had submitted a letter to the LUC on February 20, 2008 and requested that Mr. Amemiya read the letter that was in support of the 2-year extension.

Mr. Takeuchi noted that the City had no questions.

Ms. Hanabusa noted her objection that the Beck report, as referenced in the letter, since it was not a part of the record for the 2-year extension.

6. James Manaku, Sr.

Mr. Manaku stated that he was one who supported Waimanalo Gulch when it first came to the community because it was situated outside of his neighborhood. He noted his continued support in keeping the landfill there and supported the request for an extension. As a parent and grandparent, Mr. Manaku voiced his concern of health and safety for the children in his neighborhood.

There were no questions for Mr. Manaku.

Commissioner Devens left the meeting at this time.

7. Cynthia Rezentes

Ms. Rezentes noted her objections for the 2-year extension and commented on her concerns regarding the potential impacts of moving leachate from the MSW portion of the landfill to the ash portion, height limitations, and whether there was enough capacity for the next 2 years.

Mr. Takeuchi stated that the DOH has issued a grade modification approval and the permit has been issued.

Ms. Hanabusa had no questions for Ms. Rezentes.

8. Ken Williams

Ms. Hanabusa stated that Mr. Williams represents the other party in this matter and requested to defer his public testimony till the next meeting.

Mr. Takeuchi noted that Mr. Williams was a party to the Planning Commission proceeding and has had the opportunity to testify at the contested case hearing, adding that his testimony was already in the record before the LUC. Mr. Takeuchi wondered if

Mr. Williams would have the opportunity to participate as a member of the public and as a member of the party to the proceedings.

Chair Judge noted that Mr. Williams may have been a party at the lower level, however, he is not yet a party at this level. Any member of the public can provide testimony on an agenda item. However, it would be up to the LUC to hear the evidence and to take that matter into consideration or not.

9. Duke Hospodar

Mr. Hospodar stated that he is the operations director for Ko`olina and responsible for the custodian records of the landfill. Mr. Hospodar noted his concerns of the flying trash and strong noxious odors from the landfill.

There were no questions for Mr. Hospodar.

10. Kimo Kelii

Mr. Kelii stated that he was an educator, community leader on several boards, and a 4<sup>th</sup> generation resident in Nanakuli. Mr. Kelii noted his support for the 2-year extension.

Mr. Takeuchi had no questions for Mr. Kelii.

Ms. Hanabusa noted her objection to Mr. Kelii's reference of PVT.

Commissioner Devens returned to the meeting at this time.

11. Patty Teruya

Ms. Teruya stated that she was the former Chair of the Waianae Neighborhood Board but was testifying on behalf of herself. Ms. Teruya noted her support for the landfill extension.

Ms. Hanabusa posed questions regarding Ms. Teruya's past and present employment, and the number of years she participated on the neighborhood board.

A recess break was taken at 3:35 p.m. The meeting reconvened at 3:45 p.m.

12. Mary Lou Kobayashi

Ms. Kobayashi briefly summarized the OP's written testimony and stated that if the LUC concurs with the Planning Commission's decision, then the OP recommends that the Applicant or its operator make a financial contribution into a community benefits fund for the Leeward Coast.

Mr. Takeuchi asked if the OP was aware that the City had established a community benefits program for the Leeward Coast.

Ms. Kobayashi noted that they were generally aware of a community benefits program, but not specifically aware that it was from the landfill site.

Ms. Hanabusa raised questions regarding Chapter 205-6 and § 15-15-95 and 96 related to jurisdiction. Ms. Hanabusa also questioned the OP's recommendations and the rationale for the specific amounts.

13. Todd Apo

Mr. Apo stated that he was not testifying in the capacity of a councilmember nor representing Ko`olina in this matter. Mr. Apo noted his objections to the extension of the landfill.

Mr. Takeuchi posed a few questions related to the selection committee's search for a landfill and the City's request for expansion.

Ms. Hanabusa raised questions regarding the Blue Ribbon committee and discussion of alternative technologies.

After a brief discussion, there were no further questions.

Chair Judge noted that there were no other public witnesses.

Chair Judge stated that this matter would be deferred to the next appropriate meeting. Chair Judge added that the LUC has a deadline to take action on this matter.

Any supplemental pleadings need to be filed at the LUC by close of business on February 26, 2008.

Chair Judge noted that the LUC would be deferring the Administrative Rules and the Legislative Update. There will be no meeting tomorrow.

#### EXECUTIVE SESSION

Commissioner Chock moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Contrades.

The Commission entered into executive session at 4:45 p.m.

The open meeting reconvened at 5:00 p.m.

The meeting adjourned at 5:00 p.m.

*(Please refer to LUC Transcript of February 21, 2008 for more details on this matter.)*