

LAND USE COMMISSION  
MEETING MINUTES

Maunaloa/Ilima Room  
Wailea Marriott, An Outrigger Resort  
3700 Wailea Alanui  
Wailea, Maui, Hawaii 96753-8332

June 5, 2003

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Pravin Desai  
Isaac Fiesta  
Lawrence Ing  
Steven Montgomery  
Stanley Roehrig  
Randall Sakumoto  
Peter Yukimura

STAFF PRESENT: Diane Erickson, Esq., Deputy Attorney General  
Anthony Ching, Executive Officer  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 9:34 a.m.

ADOPTION OF MINUTES

Commissioner Fiesta moved to approve the minutes of Land Use Commission meeting of April 10, 2003. Vice Chair Roehrig seconded the motion, and said motion was unanimously approved by voice votes.

Commissioner Fiesta moved to approve the minutes of the Land Use Commission meeting of May 22 & 23, 2003. Vice Chair Roehrig seconded the motion, and said motion was unanimously approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Anthony Ching, Executive Officer of the Land Use Commission, reported on the following:

- Next meeting is scheduled for June 26-27, 2003 in Hilo.
- Mr. Steven Lim, attorney for Docket No. A02-73 U of N Bencorp, will submit its draft Findings of Fact, Conclusions of Law, and Decision & Order to the Commission for its review by June 16, 2003.
- On June 26, 2003, a dinner will be held at the Nihon Restaurant in Hilo.
- The Commission expects the filing of Maui dockets in a couple of weeks regarding Kahului Airport and Kapalua Mauka.
- Docket No. A03-738 Gentry Investment Properties will be heard on July 10-11, 2003

Vice Chair Catalani made a motion to add to the agenda, the adoption of the Decision and Order Approving Amendment to Special Use Permit, Docket No. SP87-362 Department of Environmental Services, City and County of Honolulu (fka Department of Public Works, City and County of Honolulu). The motion was seconded by Commissioner Coppa. The motion to amend the agenda was unanimously approved by voice votes.

Commissioner Fiesta moved to adopt the Decision and Order Approving Amendment to Special Use Permit, Docket No. SP87-362 Department of Environmental Services, City and County of Honolulu (fka Department of Public Works, City and County of Honolulu). Vice Chair Roehrig seconded the motion, and the Commission were polled as follows:

Ayes: Commissioners Fiesta, Roehrig, Catalani, Coppa, Desai, Montgomery, Sakumoto, and Ing

Nays: Commissioner Yukimura

There being 8 ayes and 1 nay, the motion passed.

A00-730 LANIHAU PROPERTIES, LLC (HAWAII)

Chair Ing announced that this was an action meeting to consider Kaloko-Honokohau National Park's Application to Intervene in the proceeding for district boundary amendment to reclassify approximately 336.984 acres of land currently in the Conservation District into the Urban District at Honokohau, North Kona, Hawaii for the development of a mix of light industrial and industrial-commercial uses for the Kaloko-Honokohau Business Park.

APPEARANCES

John Chang, Esq., representing Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Stanley Bond, Resource Manager, Kaloko-Honokohau National Historical Park

Mr. Bond indicated that the Park is directly mauka of the development, and that there are potential impacts directed to the Park. Mr. Bond also indicated that they have intervened in the past on a similar docket and is looking for the same standing as granted by the Commission in the past.

Mr. Bond stated that the Park has had lengthy and friendly negotiations with the Petitioner, and both have reached an agreement in terms of conditions and are working toward reaching a stipulated agreement on the Findings of Fact, Conclusions of Law, and Decision and Order.

Mr. Chang, represented the Office of Planning, indicated that the State had no objection to the intervention. He also stated that he received a stipulation signed by the parties indicating they have no objection to the intervention, and that the County and the Petitioner has already signed the document and will be filing the document with the Commission.

Chair Ing noted for the record that there was the absence of other parties, but the parties have signed a stipulation indicating they have no objection to the intervention. Therefore, this was the reason the other parties was not present to the proceedings.

Vice Chair Roehrig moved to approve Kaloko-Honokohau National Park's Application to Intervene. The motion was seconded by Commissioner Coppa, and the Commission were polled as follows:

Ayes: Commissioners Roehrig, Coppa, Catalani, Desai, Fiesta, Montgomery, Yukimura, Sakumoto, and Ing

There being 9 ayes, the motion passed unanimously.

DR02-26 KULEANA KU'IKAHU, LLC (MAUI)

Chair Ing announced that this was a continued hearing of the Land Use Commission Docket No. DR02-26 Kuleana Ku'ikahi, LLC (Maui) to consider a Petition for a Declaratory Order declaring that the subdivision and development of land for homesites in the State Land Use Agricultural District at Lahaina, Maui, Hawaii requires a district boundary amendment.

APPEARANCES

John Chang, Esq., representing Land Use Division, Office of Planning  
Abe Mitsuda, Land Use Division, Office of Planning

Chair Ing indicated that the Petitioner has submitted its withdrawal of the Petition for Declaratory Order, and that the parties have stipulated.

Mr. Ching reported that after the last meeting of the Commission on April 9-10, 2003, the three interveners (Makila Land Company, LLC, Kauaula Land Company, LLC, and Launiupoko Associates, LLC) and the Petitioner (Kuleana Ku'ikahi, LLC) held discussions on the issues which led to the selection of two mediators, (Dana Hall and Allen Hoe, Esq.) to facilitate their discussions, which were casted as a mediation and as being confidential. Mr. Ching indicated that he was invited to three mediation meetings and was asked to excuse himself at some points during their proceedings. Their conversation sought to address the issues that were discussed at the prior LUC meeting including access by Kuleana families to the Petition Area, surface water allocations, a dispute resolution process for issues regarding cultural, historical and archaeological resources, and also other items such as to the conformance of the prospective subdivisions to the State Land Use Law. The parties asked that Mr. Ching respect the confidentiality of their agreement, so Mr. Ching was not a party to the drafting of an agreement and was not aware of any final language with respect to any agreement.

It was inquired by Chair Ing as to who participated in these meetings. Mr. Ching stated that the participants of the interveners consolidated their position

into one representative – Richard Kiefer, Esq., Launiupoko Associates. Also participating were Richard McCarty, Esq. (Petitioner), County of Maui-Jane Lovell, Peter Martin and James Riley representing the developer, a representative of Goodfellow Bros., the Dizon/Aquino and Kapu families, and other representatives of Kuleana Ku'ikahi LLC.

Vice Chair Roehrig indicated that the negotiators consider PASH rights and resource issues in Kauaula Valley in their negotiations, and that they take a look at the decision of the Kapaakai Case to get ideas on how to carry on in the future. He also suggested that they bring before the Commission a stipulated decision specifying the resolution for the Commission to approve, which would consider the public interest issues in the community.

Mr. Ching indicated that the parties did not provide its agreement but believed that they would be respectful to any request the Commission would have.

Vice Chair Roehrig shared his concern that it was uncertain that the determination of the PASH rights via a private agreement were binding on the community.

Mr. Chang indicated that the State's position remained the same and will not participate in any discussion on this docket.

Mr. Ching provided possible options that the Commission might consider. These options included: That the Commission declare the proceeding closed; or that the Commission issue an order dismissing the Petition; or completing deliberations and issue an appropriate order; and request a copy of the final agreement reached amongst the parties.

Chair Ing asked Ms. Erickson, Commission's Counsel, if the Commission can render a decision that dismisses the Petition based upon the Petitioner's letter request and based upon the terms and conditions of the agreement. Ms. Erickson indicated that there is nothing in the rules that specifically addresses this kind of procedural issue.

After much discussion and deliberation, the Commission provided their comments and recommendations.

Vice Chair Roehrig moved to defer this item until the June 26-27, 2003 meeting in Hilo with the understanding that the counsels for the parties be informed that this matter is deferred for final action by the Commission, and that the parties provide the Commission with the settlement agreement prior to the meeting with the understanding that it is confidential except for those sections dealing with public interest which they should consider publishing. Commissioner Fiesta seconded the motion.

Vice Chair Roehrig amended his motion and moved that the Commission make a final decision or appropriate final disposition. Commissioner Fiesta seconded the motion.

Mr. Ching reiterated that the motion was to defer this matter until the June 26-27, 2003 meeting in Hilo and to request submittal of pertinent public interest portions of the agreement by the parties. The Commission were polled as follows:

Ayes: Commissioners Roehrig, Fiesta, Catalani, Coppa, Desai, Montgomery, Yukimura, Sakumoto, and Ing

The motion passed unanimously.

(Refer to the Commission's transcript for more details on this matter.)

The meeting was adjourned at 10:55 a.m.