

LAND USE COMMISSION  
MINUTES OF MEETING

Conference Room 405  
State Office Tower, Leiopapa A Kamehameha  
235 South Beretania Street  
Honolulu, Hawaii

August 7, 2003

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

COMMISSIONERS ABSENT: Rae McCorkle Sultan  
Pravin Desai

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Russell Suzuki, Deputy Attorney General  
Anthony J. H. Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Russell Kumabe, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 9:35 a.m.

MINUTES

Commissioner Fiesta moved to approve the minutes of the Land Use Commission meeting of July 10 & 11, 2003. Commissioner Yukimura seconded the motion, and said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching noted that the next Commission meeting would be scheduled for September 4-5, 2003 on Maui. The agenda would

include the election of officers and A&B Properties' petition for a district boundary amendment.

There will be an HCPO conference on Maui from October 8 & 9, 2003, and a Land Use Commission field trip on October 10, 2003, to visit the Kapalua Mauka project site at 10:30.

DR02-26 KULEANA KU'IKAHI, LLC (Maui)

Chair Ing announced that this was an action meeting for LUC Docket **No. DR02-26 Kuleana Ku'ikahi, LLC**, regarding the following:

- To consider the County of Maui's Notice of Exceptions to, and Request for Correction of, Land Use Commission's Order Regarding Withdrawal of Petition for a Declaratory Order.
- Position Statement of Kuleana Ku'ikahi, LLC, Regarding County of Maui's Notice of Exceptions to, and Request for Correction of, Land Use Commission's Order Regarding Withdrawal of Petition for a Declaratory Order.
- Position Statement of Makila Land Company, LLC, Kaua'ula Land Company LLC, and Launiupoko Associates LLC Regarding County of Maui's Notice of Exceptions to, and Request for Correction of, Land Use Commission's Order Regarding Withdrawal of Petition for a Declaratory Order.

APPEARANCES

Richard McCarty, Esq., represented Petitioner Kuleana Ku'ikahi, LLC  
Benjamin Kudo, Esq., represented Interveners Makila Land Company, LLC,  
Kauaula Land Company, LLC, and Launiupoko Associates, LLC  
Jane Lovell, Esq., represented the County of Maui Planning Department  
John Chang, Esq., represented Land Use Division, Office of Planning  
Abe Mitsuda, Land Use Division, Office of Planning

Commissioner Sakumoto moved to enter into executive session to discuss with the deputy attorney general the legal aspects of this docket. The motion was second by Commissioner Coppa, and said motion was approved by voice votes.

The Commission entered into executive session at 9:44 a.m.

The meeting reconvened at 10:30 a.m.

Commissioner Yukimura was not present to the proceedings at this time.

There were no public witnesses.

Chair Ing indicated that the Order issued by the Commission regarding the withdrawal of the petition included dicta and not findings of fact, and that those sections objected to embodied the opinion of the Commission.

Ms. Lovell indicated that the County was mindful of the delicate situation and did not wish to do anything that would impede or derail a settlement that the parties were diligently working on. Ms. Lovell further indicated that the appropriate thing to do at this time was to withdraw those sections of the Order which did appear to be dicta and not central to the actual decision of the Commission.

Mr. McCarty stated that the parties were engaged in mediation efforts and that the County was not closely involved in it. He referenced Mr. Foley's testimony in response to a request made by Commissioner Sakumoto as stated on page 144 of the prior hearing. He indicated that there was some support for the comments that were made in the record and the County statement that there was none was misplaced and misguided. There were no questions for Mr. McCarty.

Mr. Kudo stated that the Commission's Order was not clear as to whether it was findings of fact, or an opinion being expressed by the Commission relative to the proceedings heard up to that point. He asked the Commission to issue a minute order consistent with the statements made by Chair Ing that the statements in the Commission's Order were dicta and not findings of fact. There were no questions for Mr. Kudo.

Mr. Chang stated that the State had no position on this matter. There were no questions for Mr. Chang.

Commissioner Coppa clarified that the statements made in the Commission's Order were dicta and not findings of fact.

Deputy Attorney General Russell Suzuki suggested that the Commission make a motion to issue an order clarifying that the Commission's Order contained dicta and not findings of fact.

Commissioner Coppa moved to issue an order clarifying that the Commission's Order contained dicta and not findings of fact. Commissioner Fiesta seconded the motion.

Vice Chair Catalani commented that he agreed with both Mr. Kudo and Commissioner Coppa, but expressed concern that the minute order would suggest that the dicta were not that important and would minimize what was said in the Commission's Order. Vice Chair Catalani moved to amend Commissioner Coppa's motion to include in the minute order that dicta were provided and not findings of fact, and the dicta were intended to provide guidance and were supported by the record. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

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

The motion passed with 6 ayes and 3 absent.

On the main motion by Commissioner Coppa as amended, the Commission was polled as follows:

Ayes: Commissioners Coppa, Fiesta, Catalani, Sakumoto, Montgomery, and Ing.

The motion passed with 6 ayes and 3 absent.

Commissioner Sakumoto indicated that given the Commission's decision to clarify on the record via a minute order that the statements in the Commission's Order were dicta, he believed that legal grounds did not exist to file the notice of exceptions. He moved that the Commission deny the County's request. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Fiesta, Coppa, Catalani, Montgomery, and Ing.

The motion passed with 6 ayes and 3 absent.

Mr. Kudo pointed out that the hearing did not continue to allow the parties to present evidence that may have rebutted evidence submitted to that point, and as such, it was not a complete record.

Chair Ing indicated that a statement would be inserted in the minute order.

A break was taken at 10:30 a.m. The meeting reconvened at 10:47 a.m.

#### A00-730 LANIHAU PROPERTIES, LLC (Hawaii)

Chair Ing announced that this was an action meeting on Docket No. **A00-730 LANIHAU PROPERTIES, LLC**, to consider the Petition 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

R. Ben Tsukazaki, Esq., representing Petitioner

Norman Hayashi, County of Hawaii Planning Department

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

Abe Mitsuda, Land Use Division, Office of Planning

Nicole Walthal, Esq., representing Intervener Kaloko-Honokohau National Historical Park

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

Geraldine Bell, Superintendent, Intervener Kaloko-Honokohau National Historical Park

There were no public witnesses.

Mr. Tsukazaki indicated that a letter dated August 6, 2003 was filed with the Commission, which set forth language proposed by the Office of Planning regarding regional traffic. He further indicated that all the parties have agreed to this language, and asked the Commission that this particular provision be incorporated as a condition of approval, which would be an amendment to the stipulated findings of fact, conclusions of law, and decision and order.

Mr. Tsukazaki pointed out that there were errors in the findings of fact (FOF) and indicated the errors as follows:

FOF #342, page 72: Provides information on projected levels of service at certain intersections relating to Queen Kaahumanu Highway. Mr. Tsukazaki requested to amend this finding to read, "Without the project, the Queen Kaahumanu Highway's intersection with the North Access Road would have a LOS "D" at the AM peak and a LOS "F" at the PM peak, while the South Access Road would be LOS "B" at both peaks.

FOF #343: The level of service is indicated "F", but it should be "C" instead.

Mr. Tsukazaki recommended that the new language regarding regional transportation, which was submitted to the Commission this morning, be indicated as new condition #6D.

Mr. Tsukazaki referred to FOF #95 - #100, which are sites identified for preservation, and indicated that these have been confirmed for preservation.

Vice Chair Catalani suggested that preservation of sites be reflected in the conclusions of law. Mr. Tsukazaki stated that he had no objections to that.

Commissioner Sakumoto asked that Mr. Tsukazaki elaborate on new condition #6d. Mr. Tsukazaki that the intent was to be able to discuss regional transportation improvements and costs with a group of stakeholders and come to an agreement on what could be done.

Mr. Hayashi stated that the County supported this condition and amendment to FOF #342 and #343. Mr. Hayashi also stated that its intent was to convene a committee that would discuss the transportation and traffic needs of the area and coordinate the improvements and how it would be funded.

Mr. Chang indicated that the State had no objections to proposed amendments made by the Petitioner.

Ms. Walthal indicated that the National Park Service continues to support the stipulated decision filed on June 16, 2003.

Commissioner Coppa moved to accept the amended findings of fact, conclusions of law, and decision and order as stipulated by the parties. Commissioner Fiesta seconded the motion. The Commission were polled as follows:

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

The motion passed with 6 ayes and 3 absent.

A lunch break was taken at 11:15 a.m. The meeting reconvened at 1:02 p.m.

Diane Erickson was not present to the proceedings at this time.

Commissioner Yukimura was present to the proceedings at this time.

## ADOPTION OF ORDERS

A02-737 U of N Bencorp (Hawaii)

## APPEARANCES

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

There were no public witnesses.

Chair Ing pointed out that on page 18, #93b, the Petitioner had made the commitment as to the use of proceeds for scholarship funds; and on page 47, #6, the word Archaeology needs to be underlined.

Diane Erickson was present to the proceedings at this time.

Commissioner Fiesta moved to adopt the findings of fact, conclusions of law, and decision and order. Commissioner Coppa seconded the motion. The Commission were polled as follows:

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

The motion passed with 7 ayes and 2 absent.

A93-696 KUKUI'ULA DEVELOPMENT COMPANY, INC. (Kauai)

#### APPEARANCES

Benjamin Matsubara, Esq., representing Petitioner  
Rodney Funakoshi, Wilson Okamoto & Associates

Frances Yamada, Wilson Okamoto & Associates

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

Lorene Maki, Land Use Division, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Commissioner Sakumoto recused himself from the proceedings at this time.

Chair Ing asked Commissioner Fiesta if he had the opportunity to read the transcripts and was prepared to vote on this matter since he was not present to all of the proceedings. Commissioner Fiesta responded in the affirmative.

There were no public witnesses.

Mr. Matsubara indicated that the County of Kauai submitted a letter to the Commission indicating that they would not be present to these proceedings and also indicating that they had no objections to the proposed findings of fact, conclusions of law, and decision and order.

Mr. Chang indicated that the State had no objections to the proposed findings of fact, conclusions of law, and decision and order.

Commissioner Yukimura moved to adopt the findings of fact, conclusions of law, and decision and order. Commissioner Fiesta seconded the motion. The Commission were polled as follows:

Ayes: Commissioners Yukimura, Fiesta, Montgomery, Coppa, Catalani, and Ing.

The motion passed with 6 ayes, 1 recused, and 2 absent.

A break was taken at 1:20 p.m. The meeting reconvened at 1:50 p.m.

#### A03-738 GENTRY INVESTMENT PROPERTIES (Oahu)

Chair Ing and Vice Chair Catalani were not present to the proceedings at this time.

Presiding Officer Coppa announced that this was an action meeting on Docket No. **A03-738 GENTRY INVESTMENT PROPERTIES** to consider the Petition to reclassify approximately 282.614 acres of land currently in the Agricultural District into the Urban District at Ewa, Oahu, Hawaii for residential, industrial/commercial, public facility, and open space uses.

#### APPEARANCES

Benjamin Matsubara, Esq., representing Petitioner

Curtis Tabata, Esq., representing Petitioner

David Tanoue, Esq., representing the City and County of Honolulu, Department of Planning and Permitting

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

Abe Mitsuda, Land Use Division, Office of Planning

Judith Henry, Land Use Division, Office of Planning

Brian Kang, Esq., representing Intervener - Hawaii Prince Hotel Waikiki Corp.

There were no public witnesses.

Commissioner Sakumoto moved to reopen the hearing on this matter for the limited purpose of receiving additional and clarifying testimony from the State Department of Transportation. Commissioner Montgomery seconded the motion. The voice vote was unanimous in support of the motion.



## STATE'S WITNESS

### 1. Glenn Yasui

Mr. Yasui stated that he was the State highways administrator. He testified on behalf of the State Department of Transportation and provided the Commission with an update of the Department of Transportation's testimony in regard to the Fort Weaver Road and the North-South Road projects. In his testimony, he referred to OP's Exhibit 3 and provided more information as to the timing and scope of both projects.

Presiding Officer Coppa indicated that Ms. Tesha Malama's written testimony was received by the Commission and admitted into the record.

Petitioner introduced Exhibit 10, which was a letter agreement between Hawaii Prince and the Petitioner, and said exhibit was admitted into the record by the Commission.

Presiding Officer Coppa announced that the hearing portion of this matter was closed.

The meeting was adjourned at 2:25 p.m.

(See LUC Transcript for more details on this matter.)