

LAND USE COMMISSION  
MINUTES OF MEETING

January 16, 2004

Conference Room 405  
Leiopapa A Kamehameha  
235 So. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Pravin Desai  
Kyong-Su Im  
Lawrence Ing  
Steven Montgomery  
Randall Sakumoto  
Peter Yukimura

COMMISSIONERS ABSENT: Isaac Fiesta

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

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

Chairman Ing moved to enter into executive session to consult with counsel regarding Civil No. 02-1-1759-07 The Sierra Club v. the Land Use Commission of the State of Hawaii. The LUC docket in question is more commonly known as the Koa Ridge Project. Commissioner Montgomery seconded the motion and said motion was unanimously approved by voice votes.

The Commission exited regular session at 8:40 a.m. and entered executive session. The meeting reconvened at 9:40 a.m.

Vice Chair Catalani entered the meeting at this time.

(Please refer to the LUC transcript for additional details.)

DOCKET NO. A76-418 MOANA CORP

Presiding Officer Coppa announced that this was a continued action meeting on Docket No. A76-418 Moana Corporation (Kauai) to consider the following motions:

Continued Action

To consider Kiahuna Mauka Partners, LLC's Motion to Amend or Modify Condition No. 9 of Decision and Order, as amended in August 5, 1997, which reclassified approximately 457.54 acres of land from the Agricultural District into the Urban District at Poipu, Kauai, Hawaii.

To consider Eric A. Knudsen Trust's Motion to Amend or Modify Condition No. 9.a. of Decision and Order, as amended in August 5, 1997, which reclassified approximately 457.54 acres of land from the Agricultural District into the Urban District at Poipu, Kauai, Hawaii.

New Action

To consider Kiahuna Mauka Partners, LLC's Motion to Delete Conditions No. 7 and 10 through 18 of Decision and Order filed on January 6, 2004.

To consider Eric A. Knudsen Trust's Amended Motion to Modify Condition No. 9.a of Decision and Order and Motion to Release Conditions 7, 10-18 of Decision and Order filed on January 7, 2004.

On December 12, 2003, the Commission served the Order Granting Continuance of Kiahuna Mauka Partners, LLC's Motion to Amend or Modify Condition No. 9 of Decision and Order; and Motion to Modify Condition No. 9a of Decision and Order, as filed by the Eric A. Knudsen Trust.

On January 6, 2004, the Commission received Kiahuna Mauka Partners, LLC's Motion to Delete Conditions No. 7 and 10 through 18 of the Decision and Order; and the Memorandum in Support of Motion.

On January 7, 2004, the Commission received Amended Motion to Modify Condition No. 9a of Decision and Order and Motion to Release Conditions 7, 10-17 of Decision and Order; Memorandum in Support of Motion; Exhibits 1-7.

On January 16, 2004. the Commission received correspondence form the Department of Land and Natural resources on this docket.

## APPEARANCES

Walton Hong, Esq., represented Kiahuna Mauka Partners  
Greg Kamm, Kiahuna Mauka Partners  
Grace Nihei Kido, Esq., represented the Eric Knudsen Trust  
Stacey Wong, Trustee of the Knudsen Trust  
Keith Nitta, County of Kauai, Planning Department  
Laurel Loo, Esq., represented County of Kauai, Planning Department  
John Chang, Esq., represented Office of Planning  
Abe Mitsuda, Office of Planning

Presiding Officer Coppa noted that there were no public witnesses to provide testimony for this docket.

### Staff Report

#### 1. Russell Kumabe

Mr. Kumabe, staff planner, provided a GIS map orientation of the area and briefly summarized the staff report before the Commissioners. There were no questions by the parties and the Commission.

Laurel Loo and Keith Nitta representing the County of Kauai Planning Department entered the proceedings at this time.

Mr. Hong stated that they are requesting for a 5-year extension in order to perform condition 9, which requires 300 units to be constructed by August 2004. Kiahuna Mauka Partners (KMP) has recently acquired the property and have been working diligently towards completion of the project, but obviously cannot build the 300 units by August of this year. KMP believes that they can complete the development by 2009, if the extension is granted.

Mr. Hong added that they have come to a three-party agreement that contains a matrix setting forth all the conditions of the Land Use and County. As a part of this agreement, the county will be in a strong position of seeing that these conditions are enforced. KMP believes that conditions 7, 12, 16, and 18 can be deleted because they will be enforced by the county under this three-party agreement, to avoid duplication of efforts by multiple agencies.

Mr. Chang stated that the Office of Planning had some comments.

Mr. Mitsuda stated that regarding the deletion of conditions 7, 12, 16, and 18, he understood that the county would also like to retain condition 7. Mr. Mitsuda

questioned if they had concurrence with the other state departments, such as traffic impacts on the main highway, and the regional issues.

Mr. Hong explained that they have not got direct communication from the divisions, but has submitted a traffic master plan. He believes that those concerns could be properly addressed on a county level.

Mr. Kamm stated that there is a condition on the tentative approval from the county which routed the subdivision application to the DOT. They have issued a condition through the subdivision process that indicates that the impact needs to be addressed with the DOT. The county would route both land use applications to the state agencies involved.

Mr. Mitsuda questioned if they have asked for a fair share contribution, as the Office of Planning has not signed off on them. Mr. Mitsuda questioned if the state civil defense signed off on this as well, and believed that they also have not seen the three-party agreement.

Mr. Kamm stated that they have a meeting with county civil defense and they will also contact the state.

Vice Chair Catalani noted that he appreciated their confidence in the county and added that this is a major project, but conditions that have not been satisfied cannot be released by the Commission.

Mr. Hong stated that they are placing confidence to the county, as the county has been very diligent and aggressive in enforcing these conditions. The motion to delete these conditions will be left up to the decision of this Commission.

Presiding Officer Coppa questioned if the County should be tasked with all these responsibilities.

Ms. Kido explained that the modification of condition 9a is a request for an extension of time. The 5-year extension is to address the Land Use Commission's concerns of a uniform time frame to commence the development of the construction of single-family home sites.

Vice Chair Catalani questioned the movants as to which conditions they believed are satisfied?

Ms. Kido explained that while none of the conditions were completely satisfied, it was appropriate for the county to enforce the commitment of the parties as described in the three-party agreement.

Ms. Loo stated that regarding the request for an extension of time, the County has no objections. In reference to the request to delete certain conditions, the county's position is that the conditions are purely county related. To the conditions that involve the state, the county would refer to the state on those conditions.

Chairman Ing questioned what is meant to satisfy the final subdivision approval, as in condition 9b?

Mr. Nitta explained that a final subdivision approval constitutes the tentative subdivision processes. A tentative approval means an approval granted with conditions attached. The second process involves the final approval that means they have met all conditions of the tentative approval. Kauai has a Planning Commission that approves subdivisions. The conditions come in three parts. The improvement that is satisfied by bonding or constructing the improvements; the second constitutes other agency requirements; and the third is more conditions to zoning codes or anything to subdivision ordinances. To receive final approval, they will need to satisfy the bonding, the agency requirements, and the Planning Commission approval. Normally the county will assign a one-year deadline to meet the final approval. If the applicant cannot complete within a year, then we will allow for an extension, but the process goes through the Planning Commission.

Commissioner Im questioned if the Commission agrees to make this final subdivision approval for condition 9a, what will happen if for some reason the developer does not develop the property until 6-7 years later?

Mr. Nitta explained that without the improvements constructed, the county will not issue building permits and the people who purchase lots are not able to build. If the developer does not perform within the year the county needs to utilize the bond to complete the improvements. The county has the position to accommodate the person to utilize the lot if the developer does not perform. Mr. Nitta added that he personally did not know of any county that has used the bond to finish the subdivision, as they have safeguards built in to assure that.

Mr. Chang questioned if the County was in agreement with the Office of Planning that condition 7 should remain on. Ms. Loo replied in the affirmative.

Mr. Chang stated that the Office of Planning has filed their testimony with the Commission and basically has no objection to the 5-year extension of time. Mr. Chang added that whether the county has oversight over these conditions, the Office of Planning recommends that the conditions remain in effect to assure that the Petitioners fulfill them.

Vice Chair Catalani asked the Office of Planning which conditions did they believe have been satisfied.

Mr. Mitsuda stated that they have reviewed the conditions and believe that conditions 7, 12, 16, and 18 should remain, especially those that are designated to the county. Also, certain conditions deal with federal conditions, such as archeology, and the cave spiders. Mr. Mitsuda indicated that he did not believe any of these conditions have been satisfied in terms of the remaining conditions.

Commissioner Desai stated that he is in support of the state's position. He added that if these conditions have not been satisfied, then the Commission should not release these conditions.

Commissioner Yukimura concurred and added that even if the county has jurisdiction, the Commission still needs to monitor these conditions until satisfied.

Mr. Hong indicated that based on the discussion and comments today, KMP would withdraw its motion to delete conditions. 7, and 10 through 18.

Ms. Kido added that they will also withdraw their motion to delete conditions.

Commissioner Yukimura moved to approve the extension of time for both movant to August 2009, with final subdivision approval evidencing performance. The motion was seconded by Chairman Ing.

The commission was polled as follows:

Ayes: Commissioners Yukimura, Ing, Sakumoto, Desai, Montgomery, Catalani, Im, and Coppa.

The motion passed with a vote of 8 ayes, and 1 absent.

Commissioner Yukimura moved to adjourn the meeting, seconded by Chairman Ing. The proceedings ended at 10:30 a.m.

(Please refer to the LUC transcript for additional details.)