LAND USE COMMISSION
MINUTES OF MEETING

February 10, 2005

Alii Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

COMMISSIONERS PRESENT:	P. Roy Catalani Isaac Fiesta, Jr. Lisa Judge Kyong-su Im Steven Montgomery Randall Sakumoto Peter Yukimura
COMMISSIONERS ABSENT:	Michael Formby
STAFF PRESENT:	Diane Erickson, Deputy Attorney General Anthony Ching, Executive Officer Bert Saruwatari, Staff Planner Sandra Matsushima, Chief Clerk Holly Hackett, Court Reporter Walter Mensching, Audio Technician

Chair Catalani called the meeting to order at 10:25 a.m.

ADOPTION OF MINUTES

Commissioner Yukimura moved to adopt the Land Use Commission meeting minutes of January 13, 2004 and January 14, 2004. Vice Chair Montgomery seconded the motion. Said motion was approved by voice votes.

Commissioner Judge entered the meeting at this time.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- March 3-4 to be held on Maui.
- March 17-18 on Oahu for expected filings and ministerial matters.

LEGISLATIVE UPDATE

Mr. Ching summarized his report and briefly explained some of the major issues before the Commission, such as the IAL Designation and Administration, Nomination by OHA for a LUC Commission vacancy, Enhancement of Agricultural District Rules, Rural District Reform, Parceling, and the Hokulia Relief.

Mr. Ching also noted that the Commissioners could, at any time, offer suggestions or testimony that would be accepted by staff, who would also support and assist if so requested.

Chair Catalani had questions and concerns related to the rural district reform, the cost factors of quasi-legislative versus the quasi-judicial process and the 5-year boundary review.

After a discussion, Vice-Chair Montgomery moved that the Commission authorize staff to seek any vehicle to advance the boundary review process. Commissioner Fiesta seconded the motion. Said motion was approved by voice votes.

DOCKET NO. A04-747 KAMEHAMEHA INVESTMENT CORPORATION

Chair Catalani noted that the Commission would like to modify the agenda to hear the Kamehameha Investment Corporation's subpoena testimony by the Department of Education at this time. He entertained a motion to amend the agenda and said motion was approved unanimously by voice votes.

APPEARANCES

R. Ben Tsukazaki, Esq. represented Petitioner
Norman Hayashi, County of Hawaii Planning Department
Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

SUBPOENA WITNESS

1. Rae Loui

Ms. Loui stated that she is the Assistant Superintendent of the Department of Education (DOE). Also appearing was Mr. Sanford Beppu from DOE's Facilities and Support Services.

Ms. Loui previously provided the Commission with her written testimony and summarized her testimony regarding the enrollment impacts of Docket No. A04-747 referred to as the Keauhou Mauka project.

Vice Chair Montgomery thanked Ms. Loui for appearing before the Commission and noted that at the last hearing he had expressed his disappointment to the erroneous information submitted by the DLNR.

Ms. Loui indicated that the DOE intends to take a more active role in this Commission to ensure that the data on schools is accurate.

Chair Catalani asked Ms. Loui if she was able to qualify herself as an expert in facilities.

Ms. Loui noted that she has a BA, MBA and years of experience in strategic planning and capital budget, design and construction, infrastructure, and public utilities. She has held positions as Director of Water Supply Water Resource Management, PUC Commissioner, and currently, as the Assistant Superintendent of the DOE, supervises facilities, accounting, and school lunch programs.

Mr. Tsukazaki stated that Ms. Loui has the credentials, however, he is unsure if she is an expert in calculating the fair share contribution.

Ms. Leithead-Todd noted that the County of Hawaii had no objections in qualifying Ms. Loui as an expert in facilities.

Mr. Chang indicated that the State had no objections.

Chair Catalani had questions regarding the fair share calculations and the number of calculations that Ms. Loui was personally involved in.

Ms. Loui explained the calculation process, the impact fees, mitigation authority, and added that in her capacity, she is ultimately involved in the calculation process and have been involved with approximately 10-15 calculations.

Chair Catalani noted that Ms. Loui qualifies as an expert in public school facilities and fair share calculations.

Commissioner Judge had a few questions on the formula used for calculating the impact fees, and the type of projects that have not been assessed fees.

Commissioner Im had questions and concerns relative to the uncertainty after a project is assessed and if there was a mechanism that would allow the DOE to revisit the formula for future reassessment. Commissioner Im also raised questions on the possibility of agreements or MOUs between the DOE and the petitioner prior to the Commission's decision.

Vice Chair Sakumoto had questions and concerns in reference to DOE's assumption of vacancy and occupancy rates, and the standards for luxury development. Vice Chair Sakumoto noted that the accuracy of the facts provided today was appreciated by the Commission and encouraged the DOE to take a more active role in future LUC proceedings.

Commissioner Im noted that Hawaii is unique and that there should be a clear nexus when calculating fair share contributions. Commissioner Im raised questions regarding the luxury and second home projects, the affordable housing problems, and a formula and data to support the impacts.

Vice Chair Montgomery raised a few questions in reference to Ms. Loui's testimony regarding precedent projects in Kauai utilizing in-lieu fees or per unit fees rather than statewide averages.

Ms. Leithead-Todd had a few questions regarding DLNR's previous correspondence letters, school development/new construction, and the fair share formula. Ms. Leithead-Todd added that the county historically did not want to be responsible for handling monies and the language in conditions should state that petitioner deal directly with the DOE, with notification to the County of such transaction.

Mr. Chang raised a few questions on the DOE condition for this petition and also asked if the DOE will have an active role in the Hiluhilu project as well. Ms. Loui replied in the affirmative.

Mr. Tsukazaki added that they have been working with Ms. Loui and her staff and should have an agreement in the near future.

Chair Catalani indicated that the Commission has taken the Kamehameha Investment Corporation's testimony out of order and would like to return to the original agenda. He entertained a motion to amend the agenda to have the Executive Session and continue with the action items after a lunch break.

Vice Chair Sakumoto so moved to modify the agenda. Vice Chair Montgomery seconded the motion. Said motion was approved unanimously by voice votes.

DR04-30 KULEANA KU`IKAHI, LLC (Maui)

EXECUTIVE SESSION

Vice Chair Montgomery moved that the Commission enter into executive session to discuss personnel matters with its Deputy Attorney General. The motion was seconded by Vice Chair Sakumoto. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 11:55 a.m.

The open meeting reconvened at 1:25 p.m.

A05-754 MAUI LANI 100, LLC (Maui)

Chair Catalani stated that this was an action meeting to consider acceptance of Maui Lani 100, LLC's Final Environmental Assessment for the reclassification of approximately 59.6 acres of land currently in the Agricultural District to the Urban District at Wailuku, Maui, Hawaii.

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner
Leiane Paci, Maui Lani 100
David Gleason, Maui Lani 100
Mitch Hirano, Munekiyo and Hiraga
Jane Lovell, Esq., represented the County of Maui Department of Planning
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Kobayashi made his presentation before the Commission and provided a brief summary of each of the thirteen (13) points of project conformance.

1) No Irrevocable Commitment to Loss or Destruction of Any Natural or Cultural Resource Would Occur as a Result of the Proposed Project;
2) The Proposed Action Would Not Curtail the Range of Beneficial Uses of the Environment;
3) The Proposed Action Does Not Conflict With the State's Long-Term Environmental Policies or Goals or Guidelines as Expressed in Chapter 344, HRS;
4) The Economic or Social Welfare of the Community or State Would Not Be Substantially Affected;
5) The Proposed Action Does Not Affect Public Health;
6) No Substantial Secondary Impacts, Such as Population Changes or Effects on Public Facilities are Anticipated;
7) No Substantial Degradation of Environmental Quality Is Anticipated;
8) The Proposed Action Does Not Involve a Commitment to Larger Actions nor Would Cumulative Impacts Result in Considerable Effects on the Environment;
9) No Rare, Threatened or Endangered Species or their Habitats Would Be Adversely Affected by the Proposed Action;
10) Air Quality Water Quality or Ambient Noise Levels Would Not Be Detrimentally Affected By the Proposed Project;
11) The Proposed Project Would Not Affect Environmentally Sensitive Areas Such as Flood Plains, Tsunami Zones, Erosion-Prone Areas, Geologically Hazardous Lands, Estuaries, Fresh Waters or Coastal Waters;
12) The Proposed Project Will Not Substantially Affect Scenic Vistas and View Planes Identified in the County or State Plans or Studies;
13) The Proposed Project Will Not Require Substantial Energy Consumption.

Vice Chair Sakumoto stated that the Commission had just received the response letter today and the intent of this letter was to address the outstanding issues, of which, staff has cited in their report. Vice Chair Sakumoto noted that whenever possible, the Commission would appreciate that information is provided in a more timely manner.

Mr. Kobayashi replied in the affirmative and apologized for the lateness of this document.

Staff Report

1. Anthony Ching

Mr. Ching reported that staff focused on the comment letters and responses to determine whether the FONSI is warranted and added that the Petitioner has met the threshold for discussion. Mr. Ching briefly summarized the summary of significant issues in staff's report related to the nearby landfill, availability of potable water, and the number of units to the 59.6-acre project.

A recess break was taken at 2:00 p.m. The meeting reconvened at 2:25 p.m.

Mr. Kobayashi indicated that he believes the Petitioner had sufficiently addressed the former landfill matter as it has been closed since 1992. Plans are to keep that an open space area and no homes will be built there. He also added that a year after the landfill's closure, two ground water wells were tested and no contaminants were found.

Ms. Paci added that the 59.6-acre project area in the VMXR proposed zoning will house approximately 50-60 single family units and 208-255 multi-family units. Ms. Paci indicated that these are not precise numbers as more detailed plans are forthcoming.

Commissioner Judge raised questions regarding the irrevocable issues of the FEA, the loss of the sand mining quarry and preserving the sand dune, and other landfill issues.

Chair Catalani had questions and concerns related to the sand dunes and sustainable yield.

Ms. Lovell stated that the County is satisfied with the Petitioner's presentation thru witness and documentary evidence and if the letter to George Tengan is made a part of the FEA, then the County has no objections for the acceptance of the FEA.

Mr. Chang noted that it is their understanding that the deed for the school site is being stipulated with the DLNR. Mr. Kobayashi replied in the affirmative and indicated that it has been transmitted to the DLNR.

Mr. Chang commented that on this basis, the Petitioner has met the legal requirements of the FEA and believes that the FONSI is warranted in this case.

PUBLIC WITNESSES

1. Mikahala Roy

Ms. Roy stated that she is representing herself and her family, speaking as a descendant of the Nahiku family line from Maui. She expounded on the importance to protect the sand dunes as it holds importance to ancient history.

There were no questions posed by the parties and the Commission.

2. David K. Roy

Mr. Roy stated that his mother was born in Hana, Maui, and that this area has historical significance as it was the battlegrounds of the *Alii*, an elite group of warriors. He expressed concern that there should be an equitable distribution of lands for the wealthy, moderate and low-income families.

After a brief discussion, there were no further questions.

3. Violet Leihulu Mamac

Ms. Mamac stated that she is against the project development and asked that the Commission protect the significant lands of Hawaii, as found in the sand dunes and the historic battlegrounds on Maui.

There were no questions posed by the parties and the Commission.

Commissioner Judge moved that the Commission accept Maui Lani 100, LLC's Final Environmental Assessment as amended for the reclassification of approximately 59.6 acres of land currently in the Agricultural District to the Urban District at Wailuku, Maui, Hawaii. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Judge, Fiesta, Im, Montgomery, Sakumoto, Yukimura, and Catalani.

The motion passed with 7 ayes and 1 absent.

A recess break was taken at 3:00 p.m. The meeting reconvened at 3:15 p.m.

A04-744 HILUHILU DEVELOPMENT LLC (Hawaii)

Chair Catalani indicated that County Planning Director Chris Yuen will be providing testimony at this time.

APPEARANCES
Alan Okamoto, Esq. represented Petitioner
Norman Hayashi, County of Hawaii Planning Department
Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

COUNTY'S WITNESS

1. Chris Yuen

Mr. Yuen addressed the Commission and discussed the County's new affordable housing policy.

Ms. Leithead-Todd noted that the County had no questions.

Mr. Chang raised a few questions related to roadway improvements, the state's Queen Kaahumanu Highway, and the proposed access sites to the development.

Commissioner Fiesta raised a concern regarding the bottleneck while driving to Kailua-Kona and suggested that the developer revisit this area and consider widening the highway in lieu of another mauka-makai roadway.

Vice Chair Sakumoto noted that the County has submitted Bill 25 as an exhibit and asked if the Commission could receive the latest copy of the signed version.

Ms. Leithead-Todd replied in the affirmative and indicated that they will subsequently substitute the signed copy with the unsigned version. Ms. Leithead-Todd then offered into evidence the County's Exhibit 2. There were no objections by the parties, and said exhibit was admitted into the record.

Vice Chair Montgomery raised a few questions related to the County's new affordable housing policy and the statewide housing task force.

After a discussion, Chair Catalani called upon the pubic witnesses wishing to testify for this docket.

PUBLIC WITNESSES

1. Violet Leihulu Mamac

Ms. Mamac stated that this project area is significant to the Hawaiian people, as the lands are rich in culture. The owner of these lands was a powerful *kahu*. Ms. Mamac asked for the protection of the burial sites, caves, lava tubes, artifacts, and for all other religious aspects of the Hawaiian culture.

There were no questions posed by the parties or the Commission.

2. Jerry Schneyer

Mr. Schneyer stated that he is the President of Makalei Estates Homes Association, a subdivision located mauka of the proposed Hiluhilu project. Mr. Schneyer added that although they are in favor of the project, they have concerns about plans to utilize Makalei Drive as the main roadway because the road is not designed for multiple use as it is steep, narrow, and intersects with individual resident driveways.

Mr. Okamoto noted that the petitioner has been in discussion with the Makalei Estates Homes Association and the county on this matter.

Ms. Leithead-Todd stated that the County had no questions.

Mr. Chang also indicated that that State had no questions.

Chair Catalani noted that Mr. Schneyer had signed up on Kamehameha Investment's pubic witness sheet and asked if he wished to testify for that docket. Mr. Schneyer stated that he signed up to testify for the Hiluhilu docket and mistakenly signed up on Kamehameha Investment's public witness sheet.

3. David K. Roy

Mr. Roy stated that his concern related to this project is that there is an increasing number of subdivisions in this area that will affect the fishpond's water purity and the marine life.

There were no questions posed by the parties or the Commission.

4. Mikahala Roy

Ms. Roy asked the developer to protect the cultural lands and be supportive of the people. She added that there were many families of the land who were not interviewed on their position in this matter and were also not able to appear today to provide testimony before the Commission.

There were no questions raised by the parties or the Commission.

A recess break was taken at 4:15 p.m. The meeting reconvened at 4:20 p.m.

DOCKET NO. A03-743 HAWAII ELECTRIC LIGHT COMPANY

Presiding Officer Sakumoto stated that this was an action meeting to consider acceptance of Hawaii Electric Light Company, Inc.'s Final Environmental Impact Statement for the reclassification of approximately 15.643 acres of land currently in the Conservation District to the Urban District at Keahole, North Kona, Hawaii.

Chair Catalani disclosed that a partner in his law firm represents the Petitioner in other non-related matters and recused himself from participating in this docket. Chair Catalani left the meeting at this time.

APPEARANCES

Naomi Kuwaye, Esq.; represented Petitioner
Warren Lee; Hawaii Electric Light Company
Lee Sichter, Hawaii Electric Light Company
Norman Hayashi, County of Hawaii Planning Department
Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Ms. Kuwaye made her presentation before the Commission and provided a brief summary of the background of the FEIS, highlights, review, and comment letters of the EIS. Ms. Kuwaye noted that the EIS was responsive to the comment letters.

Mr. Sichter stated that he is a Planner with Belt Collins Hawaii and is the preparer and signator of the EIS. He briefly summarized how petitioner has met the acceptability of the EIS.

Staff Report

1. Anthony Ching

Mr. Ching provided a brief summary of the report and noted that staff agrees with the substance and accuracy of the EIS. He added that staff recommends the acceptance of the FEIS and that it should be noted that staff previously met with the preparers, Belt Collins, and discussed deficiencies that should be amended in this document.

Ms. Leithead-Todd stated that the County has reviewed the document and believes that the report has met its legal requirements and recommends acceptance.

Mr. Chang also noted that the FEIS has met the legal requirements and recommends acceptance by the Commission.

Presiding Officer Sakumoto asked the petitioner to clarify what will be done regarding the impacts that this FEIS is addressing.

Mr. Sicther stated that the reclassification from conservation to urban will basically move this project forward as a means to make the plant more efficient and to mitigate air and noise impacts.

Ms. Kuwaye Naomi added that the reclassification is needed since the BLNR has amended their rules for fossil fuels in a conservation district.

Commissioner Im raised a few questions regarding the BLNR rule amendment and HELCO's participation, if any, in the BLNR hearing.

PUBLIC TESTIMONY

1. Violet Leihulu Mamac

Ms. Mamac stated that she opposed this project and that her concerns are regarding the impacts to the *iwi kupuna* (ancestral bones) artifacts, burial sites, features, caves, and lava tubes. She asked that the developer look at the environmental and cultural concerns with respect.

Commissioner Im had a few questions in reference to Ms. Mamac's opposition to the project and the potential impacts to the environment.

After a brief discussion, there were no further questions posed by the parties and the Commission.

Commissioner Fiesta moved to accept the FEIS with technical amendments noted by staff. Commissioner Im seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Fiesta, Im, Judge, Montgomery, Sakumoto, Yukimura, and Catalani

The motion passed with 6 ayes, 1 abstained, and 1 absent.

A recess break was taken at 5:00 p.m. The meeting reconvened at 5:25 p.m.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION (Hawaii)

Chair Catalani returned to the proceedings at this time and called the meeting back to order.

APPEARANCES

R. Ben Tsukazaki, Esq. represented Petitioner
Norman Hayashi, County of Hawaii Planning Department
Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Public Witness

1. Violet Leihulu Mamac

Ms. Mamac stated that the Keauhou area is going through a crisis because of a shortage of affordable homes being built. She added that the people, Hawaiian and non-Hawaiians, are witnessing a destruction to their lands with the development of luxury homes, added traffic congestion, and impacts to their water wells and the coastal waters. Ms. Mamac also stated that the Kamehameha Schools money is intended for the children of Hawaii, but this project has only offered a community learning center and not a Kamehameha Schools campus for the Kona region. She stated her opposition to the project and asked that the Commission think about the future of Keauhou upon making decisions.

There were no questions posed by the parties or the Commission.

Chair Catalani called upon Nancy Matthews who signed up as a public witness but was not present at this time. He noted that the Commission has received her written testimony today expressing her concern related to traffic impacts and that her testimony will become a part of the record.

2. Mikahala Roy

Ms. Roy stated that she is the Vice President of Kulana Huli Honua and noted her opposition to the project for issues such as the many sacred and historical sites, and a 5-acre garden. She added that there has not been contact between the families, the developers, and the Kamehameha Schools.

Commissioner Im expressed his appreciation to Ms. Roy for doing a huge public service by testifying at these hearings and encouraged her to pursue more communication and dialogue between the petitioners and her group.

3. David K. Roy

Mr. Roy requested that the Commission deny Kamehameha Investment Corporation's petition because he believed that the Hawaiian people have been ignored and that the developers have been catering to the wealthy people of the West coast with nothing left for the local population.

Commissioner Judge left the meeting at this time.

There were no questions posed by the parties or the Commission.

Mr. Tsukazaki had a few housekeeping items and indicated that the petitioner has filed, on February 4, 2005, the Second Amended Stipulated Findings of Fact, Conclusions of Law and Decision and Order, which incorporates the various pieces of evidence that was presented to the Commission after the preliminary stipulation was filed.

Mr. Chang offered into evidence the state's Third Amended List of Exhibits. The parties had no objections and said exhibits were admitted into evidence.

Chair Catalani provided the post hearing instructions to the parties. There were no questions.

The meeting adjourned at 6:30 p.m.

(Please refer to LUC Transcript of February 10, 2005 for more details on this matter.)