

LAND USE COMMISSION
MINUTES OF MEETING

June 2, 2005

Maui Prince Hotel Makena Resort
5400 Makena Alanui
Makena, Maui, Hawaii

Commissioners Present: P. Roy Catalani
Michael D. Formby
Kyong-su Im
Lisa Judge
Steven Montgomery
Randy Piltz
Randall Sakumoto
Peter Yukimura

Commissioners Absent: Isaac Fiesta

Staff Present: Anthony J.H. Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Sandra Matsushima, Chief Clerk
Max Rogers, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

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

ADOPTION OF MINUTES

Vice Chair Sakumoto moved to adopt the minutes of May 18, 2005 and May 19, 2005. Vice Chair Montgomery seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the July 28-29 meetings are listed as Kona or Maui depending on the timing of completion for the HELCO and KIC dockets. If appropriate, the LUC may meet on Maui for the Maui Lani 100 action meeting on those dates.

EXECUTIVE SESSION

Chair Catalani entertained a motion to go into executive session as noted on the agenda.

Vice Chair Sakumoto moved to go into executive session under §92-5(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities related to Helani Gardens correspondence. Vice Chair Montgomery seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:15 a.m.

The open meeting reconvened at 10:30 a.m.

ADOPTION OF DECISION AND ORDER

A88-634 ALEXANDER & BALDWIN, INC. (Maui)

Appearances

Ben Matsubara, Esq., represented Petitioner

Graham Chun, Vice President of Alexander & Baldwin Properties

Michael Foley, Director, County of Maui, Department of Planning

Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning

John Chang, Esq., Deputy Attorney General, represented the State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Mr. Ching discussed the changes made to the decision and order and the other minor technical non-substantive changes that were made.

Commissioner Judge moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A88-634 as before the Commission today. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

A96-717 C. EARL STONER, JR. on behalf of S & F LAND COMPANY, INC.
(Maui)

Chair Catalani stated that the next docket for adoption of the Findings of Fact, Conclusions of Law, and Decision and Order was for Docket No. A96-717 C. Earl Stoner, Jr. Chair Catalani asked if there was a representative present for Mr. Stoner.

Mr. Ching commented that Mr. Stoner has indicated that he had a twice-delayed appointment this morning and would have liked to attend this meeting, however, he would be available at approximately 11:30 a.m.

Ms. Lovell stated that the County has not received a copy of this order and would like a few minutes to review a copy of it.

Chair Catalani noted that the Commission will allow time for the parties to review the order and to also allow time for Mr. Stoner to make his appearance. Chair Catalani then stated that they will proceed with the next item on the agenda

A03-744 HILUHILU DEVELOPMENT, LLC (Hawaii)

Appearances

Alan Okamoto, Esq., represented Petitioner

Jerel Yamamoto, Esq., represented Petitioner

John Chang, Esq., Deputy Attorney General, represented the State Office of Planning
Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Mr. Ching discussed the changes since the last draft along with the summary of post action changes for the docket and some non-substantive changes.

Vice Chair Sakumoto noted an amendment to Finding No. 236. Vice Chair Sakumoto then moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A03-744 Hiluhilu Development, LLC, as submitted to the Commission by its staff and as amended today by Vice Chair Sakumoto. The motion was seconded by Commissioner Im.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

A recess break was taken at 10:50 a.m. The meeting reconvened at 11:00 a.m.

DOCKET NO. A05-757 JAMES W. MCCULLY AND FRANCINE M. MCCULLY

Chair Catalani stated that this was an action meeting on Docket No. A05-757 James W. McCully and Francine M. McCully to consider acceptance of James W. McCully and Francine M. McCully's Final Environmental Assessment for the reclassification of approximately 4.6 acres of land currently in the Conservation District to the Agricultural District at Wailea, South Hilo, State of Hawaii.

On May 19, 2005, the Commission received Petitioner's Final Environmental Assessment.

On May 31, 2005, the Commission received e-mail correspondence from the County of Hawaii Planning Department and their Corporation Counsel indicating that they had no objections to the FEA and indicated that they would not be making an appearance today.

On June 1, 2005 the Commission received from Petitioner a corrected Appendix D containing correspondence from DOT and DWS.

Appearances

R. Ben Tsukazaki, Esq., represented Petitioner

James McCully, Petitioner

Brian Nishimura, Planning Consultant who prepared the EIS

John Chang, Esq., Deputy Attorney General, represented the State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Petitioners Presentation

Mr. Tsukazaki stated that pursuant to the Commission's order dated April 12, 2005, the LUC is the accepting agency and that an anticipated finding of no significant impact was given. The parties proceeded to finalize an FEIS. Mr. Tsukazaki noted a minor glitch upon collating the report and explained that the correspondence letter sent to the LUC yesterday contains the comment letters that answer the questions of the Commission. Mr. Tsukazaki added that he believes that the FEIS satisfies the requirements and that there is no significant impact.

Vice Chair Sakumoto raised a few questions relative to the Petitioner's intended use of the subject property.

Mr. Tsukazaki noted that they tried to clarify that in the final EA and affirmed the Petitioner's intention to build a home and continue the agricultural pursuits that exist on the land mauka of the area. Mr. Tsukazaki added that there is no intention to further subdivide and the property will be for personal use.

Commissioner Judge posed questions related to the April 12 letter from the Department of Water Supply and the 5/8-inch water meters per lot to support agricultural activities.

Mr. Tsukazaki commented that separate agricultural water systems were available and would be used. The 5/8-inch lines were to accommodate potable water needs only.

Mr. Chang sought to clarify which parcel would be used as the client's residence, and referenced figure number 5. Mr. Chang added that the state has no objections as the project meets the requirements for an FEA.

Staff Report

Mr. Ching provided a brief summary of the staff report and noted that after review, there is a finding of no significant impact for this particular item and staff recommends acceptance with the addition of the new Appendix D.

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

Commissioner Im moved to accept the final EA for Docket No. A05-757 James W. McCully and Francine M. McCully with the addition of Appendix D. The motion was seconded by Commissioner Yukimura.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

A recess break was taken at 11:20 a.m. The meeting reconvened at 11:35 a.m.

A96-717 C. EARL STONER, JR. on behalf of S & F LAND COMPANY, INC. (Maui)

Appearances

C. Earl Stoner, S&F Land Company

Michael Foley, Director, County of Maui, Department of Planning

Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning

John Chang, Esq., Deputy Attorney General, represented the State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Catalani stated that this was an action meeting for the adoption of the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A96-717 C. Earl Stoner, Jr. Chair Catalani asked if the parties had adequate time to review the copy of the order.

Ms. Lovell replied in the affirmative and had nothing further.

Mr. Chang indicated that the state had no objections to the proposed order.

Commissioner Piltz moved to accept the adoption of the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A96-717 C. Earl Stoner, Jr. The motion was seconded by Commissioner Judge.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

A lunch recess was taken at 11:45 a.m. The meeting reconvened at 1:10 pm.

A04-754 MAUI LANI 100, LLC (Maui)

Chair Catalani stated that this was a continued hearing to consider the reclassification of approximately 59.6 acres of land currently in the Agricultural District to the Urban District for a village mixed-use and open space district, and residential subdivision at Wailuku, Maui, Hawaii.

On June 1, 2005, the Commission received Petitioner's Supplemental List of Exhibits and Petitioner's Exhibit 42.

Appearances

Blaine Kobayashi, Esq., represented Petitioner

Michael Foley, Director, County of Maui, Department of Planning

Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning

John Chang, Esq., Deputy Attorney General, represented the State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Catalani welcomed Ms. Thielen, Director of the Office of Planning, to the hearing.

Submittal of Additional Exhibits

Mr. Kobayashi introduced and described Petitioner's Exhibit 42, pertaining to questions raised related to the fencing on the closed landfill site adjacent to the subject property. Mr. Kobayashi also introduced and briefly described Petitioner's Exhibit 43, an aerial photograph of the Petition area and various roadways. There were no objections by the parties. Said Exhibits 42 and 43 were admitted into the record.

Mr. Kobayashi noted that the Petitioner was withdrawing its request for exemption from making a DOE fair share contribution relative to its proposed affordable units and that Petitioner has agreed to make its DOE fair share contribution based on all of the units in its project. Mr. Kobayashi also noted that the triangular portion of the aerial photo will not contain any residential housing units and will serve as a buffer to the adjacent closed County of Maui landfill site.

Ms. Lovell stated that the County had no new exhibits, but has invited Mike Souza from the Department of Public Works and Environmental Management to answer questions about the closed landfill. Also providing testimony today will be Alice Lee, Director of Housing and Human Concerns and Mike Foley, Planning Director.

Mr. Chang noted that on May 25, the Office of Planning filed a second amended exhibit list to include Exhibit 4, a memorandum from the Department of Transportation to the Office of Planning. Mr. Chang offered Exhibit 4 into evidence. There were no objections by the parties. Said exhibit was admitted into the record.

Mr. Chang also indicated that Laura Thielen, David Shimokawa, and Roy Harding will be providing testimony today. Mr. Chang added that the representative from the Department of Health, Steven Chang, will be available at 8:00 a.m. tomorrow morning.

Chair Catalani noted that there were no public witnesses.

County's Witnesses

1. Alice Lee

Ms. Lee stated that she is the Director of Housing and Human Concerns and briefly summarized her experience in the field of housing. Ms. Lee was qualified as an expert in housing. There were no objections by the parties. Ms. Lee summarized the position of the Department of Housing with respect to this project and noted that the project's affordable housing proposal will fill an important need in their community and that the department is satisfied with the mix of income level products represented in the project.

Mr. Chang raised a few questions related to the affordable housing agreement with the developer, details of provisions to prevent re-sale at market prices, and the buy-back clause.

Mr. Kobayashi noted that the Petitioner had no questions.

Commissioner Judge posed questions relative to the percentage of affordable units for sale or for rental units.

Commissioner Yukimura had a few questions regarding the buy-back agreement with the County or the Developer and its requirements.

Chair Catalani raised a question related to the housing requirement or guidelines.

Commissioner Im raised questions relative to the current and future interest rates on mortgages, and qualifications for low-income level applicants.

After a brief discussion, there were no further questions.

2. Michael Souza

Mr. Souza stated that he is currently the Acting Chief of the Solid/Public Waste Division. Mr. Souza briefly described his responsibilities on the job and discussed issues on the post closure of the Waikapu landfill. Mr. Souza indicated that at the time that the landfill was closed, the County was compliant with State regulations and the closure was approved by the Department of Health.

Mr. Chang raised questions related to the current DOH permit to store abandoned vehicles at the closed landfill, the boundary line area and fill, buffer zone, mitigation of landfill fires, number of inspections per year, and gases being generated at the landfill.

Commissioner Piltz had a few questions related to fires in closed landfills in general, and generation/release of methane gases at landfill sites.

Commissioner Im raised questions relative to the landfill's closure date, monitoring by the DOH and the County, the closure cap, settling of the underground, methane gas, odor being emitted, and the future plans for this site.

Commissioner Judge had questions regarding complaints, the 2 existing water quality monitoring wells, regular maintenance inspections, underground liners, and the DOH inspection in 1985.

Commissioner Im posed questions relative to the DOH conditions at time of closure, state regulations, and the HAR post closure requirements.

Commissioner Formby raised questions related to Petitioner's Exhibit 42 location of the landfill site, the water pipes, the height of the fence, the natural height of the landfill with the addition of the cap, and warning signs on the property.

Commissioner Judge had concerns regarding the proximity of the landfill being close to the proposed residential units and its potential impacts.

Commissioner Im posed questions and concerns relative to the height of the landfill, pro-active and other safety measures for the landfill cap, and emergency situations or natural disasters such as heavy rain that could expose the landfill debris.

Vice Chair Sakumoto had a question related to the difference in closure requirements that were applicable to the Waikapu landfill versus a landfill closure of today. Vice Chair Sakumoto also had questions regarding the monitoring of methane gases, and the different types of waste that was deposited in this landfill.

Chair Catalani raised questions regarding an agreement with the DOH, which governs the monitoring, post closure conditions and maintenance, the post closure plan, and engineering controls as recommended by Clayton Group Services who prepared the EIS.

Ms. Lovell had a few questions relative to the current sand mining operations.

A recess break was taken at 2:30 p.m. The meeting reconvened at 3:00 p.m.

Mr. Chang requested to allow the State's water witness, Mr. Roy Hardy, to testify out-of-turn since he needed to catch a return flight to Honolulu. There being no objections from the parties. Mr. Hardy was allowed to testify out-of-turn.

State's Witnesses

1. Roy Hardy

Mr. Hardy stated that he works for the Commission on Water Resource Management and serves as the Ground Water Branch Chief. Mr. Hardy briefly described his responsibilities and discussed issues of regulation for the aquifers state-wide, pump installation standards, water use permits, and ground water management areas.

Mr. Chang raised questions relative to the water management area, state statutes, and the Kahului aquifer.

Ms. Lovell stated that the County had no questions.

Commissioner Im posed questions related to the aquifer's re-charge, water usage per day, and water demand for future agricultural uses.

Commissioner Judge had a few questions regarding the Haleakala underflow, chlorides in the water, and natural rainfall.

Chair Catalani raised questions relative to the current condition of agricultural uses, the reservoir, water salinity, the Kahului aquifer, the geological survey of the Haleakala and West Maui mountains, overall water demand, and guidance from the Water Commission.

After a discussion, there were no further questions.

County's Witnesses (continued)

2. Michael Foley

Mr. Foley stated that he is the Director of the County of Maui's Department of Planning. Mr. Foley stated that he has over 40 years of experience in planning and was qualified as an expert in the field of planning. There were no objections by the parties.

Mr. Foley commented that the County is in support of the project and discussed the highlights of the proposed project such as the combination of land uses in residential, commercial, open spaces and school adjacent to existing urban services, existing infrastructure, the much needed affordable housing component and the significant roadway connections.

There were no questions posed by the State or the petitioner.

Vice Chair Montgomery had a few questions related to the affordable housing component, lottery system, multi-family units, the County General Plan, and the home-rule policy or ordinance. Vice Chair Montgomery added that it would be helpful for the County to keep the Commission updated on this County ordinance.

Vice Chair Sakumoto raised questions relative to the school in the project site, DOE boundaries, student enrollment from neighboring projects, plans for the

much needed intermediate and high schools in the area, and fair share contributions.

Commissioner Piltz had a few comments regarding the state's initiative to convert agricultural lands for affordable housing.

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

A recess break was taken at 4:00 p.m. The meeting reconvened at 4:15 p.m.

Commissioner Piltz left the meeting at this time.

State's Witnesses

2. David Shimokawa

Mr. Shimokawa stated that he is a State Planner VI with the Department of Transportation. Mr. Shimokawa briefly described his responsibilities and discussed the terms of the agreement between the DOT and the petitioner on the local and regional fair share requirements and the understanding of traffic improvements.

Mr. Kobayashi had a few questions related to the project roadway improvements, which would benefit the project and the overall region.

Ms. Lovell stated that the County had no questions.

Commissioner Judge raised a few questions regarding the May 16, 2005 letter from the DOT to the Office of Planning.

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

3. Laura Thielen

Ms. Thielen stated that she is the new Director of the Office of Planning for the past 2 months. Ms. Thielen summarized her testimony and commented that the State is in support of this petition. Ms. Thielen also noted that the OP is currently reviewing their position and procedures on impact fees that will be

placed on future reclassification applications and provided a handout to the Commissioners.

Mr. Kobayashi had a few questions related to the DOE fair share formula and the Maui Lani 100 project impacts related to schools.

Ms. Lovell posed questions regarding the DOE calculation and formula as discussed by Ms. Thielen, and the type of assurances that schools would be built as the community grows.

Commissioner Im raised questions relative to the DOE formula as discussed by Ms. Thielen and expressed his appreciation that OP will take the lead and coordinate with other state agencies for uniformity.

Chair Catalani also expressed his appreciation to Ms. Thielen for their efforts in trying to develop the framework for a DOE formula.

Vice Chair Montgomery had a few questions regarding reclassification of agricultural lands for affordable housing and if the OP could possibly locate the available state lands.

Vice Chair Sakumoto raised questions relative to the DOE condition for this particular docket, the status of the contribution of the school site, the memo from the DOE related to the land dedicated from the developer, legislative funds appropriated for the school, and the agreement reached between the Petitioner and the DOE.

Mr. Kobayashi commented that it is his understanding that the Petitioner is in the process of signing the agreement with the DOE. He added that the Petitioner has agreed to pay the fair share contribution for this boundary amendment.

Mr. Chang added that the school site was a requirement of a prior docket and that it is not included in this docket and that the school will be built with the funds appropriated by the legislature.

Vice Chair Sakumoto noted that this school site should not be considered a fair share contribution for this docket and hopefully this will be resolved in a timely manner.

Mr. Kobayashi replied in the affirmative and commented that the Petitioner has agreed to pay its fair share contribution for the 59.6 acres for this project.

Ms. Thielen added that they are in support of this agreement between the DOE and the Petitioner.

Mr. Kobayashi asked if the State was to offer Ms. Thielen's memo onto the record. Mr. Chang replied that the memo basically applies to OP's position on future reclassifications and did not offer the memo into evidence.

Mr. Ching announced the meeting plan and schedule for tomorrow's continued hearing at 8:00 a.m. to be held at the Dunes at Maui Land Golf Course to hear the testimony of OP's witness and field trips to follow. Notice will be posted.

The meeting adjourned at 5:25 p.m.

(Please refer to LUC Transcript of June 2, 2005 for more details on this matter.)