

LAND USE COMMISSION  
MINUTES OF MEETING

August 11, 2005

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

COMMISSIONERS PRESENT: Thomas Contrades  
Michael Formby  
Kyong-su Im  
Lisa Judge  
Duane Kanuha  
Steven Montgomery  
Ransom Piltz  
Randall Sakumoto

COMMISSIONERS ABSENT: None

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Maxwell Rogers, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Chair Sakumoto called the meeting to order at 10:05 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of July 28, 2005 and July 29, 2005. Vice Chair Judge seconded the motion. The minutes of July 28, 2005 and July 29, 2005 were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- August 25 or 26 the Commission will meet for a one-day meeting in Maui. The Hale Mua project intends to use a new type of housing construction technology and has erected a model in a warehouse for viewing. The Commission could schedule a field trip to visit this model on the meeting date. The Maui Lani 100 docket will be the only other action item on the agenda. Vice Chair Judge noted that she will not be available on August 26.
- September 8 is the Pacific Aina docket and the Sphere special permit request for extension of time. Also presentations by the HCDCH and OP to be confirmed. Scheduled for September 9 is a field trip to A Charitable Foundation's Pupukea project and the Pacific Aina project in Newtown.
- September 21 the LUC is on Oahu to consider a conservation to urban boundary interpretation. September 22 the LUC is scheduling a one-day meeting on the Big Island to take action on the HELCO docket.
- October 5-7 is the field trip, HCPO conference and action meetings.
- October 13-14 the LUC will be on Oahu for the Aina Nui hearings. Vice Chair Judge noted that the Commission received e-mail indicating that the meetings would be on October 20-21, which are more favorable to her schedule. Chair Sakumoto commented that this would be 5 days of meetings over a 2-week period. It was noted that the HCPO conference may be moved back to late November. The schedule could possibly eliminate the October 5-7 meeting dates.

Chair Sakumoto congratulated Mr. Ching for receiving DBEDT's Manager of the Year award.

A05-757 JAMES W. McCULLY and FRANCINE M. McCULLY

Chair Sakumoto stated that this was a hearing on Docket No. A05-757 James W. McCully and Francine M. McCully to consider the reclassification of approximately 4.6 acres of land currently in the Conservation District to the Agricultural District at Wailea, South Hilo, Island of Hawaii, to consolidate and re-subdivide the three (3) existing legal lots of record and the contiguous former railroad right of way into three (3) lots in order to provide a more useful lot configuration.

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner

James W. McCully, Petitioner

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

Commissioner Kanuha entered the meeting at this time.

Chair Sakumoto asked Petitioner if staff has informed them of the Commission's policy regarding reimbursement of hearing expenses.

Mr. Tsukazaki replied in the affirmative and added that his client will be happy to fulfill his obligation.

Chair Sakumoto noted that there were no public witnesses.

Staff Report

1. Maxwell Rogers

Mr. Rogers provided a map orientation of LUC Maps 1 and 2, which depicts the petition area in South Hilo. Mr. Rogers summarized the staff's report and provided background information, significant issues, and other items that require further clarification by the Petitioner.

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

### Admission of Exhibits

Mr. Tsukazaki introduced and offered the First Amended List of Exhibits and Petitioner's Exhibits 1 thru 9. There were no objections by the parties. Said exhibits were admitted into evidence.

Ms. Leithead-Todd introduced County's Exhibit 1, the written testimony of Chris Yuen, Planning Director. There were no objections by the parties. County's Exhibit 1 was admitted into evidence.

Mr. Chang offered into evidence, the State's Exhibit 1, the testimony of the Office of Planning and Exhibit 2, the location map. There were no objections by the parties. Said exhibits were admitted into evidence.

Mr. Tsukazaki began his presentation and noted that the parties have worked together prior to this hearing and have come to a stipulation.

### Petitioner's Witnesses

#### 1. Brian Nishimura

Mr. Nishimura stated that he is a self-employed planning consultant, experienced in land use planning, consulting, permitting, rezoning, and environmental studies for federal, state, and county agencies. Mr. Nishimura also commented that he is experienced in affordable housing and project management services and has been qualified as an expert in housing with the State. Mr. Nishimura's resume and written testimony was admitted as Petitioner's Exhibit 9.

Mr. Nishimura was qualified as an expert in environmental impact report preparation. There were no objections by the parties or the Commission. Mr. Nishimura summarized the major findings in the environmental assessment that he compiled for this project.

Ms. Leithead-Todd raised a few questions related to the shoreline access, the railroad right of way and archeological sites.

Mr. Chang posed questions regarding the railroad right of way, the gulch area, and the process of obtaining conservation use permits thru the DLNR.

Commissioner Formby raised questions relative to the sugar cane cultivation periods, the view plains of the property, access and distance from the Belt Highway, the Northeast Hawaii Community Plan, the existing properties in the area designated conservation, and the depth of the northern pali.

Vice Chair Judge noted that the DLNR comment letters did not indicate an awareness that a petition for a DBA had been filed. Vice Chair Judge added that the comment letter from the DLNR also did not comment about taking the lands out of conservation.

A recess break was taken at 11:10 a.m. The meeting reconvened at 11:30 a.m.

#### EXECUTIVE SESSION

Vice Chair Judge moved that the Commission enter into executive session under §92-5(a)(4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. The motion was seconded by Commissioner Formby. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 11:30 a.m.

The open meeting reconvened at 11:40 a.m.

Mr. Tsukazaki stated that he has consulted with the OP regarding the DLNR comment letters, one of which is dated June 15, 2004 from the Office of Conservation and Coastal Lands, and the May 20, 2004 letter from the Forestry and Wildlife Division. Mr. Tsukazaki added that the Petitioner has chosen to come before the State LUC instead of pursuing the CDUA application from the DLNR and that the OP will speak on a procedural standpoint regarding this matter.

Vice Chair Montgomery raised questions regarding farming in Hamakua, rising land values on the Big Island, and land speculation.

Commissioner Formby asked what the petition area is currently zoned by the County. Mr. Nishimura replied agricultural zone 20.

Chair Sakumoto raised questions relative to the previous agricultural uses of the project area, the conclusion that no fauna survey was needed for this project, the DLNR comments, runoff and drainage issues, site planning and site work, potable and non potable water, intended uses by the Petitioner, allowable uses in the Conservation District versus the Agricultural District, and the DLNR permit process.

Commissioner Kanuha had a few questions regarding the state land use statute and commission rules which allow for Petitions of less than 15 acres in size to be handled by the appropriate county.

Commissioner Im posed a few questions related to the county zoning on agricultural lots, and allowable uses in the agricultural 20 zoning.

Commissioner Formby asked what the county's definition of open zone areas was. Mr. Nishimura replied that generally, areas that are designated open include county parks and other recreational areas not intended for structures. Mr. Nishimura added that the agricultural 20 zoning is not consistent with the open zone community plan.

Chair Sakumoto raised a few questions relative to the County General Plan versus the Northeast Hawaii Community Plan, and the Petition area's open designation zoning.

Commissioner Kanuha posed a few questions regarding the General Plan and the Northeast Hawaii Community Plan that were adopted by ordinance.

Vice Chair Judge asked when the General Plan was last updated. Mr. Nishimura replied February 2005.

Mr. Tsukazaki referred to Figure 5 of the EA and described the proposed consolidation and re-subdivision map of the Petition area, the agricultural 20 zoning designation, and the other lots on the map that consists of 2.4, 3.2, 1.9, and .86 acres totaling less than 20 acres. He added that the character of this neighborhood zoning is of mixed acreages.

Ms. Leithead-Todd requested for a copy of the staff report with its recommendations. Mr. Chang commented that the State would also like a copy of the staff report.

A lunch break was taken at 12:35 p.m. The meeting reconvened at 1:40 p.m.

## Petitioner's Witnesses

### 2. James McCully

Mr. McCully stated that he is a farmer and has been raising orchids since the early 1980's. Mr. McCully's written testimony was submitted as Petitioner's Exhibit 8. Mr. McCully summarized his testimony and discussed his personal history of farming since the late 1970's, his daily operation, and his proposed greenhouse and diversified orchid operations, traffic impacts, runoff and drainage, and wastewater issues.

Ms. Leithead-Todd posed a few questions regarding the current number of employees, agricultural activities, marketing and advertising, florist associations, and greenhouse revenues per square foot.

Mr. Chang raised a few questions relative to the proposed greenhouse, residence, and construction timetable of both structures.

Vice Chair Judge raised questions relative to the seven lots that Petitioner purchased in 1992 and the selling dates of the four agricultural lots.

Commissioner Formby asked if petitioner had previously informed the purchasers of the four agricultural lots regarding his intentions to reclassify the three remaining lots that are in the conservation district to the agricultural district. Mr. McCully replied in the affirmative and added that he has talked to his neighbors and notified the other party by mail. Commissioner Formby commented that the remaining three lots, based on testimony, appear that 1.2 acres will be used for orchid farming and 3.4 acres will have no present use. Commissioner Formby posed a few questions regarding intended uses such as cattle grazing on these open lots, an easement view plain, the history and selling dates of the four agricultural lots, the square footage of the proposed house plans, and other business ventures and properties owned.

Vice Chair Montgomery posed a few questions regarding the availability of farmlands along the Hilo coastline and the Puna districts.

Commissioner Im raised questions relative to the purchase price of the lots, the selling prices of the four agricultural lots, and the allowable uses of farming in the conservation district.

Commissioner Kanuha had a few questions regarding the number of lots purchased by Petitioner in 1992 and the soil characteristics of the property.

Commissioner Piltz posed questions and concerns relative to Petitioner's financial condition and his assets in real estate investments.

Commissioner Formby had a few questions and concerns regarding the four agricultural lots sold and the conservation lands, which could have sold at a lower price versus selling the agricultural lands.

Vice Chair Judge noted the importance of conservation lands and asked why Petitioner is requesting reclassification since farming, nursery operations, and a single dwelling are currently allowed in the conservation district. Mr. McCully replied that any change in the CDUA permit, such as expanding the greenhouse or a larger water tank, will require a new CDUA application to be reviewed and approved by the BLNR. Mr. McCully added that he prefers going to the LUC for reclassification at one time instead of having to continually appear before the BLNR for CDUAs.

Commissioner Formby commented that Mr. McCully's orchid and real estate endeavors are very impressive and noted that it appears that the type of operation Petitioner will be pursuing is currently allowed in the conservation district. Commissioner Formby noted his concern about setting precedence and whether this particular petition is appropriate for reclassification.

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

Chair Sakumoto called for a recess break and asked Mr. Tsukazaki if he would yield to the next item on the agenda. Mr. Tsukazaki replied in the affirmative.

Mr. Chang commented that the State's witness in the McCully docket has an early flight in the morning and asked if it was possible to have her testify out of order after the recess break. There were no objections to the State's witness testifying after the break.

A recess break was taken at 3:15 p.m. The meeting reconvened at 3:35 p.m.



## State's Witness

### 1. Laura Thielen

Ms. Thielen stated that she is the Director of the State's Office of Planning. Ms. Thielen's written testimony was filed with the LUC as the State's Exhibit 1. Ms. Thielen stated that their recommendations or official testimony have not changed since the date of the filing of Exhibit 1.

Ms. Leithead-Todd posed a few questions related to the historic difficulty in purchasing agricultural land because most of the lands were tied up in sugar cane or pineapple.

Commissioner Kanuha raised questions regarding the rationale behind the establishment of the strip of conservation lands along the coastal shoreline, the State's Exhibit 2 location map, and DLNR's determination of the conservation district.

Chair Sakumoto asked if it was possible to have a DLNR person to testify at a later date.

Mr. Chang replied that it is possible to have someone from the DLNR to testify if there is a continuance in the hearing.

Commissioner Formby had questions and concerns relative to the State's discretionary authority to designate conservation lands.

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

A recess break was taken at 4:15 p.m. The meeting reconvened at 4:25 p.m.

## DOCKET NO. A03-743 HAWAII ELECTRIC LIGHT COMPANY

Chair Sakumoto stated that this was an action meeting on Docket No. A03-743 Hawaii Electric Light Company, Inc. to consider the reclassification of approximately 15.643 acres of land currently in the conservation district to the urban district at Keahole, North Kona, Hawaii for improvements and upgrades to the Keahole Generating Station and Airport Substation.

## APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Warren Lee, President of Hawaii Electric Light Company

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Kudo presented the stipulated findings of fact, conclusions of law, and decision and order for consideration and adoption. Mr. Kudo stated that the document was filed with the LUC on August 4, 2005 and added that the document was a cooperative effort of the Petitioner, State Office of Planning, and the County of Hawaii. Mr. Kudo distributed a handout chart describing the LUC criteria and standards and Coastal Zone Management for the Commissioners to follow.

Chair Sakumoto noted that this chart is not a part of the record since the evidentiary portion of the hearing is closed. Chair Sakumoto added that the chart will be collected and returned to Mr. Kudo after his presentation.

Mr. Kudo's presentation indicated that the Petitioner had met their burden and that the petition and facts in the record met the LUC's standards for reclassification.

After the presentation, there were no questions by the Commission.

Ms. Leithead-Todd stated that the County had no comments and added that they have stipulated with the Petitioner and the County Director has signed the stipulation.

Mr. Chang commented that the State also supports the Petitioner and has executed the proposed order.

Chair Sakumoto noted that before the Commission begins deliberating, there needs to be confirmation from all the commissioners, including the two new commissioners, that they have all received and reviewed copies of the transcripts for this proceeding and are able to participate. Commissioners Contrades and Kanuha replied in the affirmative.

A recess break was taken at 5:10 p.m. The meeting reconvened at 5:25 p.m.

Chair Sakumoto stated that the Commission will begin deliberations and the Executive Officer will provide the comments and observations of the stipulated findings of fact, conclusions of law, and decision and order for this docket.

Mr. Ching summarized the order and noted that this comprehensive stipulation was submitted one-week prior to this date and that there are 267 findings and 12 conclusions of law. Mr. Ching added that staff has not had an opportunity to comprehensively review the document and could only highlight certain substantive items for the LUC's attention at this time. These items included the construction of specific conditions of approval and other formatting protocols.

Chair Sakumoto entertained a motion for the Commission to defer taking action on this document today to allow more time for the parties and staff to present a redline version of the order and circulate to the parties prior to the next Big Island meeting.

Commissioner Formby moved to defer action on this docket until such time that the staff has time to review the document, suggest changes as outlined by the Executive Officer, and provide the redline version with action to be taken at a later date on the Big Island. Vice Chair Judge seconded the motion.

Commissioner Im noted a few suggestions. Item 1 specified that the landscape plan and visual mitigation measures focus on the mitigating impacts versus the landscaping. Also, there is a difference between the Petitioner, landowner, and developer so it should be noted as such. On condition 17, the language should include that Petitioner shall use its best efforts to prevent accidents due to or caused by fuel or hazardous material carrying vehicles in and around the immediate surrounding areas and roads, including without limitation, providing and implementing prevention measures and emergency and response remediation plans.

The Commission was polled as follows:

Ayes: Commissioners Formby, Judge, Contrades, Im, Kanuha, Montgomery, Piltz, and Sakumoto.

The motion passed with 8 ayes.

The meeting adjourned at 5:45 p.m.

*(Please refer to LUC Transcript of August 11, 2005 for more details on this matter.)*