

LAND USE COMMISSION  
MINUTES OF MEETING

August 3, 2006  
Aloha Beach Resort Kauai  
3-5290 Kuhio Highway  
Kapaa, Kauai, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades  
Kyong-su Im  
Lisa Judge  
Duane Kanuha  
Steven Montgomery  
Ransom Piltz  
Nicholas Teves  
Reuben Wong

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

ADOPTION OF MINUTES

Commissioner Kanuha moved to adopt the Land Use Commission meeting minutes of July 6, 2006 and July 7, 2006. Vice Chair Montgomery seconded the motion. The minutes of July 6, 2006 and July 7, 2006 were approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the August 24 and 25 meeting dates would involve hearings on the Hale Mua docket. It is anticipated that this hearing would be continued to September 7 and 8.

Chair Judge questioned if an HCPO conference will be held in October of this year.

Mr. Mitsuda commented that the conference dates will be on October 3, 4, and 5, 2006 on Oahu.

Mr. Ching then noted that the LUC has tentative meetings scheduled for October 5 and 6. Mr. Ching suggested that the Commission could attend the HCPO conference Tuesday through Thursday, then have a one-day meeting on Friday (October 6) to minimize travel and time that the Commissioners were out of their offices. Chair Judge noted that the Commission concurred with this schedule for October 3 to 6.

### SP05-399 KAUAI ATV, LLC (Kauai)

Chair Judge stated that this was an action meeting on SP05-399 Kauai ATV, LLC (Kauai) to retroactively resend the Decision and Order Approving Special Permit in Docket No. SP05-399 Kauai ATV to include the Exhibit A referred to in the order.

### APPEARANCES

James Tagupa, Esq., Deputy Corporation Counsel, County of Kauai  
Barbara Pendragon, County of Kauai Planning Department  
Bryan Yee, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Judge noted that staff had received communication from the Petitioner indicating their non-appearance to the meeting today and that they have no objections to these proceedings.

Chair Judge noted that there were no public witnesses.

## Staff Report

### 1. Anthony Ching

Mr. Ching reported that upon issuing the decision and order involving Kauai ATV, the Exhibit A or map that is typically attached and referred to in the order was not included. Upon realizing this oversight, staff reissued the special permit to include Exhibit A. Staff requests that the LUC ratify this action.

The County stated that they had no objections to the re-issuance of the special permit to include Exhibit A.

Mr. Yee noted that the State also had no objections.

Commissioner Contrades moved to ratify the re-issuance of the special permit in Docket No. SP05-399 Kauai ATV. Commissioner Teves seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Teves, Wong, Piltz, Montgomery, Kanuha, Im, and Judge.

The motion passed with 8 yes, 1 absent.

## A94-704 LIHUE PLANTATION COMPANY, LTD. (KAUAI)

Chair Judge stated that this was an action meeting on A94-703 Lihue Plantation Company, Ltd. (Kauai) to consider Petitioner Lihue Plantation Company, Ltd.'s Motion to Amend Conditions 1, 2, and 7 made a part of the Order Adopting Hearing Officer's Findings of Fact, Conclusions of Law, and Decision and Order dated and entered January 4, 1996 as amended by the Order Granting Motion to Amend Condition No.s 2 and 7 dated April 12, 1996.

## APPEARANCES

Malia Lee, Esq., represented Petitioner

Tracy Nagata, D.R. Horton

Dave Hinazumi, Haili Moe

James Tagupa, Esq., Deputy Corporation Counsel, County of Kauai

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

## Public Testimony

### 1. Cheryl Lovell-Obatake

Ms. Lovell-Obatake expressed her concerns for this docket, especially in the Kalapaki area. Ms. Lovell-Obatake also stated that she did not have a clear understanding of who the property owner was and its officers.

Mr. Hinazumi explained that Haili Moe is the successor to the Lihue Plantation Company. Mr. Hinazumi added that Haili Moe owns most of the land under this petition area and that the Hanamaulu triangle area has been sold to D.R. Horton.

Ms. Nagata noted that the Hanamaulu triangle portion is comprised of approximately 30.168 acres of land.

Both the County and the State had no questions for Ms. Lovell-Obatake.

## Petitioner's Presentation

Ms. Lee apologized for the misunderstanding on their part and requested a continuance on this matter. Ms. Lee added that petitioner intends to file a revised motion with language for condition 1 that has been tentatively agreed upon by the County.

Mr. Tagupa commented that the County has no objections to a continuance and added that they have met with petitioner and have come to a tentative agreement on the condition, but will need additional time to draft final language. Mr. Tagupa added that the County will diligently work to be prepared for action on this item at the next LUC meeting on Kauai.

Mr. Yee commented that the State supports the request for a continuance, noting that it is generally better to have the parties agree on the appropriate language.

Mr. Tagupa asked if the parties could stipulate to the conditions instead of filing motions.

Chair Judge noted that she has been advised by counsel that even if the parties have stipulated, they would still need to come before the LUC for a vote on the stipulation.

Chair Judge then noted that having heard the presentation by the Movant, this matter will be continued at a future date to be determined. Chair Judge also stated that staff cannot grant a continuance once the agenda for the meeting has been noticed with the Lieutenant Governor's office and published. Therefore, should the need for such a continuance arise in the future, a request should be made to staff well in advance of the posting of the LUC's agenda.

Commissioner Contrades moved to continue this matter. Vice Chair Montgomery seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Montgomery, Im, Kanuha, Piltz, Teves, Wong, and Judge.

The motion passed with 8 yes, 1 absent.

#### POLICY/ADMINISTRATIVE RULES

Chair Judge stated that the LUC will be meeting to consider authorizing LUC staff to draft administrative rule amendments. Chair Judge noted that the LUC will give an opportunity to anyone in the public to provide testimony on this matter. Although the State or the County are not parties to this matter, they are also allowed to provide public testimony.

## Public Witness

### 1. Bryan Yee

Mr. Yee commended staff for bringing this matter to the LUC for consideration and for the LUC to take a pro-active approach. Mr. Yee suggested that the LUC authorize staff flexibility as appropriate and to look at all the rules, other than just for those specifically listed today, because rule making is a lengthy process.

There were no questions posed by the Commissioners of Mr. Yee.

Chair Judge noted that there were no other public witnesses.

## Staff Report

### 1. Anthony Ching

Mr. Ching expressed his gratitude to the Commission for this opportunity to discuss possible amendments of the LUC's administrative rules. Mr. Ching described the procedures for amending the LUC's rules and noted that the LUC could confirm, discuss additional issues, make comments and/or provide its directions to staff at this time. Should staff receive the LUC's approval or authorization, staff will develop the proposed rule changes for review by the LUC. Once the draft proposed rule changes are approved by the LUC, the matter will be taken out to public hearings on a statewide basis to allow for public comment. Staff expects to be able to provide the LUC with a draft proposal for hearing no later than the end of this year.

Mr. Ching briefly discussed item 1, the consideration of procedural policy regarding modification of conditions to special permits; and line items A through H, as described on the agenda. Mr. Ching also requested that latitude be given to staff to cover additional areas in the event that other issues or points may arise.

Commissioner Kanuha noted that in addition to formulating amendments to cover permissible uses in the rural districts specified in Act 205 SLH 2005, it may also be appropriate to look at the rules applying to permissible agricultural uses, as there may be some overlap.

Mr. Ching replied in the affirmative and noted that staff will examine the range of permissible uses described in 205-4.5 HRS and suggest those changes.

Commissioner Wong commented that it would also be appropriate to authorize staff to conduct a comprehensive review of all the rules. In that event, staff will not need to return to the LUC for its authorization.

Mr. Ching stated that if authorized by the LUC, staff would be empowered to conduct a comprehensive review of the rules and make the appropriate revisions as needed.

Chair Judge asked when was the last time a proposal for amendment was conducted.

Mr. Ching noted that it was sometime in the year 2000.

Chair Judge stated that given the discussion today, the LUC is looking at directing staff to do the housekeeping amendments and conducting a comprehensive review of the rules as needed.

Commissioner Wong moved to direct staff to do a comprehensive review and draft amendments to the rules. The motion was seconded by Commissioner Contrades. The motion was unanimously approved by voice votes.

The meeting adjourned at 10:45 a.m.

*(Please refer to LUC Transcript of August 3, 2006 for more details on this matter.)*