

LAND USE COMMISSION  
MINUTES OF MEETING

June 4, 2009

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

COMMISSIONERS PRESENT: Kyle Chock  
Normand Lezy  
Ransom Piltz  
Thomas Contrades  
Lisa Judge  
Duane Kanuha

COMMISSIONERS ABSENT: Vladimir Paul Devens  
Nicholas Teves, Jr  
Reuben Wong

STAFF PRESENT: Dan Davidson, Executive Officer  
Riley Hakoda, Staff Planner  
Russell Suzuki, Deputy Attorney General  
COURT REPORTER: Holly Hackett  
AUDIO TECHNICIAN; Wade Kersey

**CALL TO ORDER**

Chair Kanuha convened the meeting at 9:08 a.m.

**ADOPTION OF MINUTES**

Commissioner Piltz moved to adopt the May 14-15, 2009, minutes of the Commission. Commissioner Judge seconded the motion. The motion was unanimously approved by voice votes.

**TENTATIVE MEETING SCHEDULE**

Executive Officer Davidson announced the Commission meeting schedule for June and July. The second meeting in June is to continue the hearing on D.R. Horton-Schuler Homes docket that is scheduled for June 5, 2009. The meeting in July is to attempt to complete the hearing for Hawaii Memorial Park Life Plan and there will be a break till August 13 and 14. LUC staff should be notified if there are any conflicts or concerns.

**ACTION**

**A05-760 PUKALANI ASSOCIATES, LLC (KULA, MAKAWAO, MAUI)**

Chair Kanuha announced that this was an action hearing to consider the reclassification of approximately 87.702 acres of land currently in the Agricultural District to the Urban District at Kula, Makawao, Maui, for an urban residential community of approximately 165 single-family residential homes, together with community recreational facilities at TMK Nos. 2-3-09: 07 and 64.

**APPEARANCES:**

William Yuen, Esq. and Sharon Wright, Development Mgr., represented the Petitioner  
Michael Hopper, Esq. and Jeff Hunt, represented Maui County  
Bryan Yee, Esq., represented the State Office of Planning  
Abe Mitsuda, State Office of Planning  
Mary Alice Evans, State Office of Planning,

**PUBLIC WITNESSES**

None

**PETITIONER**

Mr. Yuen stated that Petitioner generally agreed with the LUC Staff's Findings of Fact, Conclusions of Law and Decision and Order and proceeded to describe the manner in which the Petition Area conformed to the Urban classification standards and summarized how the Project satisfied the districting criteria by meeting goals and objectives which complied with the policies of the Maui General Plan and Community

Plan, was within the urban growth boundary of the current proposed Maui Island Plan update and how the Project satisfied the Commission's re-districting criteria.

Mr. Yuen stated that the Petitioner was also in agreement with the LEED building condition suggested by LUC staff as it was consistent with past energy conservation conditions for other projects for voluntary compliance with LEED standards.

## MAUI COUNTY

Mr. Hopper stated that Maui County's position remained unchanged from its written testimony and supported the staff report's recommendations regarding the district boundary amendment.

## OP

Mr. Yee summarized the State's position in the areas of 1) energy conservation, 2) traffic, 3) infrastructure deadline, 4) automatic order to show cause, and 5) the "right to farm" condition.

Mr. Yee stated that the findings of fact for energy conservation did not include information regarding the impact or effects that buildings could have on energy use and that implementation costs to achieve LEED standards could be a reasonable amount in relation to total construction costs. Mr. Yee argued why enforceable conditions for LEED-Silver energy conservation measures should be applied if Petitioner does not come forward with any.

Mr. Yee stated that in regards to traffic, OP wanted to note that the concerns of the DOT should be acknowledged; and, that in regards to the infrastructure deadline, OP agreed that the LUC staff report findings were appropriate.

Mr. Yee described the Order to Show Cause process, stated the reasoning for OP's proposed Automatic Order to Show Cause condition and argued for the use of the word "shall" instead of "may" issue an Order to Show Cause.

Finally, Mr. Yee stated that OP was satisfied with the LUC staff report findings on the "right to farm" condition.

## FORMAL DELIBERATION

Chair Kanuha announced that formal deliberation of the proposed order was to begin. Mr. Yee asked if public testimony was going to be taken. Chair Kanuha acknowledged the question and queried the audience for public testifiers. There was no public testimony.

All Commissioners and the Chair announced that they were ready to deliberate on this matter.

Mr. Davidson described the process that he would use to read the order into the record and stated that the base of the proposed D&O was the Petitioner's April 9, 2009 proposed Stipulated D&O, and also reflected submittals from the Office of Planning, Maui County and LUC Staff. Mr. Davidson then commenced reading the document into the record and noted the editing changes as they occurred.

Commissioner Judge asked whether Condition 1 should refer to "lot buyers" or "lot owners". Mr. Davidson replied "lot owners", acknowledged the correction, and continued to the conclusion of his readings and the end of his report.

The Commission went into recess at 10:06 a.m. and reconvened at 10:21 a.m.

Commissioner Judge questioned the acceptance of the Petitioner's proposed TIAR by the DOT in Condition #2- Traffic Improvements. Mr. Davidson replied that from the staff perspective, all parties had agreed to accept the condition as stated. After further discussion, Commissioner Judge was satisfied with the language of the Condition#2 and asked for discussion on Condition #18.

Commissioner Judge noted that Condition #18 contained the wording "for the portion of the Petition Area" and that since the Petition Area is identified as parcel 7 and 64, the wording should be "infrastructure for the Petition Area".

Commissioner Lezy offered that Condition#18 should change the word "receipt" to "issuance" of the Decision and Order.

Commissioner Judge stated that since Section 64 would not be residential, the word "residential" should be stricken. There were no objections to the suggested wording changes and striking the word "residential". Mr. Davidson read the proposed condition for the Commissioners as stated below (deletions stricken, additions underlined).

**“Proposed Condition 18. Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access points, ~~residential~~ internal roadways, and water supply, sewage and electrical infrastructure for the ~~portion of the~~ Petition Area ~~identified as Parcel 7 and 64~~ within ten (10) years from the date of ~~receipt~~ issuance of the Decision and Order.”

Commissioner Judge moved to amend Condition 19’s wording as noted below (deletions stricken, additions underlined).

**19. Order to Show Cause.** If: (a) Petitioner fails to complete construction of the proposed backbone infrastructure as described above or furnish a bond to the County of Maui for such completion within ten (10) years from the date of the Decision and Order, or (b) prior to the approval of an ordinance changing the zoning district of the portion of the Petition Area identified as Parcel 7 to an appropriate Residential District an ordinance shall be enacted by the County of Maui pursuant to which Parcel 7 shall no longer be designated for Single Family Residential use in the Makawao-Pukalani-Kula Community Plan Land Use Map or its equivalent, or placing Parcel 7 outside of the Urban Growth Boundaries adopted by the Maui County Council as part of the Maui Island Plan, then in either event the Commission may shall, ~~on its own motion or at the request of any party or other interested person~~, issue an Order to Show Cause requiring Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural District classification or be changed to a more appropriate classification.

Commissioner Piltz seconded Commissioner Judge’s motion.

Commissioner Lezy expressed concern over changing “may” to “shall” as it would require future Commissioners to issue an order without considering the motion for the order. After discussion over the matter, a call for the question was made and the Commission was polled as follows:

Ayes- Commissioners Judge, Piltz, Chock, Lezy  
Nays-Commissioners Contrades and Kanuha  
The motion failed 4-2 with 2 absent.

Commissioner Chock moved to amend Condition #1-Affordable Housing to provide that 100% of the affordable housing product be constructed prior to the sale of the first market lot.

Commissioner Judge seconded the motion for discussion and asked if the County of Maui could define the requirements of the Maui residential workforce housing policy. Mr. Hopper described the various requirements and conditions of the policy that the County had and stated that the timing for having units completed was not clearly stated. Mr. Hopper stated he could check and get back to the Commission but did not think there was a stated requirement.

Discussion on the motion ensued. The following wording of the Affordable Housing condition was voted upon (additions underlined).

- 1. Affordable Housing.** Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii substantially in accordance with an the Residential Workforce Housing Policy of the County of Maui, Chapter 2.96 Maui County Code. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and the County of Maui. 100% of the affordable housing shall be constructed prior to the sale of the first market lot. Petitioner will not permit lot buyers to build any ohana units in the Project through the imposition of restrictive covenants.

Commissioner Lezy asked what the past practice of Maui County had been in regards to requiring affordable housing. Mr. Hopper stated that the developer could provide affordable housing or pay a fee or set aside land and described how developers could comply with the county requirements during the county change of zoning approval stage. Commissioner Piltz commented that in the past, the County had been negligent in building affordable housing when land or money had been given in lieu of having affordable housing built and that might be the reason for this change in the condition.

Commissioner Chock moved to enter into Executive Session. Commissioner Judge seconded the motion. By a show of hands, the Commission unanimously voted to enter into Executive Session at 10:46 a.m.

Commissioner Lezy moved to exit Executive Session. Commissioner Contrades seconded the motion and the Commission resumed the meeting at 11:09 a.m.

Commissioner Judge moved to make a friendly amendment to keep Commissioner Chock's motion intact but to add changes in regards to the County affordable housing requirements.

Commissioner Chock accepted the friendly amendment to his motion and Commissioner Piltz accepted the amendment change as the motion's seconder. Further discussions between the Commissioners to clarify the intent of the motion ensued. Commissioner Lezy suggested changes in the wording of the condition to read as follows (additions underlined):

- 1. Affordable Housing.** Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii substantially in accordance with an the Residential Workforce Housing Policy of the County of Maui, Chapter 2.96 Maui County Code. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and the County of Maui; provided however, that if the Petitioner builds affordable housing, then 100% of the affordable housing shall be constructed prior to the sale of more than 50% of the market lots. Petitioner will not permit lot buyers to build any ohana units in the Project through the imposition of restrictive covenants.

Commissioner Chock accepted the revised friendly amendment to his motion and Commissioner Piltz accepted the new amendment change as the motion's seconder.

The Commission was polled by voice vote to amend the condition as noted above and the motion passed 6-0 with 3 absent.

Commissioner Lezy stated he had concerns with how Condition#21 was worded in regards to "habitable structures" and suggested that the condition be phrased "Parcel 64 shall not be improved". There was no objection to making this change.

Commissioner Judge moved to approve the Findings of Fact, Conclusions of Law and Decision and Order as amended. Commissioner Piltz seconded the motion. The Commission was polled by voice vote as follows:

Ayes: Commissioners Chock, Contrades, Judge, Lezy, Piltz and Chair Kanuha. The motion passed 6-0 with 3 absent.

The Commission went into recess at 11:22 a.m. and reconvened at 11:32 a.m.

**DR09-38 Alexander & Baldwin, Inc. Wailuku and Makawao, Maui, Hawaii**

Chair Kanuha announced that this was a meeting to consider the petition for a declaratory order to designate Important Agricultural Lands for approximately 27,104.5 acres at Wailuku and Makawao, Maui, Hawaii.

APPEARANCES:

Benjamin Matsubara, Esq., Curtis Tabata, Esq., Chris Benjamin and Rick Volner Jr., represented the Petitioner

Michael Hopper, Esq. and Jeff Hunt, represented Maui County

Bryan Yee, Esq., represented the State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans State Office of Planning,

PUBLIC WITNESSES

1) Irene Bowie, Executive Director, Maui Tomorrow Foundation, stated she was concerned about what had not been designated Important Agricultural Lands and questioned the 15 percent portion of the 85/15 formula. She identified lands along the north shore and areas around Maalaea that had not been designated IAL and asked the Commissioners to compare all the lands that A&B owns, the County Map of where the urban growth boundaries are and what is being proposed as IAL lands by A&B and to consider these factors. She testified that her other point was on water and the type of crops that would be grown on the IAL. She stated that the availability of water for irrigating the fields is a very controversial issue and that her organization had been involved in two water cases. She represented that since water availability is a criterion for IAL that it should be considered.

There were no questions for Ms. Bowie.

2) Lucienne deNaie, Sierra Club Maui, stated she was concerned about what types of crops and what the focus would be in the future since she had served on the General Plan Advisory Committee and had examined the lands in detail with the County staff. She asked the Commission to look at the maps that the County had produced for projecting future growth and noted that there were gaps within the urban growth



boundary which consisted of land still owned by the Petitioner. She represented that the “gap lands” were lands that had been proposed for development projects despite being very similar to those being proposed and designated IAL. She stated that the proposed IAL were not consistent with the county’s own agricultural lands map and the urban growth boundaries. She also stated that the water issue was huge and the water demand and supply problems should be resolved before designating IAL.

Commissioner Piltz asked Ms. deNaie about water supply and needs in the East Maui area. Ms. deNaie described the different situations in various parts of the region.

Commissioner Judge asked Ms. deNaie if the proposed 27,000 acres had a different designation from the maps that she had been working on. Ms. deNaie replied that the majority of the lands were designated agricultural and acknowledged that the proposed IAL lands were consistent with all the county planning maps she had worked on.

There were no questions for Ms. deNaie

Chair Kanuha asked Mr. Matsubara if there were any objections to the documents submitted by the Department of Agriculture, the County of Maui and the State Office of Planning being submitted into the record. Mr. Matsubara replied that there were no objections.

Riley Hakoda, staff planner, provided the LUC staff report. There were no questions for Mr. Hakoda.

Commissioner Lezy disclosed that he provides legal services to a subsidiary of Alexander & Baldwin-Matson Navigation Company to avoid the perception of conflict of interest. There were no objections to Commissioner Lezy’s participation.

## PETITIONER

Mr. Matsubara acknowledged the LUC staff report findings and stated that the 85/15 formula had been waived by Petitioner. Mr. Matsubara represented that HC&S had designated about 27,000 of its 33,000 acres in active agriculture cultivation as IAL and that the proposed Petition Area met all the criteria for IAL as required by law.

## MAUI COUNTY

Mr. Hopper stated that the County's position considered the waiver of any development credits with the 85/15 formula. He recommended that a condition similar to the Kauai order regarding the waiver be included and deferred to Mr. Hunt to make further comments.

Mr. Hunt stated that the County of Maui supported providing incentives for the agricultural industry and commended A&B for its actions and appreciated the voluntary waiver of development credits and that no provision for re-classification had been included. Mr. Hunt stated that his office wanted to put people on notice that the "gap lands" mentioned in earlier testimony and which were indicated on a map as non-important agricultural lands may be protected by the County through the general plan updating, including the Maui Island Plan.

OP

Mr. Abe Mitsuda stated that the Office of Planning supported the Petition subject to concerns regarding the inclusion of certain discrete parcels that are not high value agricultural lands. Mr. Mitsuda testified that the LUC should weigh whether these parcel qualify as IAL and that OP supports the Petition based on the Petitioner not seeking the re-classification of other lands for development; the Petitioner waiving all rights to any credits that could be claimed; and the percentage of lands that are not high-value agricultural lands being relatively small in comparison to the total lands proposed for designation. Mr. Mitsuda stated that the Petitioner's land met the criteria and definition of Important Agricultural Lands and provided large, relatively intact blocks of agricultural land.

Mr. Mitsuda stated that OP supported the Petition with the following concerns: 1) lands currently in pasture use and, 2) lands designated as "Sensitive Lands" in adopted county community plans or identified "Sensitive Lands" in the draft County General Plan's Maui Island Plan map. Mr. Mitsuda testified that the Petitioner had answered these concerns in a letter dated May 26, 2009 and deferred to the County regarding county and community issues.

Mr. Mitsuda stated that a simulated "flyover" tour of the designated lands had been prepared and unsuccessfully attempted to present it.

The Commission went into recess at 12:10 p.m. and reconvened at 12:20 p.m.

Mr. Mitsuda stated that the intent of the presentation was to supplement the site tour visit taken on June 3, 2009. There were no questions for Mr. Mitsuda.

Commissioner Judge moved to accept the Petition from Alexander & Baldwin, Inc. to approve the designation of Important Agricultural Lands. Commissioner Contrades seconded the motion.

Commissioner Piltz stated that he would like to add the condition of waiving credits according to HRS 205-45(h) as an amendment to the motion. Commissioner Judge accepted the amendment and Commissioner Contrades accepted the amendment as the motion's seconder.

Chair Kanuha stated his appreciation for the Petitioner's actions in designating the Important Agricultural Lands. Commissioner Judge added her thanks and Commissioner Piltz applauded the Petitioner for its sugar cultivation efforts as demonstrated during the site visit.

The Commission was polled by voice vote as follows:

Ayes: Commissioners Chock, Contrades, Judge, Lezy, Piltz and Chair Kanuha.

The motion passed 6-0 with 3 absent.

The meeting was adjourned at 12:30 p.m.