

LAND USE COMMISSION  
MEETING MINUTES

October 23, 2003

Pikake Room  
Wailea Marriott, an Outrigger Resort  
3700 Wailea Alanui  
Wailea, Maui, Hawaii 96753-8332

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Isaac Fiesta  
Lawrence Ing  
Steven Montgomery  
Peter Yukimura

COMMISSIONERS ABSENT: Pravin Desai  
Randall Sakumoto

STAFF PRESENT: Anthony Ching, Executive Officer  
Russell Kumabe, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 9:58 a.m.

ADOPTION OF MINUTES

Commissioner Fiesta moved to adopt the Land Use Commission meeting minutes of September 18-19, 2003. Commissioner Yukimura seconded the motion. Said motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching indicated that the next meeting would be on Kauai on November 6-7, 2003. At that time, two motions regarding the Moana Corporation will be acted upon. He also indicated that the Commission would meet on Maui on November 20-21, 2003, and on Oahu on December 4-5, 2003. There will also be one meeting in January 2004.

Commissioner Fiesta moved to enter into executive session to discuss legal matters with counsel. Commissioner Coppa seconded the motion, and the motion was unanimously approved by voice votes.

The Commission exited regular session at 10:02 a.m. The meeting reconvened at 10:41 a.m.

Vice Chair Catalani recused himself from the proceedings at this time.

Commissioner Coppa moved to appeal Judge Hifo's circuit court decision. Commissioner Fiesta seconded the motion. Discussions and deliberations were made amongst the Commission. Commissioner Montgomery indicated that he doesn't see any compelling case to challenge Judge Hifo's ruling, and it seemed unnecessary to appeal a sensible ruling. Commissioner Yukimura commented that the Judge's decision was a groundbreaking decision especially for the Commission and other agencies, and that by filing the appealing, it would give the Commission more time to review and study the decision in detail.

The Commission was polled as follows:

Ayes: Commissioners Coppa, Fiesta, Yukimura, and Ing

Nays: Commissioner Montgomery

The motion failed with 4 ayes and 1 nay as the motion did not generate the five necessary supporting votes by the Commission.

A recess break was taken at 10:47 a.m. The meeting reconvened at 10:59 a.m.

A03-740 Maui Land & Pineapple Company, Inc. (Maui)

Vice Chair Catalani was present to the proceedings at this time.

Chair Ing announced that this was an action meeting on Docket No. **A03-740 Maui Land and Pineapple Company, Inc.** to determine whether an environmental impact statement was required pursuant to the Order for Summary Judgment issued by the Second Circuit Court, State of Hawaii, on April 16, 2003 and the petition for reclassification of approximately 40.6 acres of land currently in the Agricultural District into the Urban District at Pukalani, Makawao, Maui, Hawaii for the development of a town center including commercial, office, civic, cottage industries, senior and multi-family residential and open space uses.

## APPEARANCES

Steven Lim, Esq., represented the Petitioner  
Robert McNatt, Maui Land & Pineapple Company, Inc.  
Jeff Overton, Group 70 International  
Randy Endo, Maui Land & Pineapple Company, Inc.  
John Chang, Esq., represented Office of Planning  
Abe Mitsuda, Office of Planning

The Supplement to the Revised Final EIS was received by the Commission on October 23, 2003.

## PUBLIC WITNESSES

### 1. Barbara Long

Ms. Long distributed a copy and briefly summarized her testimony. Ms. Long commented that she has not received the final or supplement to the Revised EIS and asked the Commission to defer this matter so that those who haven't seen the EIS may have time to review it.

Mr. Ching referred to the Environmental Guidebook issued and prepared by OEQC dated October 19, 1997. He further referred to page 20 of the guidebook with respect to preparation of a statement, which described the EIS and its requirements. The guidebook did not seem to require that a draft RFEIS be publicly disseminated if each comment received was provided a response.

Chair Ing added that subsequent to this, the Petitioner will file its Petition for reclassification, and at that time, the public will have opportunity to provide input.

Ms. Long indicated the Mr. Dick Mayer could not be present to testify but spoke on his behalf requesting that the Commission hold a meeting at a more convenient place for people who live in the affected area.

Chair Ing asked Ms. Long for assistance in finding an area to hold LUC hearings. Ms. Long indicated that she would be happy to assist.

Ms. Long commented that she believed the Final EIS, which she has not seen yet was not ready for acceptance according to EIS rules. She noted Section 11-202 Acceptance which required the EIS document to do three things: 1) fulfill the requirements and definitions of the law; 2) Adequately describe environmental impacts; and 3) satisfactorily respond to comments received during review.

Ms. Long also felt that Group 70's October 10, 2003 response was inadequate and inaccurate. It stated that buildout capacity was described in Section 3 of the Draft EIS and mentioned two figures for square footage for office and commercial space and a figure for the size of cottage industry lots. Ms. Long felt that it did not respond by giving an estimate of total square footage at buildout.

Ms. Long asked that the Commission require the final EIS to contain total estimates of buildout square footage for the proposed project all components. The law states in Section 11-219, that they convey the information in a form easily understood without the need for cross-reference.

Ms. Long indicated that the final EIS must fulfill the requirements of the statute, and noted that in Section 11-217, DEIS content requirement Section F - Alternatives, the consideration of alternatives should contain "rigorous exploration and objective evaluation of the environmental impacts of alternative actions." She believed the applicant's consideration of a less intensive development, which was included in Section 7.5 on page 7.6 of the draft, that section only considers a project with 50% of the proposed plan. She further indicated that it does not consider any downsizing alternatives and believed that this analysis was inadequate and that the applicant should expand the section in the Final EIS using alternative scenarios.

Finally, Ms. Long indicated that the final EIS does not presently fulfill the requirements of Section 11-200 subsection 17G, which required "special emphasis shall be placed on environmental resources that are rare and unique to the region and the project site including natural or human made resources of historic, archaeological or aesthetic significance." She believed that this unique historic resource has not been given adequate or appropriate consideration for the value its retention would impart to any development of the proposed project.

## 2. Isaac Hall

Mr. Hall stated that he represented Malama Maui, a group of individuals who reside in the Upcountry area who are interested in protecting and preserving prime agricultural lands and open space areas between Kekaulike High School and the existing urban area in Pukalani in preventing urbanization where it is unnecessary.

Mr. Hall indicated that he also objected to this location as a meeting place, and that it was inconvenient for those affected by the projects before them. He noted that this meeting should have been held in an area affected by the application, and asked to defer this matter because of a procedural error. He commented that he disagreed with Mr. Ching's interpretation, and indicated that the revised final EIS should have been delivered to interested members of the public before this action meeting. He noted that Chapter 343 was intended to enhance public participation in the EIS process, and felt

that Mr. Ching did not interpret correctly what the guidelines said about the duty to provide the final EIS to commenters. Mr. Hall briefly described various sections of the law to provide a clear explanation as to why there was a duty to provide commenters a copy of the final EIS before this action meeting.

Chair Ing inquired about the deadline to act on this item. Mr. Ching noted that the Commission has 30 days to issue a ruling with respect to the proposed revised final EIS.

Mr. Hall indicated that he did not receive adequate notice of this agenda. Mr. Hall also indicated that he cannot comment on the revised EIS because he hasn't seen it and suspects that the final revised EIS was as inadequate as the draft EIS.

In conclusion, Mr. Hall indicated that the revised final EIS was inadequate, should not be accepted, and be deferred until the public has copies of this document for review and participation on this matter.

Chair Ing indicated that the 30-day provision started on October 13, 2003 and ends on November 12, 2003.

### 3. Aric Nakashima

Mr. Nakashima commented that this project was a good idea and was in support of this development because businesses are wanted in the Pukalani area. There were no questions by the parties and the Commission.

A recess break was taken at 11:58 a.m. The meeting reconvened at 12:11 p.m.

Mr. Lim indicated that the procedures suggested by Malama Maui were not supported by Chapter 343 or the EIS rules, and that there were no provisions for pre-review of the Final EIS. He further indicated that the practical result of accepting what Mr. Hall recommended was that the Commission is going to be engaged in a quasi-judicial contested case hearing on the acceptance of the Final EIS. He also indicated that the acceptance of the Final EIS does not approve the project, and does not make a final determination of whether the findings of the EIS are sound or unsound, that it was merely to determine that the Petitioner has adequately described the potential range of impacts.

Mr. Chang indicated that the state's position was that the advice received from the Commission's counsel should be followed at this time, and that the state does not have a position at this time.

Commissioner Yukimura moved to enter into executive session to discuss legal aspects with counsel. Commissioner Fiesta seconded the motion. The motion was unanimously approved by voice votes.

The Commission exited regular session at 12:20 p.m. and entered into executive session.

A lunch break was taken at 12:39 p.m.

At 1:58 p.m., Chair Ing announced that the Commission was still in executive session and asked the audience to excuse themselves from the proceedings.

The Commission adjourned from executive session at 2:03 p.m. The regular meeting reconvened immediately thereafter at approximately 2:05 p.m.

#### 4. John Chang

Mr. Chang noted that the Office of Planning submitted written comments to the Petitioner on May 9, 2002 and received Petitioner's response to its comments. Mr. Chang indicated that the Office of Planning felt that the EIS met the minimal standards and should be accepted by the Commission. He further indicated that Mr. Abe Mitsuda of the Office of Planning was present to answer any questions the parties and Commission may have.

#### 5. Abe Mitsuda

Mr. Mitsuda indicated that this project was in the conceptual stage and that the community plan should be played out and that it was difficult to nail down a square footage.

Commissioner Montgomery indicated that it seemed common sense that it was reasonable to have all of these aspects disclosed in a document of sort.

Commissioner Montgomery asked Mr. Mitsuda to summarize the DLNR's position about these resources as Ms. Long stated that this historic resource has not be given adequate consideration.

Mr. Mitsuda indicated that there had been discussions about preservation of some of the buildings as a water tank, and buildings associated with agriculture on the property. He further indicated that once the Petition is finalized, it would be sent to DLNR for comments.

## 6. Sally Raisbeck

Ms. Raisbeck expressed her concern about water and the plans to drill a well 2,000 feet from the existing Pookela well.

Ms. Raisbeck indicated that the Upcountry water system was a water system separate from the water system that supplies central and south Maui. She further indicated that Maui has had a long-standing problem with shortage of water for 20-30 years, and that it has been a difficult process for the Upcountry people to obtain a water meter. She was concerned that people are waiting for water for years, and that a development such as this has the money to drill a well and then turn it over to the County. The economic effects of providing water this way might be something that the EIS might be expected to cover.

### Staff Report

Mr. Kumabe, staff planner, provided a map orientation of the petition area and briefly summarized its staff report before the Commission. He referenced the following during his staff report presentation:

- Map No. 1
- A conceptual view from Pukalani Superette Parking Lot
- Table 1: Checklist of EIS content requirements, Chapter 343, HRS
- Summary of staff's comments by FEIS II Sections

Mr. Kumabe indicated that from a standpoint of a technical review of the EIS, with the clarification that staff had pointed out, staff felt that if clarification was provided and that they would address the technical requirements of the EIS with the merits of the project and the case would be explored further in the Commission hearing. Mr. Kumabe also indicated that staff felt that the major issues raised, including more discussion on Chapter 205 and 205a, was satisfactory.

Mr. Kumabe noted that OEQC indicated that the following issues should be added to the unresolved issues:

- DOE's fair share requirement for residential component
- State Historic Preservation's confirmation of the archaeological inventory survey.

### Petitioner's Presentation

Mr. Lim stated that the Supplement to Revised Final EIS included some additional information and expanded discussions on the areas that were discussed with

Land Use Commission staff, and felt that with the submittal of this information, the revised final EIS was complete.

Mr. Jeff Overton, Mr. Randy Endo, and Mr. Robert McNatt then introduced themselves.

1. Randy Endo

Mr. Endo stated that he was the development manager of Maui Land & Pineapple Company, Inc. (ML&P). He briefly described the history of ML&P and provided the current status of the project. He also indicated that ML&P has three primary divisions – Pineapple farming, commercial and property division, and resort and development. Mr. Endo further indicated that ML&P has had substantial public input and have made presentations to various organizations such as the Pukalani Community Association, Kula Community Association, Makawao/Main Street Association, King Kekaulike PTSA, and other groups.

2. Jeff Overton

Mr. Overton stated that he was the Chief Environmental Planner with Group 70 International. He provided a solid briefing of what the project really was and referred to conceptual drawings in his presentation. He walked through some of the basics in terms of the project, how it was composed and how it came about.

From the audience, Mr. Hall objected that Mr. Overton was supposed to only discuss the EIS and whether it was acceptable or not.

Mr. Overton indicated that he made his presentation to answer questions that were asked in prior testimonies. Mr. Overton also indicated that he did not have design plans yet and was currently in the state LUC and community plan level.

A recess break was taken at 3:17 p.m. The meeting reconvened at 3:33 p.m.

Chair Ing expressed his concern about the specific details on the adequacy of this EIS report.

Mr. Overton addressed the issues as indicated in the Summary of staff's comments by FEIS II Sections. He also provided answers to Ms. Long's questions.

Mr. Lim asked Mr. Overton to explain to the Commission regarding OEQC's comments on how to address DOE fair share requirements with relation to the proposed project. Mr. Overton indicated that there would not be any school age children generated by the project and doubt there will be a DOE fair share on a senior project.



Mr. Lim asked that Mr. Overton provide a status of the Historic Preservation Division's confirmation of archaeological clearance of the property. Mr. Overton indicated that the property has been assessed as an inventory of archaeological survey as well as the cultural assessment, and that both of studies were reviewed and received comments during the initial EIS. Mr. Overton further indicated that they have met the requirements in terms of archaeological and cultural, and that there were no findings in the survey of the well site.

Chair Ing asked that staff make available to the general public any request of such material. Mr. Ching asked that the Petitioner or the parties provide the Commission with .pdf files of the EIS and at the same time staff will have it posted on its website.

Chair Ing indicated that for the record, after consultation with counsel, the Commission was advised that the procedure that they had followed did comply with the law.

The Commission have discussed and deliberated. A motion was then made by Vice Chair Catalani to accept the Revised Final EIS as offered by the applicant. Commissioner Coppa seconded the motion. Vice Chair Catalani clarified the Revised Final EIS will incorporate staff's issues of concern. The Commission was polled as follows:

Ayes: Commissioners Catalani, Coppa, Montgomery, Yukimura, Fiesta, and Ing.

The motion passed with 6 ayes and 2 absent.

#### ELECTION OF OFFICERS

Commissioner Yukimura made a motion nominating Lawrence Ing as Chair, Roy Catalani as Vice Chair, and adding Commissioner Coppa as co-vice chair of the Land Use Commission. Commissioner Fiesta seconded the motion. The motion was unanimously approved by voice votes.

The meeting was adjourned at 4:25 p.m.