

LAND USE COMMISSION  
MINUTES OF MEETING

November 20, 2003

Maunaloa/Ilima Room  
Wailea Marriott, an Outrigger Resort  
3700 Wailea Alanui  
Wailea, Maui, Hawaii 96753-8332

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

COMMISSIONERS ABSENT: None

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Caroline Lorenzo, Secretary  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 9:45 a.m.

ADOPTION OF MINUTES

Chairman Ing noted amendments to the November 6, 2003 minutes to include on page 1, Diane Erickson, Deputy Attorney General, present at the meeting; page 3, last paragraph, second sentence to read "the widening of the Fort Weaver Road of 2 to 3 lanes will allow the current 700 cars to turn off in a more efficient manner"; page 7, misspelled name of Greg Kamm; page 10, second paragraph, motion made by Commissioner Sakumoto should read "not to exceed 90 days."

Vice Chair Catalani moved to adopt the Land Use Commission meeting minutes of November 6, 2003 as amended. Commissioner Fiesta seconded the motion. Said motion was unanimously approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that at the Commission's December 4 and 5, 2003 meetings, there will be appearances on December 4<sup>th</sup> by the Department of Education at 9:30am, followed by the Department of Transportation at 10:30am. Sierra Club will also be appearing in the early afternoon. On December 5, 2003, there will be a report on status of work to date, agricultural work group, Maui Business Park and Kamehameha Schools Special Project. Mr. Ching added that there would also be presentations on homelessness and affordable housing made to the Commission.

Mr. Ching stated that the LUC has received communication via facsimile this morning from Senator Hanabusa who seeks to have the LUC consider her request for clarification of the Decision and Order Approving Amendment to Special Use Permit for Docket No. SP 87-362.

Commissioner Montgomery entered the proceedings at this time.

Vice Chair Coppa moved to amend the November 21, 2003 agenda to include the correspondence from Senator Hanabusa for discussion. Commissioner Fiesta seconded the motion and said motion was unanimously approved by voice votes.

(Please refer to the LUC transcript for more details on the above matters.)

## A03-738 GENTRY INVESTMENT PROPERTIES

Chair Ing announced that this was an action meeting to adopt the Findings of Fact, Conclusions of Law, and Decision and Order regarding the petition to reclassify approximately 282.614 acres of land currently in the Agricultural District into the Urban District at Ewa, Oahu, Hawaii, for the development of residential and an industrial and commercial complex.

On November 17, 2003, the Commission received correspondence from Linnel T. Nishioka, attorney for intervener Haseko (Ewa) Inc., notifying of their non-appearance at today's meeting, as the Haseko (Ewa) Inc., has come to an agreement with Petitioner and the other parties to this case and that agreement is part of Petitioner's stipulated proposed findings of fact, conclusions of law, and decision and order.

On November 19, 2003, the Commission received a telephone call from the City and County of Honolulu notifying of their non-appearance at today's meeting.

## APPEARANCES

Curtis Tabata, Esq., represented Petitioner  
Russell Tsuji, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning

Mr. Tabata stated that they have received the Decision and Order and have no objections to the changes.

Mr. Tsuji noted that they are in agreement of the stipulated Findings of Fact, Conclusions of Law, and Decision and Order.

Mr. Ching summarized the changes dictated by the Commission's action at its previous meeting. These changes included the addition of number 66 as a new finding, and amendments to various conditions. Finding No. 66 states "The Commission received public testimony regarding the traffic conditions along the `Ewa Plain corridor, which are adversely impacting the quality of life for residents of the `Ewa community. There is a need for appropriate State and County agencies to develop regional roadway improvements, including the widening of Fort Weaver Road, the construction of the North-South Road, and the construction of the Kapolei Parkway, in a timely and coordinated manner to alleviate the current traffic congestion and delays as a result of the increased growth in the region."

Mr. Ching also noted that Condition No. 4, Transportation, now includes specification that "Petitioner shall undertake subsequent mitigative measures that may be required by the Department of Transportation or the City and County of Honolulu. The mitigative measures shall be coordinated with and approved by the Department of Transportation and the City and County of Honolulu, as appropriate. Petitioner in coordination with DOT shall provide briefing and update on regional and local traffic improvement projects to the Ewa community on a semi-annual basis in conjunction with this project."

Condition No. 16, Energy Conservation Measures, should read "Petitioner shall implement energy conservation measures such as the use of solar energy and solar heating and incorporate such measures into the Project."

Vice Chair Coppa moved to the adopt the Findings of Fact, Conclusions of Law, and Decision and Order. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Coppa, Fiesta, Desai, Sakumoto, Catalani, Montgomery, Yukimura, and Ing

The motion passed with 8 ayes.

(Please refer to the LUC transcript for more details on the above matters.)

A break was taken at 9:56 a.m. The meeting reconvened at 10:11 a.m.

A03-741 MAUI LAND AND PINEAPPLE, INC. (Maui)

Chair Ing announced that this was a hearing to consider reclassifying approximately 275.3 acres of land currently in the Agricultural District into the Rural District and approximately 515 acres of land currently in the Agricultural District into the Urban District at Honokahua and Napili, Maui, Hawaii, for residential, commercial, and golf course uses.

APPEARANCES

William Yuen, Esq., represented Petitioner, Maui Land and Pineapple, Inc.  
Robert McNatt, Maui Land and Pineapple, Inc.  
Ryan Churchill, Maui Land and Pineapple, Inc.  
Michael Foley, County of Maui Department of Planning  
Jane Lovell, Esq., represented County of Maui Department of Planning  
Russell Tsuji, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning

PUBLIC WITNESSES (Please refer to the LUC transcript for additional details.)

1. Pua Aiu

Ms. Aiu provided the Commission with a summary of written testimony from the Office of Hawaiian Affairs (OHA).

Ms. Aiu testified that OHA has concerns about the Petitioner's Petition because of the continued diversion of water from the Honolua ditch, the exchange of the State parcel of land within the project, the long-term effects of the project which are not compatible with the West Maui Community Plan, and the Cultural Assessment that does not gauge the effects of the project on taro farmers in Honokohau Valley, or of the fishermen at Napili and Honokohau.

Vice Chair Catalani indicated that his law firm has a relationship involving the Kapalua Water Company and the Petitioner. He indicated that the Kapalua Water Company has approached his firm and the matter was referred to his partner, Craig Nakanishi. Vice Chair Catalani will not personally be involved in this case.

Chairman Ing questioned if there were any objections from the parties or the Commission for Vice Chair Catalani to continue to sit in on the proceedings. The Petitioner, Maui County, and the State Office of Planning had no objections.

2. Zandra Souza-Amaral

Ms. Souza-Amaral expressed her concerns regarding the need for affordable housing in Maui. There were no further questions by the parties and the Commission.

3. Diane Shephard

Ms. Shephard expressed her concerns to protect the streamline and the need for a stream restoration program. She added that there is a need to incorporate water conservation measures and referenced information from studies done by the USGS. After a brief discussion, there were no further questions by the parties and the Commission.

4. Ann Fielding

Ms. Fielding expressed her concerns regarding the rising cost of homes because of too much resort development. The local people are no longer able to afford a home in Maui and the people with money are driving the locals out. She added that traffic between Lahaina and Kaanapali is terrible, the project will use a lot of water, and this project will only add to these problems. After a brief discussion, there were no other questions by the parties and the Commission.

5. Mahelani Ventura Oliver

Ms. Oliver expressed her concerns regarding the legal ownership of the subject property. According to Ms. Oliver, this is a non-established title with no record to legally transfer title and interest from the Chiefs and the people. There were no questions by the parties and the Commission.

6. Degray Vanderbilt

Mr. Vanderbilt expressed his concerns regarding the affordable housing issue. Mr. Vanderbilt stated that there is a need for affordable housing in Maui. He suggested that the Petitioner develop 100 acres into affordable housing on larger sized lots, affordable for the working class people of the county, such as teachers, county emergency personnel, etc. and indicated that there are social benefits from residing in these larger-sized lots. After a brief discussion, there were no further questions by the parties and the Commission.

A lunch break was taken at 11:52 a.m., and the meeting reconvened at 1:10 p.m.

7. Lucienne de Naie

Ms. de Naie expressed her concerns regarding the potential impacts of the project upon the traditional taro growing families in the region and to the threatened native stream life in the Honokohau Stream. Ms. de Naie noted the importance of drinking water as it is trucked in to Honokohau and suggested that the project use recycled water for other uses, suitable for golf courses and irrigation purposes. Ms. de Naie also referenced Dr. Denbow's findings, such as fish reproduction in the stream. After a brief discussion, there were no other questions by the parties and the Commission.

8. Sally Raisbeck

Ms. Raisbeck expressed her concerns regarding the water system and commented that the water system should be considered in the Commission's determination upon approval of the Petition. There were no other questions by the parties and the Commission.

Staff Report

1. Bert Saruwatari

Mr. Saruwatari, staff planner, provided a GIS map orientation of the area and briefly summarized the staff report before the Commissioners. There were no questions by the parties and the Commission.

Commissioner Fiesta moved to enter into executive session to consult with counsel regarding the legal aspects of the Commission's decision-making criteria. Vice Chair Coppa seconded the motion and said motion was unanimously approved by voice votes.

The Commission exited regular session at 1:54 p.m. and entered executive session at 1:55 p.m. The meeting reconvened at 2:35 p.m.

INTRODUCTION OF EXHIBIT AND WITNESS LISTS BY THE PARTIES

The Petitioner introduced an amended list of witnesses and 53 exhibits (#1 -54), with no exhibit number 46. There were no objections and said amended witness list and exhibit list were admitted into the record by the Commission.

The County introduced written testimony from the Maui Planning Department as its sole exhibit. There were no objections, and said exhibit was admitted into the record by the Commission.

In addition to exhibits #1-5, the State introduced Exhibit 6, the State of Hawaii, Department of Health, Guidelines Applicable to Golf Courses in Hawaii. There were no objections by the parties and said exhibit and witness list were admitted into the record by the Commission.

PETITIONER'S WITNESSES (Please refer to the LUC transcript for additional details.)

1. Robert McNatt

Mr. McNatt stated that he is the Vice President of land planning, Maui Land and Pineapple, Inc.

Mr. Yuen commented that Mr. McNatt is an expert in land development and his resume is attached as Exhibit No. 24. Mr. Yuen requested that questions to Mr. McNatt be deferred until after Mr. Warren Suzuki, Vice President of Maui Land and Pineapple, Inc., provides his testimony. There were no objections by the parties and the Commission.

2. Warren Suzuki

Mr. Suzuki stated that he is the Vice President of land asset management for Maui Land and Pineapple, Inc.

Mr. Yuen commented that Mr. Suzuki is a qualified engineer and his resume is attached as Exhibit No. 31.

The county stated that the record should reflect that Mr. Suzuki is a qualified civil engineer. There were no objections by the parties, state, and the Commission.

Mr. Suzuki provided a brief summary of the water diversion system and the stream restoration. Mr. Suzuki commented that based on consultant John Ford's results, there are native migratory species in the stream and that during periods of high flow, the native migratory species are able to swim above the stream diversion and the larvae are getting down the ocean to complete their life cycles. Mr. Suzuki added that it might not be necessary to have a stream restoration program, as there may be a direct benefit to the native species since the evasive, non-native species (guppies and mosquito fish)

may not reach upstream. He indicated that it is not clear what is the best solution and that all studies have not been completed to date.

Mr. Suzuki commented that the report did indicate that the testing period was conducted at the bottom of the stream and not at the taro gate. The release of water is through a monitored gate valve system. The water does get caught up in debris and staff checks periodically, or if the residents of the valley suspect a clog, they will notify the office, who will immediately dispatch a crew to remove the debris. They have undertaken efforts to monitor the flow of at least a million gallons a day on a continuous data recorder.

Mr. Suzuki noted that domestic drinking water is currently trucked into Honokohau Valley due to constraints related to necessary compliance of the Clean Water Act. After searching for alternative strategies, trucking of drinking water was the most cost-effective way.

Ms. Lovell questioned which studies need to be completed and if the information on the years of stream flow data has been shared with the county.

Mr. Suzuki was unsure if the data has been shared with the county. However, the data recorder was recently installed late last month and could provide all data recorded since the installation date could be provided at the next hearing.

Mr. Yuen commented that John Ford is currently in the process of his study and did not know when that study will be completed. Mr. Yuen added that he would provide a copy upon its completion.

Mr. Tsuji asked if it would be fair to say that the project, as proposed, would not have an adverse impact on the irrigation ditch, based on Mr. Ford's study.

Mr. Suzuki replied that he did not see why it would have an adverse impact on the ditch and added that at this time, they do not feel that the stream restoration program is necessary given the facts based upon the information provided to them. The environmental consultant indicated that from his observation, the native species are able to migrate up and down the stream.

Commissioner Fiesta questioned how did they determine that the native species completed their life cycles by moving from the stream to the ocean and back to the stream.

Mr. Suzuki stated that the study has indicated a complete life cycle because of the larvae moving to the ocean and back to the stream.



Commissioner Fiesta questioned if rainfall contributes to the overflow. Mr. Suzuki replied that when there is significant rainfall, the water is primarily flowing into the stream. There is always water in the stream.

Commissioner Montgomery noted that some species, such as Opu, could crawl over rocks by the waterfalls, which could be the reason for the benefits of no evasive species upstream. Mr. Suzuki stated that there are no waterfalls, just a continuous stream.

Chairman Ing questioned the number of taro farmers and residents, including those who do not reside there but are the landowners, users, or squatters, and how will they be impacted.

Mr. Suzuki stated that in 1995 there was an indication of five acres of taro cultivation based upon visual observations. There has been a reduction of acreage and unsure if they are the landowners, squatters, lessees, or have multiple ownership. Mr. Suzuki added that they would be working with the taro farmers to enhance their farming and to nurture their activities. There were no other questions by the parties and the Commission.

A recess break was taken at 3:50 p.m. The meeting reconvened at 3:55 p.m.

Mr. Yuen requested that the proceedings continue with discussions with Mr. McNatt. There were no objections by the parties and the Commission.

Mr. Yuen asked Mr. McNatt if Maui Land and Pineapple, Inc., has sufficient title to this project. Mr. McNatt replied in the affirmative.

Mr. McNatt stated that in reference to the stream, they will release that information soon and will restore the stream. He added that the diversion has been going on for years. Mr. McNatt then provided a brief summary of the planning concepts incorporated into Kapalua Mauka.

Ms. Lovell asked for more detail on the water protection aspects. She questioned how the water will be directed from the greens and how any applications, such as fertilizers and pesticides to the greens will be directed from the drinking water wells.

Mr. McNatt stated that the land under the greens will have a slope, which is designed to channel the flow to the catchment area away from the wells. They are also looking at natural or organic farming fertilizers instead of chemical types, and intend to use recycled water.

Ms. Lovell noted if the affordable housing component was still in progress. Mr. McNatt indicated that they have agreed to the county's policy of a 10% requirement and will comply with whatever county policy becomes in the future.

Mr. Tsuji asked if Mr. McNatt had a chance to review the conditions. Mr. McNatt replied in the affirmative. Mr. Yuen added that they did not have any objections with the intent of the conditions, however, are some legal clarification was required.

Commissioner Sakumoto noted that with respect to the title of the property, what basis does Maui Land and Pineapple, Inc. have to support its claim, and if they have been able to acquire title insurance on any part of the petition area.

Mr. Yuen stated that they have submitted as exhibits the title reports, as well as deeds admitted into evidence. The company has received title insurance for all the homes sold in Kapalua in the past. They are at preliminary stages and it is not necessary to acquire title commitments at this time.

Commissioner Sakumoto questioned what is the county policy for affordable housing and how long will it take for this project to provide affordable homes.

Mr. McNatt stated that the county policy is 10% of the total units so they will be required to build 69 affordable units. He added that they are committed to have these homes built as quickly as possible.

Commissioner Sakumoto asked how these homes will be integrated into the project. Mr. McNatt replied that these homes will not be in the petition area, but near by.

Commissioner Fiesta asked if there will be any loss of jobs due to the taking of 925 acres out of production. Mr. McNatt anticipates no loss of jobs, as workers will be shifted to work on other agricultural lands. Migrant workers will be out first and attrition will likely contribute to stabilizing the work force.

Vice Chair Catalani noted that Maui Land and Pineapple, Inc., will commit to develop a minimum of 69, and potentially 125 affordable rental units for West Maui. This commitment to affordable housing may help to alleviate the county's affordable housing crisis.

Vice Chair Coppa questioned if this will be employee housing. Mr. McNatt replied that this is intended to be affordable housing and employees will given preference.

Vice Chair Catalani questioned if they are committed to including public trails. Mr. McNatt replied that they are committed to public trails.

The proceedings recessed at 4:35 p.m. and will reconvene on November 21, 2003 at 8:30 a.m.