

LAND USE COMMISSION
MINUTES OF MEETING

May 6, 2004

Makena Salon Ballroom
Maui Prince Hotel Makena Resort
5400 Makena Alanui
Makena, Maui, Hawaii

COMMISSIONERS PRESENT: Bruce Coppa
Pravin Desai
Kyong-Su Im
Lawrence Ing
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: P. Roy Catalani
Isaac Fiesta
Steven Montgomery

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

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

Chair Ing noted that the agenda would be amended to delete the Adoption of Minutes and will proceed with the Tentative Meeting Schedule, followed by the Executive Officer's Report. Other amendments to the remaining order of the dockets were noted. Chair Ing entertained a motion for approval of the amended agenda. Vice Chair Coppa moved to approve the amended agenda, seconded by Commissioner Sakumoto. The motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported changes to the June meetings, which were originally scheduled for June 17 and 18, will now be held on June 24 and 25 on Maui. In order to maintain a 2-week duration, the July meetings have also been

adjusted. The July meetings will be held on July 8 and 9, and on July 22 and 23 respectively.

Mr. Ching also noted that the upcoming calendar will be full, as there will be two hearings scheduled on the July 22 and 23 meetings dates for the Spencer 201G fast track affordable housing project and the Waiolani Mauka Subdivision. Mr. Ching added that the July 8 and 9 meetings would be held on the Big Island as he anticipates a hearing for the Kamehameha Investment Corporation's Keahou project.

Mr. Ching commented on the Waimanalo Landfill status report and asked if the Commission preferred a written report or a presentation? The Commission agreed to a written report with greater coordination and clarity amongst the parties.

EXECUTIVE OFFICER'S REPORT

Executive Officer Anthony Ching informed the Commission that Senate Bill 3052 relating to the IAL (Important Agricultural Lands) has suffered an untimely passing and all momentum for the IAL designation has been stopped. There was a brief discussion by the Commission.

Mr. Ching provided a brief report on the financial plan and its challenges. Most recently, the Governor has issued a spending moratorium to all state agencies. After a brief discussion, there were no questions by the Commission.

DOCKET NO. A89-650 WAIHEE OCEANFRONT HAWAII, INC.

Chair Ing stated that this was for an adoption of the Order and asked if the Commissioners had a copy of the order. The Commissioners replied in the affirmative.

APPEARANCES

Tom Leuteneker, Esq. representing Waihee Oceanfront Hawaii, Inc.
Dale Bonar, representing Maui Coastal Land Trust
Bert Sakata, the intervenor
Jane Lovell, Esq., represented County of Maui
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Judith Henry, State Office of Planning

Chair Ing noted that the order is the written portion of the Commission's decision and asked if there were any questions by the parties. Being none, Executive

Officer Anthony Ching was asked to summarize the order for the benefit of the parties and the general public. Mr. Ching provided a brief summary of the order and its conditions. There were no questions by the parties and the Commission.

Commissioner Sakumoto moved to adopt the order as presented by the Executive Officer and the motion was seconded by Commissioner Desai.

The Commission was polled as follows:

Ayes: Coppa, Desai, Im, Ing, Sakumoto, and Yukimura.

The motion passed with 6 yes and 3 absent.

A recess break was taken at 10:35 a.m. The meeting reconvened at 10:45 a.m.

DOCKET NO. A03-741 MAUI LAND AND PINEAPPLE COMPANY, INC.

Chair Ing stated that this was an action meeting on Docket No. A03-741 Maui Land and Pineapple Company, Inc.'s Stipulated Findings of Fact, Conclusions of Law, and Decision and Order 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.

On April 22, the Commission received the Petitioner's Stipulated Findings of Fact, Conclusions of Law, and Decision and Order.

On April 23, 2004, the Commission received from the County of Maui's Deputy Corporation Counsel, the Signature page.

On April 28, 2004, the Commission received the Petitioner's amended Stipulated Findings of Fact, Conclusion of Law, and Decision and Order.

APPEARANCES

William Yuen, Esq. represented Maui Land and Pineapple Company, Inc.
Robert McNatt, represented Maui Land and Pineapple Company, Inc.
Jane Lovell, Esq., represented County of Maui
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning
Judith Henry, State Office of Planning

Mr. Yuen commented that Maui Land and Pineapple is proposing to reclassify approximately 275 acres from the agricultural district to the rural district, of which it will subdivide into 180 rural residential lots. Mr. Yuen added that there has been a number of testimonies regarding affordable housing issues and the Petitioner has already developed 45 employee lots in 2003 and is proposing the development of a mixed affordable and market housing project at Pulelehua, containing at least 125 affordable rental units. Mr. Yuen also noted that testimony regarding restoration of continuous flow at the Honokohau Stream, installation of impervious liners and protective measures for the well heads, traffic issues, and a commitment to diversified agriculture has been heeded and appropriate conditions of approval developed. In addition, they are addressing concerns from both the public witnesses and governmental agencies. Mr. Yuen added that Kapalua Mauka would expand and enhance one of Hawaii's premier destination resorts, the Kapalua Resort. After a brief discussion, the Commission had no further questions.

Ms. Lovell noted that she has met with the Petitioner's representative and reviewed the proposed findings of fact, conclusion of law, and decision and order. Ms. Lovell commented that they were able to work out their differences at that level. Therefore, the County has no formal presentation for today's meeting. Ms. Lovell added that they are satisfied with the document.

Mr. Chang noted that he has also met with the Petitioner's representative and have come to an agreement, except on the transportation issue. The Office of Planning does not know what the traffic generation is going to be, as it was based partially as a resort residential with less people and trips. Therefore, OP would like more flexibility to respond to any traffic condition that may be caused by the development. Mr. Chang added that clearly, more traffic in that area would cause problems on the state's roadway.

Ms. Lovell noted that she understood the State's position, but the County's position remains the same, that they are satisfied with the conditions as proposed by the Petitioner.

Commissioner Im asked if the state knew what the impact will be regarding the transportation system for this project?

Ms. Charlene Shibuya from the Department of Transportation, Highways Division, replied that they do not have a specific number for this project's impact on the regional area at this time. Ms. Shibuya added that it is important to have some flexibility in the language and not lock into a \$3500 per unit cost.

Commissioner Im asked when the DOT would have estimates or calculations on these types of developments, not only for this project, but other projects that may have traffic impacts as well.

Ms. Shibuya noted that the County had some consultants prepare numbers but she was not sure if she could formally comment on that study. Ms. Shibuya added that these project districts are large and the nature of the projects and the time frame in which it occurs may have a difference as to what is appropriate at that time for fair regional improvements. At this time, the impact fee structure has not been formally adopted, but they are working together with the County and the State.

Vice Chair Coppa asked the Petitioner if they were aware of the energy conservation measure which the LUC had previously imposed in other dockets. Mr. Yuen replied in the affirmative and noted that they were aware of the recently imposed energy conservation measure on a number of other petitions.

Commissioner Im commented that there needs to be some kind of concrete dates and/or numbers worked out between the parties with respect to a fair contribution for transportation impacts.

Mr. Yuen noted that their commitment is to pay at least \$3,500 per lot or unit for each unit developed on the project. This commitment to pay that amount is solid because it is recorded as an encumbrance on the title.

Commissioner Im commented that although the title is encumbered by the LUC order, when the developer sells the lots, there might not be any one person that the state could collect their money from.

Mr. Yuen stated that the County ordinance requires the impact fee be assessed and paid to the County upon issuance of any building permit or final subdivision approval. Therefore, if the fee is to be paid to the County, there is a mechanism to determine when that is going to be paid.

Chair Ing noted that the language should have been exactly like what was just referenced to, rather than as listed. Mr. Yuen stated that he had no objections to imposing that language change.

Chair Ing asked Ms. Shibuya what was the practice of assessments made regarding access to state highways? Ms. Shibuya commented that for access of assessments, it is handled differently from traffic impact fees. Ms. Shibuya added that the DOT does not have a mechanism for impact fees. The highway access types have a mechanism where they have it appraised and there is a fee that can be paid to the rights of way agents. As an example, if you did not have an access opening to Piilani

Highway, or you had one and wanted to move it or want an additional access, then there is a number associated for obtaining a new access or enhancement of the property. She added that once you have an appraisal that is agreed upon, the developers pays that fee to the DOT.

Mr. Yuen noted that they have agreed with the State as to the three access points on Honoapiilani Highway. He added that the Petitioner is aware that a different fee will be assessed if they were to change the access points or add a fourth access point.

Commissioner Sakumoto asked if there have been any instances where a \$3500 per unit impact fee was found insufficient to cover the cost of the impacts of a development? Ms. Shibuya commented that this study is new and there has not been any similar imposed impact fee for any project to her knowledge. Ms. Shibuya added that broadly speaking, if it is a large project that may be in four increments with conditions locked in early on. The project spans for 20 years, then upon the last phase, the state may be stuck with regional improvements possibly caused by this project and have lost the mechanism to capture any fees at that latter time.

Mr. Chang stated that the Petitioner has based their trip generations on a resort development situation, although they are selling single-family type units. The State will not know the impacts until a future date whether the Petitioner's assumptions are correct or not. If the project is more like a residential development, then there will be more traffic impacts on a state roadway. Mr. Chang added that the County ordinance basically deals with the County roads. In this case, the only major roadway or the main highway is a State roadway, but it is the County who will be collecting the \$3500 for improvements and there is no way that the State can collect their money except for some type of legislation that allows the State to tap in to that money.

Mr. Yuen noted that their traffic expert, Wayne Yoshioka, used hotel trip generation rates, rather than resort trip generation rates, which are greater than the resort residential rates. Mr. Yoshioka's testimony was presented to the Commission at a previous hearing. Mr. Yuen added that the \$3500 figure is being paid to address traffic impacts. This figure is being paid at the single-family residential rate for all lots and units being constructed in Kapalua Mauka, whether they are going to be occupied as timeshares, hotel resort residential or single-family. Mr. Yuen noted that they are prepared to pay this figure, which they believe is a fair rate for resort residential or single-family residential impacts, and are willing to pay 10 percent over what they believe is a credible study as to a figure for those impacts.

After a discussion, Chair Ing noted that the Commission would take a recess for lunch. Chair Ing asked that the parties and staff meet to discuss an agreement in the interim and produce language acceptable to everyone. A recess break was taken at 12:10 p.m. The meeting reconvened at 1:40 p.m.

Chair Ing noted that upon recess, the Commission had hoped that the parties could agree to a language acceptable to all the parties in regards to the transportation and traffic impact fee provision. Chair Ing asked if the Executive Officer could report on this matter.

Mr. Ching reported that on behalf of the parties, they have reached an agreement as to the transportation conditions. Mr. Ching then recited the agreement of these conditions. (Please refer to the transcript for details.)

Mr. Yuen commented that the version recited by Mr. Ching was acceptable to the Petitioner. Ms. Lovell noted that these conditions were also acceptable to the County of Maui. Mr. Chang concurred and stated that this is acceptable to the State of Hawaii.

Commissioner Sakumoto moved to approve the stipulated order as amended and noted that he would like to add a couple of further changes. Commissioner Sakumoto added that to Condition number 1, a sentence that is consistent with the representations made by the Petitioner, to be added at the end of what is now Condition Number 1. The sentence should read “Notwithstanding any affordable housing provision that may be agreed to by the Petitioner and the County of Maui, Petitioner at a minimum shall develop no less than 125 affordable units as a part of its proposed Pulelehua project at Mahinahina.” Commissioner Sakumoto noted that amendments made to Conditions 18 and 19, after the word “Petitioner” have the phrase “where feasible” deleted in both these conditions to comport with other similarly worded conditions as found in other dockets.

Commissioner Coppa seconded the motion.

Commissioner Im noted that as part of the agreed stipulation proposed to the Commission, he asked to add after the \$3500 figure, the fact that it is not the Commission who is imposing this condition, but rather an agreement of the parties; the County, OP, and the Petitioner’s agreement.

Commissioner Sakumoto also noted that he would like to incorporate the other non-substantive revisions, which the Executive Officer described earlier for this docket.

There were no objections to all of the additions by the Petitioner, the County or the State.

The Commission was polled as follows:

Ayes: Coppa, Desai, Im, Ing, Sakumoto, and Yukimura.

The motion passed with 6 yes and 3 absent.

A recess break was taken at 1:55 p.m. The meeting reconvened at 2:00 p.m.

A00-730 LANIHAU PROPERTIES LLC

Chair Ing stated that this was an action meeting to consider a motion for time extension for performance under Condition 8 of the Findings of Fact, Conclusions of Law, Decision and Order dated September 26, 2003.

On March 19, 2004, the Commission received Petitioner's Motion for Time Extension.

On April 30, 2004, the Commissioner received from the County of Hawaii Planning Department a statement in support of Petitioner's motion.

On May 5, 2004, the Commission received a telephone communication from Norman Hayashi, County of Hawaii Planning Department, indicating that they would not be able to attend the commission's hearing on the motion, but stood on their earlier filed statement in support of the motion.

The Commission also received, on May 5, a fax communication from R. Ben Tsukazaki, counsel for Petitioner, indicating that a previously scheduled matter for which he could not be excused would prevent him from also attending the commission's hearing on the motion. Mr. Tsukazaki indicated that as both the Office of Planning and County of Hawaii had no objections to the subject motion, he requested the Commission's favorable action on the request for the extension. There were no objections from the parties.

Commissioner Coppa moved to approve the motion in the matter of Docket No. A00-730 Lanihau Properties for more time as requested. The motion was seconded by Commissioner Yukimura.

The Commission was polled as follows:

Ayes: Coppa, Desai, Im, Ing, Sakumoto, and Yukimura.

The motion passed with 6 yes and 3 absent.

DOCKET NO. A04-746 WAIKAPU 28 INVESTMENT

Chair Ing noted that this was an action meeting to consider, pursuant to Chapter 343 Hawaii Revised Statutes, whether a finding of no significant impact action should be

issued in the subject docket for reclassifying approximately 28.7 acres of land currently in the agricultural district into the urban district at Waikapu, Maui, Hawaii.

On April 14, 2004, the Commission served upon its parties, its order determining that the Land Use Commission will serve as the accepting authority pursuant to Chapter 343, HRS, and that the Draft Environmental Assessment dated January 5, 2004 warrants the issuance of an anticipated findings of no significant impact.

On April 22, 2004, the Commission received Petitioners proposed Final Environmental Assessment for the Waiolani Mauka Subdivision at Tax Map Key: 3-5-04:25.

On May 4, 2004, the Commission received the statement of the position of the Office of Planning, in support of the petition,

APPEARANCES

Blaine Kobayashi, Esq., representing Waikapu 28 Investment
Scott Nunokawa, Waikapu 28 Investment
Karlynn Kawahara, Munekiyo and Hiraga
Jane Lovell, Esq., County of Maui
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Kobayashi noted that as stated in the agenda, the purpose of this meeting was to consider the acceptance of Waikapu 28 Investment's final environmental assessment that has been prepared for this case. Mr. Kobayashi also noted that at the February 5th meeting, this Commission voted in favor of issuing the anticipated finding of no significant impact on this matter. Under Chapter 343, HRS, there needs to be a comment period in which the public may comment on this matter. The Petitioner has received several comment letters from the governmental agencies, federal, state and county, and has prepared written responses to each of those comments. Mr. Kobayashi added that based on all of the comments and responses provided, their analysis of the finding of no significant impact justifies that the Commission should accept this final environmental assessment.

Ms. Lovell stated that the County has previously provided it's comments and that the County has nothing further to add to its agency's comments.

Mr. Chang noted that they have submitted the Office of Planning's statement of position in support of the petition and that their written comments are still valid. Mr. Chang added that they are recommending approval at this time.

Commissioner Sakumoto moved to accept Waikapu 28 Investment's final environmental assessment and issue the finding of no significant impact. The motion was seconded by Commissioner Desai.

The Commission was polled as follows:

Ayes: Coppa, Desai, Im, Ing, Sakumoto, and Yukimura.

The motion passed with 6 yes and 3 absent.

Chair Ing announced that there will be a site visit to this subject docket site tomorrow morning at 10:00 a.m. The meeting area will be at the former Waikapu stop at 10:00 a.m.

A recess break was taken at 2:20 pm.. The meeting reconvened at 2:30 p.m.

DOCKET NO. A04-748 CONSOLIDATED BASEYARDSLLC

Chair Ing noted that this was an action meeting to determine whether the Land Use Commission is the appropriate reviewing/accepting authority pursuant to Chapter 343, HRS, to determine whether an anticipated finding of no significant impact is warranted for this docket.

On April 15, 2004, the Commission received the Petition for district boundary amendment and draft environmental assessment.

APPEARANCES

Blaine Kobayashi, Esq., representing Consolidated Baseyards LLC
Dave Ward, Consolidated Baseyards LLC
Karlynn Kawahara, Munekiyo and Hiraga
Jane Lovell, Esq., County of Maui
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Kobayashi stated that the proposed project involves a 39-lot light industrial subdivision project situated on approximately 23.3 acres. The parcel is currently classified as agricultural by the State Land Use Commission and the County of Maui. However, this parcel is classified as light industrial in the Wailuku-Kahului Community Plan. Currently, half of the 23.2-acre parcel is used for miscellaneous light industrial. Because this particular project involves work within the County's right-of-way, there is a need for an environmental assessment. Mr. Kobayashi added that he believed this

Commission is the appropriate approving agency for the draft environmental assessment.

Chair Ing asked who is the owner of Waiko Road, which fronts this project area. Mr. Ward replied that the owner is the County of Maui and they are also responsible for the repairs of the road.

Vice Chair Coppa asked if the cane haul road is still being utilized. Mr. Ward replied that the road is used by HC&S who has been working with users along Waiko Road under a permitted basis for access on to some of the areas along Waiko Road.

Chair Ing asked Ms. Lovell if the discussion regarding the ownership of Waiko Road was correct to her knowledge? Ms. Lovell replied that there is some controversy over the matter and did not know the interim measures being worked out between the County and the businesses directly affected. Ms. Lovell added that there is a cooperative agreement underway in which the adjoining landowners are working together with the County to make necessary repairs.

Staff Report

Mr. Ching 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.

Ms. Lovell noted that the County had no further comments at this time.

Mr. Chang stated that the Office of Planning's position is that the Land Use Commission should be the accepting authority and supports the Land Use Commission staff in this action to have the case go forward.

Commissioner Im moved that the Land Use Commission is the proper authority to receive the final environmental assessment and that a FONSI be issued for the project.

Commissioner Sakumoto made a friendly amendment to Commissioner Im's motion to issue an anticipated finding of no significant impact as opposed to a FONSI. Commissioner Im replied in the affirmative. The motion was seconded by Commissioner Sakumoto.

The Commission was polled as follows:

Ayes: Coppa, Desai, Im, Ing, Sakumoto, and Yukimura.

The motion passed with 6 yes and 3 absent.

A recess break was taken at 2:55 p.m. The meeting reconvened at 3:05 p.m.

DOCKET NO. A03-744 HILUHILU DEVELOPMENTLLC.

Chair Ing stated that this is to consider Hiluhilu's final environmental impact statement for the reclassification of approximately 725.2 acres of land currently in the conservation and agricultural district into the urban district at Ka'u, North Kona, Hawaii, Tax Map Key: 7-2-005: 001.

On April 20, 2004, the Commission received correspondence from Clyde Namuo, OHA Administrator, regarding resubmission of the final environmental impact statement for the proposed project. The Commission also received a copy of correspondence to Group 70 from Mr. Namuo regarding the same subject matter.

On April 27, 2004 the Commission received correspondence from Mr. Namuo regarding the resubmitted proposed FEIS dated March 19, 2004 for the proposed project.

On May 5, 2004, the Commission received a telephone communication from the County of Hawaii Planning Department indicating no objections to the proposed EIS and their inability to attend before the Commission today due to scheduling conflicts.

APPEARANCES

Alan Okamoto, Esq., representing Hiluhilu LLC
Guy Lam, Hiluhilu LLC
Guido Giacometti, Hiluhilu LLC
George Atta, Group 70
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Okamoto asked to have Jan Yokota, University of Hawaii, to present some testimony to the Commission.

PETITIONER'S WITNESS

1. Jan Yokota

Ms. Yokota stated that she is the Director of Capital Improvements for the University of Hawaii and oversees the major construction and renovation projects on all 10 campuses in the university's system.

Ms. Yokota added that she was testifying before the Commission because the university owns a 500-acre parcel next to the Hiluhilu parcel and has an interest in the development for a number of reasons. The University of Hawaii at West Hawaii is administratively attached to Hawaii Community College, which offers a number of programs including community college, baccalaureate and master's level programs. Presently, the center is located at the Kealahou Shopping Center in South Kona. While the parcel was designated urban in 1991, development was hampered due to lack of funds for improvements and infrastructure to provide the necessary classroom and facilities needed. The university is working with Hiluhilu Development primarily to outline several principles by which to continue to cooperate and work towards joint planning of infrastructure and development of facilities in their planned developments.

Vice Chair Coppa asked if the University will be participating in funding a part of the infrastructure? Ms. Yokota replied that initially, they are trying to coordinate with the various departments, as they presently do not have the funding for the infrastructure. Ms. Yokota added that they are not planning to put any funding in the next biennium budget, but possibly in a couple of years.

Commissioner Im asked if the MOU is binding between the developer and the University? Ms. Yokota stated that it is not binding, but a statement of joint cooperation that could be rescinded by any party. Ms. Yokota added that it is also subject to the Board of Regents' subsequent approval. There were no further questions posed by the Commission.

2. George Atta

Mr. Atta provided the Commission with background and outlined the significant changes made to the text of the draft EIS to conform to Chapter 343 requirements.

A recess break was taken at 4:10 p.m. The meeting reconvened at 4:20 p.m.

Commissioner Sakumoto moved to go into executive session at 4:20 pm. Commissioner Coppa seconded the motion. The motion was carried by voice votes.

The open meeting reconvened at 4:35 p.m.

Chair Ing noted that during the executive session, one of the Commissioners had the opportunity to raise a legal issue to our counsel. Chair Ing then asked Commissioner Sakumoto to comment on the factual issue in regards to this docket item.

Commissioner Sakumoto referred Mr. Okamoto to the rules on the EIS, HAR 11-200-23, subsection (b) that lists criteria for the approving agency to review in determining whether or not to approve a final EIS. Commissioner Sakumoto added that

in reviewing the rules on withdrawal, he questioned if the petitioner had sent a letter to the OEQC to inform them of the withdrawal. Commissioner Sakumoto asked Mr. Okamoto if they have followed these procedures. Mr. Okamoto replied in the negative and stated that he believed he withdrew it from the agenda and did not withdraw it from the OEQC process.

Commissioner Sakumoto commented that this document as revised, had never been subject to public scrutiny that draft EIS should be subjected to, and was basically just between the client and our staff. Commissioner Sakumoto added that the overriding concern is that procedurally we are all on sound footing upon the petition's process.

After a brief discussion, Chair Ing asked that staff make the April 1st Land Use Commission meeting transcript available and noted that this matter will be taken up at the next Land Use Commission meeting in Oahu on May 20. Commissioner Sakumoto asked if the Petitioner could obtain something in writing from the OEQC during this time period for some degree of comfort. Mr. Okamoto replied in the affirmative.

Chair Ing adjourned the meeting at 4:55 p.m.

(Please refer to the Land Use Commission transcript for additional details on all of the above matters.)