

LAND USE COMMISSION
MINUTES OF MEETING

March 16, 2005

Hawaii Naniloa Resort
The Crown Room
93 Banyan Drive
Hilo, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Michael Formby
Lisa Judge
Kyong-su Im
Steven Montgomery
Randall Sakumoto

COMMISSIONERS ABSENT: Isaac Fiesta, Jr.
Peter Yukimura

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Max Rogers, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Catalani called the meeting to order at 8:15 a.m.

ADOPTION OF MINUTES

Commissioner Im moved to adopt the Land Use Commission meeting minutes of March 3, 2005 and March 4, 2005. Vice Chair Sakumoto seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- April 19-20 in Kona – may not have a quorum

LEGISLATIVE UPDATE

Mr. Ching summarized his report and reviewed House bills that crossed over and also discussed Senate bills.

Commissioner Im posed a few questions on the recommended language for uses in the rural area and for golf course uses.

DOCKET NO. SP73-159 TOYAMA GARDENS DBA NANI MAU GARDENS

Chair Catalani stated that this was an action meeting to consider a ninth amendment (deletion of Condition No. 7) to the special use permit that established a commercial arboretum for public tours and the sale of agricultural products and accessory uses in the Agricultural District at Panaewa Farm Lots Subdivision, Waiakea, South Hilo, Hawaii.

APPEARANCES

Ken Fujiyama, Nani Mau, Inc.

Chian Hsu, Nani Mau, Inc.

Norman Hayashi, County of Hawaii Planning Department

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that there were no public witnesses.

The County of Hawaii made its report. Mr. Hayashi noted that based on Petitioner's traffic impact report, the County supports the Petitioner's proposal to delete Condition No. 7. Mr. Hayashi indicated that should the situation warrant it, the petitioner may still have to conduct a traffic study to determine any future traffic impacts. Mr. Hayashi also discussed issues of subdivision approval, traffic impacts, and signage.

The petitioner made its presentation and noted that their name is Nani Mau, Inc. and not Toyama Gardens. Petitioner then argued for the release of Condition No. 7 and discussed the traffic improvement threshold and impacts related to the property.

Mr. Chang had questions and concerns related to the current capacity for banquets, the building's expansion, date of purchase of the property, the location of the residential area, the number of residential lots to be developed, and the status of the residential lots and its access. Mr. Chang also noted that because the project is downsized, deletion to terms of Condition No. 7 is acceptable to the State and added that a TIAR should be required if the conditions change to determine any potential impacts.

A recess break was taken at 9:33 a.m. The meeting reconvened at 9:48 a.m.

Mr. Chang continued with the State's position and commented that if the Petitioner requests any changes to special permit at the County level, then it would trigger a review by the County and State to determine required traffic mitigation. He added that the State recommends that any improvement beyond the currently authorized 25,000 square feet of commercial area should trigger a requirement that a traffic study is conducted and reviewed by the County and State.

The Petitioner indicated that significantly larger functions generating traffic are not an every day occurrence and added that the Petitioner thought they would be able to expand to 25,000 square feet without a traffic study. The Petitioner also noted that they would not object to a study of the traffic situation should they pursue expansion beyond the 25,000 square feet.

Ms. Leithead-Todd clarified that the terms of the current special permit allows for expansion up to 25,000 square feet without the need to conduct further studies.

After discussion, Chair Catalani stated that the Commission will continue with this docket after their lunch break to allow for additional information from the DOT.

A recess break was taken at 10:04 a.m. The meeting reconvened at 10:19 a.m.

DOCKET NO. A05-757 JAMES W. MCCULLY & FRANCINE M. MCCULLY

Chair Catalani stated that this was an action meeting to determine whether the Land Use Commission is the Appropriate Accepting Authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 4.6 acres of land currently in the Conservation District to the Agricultural District at Wailea, South Hilo, Island of Hawaii; and to determine whether an Anticipated Finding of No Significant Impact is warranted pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

Michael Moore, Esq., represented Petitioner

James McCully, Petitioner

Norman Hayashi, County of Hawaii Planning Department

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Mr. Moore gave his presentation and stated his belief that the LUC should be the accepting authority for the EA and that the Project warrants issuance of an A-FONSI.

Mr. Moore stated that it is his client's intent to move his existing farming operations to this property. The Petitioner has sold their former property so that he could move to the subject parcel to build a residence and reconstruct his agricultural operation. The conservation lands are located north and south of the property and the mauka property is in agricultural. The Petitioner currently cultivates warm climate orchids. The Petitioner intends to keep the three lots and not consolidated them into one parcel. In the future, his two sons, ages 21 and 25 years old, may wish to develop homes on the other two parcels. The Petitioner has no interest in selling the property or any of the lots.

Ms. Leithead-Todd stated that the County had no objections to Petitioner's proposal and added that the County has not yet received a written proposal from the Petitioner.

Mr. Chang had a question on which of the three parcels would the Petitioner be utilizing. Mr. Moore replied that the middle parcel would be the site of the Petitioner's headquarters.

Mr. Chang commented that the State agrees with the County, that the LUC is the accepting authority and that A-FONSI may be warranted.

Staff Report

1. Maxwell Rogers

Mr. Rogers provided a brief summary of his staff report. There were no questions by the parties or the Commission.

Vice Chair Sakumoto moved that the LUC be the accepting authority and warrants A-FONSI. The motion was seconded by Vice Chair Montgomery. The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Montgomery, Formby, Judge, Im, and Catalani.

The motion passed with 6 ayes and 2 absent.

A recess break was taken at 10:56 a.m. The meeting reconvened at 11:14 a.m.

DOCKET NO. A03-744 HILUHILU DEVELOPMENT, LLC

Chair Catalani stated that this was a continued hearing to reclassify approximately 725.2 acres of land currently in the Conservation and Agricultural Districts into the Urban District at the ahupua`a Kau, North Kona, Hawaii, for the development of single- and multi-family residential units, mixed commercial uses and an 18-hole golf course.

APPEARANCES

Jerel Yamamoto, Esq., represented Petitioner

Alan Okamoto, Esq., represented Petitioner

Norman Hayashi, County of Hawaii Planning Department

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Admission of Additional Exhibits

Mr. Yamamoto stated that Petitioner offers Exhibit 42, the revised INCRMP, and Exhibit 43, letter from SHPD accepting the archeological inventory survey. There were no objections by the County and the State. Said exhibits were admitted into the record.

Mr. Chang noted that the State offers Exhibit 9, letter from the DOE and amended list of witnesses.

Mr. Yamamoto stated that Petitioner had no objections to admitting State's Exhibit 9, however, he noted that the Petitioner's meeting with DOE involved an elementary school and not a high school facility. Mr. Yamamoto added that the Petitioner had no objection to the standard DOE fair-share language requested in the letter.

The County had no objections. Said exhibit and amended witness list were admitted into the record.

PETITIONER'S WITNESS:

1. Roger Harris

Mr. Harris explained his role in the Project and discussed issues of project background, coordination with UH, regulations and area plans, golf course irrigation, brackish water usage, INCRMP and its revisions, management plan, important preservation sites and management principles, INCRMP costs and revision, preservation efforts, landscaping, view planes, and follow-up discussions with Mikahala Roy to address her comments, water collection in caves, the affordable housing requirement (20%), DOE fair-share, and the use of Makalei Drive.

A lunch break was taken at 12:00 p.m. The meeting reconvened at 1:09 p.m.

DOCKET NO. SP73-159 TOYAMA GARDENS dba NANI MAU GARDENS (continued)

Chair Catalani stated that the Commission will continue with Special Permit SP73-159 Toyama Gardens dba Nani Mau Gardens.

Mr. Chang noted that the State had no problem with deleting Condition No. 7, adding that the Petitioner has the right to expand up to 25,000 square feet without amending the special permit.

Vice Chair Sakumoto moved to delete Condition No. 7, and replace it with the condition that if Petitioner seeks to amend the Special Permit and the amendment requires expansion of current uses allowed, then Petitioner shall prepare a TIAR. The TIAR should reflect the latest State and County transportation plans and be approved by the State's DOT and the County. Petitioner shall also apply appropriate mitigation. The motion was seconded by Vice Chair Montgomery.

Ms. Leithead-Todd asked if the motion applied to Condition No. 4 and 5. Vice Chair Sakumoto replied in the affirmative and added that the amended motion should delete the words in 4 and 5 as recommended by the Planning Commission

The motion was seconded by Vice Chair Montgomery. The Commission was polled as follows:

Ayes: Commissioners Sakumoto, Montgomery, Formby, Judge, Im, and Catalani.

The motion passed with 6 ayes and 2 absent.

A recess break was taken at 1:14 p.m. The meeting reconvened at 1:16 p.m.

DOCKET NO. A03-744 HILUHILU DEVELOPMENT, LLC (continued)

Chair Catalani stated that the Commission will continue with Docket No. A03-744 Hiluhilu Development, LLC.

Ms. Leithead-Todd stated that the County had no questions for Mr. Harris.

Mr. Chang raised questions related to Mr. Harris's familiarity of local area golf courses and near shore water quality and monitoring issues, pollution problems associated with golf courses, and the project's roadway improvements to state highways.

Commissioner Formby had a few questions related to Exhibit D the revised IMCRMP, the affected federal agencies, timeframe, and utilizing Makalei Drive.

Commissioner Im had questions and concerns related to the Makalei Drive connection, the new county affordable housing requirement, UH improvements, and DOE's concerns.

Commissioner Judge raised a few questions in reference to public pedestrian access and bicycles paths.

Vice Chair Montgomery's questions and concerns were related to Exhibit 43 SHPD delays and matters related to the lava tube preservation, additional biological surveys in the caves related to invertebrates above the caves, and the omission of micro-fauna.

Vice Chair Sakumoto posed a few questions regarding the feasibility of the proposed university village to the Project as a whole, conformity of UH's commitment, and other areas besides the project area that UH could possibly build on. Vice Chair Sakumoto also posed a few questions related to issues of Makalei Drive, and the DOE's letter.

Chair Catalani's questions and concerns were in reference to the SHPD recommendations and INCRMP standards.

Commissioner Im had a few questions regarding the Petitioner's request to have the LUC chair serve as arbitrator for INCRMP.

A recess break was taken at 2:23 p.m. The meeting reconvened at 2:42 p.m.

STATE'S WITNESS

1. Abe Mitsuda

Mr. Mitsuda provided a brief summary of the testimony of the Office of Planning and recommended approval of the Petition.

Ms. Leithead-Todd asked if the State is satisfied with the north project access road. Mr. Mitsuda replied in the affirmative.

Ms. Leithead-Todd commented that the County believes that in-lieu fees make more sense than building a high school, as the site would be better served by a high school in Waikoloa.

2. Lisa Hadway

Ms. Hadway stated that she is the North Kona Dry Forest Preserve Coordinator. Ms. Hadway stated that her recommendations for the forest on the Property would be fencing, control for weeds, out planting, and mitigation for both fire and ungulates. She added that the INCRMP is sufficient to protect the forest and the endangered species. Ms. Hadway also noted that she would be available to help Petitioner manage the forest, although she did not know the condition of the forest in the adjacent State site. Ms. Hadway commented that she was unsure of invertebrates on the property and added that she would not recommend a road through the dry forest.

Vice Chair Montgomery had a few questions regarding the status of the state lands adjacent to the forest, preservation of the invertebrates, the management and coordination between the State and Petitioner in protecting the forest as a whole.

Vice Chair Sakumoto raised questions and concerns related to the forest boundary lines and Petitioner's efforts to preserve the forest, the impacts to the forest area if the adjacent land does not receive protection, and the MOU.

Chair Catalani posed questions in reference to the appropriateness on protection of the forest, allocated expenses, and the recommended language related to preservation for the Commission to consider.

Vice Chair Sakumoto noted that the INCRMP is very critical to this docket and suggested that the Commission allow more time for staff to go over the issues that have been raised and review the record that reflects all mitigation for the recommended issues. Vice Chair Sakumoto requested that staff provide a summary of this.

After a discussion, Chair Catalani stated that they will leave the record open for evidence and to provide for additional information.

Chair Catalani then read the post hearing instructions and closed the evidentiary portion of the hearing. Chair Catalani directed that the parties develop their draft decision and orders and if the parties file separately, the decision and orders are due by April 25th. If the parties should file a stipulation, then they are due by April 27th.

The meeting adjourned at 3:48 p.m.

(Please refer to LUC Transcript of March 16, 2005 for more details on this matter.)