

LAND USE COMMISSION
MINUTES OF MEETING

May 19, 2005

King Kamehameha's Kona Beach Hotel
75-5660 Palani Road
Kailua-Kona, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Isaac Fiesta, Jr.
Kyong-su Im
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Michael Formby
Lisa Judge
Peter Yukimura

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Bert Saruwatari, Staff Planner
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Catalani called the meeting to order at 8:35 a.m.

A05-760 MAUI LAND & PINEAPPLE COMPANY, INC. - KAUHALE LANI

Chair Catalani stated that this was an action meeting to determine whether the LUC is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 87.702 acres of land currently in the Agricultural District to the Urban District at Pukalani, Maui, Hawaii; and to determine whether the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

William Yuen, Esq., represented Petitioner

Leilani Pulmano, Development Coordinator, Maui Land & Pineapple Company

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that the County of Maui was unable to attend today's meeting, however, through correspondence from Jane Lovell, she has indicated that the County has no objections to today's proceedings.

Chair Catalani noted that there were no public witnesses.

Mr. Yuen made his presentation and described the proposed project as consisting of 150-165 single-family residential units, outdoor recreational area, community facilities, and a small wastewater treatment plant. Mr. Yuen commented that he believes the LUC is the appropriate accepting authority for this project and that the project will not create a significant effect.

Mr. Chang raised a few questions on the L-shaped parcel, type of recreational facilities and the buffer along the highway.

There were no further questions.

Staff Report

1. Maxwell Rogers

Mr. Rogers provided a summary of the project and discussed the anticipated project impacts. Mr. Rogers added that staff recommends an anticipated FONSI as the project does not appear to have a significant impact.

There were no questions posed by the parties or the Commission.

Mr. Chang commented that the state agrees with the staff report and that the LUC is the proper accepting authority for the EA. He added that because they received the DEA only a few days ago, they are unable to make a comment at this time.

Commissioner Im raised a few questions on the state's processing of the DEA upon receipt and the timeline of anticipated comments from other government agencies. Commissioner Im also raised questions related to the DEA and the TMK of the subdivided parcel.

Commissioner Piltz had a few questions concerning the traffic study and noted the need for residential housing facilities on Maui.

Commissioner Piltz moved that the LUC is the accepting authority and that the proposed action appears to not have a significant impact. Commissioner Montgomery seconded the motion. The Commission was polled as follows:

Ayes: Piltz, Montgomery, Fiesta, Im, Sakumoto, and Catalani.

The motion passed with 6 ayes and 3 absent.

A recess break was taken at 9:00 a.m. The meeting reconvened at 9:15 a.m.

SP00-393 KAMEHAMEHA SCHOOLS BERNICE PAUAHI BISHOP ESTATE (Hawaii)
and BR93-699 OFFICE OF STATE PLANNING, STATE OF HAWAII

Chair Catalani stated that this was an action meeting to consider the motion to release condition 7g of LUC Docket No. SP00-393 and conditions 7 and 8 of LUC Docket No. BR93-699.

APPEARANCES

Lane Ishida, Esq., represented Petitioner
Norman Hayashi, County of Hawaii Planning Department
Patricia O'Toole, Esq., represented County of Hawaii Planning Department
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Public Witness

1. Lunakanawai Hauanio

Mr. Hauanio stated his concern of continuous desecration to the lands and matters related to the inadequacy of the county to impose requirements on the developers, lack of funding to regulate the population growth, and the increase of homeless people in Kona.

Chair Catalani noted that today's proceeding impacts only the traffic mitigation related to the Kamehameha Schools campus.

Commissioner Montgomery suggested that Mr. Hauanu could contact the State's Ombudsman's office for assistance to his concerns of enforcement by government agencies.

There were no further questions.

2. Mikahala Roy

Ms. Roy stated that she was speaking as a participant from Hawaii Island to voice her concerns regarding the traffic at Keaau and the safety of the citizens in that community.

There were no questions posed by the parties and the Commission.

Chair Catalani noted that in reference to the public's testimony today, the Petitioner could address safety issues in his presentation.

Mr. Ishida commented that in reference to safety, the Petitioner has installed a signalized intersection to improve the safety for both the walking pedestrians crossing the highway and vehicle traffic turning left at the intersection.

Mr. Ishida began his presentation and asked that they be allowed to amend their motion to be "...petitioner shall fund, design and construct its fair share of local and regional transportation improvements as determined by State Department of Transportation." Mr. Ishida added that this language has been agreed upon with the State.

Ms. O'Toole asked if the County would be included in this condition.

Mr. Ishida stated that they did not include the County because they were not included in the original condition, as the impacts were to the State's highway.

Mr. Chang commented that it was their understanding of the agreement and that the proposed change in the language is acceptable.

Vice Chair Sakumoto noted that condition 7 of BR93-699 has reference to the County and that they should remain in the condition.

Commissioner Im had a few questions related to the current conditions 7g, 7 and 8, specific language of the current condition, and a reasonable nexus.

Commissioner Fiesta had questions and concerns in reference to the state and county roadways in the region, and commented that the project impacts both the State and County roads.

Commissioner Fiesta moved to reject the proposed motion and keep conditions 7g, 7 and 8 of the two orders as is. Commissioner Im seconded the motion. The Commission was polled as follows:

Ayes: Fiesta, Im, Piltz, Montgomery, Sakumoto, and Catalani.

The motion passed with 6 ayes and 3 absent.

Vice Chair Sakumoto raised a few comments related to condition 7 of BR93-699, the traffic analysis report, construction of local and regional traffic improvements, and the reference to the County Public Works.

After a discussion, Commissioner Fiesta moved to maintain conditions 7g, 7 and 8 of the current orders as noted. Commissioner Im seconded the motion. The Commission was polled as follows:

Ayes: Fiesta, Im, Piltz, Montgomery, Sakumoto, and Catalani.

The motion passed with 6 ayes and 3 absent.

Chair Catalani clarified that the fair share contribution concept already exists in the condition and that it is the Petitioner's belief that they may be subject to unlimited improvements, as noted in the previous language.

After further discussion on the language of the conditions, Vice Chair Sakumoto moved to modify the conditions to prescribe a fair share contribution by the Petitioner and participation by the County and State in determining compliance. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Sakumoto, Fiesta, Im, Piltz, Montgomery, and Catalani.

The motion passed with 6 ayes and 3 absent.

A recess break was taken at 10:00 a.m. The meeting reconvened at 10:25 a.m.

A03-744 HILUHILU DEVELOPMENT, LLC (Hawaii)

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

APPEARANCES

Alan Okamoto, Esq., represented Petitioner

Jerel Yamamoto, Esq., represented Petitioner

Norman Hayashi, County of Hawaii Planning Department

Patricia O'Toole, Esq., represented County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Public Witnesses

1. Lunakanawai Hauanio

Mr. Hauanio discussed concerns related to restoration of the Hawaiian Nation, hereditary issues and unresolved land claims, the numerous religious, burial and sacred sites on this project, increased homeless population, protecting the fisheries, traffic issues, fair share contributions, and the depletion of agricultural lands.

There were no questions raised by the parties.

Commissioner Piltz suggested that Mr. Hauanio review a copy of the Petitioner's EIS or environmental assessment to see what has already been addressed in reference to his testimony.

2. Jerry Schneyer

Mr. Schneyer stated that he is the President of Makalei Estates Homeowners Association and expounded his opposition of the project's connection to Makalei Drive. Mr. Schneyer noted that the road is a minor road and that the developer will be in violation of County ordinance with the future development of the mauka makai road connection to Makalei Drive.

After a brief discussion, there were no further questions posed by the parties.

Mr. Okamoto noted a housekeeping item and stated that since the last meeting, Hiluhilu coordinated with the DLNR Forestry Division and submitted a letter dated April 28, 2005 regarding fire suppression for the native trees and forest remnants. Mr. Okamoto offered this letter into evidence as the Petitioner's Exhibit 44. The County and the State had no objections. Said exhibit was admitted into the record.

Vice Chair Sakumoto had a few questions and concerns related to Mr. Schneyer's testimony in regards to the violation of County ordinances.

Ms. O'Toole noted that they have not heard of that legal argument before but that the County is in the process of having Makalei Estates Drive dedicated as a County roadway.

Vice Chair Sakumoto noted that he will be presenting his draft decision and order, but will reserve the right to hear the County's response.

Vice Chair Sakumoto then described his findings of fact, conclusions of law, and decision and order. He added that the proposed findings were served to the parties inside of the 7-day requirement, and asked that the Commission waive the 7-day rule.

Chair Catalani noted that there were no objections to the waiver of the 7-day rule and requested that Vice Chair Sakumoto continue with the discussion of his proposed decision and order.

After a discussion of the summary of changes, there were no objections, changes, or additional language by the parties.

Vice Chair Montgomery commented that he would like to clarify the difference between the 50- and 80-foot roadways and because there is time today, he would prefer to have more information on this matter before voting.

EXECUTIVE SESSION

Vice Chair Sakumoto moved that the Commission enter into executive session to discuss legal matters with its Deputy Attorney General. The motion was seconded by Vice Chair Montgomery. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 11:15 a.m.

The open meeting reconvened at 11:45 a.m.

COUNTY'S WITNESS

1. Chris Yuen

Mr. Yuen described the County's position on the Makalei Drive connection and clarified the County's plans for a mauka makai connection. Mr. Yuen noted the importance of having Makalei Drive and the project's roads connect and added that although Makalei Drive is not an ideal connection, it can function as a connector.

Commissioner Im raised questions related to the 50- and 80-foot right of way, the legal versus ideal connection, and if the entire mauka makai road be built at 80 feet or just as it passes through the Project.

Mr. Yuen noted that the County intends to approve the 50 feet now and when the connection is made, the road must meet the 80-foot right of way extension. He added that previously, Makalei Drive was approved under minor road standards and that the County had not made a commitment that the road could be developed into something else. The County has been assured by the Petitioner that the lot owners were informed that the road eventually could be connected to a lower road and become a connector. Mr. Yuen added that in reference to violation of County ordinances, Makalei Drive will be the responsibility of the County upon dedication of the road to the County.

Vice Chair Sakumoto discussed additional amendments and suggested a few more changes to the findings.

After further discussion, Vice Chair Sakumoto moved to adopt his proposed findings of fact, conclusions of law, and decision and order as amended by today's discussion. Commissioner Fiesta seconded the motion. The Commission was polled as follows:

Ayes: Sakumoto, Fiesta, Im, Piltz, Montgomery, and Catalani.

The motion passed with 6 ayes and 3 absent.

A lunch break was taken at 12:15 p.m. The meeting reconvened at 1:35 p.m.

A03-743 HAWAII ELECTRIC LIGHT COMPANY, INC. (Hawaii)

Presiding Officer Sakumoto stated that this was a hearing, continued from yesterday, to consider the reclassification of approximately 15.643 acres of land currently in the Conservation District to the Urban District at Keahole, North Kona, Hawaii, for improvements and upgrades to the Keahole Generating Station and Airport Substation.

PETITIONER'S WITNESSES

1. Art Seki

Mr. Seki described his educational and professional background in engineering and stated that he specializes in the renewable energy field. Mr. Seki discussed issues of renewable energy strategies, commercial technologies in rehabilitation, and HELCO's strategy for increasing renewable energy generation.

Ms. O'Tolle commented that the County had no questions.

Mr. Chang had a few questions related to bio diesel fuel, the UH Hydrogen Power Park, NELHA, and power generation.

Vice Chair Montgomery raised a few questions related to wind power projects, alternative fuels, and reducing the need for fossil fuels.

After a brief discussion, there were no further questions.

2. Alvin Goto

Mr. Goto described his education and professional background and stated that he is the Senior Planning Engineer and produced the evaluation for electric generation for this application. Mr. Goto discussed issues of alternatives for HELCO's integrated planning report to meet the Big Island's long term needs, the ST7 generating station, and the mix of fossil fuel and renewables.

There were no questions posed by the parties.

Commissioner Im raised a few questions regarding the CDUA permit from the DLNR, the Land Board approvals, recycled heat from the CT4 and CT5, the ST7, and the configuration of the plant.

Vice Chair Sakumoto also posed questions related to the proposed action and key advantages of the ST7, and the system to control emissions.

After a brief discussion, there were no further questions.

3. Curtis Beck

Mr. Beck stated that he is the Manager of the Energy Services Department of HELCO and prepared the integrated resource plan. He discussed the key elements of the current plan and the relationship of the ST7, near term and long term energy needs, and the goal to generate additional power without consuming additional fuel.

Ms. O'Tolle noted that the County had no questions.

Mr. Chang had a question regarding the production at Puna Geothermal.

There were no further questions.

A recess break was taken at 2:30 p.m. The meeting reconvened at 2:40 p.m.

4. Donn Fukuda

Mr. Fukuda stated that he is the Principle Environmental Scientist in Water Quality of the Hazardous Materials Division. Mr. Fukuda described his duties and discussed issues of environmental compliance for water quality and industrial wastewater treatment and disposal.

Ms. O'Tolle commented that the County had no questions.

Mr. Chang had a few questions related to the injection wells, water treatment, water control system, monitoring, handling of hazardous materials generated in the plant, heavy metals, disposal sites, oil collection systems, storm water run off, fuel storage, and spills.

Commissioner Im raised questions on the current injection wells and the capacity and volume of wastewater disposed into the wells, the future wastewater treatment facility, traces of heavy metal in the wastewater, hazardous waste, mitigation and emergency plans.

Vice Chair Sakumoto posed a few questions on regulatory compliance, the anticipated developments in the surrounding area, and the concern of hazardous materials, air quality, periodic monitoring, and permit regulations.

Commissioner Piltz had concerns related to contaminants and offshore monitoring.

After a discussion, there were no further questions.

The meeting adjourned at 3:25 p.m.

(Please refer to LUC Transcript of May 19, 2005 for more details on this matter.)