

LAND USE COMMISSION
MINUTES OF MEETING

June 3, 2005

The Dunes At Maui Lani Golf Course
1333 Maui Lani Parkway
Kahului, Hawaii 96732

Commissioners Present: P. Roy Catalani
Michael D. Formby
Kyong-su Im
Lisa Judge
Steven Montgomery
Randy Piltz
Randall Sakumoto
Peter Yukimura

Commissioners Absent: Isaac Fiesta

Staff Present: Anthony J.H. Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Sandra Matsushima, Chief Clerk
Max Rogers, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

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

A04-754 MAUI LANI 100, LLC (Maui)

Appearances

Blaine Kobayashi, Esq., represented Petitioner
Michael Foley, Director, County of Maui, Department of Planning
Jane Lovell, Esq., Dep. Corporation Counsel, County of Maui, Department of Planning
John Chang, Esq., Deputy Attorney General, represented the State Office of Planning
Abe Mitsuda, State Office of Planning
Mary Alice Evans, State Office of Planning

State's Witness

1. Steven Chang

Mr. Chang stated that he is the Environmental Program Manager, Department of Health, Solid Waste Management Branch.

Mr. Chang briefly summarized his responsibilities and discussed issues on management of hazardous waste, underground storage tanks, and solid waste statewide, including landfills.

Mr. Chang indicated that he is familiar with the closure of the Waikapu landfill and the DOH requirements that were imposed when the landfill stopped receiving waste in 1987. Mr. Chang added that the rules for closure of landfills were repealed and replaced in 1994.

Mr. Kobayashi raised a few questions on the requirements and conditions of the post closure plan.

Ms. Lovell stated that the County had no questions.

Vice Chair Sakumoto had concerns regarding the change in regulations governing the closure of landfills and asked Mr. Chang if the Waikapu landfill was to be closed today, what would be done differently. Vice Chair Sakumoto also raised questions relative to the new regulations, liners that are put in place and designed for certain elements, size impacts and new monitoring requirements.

Mr. Chang discussed the additional monitoring requirements and expounded on the key issue, which is to maintain the cover of the landfill to ensure that water is not entering into it to eliminate the problems of additional fluids and potential fires.

Commissioner Im expressed his appreciation for Mr. Chang's testimony and asked why the landfill had not been inspected by the state in years. Commissioner Im also raised questions related to testing, landfill fires, adequate buffers, the proposed residential units adjacent to the landfill, post closure monitoring, and reasonable monitoring standards for the County.

Vice Chair Montgomery posed questions related to the buffers, the 30-foot access for service area, the hydrology, the current sand mining, and if the state was planning to conduct an inspection in the near future.

Commissioner Piltz had a few questions on the 100-yard buffer and the 30-foot access within the property.

Commissioner Judge raised a few questions on issues such as the hazardous soil contamination, water contamination, monitoring of the database, monitoring of the 2 existing wells and also the potential for development of a 3rd monitoring well, gas collection or venting systems, and gas and methane dioxide monitoring.

Commissioner Formby had questions and concerns relative to the sand mining activity, the integrity of the soil cap and the fence, the distance of the actual fill to the subject property line, the type and area of the hazardous waste disposed there, and the inclusion of the 300-foot buffer, which was not mentioned in the FEA.

Vice Chair Sakumoto posed a few questions regarding the 300-foot buffer and whether the starting line applies to the landfill site or the adjacent owner's property, and best management operating practices.

Commissioner Judge had questions and concerns relative to the gas collection system or monitoring wells, the closure plan, and flammable gases emitted from landfills.

Commissioner Im asked if the DOH is comfortable with the proposed residential project planned within the adjacent property.

After a discussion, Chair Catalani noted that the Commissioners have voiced their concerns on the current mitigation measures and the DOH actions. Chair Catalani summarized some of the discussions and asked that the DOE prepare an additional report for the Commission which covers the concerns of the Commissioner as discussed today.

- A report from the DOH to verify the current condition of the landfill and any concerns or comments relative to the desirability allowing residential and mixed use development nearby.

- Any recommendations relative to establishing a 300-foot buffer between the landfill and residential properties.
- Any further clarification as to permissible activities within the 300-foot buffer and the 30-foot setback for roads and fencing.
- Additional safeguards recommended to ensure proper management.
- A description of the state of the soil cover. Whether additional monitoring wells, either gas or ground water wells, will be required.
- Whether storm water run off is adequately managed.

Chair Catalani noted that these are significant concerns of the Commission and discussed the time frame that Mr. Chang would need to submit his report.

Mr. Chang will try to submit the report within a 4-week period and will contact the Executive Officer upon its completion.

Mr. Kobayashi had a question related to the 300-foot buffer and asked if it relates to open landfills as well as closed landfills. Mr. Chang replied in the affirmative and added that it is on a case-by-case basis, but as a rule of thumb, they recommend a 300-foot buffer.

Mr. Kobayashi referenced the 1-acre parcel adjacent to the landfill, which the project proposes to create open spaces and will not contain any type of structures or residences. He asked if that would be an adequate buffer. Mr. Chang replied that generally speaking, the 1 acre site would be acceptable to the DOH.

Mr. Kobayashi asked if landfill fires were the responsibility of the property owner and not the responsibility of the adjoining property owner. Mr. Chang replied in the affirmative.

Ms. Lovell commented that closed landfills have other uses such as parks and golf courses and are consistent with health and safety in the community. Ms. Lovell also had a few questions on the health and safety of asbestos disposal in regular landfills.

Mr. Chang noted that the State had no questions.

Vice Chair Montgomery had a few questions on the EPA's position and whether they have reviewed the landfill closure plan and made any recommendations.

Commissioner Formby posed questions related to the cap covering and any history showing that buried asbestos can be introduced into the water table.

Chair Catalani expressed his appreciation to Mr. Chang for his testimony and suggested that he work with the Executive Officer on the 4 week time period for the submittal of his report.

Chair Catalani noted that the parties have completed their presentations and that the evidentiary portion of this proceeding is closed, subject to the DOH report from Steven Chang. The draft findings of fact, conclusions of law, and decision and order should be filed no later than seven days from the date of service or the close of business on June 24, 2005.

Mr. Kobayashi stated that they will pursue a full stipulated order.

Ms. Lovell stated that the County has concerns about the evidence being closed with only the exception of the DOH report. Ms. Lovell added that they may want to submit further comments on the report.

Chair Catalani noted that it is the County's prerogative to reopen the record once the report is received.

Mr. Chang commented that the State will support the petitioner's efforts with the stipulated order.

Chair Catalani continued with the post hearing instructions and noted that the stipulation should be filed no later than July 5, 2005 and will be considered at the tentative scheduled meeting to be held on July 28, 2005 in Maui.

The meeting adjourned 10:05 a.m.

(Please refer to LUC Transcript of June 3, 2005 for more details on this matter.)