

LAND USE COMMISSION  
MINUTES OF MEETING

June 16, 2005

Conference Room 405  
Leiopapa A Kamehameha  
235 So. Beretania Street  
Honolulu, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani  
Isaac Fiesta, Jr.  
Michael Formby  
Kyong-su Im  
Lisa Judge  
Steven Montgomery  
Randall Sakumoto  
Peter Yukimura

COMMISSIONERS ABSENT: Ransom Piltz

STAFF PRESENT: Russell Suzuki, Deputy Attorney General  
Anthony Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Maxwell Rogers, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter

Chair Catalani called the meeting to order at 9:10 a.m.

ADOPTION OF MINUTES

Vice Chair Sakumoto moved to adopt the Land Use Commission meeting minutes of June 2, 2005 and June 3, 2005. Vice Chair Montgomery seconded the motion. Said motion was approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the July 28-29 schedule will take place between Maui and the Big Island. On July 28, the LUC will take action on the Maui Lani 100 stipulated order from 9:00 a.m. to 12:00 noon. The LUC will then fly to Kona and convene at 8:30 a.m. on July 29<sup>th</sup> for final action on the Kamehameha Investment docket.

Mr. Ching also reported the upcoming hearing schedule:

- August 11-12 - McCully docket in Hilo;
- August 25-26 - Aina Nui West Oahu docket;
- July 6-8 - hearings held by the hearing officer for the Kuleana Ku`ikahi docket. This matter will be heard by the Commission in late October.

There were no questions posed by the Commission.

### A87-617 BRIDGE AINA LE`A LLC (Hawaii)

Chair Catalani stated that this was an action meeting to consider Petitioner Bridge Aina Le`a LLC's Motion To Amend Condition Number 1 of Amended Findings of Fact, Conclusions of Law, and Decision and Order Dated July 9, 1991.

### APPEARANCES

Ben Kudo, Esq., represented Petitioner

Stephanie Uechi, 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

Chair Catalani noted that after reviewing the submittals of the Petitioner, there are two issues that need clarification. The first is that the LUC files indicate that the current Petitioner of record is Puako Hawaii Properties, as established in the LUC's 1991 order.

Subsequently, there was a motion to amend the docket and identify the new parties but this motion was withdrawn by the movant and this matter still remains under the Puako Hawaii Properties caption. This creates an issue relating to the adequacy of the LUC's public notice of its meeting on this docket. The State's Sunshine Law requires that our agenda provide sufficient notice and detail to the public on matters being heard by the LUC.

Chair Catalani also noted that there needs to be clarification on the present movant's legal standing to make this motion and its authority to make representations on behalf of the other entities with property interest. Recently, notice was received by the Commission regarding the transfer of property interest for a significant portion of the petition area from Bridge Aina Le`a, LLC to Banter, Inc.

Chair Catalani stated that while the movant will have the opportunity today to clarify the ownership issues, because of the notice concerns, this matter needs to be deferred until proper notice can be published.

Mr. Kudo stated that although he would have liked to move forward with this motion, he moved to defer until such time to ensure that proper notice is given to the public.

After a brief discussion, Commissioner Fiesta moved to accept Petitioner's motion to defer and requested that the movant work with the LUC's Executive Officer on a future meeting date on the Big Island. Commissioner Yukimura seconded the motion.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

Chair Catalani called upon the public witnesses who wished to provide testimony at this time.

## Public Witnesses

1. John S. Carroll

Mr. Carroll stated that he was testifying as a private citizen and expounded on the need for affordable housing on the Big Island, adding that this project has the ability to provide affordable housing and is a role model on how these projects can be done successfully.

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

2. Franklin Hayashida

Mr. Hayashida stated that he represents the Iron Workers Stabilization Fund that represents over 500 union members and 75 unionized companies throughout Hawaii. Mr. Hayashida noted their overall support for this project.

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

3. John Goemans

Mr. Goemans stated that he had no objections and will testify at the next scheduled meeting.

4. Buzz Hong

Mr. Hong stated that he is the Executive Director of the Hawaii Building and Construction Trades Council, AFL-CIO comprised of 18 construction companies. Mr. Hong added that they have submitted their testimony in support of the project and will be appearing at the next Big Island meeting.

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

5. Vernon Ta`a

Mr. Ta`a stated that he is representing the Plumbers and Fitters Local 675 in support of the project and looking forward to testifying at the next hearing.

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

A recess break was taken at 9:35 a.m. The meeting reconvened at 10:00 a.m.

DOCKET NO SP05-399 KAUAI ATV LLC (Kauai)

Chair Catalani stated that this was an action meeting on SP05-399 Kauai ATV, LLC (Kauai) to consider acceptance of a Special Permit request for the expansion of use and additional structures within a previously County-approved staging area and expansion of commercial recreational activities involving the increase and change of number of vehicles allowed for guided all-terrain vehicle tours, water activities in the Waita Reservoir, two paint ball parks, and a speedball tournament field on approximately ± 22,000 acres at Koloa, Kauai, Hawaii.

APPEARANCES

Walton Hong, Esq., represented Petitioner

Myles Hironaka, Deputy Director, County of Kauai Planning Department

James Tagupa, Esq., represented County of Kauai 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.

Staff Report

1. Anthony Ching

Mr. Ching briefly discussed the report and summarized the issues and staff's recommendations as follows:

- Petitioner is not the landowner but rather a licensee;
- Clarity from the landowner as to the scope of the outdoor recreational activities which will be licensed is needed;
- What is the size of the permit area;
- Permission to utilize roads/trails which transit the Knudsen TMK parcels should be demonstrated;
- LUC staff had performed a boundary interpretation;
- Transit over roads located within or in proximity to the SLU conservation district is an issue;

- Transit over or parallel to the Kaumualii Highway is also another important issue;
- The duration of the special permit is not specified ;
- Annual reports need to be submitted by the county;
- Was appropriate notice and agenda published during the County Planning Commission hearing.

### EXECUTIVE SESSION

Vice Chair Sakumoto moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities related to the boundary interpretation of the special permit and the identification of the petition area. Commissioner Yukimura seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:20 a.m.

The open meeting reconvened at 10:55 a.m.

Chair Catalani reconvened the meeting and noted that the Commission has received advise from their attorney related to the identification of specific TMK parcels.

### Petitioner's Presentation

Mr. Hong made his presentation and provided the procedural history on this special permit and stated that as the proposed application includes an expanded area, which is clearly beyond 15 acres, the special permit application is being transmitted to the LUC for its review and consideration.

Commissioner Im raised questions related to the specific operations and activities of the original permit, the path of the ATV trails near the highway, and if any environmental studies were required or if an EA was conducted.

Vice Chair Sakumoto posed questions regarding the location and recordation of the trails, metes and bounds descriptions, impacts of the ATVs on the environment, the permit area's TMKs, and previous attempts to provide public notice to all of the adjoining landowners that encompass this permit area.

Commissioner Yukimura had a few questions relative to other potential landowners, besides Knudsen Trust, within the entire permit area as identified by the TMKs. Commissioner Yukimura asked if the petitioner would have any objection to a condition that Kauai ATV and Grove Farms give assurance that the ATV activities will substantially comply with the representations made at this hearing.

Mr. Hong replied in the affirmative and added that Kauai ATV has no problems with a condition requiring that all activities conform with the specific representations in the record.

Vice Chair Montgomery raised questions relative to noise and environmental noise impacts and how they are being addressed.

Commissioner Formby posed a few questions regarding the TMK issues and proper noticing to the public.

After a brief discussion, Chair Catalani noted that the parties have agreed that the new information provided today declares this application incomplete and will be properly noticed on a future agenda. Chair Catalani asked if the County and the Petitioner will be providing supplemental information on the TMKs for the entire permit area and the specific ATV uses limited to the trails and the paintball areas. Mr. Hong replied in the affirmative.

#### Petitioner's Witnesses

1. Olie Rivera

Mr. Rivera stated that he is the manager and owner of Kauai ATV, LLC. Mr. Rivera stated that they have been conducting activities within the permitted areas on the trails in accordance with the special permit.

Mr. Hironaka stated that the County had no questions.

Mr. Chang had a few questions relative to the ATV tours and other private vehicles utilizing the trails.

Commissioner Formby raised a few questions related to the limited use of the existing cane haul roads and other future agricultural uses in the area.

2. Allan Smith

Mr. Smith stated that he is the Chief Operating Officer with Grove Farms. Mr. Smith discussed issues of authority for Grove Farms to use 2 parcels owned by the Knudsen Trust and stated that they are in the process of getting a formal right of entry and has not had any resistance from the land owner.

Mr. Smith stated that they have expanded the application thru the joinder process to encompass the additional outdoor uses, to include canoeing , fishing, rodeos, tubing , walking, etc. and will be operated by various licensees with permission by the County.

Commissioner Judge had a few questions relative to the noticing of adjoining landowners and any landowner on record within 300 feet of the exterior or boundary line.

Commissioner Im posed questions regarding the Catholic Church that is in the process of being sold, the conveyance of the property, and the relocation of a portion of the road within the neighboring property.

Vice Chair Sakumoto expressed his appreciation to Grove Farms for their willingness to join the petitioner in this application. Vice Chair Sakumoto commented that the Planning Commission basically approved the use of the trail, but now the Special Permit would cover the entire 20,000+ acres. He asked if there was any type of contractual agreement with Kauai ATV that limits the portions of the Grove Farm property, such as a prescribed route.

Mr. Smith replied that there is a licensed agreement and they also have security and maintenance personnel who coordinate daily activities and usage with Kauai ATV and other existing users and ranchers. He added that they enforce activities daily and maintain other controls. Mr. Smith also noted that 90 percent of the trail's route is fenced in on both sides.



Commissioner Im had a few questions relative to the agricultural uses of the property, the quarry operations, other licensed activities, and any traffic impacts created by these operations.

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

Commissioner Yukimura moved to declare this matter incomplete given the new information and to have this matter continued on Kauai after an appropriate agenda is posted and to allow the parties an opportunity to correct the deficiencies. Vice Chair Sakumoto seconded the motion.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

A lunch break was taken at 12:00 p.m. The meeting reconvened at 1:10 p.m.

Russell Suzuki left the meeting at this time.

#### A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Catalani stated that this was an action meeting to consider acceptance of Hale Mua Properties, LLC's Final Environmental Assessment for the reclassification of approximately 232.135 acres of land currently in the Agricultural District into the Urban District, and 5.918 acres from the Rural District to the Urban District, at Waiehu, Maui, Hawaii for an approximately 466-lot single family residential subdivision.

#### APPEARANCES

Blaine Kobayashi, Esq., represented Petitioner  
Sterling Kim, President of Hale Mua Properties  
John Chang, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Chair Catalani stated that on June 15, 2005, the Commission received e-mail correspondence from Jane Lovell, Deputy Corporation Counsel for the County of Maui informing the Commission that the County Department of Planning will not be present today.

### Petitioner's Presentation

Mr. Kobayashi began his presentation and stated that the petitioner proposes to develop a 466-lot residential development in Waiehu, Maui. Of the 466-lots, 51% or 238 lots will be set aside for much needed affordable housing.

Mr. Kobayashi discussed each of the OEQC's 13 significance criteria as it relates to the project and the comment letters received during the review period. Mr. Kobayashi added that the petitioner is requesting that the LUC accept the EA and believes that there is sufficient justification for the Commission to issue a finding of no significant impact.

Vice Chair Sakumoto raised a few questions related to the scenic vistas and the County's concern on the potential loss of open space.

Mr. Chang noted that the State has reviewed the EA and believes that the Petitioner has met the requirements.

### Staff Report

#### 1. Maxwell Rogers

Mr. Rogers briefly summarized the report and discussed the issues pertaining to 11-200-12(b) HAR, Significance Criteria and noted three substantive issues:

- FEA lacks a biological study;
- Loss of open space;
- Appropriate area for archaeological monitoring.

Mr. Rogers also noted minor issues to be addressed and added that staff has reviewed the EA and believes that it is an adequate document as prescribed under Chapter 343 and the three issues raised by staff can be clarified in the Petitioner's case in chief.

Mr. Kobayashi stated that they have no additional comments and have no objections to the staff recommendations.

Commissioner Judge raised a few questions relative to the DOE letter and the anticipated low enrollment in the school. Commissioner Judge commented that it would be helpful to have a DOE representative or a DOE report that explains the calculation for school enrollment and plans in Maui.

Mr. Chang stated that they will notify the DOE of the LUC's request and will advise them when this matter comes before the LUC.

Vice Chair Sakumoto posed a few questions related to the biological study and how Petitioner plans to address this issue.

Commissioner Im had questions and concerns regarding the representation of low prices for the affordable homes and how Petitioner will be able to keep these prices down in that low range.

Commissioner Im moved to accept Hale Mua Properties FEA with the 3 amendments, and that a finding of no significant impact be issued. The motion was seconded by Commissioner Judge.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

Mr. Kobayashi expressed his appreciation to Chair Catalani, and Commissioners Fiesta and Yukimura for their commitment and significant amount of time spent during their years of service on this commission.

A recess break was taken at 1:50 p.m. The meeting reconvened at 2:10 p.m.

A04-753 AINA NUI CORPORATION (Oahu)

Chair Catalani stated that this was an action meeting to consider acceptance of Aina Nui Corporation's Final Environmental Impact Statement for the reclassification of approximately 174.209 acres of land currently in the Agricultural District into the Urban District at Ewa, Oahu, Hawaii for residential, golf course, park, and open space uses.

APPEARANCES

Ben Kudo, Esq., represented Petitioner

Raymond Sakai, City and County of Honolulu, Department of Planning and Permitting

Don Kitaoka, Esq., represented Department of Planning and Permitting

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that there were no public witnesses.

Petitioner's Presentation

Mr. Kudo made his presentation and stated that Aina Nui Corporation Kapolei West is located in the Ewa district. The proposed project will consist of a master planned residential golf course community. Mr. Kudo added that they are requesting that the LUC accept the FEIS prepared for the Kapolei West project and believes that they are in compliance with LUC rules and statutes.

Petitioner's Witnesses

1. Thomas Fee

Mr. Fee provided an orientation on the project site and discussed issues relating to the Kapolei long-range master plan, the OR&L right of way, the mix of primary and secondary homes on the market, golf course locations, and noted that the fairways will carry regional drainage, best management practices, and water quality.

Commissioner Im raised a few questions relative to the current uses of the petition area, golf courses, agricultural uses, and quarrying operation.

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

2. Donna Goth

Ms. Goth stated that she is the President of Aina Nui Corporation. Ms. Goth discussed the background in terms of the evolving areas, the Kapolei long-range plan, jobs creation in the region, existing job centers in the West Oahu area, the UH West Oahu campus, and regional traffic mitigation plans.

Mr. Chang raised a few questions relative to the original transportation plan, the widening of Fort Weaver Road, Kapolei Parkway, the North-South Road, Makakilo interchange, and the widening of Fort Barrette Road.

Commissioner Judge posed questions regarding the regional transportation plan and the long-range master plan.

Commissioner Im had questions and concerns relative to the petition area and the transit line into the area, West Kapolei and the business area, open spaces, and the urban growth boundary.

Vice Chair Montgomery had a few questions regarding the Ewa Plains and a study on bird life.

Vice Chair Sakumoto raised questions relative to the transportation issues and the types of discussion the developers have had with the community on traffic concerns.

Mr. Kitaoka stated that the City had some outstanding issues raised during the comment period but has no objections for the FEIS and will leave the acceptability of the FEIS to the LUC for decision making.

Mr. Chang noted that the State has no objections to LUC acceptance of the FEIS and believes that the LUC should approve the FEIS.

Vice Chair Montgomery moved to accept Aina Nui Corporation's FEIS. Commissioner Fiesta seconded the motion.

The Commission was polled as follows:

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

The motion passed with 8 ayes and 1 absent.

FIELD TRIP for June 17, 2005

Mr. Ching issued instructions for all interested individuals to meet at 9:00 a.m. near the flag poles fronting the State Capitol. The Petitioner will provide bus transportation for public, Commissioners, and all others who wish to attend. A quorum is not required, there will be no formal discussion, and the trip will provide an opportunity to see the geographical area of the proposed Kapolei West project.

Mr. Kudo reiterated Mr. Kobayashi's previous statement and expressed his appreciation to the outgoing commissioners for their commitment to public service.

Mr. Chang also noted that the State of Hawaii expresses their thanks to the Commissioners for their 8 years of dedicated service to the Commission.

The meeting adjourned at 3:00 p.m.

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