

LAND USE COMMISSION
MINUTES OF MEETING

July 13, 2005

Sheraton Keauhou Bay Resort and Spa
78-128 Ehukai Street
Kona, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Kyong-su Im
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: None

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

Chair Sakumoto called the meeting to order at 9:45 a.m.

Chair Sakumoto welcomed the new members to the Land Use Commission: Thomas Contrades from Kauai, and Duane Kanuha of Hilo. Chair Sakumoto noted that these members will need to sign some paperwork before officially taking action on dockets today and are waiting for the paperwork to arrive at the hotel. Until such time, they will not be voting on action items.

ADOPTION OF MINUTES

Chair Sakumoto noted a correction to the minutes of June 16, 2005. On page 6, in the Executive Session paragraph, after the words "...related to the boundary interpretation of the special permit" to add "...and the identification of the petition area."

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of June 16, 2005 as amended. Commissioner Formby seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- July 28 in Maui to consider a proposed decision and order for the Maui Lani 100 docket. Mr. Ching noted that the report from the DOH regarding the Waikapu Landfill was issued and the Commission should be receiving a proposed order from the parties which incorporates the DOH's findings and recommendations. In the afternoon of July 28, the Commission will fly from Maui to Kona for a meeting at the Waikoloa Marriott. On July 29, the Commission will take final action on the Kamehameha Investment Corporation matter.
- August 11-12 in Kona for the McCully hearings.
- August 25-26 is tentatively scheduled for Maui and could possibly be a one-day meeting on Friday. These dates were originally scheduled for Kauai, but the County's action on the Kauai ATV special permit will take place in September and requires that the LUC hear the matter in October.
- The September 8-9 meeting will be on Oahu and the HCDCH presentation may be re-scheduled to this date. Laura Thielen, Director of the Office of Planning may also conduct a presentation on these dates.

- October 5, 6, and 7, are the dates for the HCPO conference being held on Kauai. Attendance at this conference provides the Commissioners with an opportunity to orient themselves with the various land use regulatory bodies and public sector planners.

Chair Sakumoto asked if it was possible to hear the Kauai ATV matter while in Kauai during the HCPO conference. Mr. Ching replied in the affirmative and added that staff could schedule a field trip prior to the HCPO conference dates and hold an action meeting on the Friday at the end of the conference.

Mr. Ching briefly discussed two pieces of legislation. Act 183 which reflects HB 1640 Important Agricultural Lands (IAL), and Act 205 which reflects HB 109, permitted uses on agricultural and rural land districts.

There were no questions posed by the Commission.

A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui) - PULELEHUA

Chair Sakumoto stated that this was an action meeting to consider the adequacy of Maui Land & Pineapple's Pulelehua Final Environmental Impact Statement for the reclassification of approximately 310.437 acres of land currently in the Agricultural District to the Urban District at Mahinahina, West Maui, Hawaii for multi- and single-family residential homes and retail commercial spaces.

On June 28, 2005, the Commission received Maui Land & Pineapple's Pulelehua Final Environmental Impact Statement and the Market Study and Economic Impact Analysis.

On July 11, 2005, the Commission received e-mail correspondence from Jane Lovell, Deputy Corporation Counsel, County of Maui, indicating that the County's Planning Department will be represented by Kivette Caigoy. Ms. Lovell also indicated that the Corporation Counsel was not able to send a representative to this off-island hearing.

On July 11, 2005, the Commission received public testimony (via e-mail) from Nell Woods, West Maui Community Association, LLC.

Appearances

William Yuen, Esq., represented Petitioner
Randall Endo, Vice President, Maui Land & Pineapple Company, Inc.
Karl Bossert, Manager of Pulelehua
John Chang, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Chang welcomed the new members to the Commission and also noted that the State has received a message from the County of Maui indicating that County Planner, Kivette Caigoy, was ill and would not be in attendance at this hearing.

Chair Sakumoto noted that there were no public witnesses.

Mr. Yuen began his presentation and stated that the Maui Land & Pineapple's final EIS consists of 2 volumes prepared by PBR Hawaii, and includes several reports and studies, such as a market study, economic analysis, marine environment, botanical, archaeology, cultural impacts, and traffic study. Mr. Yuen also noted that the project will have a positive economic impact on the island of Maui.

Mr. Chang noted that the State had no questions.

Vice Chair Montgomery raised a few questions related to the testimony received from Mr. Woods and the West Maui Community Association regarding their opposition to the density of this project.

Mr. Yuen replied that Mr. Woods has commented on the EIS during the comment period and Petitioner has responded to his concern. Petitioner will also address this matter during the hearing.

Staff Report

Mr. Ching summarized the report and noted that staff believes the final EIS shall be deemed satisfied and the comments received have been incorporated into the final proposed EIS. Petitioner has generally complied with the content requirements promulgated by the OEQC.

Commissioner Formby moved that the Commission accept Maui Land & Pineapple's Pulelehua Final Environmental Impact Statement for the reclassification of approximately 310.437 acres of land currently in the Agricultural District to the Urban District at Mahinahina, West Maui, Hawaii. Commissioner Im seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Formby, Im, Montgomery, Piltz and Sakumoto.

The motion passed with 5 ayes, 2 abstention, and 1 absent.

A recess break was taken at 10:25 a.m. The meeting reconvened at 10:35 a.m.

Commissioner Judge entered the meeting at this time.

Chair Sakumoto noted that the paperwork allowing Commissioners Kanuha and Contrades had been properly executed. The Commissioners were therefore eligible to participate in the LUC's deliberations.

A05-761 ERIC A. KNUDSEN TRUST (Kauai)

Commissioner Kanuha noted a disclosure that his employer has previously had a business affiliation with PBR Hawaii but due to his recent appointment with the Land Use Commission, this affiliation has been terminated.

Chair Sakumoto stated that this was an action meeting on Docket No. A05-761 Eric A. Knudsen Trust to: 1) determine whether the LUC is the appropriate reviewing and accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 127.4 acres of land currently in the Agricultural District to the Urban District at Poipu, Koloa, Kauai, Hawaii; and 2) 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

Lorna Nishimitsu, Esq. represented Petitioner

Kimi Yuen, Planner, PBR Hawaii

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Ms. Nishimitsu began her presentation and stated that the Petition area is less than the project area, as a result of prior land use approvals. Ms. Nishimitsu stated that they believe the LUC is the appropriate agency to be the accepting authority and that the requirement for the EIS has been triggered.

Mr. Chang noted that the State had no questions.

Chair Sakumoto raised a few questions related to the improvements and reclassification of Hapa Road and asked if the County has joined Petitioner in this application.

Ms. Yuen replied that a portion of Hapa Road will be reclassified and that a letter from the County to authorize the improvements will accompany the Petition and be a part of the record.

Mr. Ching offered a few comments and noted that the Executive Officer has 30 days to deem the application complete and added that this petition was just received and that staff has not been able to analyze it to assure form and appropriateness. Staff will conduct its review for completeness and will forward its findings to the Petitioner shortly.

Commissioner Kanuha asked for clarification of Chapter 343, the trigger for the EIS, since Hapa Road is being included in the application and improvements to be made to Hapa Road, which is government-owned land.

EXECUTIVE SESSION

Commissioner Im moved that the Commission enter into executive session under §92-5 (a)(4) to discuss with the its attorney, questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities relative to the appropriate parties of the petition area for this docket. The motion was seconded by Commissioner Contrades. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:55 a.m.

The open meeting reconvened at 11:20 a.m.

Chair Sakumoto called the meeting back to order and stated that the Commission had the opportunity to speak with their counsel regarding questions on who the appropriate Petitioner was for this particular docket item.

Ms. Nishimitsu stated that she had nothing further to add.

Mr. Chang noted that the State believes that the LUC is the appropriate accepting authority.

Chair Sakumoto stated that before the application can be deemed complete, the LUC will need a letter of authorization from the County of Kauai for those portions of Hapa Road that will be improved and reclassified as part of the project.

Chair Sakumoto raised a few questions relative to the EIS and asked if the Petitioner is volunteering to skip the EA process and go directly to the EIS. Ms. Nishimitsu replied in the affirmative.

Commissioner Formby moved that the LUC is the appropriate reviewing and accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, and that the proposed action may have a significant effect to warrant the preparation of an Environmental Impact Statement. Commissioner Piltz seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Formby, Piltz, Im, Judge, Montgomery, Kanuha, Contrades and Sakumoto.

The motion passed with 8 ayes.

A recess break was taken at 11:25 a.m. The meeting reconvened at 11:30 a.m.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION

Chair Sakumoto stated that this was an action meeting on Docket No. A04-747 Kamehameha Investment Corporation (Hawaii), to reclassify approximately 487.246 acres of land currently in the Agricultural District to the Rural District at Keauhou I and II and Kahaluu, North Kona, Hawaii, for the development of a single-family residential subdivision.

On May 24, 2005, the Commission issued the Order Granting Petitioner's Motion For Extension of Time Pursuant to Section 15-15-51(e), Hawaii Revised Statutes, to the parties.

On July 1, 2005, the Commission received Petitioner's Fourth Amended Stipulation of Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment.

Appearances

R. Ben Tsukazaki, 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

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

Public Witness

1. Richard Stewart

Mr. Stewart stated that he is a resident of Puuloa since the 1960's and is representing himself and his mother, Betty Stewart. Mr. Stewart stated his concern for impacts related to the project, such as the location of the golf course, runoff into Keauhou Bay, and traffic back-ups that could block emergency vehicles.

Vice Chair Montgomery posed a few questions as to Mr. Stewart's knowledge of the proposed drainage and injection wells that should deter the runoff into Keauhou Bay.

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

2. Mikahala Roy

Ms. Roy stated that she is testifying as a Puuloa resident and as the President of Kulana Huli Honua. Ms. Roy stated that her concern is about the lands being open only to non-Hawaiians. She added that these lands are historically important and that it should remain so that the legacy of the chiefs and people will remain there.

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

A lunch recess break was taken at 12:25 p.m. The meeting reconvened at 1:30 p.m.

Mr. Tsukazaki provided his presentation of Petitioner's Fourth Amended Stipulated Findings of Fact, Conclusions of Law, and Decision and Order.

Mr. Tsukazaki stated that the document is technically the third amendment because the last draft document was entitled the third amendment but was never filed with the LUC. Mr. Tsukazaki then provided an overview of the proposed document.

Chair Sakumoto stated that he has consulted with their Deputy Attorney General to clarify Act 205 for this matter, and asked if Petitioner is requesting that this new law be applied to this particular docket.

Mr. Tsukazaki replied in the affirmative and stated that until the LUC takes final action, they would need to use current laws and Petitioner requests that the LUC applies this new law to this situation.

Chair Sakumoto noted that the Office of Planning has not signed the stipulation and asked if they had any objections to this document.

Mr. Chang stated that after much discussion and review, the Office of Planning intends to sign the stipulation.

Ms. Leithead-Todd stated that the principle concerns of the County have been addressed and that the Petitioner will come before the County for rezoning and the County will conduct further review of issues relating to infrastructure and affordable housing at that time.

State's Witness

1. Laura Thielen

Ms. Thielen briefly discussed the state's general position regarding imposition of impact fees, exactions or required construction of public facilities as a condition of an amendment of the state land use district boundaries.

Ms. Leithead-Todd stated that the County had no questions, but added that the County does not currently impose impact fees as it has not enacted appropriate ordinances to that effect.

A recess break was taken at 2:30 p.m. The meeting reconvened at 2:45 p.m.

Commissioner Formby raised a few questions relative to the commitment of the Kamehameha Schools to the Keauhou master plan.

Vice Chair Judge had questions and concerns regarding the previous testimony of Mr. Stewart and Mr. Halverson's concern of the buffer and suggested that the petitioner incorporate this information into the document. Vice Chair Judge also had amendments to the findings regarding the 300-400 single-family homes, mammal and bird species (hawk and bat), and the railroad right-of-way trail system.

Commissioner Im also raised a few questions relative to the trail system, maintenance and preservation, safety and public access, and DOT and DOE fair share agreements.

Commissioner Kanuha posed a few questions relative to OP's position on the DOE's impact fees or fair share contribution for this project.

A recess break was taken at 3:50 p.m. The meeting reconvened at 4:10 p.m.

A03-743 HAWAII ELECTRIC LIGHT COMPANY, INC.,

Chair Sakumoto noted that the Hawaii Electric Light Company has two witnesses that will need to take a return flight to Honolulu. Chair Sakumoto stated that the Commission will hear the testimony of these witnesses at this time and any public witnesses, then they will continue with the Kamehameha Investment docket.

APPEARANCES

Benjamin Kudo, Esq. represented Petitioner

April Cadiz, 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

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

Petitioner's Witnesses

1. Tom Nance

Mr. Nance summarized his written testimony that was previously admitted as Petitioner's Exhibit 25 and discussed issues of ground water effects for the generating station, the brackish water wells and water supply. Mr. Nance was qualified as an expert in hydrology.

Commissioner Im raised questions relative to the brackish water uses, the wash water, salinity levels, and percentage of minerals and heavy metals.

Commissioner Formby raised a few questions on the depth of the Uwajima Fisheries wells and the re-injection of brackish water by the Petitioner.

Chair Sakumoto posed a few questions related to the direction of the plume flowing from the disposal wells, as indicated in Petitioner's Exhibit 32.

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

2. Steven Dollar

Dr. Dollar's resume was previously admitted as Petitioner's Exhibit 29 and his written testimony was admitted as Exhibit 28. Dr. Dollar was qualified as an expert in marine ecology.

Dr. Dollar summarized his written testimony and discussed issues of the potential effects to the marine environment directly down slope by the petition area. Dr. Dollar noted that the effect of this project would not be significant to the near shore ocean environment.

Vice Chair Judge raised a few questions relative to issues of the monitoring wells, NELHA activities, and the injection wells.

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

Mr. Kudo noted that they had nothing further for the day, but would like to reconvene with their last witness in the morning.

A recess break was taken at 4:45 p.m. The meeting reconvened at 4:55 p.m.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION

Chair Sakumoto expressed his appreciation to Mr. Tsukazaki for allowing HELCO's two witnesses to testify. Chair Sakumoto continued with the Kamehameha Investment docket.

The Commission continued to discuss the parties proposed stipulated order.

Vice Chair Judge commented on the DOE conditions and noted that any effort by the Office of Planning to bring more information and clarity would be supported.

Chair Sakumoto had a few amendments to condition number 1, recommended the addition of the LUC's standard conditions, and proposed amendments to condition numbers 3, 4, 7, 8, 9, 12, 14, and 15.

Commissioner Im offered a friendly amendment to consider addressing the issues of ACT 205, in the findings of fact relating to golf courses in the rural districts.

Commissioner Im asked if a memo from the Attorney General could be provided to ensure that the new law applies.

Chair Sakumoto noted that the Deputy Attorney General has prepared a memo on that subject and that the Commission will be briefed.

Mr. Ching commented on the procedures for the parties to draft the black line version of the decision and order within 1 week from this date, filed to all parties, for Commission review one week prior to the July 29, 2005 meeting.

Chair Sakumoto entertained a motion to enter into executive session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

EXECUTIVE SESSION

Commissioner Piltz moved that the Commission enter into executive session under §92-5 (a)(4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities to discuss the language of the DOE fair share contribution condition for this docket. The motion was seconded by Vice Chair Montgomery. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 5:25 p.m.

After returning from its executive session, the open meeting was adjourned by the Commission at 5:45 p.m.

(Please refer to LUC Transcript of July 13, 2005 for more details on this matter.)