

LAND USE COMMISSION  
MINUTES OF MEETING

July 28, 12005

The Dunes at Maui Lani Golf Course  
1333 Maui Lani Parkway  
Kahului, Maui, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades  
Michael Formby  
Lisa Judge  
Duane Kanuha  
Ransom Piltz  
Randall Sakumoto

COMMISSIONERS ABSENT: Kyong-su Im  
Steven Montgomery

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

Chair Sakumoto called the meeting to order at 9:55 a.m.

DOCKET NO. A04-754 MAUI LANI 100, LLC (MAUI)

Chair Sakumoto stated that this was an action meeting to consider the reclassification of approximately 59.6 acres of land currently in the agricultural district to the urban district for a village mixed-use/open space district and residential subdivision at Wailuku, Maui, Hawaii.

## APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner

Cory Kimura, Maui Lani 100, LLC

Madelyn Denbeau, Esq., represented the County of Maui Department of Planning

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Mr. Kobayashi commented that on July 26, 2005, the Petitioner (Cory Kimura) met with Steven Chang of the Department of Health and Mr. Souza of the County's Solid Waste Division regarding the closed Waikapu Landfill. Mr. Kobayashi stated that the Petitioner has agreed to a 300-foot residential buffer zone with no residences within the area. Mr. Kobayashi added that they have also discussed the mitigation plan regarding the closed landfill and that the Petitioner has agreed to install gas monitoring wells along the boundary of the petition area. Mr. Kobayashi noted that the Petitioner has agreed to the conditions as set forth by the DOH.

Ms. Denbeau stated that the County accepts the proposed conditions and commented that should there be a fire at the landfill, the County will be the ones to respond and that the proposed parking lot and/or commercial use is a good solution for the County to access the area for fire or emergencies.

Mr. Mitsuda stated that the Office of Planning has submitted a letter dated July 27, 2005 from its Director, Laura Thielen, regarding the State's position on the closed Waikapu Landfill and the DOH's recommendations. Mr. Mitsuda summarized the State's position and noted that the main concern is to maintain the integrity of the landfill cap.

Mr. Chang offered the DOH report dated July 6, 2005, as OP's Exhibit 4 and the July 27, 2005 letter from Ms. Thielen as OP's Exhibit 5. There were no objections by the parties or the Commission. Said exhibits were admitted into the record.

Mr. Kobayashi began his presentation and discussed the stipulated findings of fact, conclusions of law, and decision and order that was filed with the parties and the Commission. Mr. Kobayashi noted that the intent was to file an executed stipulation, however, the timing of the DOH report and the transcripts delayed the submittal of the decision and order. Mr. Kobayashi added that the OP and the County of Maui had minimal comments to include in the document. Mr. Kobayashi stated that there is sufficient evidence that the Petitioner has met its burden and criteria and asked that the Commission grant the reclassification request.

Ms. Denbeau summarized the County's suggested changes and noted changes to paragraphs 84, 93, 107, and 11C. Ms. Denbeau offered their proposed conditions filed on July 28, 2005 as the County of Maui's Exhibit next in order. There were no objections by the parties or the Commission. Said exhibit was admitted into evidence.

Ms. Denbeau added that the County Council is considering a change in zoning for the entire project area and that the general language in the condition reflects the Maui County General Plan.

#### County Witness

1. Colleen Suyama

Ms. Suyama stated that she is a planner with the County's Planning Department. Ms. Suyama discussed the County's recommendations regarding issues of potable water for this project and the agreement between the County's Department of Water Supply and the Petitioner. Ms. Suyama also discussed current and future EPA and DOH standards, remediation and the right of way agreement.

Chair Sakumoto posed a few questions related to the agreement and the general language of the County's recommended conditions.

Commissioner Formby also had a few questions on the general language that the County proposed in paragraph 84 related to the right of entry agreement and the cost to the County.

A recess break was taken at 10:45 a.m. The meeting reconvened at 11:00 a.m.

Mr. Kobayashi stated that he also believes that the language of the conditions are very general and that throughout the course of previous dockets, the conditions imposed were more specific. However, the County's recommended general language in the conditions for this docket may not pose any future problems and that Petitioner has come to an agreement with the County and accepts the changes to their recommendations.

Mr. Chang noted that the State had no objections to the recommended changes by the County.

Chair Sakumoto noted that the stipulated document filed on July 23, 2005 was not executed by the County or the State and asked if the document filed by the Petitioner is acceptable to the County, as discussed in today's meeting.

Ms. Denbeau replied in the affirmative and added that the County has other issues on conditions 3, 9, and 21.

The Commission continued to discuss the parties' recommendations and amendments to the decision and order.

Chair Sakumoto noted that since there appears to be a number of changes, perhaps another stipulated document could be submitted with signatures of all the parties.

Mr. Chang noted that they have no objections to the proposed decision and order as discussed by the parties this morning. Mr. Chang added that the State recommends that a deed restriction be recorded on the buffer area to provide notice that the adjacent property is a closed landfill and to prohibit any construction or activity that would compromise the integrity of the landfill cap or permit air or water to access the landfill site from the side.

Mr. Kobayashi stated that the Petitioner had no objections to the State's recommendations and could include that language in condition number 11.

After a discussion, Chair Sakumoto noted that the record for this docket is closed and that the Commission will be conducting their deliberations on the decision and order. Chair Sakumoto asked if all the commissioners, including the two new members, were able to review the entire record and transcripts for this particular docket. The Commissioners replied in the affirmative. Chair Sakumoto noted that there will be no discussion or comments by the parties during the Commission's deliberations.

Mr. Ching reviewed the document from the beginning, the Findings of Fact Procedural Matters; Description of the Petition Area; Proposal for Reclassification; Petitioner's Financial Capability; State and County Plans and Programs; Need for the Proposed Development; Socio-Economic Impacts; Impacts Upon Resources in the Area; Environmental Quality; Adequacy of Public Services and Facilities; Commitment of State Funds and Resources; Conformance To Urban District Standards; Conformance With the Goals, Objectives, and Policies of the Hawaii State Plan; Conformance With Coastal Zone Management Objectives and Policies; Ruling on Proposed Findings of Fact, Conclusions of Law, Decision and Order.

Vice Chair Judge had a few amendments to findings of fact 90, 93, and 94 related to the 30-foot easement access area and DOH's recommendation of a 300-foot buffer area. Vice Chair Judge also noted an amendment to findings of fact 120 related to the impact to public services.

Chair Sakumoto noted that a new finding of fact 25 should be drafted to indicate that the Commission met on July 28, 2005 to act on this petition.

The procedural amendments were noted and accepted by the Commission.

Chair Sakumoto had a few amendments to condition number 1 and findings of fact 37 related to the affordable housing percentage and number of units. Chair Sakumoto also discussed an amendment to the language on the restrictive uses of the buffer area as recommended by the DOH and posed a question to Mr. Kimura.

Mr. Kimura stated that the DOH's concern was to preclude any residential dwellings, but will allow for commercial activities and uses in the buffer area.

Commissioner Kanuha raised a few questions to Mr. Kimura related to OP's position on the 300-foot buffer area and the recommended deed restrictions.

Mr. Kobayashi commented that the OP was not present at the meeting between Petitioner, County Solid Waste and the DOH. However, the Petitioner and the DOH have already come to an agreement and Petitioner will recognize the 300-foot buffer area as recommended by the DOH.

A recess break was taken at 11:50 a.m. The meeting reconvened at 11:55 a.m.

The Commission continued its deliberation and discussed conditions 11a, 11b, 11c, 11d, and 11e, regarding the 30-foot right of way access, deed restriction, and the buffer area.

Vice Chair Judge recommended that standard condition number 14 be replaced with the language of the condition imposed on a recent Big Island docket, the Hiluhilu docket, related to unidentified archaeological finds.

Commissioner Kanuha had a few questions and concerns related to clarity on the language of this condition.

After further discussion and deliberation, there were no additional comments by the Commissioners. Chair Sakumoto then instructed Mr. Ching to draft an appropriate amendment to the stipulated order and serve the document to the parties. Action will be taken at the next appropriate date of this Commission in Maui. Chair Sakumoto also noted that Mr. Ching should make all technical and non-substantive changes to the document.

The meeting adjourned at 12:25 p.m.

*(Please refer to LUC Transcript of July 28, 2005 for more details on this matter.)*