

LAND USE COMMISSION
MINUTES OF MEETING

July 29, 2005

Alii Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

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

COMMISSIONERS ABSENT: Steven Montgomery

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 8:50 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of July 13, 2005 and July 14, 2005. Commissioner Contrades seconded the motion.

Commissioner Formby noted a correction to the minutes of July 14, 2005. Page 3, third paragraph, to change "...SCR/HRSG wastewater disposal systems" to "...SCR/HRSG power generating systems." The minutes of July 13, 2005 and the amended minutes of July 14, 2005 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- August 11-12 meetings will be held at this same location (Waikoloa Marriott Beach Resort) for the opening hearing of the McCully petition.
- August 26 will be a one-day meeting on Maui to complete action on the Maui Lani 100 docket and possibly an application for intervention for the Pulelehua docket.
- September 8 will be a one-day meeting for the HCDCH and OP presentations. On September 9, staff will conduct a field trip and create a video of A Charitable Foundation site in Pupukeya.
- September 22-23 is anticipated for the Aina Nui hearings to commence.
- October 5-7 the Commission will conduct a field trip to the Kauai ATV special permit area on Wednesday. The HCPO conference will be held on Thursday, and Friday. At noon Friday, after the conference had adjourned, the LUC will hold a meeting to act on the Kauai ATV special permit.
- October 27-28 will be in Maui for the Kuleana Ku`ikahi hearings.
- December 8-9 LUC will be holding a workshop and commence hearings for A Charitable Foundation docket.

Chair Sakumoto asked if the September 9th field trip was available for the Commissioners to attend with staff. Mr. Ching replied in the affirmative. An agenda would be issued one week prior to the field trip so participation by the Commissioners and the general public could be easily accomplished. Mr. Ching commented that the Commissioners are welcome to attend this field trip.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION (Hawaii)

Chair Sakumoto stated that this was an action meeting to reclassify approximately 487.246 acres of land currently in the Agricultural District into the Rural District at Keauhou I and II and Kahaluu, North Kona, Hawaii, for the development of a single-family residential subdivision.

APPEARANCES

R. Ben Tsukazaki, Esq. represented Petitioner

Greg Chun, President of Kamehameha Investment Corporation

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

Chair Sakumoto noted that there was no public witnesses at this meeting.

Chair Sakumoto asked if there were any comments by the parties on the revised decision and order that staff had provided.

Mr. Tsukazaki stated that they have reviewed the document and had no objections.

Ms. Leithead-Todd stated that the County had no objections.

Mr. Chang noted that the State had no objections, but is requesting that the Office of Planning be included in condition numbers 3 Transportation and 9 Public School Facilities.

Mr. Tsukazaki stated that the Petitioner is agreeable to the concept of including the Office of Planning in condition numbers 3 and 9, however, there should be some clarifying language inserted, if the Commission decides to accept the amendments as suggested by the OP. Mr. Tsukazaki added that described in Ms. Thielen's written testimony was the ongoing effort by OP to work with other agencies to develop a fair share policy and overall framework. Because the wording is very general, by inserting the OP as another approval body could be misrepresented in the future as 2 separate line agencies.

EXECUTIVE SESSION

Commissioner Formby 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. The motion was seconded by Vice Chair Judge. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 9:05 a.m.

The open meeting reconvened at 9:30 a.m.

Chair Sakumoto continued with the open meeting and noted a housekeeping matter. Chair Sakumoto stated that at the last meeting on this docket the Petitioner requested that Act 205, which is HB 109 in the 2005 legislative session, be applied to this particular docket. Chair Sakumoto then asked if the County and the State had any objections to the application of Act 205 for this docket, as previously requested by Petitioner. Both the County and the State had no objections.

Chair Sakumoto stated that due to time constraints under this particular docket, the final decision and order will be filed no later than Monday, August 1, 2005. The Commission's objective today is to come to a decision on the document and provide signatures and authorization to the appropriate document to be filed on Monday.

Chair Sakumoto added that they will be conducting formal deliberations and that during the deliberations, the Commission will not entertain additional input from the parties or the public, unless they are asked a specific question by the Chair or the Commissioners.

Mr. Ching then summarized the pertinent points and comments from the last hearing of the parties' stipulated findings of fact, conclusions of law, and decision and order.

Vice Chair Judge had an amendment to findings of fact 61, to add the Keauhou master plan after educational and cultural components.

Chair Sakumoto had an amendment to findings of fact 30, to include today's continued action meeting date. Chair Sakumoto also had an amendment to findings of fact 68 to replace the word equity with assets.

Vice Chair Judge discussed the language of condition 8. Vice Chair Judge noted that it would be helpful to list category titles with the conditions.

Chair Sakumoto asked that findings of fact 115-116, and 133 be amended to reference the authors by first and last names, findings of fact 127 to indicate Keauhou I and II, findings of fact 139 to delete the word "term", findings of fact 143 to insert "native Hawaiian rights", amend conclusions of law 14 to further describe the legal effects of Act 205 upon the docket, and to include a new condition specifying the preservation of the `ohe makai and the ban on clearing and grubbing work during the breeding periods of the Hoary Bat and Hawaiian Hawk.

Chair Sakumoto asked the Commissioners if they had any comments related to OP's request to include the Office of Planning in condition number 3 Transportation and condition number 9 Public School Facilities.

Commissioner Piltz commented that he agrees with Petitioner in believing that having OP as a second consulting agency may be interpreted as needing some form of approval from OP as well as the other line agencies.

Commissioner Formby noted that in this particular docket, the OP's position was that they had no objections to the Petitioner's previous agreements with the DOE and DOT. Commissioner Formby added that he did not feel that it was appropriate at this time to include the OP in the conditions for this docket.

Commissioner Kanuha concurred with Commissioners Piltz and Formby, and added that the OP has a legislative position by statute before this Commission and they should coordinate the comments from all state agencies. Commissioner Kanuha added that for this particular docket, OP has stated on the record that they are in the process of developing certain standards of future impact fees and fair share formulas, but have no objections to the Petitioner's agreements with DOE and DOT.

Commissioner Im also agreed with the Commissioners adding that it would not be fair to the Petitioner having to deal with both the DOE, DOT and OP. Commissioner Im added that their differences should have been resolved before coming to the LUC and this application should not be held up because of any difference in opinions which might arise between the state agencies and OP.

Chair Sakumoto commented that in the past, the Commission had encouraged the petitioners to meet with the line agencies to come to an agreement and resolve their differences.

A recess break was taken at 10:15 a.m. The meeting reconvened at 10:40 a.m.

Chair Sakumoto noted that this particular docket has taken over a year to come to this point and asked if all the commissioners, including the new members, had been able to review the entire record and transcripts and were able to take action today. The Commissioners were polled as follows:

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

Nay: None

Mr. Ching reviewed the specific language changes that was deliberated and discussed by the Commission.

Chair Sakumoto then entertained a motion to grant the petition for reclassification.

Commissioner Formby moved to approve the reclassification of approximately 455.746 acres of land in the State Land Use Agricultural District into the Rural District at Keauhou I and II and Kahalu`u, North Kona, Hawaii, identified as Tax Map Keys: 7-8-05: 1, 6, 27; 7-8-07: 4; and 7-8-10: 6 and 9; and deny the application for reclassification of approximately 31.5 acres of land originally within the Property, identified as Tax Map Key: 7-8-05: 28, 37, 38, and 39. Vice Chair Judge seconded the motion.

The Commission was polled as follows:

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

The motion passed with 7 ayes and 1 absent.

Chair Sakumoto entertained a motion to adopt the decision and order to be filed no later than Monday, August 1, 2005.

Vice Chair Judge moved to adopt the decision and order to be filed no later than Monday, August 1, 2005. Commissioner Piltz seconded the motion.

The Commission was polled as follows:

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

The motion passed with 7 ayes and 1 absent.

The meeting adjourned at 11:00 a.m.

(Please refer to LUC Transcript of July 29, 2005 for more details on this matter.)