

LAND USE COMMISSION
MINUTES OF MEETING

September 8, 2005

Conference Room 405
Leiopapa A Kamehameha
235 So. Beretania Street
Honolulu, 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
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

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

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of August 26, 2005. Commissioner Im seconded the motion. Said motion was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- The LUC will participate in field trips on September 9 and will be meeting at 9:00 a.m. at the project site where further instructions will be issued.
- The HCPO conference will be held on November 2-3 at the Kauai Radisson Resort. The LUC field trip is scheduled for November 2 in the early morning.
- The LUC will schedule an action meeting for the Kauai ATV special permit on November 4.
- The LUC will be on Maui to open the Pulelehua hearings on November 17-18.
- The LUC's December 8-9 meetings will be held on Oahu and will include the annual LUC workshop.

Mr. Ching added that there appears to be no other significant changes to the schedule. There were no questions posed by the Commission.

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

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

On August 26, 2005, the Commission approved the Petition for reclassification at its meeting in Kahului, Maui.

Chair Sakumoto noted that the County of Maui was unable to attend this meeting on Oahu today.

Chair Sakumoto noted that there were no public witnesses.

Mr. Ching proceeded with describing the decision and order and the changes and notes previously dictated by the Commission.

After a brief discussion, Chair Sakumoto entertained a motion for adoption of the decision and order as described by the Executive Officer and reviewed by the Commission.

Commissioner Formby moved that the LUC adopt the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A04-754 Maui Lani 100, LLC as revised by the Commission. Commissioner Piltz seconded the motion.

The Commission was polled as follows:

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

Abstention: Commissioner Judge

The motion passed with 6 ayes, 1 abstain and 1 absent.

A recess break was taken at 9:25 a.m. The meeting reconvened at 9:35 a.m.

DOCKET NO. A05-758 A CHARITABLE FOUNDATION CORPORATION (Oahu)

Chair Sakumoto stated that this was an action meeting to consider approval of Petitioner's Final Environmental Assessment for the reclassification of (i) approximately 28.759 acres of land currently in the Agricultural District to the Conservation District for the creation of a new State Park Reserve; and (ii) approximately 5.219 acres of land currently in the Conservation District to the Agricultural District for the development of farm dwellings with agricultural uses at Koolauloa and Waialua, Oahu, Hawaii

APPEARANCES

Benjamin M. Matsubara, Esq., represented Petitioner

Curtis Tabata, Esq., represented Petitioner

David Druz, President, A Charitable Foundation Corporation

Lori Sunakoda, Esq., represented City and County of Honolulu, Department of Planning and Permitting

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

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

PUBLIC WITNESS

1. Henry Curtis

Mr. Curtis stated that he is the Executive Director of Life of the Land, and noted that he previously testified at the last hearing on this docket. Mr. Curtis stated his concern is that the Petitioner does not have any concrete plans for the project site. Mr. Curtis added that because of the uncertainty of future development at the project site, there could be potential impacts to the view planes and to the area of Waimea Valley.

Mr. Matsubara questioned the public witness and sought to determine if Mr. Curtis was aware of the particulars of the petition. The LUC had no questions for Mr. Curtis.

Mr. Matsubara began his presentation and stated that Petitioner currently owns 94 acres of land in Pupukea and provided a map orientation of the project site.

PETITIONER'S WITNESS

1. Rodney Funakoshi

Mr. Funakoshi stated that he is the Project Manager for Planning at Wilson Okamoto Corporation, a consulting and engineering firm. Mr. Funakoshi was previously qualified as an expert in planning at the April 7, 2005 meeting of the LUC. Mr. Funakoshi stated that the final environmental assessment was prepared under his direction and supervision. Mr. Funakoshi summarized the proposed project's relationship to each of the 13 significance criteria.

City and County of Honolulu

Ms. Sunakoda stated that the City will not be taking a position at this time.

Office of Planning

Mr. Chang asked if the Petitioner has come to a formal agreement with the DLNR to donate the specified acreage at this time. Mr. Funakoshi noted that while there is no formal agreement in place at this time, the Petitioner has received some indication that the DLNR is favorably disposed to the donation.

Mr. Chang raised a few questions relative to access rights and discussions that the petitioner had with lot owners in the subdivision adjacent to the subject property.

Commissioner's Examination

Commissioner Judge noted that at the last meeting, she had raised issues of potential contamination of drinking water, fauna study, and a cultural assessment which were to have been included in the final version.

Commissioner Im raised questions related to the numbers and sizes of lots in the proposed subdivision of the petition area, its cost effectiveness, and the main purpose for the reclassification. Mr. Funakoshi explained that the main purpose for the reclassification is to allow those portions of the agricultural district proposed to be donated as a state park reserve to be reclassified to conservation. The remainder of the petition area would be retained by the petitioner in the agricultural district. The City recommended that a homogeneous conservation parcel rather than a split zone agricultural remnant be established as a state park reserve.

Commissioner Judge commented that at the last meeting, questions from the State regarding invertebrate species were also to have been addressed.

Mr. Matsubara noted that although those matters were discussed, the DEA order only referenced 4 items. Those 4 items were subsequently covered in the proposed FEA. Other issues could be covered in the presentation of the case in chief.

Commissioner Judge asked if the Petitioner would specifically address the potential drinking water contamination on the agricultural lands during his case in chief. Mr. Matsubara replied in the affirmative.

Chair Sakumoto posed a few questions relative to page 1 of the final environmental assessment, the term state park *preserve* or *reserve*.

Mr. Chang stated that they may be words of distinction and would seek clarification.

Mr. Matsubara commented that in their discussion with Dan Quinn, State Parks Administrator, although there is a willingness to accept the property, the state has no immediate plans. Mr. Matsubara noted that the terms have been used interchangeably, but *reserve* would be a better description of the property since the state is accepting the property and the property would remain in its natural state.

Staff Report

1. Bert Saruwatari

Mr. Saruwatari summarized the staff's report and its recommendations.

Commissioner Piltz noted that on the staff's report under recommendation 4, there is distinction between the words *reserve* and *preserve*.

Chair Sakumoto noted that for purposes of the final environmental assessment, it was important what the intended uses of the property were to be. Chair Sakumoto asked if Petitioner would change the term to state park *preserve* in the final environmental assessment to be more consistent. Mr. Matsubara replied in the affirmative.

Commissioner Formby moved to approve the Petitioner's Final Environmental Assessment and issue a finding of no significant impact, and Petitioner to revise the document to change the wording of *reserve* to *preserve*. Commissioner Piltz seconded the motion.

The Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

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

DOCKET NO. A05-759 PACIFIC AINA DEVELOPMENT, INC (Oahu)

Presiding Officer Judge stated that this was an action meeting to 1) determine whether the LUC is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 1.142 acres of land currently in the Conservation District to the Urban District at Waimalu, Oahu, 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

Richard Sakoda, Esq., represented Petitioner
Wallace Lee, Principal, Pacific Aina Development, Inc.
Raymond Young, City and County of Honolulu, Department of Planning and Permitting
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

Presiding Officer Judge noted that there were no public witnesses.

Mr. Sakoda gave his presentation and stated that he believes the LUC is the appropriate accepting authority.

PETITIONER'S WITNESS

1. Colette Sakoda

Ms. Sakoda described her background as a Chief Environmental Land Use Planner and commented that she prepared the draft environmental assessment for this petition. Ms. Sakoda briefly summarized the findings as they were related to the 13 significance criteria.

Both the City and the State had no questions.

Chair Sakumoto had a few questions relative to the degree of the slope in the area where homes will be built, a study on landslides, and the recommended use of the project area. Chair Sakumoto also clarified if Petitioner has volunteered to prepare an EIS. Ms. Sakoda replied in the affirmative.

There were no further questions posed by the parties and the Commission.

Chair Sakumoto moved that the LUC is the appropriate accepting authority for Docket No. A05-759 Pacific Aina Development. The motion was seconded by Commissioner Kanuha.

Chair Sakumoto moved that based on the testimony by Petitioner's Witness, Colette Sakoda, the proposed action will have a significant impact to warrant an EIS. The motion was seconded by Commissioner Kanuha.

On the first motion that that the LUC is the appropriate accepting authority for Docket No. A05-759 Pacific Aina Development, the Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

On the second motion that the proposed action will have a significant impact to warrant an EIS, the Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

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

DOCKET NO. SP04-398 SPHERE LLC dba PACIFIC AGGREGATE (Oahu) -

Presiding Officer Judge stated that this was an action meeting to consider Applicant's request for a time extension to comply with the Commission's August 12, 2004, Decision and Order Denying and Remanding Special Use Permit to establish a construction and demolition debris landfill on approximately 190 acres of land within the Agricultural District at Maili, Waianae, Oahu, Hawaii.

On August 5, 2005, the Commission received the Applicant's request for a time extension.

Today, the Commission received written testimony from Cynthia K.L. Rezendes in opposition to the request for time extension.

APPEARANCES

Roger Moseley, Esq., represented Petitioner

Larry Wilderman, Sphere, LLC

Bernie Kim, Sphere, LLC

Duane Pang, Esq., City and County of Honolulu, Department of Planning and Permitting

John Chang, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Presiding Officer Judge noted that this motion for extension was timely filed, but the Commission's calendar did not allow for it to be heard until today's meeting.

PUBLIC WITNESS

1. Cynthia Rezendes

Ms. Rezendes stated her opposition to the time extension because of the past performance by the applicant and the continuing opposition to the project by the community, neighbors, and the long-term businesses in the area.

There were no questions posed by the parties.

Chair Sakumoto commented that he believes the Petitioner is basically seeking a time extension to appeal a legal issue based upon proceedings with the Planning Commission. Chair Sakumoto asked what harm or prejudice would be generated to Ms. Rezendes or to the community if the extension was granted for 6 months, as requested by the Petitioner.

Ms. Rezendes replied that the community and herself have gone through many years of objection about this application and also for the Waimanalo Gulch landfill issue. Ms. Rezendes added that there would be no direct harm except that the members of the community had believed that this issue was earlier put to rest with no future need to fight it any further.

Commissioner Formby asked if Ms. Rezendes was testifying individually or for any particular group. Ms. Rezendes replied that she was testifying today as an individual.

Mr. Moseley commented that the Planning Commission rules do not specifically address a procedure on remand from the LUC and that Petitioner is requesting additional time to work out the appropriate way to proceed and ensure that the opportunity for due process was afforded his client.

Chair Sakumoto asked if the request for 6 months extension of time is appropriate for the anticipated process before the Planning Commission.

Mr. Moseley replied that they have not determined what the precise process is but know that they have scheduling and noticing requirements. Mr. Moseley added that he believes that the requested 6 months extension of time is sufficient for this process.

Commissioner Im posed questions relative to legal challenges, re-filing the application with the LUC and due process proceedings.

Mr. Pang commented that the City Department of Planning and Permitting (DPP) does not oppose the Petitioner's motion as Mr. Moseley has raised legitimate problems and would like to see them resolved. Mr. Pang added that the DPP needs to return to the Planning Commission for clarity.

Mr. Chang noted that the State agrees that this matter should be worked out at the county level and added that they have no objections to the request for extension of time.

Chair Sakumoto asked Petitioner what date would the 6 months extension start from. Mr. Moseley replied August 12, 2005.

Presiding Officer Judge noted that the Commission has just received a telephone message from Phyllis Geiser in opposition to the motion for a time extension.

Commissioner Formby moved that the LUC grant the Petitioner's motion for a 6-month time extension with a new deadline of February 12, 2006. The motion was seconded by Commissioner Im.

The Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

DOCKET NO. A87-617 PUAKO HAWAII PROPERTIES fka Puako Signal Corporation (Hawaii)

Presiding Officer Judge stated that this was an action meeting to consider the:

- Correspondence – Entry of Appearance of Counsel for Bridge Aina Le`a, LLC and Banter, Inc.; and to

- To consider Motion to Change Petitioner and Amend Caption; and
- Correspondence – Notice of Withdrawal of Petitioner Bridge Aina Le`a, LLC Motion to Amend Condition 1 of Amended Findings of Fact, Conclusions of Law, and Decision and Order dated July 9, 1991.

APPEARANCES

Bernard Bays, Esq., represented Petitioner
 Robert Martin, Esq., represented Petitioner
 Hoolae Paoa, CEO, Bridge Aina Le`a and Banter, Inc.
 Norman Hayashi, County of Hawaii, Department of Planning
 John Chang, Esq., represented State Office of Planning
 Laura Thielen, Director, State Office of Planning
 Abe Mitsuda, State Office of Planning

Presiding Officer Judge noted that there were no public witnesses.

Mr. Bays gave his presentation and stated that there are three items on the agenda. The first is the appearance of his law firm as the counsel for Bridge Aina Le`a and Banter, Inc. The second is the motion to change Petitioner and to amend caption as Bridge Aina Le`a and Banter, Inc. as the new successors. The third is correspondence on the Notice of Withdrawal of Petitioner Bridge Aina Le`a, LLC Motion to Amend Condition 1 of Amended Findings of Fact, Conclusions of Law, and Decision and Order dated July 9, 1991. Mr. Bays added that the motion to change Petitioner and to amend caption was the only action item before the commission at this time.

Commissioner Im raised questions relative to the change in parties from Puako Hawaii to Bridge Aina Le`a and the recent transfer of Banter Inc., the purpose of the new ownership, financial capability, potential joint venture partner, and the previous procedural deficiencies.

Mr. Hayashi stated that the County had no objections to the motion.

Mr. Chang questioned who the joint venture partner was. Mr. Bays replied that it was Heritage Westwood, who will have an equity interest as a joint partner.

Chair Sakumoto moved to grant the motion to change petitioner and amend caption. The motion was seconded by Commissioner Formby.

The Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

A lunch break was taken at 12:15 p.m. The meeting reconvened at 1:35 p.m.

LAND USE COMMISSION WORKSHOP

Housing and Community Development Corporation of Hawaii (HCDCH)

1. Stephanie Alveiro

Ms. Alveiro stated that she is the Executive Director of the HCDCH. Ms. Alveiro gave her presentation and discussed issues of the affordable housing demands, soaring home prices, housing and homeless needs, and provided figures from the SMS Research 2003 housing study.

2. Janice Takahashi

Ms. Takahashi stated that she is the Chief Planner for the HCDCH. Ms. Takahashi provided a handout on the Comparison of Affordable Housing Requirements by County. Ms. Takahashi discussed issues of the existing and proposed housing requirements by County on authorization, percent affordable, targeted income groups, credit structure, options to satisfy housing condition, trigger, bank or sell credits, density bonus, eligibility criteria, sales or rental flexibility, transfer/resale restrictions, and rental restrictions.

Commissioner Formby thanked Ms. Alveiro and Ms. Takahashi for their testimony and efforts in the perpetuity of the affordable housing market. Commissioner Formby posed a few questions on how the State could keep housing affordable.

Commissioner Piltz raised questions related to the conversion of state agricultural lands to residential for affordable housing.

Commissioner Im posed a few questions relative to the rate of wage growth in the last 10-15 years in Hawaii and the increase in property appreciation.

Chair Sakumoto commented that when the LUC is asked to reclassify lands, they are required by statute to consider the various areas of the State's concern, and one of them would be the provision of housing opportunities for all income groups. Chair Sakumoto asked if the housing agency was willing to take a more visible role in this process by participating and providing the LUC with information to better assess these impacts. Ms. Alveiro replied in the affirmative.

Ms. Takahashi added that when their agency went thru the strategic planning process, they wanted to be known as the "go to" housing agency so that good decisions can be made.

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

A recess break was taken at 2:30 p.m. The meeting reconvened at 2:40 p.m.

State of Hawaii, Office of Planning (OP)

1. Laura Thielen

Ms. Thielen summarized OP's presentation and provided their role and responsibilities, Legal Requirements For Conditions Imposed By Government In Discretionary Permit Approval, and the Current Focus on Preparing for Important Agricultural Lands and Rural Lands.

Commissioner Im raised a few questions related to the state's policy and plan, and a proposed structure or framework.

Commissioner Formby asked if the DOE is a state regulatory agency. Ms. Thielen stated that they are almost like service agencies and would not label the DOE as a regulatory agency.

Commissioner Formby raised a few questions and concerns related to the DOE and OP's difference in position, and policy concerns related to the formula on impact fees.

Commissioner Piltz posed a few questions related to fees, affordable housing, and waivers.

Chair Sakumoto commented that it would be helpful to the LUC if the OP would file their position statement with comments from the other state agencies. Chair Sakumoto added that the LUC want the stakeholders to participate and would appreciate it if the OP could help with the coordination.

Commissioner Formby commented that the LUC relies on the state's position and questioned if it's the LUC who needs to make a determination when faced with differing positions of the various state agencies. Ms. Thielen replied in the affirmative and added that this body will need to make that determination.

Commissioner Im commented that the LUC does not have the capability to go out and find facts and research on their own, as they rely on the parties and the Petitioner to provide these facts. Commission Im added that the LUC needs to make decisions based on the information given and recommend that OP gather the facts and provide that information to the LUC, as the Commission does not want to be in situations where there are differing opinions from different state agencies.

Presiding Officer Judge thanked the workshop participants and commented that the most critical thing is for the LUC to have all relevant information and would appreciate any input from all the state agencies involved.

FIELD TRIP

Mr. Ching announced that the Commission will meet tomorrow (September 9) at Anna Miller's Restaurant near Pearlridge. They will convene at 8:50 a.m. to the site where further instructions will be given.

The meeting adjourned at 3:40 p.m.

(Please refer to LUC Transcript of September 8, 2005 for more details on this matter.)