

LAND USE COMMISSION  
MINUTES OF MEETING

September 29, 2005

Hapuna Beach Prince Hotel  
62-100 Kaunao`a Drive  
Kohala Coast, Hawaii 96743

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

COMMISSIONERS ABSENT: Thomas Contrades  
Michael Formby

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

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

ADOPTION OF MINUTES

Commissioner Im moved to adopt the Land Use Commission meeting minutes of September 8, 2005. Commissioner Piltz seconded the motion. The minutes of September 8, 2005 was approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the LUC will commence with the Aina Nui hearings on October 6 and 7 in Kapolei, Oahu.

In November, the LUC will be traveling to Kauai on November 2 for a field trip to the Kauai ATV site. On November 3, the LUC will attend the HCPO conference and will schedule an action meeting on the Kauai ATV docket on November 4.

Mr. Ching stated that no changes are anticipated except for a possibility that the December 8 and 9 meetings may switch from Oahu to the Big Island.

There were no questions posed by the Commission.

Commissioner Kanuha entered the meeting at this time.

Chair Sakumoto asked the Commission for favorable consideration and support for amending the agenda to first address issues raised in correspondence received from the Office of Planning and would entertain a motion to convene in executive session. Second, to ensure that the Commission maintains the necessary minimum attendance for a quorum and to accommodate the travel schedule of Commissioner Piltz, Chair Sakumoto proposed to shift item #3 Miscellaneous - Correspondence from Ms. Claudia Rohr to the first available time after the lunch break and to substitute the HELCO docket as next in order. The third matter is that the Commission had previously requested for a live witness from the DLNR to testify in the McCully docket. The travel schedule of Mr. Sam Lemmo requires that he complete his testimony by 12:30 p.m. It is possible that HELCO may be asked to yield the floor in order for the LUC to receive Mr. Lemmo's testimony.

Vice Chair Judge moved to amend the agenda as proposed. Vice Chair Montgomery seconded the motion. The motion was approved by voice votes.

Chair Sakumoto asked if there was anyone wishing to provide public testimony on Docket No. A03-743 Hawaii Electric Light Company. There being no public witnesses for this docket, Chair Sakumoto entertained a motion to go into executive session to discuss the correspondence received from the Office of Planning.

## 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. The motion was seconded by Vice Chair Montgomery. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:25 a.m.

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

Chair Sakumoto reconvened the meeting and noted that the Commission has instructed their Deputy Attorney General to prepare a written response to the Office of Planning by the October 20-21 LUC meetings.

## DOCKET NO. A03-743 HAWAII ELECTRIC LIGHT COMPANY

Chair Sakumoto stated that this is an action meeting on Docket No. A03-743 Hawaii Electric Light Company, Inc., to consider the reclassification of approximately 15.643 acres of land currently in the Conservation District to the Urban District at Keahole, North Kona, Hawaii, for improvements and upgrades to the Keahole Generating Station and Airport Substation.

## APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Warren Lee, President of Hawaii Electric Light Company

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

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto noted that there were no public witnesses.

Commissioner Kanuha gave a presentation of his proposed findings of fact, conclusions of law, and decision and order. He described his proposed order and noted what his rationale was in drafting his order. He noted a few other amendments and accepted three of the four proposed amendments offered by the Petitioner.

Mr. Kudo thanked Commissioner Kanuha and the Commission for accepting 3 of the 4 responses that the petitioner had suggested.

Mr. Lee provided some clarification on the federal, state, and county permits that petitioner needed.

Commissioner Im raised questions on the timelines of discretionary permit processes and the anticipated construction timeframe.

Vice Chair Judge posed a few questions relative to the timeframe of discretionary permits and clarified the language proposed by Petitioner for condition 2.

Ms. Leithead-Todd stated that the County had no questions and emphasized that the county process of rezoning may have a great variation in processing time.

Mr. Chang noted that the State had no objections to the proposed changes made by the Petitioner.

Chair Sakumoto stated that the Commission will begin with their deliberations and asked if the Commissioners have received and reviewed copies of the transcripts and are prepared to deliberate on this matter.

The Commission was polled as follows:

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

Mr. Ching went through the document and recorded the amendments and corrections offered by the Commissioners. After a brief discussion, the decision and order, as proposed and amended by the Commission, was ready for approval.

Commissioner Kanuha moved to approve the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment in Docket No. A03-743 Hawaii Electric Light Company, Inc. The motion was seconded by Vice Chair Judge. The Commission was polled as follows:

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

The motion passed with 6 ayes, 2 absent.

Chair Sakumoto directed staff to ensure that an appropriate form of the order is prepared and distributed to the parties and the commission for their review prior to adoption at the next LUC meeting.

A recess break was taken at 12:00 a.m. The meeting reconvened at 12:10 a.m.

A05-757 JAMES W. McCULLY and FRANCINE M. McCULLY

Chair Sakumoto stated that because of travel and time constraints, the Commission will allow the State's witness, Mr. Sam Lemmo, to provide his testimony out of order.

APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner

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

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

State's Witness

1. Sam Lemmo

Mr. Lemmo stated that he is the Administrator of DLNR's Office of Conservation Coastal Lands. Mr. Lemmo discussed his duties and the regulation of conservation district laws, responsibilities of coastal land and beaches, erosion solutions for these areas, management of lands in the conservation district, and the criteria associated with lands designated conservation, such as coastal bluffs, scenic view plains, watershed, and areas prone to erosion. Mr. Lemmo added that their program specifically addresses coastal erosion, management and long term plans, and noted that agencies such as the LUC should consider the erosion trends before making a decision on a change in land use district.

Mr. Lemmo also recommended that parties review the Hawaii Coastal Hazard Mitigation manual, a technical guide that provides a step-by-step discussion about development and coastal hazards. Mr. Lemmo commented that any erosion analysis or hazard assessment could become a scientific basis for decision making.

Mr. Chang asked Mr. Lemmo what type of requirement would the DLNR require on this petitioner's request to build a residence on conservation lands. Mr. Lemmo replied that an erosion analysis would determine the erosion hazard and also to determine the bases for establishing a setback to assure that the petitioner does not place a residence in an area that is potentially dangerous.

Mr. Chang asked what would be DLNR's position on this docket. Mr. Lemmo responded by indicating that the DLNR would prefer that the petition area remain in the conservation district or in the alternative, be partially in the conservation district.

Ms. Leithead-Todd raised a few questions on the proposed 80-foot setback mentioned by Mr. Lemmo, scenic values, the process of conducting an erosion analysis, and historical and aerial photos.

Chair Sakumoto noted that based on Mr. Lemmo's travel schedule for today, the LUC will need to continue with his testimony at a later date. Chair Sakumoto commented that the Executive Officer will work with Mr. Lemmo to coordinate a future meeting date.

Vice Chair Montgomery stated that since his observations are crucial for the LUC's deliberations, he suggested that Mr. Lemmo take the opportunity to visit the project site prior to the next meeting.

Mr. Chang added that maybe the LUC or its staff could also conduct a site visit so that they could see the petition site, bluffs, and the surrounding area.

Chair Sakumoto entertained a motion for the LUC to visit the property.

Vice Chair Judge moved to instruct the Executive Officer to organize a site inspection to the project site. Vice Chair Montgomery seconded the motion. The motion was approved by voice votes.

A lunch break was taken at 1:15 p.m. The meeting reconvened at 2:55 p.m.

Commissioner Piltz left the meeting at this time.

### Miscellaneous Correspondence from Ms. Claudia Rohr

Chair Sakumoto stated that the Commission will be discussing the correspondence from Ms. Claudia Rohr regarding coal ash pile on TMK 2-8-8-95 (por.), located in Makahanaloa ahupua`a, South Hilo, Hawaii.

Mr. Ching provided a brief summary of the contacts made by Ms. Rohr to the LUC via telephone and written correspondence since late July 2004. Ms. Rohr's correspondence is related to the storage of coal ash in the district and a number of issues and allegations as to the Hilo Coast Processing's SMA permit and temporary zoning clearance, and jurisdiction issues between the DOH and the County of Hawaii.

### Public Testimony

#### 1. Claudia Rohr

Ms. Rohr stated her concerns regarding the temporary zoning clearance of an area over 15 acres and the storage of coal ash on agricultural lands. Ms. Rohr discussed issues that she had with the settlement agreement with the DOH, the use of coal ash as soil for ornamental plants, efforts by the DLNR and NOAA to monitor the project, and sediment flowing into the ocean from the coal ash.

Ms. Leithead-Todd stated that the County had no comments as they have not received any letters or correspondence on this matter.

Mr. Chang noted that the State cannot formulate any response at this time as they also have not seen or received any of the correspondence.

Chair Sakumoto asked Ms. Rohr if she was aware of the procedure for a declaratory ruling. Ms. Rohr replied in the affirmative and added that she will try to refine her questions and will request for a declaratory ruling. Ms. Rohr expressed her appreciation to the Commission, the Executive Officer, and Staff Planner Max Rogers.

Vice Chair Montgomery raised a few questions relative to filing complaints with the Ombudsman's office, the EPA, NOAA, and the seriousness of any real or potential impacts to the shoreline.

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

The meeting adjourned 3:30 p.m.

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