

LAND USE COMMISSION
MINUTES OF MEETING

March 3, 2006

Conference Room 405
Leiopapa A Kamehameha
235 So. Beretania Street
Honolulu, Hawaii

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

COMMISSIONERS ABSENT: Lisa Judge

STAFF PRESENT: Anthony Ching, Executive Officer
Diane Erickson, Deputy Attorney General
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 February 16, 2006 and February 17, 2006. Commissioner Contrades seconded the

motion. The minutes of February 16, 2006 and February 17, 2006 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- March 16 & 17 meetings are cancelled.
- April 7 the LUC will meet on Maui to continue the Pulelehua docket and to take action on the Waikapu 28 motion.
- April 20 will be a field trip to the Waimanalo Gulch Landfill site.
- April 21 the LUC will receive a status report from the City Department of Environmental Services. The LUC order had required the City to provide monthly status reports and will also be updated on the recent actions taken by the City Council on this matter. Also, the West Beach Estates docket will be providing an update on their report.
- May 5 is a one-day action meeting in Hilo on the McCully docket.
- May 18 & 19 the LUC will conduct a field trip on May 18 and hold meetings on the Lanai docket. June 7, 8, & 9 is scheduled for hearings on the Lanai docket.

Chair Sakumoto noted that the Castle & Cooke Homes item was on the Maui agenda and questioned if the LUC needed to hear this matter on Oahu.

Mr. Ching commented that this matter is from a recent action taken by the Supreme Court vacating the LUC's decision and sending it back to the LUC. Our counsel has advised that the LUC should officially take notice and vacate the decision and order so the parties will prepare and EA or EIS, as a ministerial matter to officially proceed.

Ms. Erickson noted that she will check if the LUC needs to hear the matter on Oahu.

LEGISLATIVE UPDATE

Mr. Ching provided a brief legislative update and noted that his testimony now contains some disclaimers. Mr. Ching discussed SB2774 regarding plantation camps and the grandfathering effect. Mr. Ching also commented briefly on HB1368, testimony

that emphasized the positive features rather than the negative features of the proposal as drafted.

Ms. Thielen commented that there was some legislation previously submitted that may affect this body and asked if she could provide an update at this time.

Chair Sakumoto asked if this update would be on a specific bill. Ms. Thielen replied in the affirmative.

Chair Sakumoto noted that he has a concern about discussion on any specific bills since the lack of that specificity was not printed on the meeting agenda. Chair Sakumoto added that any input from the outside of the Commission may need to be noticed with some specificity.

Vice Chair Montgomery commented that the Legislative Update on the agenda appears rather general and may allow for discussion by a state agency.

Mr. Yee noted that the addition of a simple update from the Office of Planning, which does not result in a decision, would not run afoul of the Sunshine Law.

Chair Sakumoto commented that he did not want to hold up the agenda and noted that the Commission may have other time during the day to return to this discussion.

DR04-30 KULEANA KU`IKAHI LLC (Maui)

Chair Sakumoto stated that this was an action meeting on DR04-30 Kuleana Ku`ikahi LLC (Maui) to adopt the Findings of Fact, Conclusions of Law, and Decision and Order.

APPEARANCES

Blaine Kobayashi, Esq., represented Intervenor R. Charles Bergsen, et al
Paul Horikawa, Esq., represented Intervenor Jason and Concetta Cuevas
Bryan Yee, Deputy Attorney General, 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.

Mr. Ching described the changes made to the findings of fact, conclusions of law, and decision and order. Mr. Ching noted that findings of fact 38 and 39 were modified and specific lot numbers were inserted where appropriate. Mr. Ching also discussed the Conclusions of Law.

Chair Sakumoto noted some typos and had a few substantive changes to tighten the language in the decision and order. Chair Sakumoto commented that because the vote was taken based upon the prior language in this document, he suggested that the LUC return to Maui at its next meeting and adopt the order at that time. The LUC will then have a clean document with all changes and amendments.

Commissioner Piltz asked if the petitioner's counsel would accept the document the LUC has proposed.

Chair Sakumoto commented that the Commission is now at the stage of the proceeding where the Commissioners are free to ask a specific question to the parties, but will not entertain any input from other than within the Commission at this stage of the document.

Chair Sakumoto then proposed that the LUC make the corrections to the document and staff to circulate a redline version so that the Commissioners will know exactly what changes were made and proceed with the adoption in Maui.

Vice Chair Montgomery moved to defer this matter until the next LUC meeting in Maui. Commissioner Piltz seconded the motion. The motion was approved by voice votes.

A recess break was taken at 9:45 a.m. The meeting reconvened at 9:55 a.m.

Chair Sakumoto commented on the Office of Planning's request to make a presentation on a specific piece of pending legislation. Chair Sakumoto explained that his concern was that if the LUC did not notice anything with specificity and it's clear that the LUC would be talking about a particular piece of legislation, then maybe other parties would have had interest and appeared today. In the interest of fairness, that was the concern. Chair Sakumoto cited HRS §92-7(b) and commented that the LUC has the authority, if the LUC chooses, to amend the agenda to include this item if they believed that it met its criteria. Chair Sakumoto added that from a scheduling

standpoint, this matter would be discussed at the end of the posted items because in fairness to the parties, the LUC will try to get through the agenda items first.

Vice Chair Montgomery moved to add an agenda item of legislative update that would allow a party to present testimony today on bills before the Legislature. The motion was seconded by Commissioner Piltz.

The Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

A04-746 WAIKAPU 28 INVESTMENT, LLC

Chair Sakumoto stated that this was an action meeting to consider whether or not to issue a subpoena to the Department of Education to appear and testify in the matter of Waikapu 28 Investment, LLC's Motion to Amend Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed December 14, 2004.

APPEARANCES

Blaine Kobayashi, Esq., represented Intervenor R. Charles Bergsen, et al
Bryan Yee, Deputy Attorney General, 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.

Mr. Kobayashi stated that this agenda item was not a request by his client, but his understanding is that it was a meeting for the LUC to consider whether or not to subpoena the DOE. Mr. Kobayashi added that at a prior LUC meeting on another docket, the DOE vowed to be actively involved in petitions before the LUC. Mr. Kobayashi commented that if the LUC feels there is a need for the subpoena to be issued, then his client would support that action.

Mr. Yee stated that the OP believes that the DOE's direct input would be appropriate and have no objections to the issuance of a subpoena. Mr. Yee added that the OP would request that the subpoena include requirements for production of documents related to funding, actual expenditures, the impact of the proposed construction, and due dates for responses.

Mr. Ching provided a brief summary and background of this matter. Mr. Ching noted that the motion was filed on November 25, 2005 and no response was received by any of the parties or the DOE. Mr. Ching added that although the DOE is not a party, they did indicate at a previous hearing (on another docket) their willingness to participate actively before the LUC.

Mr. Ching commented that the motion itself is that the LUC granted the reclassification to the Petitioner, subject to a condition, among other conditions, that prior to zoning, the Petitioner would execute an agreement with the DOE. The Petitioner subsequently returned to the LUC seeking relief and extension of that deadline. Mr. Ching believed that this revised deadline is rapidly approaching and agreement with the DOE, as provided for in the LUC order, has not been reached amongst the parties.

Mr. Kobayashi concurred with Mr. Ching's assessment of the motion. Mr. Kobayashi commented that his client is in the process of securing final subdivision approval. The agreement with the DOE is one of the issues that need to be addressed before they can receive final subdivision approval.

Chair Sakumoto asked if they have had any meetings with the DOE and if there was an impasse in reaching an agreement.

Mr. Kobayashi replied in the affirmative. Mr. Kobayashi briefly summarized the relief his client is seeking from the LUC. Mr. Kobayashi commented that his client is seeking to amend condition 4 of the decision and order, related to the fundamental problems in the DOE's calculation of their fair share formula.

After a brief discussion, Commissioner Piltz moved to issue a subpoena to the DOE to include the requested documents and setting forth deadlines for responses. Vice Chair Montgomery seconded the motion.

The Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

A recess break was taken at 10:20 a.m. The meeting reconvened at 10:25 a.m.

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

Chair Sakumoto stated that this was an action meeting on Docket No. A05-758 A Charitable Foundation Corporation to consider the reclassification of (i) approximately 28.759 acres of land currently in the Agricultural District to the Conservation District for a 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 Pupukea, Koolauloa and Waialua, Oahu, Hawaii.

APPEARANCES

Benjamin M. Matsubara, Esq., represented Petitioner

Curtis Tabata, Esq., represented Petitioner

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

Bryan Yee, 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.

Mr. Matsubara provided a brief summary of the subject property and stated that through a joint effort with the Office of Planning and the Department of Planning and Permitting, they were able to submit to the LUC a stipulated proposed decision and order. Mr. Matsubara then highlighted the proposed conditions.

Commissioner Im raised a few questions relative to issues of the proposed two zoning lots and the Department of Health regulations that limits 5-bedrooms on the site.

Commissioner Kanuha expressed a few concerns regarding the efforts of the parties to mitigate the concerns raised by the OP and the need for an agricultural plan, as specified within condition 2.

Commissioner Formby echoed Commissioner Kanuha's concerns and commented that the LUC should not be reviewing ag plans for this petition.

Chair Sakumoto asked if it was the City and County or the OP that reviews ag plans.

Mr. Yee stated that the OP is willing to be responsible for working with the Department of Agriculture (DOA) on such a review.

Ms. Sunakoda noted that it was her understanding that at the time of subdivision approval, the City would work with the DOA, who will make that determination.

Mr. Matsubara commented that he had a legal concern on whether the approval could be delegated to another agency.

Commissioner Im commented that he concurs with Mr. Matsubara that delegating the review process to another agency might be a problem under Ka Pa`akai.

Mr. Matsubara discussed finding of fact 40, which indicates that the 2 agricultural district parcels will be limited to agricultural uses with the potential of developing farm dwellings. Mr. Matsubara also discussed condition 5, which says that they will need to comply with their representations.

After a discussion, Mr. Matsubara commented that he would have no problems with the non-substantive changes to format, grammar, and typographical errors.

Commissioner Im offered his opinion that condition 2 is not necessary and could be taken out of the document as long as condition number 3 says that it will remain in agricultural and allowed only 2 lots. Commissioner Im also commented on the proposed condition regarding the trail system. Commissioner Im suggested to remove the sentence on the 6th line beginning with "...or until the DLNR assumes active management..." since he believed that the concern was for someone to manage the park until another agency takes over, not to have active management and no one maintaining it. Commissioner Im added that since there is a 10-year date, that line could be removed.

Commissioner Formby commented that in response to condition 2, his understanding of Ka Pa`akai is not that the LUC cannot delegate, but since this is before the LUC as a stipulated order, he believed that it is appropriate to defer to OP on whether they want to have a condition in there that gives them the right to review and approve.

Mr. Yee stated that there ought to be a review and approval on the agricultural uses. The petitioner has come before the LUC and represented that they will use it for agricultural use and the OP wants to hold them to their representations. In regards to the review and approval, the OP is willing to do that or that issue can be with the City prior to subdivision approval. Mr. Yee added that in reference to condition 2, they prefer to keep it in as they have included a sentence taken from 205 stating that "to be used in connection with the farm or agricultural activity provides income to the family occupying the dwelling." Mr. Yee noted that this is part of an agreement that they all have concurred with.

Chair Sakumoto commented that he believed Ms. Sunakoda stated that they defer to the DOA with respect to review of the farm plan.

Mr. Yee noted that they would be satisfied with the DOA conducting such a review.

Ms. Sunakoda stated that they concur with Mr. Matsubara's representations and have had the opportunity to review the proposed findings of fact, conclusions of law, and decision and order. Ms. Sunakoda added that the City has stipulated on this document and had no further presentation to make.

Mr. Matsubara commented that assuming they received this approval, they will be immediately filing the consolidation and subdivision approvals with the City. Mr. Matsubara asked whether they would need input as to the approval of an ag plan.

Ms. Sokogawa, Planning Division Chief, noted that in general, when there is a subdivision in agriculture, they will require a feasibility, marketability or viability of an ag plan that is sent to the DOA for confirmation. Ms. Sokogawa added that the DOA review is for subdivisions of 4 or more lots, so in this particular matter, it will not be necessary since it is limited to 2 lots. Ms. Sokogawa noted that in this proposal, acreages description and a site plan were received, which does not determine viability of the plan, the marketability, or its economics. Ms. Sokogawa added that if it is the intent of the proposed condition, then the City should be notified prior to subdivision

approval and they would not be making any determination of its feasibility from an economic standpoint. The feasibility is determined by the DOA.

Mr. Yee commented that since the City would not require the DOA to review the ag plan, they believed that it was even more important to have condition 2 and to also require DOA review and approval of the farm plan.

Commissioner Kanuha commented that previous testimony from the OP indicated that their position was that the lands be reclassified to rural classification.

Ms. Thielen replied in the affirmative and noted that when they reviewed the application, they had no concerns about the generous donation of lands for the park reserve to be removed from the agricultural to conservation district. Ms. Thielen indicated that their concern was that the remaining lands are appropriate for low density residential. The Applicant has no history of farming and no current farm plan. Ms. Thielen added that their other concern was related to Chapter 205 farm dwellings on agricultural lands.

Commissioner Kanuha commented that Ms. Thielen referenced the differentiation between the Big Island (McCully) petition and this petition, where the OP's position was that they supported the McCully docket because it had some disclosure of the agricultural activity and background in the business and not on post performance as in this matter. Commissioner Kanuha added that once the lands are reclassified in agricultural, the use will need to be consistent with 205.

Ms. Thielen commented that this specific petition does not have a current plan for development and that is a concern with the OP.

After a brief discussion, Chair Sakumoto noted that staff has prepared a redline version of the findings of fact, conclusions of law, and decision and order with non-substantive changes to ensure that the findings conform to the LUC's formatting conventions and to correct typographical errors.

A recess break was taken at 11:20 a.m. The meeting reconvened at 11:30 a.m.

Mr. Ching discussed the changes made to conform to the LUC formatting conventions to ensure that the findings were verified by the record and to ensure that they were concise and comprehensive.

After reviewing the changes, Mr. Matsubara had no objections to the changes proposed.

Ms. Sunakoda noted that the City had no questions or objections.

Mr. Yee expressed his appreciation to staff for all the work that went into this document but stated that it was very difficult for them to adequately respond, given the short time, and commented that they were not able to provide a well informed statement of position at this time.

Chair Sakumoto noted that Mr. Ching will continue with his explanation of the changes and the OP and the parties will reserve their comments at this point.

Mr. Ching then continued to describe the changes and edits for clarity offered by staff for this document.

After this discussion, Chair Sakumoto commented that although it was only conventions to ensure clarity and consistency, he realizes that it was a lot of information to digest at once.

Mr. Matsubara stated that he also appreciates staff's efforts in the corrections being made, however, this is their 5th hearing and have no objections to these changes and would appreciate if the LUC expedited this process.

Chair Sakumoto noted that he was sensitive to Mr. Matsubara's comments and added that if the LUC did not take action today, they would be inclined to defer until the next meeting in mid-April.

Mr. Yee asked if this matter could be moved to the end of the agenda to allow the OP some time to review the document and potentially come up with the position of the OP.

Ms. Sunakoda commented that they would join in Mr. Matsubara's response and noted that the City had nothing further.

Vice Chair Montgomery sympathized with the comments made by Petitioner.

Commissioner Im commented that he was also sympathetic with the Petitioner and understood the need to expedite this application, but his concern was that the LUC may be moving too fast and were not careful enough, or too hasty in reviewing, and

unfortunately these changes came in too late. Commissioner Im noted that this is a very important decision and to rush any application is not a good practice in general, and added that it is not fair to the parties and the Commissioners to digest everything in a short period of time.

Commissioner Formby noted that since the OP has kindly offered to review the document for two hours, then the LUC should accept that offer. If that was not enough time for OP, then the LUC can make a decision to defer when they return.

Chair Sakumoto stated that the neighbor island commissioners will need to leave at 2:00pm in order to catch their return flights. Chair Sakumoto added that they will reconvene this matter at 1:30 p.m.

A04-753 AINA NUI CORPORATION (Oahu)

Chair Sakumoto stated that this was an action meeting on Docket No. A04-753 Aina Nui Corporation (Oahu) to consider the reclassification of approximately 174,209 acres of land currently in the Agricultural District to the Urban District at Ewa, Oahu, Hawaii for residential, golf course, park, and open space uses.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Lori Sunakoda, Esq., represented Department of Planning and Permitting

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

Bryan Yee, 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.

Ms. Sunakoda stated that counsel assigned for this matter, Don Kitaoka, was on his way and should be in attendance shortly.

Chair Sakumoto noted that the LUC will return to formal deliberations on the proposed order. During its deliberations, the LUC will not entertain any additional input from the parties or the public unless those individuals or entities are specifically requested to do so by the Chair. Chair Sakumoto noted that they will continue the

matter from the last hearing on staff's review of the record in relation to the condition on affordable housing.

Mr. Ching summarized staff's findings on that review in the testimony of Thomas Fee in the FEIS, Petitioner's exhibit 41a, and the transcript of October 6, 2005, which had some interchange on questions from Commissioners Judge and Im. Also, the testimony of Donna Goth on October 19th, and the City's representations of Kathy Sokogawa on October 7th also specific to the issue of affordable housing. Mr. Ching added that he believed the record shows that there has been representations that Petitioner will offer at least 20% of the total residential units in the Petition area to households, families, persons whose incomes do not exceed 120% of Oahu's median income and at least 10% of the total residential units in the petition area will be offered to households earning below the 80% of Oahu's median income.

Chair Sakumoto commented that the actual contribution is based upon a negotiation or agreement between the Petitioner and the City and County. Chair Sakumoto asked if there were a variety of options to satisfy the requirement.

Mr. Ching replied in the affirmative and noted that there is direct testimony from Ms. Sokogawa in the October 7th transcript that describes the options to satisfy the 30% requirement.

Commissioner Im raised a few questions on the 30% requirement noting that at least 10% of the total residential units shall be available to those with incomes of 80% or below and 20% offered to those with incomes of less than 120% median.

Mr. Ching noted that the testimony of Ms. Sokogawa in the transcript of October 7, page 44, lines 9 through 15, is clear that there is a 30% requirement that all units built, 20% being in the categories serving the families of 80-120%, the 10% is below the 80%, totaling 30%.

Commissioner Im commented that he would like to see some assurance that affordable housing would be built. Commissioner Im noted that he's willing to work out some language in a condition that is reasonable because he would like to see some of these units actually built and sold. Commissioner Im proposed a time limit of 2 years from the change of zoning or 4 years from the date of the LUC order.

Commissioner Formby noted that he had no problems with the proposed condition as is because he believed that the record reflects that the LUC was not exacting in requiring a commitment to build affordable housing. Commissioner

Formby added that the LUC may be in a difficult position to get too specific by including timeframes, because the LUC does not have the specifics on the build out. Commissioner Formby suggested to leave the condition as proposed and to have the City negotiate with the Petitioner.

EXECUTIVE SESSION

Commissioner Im moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Vice Chair Montgomery seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 12:35 p.m.

The open meeting reconvened at 12:45 p.m.

Commissioner Im commented that he would like a time limitation of something tied to the project build out and his intention is to have some deadline so if it is not done, the condition is not met. Commissioner Im noted that findings of fact 36 refers to the anticipated project absorption rate of 9 years if it begins in 2008, so that would be 11 years from today. Commissioner Im added that it was not his intention to unreasonably force the developer to build any faster than they are trying to sell, just that he would like to see the affordable units built.

Chair Sakumoto proposed an amendment to paragraph 1, to add "...but shall not be less than 30% of all units." and commented that Commissioner Im's proposal could also be added "...and this condition shall be satisfied no later than December 31, 2017" which is supported by the record.

Vice Chair Montgomery commented that since the economy is notoriously unpredictable, he was uncomfortable with putting in an exact calendar date and proposed that they use "...9 years from the start of construction."

Commissioner Formby had similar concerns and noted that 9 years from build out would be more appropriate to use, as he believes that was the testimony in the record.

Commissioner Im commented that it would be acceptable to him, except that he believed that the LUC should define what is construction. Commissioner Im added that in any event, either economic or natural disaster, the applicant could always return to the LUC.

Commissioner Kanuha asked if it might be more appropriate to ask the Petitioner whether that is acceptable or if they could provide a finite data from which the 9 year period would run to satisfy the affordable housing condition.

Mr. Kudo commented that there is an abundance of affordable housing in the Ewa region and the program has worked very well. Mr. Kudo added that Campbell Estate is serious about proceeding forward with this project, but there are things that they cannot control, such as economic forces, other commitments and processes. Mr. Kudo noted that although they have testified that they anticipate to begin construction in 2008 that date is subject to these factors beyond their control. Mr. Kudo stated that they would prefer some other type of event date, such as the first building permit issued for a dwelling or certificate of occupancy to tie in the 9 year period rather than a specific date.

Chair Sakumoto noted that Mr. Kudo has just proposed a start date as 9 years from the issuance of the first building permit for the residential unit within the project area, if that is the time period the LUC wishes to use.

Commissioner Im commented that the time period from the first issuance of the building permit is fair, but his preference would be to tie it in to the zoning.

Mr. Kudo noted that although the project includes other areas that were previously reclassified, they are only talking about this petition area. Mr. Kudo commented that 20% would be located within this project. There is another site within a 5-mile radius that will have some affordable housing, but the focus and jurisdiction of the LUC condition would be in this petition area. The preferred language of the condition would be the first building permit for the first dwelling unit in the petition area.

Commissioner Im asked if at least 20% would be built on this site, as he had the impression that petitioner would provide at least 20% in the petition area.

Mr. Kudo replied that it would not, although a portion would be on this site. There is another parcel located 3 miles away that is designated for the construction of most of the affordable housing for this particular project.

After a brief discussion, Commissioner Formby proposed language to say that “..the number, location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as determined by the City and County of Honolulu but shall not be no less than 30% of all units.”

The Commission then discussed the commencement date. Chair Sakumoto noted that the language for condition number 1 says “..shall be satisfied by no later than 9 years from the issuance of the first building permit for the first residential unit within the Petition Area.”

The Commission discussed the entire condition number 1.

Commissioner Im offered a friendly amendment to the second sentence, as he believed that the petitioner represented that the affordable housing units would be built at the same time as the market units at a ratio of 10 market to 3 affordable.

Mr. Kudo stated that the City has the rules and regulations and commented that he believed there was a building out of market along with the number of affordable units.

Commissioner Im commented that they would not need to include this amendment.

Vice Chair Montgomery then described his motions that he prepared and has offered conditions to the LUC order regarding ground termite protections during construction of the project.

Commissioner Formby commented that he did not recall this being discussed during the evidentiary portion of the case and is something that is being raised during deliberation and believes it was not appropriate at this time.

Vice Chair Montgomery commented that he believes it may have been discussed briefly during Donna Goth’s testimony and he vaguely recalls that she replied that it may be considered.

Mr. Kudo stated that he did not recall this specific topic being raised in the record, but because it is a consideration, Campbell Estates is always interested in using Best Management Practices for the construction of any facility and may consider it or have the sub-developers consider it as an option.

Commissioner Im commented that although he agrees with Vice Chair Montgomery's offering, he believes that they are suggestions and not conditions. Commissioner Im added that he has some difficulty including it as a condition and that the Petitioner indicated that they will consider it.

After a brief discussion, Chair Sakumoto commented that the LUC has voiced some hesitancy to include this in the document and added that the Petitioner has voluntarily indicated that they will be considering the proposals.

Vice Chair Montgomery expressed his appreciation and was gratified that he has made a rhetorical point and had a favorable reception. Vice Chair Montgomery then withdrew his motion for a lack of a second.

Chair Sakumoto noted that Vice Chair Montgomery will have another chance to bring this matter up on a future docket and build a record on it.

Commissioner Formby then moved to approve the findings of fact, conclusions of law and decision and order as modified by this body today. The motion was seconded by Commissioner Contrades.

The Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

A recess break was taken at 1:30 p.m. The meeting reconvened at 1:40 p.m.

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

Chair Sakumoto stated that this was a continuation where the Office of Planning was allowed time to review the redline version of the findings of fact.

APPEARANCES

Benjamin M. Matsubara, Esq., represented Petitioner
Curtis Tabata, Esq., represented Petitioner

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
Bryan Yee, Esq., represented State Office of Planning
Laura Thielen, Director, State Office of Planning
Abe Mitsuda, State Office of Planning

Mr. Yee offered their comments for the final decision by the LUC and offered three comments. First on page 13 paragraph 44 to include the words “approved plans” to be consistent with their discussion regarding a request that someone approve the ag plans. Secondly, on page 44 paragraph 2 relative to the review of the ag plan. The OP suggested that OP be the conduit prior to the DOA for plan approval. Last, is the maintenance of the trail system and the OP has no objections to Commissioner Im’s amended language.

Mr. Matsubara had no objections to OP’s amendments to the findings of fact.

Ms. Sunakoda noted that the City had no objections to the proposed changes.

Chair Sakumoto asked Commissioner Kanuha if he had any objections to OP’s proposed language in condition 2 regarding the OP being the recipient of the plan and responsible for forwarding it to the DOA.

Commissioner Kanuha commented that his principle concern was that it not be this Commission, and added that once the LUC reclassifies it to the district, it should have enough evidence on the record that speaks to the characteristics of that area which supports agriculture. Commissioner Kanuha noted that he believed that taking the next step to prove that the land can sustain agriculture may be taking it a bit too far, and if the Petitioner has no objections with OP’s proposal, then he is satisfied with it.

After a discussion regarding the farm plan, Commissioner Piltz moved to approve Docket No. A05-758 A Charitable Foundation Corporation’s reclassification of (i) approximately 28.759 acres of land currently in the Agricultural District to the Conservation District for a 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 Pupukea, Koolauloa and Waialua, Oahu, Hawaii. The motion was seconded by Commissioner Montgomery.

The Commission was polled as follows:

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

The motion passed with 7 ayes, 1 absent.

The meeting adjourned at 2:00 p.m.

(Please refer to LUC Transcript of March 3, 2006 for more details on this matter.)