

LAND USE COMMISSION
MINUTES OF MEETING

November 16, 2006

Maui Prince Hotel Makena Resort
5400 Makena Alanui
Makena, Maui, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Nicholas Teves, Jr.
Reuben Wong

COMMISSIONERS ABSENT: Kyong-su Im

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 Judge called the meeting to order at 10:15 a.m.

ADOPTION OF MINUTES

Chair Judge noted that the minutes of November 3, 2006 should reflect that Commissioners Contrades and Teves were not present on this date.

Commissioner Piltz moved to adopt the minutes of November 2, 3, and 6, 2006 as amended. Vice Chair Montgomery seconded the motion. The minutes of November 2, 3, and 6, were approved by voice votes.

Chair Judge noted that the Tentative Meeting Schedule will be deferred until later in the afternoon.

SP06-400 WILLIAM HORNEMAN on behalf of Hawaiian Cement (Maui)

Chair Judge stated that this was an action meeting to consider a Land Use Commission special permit to operate and expand the Pohakea Quarry and base course operation on approximately 79.2 acres of land within the State Land Use Agricultural District at Maalaea, Maui, Hawaii.

APPEARANCES

Karlynn Kawahara, Munekiyo & Hiraga, Inc.

William Horneman, Hawaiian Cement

Jane Lovell, Esq., represented the County of Maui Department of Planning

Michael Foley, Director, County of Maui Department of Planning

Colleen Suyama, County of Maui Department of Planning

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Commissioner Piltz disclosed that this application came before the Maui Planning Commission while he was a member of that Commission. Commissioner Piltz added that he feels that he will be able to participate objectively in this matter.

Chair Judge noted that she also was employed at the County's Planning Department when this application was processed and felt that she could participate objectively.

The parties expressed no objections to both disclosures and both Commissioners continued to participate in this docket.

County's Witness

1. Colleen Suyama

Ms. Suyama discussed issues of the Pohakea Stream buffer zone, air and noise pollution, visual impacts, and re-vegetation once the quarry operation ceases.

Commissioner Piltz wondered if the area could be used as a landfill once the operations have ceased.

Ms. Suyama replied that the topography is not a pit, as compared to the Central Maui Landfill. In this case, the rocks are on the surface going up towards the mountainside and it would not create the same type of pit.

Vice Chair Formby posed a few questions related to the expiration date of the County's permit.

A recess break was taken at 10:40 a.m. The meeting reconvened at 10:50 a.m.

Chair Judge raised a few questions related to the conditions imposed by the Planning Commission. Chair Judge asked if the parties were familiar with the conditions and asked if the parties would stipulate to entering this as a part of the record.

Ms. Kawahara stated that they are familiar with the conditions and had no objections.

Ms. Lovell noted that the County had no objections.

A recess break was taken at 10:55 a.m. The meeting reconvened at 11:05 a.m.

Petitioner's Presentation

Ms. Kawahara began her presentation and stated that the proposed expansion on the project site is currently adjacent to vacant lands. Ms. Kawahara noted that petitioner is requesting to expand the quarry and will utilize existing buildings and staff for the expanded operation. Ms. Kawahara added that the quarry has been in operation since 1999 and estimated that the expanded quarry had the capacity to provide rock material for 20 more years.

Commissioner Piltz had a few questions regarding the 2009 expiration date and commented that he could support a 5 to 10 year extension rather than the applicant needing to go through the whole process again in 3 years.

Chair Judge commented that the report estimated that the rock yield at the existing core site would be exhausted in 2028.

Ms. Kawahara noted that construction activity on Maui has increased significantly and this demand for rock products would significantly reduce the capacity of the existing site.

Chair Judge questioned if the 25-foot buffer on the stream was based on the Planning Commission's recommendation.

Ms. Kawahara replied in the affirmative.

Vice Chair Montgomery posed a few questions related to the restriction on exporting any material to other islands and asked for an explanation.

Commissioner Kanuha noted that Mr. Horneman is the operator and not the landowner and questioned if these conditions were binding on just the operator or also included the landowner.

Mr. Horneman noted that he understood that the conditions are on the operator and that he would need to restore the property upon closure.

Ms. Kawahara added that the County's condition applies to the operator and he has agreed to vegetate the site upon closure of the quarry operation. Ms. Kawahara also noted that this is something that Mr. Horneman will need to clear with the landowner.

Mr. Horneman noted that the permit is valid only until 2009 and that the useful life of the operation could extend for approximately 18 more years.

Commissioner Wong asked if Mr. Horneman had received the owner's consent to apply for this permit.

Mr. Horneman replied in the affirmative.

Ms. Kawahara added that Mr. Horneman received a letter of authorization from the landowner to apply for the permits and understood that the permits will be issued to Hawaiian Cement. The landowner is not responsible for the permit.

Commissioner Wong commented that certain conditions would run with the land and if for some reason the applicant decides to not mine or close the business, his concern would be that the land is left barren. Commissioner Wong added that any order that has an effect upon the land should be binding upon the landowner and that the consent to authorize the applicant is an acknowledgement that the land would be bound.

Ms. Erickson referenced § 205 (6) (a) HRS, Special Permit and noted that any person who desires to use land within the agricultural or rural district other than for an agricultural or rural use, may petition the planning commission of the county within which the land is located for permission for an unusual and reasonable use.

Chair Judge had questions and concerns on the height of the quarry, the mine operation and its visibility, and the DOT letter to Mr. Foley regarding the 5-foot strip abutting the Honoapiilani Highway.

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

Mr. Yee noted that the State had no objections to the application. However, Mr. Yee commented that they would be interested in knowing if the applicant will open and close sections of the quarry in increments and whether the requirements will run with the land.

Mr. Horneman stated that they do not want to expose much land without vegetation and are moving towards the back of the valley. Mr. Horneman explained that they cut 20-foot wide benches and are bound by mine safety controls. They also have dust mitigation measures in place.

There were no further questions of Mr. Horneman posed by the parties or the Commission.

Staff Report

1. Bert Saruwatari

Mr. Saruwatari briefly summarized the staff's report and discussed the recommendations.

Commissioner Kanuha had a few questions on conditions 6 and 7 recommended by staff.

Commissioner Piltz had a few questions and concerns regarding the special permit time frame.

A recess break was taken at 11:55 a.m. The meeting reconvened at 12:10 p.m.

Ms. Erickson referenced the Commission's statutes and rules which permits the LUC to modify conditions and approve with modification, and the modification of the special permit by the LUC with additional restrictions.

Ms. Suyama noted that the department originally recommended the termination date as 2009 so that all the permits would end on the same date.

Ms. Lovell commented that she did not know of any legal reason why the LUC could not set a different time frame. The County's permits will expire in 2009 and the operation would need to extend their permits. Ms. Lovell added that she believed that there is nothing that would preclude the LUC from granting a shorter or longer period of time from the County's perspective.

After a discussion, Commissioner Piltz moved to amend the County's condition 1 to extend the period of the permit for 10 years on top of the expiration date of 2009. Commissioner Teves seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Teves, Contrades, Formby, Montgomery, Wong, and Judge.

The motion passed with 8 yes, 1 absent.

After a brief discussion, Commissioner Wong moved to amend condition 12 to include the landowner. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Commissioners Wong, Teves, Piltz, Montgomery, Kanuha, Formby, Contrades, and Judge.

The motion passed with 8 yes, 1 absent.

After a brief discussion, Commissioner Piltz moved to approve the special permit as proposed by staff with further amendments to conditions 14, 17, and 20. Commissioner Teves seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Teves, Wong, Montgomery, Kanuha, Formby, Contrades, and Judge.

The motion passed with 8 yes, 1 absent.

A lunch break was taken at 12:30 p.m. The meeting reconvened at 1:40 p.m.

EXECUTIVE SESSION

Commissioner Teves moved to go into executive session pursuant to §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to jurisdiction, and consideration and evaluation of evidence relating to Docket No. A05-755 Hale Mua Properties, LLC. Commissioner Piltz seconded the motion. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 1:45 p.m.

The open meeting reconvened at 2:15 p.m.

A05-755 HALE MUA PROPERTIES, LLC (Maui)

Chair Judge stated that this was a hearing and action meeting to consider the reclassification of approximately 232.135 acres of land currently in the Agricultural District

into the Urban District, and 5.918 acres from the Rural District to the Urban District, at Waiehu, Maui, Hawaii for an approximately 466-lot single-family residential subdivision

APPEARANCES

Blaine Kobayashi, Esq., representing Petitioner
Sterling Kim, Hale Mua Properties, LLC
Jane Lovell, Esq., represented the County of Maui Department of Planning
Michael Foley, Director, County of Maui Department of Planning
Colleen Suyama, County of Maui Department of Planning
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Public Witness

1. Kemokeo Kapahulehua

Mr. Kapahulehua stated that he is a representative from *Na Kupuna* of Maui. Mr. Kapahulehua noted that he is in support of this project because it will provide much needed affordable housing not only for the Hawaiian people but also for others who live on Maui. Mr. Kapahulehua added that this project will also provide infrastructure, bridge and roadway improvements.

Vice Chair Montgomery asked Mr. Kapahulehua to describe his *Na Kupuna* group and its activities.

Mr. Kapahulehua commented that they protect and preserve archeological sites, native plants and birds, and other resources, adding that their main interest is the *kuleana* for their people on this island.

There were no further questions posed for Mr. Kapahulehua by the parties or the Commission.

Chair Judge noted that there were no other public witnesses.

Admission of Additional Exhibit

Mr. Yee described and offered State's exhibit 15, the written statement of the DOE's fair share formula. There were no objections by the parties or the Commission. State's exhibit 15 was admitted into the record.

Commissioner Kanuha raised a few questions regarding the DOE formula and its foundation.

Mr. Yee stated that the formula was not adopted as a rule but is a document used in formulating fair share contributions for education. Mr. Yee added that the Board of Education is fully aware of the formula and that this formula is being used by all parties of the DOE.

Chair Judge then described the post hearing instructions. Chair Judge instructed the parties to draft their orders based upon the record. The proposed order should be filed and served by close of business on December 18, 2006. Responses should be filed by close of business on December 27, 2006. The LUC encouraged the parties to pursue partial or fully stipulated orders.

Mr. Kobayashi stated that the petitioner desired to enter into stipulations with the parties and have prepared and distributed an order to the county and the state. Mr. Kobayashi requested if the LUC would consider an expedited schedule since the petitioner has already submitted an order to the parties.

Chair Judge noted that the earliest meeting date would be January 4-5.

Ms. Lovell commented that the County had received the proposed order but not had time to review it. Ms. Lovell concurred with the LUC's scheduled hearing dates.

Mr. Yee noted that they concurred with the County to have the submittal date to file the orders on December 18, 2006.

Chair Judge noted that the LUC will keep the date of receipt for the proposed order filed with the LUC as December 18, 2006 and encouraged the parties to partially or fully stipulate to an order.

TENTATIVE MEETING SCHEDULE

Mr. Ching reported that the next scheduled meeting on December 7-8 will be held on Oahu. The next available meeting date to consider this matter on Maui could possibly be held on January 4-5. Mr. Ching added that the LUC's upcoming schedule was tight with hearings already scheduled for various islands.

Chair Judge reminded the Commissioners that for quorum purposes, please advise Mr. Ching in advance on their availability.

The meeting was at recess at 2:30 p.m.

(Please refer to LUC Transcript of November 16, 2006 for more details on this matter.)