

LAND USE COMMISSION  
MINUTES OF MEETING

FEBRUARY 1, 2007

Leiopapa A Kamehameha, 2<sup>nd</sup> Floor  
Conference Room 204  
235 S. Beretania Street  
Honolulu, Hawaii

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

COMMISSIONERS ABSENT: Lisa Judge

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony J. H. Ching, Executive Officer  
Bert Saruwatari, Staff Planner  
Maxwell Rogers, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Presiding Officer Formby called the meeting order at 9:38 a.m.

ADOPTION OF MINUTES

Since the January 18 and 19, 2007 minutes was not ready for adoption, review of the minutes was deferred.

## TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported on the following:

- March 1 & 2 LUC meeting to be held in Kona.
- March 15 & 16 LUC meeting to be held in Honolulu.
- A special commission meeting may be necessary to cover the Halekua Development docket, which is a time-sensitive case from bankruptcy court with a deadline of February 28, 2007. Presiding Officer Formby polled the commission as to their availability on either February 23 or February 26. The special meeting would require a minimum of six commissioners. Mr. Ching to look for another date should there be insufficient quorum on either February 23 and 26.
- Mr. Ching will be on vacation leave after the March 1 & 2 meeting.

Commissioner Kanuha made a motion, and Commissioner Piltz seconded the motion, to enter into executive session to consult with legal counsel pursuant to §92-5(a)(4), HRS, on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to ex parte communications, the deliberative process, §205-4(g), HRS, and subchapters 9 and 11, Hawaii Administrative Rules. The Commission entered into executive session at 9:40 a.m. The open meeting reconvened at 10:14 a.m.

Presiding Officer Formby introduced all the Commissioners that were present to the proceedings.

### A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (OAHU)

Presiding Officer Formby stated that this was a hearing to consider the reclassification of approximately 344.519 acres of land currently in the Agricultural District to the Urban District at Ewa, Oahu, Hawaii for business industrial park uses.

### APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

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

Ray Sakai, City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

## PUBLIC TESTIMONY

### 1. Shad Kane

Mr. Kane provided a brief summary of his written testimony. Mr. Kane stated he represented Kapolei Hawaiian Civic Club, and supports the permanent preservation of the 6-acre sinkhole. He indicated its unique history and the importance of protecting something with significant history. He then made several recommendations:

- Donate the 6-acre sinkhole parcel to the State and afford the State to preserve the natural area.
- Restore the 6-acre sinkhole and build a new fence to protect the area.
- Help educate the people who would work in the surrounding area.
- Establish a permanent revolving fund to maintain sanctuary of the area.
- Establish and continue a working relationship with those concerned and maintain a level of communication.

Mr. Yee questioned the witness whether or not he was familiar with other sinkholes outside of the 6-acre parcel and if he had seen the current inventory report with the State Prehistoric Division. Mr. Kane responded that he was familiar with the work done by Alan Ziegler, and had not seen the inventory report.

Vice Chair Montgomery expressed his concerns about the loss of paleontological sites because of other developments, and suggested perhaps a National Wildlife Refuge as opposed to management by the state. Mr. Kane indicated that he believed that 99% of all sinkholes have been lost or destroyed. He further indicated that he supports the parcel being donated to the state for preservation and to serve as a venue to help educate others on the history of the area.

Commissioner Wong posed questions to the witness regarding any state agency willing to accept the 6-acre parcel and who would fund the permanent revolving fund that Mr. Kane suggested.

### 2. Sarah Collins, Pacific Consulting Services

Ms. Collins indicated that she represented the Society of Hawaiian Archaeological, and testified that she was in favor of preserving the sinkholes.

Mr. Yee asked Ms. Collins if she was aware of any sinkholes outside the area. Ms. Collins responded in the affirmative and indicated that there was another small preserved area on the margin of the harbor and maybe more in the former Naval Air

Station area. Mr. Yee further asked if Ms. Collins was aware of any additional sinkholes within the petition area. She responded in the negative.

### 3. Wilma Keawe

Ms. Keawe summarized her written testimony provided to the Commission that evidence of what is Hawaiian is slowly vanishing and asked the Commission to continue to preserve the sinkholes for the education of children and for the identity of any future Hawaiian nation.

There were no questions by the parties and the Commission.

### 4. Oren Tsutsumi

Mr. Tsutsumi testified that he was in favor of preserving the sinkholes and suggested the following:

- Donating the 6-acre parcel so that it may qualify for a NARS designation;
- Amending the land use classification from agricultural to conservation;
- Place new fencing around the 6-acre parcel and restoring what the area originally was; and
- Create educational programs for the area.

There were no questions by the parties and the Commission.

### 5. Ati Jeffers-Fabro

Mr. Jeffers-Fabro indicated that he's an educator and testified on the following:

- That the sinkholes are a unique geological area where biological data are found;
- That the parcel should be donated to the state to ensure adequate protection of the site;
- That land designation should be changed from agricultural to conservation;
- That the existing fence should be replaced;
- That the people should be educated on the sensitivity of the area;
- That a permanent revolving fund be established; and
- That the developer should continue working with the public and the government to continue preservation of the site.

There were no questions by the parties.

Vice Chair Montgomery asked Mr. Jeffers-Fabro for his opinion on a federally-managed refuge as opposed to donating to the state. Mr. Jeffers-Fabro stated that he was in favor of the parcel being donated to the state for preservation.

#### 6. Mike Yamamoto

Mr. Yamamoto stated that he is a field biologist with the Division of Aquatic Resources of the Department of Land and Natural Resources. Mr. Yamamoto summarized his written testimony which he indicated was submitted to the Commission. He provided a brief description of the sinkholes and indicated that it provided a habitat for certain species. Because the Commission did not receive Mr. Yamamoto's written testimony, Presiding Officer Formby asked that Mr. Yamamoto resubmit his written testimony to the Commission.

There were no questions by the parties and the Commission.

#### 7. Marjorie Ziegler, Conservation Council for Hawaii

Ms. Ziegler testified that she was in favor of securing the permanent protection of the sinkholes, and indicated that the parcel should be donated to the state. Ms. Ziegler referred to a letter dated January 22, 2007 from Steve Kelly to Peter Young of the Department of Land and Natural Resources indicating that the community is willing to provide its help. Ms. Ziegler recommended the following:

- The permanent protection and donation of the 6-acre parcel to the state;
- That the land use designation be changed from agricultural to conservation;
- The parcel to be designated "preservation" at the county level;
- Replace the existing fence to include a permanent shaded area for visiting kupuna; and
- The preservation of 30-plus birds native to Hawaii that were found in the sinkholes.

Commissioner Thomas Contrades entered the proceedings at 11:08 a.m.

Mr. Yee questioned the witness as to her knowledge of other sinkholes seen within the petition area but outside the 6-acre parcel. Ms. Ziegler responded with uncertainty.

There were no other questions and no other public witnesses wishing to testify.

A recess was taken at 11:13 a.m. The meeting reconvened at 11:25 a.m.

Staff Planner Bert Saruwatari provided a brief staff report and map orientation before the Commission using Map 1 of the petition area and the O-6 Ewa Quadrangle Quad map. There were no questions by the parties or the Commission.

Mr. Kudo presented and described Petitioner's list of exhibits (Exhibits 1 through 49). Mr. Kudo indicated that he had previously obtained oral stipulation from the City and County of Honolulu (C&C) and the State regarding Exhibits 1-49 and received no objections. Exhibits 1-49 were then admitted into the record by the Commission.

Ms. Sunakoda presented the C&C's Exhibits 1, 2, 3, 3a, 3b, 3c, 4, 5, 6, and 7. There were no objections by the parties, and the exhibits were admitted into the record by the Commission.

Mr. Yee presented the State's Exhibits 1, 2a, 3a, 4, 5, 6, 7, 8, 10, and 12. There were no objections by the parties, and the exhibits were admitted into the record by the Commission.

Mr. Kudo indicated that Petitioner's exhibits included written direct testimony, and the use of 7 enlarged exhibits for use by its witnesses. He further indicated that he received oral stipulation from the parties regarding Petitioner's list of witnesses and moved to qualify each individual as experts in its own expertise. Mr. Kudo then made his opening statements and proceeded with the presentation of its petition. He briefly described the petition area and indicated that Petitioner will provide 12 to 13 witnesses as described in its list of witnesses. He further indicated that he may call certain individuals to testify out of turn.

#### PETITIONER'S WITNESSES

##### 1. Jeffrey H. Overton

Mr. Overton stated that he is a planner with Group 70 International, Inc. He briefly summarized his written testimony which was submitted as Petitioner's Exhibit 1, and indicated there were no changes to his written direct testimony. He also provided an overview of the project's concept plan.

#### Cross Examination

There was no cross examination by the C&C.

Mr. Yee also questioned the witness regarding Petitioner's 10-year development timetable. Mr. Overton indicated that there would be some phasing of the project and which will be discussed further by the Petitioner's representative. To other questions

asked by Mr. Yee, Mr. Overton indicated that a TIAR has been completed during the preparation of the EIS, that there will be a traffic expert to speak on traffic conditions, and also that there is a regional drainage system planned within the petition area.

There were questions by Commissioner Wong regarding the use of light industrial and commercial areas. There was also a question by Vice Chair Montgomery about where the employees would be living in West Oahu. Commissioner Im posed questions regarding the use of non-potable water and drainage.

There was no redirect by the Petitioner.

The Commission took a lunch recess at 12:14 p.m. The Commission reconvened at 1:12 p.m.

Commissioner Wong was not present to the proceedings at this time.

#### CONTINUED – PETITIONER’S WITNESSES

##### 2. Bryant Terry Brothers, P.E.

Mr. Brothers provided a brief summary of his written testimony which was submitted to the Commission as Petitioner’s Exhibit 18. Mr. Brothers oriented the Commission to the planned roadways and referred to Exhibit 4 of the FEIS. He also summarized key inputs and findings of the traffic study, including impact analysis of peak-hour traffic, and construction and extension of roadways. Mr. Brothers indicated that there would be an extensive network of roads and a large amount of development. The project is anticipated to be fully developed by the year 2018.

Mr. Kudo referred to Exhibit 21 (TIAR) and questioned the witness regarding trip rate, and traffic signs and signals.

#### Cross Examination

Presiding Officer Formby clarified that Petitioner’s TIAR was Exhibit S-1, and not Exhibit 21.

The State had questions regarding the TIAR specifically regarding traffic signals and intersections and access to the freeway and other properties and its impacts on the community.

Commissioners Piltz, Im and Formby posed questions regarding the proposed changes to the roads and its impact on traffic.

There was no redirect.

A recess was taken at 2:20 p.m. The Commission reconvened at 2:32 p.m.

3. Robert Gardner

Mr. Gardner provided a brief summary of his written testimony which was submitted as Petitioner's Exhibit 9.

There were no questions from the State or C&C.

4. Bruce Plasch, Ph.D.

Dr. Plasch briefly summarized his written testimony which was submitted as Exhibit 13. Dr. Plasch's summary included a discussion of the impacts of the project upon regional economic and population growth and fiscal impacts; agricultural impacts; and the demand on housing.

Commissioner Teves left the proceedings at 2:59 p.m.

Cross Examination

Mr. Yee questioned Dr. Plasch regarding his testimony on economic and population growth. Commissioner Im questioned Dr. Plasch regarding affordable housing and fair share contributions. Commissioner Piltz questioned Dr. Plasch regarding jobs.

A recess was taken at 3:27 p.m. The Commission reconvened at 3:37 p.m.

Commissioner Wong was present to the proceedings at this time.

5. Eric Guinther

Mr. Guinther provided a brief summary of his written direct testimony which was submitted as Exhibit 22. Mr. Guinther indicated that he had additional information to add to his written direct testimony. He reported that he had received a letter from the Department of Land and Natural Resources regarding endangered species on the property.



## Cross Examination

Commissioner Im posed questions and suggested the reintroduction of endangered species into the project area.

### 6. Reginald David

Mr. David provided a brief summary of his written testimony which was submitted as Exhibit 25. In addition to his written testimony, Mr. David added that he visited the site on September 2006 and January 2007 to check if there were any Hawaiian stilts utilizing any of the habitat around the coral mining areas and if there were any nesting in the area. Mr. David then added that he observed no stilts during these times.

There were no questions by the parties or the Commission.

There were no other witnesses to present for the day. Presiding Officer Formby indicated that the hearing would be continued to the Commission's second March meeting.

### A05-755 HALE MUAPROPERTIES, LLC (Maui)

Presiding Officer Formby indicated that this was a meeting to approve as to form the Findings of Fact, Conclusions of Law, and Decision and Order previously acted upon by the Commission. He further indicated that the Petitioner would be represented by Mr. Sterling Kim, and that the County of Maui would not be present since it had no position on the matter.

### APPEARANCES

Sterling Kim, Hale Mua Properties, LLC

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

There were no persons wishing to provide public testimony on this docket.

Mr. Ching indicated that there were three areas of non-substantive technical changes made by staff.

- Page 16 of the FOF 75 reads, "In the counsel of the County of Maui....."  
"Counsel of the" was redundant and deleted. 75 is also a new FOF.

- The final order reflects that there's a "period" after the word "insurance" and "before applying for subdivision approval" was deleted. Staff verified the citation that had been offered at the action meeting and confirmed that the quotation should end after the word "insurance."
- FOF 207 regarding discussion of storage tanks for drinking water. The finding of fact was corrected to read, "At a minimum 500,000 gallons may be necessary due to differences occurring within the petition area."

There were no questions of staff.

Commissioner Piltz moved to adopt the Findings of Fact, Conclusions of Law, and Decision and Order in its current form. Commissioner Contrades seconded the motion.

Commissioner Wong moved to enter into executive session. Commissioner Contrades seconded the motion. The Commission exited the open meeting and entered into executive session at 3:56 p.m. The Commission reconvened in open meeting at 4:01 p.m.

Mr. Ching polled the Commission as follows:

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

Abstain: Wong

Nays: None

The motion passed with 6 ayes, 1 abstain, and 2 absent.

#### A06-769 1250 OCEANSIDE PARTNERS (Hawaii)

Presiding Officer Formby stated that this was an action meeting to determine whether the preparation of a Supplemental Environmental Impact Statement is warranted pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 1,418.739 acres of land from the State Land Use Agricultural District to the State Land Use Rural District and approximately 16.016 acres of land from the State Land Use Agricultural District to the State Land Use Conservation District at Honuaino 3 and 4, Hokukano 1 and 2, Kanaeue 1 and 2, Halekii, Keekee, Ilikahi, Kanakau, Kalukalu, and Onouli 1, North and South Kona, Hawaii for residential, golf course with related improvements, and park uses within the Hokulia development; and to determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, in the event the preparation of a Supplemental Environmental Impact Statement is found to be warranted.

## APPEARANCES

R. Ben Tsukazaki, Esq., represented Petitioner

Bobbie Jean Leithead-Todd, represented County of Maui Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Mary Alice Evans, State Office of Planning

Mr. Tsukazaki indicated that it was the Petitioner's intention to voluntarily prepare the Supplemental Environmental Impact Statement (SEIS), therefore action on this docket was moot.

Ms. Leithead-Todd felt that there was legal and factual reasons why the SEIS was not required, but because Petitioner was willing to do an SEIS, the County had no opposition.

Mr. Yee indicated that the State had no objections and joins in on the County's comments. Mr. Yee expressed his concern that there would be no misunderstanding of a precedential effect on this case.

Mr. Tsukuzaki added that the SEIS will address the questions and issues previously raised by the Commission and will consult with the parties prior to the beginning of the SEIS preparation. He also indicated that he will consult with the Office of Hawaiian Affairs and will keep abreast with LUC staff.

Presiding Officer Formby indicated his understanding of the position of the County and the State and Petitioner's willingness to prepare an SEIS.

The meeting was adjourned at 4:10 p.m.

*(Please see the LUC transcripts for more details on all above matters.)*