

LAND USE COMMISSION  
MINUTES OF MEETING

September 18, 2008

Naupaka Ballroom  
Waikoloa Beach Marriott  
69-275 Waikoloa Drive  
Waikoloa, Hawaii

COMMISSIONERS PRESENT: Kyle Chock  
Vladimir Paul Devens  
Lisa Judge  
Duane Kanuha  
Normand Lezy  
Nicholas Teves, Jr.

COMMISSIONERS ABSENT: Thomas Contrades  
Ransom Piltz  
Reuben Wong

STAFF PRESENT: Dan Davidson, Executive Officer  
Sandra Matsushima, Chief Clerk  
Diane Erickson, Deputy Attorney General  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Chair Kanuha called the meeting to order at 10:40 a.m.

## ADOPTION OF MINUTES

Commissioner Judge noted an amendment to the minutes of September 12, 2008 on page 7, fourth paragraph, to add the word "boundaries" to read "...the urban growth boundaries and community plan amendments."

Commissioner Judge then moved to adopt the amended minutes of September 12, 2008. Commissioner Teves seconded the motion. The minutes were unanimously approved by voice votes.

## TENTATIVE MEETING SCHEDULE

Mr. Davidson stated that the schedule is set through December. Mr. Davidson noted that the November 20-21 meeting dates might be shifted due to an energy conference that will be held on the Big Island on those same dates in November. Mr. Davidson reminded the Commissioners to let him know of any conflicts that they may have.

### A05-760 PUKALANI ASSOCIATES, LLC (Maui)

Chair Kanuha stated that this was an action meeting to consider acceptance of Pukalani Associates, LLC's Final Environmental Assessment for the reclassification of approximately 87.702 acres of land currently in the Agricultural District into the Urban District at Kula, Makawao, Maui, Hawaii, Tax Map Key Nos.: (2) 2-3-009: 007 and 064 for a residential subdivision.

On April 25, 2007, the Commission received the Amended Petition for Land Use District Boundary Amendment at which time, the petitioner's name changed from Maui Land & Pineapple Company, Inc. – Kauhale Lani to Pukalani Associates, LLC.

On September 9, 2008, the Commission received correspondence from Petitioner's attorney regarding response to questions raised by former Executive Director dated May 25, 2007.

On September 11, 2008, the Commission received additional correspondence from Petitioner's attorney regarding response to question 1, noting that Pukalani Associates will not permit Ohana units to be constructed within the Kauhale Lani project.

On September 16, 2008, the Commission received email correspondence from Jane Lovell, Deputy Corporation Counsel, County of Maui, indicating that the County would not be sending a representative to the hearing and that they did not have any objections to the LUC's acceptance of the FEA.

#### APPEARANCES

William Yuen, Esq., represented Petitioner

Matt Slepik, Hart & Associates

Sharon Wright, Pukalani Associates, LLC

Bryan Yee, Esq., represented the State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Kanuha noted that there were no public witnesses.

Mr. Yee commented that the OP had no objections to the LUC's acceptance of the petitioner's FEA.

#### Staff Report

1. Orlando Davidson

Mr. Davidson provided a brief summary of the report and a map orientation of the project site.

Commissioner Judge asked if lot 007 would have the development and lot 064 would be the bike park with recreational uses.

#### Petitioner's Presentation

Mr. Yuen began his presentation and stated that the project would consist of a 170 lot residential subdivision. Mr. Yuen noted that Chris Hart Partners, Inc. prepared the environmental assessment and concluded that there would be no significant impact on the environment. Mr. Yuen added that the project is in conformance with the State and County general and community plans for the Upcountry area. Mr. Yuen requested that the LUC accept the FEA and issue a finding of no significant impact to the environment.

Commissioner Judge commented that Mr. Yuen's letter dated August 29, 2008 states that the bike trail is on TMK 2-3-009: 007 and wondered if that was in error.

Mr. Yuen noted that it was in error as parcel 007 is the development parcel and the bike park will be in parcel 064, as no units are planned for that parcel.

Chair Kanuha asked how this project comports to the county's ongoing general plan review on Maui.

Mr. Yuen stated that the 1996 revision to the Upcountry Maui community plan included a change in zoning of these parcels from agricultural to urban with respect to the current general plan and that these parcels are within the proposed urban growth boundaries. Mr. Yuen added that this project conforms to both the present plan and to the proposed plan.

Commissioner Judge moved to accept Pukalani Associates LLC's Final Environmental Assessment for the reclassification of approximately 87.702 acres of land currently in the Agricultural District into the Urban District at Kula, Makawao, Maui and the issuance of a finding of no significant impact.

Chair Kanuha offered a friendly amendment to the motion to include the requirement that petitioner include in the FEA filed with OEQC the letters received September 9, 2008 and September 11, 2008 from Petitioner's attorney.

Commissioner Judge accepted the friendly amendment. The motion was seconded by Commissioner Chock.

The Commission was polled as follows:

Ayes: Judge, Chock, Devens, Lezy, Teves, and Kanuha.

The motion passed with 6 yes, 1 excused, 2 absent.

A recess break was taken at 11:00 a.m. The meeting reconvened at 11:05 a.m.

A87-617 BRIDGE AINA LE`A, LLC and BANTER, INC. fka PUAKO HAWAII  
PROPERTIES (Hawaii)

Chair Kanuha stated that this was an action meeting to receive a status report and to consider the issuance of an order to show cause why the petition area should not revert to its former classification or a more appropriate classification.

On September 17, 2008, the Commission served the Order Granting Motion to Change Petitioner and Amend Caption. Henceforth, the docket will be named Bridge Aina Le`a, LLC.

APPEARANCES

Eric Maehara, Esq., represented Petitioner  
Norman Hayashi, County of Hawaii Planning Department  
Bryan Yee, Esq., represented the State Office of Planning  
Abe Mitsuda, State Office of Planning  
Lorene Maki, State Office of Planning

Public Witnesses

1. Christen Shigemura

Ms. Shigemura stated that she was a representative from Cades Schutte LLP who represents the Mauna Lani Association. Ms. Shigemura stated that her client owns areas within the resort and voiced their concerns regarding the impacts to the environment, the infrastructure in the resort, and the intersection to be signaled at the highway. Ms. Shigemura added that they would like copies of all pleadings for this project.

Mr. Maehara asked whether Mauna Lani Resort was a party to these proceedings.

Ms. Shigemura stated that they were not a party and she was testifying on their behalf as a member of the public.

Chair Kanuha asked where the Mauna Lani Resort is located in relation to the petition area.

After a brief discussion, there were no further questions posed for Ms. Shigemura.

2. Michael Kimball

Mr. Kimball stated that the Puako residential community is located 5 miles north of this project and voiced his concerns regarding water quality monitoring, affects to the aquifer, the needs of the existing community, such as sewage, shoreline and ocean reef impacts, and county services. Mr. Kimball asked that the LUC support reversion of this project.

Mr. Hayashi asked if Mr. Kimball was representing himself or the Puako Community Association.

Mr. Kimball stated that he was representing the Puako Community Association and that they had made a formal decision to recommend that this petition area revert to its original classification.

Mr. Yee asked Mr. Kimball to clarify and repeat the final recommendation.

Mr. Kimball stated that their recommendation is that the LUC revert this project to its former classification and that new plans be proposed by the developer.

Chair Kanuha clarified that this was not a new petition and that the reason this petitioner is before the LUC was to present their annual report.

There were no further questions for Mr. Kimball.

### Petitioner's Presentation

Mr. Maehara stated that he had hoped to file the status report and a motion to amend the housing condition. However, he was still negotiating with the county to address the affordable housing issues and was in the process of concluding studies of highway improvements for an EIS.

Mr. Hayashi stated that since they have not received a status report or a motion, the county had no comments at this time.

Mr. Yee commented that a status report should have been filed and that there should have been more communication between the parties.

Mr. Maehara stated that their discussions with the county have been directly with the Mayor, who presently has serious health issues. Mr. Maehara added that he would submit a report within two weeks.

Mr. Hayashi noted that he was not involved in the discussions between the Petitioner and the Mayor, nor was he familiar with the specifics of these discussions.

### EXECUTIVE SESSION

Commissioner Judge moved to go into executive session pursuant to §92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. The motion was seconded by Commissioner Teves. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 11:32 a.m.

The open meeting reconvened at 11:45 a.m.

A recess break was taken at 11:45 a.m. The meeting reconvened at 11:50 a.m.

Commissioner Judge stated that several of the commissioners were made aware of the numerous proceedings for this docket and that when the LUC finally rendered a decision to approve the amended condition, it was specific and set forth very specific time frames that the petitioner had agreed to and represented that would take place. However, the past reports of 2005, 2006, and 2007 show no activity. Commissioner Judge added that there was reason to believe that the petitioner failed to perform and moved that the LUC issue an Order to Show Cause that the property should revert to its original classification. The motion was seconded by Vice Chair Devens.

Chair Kanuha noted that he and Commissioner Judge were the only ones on board at that time of the proceedings and heard the testimony and representations made. Chair Kanuha added that over the years nothing has come forth and believed that the commissioners today should seriously consider this motion.

The Commission was polled as follows:

Ayes: Judge, Devens, Chock, Lezy, Teves, and Kanuha.

The motion passed with 6 yes, 1 excused, 2 absent.

A lunch break was taken at 11:55 a.m. The meeting reconvened at 1:20 p.m.

A06-770 THE SHOPOFF GROUP, L.P. (Hawaii)

Chair Kanuha stated that this was an action meeting to consider the reclassification of approximately 127.94 acres of land currently in the Agricultural District to the Urban District at North Kona, Hawaii for single-family residential and affordable housing units.

APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner  
Jesse Souki, Esq., represented Petitioner  
Brian Rupp, The Shopoff Group, L.P.  
Norman Hayashi, County of Hawaii Planning Department  
Bryan Yee, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning  
Lorene Maki, State Office of Planning

Chair Kanuha noted that there were no public witnesses.

Chair Kanuha reminded the Commissioners that they were in formal deliberations and reminded them that pursuant to HAR § 15-15-56(4), the Commission may approve the proposed decision and order by amending or adopting the proposed decision and order and that he would not entertain additional input from the parties or the public unless those individuals or entities were specifically requested to do so. If called upon, any comments would be limited to the question at hand.

Chair Kanuha added that at the July 24, 2008 meeting the Commissioners present were polled to confirm that each one had the opportunity to review the record and/or received and (if appropriate) reviewed copies of the transcripts of these proceedings and were prepared to deliberate on the subject. Chair Kanuha noted that Commissioners Judge and Teves were not present at that meeting and asked



Commissioner Judge and Commissioner Teves if they were prepared to deliberate on the matter.

Commissioner Judge and Commissioner Teves affirmed that they had the opportunity to review the record and/or reviewed copies of the transcripts of the proceedings and were prepared to deliberate on the subject.

Chair Kanuha then asked the Executive Officer to review the document and record any comments, changes or corrections that the Commission had to offer.

Mr. Davidson discussed the redline version that incorporated the amendments offered by the Commission from its July 24, 2008 meeting and minor technical corrections.

Mr. Davidson began with the Findings of Fact portion of the document. Mr. Davidson described amendments to Finding of Fact numbers 33, 35, 50, 63, 184, and 194.

Vice Chair Devens offered amendments to Finding of Fact numbers 119, 152, 170, 189, 190, 191, 196, 201, 209, 216, and 226.

Mr. Davidson discussed the proposed Conclusions of Law 14 and 16.

Mr. Davidson offered language to replace condition numbers 1, 2, 3 and 4 in their entirety.

Commissioner Lezy discussed the amendment offered by Mr. Davidson and offered some language for more clarity.

Vice Chair Devens also commented on the proposed amendment, the language for the condition, and discussed the difference between 15-15-93 and 15-15-79.

Chair Kanuha commented that he offered this language to try to consolidate the components related to representations, commitments or conditions before the LUC as an attempt to see whether it would be more efficient to consolidate into one condition versus four separate conditions.

Mr. Davidson noted that because of deference to home rule, staff did not recommend the previous recommendation to add a requirement to the affordable housing condition that the affordable units be completed before the sale of market-priced lots.

Commissioner Chock questioned where in the LUC's rules or statutory DBA criteria a reference to deference to home rule.

Mr. Davidson noted that he was not sure and that it may be a policy consideration.

A discussion ensued between the Commissioners regarding the affordable housing requirement.

Commissioner Judge asked if the county could clarify the affordable housing ordinance.

At the request of the Chair, Mr. Hayashi stated that the county does not address when a petitioner can develop and sell the market lots as the county policy addresses the affordable housing lots and where the units would be located.

Commissioner Judge commented that historically, there were no existing county ordinances so the LUC would set the bar. The counties have since adopted affordable housing ordinances, however, that does not restrict the LUC from exceeding a county's policy.

Chair Kanuha commented that the affordable housing percentage was as low as 10% and in the late 80's there was a concerted effort to solicit more affordable housing and the affordable housing percentage rose to 60%. Over time, the counties adopted their own criteria for affordable housing and it varies by county.

Commissioner Judge offered an amendment to the condition that the petitioner shall construct on a one-to-one ratio the affordable housing units to the market lots.

Vice Chair Devens raised concern regarding the term "time of development"; whether it occurred when the developer broke ground; upon completion of the backbone infrastructure; or at another time.

Commissioner Judge asked what would be the appropriate timing from the county's perspective.

At the Chair's request, Mr. Hayashi stated that he could not respond to the question, as it would be something that the county administrator would know.

Mr. Davidson continued to discuss amendments to condition numbers 11, 13, and 19.

Chair Kanuha commented on the proposed amendments to the energy conservation condition and HRS section 196-9.

Commissioner Judge offered additional language for condition number 1 and stated that instead of using the word "reversion" the language should be "order to show cause."

Vice Chair Devens noted that he supported the proposed language offered by Commissioner Judge. Vice Chair Devens continued to discuss the difference between sections 15-15-93 and 15-15-79, HAR, noting his concern regarding the enforcement powers of the LUC.

A recess break was taken at 2:30 p.m. The meeting reconvened at 2:45 p.m.

#### EXECUTIVE SESSION

Vice Chair Devens moved to go into executive session pursuant to §92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. The motion was seconded by Commissioner Judge. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 2:45 p.m.

The open meeting reconvened at 3:05 p.m.

Commissioner Judge offered an amendment to the language for condition number 1. Commissioner Judge stated that the condition be amended to "...the Land Use Commission, on its own motion or at the request of any party shall issue an order to show cause and..." to be consistent with the statute and the LUC's rules.

Mr. Davidson discussed condition numbers 7, 8, and 9.

The LUC discussed the amended language to the affordable housing condition in reference to the ratio of development of the affordable housing and market lots.

Commissioner Judge commented that the affordable housing component must be completed prior to 50% of the market lots that are sold, whenever that is determined by the county and offered language to that effect.

Mr. Davidson discussed condition number 19 regarding solid waste.

Commissioner Judge discussed amended language for the solid waste management plan.

Chair Kanuha discussed condition number 6 regarding water reuse for irrigation purposes.

Commissioner Judge discussed and offered language for the condition regarding energy sustainable measures noting that she would like the LUC to be more proactive on this subject.

After a discussion, Commissioner Judge moved to amend the language for the affordable housing condition as discussed. The motion was seconded by Vice Chair Devens.

Commissioner Lezy offered a friendly amendment to change the language that the affordable housing units shall be constructed and offered for sale.

The amendment was accepted by Commissioner Judge and seconded by Vice Chair Devens.

The Commission was polled as follows:

Ayes: Judge, Devens, Chock, Lezy, Teves, and Kanuha.

The motion passed with 6 yes, 1 excused, 2 absent.

Commissioner Judge continued to discuss and offered language for condition number 24, the energy conservation measure.

Commissioner Lezy discussed the proposed language to condition number 24 and noted his concerns regarding the developer's compliance with this condition and whether it would be an obligation to the petitioner to inform the buyers of the potential energy conservation options.

After a brief discussion, Commissioner Judge moved to accept the proposed language as discussed for condition number 24. The motion was seconded by Commissioner Devens.

The Commission was polled as follows:

Ayes: Judge, Devens, Chock, and Teves.

Nays: Lezy and Kanuha.

The motion failed with 4 yes, 2 no, 1 excused, 2 absent.

Commissioner Lezy then offered a friendly amendment to the previous motion regarding condition number 24. The motion was seconded by Commissioner Judge.

The Commission was polled as follows:

Ayes: Lezy, Judge, Chock, Devens, Teves, and Kanuha.

The motion passed with 6 yes, 1 excused, 2 absent.

A recess break was taken at 4:15 p.m. The meeting reconvened at 4:20 p.m.

Chair Kanuha noted that the LUC had taken action on the separate motions as proposed for condition numbers 1, 10, and 24. Chair Kanuha then entertained a motion to approve the remaining Findings of Fact, Conclusions of Law, and Decision and Order as discussed today, along with the technical, non-substantive changes and to authorize staff to make those changes.

Commissioner Judge moved to approve the order. The motion was seconded by Commissioner Lezy.

Ayes: Judge, Lezy, Chock, Devens, Teves, and Kanuha.

The motion passed with 6 yes, 1 excused, 2 absent.

Chair Kanuha noted that the administrative rules would be deferred until the next meeting.

The meeting adjourned at 4:25 p.m.

*(Please refer to LUC Transcript of September 18, 2008 for more details on this matter.)*