

LAND USE COMMISSION  
MEETING MINUTES

July 8, 2020 – 9:00 a.m.

**Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.**

PLACE: Zoom Webinar Virtual Meeting registration-use link  
below

[https://us02web.zoom.us/webinar/register/WN\\_fEvoBLnmTJCCKPDtw1plnA](https://us02web.zoom.us/webinar/register/WN_fEvoBLnmTJCCKPDtw1plnA)

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Edmund Aczon  
(Attending via ZOOM conference media) Nancy Cabral  
Gary Okuda  
Jonathan Scheuer  
Arnold Wong  
Dawn N. S. Chang  
Lee Ohigashi  
Dan Giovanni

COMMISSIONERS EXCUSED: None  
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer  
(Attending via ZOOM conference media) Dan Morris, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Bert Saruwatari, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus  
(Attending via ZOOM conference media)

**CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:01 a.m.

Chair Scheuer had Mr. Orodenker verbally do a roll call to confirm Commissioner attendance for the record. All present Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

### **APPROVAL OF MINUTES**

Chair Scheuer stated that the first agenda item was the approval of the June 9-10, 2020 minutes. Chair Scheuer asked and the staff confirmed there was no public testimony submitted regarding the minutes. There were no comments or corrections to the minutes. Commissioner Cabral moved to adopt the minutes.

Commissioner Wong- seconded the motion. There was no discussion on the motion. By a roll call vote, the Commission unanimously approved the minutes. (7-0- 1 abstain- Commissioner Giovanni)

Chair Scheuer called for Mr. Orodenker to provide the Tentative Meeting Schedule.

### **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodenker provided the tentative meeting schedule from June to December for the Commissioners and cautioned that it was subject to change based on the pandemic impacts. Commissioners were advised to contact LUC staff if there were any questions or conflicts.

There were no questions or comments regarding the tentative meeting schedule.

### **ACTION**

#### **A94-706 KA`ONO`ULU RANCH (MAUI)**

- Consider Pi`ilani South, LLC and Pi`ilani North, LLC and Honua`ula Partners, LLC's Motion to Dismiss the Order to Show Cause Proceeding
- Consider Intervenors' Motion to Conduct Phase II of Contested Case Pending Since 2012, and for Final Decision
- Consider Intervenors' Motion to Strike Portions of the Petitioner's Responses Attempting to Improperly Submit Evidence
- Consider Petitioners' Motion to Strike Intervenors' Witness List and Exhibit List

Chair Scheuer announced that this was an action meeting on Docket No. A94-706 Ka`ono`ulu Ranch (Maui).

#### APPEARANCES

Randall Sakumoto, Esq. (co-counsel) represented Pi`ilani Promenade North LLC, and Pi`ilani Promenade South LLC, ("PP")

Margery Bronster, Esq. and Rex Fujichaku, Esq. (co-counsel) represented Pi`ilani Promenade North LLC, and Pi`ilani Promenade South LLC, ("PP")

Curtis Tabata, Esq. represented Honua`ula Partners, LLC ("HP")

Charles Jencks, HP representative

Tom Pierce, Esq., represented Intervenor Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth and Daniel Kanahele,

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Ann Cua, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Rodney Funakoshi, Planning Program Administrator, OP

Lorene Maki, Planner, OP

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings.

There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses.

#### Public Witnesses

1. Lucienne de Naie

Ms. de Naie read her comments regarding the cultural area within the Petition Area into the record and provided her perspective on the matter.

There were no questions for Ms. de Naie.

2. Bret Gobar

Mr. Gobar shared why he thought the planned mall was a poor idea.

There were no questions for Mr. Gobar.

3. Rob Weltman

Mr. Weltman described his affiliation with Sierra Club Maui and provided his concerns about the need for flood prevention measures for the Petition Area.

Commissioner Okuda requested clarification on Mr. Weltman's representing the Sierra Club and whether he was aware of the stipulation that had been agreed upon by the Parties. Mr. Weltman responded that he was not aware of the stipulation and had not reviewed it.

Chair Scheuer commented for the benefit of the audience that the stipulation prevented the advancement of the proposed plans for developing a mall on the Petition Area.

There were no further questions for Mr. Wellman.

4. Steven Goldsmith

Mr. Goldsmith stated that he was not aware of the stipulation and provided his concerns about traffic in the area.

There were no questions for Mr. Goldsmith.

5. Charlene Schulenberg

Ms. Schulenberg stated that she was not aware of the stipulation and described her concerns about drainage and flooding in the area.

There were no questions for Ms. Schulenberg.

6. Clare Apana

Ms. Apana experienced audio difficulties and was bypassed to allow her to resolve her problems. Chair Scheuer assured her that he would allow her testimony.

7. Mike Wildberger

Mr. Wildberger shared why he was opposed to the proposed mall plan.

There were no questions for Mr. Wildberger.

8. Patricia Stillwell

Ms. Stillwell provided written testimony and shared that she was not aware of the stipulation and summarized why the OSC should not be dismissed.

There were no questions for Ms. Stillwell.

9. Clare Apana

Ms. Apana tested her connection and it was confirmed that it was working. Ms. Apana described her concerns about data recovery for important preservation sites in the Petition Area.

Chair Scheuer provided clarification on how the stipulation reverted plans back to how they were originally approved before plans for a mall were proposed.

10. Foster Among

Mr. Among submitted written testimony for Bernice Kalanikau and summarized it on her behalf.

Chair Scheuer checked and made a final call for public witnesses. There were no further testifiers.

#### EXHIBITS OFFERED FOR THE RECORD

Chair Scheuer called for the Parties to offer their Exhibits for the record.

Ms. Bronster stated that she had no exhibits.

Mr. Tabata offered his Third Amended Exhibit List and Exhibits 36-38 for the record. There were no objections to Petitioner's Exhibits, and they were admitted.

County stated that it had no further Exhibits to enter and confirmed that it had filed Exhibits 1 and 2 for the record. There were no objections.

OP stated that it had no new exhibits.

Intervenor stated that it had no new exhibits.

Chair Scheuer concluded the admission of exhibits portion of the meeting and declared a recess.

The Commission went into recess at 9:57 a.m. and reconvened at 10:11 a.m.

Chair Scheuer confirmed that the Parties' stipulation had been posted on the LUC website and was accessible to the public; and shared the late testimony that the Commission had received.

#### PRESENTATIONS ON PROPOSED STIPULATION

Ms. Bronster summarized the cooperative efforts that the Parties had made to present the stipulation to the Commission, provided the points that she thought the Commission would be interested in and requested that the Commission enter the order as requested.

Chair Scheuer asked if there were additional comments.

Ms. Bronster, Mr. Tabata, County and OP had no further comments.

Mr. Pierce urged the Commission to observe the language of the stipulation and noted areas that he thought the Commission should be aware of.

There were no further comments from the Parties.

Chair Scheuer entertained questions from the Commission for the Parties.

Commissioners Okuda, Ohigashi, and Chang requested clarification on the stipulation regarding duties, rights and obligations of the respective Parties, how the original plan would succeed the proposed plan for a mall, how the terms of the new stipulation impacted previous conditions and project requirements, who would be accountable for the terms of the stipulation, and whether any violations of the 1995 Decision and Order were outstanding. The various signatories provided their perspectives to clarify portions of the stipulation that they had input on.

Chair Scheuer questioned whether the Parties felt further “wordsmithing” of the completed stipulation was necessary.

Ms. Bronster stated that the Parties had acted in “good faith” to achieve the stipulation that was presented to the Commission in its final form for consideration.

Mr. Tabata agreed with Ms. Bronster.

County supported the stipulation and had no objections.

OP deferred to the Commission on the wording of the stipulation.

Intervenor also deferred to the Commission.

Chair Scheuer sought clarification on Intervenor’s position on cultural issues and the conservation easement.

Commissioner Okuda requested clarification on the binding effect of the stipulation if the LUC accepted it. The Parties shared how there was no disagreement on the stipulation and how the 1995 Order would guide enforcement.

There were no further questions for the Parties.

Commissioner Wong moved to adopt the stipulation and to authorize the Chair to sign it on behalf of the Commission. Commissioner Cabral seconded the Motion.

#### Discussion on the Motion

Commissioner Wong spoke in favor of the Motion.

Commissioner Okuda spoke in favor of the Motion.

Commissioner Chang stated that she would vote in favor of the Motion but still had some concerns.

Commissioner Ohigashi sought clarification from Mr. Morris on adopting the stipulation or adopting it as an order and then supported the Motion.

Commissioner Okuda opined on how Commissioner Chang’s concerns could rely on the 1995 Decision and Order for authority and that vigilance by lineal descendants could monitor the area to ensure compliance.

Commissioner Cabral stated that she was in favor of the Motion and was relieved that a settlement had been reached.

Commissioner Aczon had no comments and stated that he had no recommended changes to the stipulation.

Commissioner Giovanni stated that he was in favor of the Motion and commended the Parties for their effort to resolve the situation.

Chair Scheuer shared how much effort had been expended in attempting to settle this matter, complimented the Parties on their work and called for Mr. Orodener to poll the Commission.

The Commission unanimously (8-0) voted to adopt the proposed stipulation and authorized the Chair to sign on behalf of the Commission.

Chair Scheuer confirmed with County that its earlier request for a recess was still valid. Mr. Hopper agreed that it was.

Chair Scheuer declared a recess at 11:26 a.m. and reconvened the meeting at 11:42 a.m. and moved on to the next agenda item.

#### **ACTION**

##### **SP97-390 COUNTY OF MAUI (CENTRAL MAUI LANDFILL)**

Consider Amendment to State Special Permit (SP97-390) for the Proposed Central Maui Landfill Facilities project at TMK (2) 3-8-003:019 (por) and 020, Pu`unene, Maui, Hawai`i

#### **APPEARANCES**

Jennifer Oana, Esq. represented County of Maui- Department of Environmental Management (“DEM”)

Mark Roy, planner consultant with Munekiyo-Hiraga – Project Consultant-DEM

Eric Nakagawa, Director- DEM

Elaine Baker, Planner- DEM

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)

Jordan Hart, Deputy Director, County

Kurt Wollenhaupt, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Rodney Funakoshi, Planning Program Administrator, OP

Lorene Maki, Planner, OP

Chair Scheuer announced that this was an action meeting on Docket No. SP97-390 Central Maui Landfill, updated the record and explained the procedures to be followed for the proceedings.

There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

There were no registered testifiers or written public testimony submitted.

Chair Scheuer made a final call for Public Testifiers.

#### PUBLIC TESTIMONY

None

Chair Scheuer called for Petitioner DEM’s presentation.

Ms. Oana introduced Mr. Roy, who provided an overview of how DEM had developed its 4<sup>th</sup> special permit amendment and obtained approval for presentation to the LUC from the Maui Planning Commission.

Commissioners Cabral, Chang, and Okuda requested clarification on how DEM had offered the Public opportunities to comment on the proposed amendment’s project, how complaints regarding the landfill were resolved, what plans for restoration after a

landfill closer were in place, how the record reflected compliance with Federal and Department of Health (DOC) directives and what types of agricultural use would be allowed when the site was restored. Ms. Oana, Mr. Roy, and Mr. Nakagawa responded to the Commissioners' questions.

Commissioner Wong suggested a recess. Chair Scheuer acknowledged the request and declared a recess at 12:49 p.m. and reconvened the meeting at 1:15 p.m.

Chair Scheuer continued the Commissioner questioning of DEM portion of the meeting.

Commissioners Okuda, Ohigashi, Giovanni and Chair Scheuer requested clarification on DEM's decision to pursue a Special Permit instead of seeking a District Boundary Amendment (DBA), how concerns about siting the project on IAL land would be resolved once the permit amendment was granted, how the specified time extension was selected, what features and capabilities the proposed waste disposal facility would have, and what criterion was applied to make decisions for the proposed facility and the remediation plans associated with it after it outlived its useful life. . Ms. Oana, Mr. Roy, and Mr. Nakagawa responded to the Commissioners' questions.

Commissioner Wong commented that DEM might need more time to provide more specific details to answer Commissioners' questions and suggested a recess.

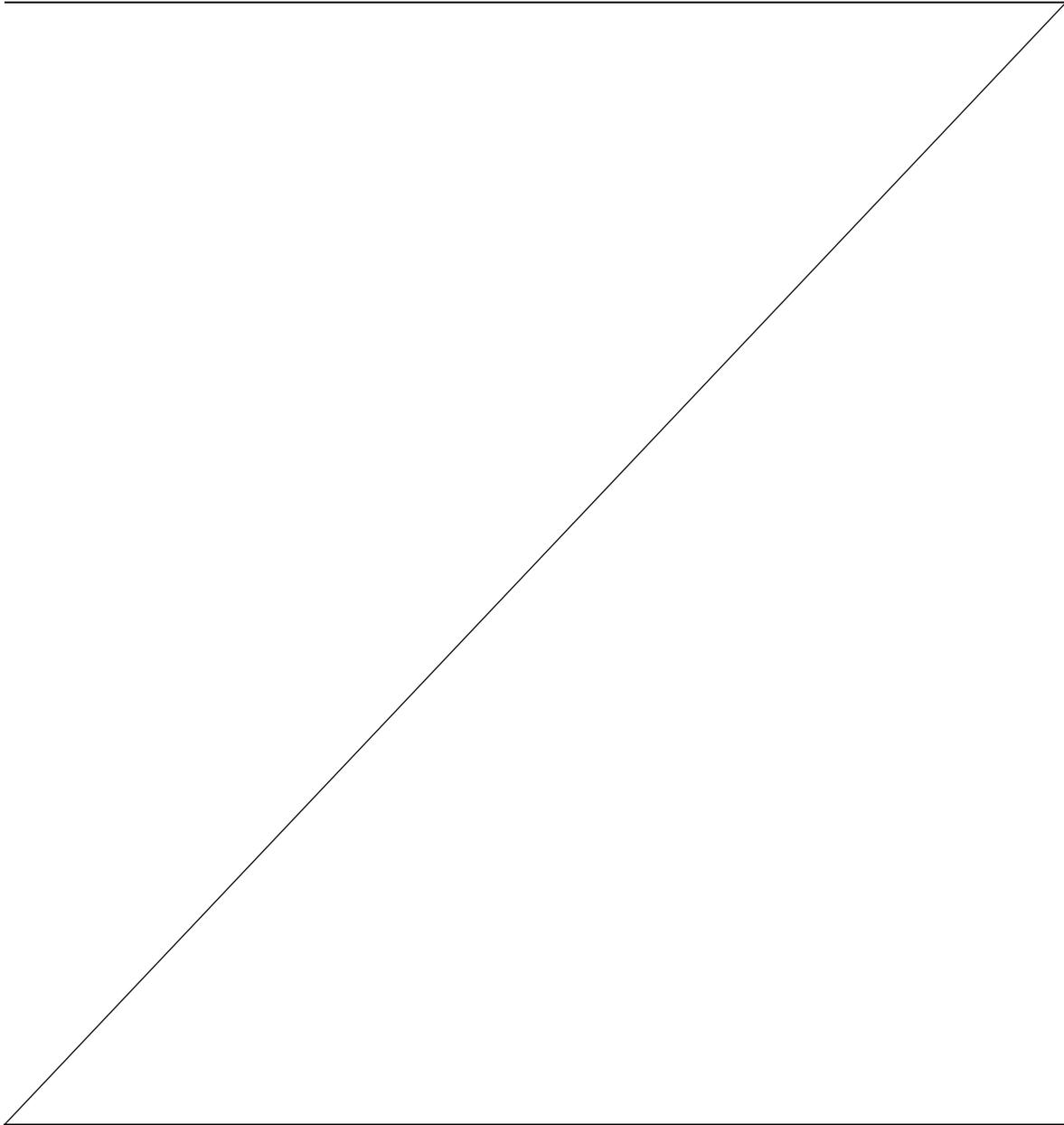
Chair Scheuer concurred and declared a recess at 2:13 p.m. and reconvened the meeting at 2:24 p.m.

Chair Scheuer assessed the state of the proceedings and a discussion ensued to determine how the Commission would address the remainder of the hearing on this docket. Commissioner Ohigashi noted that he would be joining the meeting at approximately 9:30 a.m. on July 9, 2020. It was suggested that Agenda Item IX be taken out of order and addressed by the Commission first to accommodate Commissioner Ohigashi's arrival time so he would not miss any of the SP09-309 proceedings. County, OP and DEM were amenable to a recess and continuing matters as described when the

Commission reconvened. Commissioner Giovanni reconfirmed how the meeting invitations would be sent.

Chair Scheuer declared a recess at 2:29 p.m. and announced that the Commission would resume its "ZOOM" virtual meeting at 9 a.m. on July 9, 2020.

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LAND USE COMMISSION  
MEETING MINUTES

July 9, 2020 – 9:00 a.m.

**Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.**

PLACE: Zoom Webinar Virtual Meeting registration-use link below

[https://us02web.zoom.us/webinar/register/WN\\_cSqCokAoSACVwZLpAZpOTw](https://us02web.zoom.us/webinar/register/WN_cSqCokAoSACVwZLpAZpOTw)

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda

COMMISSIONERS PRESENT:

(Attending via ZOOM conference media)

Edmund Aczon  
Nancy Cabral  
Gary Okuda  
Jonathan Scheuer  
Arnold Wong  
Dawn N. S. Chang  
Lee Ohigashi (arrived at 9:17 a.m.)  
Dan Giovanni

COMMISSIONERS EXCUSED:

None  
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT:

(Attending via ZOOM conference media)

Daniel Orodener, Executive Officer  
Dan Morris, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Bert Saruwatari, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER:

(Attending via ZOOM conference media)

Jean McManus

**CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:01 a.m.

Chair Scheuer had Mr. Orodener verbally do a roll call to confirm Commissioner attendance for the record. All present Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

Chair Scheuer announced that due to the unfinished proceedings on Docket No. SP 97-390 Central Maui Landfill and as discussed at the end of Day 1 of the hearing, that the Commission would first hear Agenda Item IX- Adoption of Order for Docket No. A04-751 Maui Land & Pineapple Company, Inc. (Pulelehua) before continuing action on Agenda Item VIII Docket No. SP97-390. There were no objections to the adjustment to the agenda.

Chair Scheuer called for Docket No. A04-751, had the Parties identify themselves.

**ADOPTION OF ORDER**  
**A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (PULELEHUA)**  
**APPEARANCES**

Gil Keith-Agaran, Esq. represented Petitioner-Pulelehua (“PP”)

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)

Michele McClean, Director, County

Ann Cua, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Rodney Funakoshi, Planning Program Administrator, OP

Lorene Maki, Planner, OP

Chair Scheuer announced that this was a meeting to adopt the order for Docket No. A04-751 Maui Land and Pineapple, updated the record and explained the procedures to be followed for the proceedings.

There were no objections to or questions on the procedures.

Chair Scheuer called for Public Witnesses. There was no submitted written testimony, no registered witnesses and no witnesses in the audience.

Chair Scheuer called for final arguments by the Parties.

## FINAL ARGUMENTS

### PETITIONER

Mr. Agaran argued why the Commission should adopt the order and described how Petitioner had worked with the community and government agencies to produce the order before the Commission.

### COUNTY

Mr. Hopper shared the reasons why County supported the proposed Order and provided an update on events that had transpired after the last Commission meeting on this matter at the County level.

### OP

Ms. Apuna stated that OP supported the Order.

Mr. Agaran thanked the County and OP for their assistance is preparing the proposed Order and expressed his appreciation for the community's efforts that were also involved in the effort.

There were no further questions or comments.

Chair Scheuer requested clarification on whether there had been any alterations to the proposed project timelines. Mr. Agaran responded that Petitioner was moving forward as planned.

There was no further discussion and Chair Scheuer sought the pleasure of the Commission.

Commissioner Wong moved to adopt the stipulated form of the Decision and Order. Commissioner Giovanni seconded the motion. (Commissioner Ohigashi joins the meeting at 9:17 a.m.)

Commissioner Chang recognized the efforts of the Petitioner and Community and stated her support of the Motion.

Commissioner Okuda echoed Commissioner Chang's comments and also stated his support of the Motion.

Commissioner Giovanni also commended the efforts of Petitioner and the community and recognized how the proposed project would help meet the demand for affordable housing.

Commissioner Cabral expressed her appreciation for the dedicated effort put into the Petition.

Commissioner Ohigashi stated he would not be voting on the issue due to his absence during its discussion but was in support of the Motion.

Commissioner Aczon thanked everyone for their hard work and expressed his support for the Motion.

Chair Scheuer acknowledged Mr. Agaran's efforts to guide Petitioner to a proposed Order that had great community input and support from the County and had Mr. Orodener poll the Commission.

The Commission voted (7-0- 1 abstain -Ohigashi) in favor of the Motion

Chair Scheuer declared a recess at 9:22 a.m., reconvened the meeting at 9:25 a.m. and called for the continuation of Docket No. SP97-390 Central Maui Landfill.

#### **CONTINUED ACTION**

#### **SP97-390 COUNTY OF MAUI (CENTRAL MAUI LANDFILL)**

Consider Amendment to State Special Permit (SP97-390) for the Proposed Central Maui Landfill Facilities project at TMK (2) 3-8-003:019 (por) and 020, Pu'unene, Maui, Hawai'i

#### **APPEARANCES**

Jennifer Oana, Esq. represented County of Maui- Department of Environmental Management ("DEM")

Mark Roy, planner consultant with Munekiyo-Hiraga – Project Consultant-DEM

Eric Nakagawa, Director- DEM

Shane Ogawa, Deputy Director, DEM

Elaine Baker, Planner- DEM

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department (“County”)

Jordan Hart, Deputy Director, County

Kurt Wollenhaupt, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Rodney Funakoshi, Planning Program Administrator, OP

Lorene Maki, Planner, OP

Chair Scheuer stated that Commissioner questioning of DEM would continue.

Commissioner Giovanni requested clarification on the contents of DEM’s presentation and whether an integrated solid waste plan was included. It was determined that it was not part of the record or in the presentation.

There were no further Commissioner questions. Chair Scheuer called for OP’s comments.

OP

Ms. Apuna stated that OP supported the amendment subject to the inclusion of two OP conditions for the IAL lands and for cultural resources.

- 1) Petitioner shall submit a petition for Declaratory Ruling to the Land Use Commission to withdraw 22 acres of Important Agricultural Lands (IAL) from the IAL designation, within one year of the LUC Decision and Order for this SP and
- 2) Petitioner shall instruct the construction employees during the pre-construction meeting or similar circumstances, of the possibility of discovering funerary objects and burials during construction. Further, should burials be found, the Petitioner shall consult with the State Historic Preservation Division, and cultural and lineal descendants of the area, to develop a re-internment plan and cultural preservation plan for proper cultural protocol, curation and long-term maintenance.

Commissioners Okuda, Giovanni, Ohigashi, Wong and Chang requested clarification on OP's perspective of appropriate land use designation for landfill issues, whether considerations for a Special Permit or DBA process should be applied, how the IAL designation should be addressed, the time limits proposed in OP's comments, and how Declaratory Orders affected the IAL designation.

Mr. Hopper provided County's perspective of why the Maui Planning Commission had decided to take certain actions.

Commissioner Giovanni moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities on the proper procedures on Special Permits and how they should be applied to IAL matters.

Commissioner Cabral seconded the Motion.

Commissioner Ohigashi confirmed that the motion addressed procedural matters on this docket. There was no further discussion on the Motion.

By an oral vote, the Commission unanimously voted to enter into Executive Session.

Chair Scheuer announced that the Commission would enter Executive Session and declared a recess.

The Commissioner entered Executive Session at 10:26 a.m. and reconvened the regular meeting at 11:17 a.m.

Chair Scheuer resumed the questioning of OP portion of the meeting.

Chair Scheuer requested clarification on the consequences of keeping the Petition Area rather than seeking an Urban use designation, how the temporary versus permanent used on the property might affect matters and whether the sequencing of first removing the IAL designation before getting the Special Permit might be more appropriate. Ms. Apuna provided her perspective of how OP's position had considered those matters. There were no further questions for OP.

Chair Scheuer acknowledged County's request to provide comments.

## COUNTY

Mr. Hopper shared County's perspective on DEM's application and shared why an SP could be granted on IAL designated land. DEM also commented on why it had sought an SP and described how the 4<sup>th</sup> amendment application differed from the Neighborhood Board #24 vs. LUC case that was being used as a reference.

DEM offered two additional conditions to its application for the Commission to consider.

- 1) Within a year of amendment approval, County would identify similar County agricultural land for IAL designation to compensate for the loss of the 22 acres being removed from IAL and
- 2) Restoration/remediation of the lands for agriculture use would be done.

Commissioners Chang and Ohigashi requested clarification on the extension time term limits and County's Exhibit 17. Mr. Ogawa and Mr. Roy described how the next expansion phase of the Central Maui Landfill (CML) was in the bid process and the 5-year preparation process that DEM had completed to prepare the 4<sup>th</sup> amendment application for the Commission's consideration.

Mr. Hopper provided his recollection of County proceedings when the 4<sup>th</sup> amendment application was being considered by the Maui Planning commission and shared details of the Maui Planning Commission's SP approval process.

Commissioners Giovanni, Okuda and Ohigashi requested further clarification on past, present and future landfill operations and plans, facility site selection criteria, and why DBA efforts were not continued or pursued to more appropriately match the landfill operation's more permanent, long-term use than an ongoing permit renewal process which was more appropriate for temporary uses.

Chair Scheuer requested clarification from Mr. Morris on the Commission's options in this action matter. Mr. Morris described how the Commission could decide on the application and clarified that separating parts of the application to deny the expansion and grant the time extension was not an option.

Discussion ensued to clarify the Commission's options.

Commissioners Okuda, Giovanni, Wong, and Chang requested clarification on why granting in part and denying in part could not be applied to the application, how critical time approvals factored into LUC's decision to grant, deny or remand the application, whether DEM's offer of proposed conditions could be formalized to become part of the application, DEM's readiness to begin construction, and to confirm the time extension dates being requested.

Chair Scheuer assessed the progress of the hearing and stated that he would be declaring a recess to allow DEM time to provide the Commission with written versions of its orally presented conditions to consider and provide more detailed responses to the Commissioner's questions.

Chair Scheuer declared a recess at 12:17 p.m. and reconvened the meeting at 1:03 p.m.

Chair Scheuer confirmed that all meeting attendees were ready to resume the hearing and allowed further discussion on County/DEM's comments.

Discussion ensued on how to address the bundled parts of the application and whether a remand would achieve the kinds of results that the Commission was interested in achieving.

Commissioners Giovanni, Aczon, Ohigashi, Cabral, Chang, Wong and Chair Scheuer sought clarification on what, if any, alternatives were available to the Commission, how long a remand and re-appearance before the Commission would take and what LUC scheduling for an SP issue might involve. County and DEM responded on the topics under discussion and Mr. Morris and Mr. Orodener described what procedures and guidelines the Commission should adhere to and provided the scheduling calendar for prospective dates that were available to have future hearings on this matter.

Chair Scheuer noted that DEM's proposed conditions had been printed and circulated to the Parties and Commissioners to review.

*SP 97-390*

*County of Maui, Department of Environmental Management Proposed Conditions*

- 1) Within one year of approval of this Fourth Amendment, the County shall identify County-owned agricultural property of similar land properties and equivalent acreage on Maui and submit a request to have it designated as IAL to compensate for the loss of the 22 acres of IAL associated with the CML facilities project.*
- 2) Upon restoration of closed phases of the CML and where safe and practicable to do so and if still designated as agriculture at that time, the County shall seek to make such lands available for future appropriate agriculture use in accordance with applicable state and federal guidelines and requirements.*

DELIBERATIONS

Chair Scheuer queried whether the Commission was ready to deliberate on this matter.

Commissioners Wong, Ohigashi and Aczon provided comments on their readiness to deliberate.

Commissioner Ohigashi stated his concerns with the proposed Petition and stated that he would be voting against it.

Commissioner Cabral moved to grant the Petition with DEM's added conditions. Commissioner Aczon seconded the Motion.

Commissioner Giovanni offered a friendly amendment to add a condition that the Petitioner seek a DBA within 5 years of the approval of the Petition by the LUC.

Commissioners Cabral and Aczon accepted the friendly amendment.

Commissioner Giovanni provided additional comments on his reason for suggesting the friendly amendment to the Motion.

Commissioners Chang and Aczon shared their reasons for supporting the amended Motion.

Chair Scheuer noted that the amended Motion did not include OP's two additional suggested conditions.

Commissioner Wong requested clarification on whether the DBA request would entail the 22 acres described by Petitioner.

Commissioner Ohigashi re-stated his opposition to the Motion and described the process that he thought County should have pursued to better address its landfill situation.

Commissioner Cabral recognized the need to additionally amend her amended original motion to include OP's suggested conditions, bringing the total of additional conditions to be added to 5. Two by DEM, two by OP and Commissioner Giovanni's friendly amendment to add seeking of the DBA within 5 years of LUC approval condition. Discussion ensued to clarify the status of the Motion on the floor and Chair Scheuer confirmed that the current Motion had been altered to include 5 additional conditions.

Commissioner Aczon acknowledged and accepted the additional amendment to the amended Motion. Commissioner Giovanni stated that he concurred with the addition of the two OP conditions to the two by DEM and his friendly amendment regarding seeking the DBA.

Chair Scheuer opened the floor to discussion on the twice amended Motion.

Commissioner Okuda shared his reasons why he would be voting against the Motion.

Commissioner Aczon recognized the opposing comments of Commissioners Ohigashi and Okuda on the amended Motion but stated he would still vote in favor of the Motion.

Commissioner Cabral stated her appreciation of the dissenting opinions of Commissioners Okuda and Ohigashi and shared her difficulties in voting in favor of the Motion.

Commissioner Chang provided her perspective on landfill matters and described why she was comfortable that the 5 additional conditions to the Petition would help address some of the concerns voiced by the opposing Commissioners.

Commissioner Giovanni described how the amended Petition might serve the public's interest and reaffirmed his voting in favor of the Motion.

Commissioner Wong stated he would be reluctantly voting in favor of the motion and shared how he had weighed the arguments for and against the Petition and described how he hoped the experience of proposing an SP instead of a DBA (when permanent land uses were involved) before the Commission would alter how future Petitions were prepared.

Chair Scheuer described the conditions and number of votes required for the various actions that the Commission decides upon and stated that per LUC rules for Special Permits, 5 affirmative votes were required. Chair Scheuer opined on how the Commission differed from legislators and shared how he thought the IAL and SP statutes needed to be improved to better serve the public and why he would be voting against the Motion.

Chair Scheuer then called for Mr. Orodener to poll the Commission.

The Commission voted as follows.

Yeas: Commissioners Cabral, Aczon, Chang, Giovanni, and Wong

Nays: Commissioners Okuda, Ohigashi and Chair Scheuer.

The Motion passed. (5-3)

Chair Scheuer asked if there was any further business to discuss. There was none.

Chair Scheuer adjourned the meeting at 2:13 p.m.