

UPDATE Re: REQUEST FOR DECLARATORY RULING BY THE BOARD OF APPEALS... for those interested the current status of this case:

Yesterday the Board of Appeals ruled that it does not have the authority to address the question of the County's non-enforcement of the Parker Ranch Rezoning Ordinance in the context of the Luala'i III subdivision --- **until the Planning Director issues his "final decision"** regarding this subdivision [the rezoning ordinance requires construction of the relevant phases of the Connector Road "in conjunction with development in the immediately surrounding areas" .] Parker Ranch was supposed to have applied for that final approval by March 22, 2006.

It is my expectation that the Planning Director will issue a Luala'i III "final decision" (in one form or another) in the very near future. I will ask Bob to post that decision on his website as soon as it is available.

Ordinarily affected persons would expect to wait for the Planning Director's final written decision, and then consider appealing IF he did not require compliance with the applicable rezoning and subdivision conditions. The problem was that in the context of Luala'i III, Parker Ranch/ and its joint venture partner Schuler Homes had requested of the Planning Department to delete the "Connector Road requirement" from the Tentative Subdivision Approval dated March 22, 2005. By way of various email communications, the Planning Department indicated it would consider deleting the "Connector Road" requirement. Additionally, in April 2006, the Planning Department authorized the Engineering Division to approve the infrastructure plans for the Luala'i III subdivision even though the detailed plans did not include any plans for the relevant sections of the Connector Road. Since April, the Engineering Division has been reviewing those infrastructure plans in coordination with the Parker Ranch engineering consultant. [Keep in mind that based on the current terms of Planning Department's Luala'i III tentative approval -- the required Connector Road construction is due to be completed by March 22, 2008.]

By mid September 2006, there was still no formal written final decision by the Planning Director and yet the County's Engineering Division appeared close to completing its review of the Luala'i III infrastructure plans. The crux of the matter was that once engineering completes its review, the developer can proceed with its construction (roads, drainage, sewage system etc) even in advance of the Planning Director's final written subdivision approval.

Under these circumstances, filing a legal action was important to preclude Parker Ranch from being in a position to avoid having to construct the Connector Road **even if** the Director's eventual "final decision" required the road construction-- based on the legal theory of "zoning estoppel" [that legal doctrine requires the balancing of equitable positions and involves complex factual determinations, including whether the developer reasonably relied on official assurances by a government official with the authority to make those assurances that it could proceed with its development and that the necessary permits were assured, and the Developer thereafter spends substantial sums based on

those official assurances].

At the Board of Appeals hearing, the Board Chairman asked one of the Parker Ranch attorneys about the "zoning estoppel" issue and this case [the filing of this Petition for Declaratory Ruling] . The Parker Ranch attorney acknowledged that arguably as of October 11, 2006, (the date the Petition was filed) that Parker Ranch could not use this argument with respect to sums spent after that date. The attorney would not however commit to whether Parker Ranch was still in a position to advance this "zoning estoppel" argument.

Understanding why the Connector Road requirement is particularly important in the context of the Luaia III subdivision. The Luaia III subdivision is the division of three TMK lots that stretch from the Lindsey Road extension intersection to Mamalahoa Highway by the rodeo grounds and are immediately adjacent to all of the southerly phase of the Connector Road corridor (Mamalahoa Hwy to future Kaomaloa Street) and immediately adjacent to a substantial portion of the middle phase of the Connector Road (the middle phase extends from future Kaomaloa Street to Pukalani Road); and the portion of this middle phase of the Connector Road that abutts the Luaia III project site includes the road corridor section from future Kaomaloa Street to the Lindsey Road intersection.

---Note that the Connector Road is to be constructed in phases, not in "bits and pieces".

In light of the terms of the 1996 amendment to the Parker Ranch Rezoning Ordinance, it is possible that the Luaia subdivision project will be the last major residential subdivision project adjacent to the Connector Road corridor that could trigger the Connector Road for many years.....so if none of the phases of this road are now required..... there is no saying when it will again be "triggered". [The original 1992 Parker Ranch Ordinance required that the Connector Road be completed in advance of permits for any residential or commercial development within the rezoned property -- which was, I believe, about 340 acres. ]

All for now.... Margaret Wille (Attorney for the Petitioners)