

LAND USE COMMISSION
MINUTES OF MEETING

January 10, 2008

Leiopapa A Kamehameha
4th Floor
Conference Room 405
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Vladimir Devens
Lisa Judge
Duane Kanuha
Ransom Piltz
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: Normand Lezy

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Mikel Humerickhouse, Audio Technician

Chair Judge called the meeting to order at 10:35 a.m.

EXECUTIVE SESSION

Commissioner Chock 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 relating to personnel issues. The motion was seconded by Commissioner Teves and passed with 6 affirmative votes.

The Commission entered into executive session at 10:40 a.m.

Commissioners Contrades and Kanuha entered the meeting at this time.

The open meeting reconvened at 11:05 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the minutes of December 13, 2007. Commissioner Devens seconded the motion. The minutes were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Chair Judge noted that although the docket items were still being arranged, the meeting dates would still remain as scheduled.

APPOINTMENT OF AN INTERIM EXECUTIVE OFFICER AND RELATED ACTION

Public Witness

1. DeGray Vanderbilt

Mr. Vanderbilt distributed his written testimony and stated that he is a 30-year resident of Molokai. Mr. Vanderbilt noted his concerns of the outgoing executive officer, related to a specific pending docket.

Chair Judge stated that this agenda item was for the appointment of an interim officer.

Mr. Vanderbilt commented that he would like to see the LUC clean up what the previous executive officer had left behind.

There were no questions posed for Mr. Vanderbilt from the Commission.

Chair Judge noted that there were no other public witnesses.

Chair Judge stated that Mr. Rodney Maile, Hearings Officer with the DCCA, is willing to serve as an interim officer until a new permanent replacement is appointed, by early Spring. Chair Judge entertained a motion to have Mr. Maile serve as the interim officer effective mid-January 2008 and to continue until Spring, and to authorize the Chair to any inter-agency agreements.

Commissioner Teves moved to appoint Rodney Maile as the interim executive officer and to also authorize the Chair to execute necessary agreements. The motion was seconded by Commissioner Chock.

The Commission was polled as follows:

Ayes: Teves, Chock, Devens, Contrades, Kanuha, Piltz, Wong, and Judge.

The motion passed with 8 yes, 1 absent.

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

Chair Judge noted that this was an action meeting on Docket No. A06-770 The Shopoff Group (Hawaii) to consider the application for intervention filed by the U.S. Department of the Interior, National Park Service on December 6, 2007.

On January 9, 2008, the National Park Service submitted a letter informing the Land Use Commission that it withdraws its application to intervene in this docket, without prejudice, based upon an agreement by The Shopoff Group (Hawaii) to include conditions of approval as specified in Attachment A to the National Park Service's letter.

Based upon the letter withdrawing the application for intervention, there is nothing before the Commission to consider on this docket at this time.

However, because this item appeared on the Commission's agenda, the Chair asked if anyone in the audience desired to provide public testimony.

Public Witness

1. Melia Lane-Kamahele

Ms. Lane-Kamahele stated that she was presenting testimony on behalf of the Kaloko-Honokohau National Park, U.S. National Park Service (NPS). Ms. Lane-Kamahele summarized the NPS's written testimony and noted that the NPS had reached an agreement with the petitioner and had submitted proposed conditions to the LUC. Ms. Lane-Kamahele added that the NPS had withdrawn its application to intervene.

Commissioner Wong commented on the proposed agreement between the petitioner and NPS, the proposed conditions, and whether the NPS understood that those conditions were between the petitioner and the NPS and not binding on the LUC.

Ms. Lane-Kamahele stated that she was not in a position to answer for their legal counsel.

After a brief discussion, Commissioner Wong moved that NPS' motion to withdraw the application for intervention be accepted with prejudice.

Chair Judge stated that there is no action required by the LUC as the NPS had withdrawn their application for intervention.

Ms. Erickson noted that it would not preclude the NPS from filing a motion for intervention at a later time. However, an application for intervention at a later time would be untimely and at that time the LUC could accept or deny the application for intervention.

Chair Judge stated that there was no action to take on this matter and that there were no further public witnesses.

A recess break was taken at 11:20 a.m. The meeting reconvened 11:30 a.m.

A84-583 MAUNA LANI RESORT, INC. (Hawaii)

Chair Judge noted a clarification that the next items on the agenda were not part of any current or former docket item before the LUC. The way they appear on the agenda is not intended to indicate that they are part of a pending docket. By listing them the way they appear, it was intended merely to indicate that the land was the subject of a previous district boundary amendment proceeding before the Commission. That proceeding ended with the issuance of the Commission's decision and order in 1986. Although the next items on the agenda incidentally affect to land that was the subject of a prior district boundary amendment, they are related to a proceeding before the County of Hawaii for a special management area (SMA) permit. The Commission is proceeding solely pursuant to chapter 92, Hawaii Revised Statutes, with respect to these agenda items; there is no chapter 91 proceeding involved.

The first item would be to consider the Petition to Intervene filed by the Mauna Lani Resort Association on December 5, 2007.

APPEARANCES

Patricia McHenry, Esq., represented Intervenor
Brooks Bancroft, Esq., represented County of Hawaii Planning Department
Norman Hayashi, County of Hawaii Planning Department
Bryan Yee, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

Commissioner Devens disclosed that partners in his firm have done work for Stanford Carr in the past, although he personally has not been involved in that work. Also, Commissioner Devens noted that he knows Mr. Steven Lim on a professional level as they have been involved in previous cases that have since been resolved. Commissioner Devens stated that he would be able to continue to participate and remain impartial in this matter.

There were no objections by the parties or the Commission for the continued participation of Commissioner Devens in this matter.

Public Witness

1. Steven Lim

Mr. Lim stated that he was representing Stanford Carr Development, LLC, which is presently developing site M at Mauna Lani. Mr. Lim added that they are currently going through the SMA proceeding. Mr. Lim argued that this is not a proceeding that the association could intervene in.

There were no questions posed for Mr. Lim.

Ms. McHenry began her presentation and asserted that the Mauna Lani Resort Association is a party that has the right of intervention under §15-15-52, HRS.

Commissioner Wong posed questions regarding the requirement of a supplemental EIS, presenting facts and discovery to the county's planning commission, the contested case proceeding, and a previous intervention, if any, since this docket was approved 25 years ago.

Commissioner Devens commented that it was unclear to him as to what proceeding is open and pending and what the association was trying to intervene in. Commissioner Devens noted that in §15-15-52, there is a 30 day time limit that the rule sets forth in intervention.

EXECUTIVE SESSION

Commissioner Wong 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. The motion was seconded by Commissioner Devens.

The Commission entered into executive session at 12:00 p.m.

The open meeting reconvened at 12:10 p.m.

Mr. Bancroft stated that the County believed that it would be under the discretion of the Planning Director as to whether or not a supplemental EIS is required. Mr. Bancroft added that the rules also say that the Planning Department makes a decision with the approving agency, in this case, the LUC, regarding the SEIS. Mr.

Bancroft stated that there is nothing to intervene in because the Planning Director will make the final decision.

Mr. Yee noted that the LUC is only providing a recommendation and that OP recommends the LUC deny the request for intervention and have the matter returned to the LUC after the contested case hearing is resolved. The LUC would then have the evidence that was brought before the County.

Commissioner Wong then moved that the LUC deny the application for intervention. Commissioner Wong noted that there is no formal petition before the LUC so there is no intervention and that the SEIS matter had not been fully raised before the LUC. The motion was seconded by Commisisoner Piltz.

The Commission was polled as follows:

Ayes: Wong, Piltz, Chock, Contrades, Devens, Kanuha, Teves, and Judge.

The motion passed with 8 yes, 1 absent.

Chair Judge stated that the LUC would continue with the second item to consider the written request, dated November 13, 2007, from the County of Hawaii Planning Director to coordinate with the County of Hawaii pursuant to section 343-5, Hawaii Revised Statutes, and section 11-200-27, Hawaii Administrative Rules. The County of Hawaii Planning Director has set forth reasons in his letter for concluding that a supplemental environmental impact statement is not necessary in the SMA permit proceeding. Pursuant to section 343-5, Hawaii Revised Statutes, and section 11-200-27, Hawaii Administrative Rules, the Planning Director is asking whether the Land Use Commission agrees with his conclusion.

Public Witness

1. Steven Lim

Mr. Lim stated that he reiterates his prior public testimony noting that this is a request for coordination pursuant to the rules of the OEQC. The LUC is only being asked for consultation and Mr. Lim requested that the LUC pass on their comments to the Planning Director so that he can make the final decision.

There were no questions posed for Mr. Lim.

2. David Harada-Stone

Mr. Harada-Stone stated that he represents the Village of Mauna Lani AOA and reiterate their letter of December 5, 2007. Mr. Harada-Stone requested that this matter be deferred until a noticed meeting on the Big Island could be held so that the individuals there could present testimony.

There were no questions posed for Mr. Harada-Stone.

3. Patricia McHenry

Ms. McHenry stated that the new project proposal substantially changes the intensity, location, timing, and use of the project as previously presented to the LUC. The project described in the SMA proceeding would allow the density of the development within the resort's residential units to be changed and dramatically shifted to one part of the project. She argued that the project has undergone changes in the intensity of use and a major change in sewage. She further argued that an SEIS is therefore required.

There were no questions posed for Ms. McHenry.

Mr. Yee noted that the State had no additional comments.

Mr. Bancroft argued that the coordination requirement has been met and that although the Planning Director's letter dated November 13, 2007 requests input, the Planning Director makes the final decision on whether the SEIS is required.

Commissioner Wong posed a few questions regarding what was meant as coordination by the County, and the status of the contested case hearing.

Mr. Hayashi stated that the procedure is that the applicant, Stanford Carr LLC, has filed for an SMA permit. In reference to whether an SEIS is required, the Planning Director has initially indicated that no SEIS was required, but based on the OEQC rules, the county needed to coordinate with the LUC. The LUC does not need to make a recommendation. Once that is completed, then the county can move forward with the

contested case hearing. Upon determination by the Planning Commission, the application is complete and the matter would not return to the LUC.

Commissioner Piltz commented that the LUC should make no decision, as the LUC had not been presented with any facts before them today. Commissioner Piltz moved that this matter be left at the county level and recommend that the LUC take no action on this matter at this time. The motion was seconded by Commissioner Wong.

Vice Chair Kanuha posed a few questions related to the November 13, 2007 letter referencing a possible trigger, which would require compliance with Chapter 343 related to highway improvements.

Mr. Hayashi stated that the determination would be made by the Planning Director whether an SEIS or EIS is required. That determination is a separate determination from what the county is seeking from the LUC.

Commissioner Wong noted that in regards to his motion, with respect to not responding to the county's request at this time, he believed that it was premature for the county to come to the LUC at this point. Commissioner Wong added that he was not suggesting that the LUC was not going to coordinate whether an SEIS or EIS is required or not.

Commissioner Piltz concurred with Commissioner Wong's motion that there is not enough information before the LUC at this time.

The Commission was polled as follows:

Ayes: Piltz, Wong, Chock, Contrades, Devens, Kanuha, Teves, and Judge.

The motion passed with 8 yes, 1 absent.

A lunch recess break was taken at 12:40 p.m. The meeting reconvened at 1:50 p.m.

A07-778 SCD KALOKO MAKAI, LLC (Hawaii)

Chair Judge stated that this was a chapter 92, Hawaii Revised Statutes, action meeting to 1) determine whether the Land Use Commission agrees to be the accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of

approximately 952.165 acres of land currently in the Conservation and Agricultural Districts into the Urban District at Kaloko, North Kona, Hawaii; and 2) to determine whether the proposed action may have a "significant effect" on the environment to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes.

APPEARANCES

Jennifer Benck, Esq., represented Petitioner

Stanford Carr, Petitioner

Brooks Bancroft, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Public Witness

1. Melia Lane-Kamahele

Ms. Lane-Kamahele stated that she was representing the NPS and briefly summarized their written testimony. Ms. Lane-Kamahele noted that they believed that this project would significantly impact the environment and commented on their concerns for the ground water, wastewater, coastline effects, and the anchialine pools.

Vice Chair Kanuha asked what was the proximity from the park to the petition area.

Ms. Lane-Kamahele stated that the park is across the street, downhill from the petition area.

There were no further questions posed for Ms. Lane-Kamahele.

Mr. Carr began his presentation and provided a brief overview of the proposed community. Mr. Carr noted that they are involved in the master planned community and look forward to engaging with the community with their comprehensive master plan.

Mr. Bancroft stated that the County had no comments on this matter.

Mr Yee noted that the OP agreed that an EIS is needed in this case.

Vice Chair Kanuha moved that the LUC is the appropriate accepting authority and that the LUC find that the proposed action may have a significant impact to the environment to warrant the preparation of an EIS. The motion was seconded by Commissioner Teves.

The Commission was polled as follows:

Ayes: Kanuha, Teves, Chock, Contrades, Devens, Piltz, Wong, and Judge.

The motion passed with 8 yes, 1 absent.

A recess break was taken at 2:05 p.m. The meeting reconvened at 2:15 p.m.

REVIEW OF STAFF PROPOSED ADMINISTRATIVE RULES

Chair Judge stated that last version of the proposed rules was the November 16, 2007 version. Chair Judge noted that the area that had received the most comments involved the proposed new definitions for agri-business, subsistence agriculture, agricultural research, and the amendment to the farm dwelling definition, and to the non-conforming use section. Chair Judge added that she had directed staff to delete all changes to the definitions section and to the proposed changes to the non-conforming section.

Chair Judge noted that after the LUC hears the public witnesses, she would propose that the rules before the LUC be brought up for approval today. By approving these rules, the action would trigger a comprehensive review by the Governor's office, the A.G., Department of Budget and Finance, DBEDT Small Business Regulatory Review Board, and communities statewide. Once all of these comments have been generated, the LUC would again have the opportunity to determine the final form of the rules.

Pubic Witnesses

1. Mary Lou Kobayashi

Ms. Kobayashi stated that the OP encourages the LUC to proceed with these rules and would have further recommendations during the public hearing process.

2. Brooks Bancroft

Mr. Bancroft stated that the concerns of the Planning Director had been addressed and the County had no further comments at this time.

Chair Judge noted that there were no further public witnesses. Chair Judge then noted that once the LUC adopts the proposed rules, Ms. Erickson would re-format the rules and proceed to complete the package to the Governor. Chair Judge then described the statutory rule-making process and proposed timeline.

Commissioner Devens noted that since the definitions are deleted, under §15-15-25, page 15-26, subsection 25, subsection C could be deleted.

Commissioner Wong asked whether these rules would be final upon today's adoption, or would the LUC have the opportunity for additional changes after they go through the agency comment and public hearing process.

Chair Judge noted that the LUC would be adopting the proposed rules for the purpose of public and agency comments. The LUC would have the opportunity to re-visit these rules and provide further input or change.

Commissioner Wong then moved to adopt the staff's proposed rules as amended today for the purpose of submitting it to the Executive Branch. The motion was seconded by Commissioner Contrades.

Vice Chair Kanuha commented that he acknowledged that the LUC has been going through these rules and believed that the the major concerns have been addressed. Vice Chair Kanuha added that he was uncomfortable moving forward with this document, having just received it today and not being able to review it.

Commissioner Devens noted that he understood Vice Chair Kanuha's concerns and suggested the LUC defer action until the next meeting in two weeks.

Chair Judge stated that the LUC would defer this matter until the next board meeting and requested that all the Commissioners review these rules and be prepared to take action on this at the next meeting.

After a brief discussion, Commissioner Wong withdrew his motion. Commissioner Contrades withdrew his second.

The meeting adjourned at 2:35 p.m.

(Please refer to LUC Transcript of January 10, 2008 for more details on this matter.)