

LAND USE COMMISSION  
MEETING MINUTES

July 20, 2017

8:30 a.m.

Maui Arts and Cultural Center, Morgado Conference Room  
One Cameron Way, Kahului, Hawai'i, 96766

COMMISSIONERS PRESENT: Edmund Aczon  
Gary Okuda  
Jonathan Scheuer  
Linda Estes  
Nancy Cabral  
Dawn Chang  
Lee Ohigashi  
Arnold Wong

COMMISSIONERS EXCUSED: Aaron Mahi

LUC STAFF PRESENT: Daniel Orodenker, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

**CALL TO ORDER**

Chair Aczon called the meeting to order at 08:30 a.m.

**ACTION**

**A94-706 Ka'ono'ulu Ranch (Maui)**

Chair Aczon announced that this was a continued action meeting on Docket No. A94-706 Ka'ono'ulu Ranch (Maui) and that the Public Testimony portion of the meeting had concluded on July 19, 2017. Chair Aczon noted that the Parties had agreed that the order of presentation would be Intervenor, County, OP and Petitioner to better address issues that might arise. Chair Aczon confirmed that the Parties were in agreement on the order of presentations and called for Intervenor's presentation.

## PRESENTATIONS-

### INTERVENOR

Mr. Pierce stated that he had Mark Hyde, Daniel Kanahele, Lucienne de Nae, and Dick Mayer as witnesses; and described how he would make his presentation.

Intervenor Witnesses (all witnesses for all parties were sworn in before providing testimony)

1. Mark Hyde – South Maui Citizens for Responsible Growth Representative

Mr. Hyde described his organization's purpose and objectives in this docket and why his group was opposed to acceptance of the FEIS.

Mr. Sakumoto, Mr. Tabata and Commissioner Okuda requested clarification on Mr. Hyde's testimony. Mr. Pierce had follow-up questions to further clarify Mr. Hyde's testimony.

2. Daniel Kanahele

Mr. Kanahele described his reason for intervening in this docket and shared why he felt the FEIS was insufficient.

Ms. Cataldo, Mr. Sakumoto and Commissioners Ohigashi, and Chang requested clarification on Mr. Kanahele's testimony.

3. Dick Mayer (Intervenor Expert Witness in Economics)

Mr. Meyer described the portions of the FEIS that he felt needed additional/updated economic, traffic, and groundwater/runoff information.

Mr. Tabata and Commissioners Okuda, Cabral and Scheuer requested clarification on Mr. Meyer's testimony. Mr. Pierce had follow-up questions to further clarify Mr. Meyer's testimony.

Commissioner Wong moved and Commissioner Okuda seconded the motion to enter Executive Session to consult with counsel to clarify the Commission's rights, responsibilities, liabilities and authorities with respect to this docket. By a unanimous voice vote, the Commission voted to enter Executive Session.

The Commission went into Executive Session at 10:48 a.m. and reconvened in regular session at 11:02 a.m. Chair Aczon resumed public testimony

4. Lucienne de Naie– Maui Tomorrow

Ms. de Naie described her experience in reviewing EIS documents and commented on why she felt that the draft FEIS was not adequate.

Ms. Cataldo and Commissioners Chang, Cabral and Scheuer requested clarification on Ms. de Nae's testimony.

Mr. Pierce concluded his presentation and Chair Aczon called for the County's presentation.

## COUNTY

Mr. Hopper offered Will Spence, Director- County as a witness to respond to the zoning and Community Plan issues and other matters raised by Intervenor's witnesses.

### County Witness

#### 1. Will Spence

Mr. Spence summarized the background of the Petition Area and described County's perspective on why the draft FEIS was acceptable and how it sufficiently addressed the County's General and Community plans.

Mr. Pierce questioned how Mr. Spence's testimony addressed the acceptance of the FEIS. Discussion ensued and Mr. Sakumoto asked whether past statements by past County Directors Mike Foley and Jeff Hunt were consistent with the current testimony. Mr. Spence acknowledged that the testimony was consistent.

Commissioners Scheuer, Cabral, Ohigashi, Chang and Okuda requested clarification of Mr. Spence's testimony.

The Commission went into recess at 12:33 p.m. and reconvened at 1:07 p.m. Chair Aczon called for OP to make its presentation.

## OP

Ms. Apuna argued OP's position that the draft FEIS was adequate and should be accepted.

Commissioners Wong, Chang, Okuda and Scheuer requested clarification on OP's position.

## "HP"

Mr. Tabata stated that HP supported the acceptance of the FEIS.

Commissioners Scheuer, Chang, Estes and Okuda requested clarification on HP's position.

## PETITIONER "PP"

Mr. Sakumoto used a PowerPoint presentation and argued why the Land Use Commission was the appropriate accepting authority pursuant to Chapter 343, Hawai`i Revised Statutes, of a Final Environmental Impact Statement and why the proposed action may have a "significant effect" to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawai`i Revised Statutes; and stated that he had four witnesses to offer.

### Petitioner Witnesses

#### 1. Jordan Hart

Mr. Hart described his firm's role in the preparation of the FEIS. Ms. Cataldo, Mr. Sakumoto and Commissioners Wong, Ohigashi, Scheuer, Okuda and Chang requested clarification on his testimony

The Commission went into recess at 2:20 p.m. and reconvened at 2:28 p.m.

#### 2. Darin Unemori – Civil Engineer (Expert Witness)

Mr. Unemori described the planning and design considerations, analyses and studies involved with developing the proposed site infrastructure for water, water runoff, flooding and retention/drainage.

Commissioners Wong, Ohigashi, Scheuer, Okuda and Chang requested clarification on his testimony.

Commissioner Wong moved and Commissioner Okuda seconded a motion to enter into Executive Session to consult with counsel regarding the Commission's rights, duties and obligations related to this docket. By a voice vote, the Commission unanimously voted to enter Executive Session (8-0-1 excused). The Commission entered Executive Session at 3:24 p.m and exited and reconvened into regular session at 3:41 p.m.

#### 3. Juanita Wolfgramm- Traffic Engineer (Expert Witness)

Ms. Wolfgramm described her professional credentials and educational background. Discussion ensued to have the Parties stipulate that the Petitioner's witnesses were qualified as experts in their fields to hear their testimonies more efficiently. Mr. Pierce requested that Petitioner offer and identify the area of expertise of each witness to be considered. Chair Aczon acknowledged his request and Mr. Sakumoto identified his remaining witnesses. The Parties stipulated to the expertise of the remaining witnesses.

Ms. Wolfgramm summarized her traffic study report for the Commission and provided clarification of her testimony to Mr. Pierce and Commissioners Scheuer, Okuda and Ohigashi.

The Commission went into recess at 4:12 p.m. and reconvened at 4:17 p.m

4. Eric Frederickson- Archaeology (Expert Witness)

Mr. Frederickson described the methods used to gather background historical information of the Petition Area, and to assess field conditions and conduct the site investigation for his report. Mr. Frederickson provided clarification of his testimony to Ms. Cataldo and Commissioners Scheuer, Chang and Cabral.

Commissioner Estes excused herself from the meeting with the approval of the Chair at 4:38 p.m. (7 Commissioners remained)

5. Thomas Holliday- Market Study, Economic & Fiscal Analysis (Expert Witness)

Mr. Holliday described his and his company's professional role in assisting in the preparation of the market and econometric studies for the proposed project. Mr. Holliday provided clarification on this testimony to Mr. Sakumoto and Commissioner Scheuer.

Commissioner Cabral excused herself from the meeting with the approval of the Chair at 5:05 p.m. (6 Commissioners remained)

Commissioner Wong excused himself at 5:07 p.m. and returned at 5:09 p.m.

## DECISION MAKING

Commissioner Ohigashi moved that the LUC find that PP's FEIS does not comply with the content requirements for an FEIS, and is therefore not accepted pursuant to HRS chapter 343 and HAR chapter 11-200, because: The FEIS does not contain a thorough discussion of the cumulative impacts of the Project and other developments in the area on the economy, police and fire protection services, schools, solid waste, civil defense, utilities, and medical facilities and of the secondary impacts of the Project, particularly in regard to the potential impacts from future developments mauka of Pi'ilani Highway brought about by the construction of the KUH, as required by HAR §11-200-17(i). Further, that the LUC authorizes the Executive Officer to notify and submit a record of this non-acceptance to Pi'ilani and OEQC by the July 27, 2017, deadline for LUC action. Commissioner Okuda seconded the motion and offered a friendly amendment that the Chair be authorized to sign the order and that the

Executive Officer to notify and submit the record of non-acceptance to OEQC by the appropriate deadline. Commissioner Ohigashi accepted the friendly amendment.

Commissioner Scheuer stated that he was in favor of the motion and shared his reasons for not accepting the FEIS.

Commissioner Chang was also in favor of the motion and stated that she found that the Cultural Impact Assessment was inadequate and the suggested mitigation measures were as well.

Commissioner Okuda stated that he seconded the motion since he believed that the FEIS did not satisfy the standard which is described by a number of legal cases and described his concerns regarding how traffic and cultural impact matters were inadequately addressed in the FEIS.

Commissioner Ohigashi shared his concerns that the entire 88 acres of the Petition Area had been addressed in the Commission's August 23, 2012 Decision and Order finding the Petitioner to have violated conditions imposed when the land was reclassified from Agricultural to Urban, but the FEIS had only partially addressed the total 88 acres since there was no officially recognized bifurcation of the Petition Area after PP and HP acquired different portions of the Petition Area after the August 23, 2012 Decision and Order.

Commissioner Wong echoed Commissioner Ohigashi's concerns that the FEIS did not entirely cover the 88 acres and stated that he would be voting in favor of the motion.

There was no further discussion.

The Commission was polled and unanimously voted in favor of the motion. The Motion passed 6-0 with 3 excused.

Chair Aczon asked if there was any further business. There was none. The Commission adjourned at 5:30 p.m.