

LAND USE COMMISSION
MEETING MINUTES
(CONTINUED PROCEEDINGS FROM JULY 25, 2019 AGENDA ITEM IV.)

August 8, 2019 – 9:30 a.m.

**Kaua`i Community College, Rooms 106 C & 106 D
3-1901 Kaumuali`i Highway, Lihu`e, Kaua`i, Hawai`i 96766**

COMMISSIONERS PRESENT: Dan Giovanni
Nancy Cabral
Dawn Chang
Lee Ohigashi
Arnold Wong
Edmund Aczon
Gary Okuda

COMMISSIONERS EXCUSED: Jonathan Scheuer
Aaron Mahi

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Randall Nishiyama, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Laurie Savo

CALL TO ORDER

Vice Chair Cabral reconvened the meeting at 09:30 a.m. and announced that the proceedings were a continuation of the July 25, 2019 meeting.

HEARING AND ACTION (CONTINUED)

A17-803 KEALIA PROPERTIES, LLC- (Kaua`i)

To Consider Petitioner's Motion to Accept its Final Environmental Impact Statement.

APPEARANCES

Curtis Tabata, Esq. and Benjamin Matsubara, Esq., Counsel for Kealia Properties, LLC ("KP")

Adam Roversi, Esq., County Attorney, County of Kaua`i, Planning Department ("County")

Ka`aina Hull, Director, (County)

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

Vice Chair Cabral had Petitioner continue its presentation from the July 25, 2019 LUC meeting..

Mr. Matsubara provided an overview of the proposed project and the efforts put into the preparation of the FEIS. Mr. Matsubara called Petitioner's second witness, Scott Ezer and stated that Mr. Tabata would be handling this portion of the presentation.

PRESENTATIONS:

Petitioner Witnesses

1. Scott Ezer, Principal, Helbert, Hastert and Fee Planners(HHF)

Mr. Ezer provided his professional background and described how the FEIS had been prepared and assembled for consideration by the LUC. Mr. Ezer also addressed issues raised during the Public Testimony of the July 25, 2019 meeting and shared how no *loi* was located in the Petition Area, but in a neighboring parcel; how surveys had contacted senior family members and not the family members who had testified; how outreach efforts had been conducted in areas where public testimony had denied being contacted; and how attempts to contact organized cultural groups had been made, but not responded to. Mr. Ezer also stated that the FEIS satisfied the content requirements and acceptance standards for the LUC.

County and OP had no questions.

Commissioner Wong suggested that the Parties reintroduce themselves for the record. Vice Chair Cabral acknowledged his suggestions and had the Parties identify themselves.

Commissioner Wong inquired whether Mr. Tabata was going to qualify Mr. Ezer as an expert witness. Mr. Tabata replied that although Mr. Ezer was an expert, he was not qualifying him for his presentation.

Commissioner Wong requested clarification on how community outreach had been conducted and communicated. Mr. Ezer described the notification process his firm had used to publicize community meetings about the proposed project; and how the FEIS addressed the concerns that it had been notified about.

Commissioner Chang requested clarification on what witnesses Petitioner would be presenting to the Commission and inquired about the existence or location of the

“Old Government Road” that she had noted in the title report and the Archaeological Inventory Survey (AIS). Mr. Ezer deferred to Dr. Hammatt to respond to questions regarding the “Old Government Road”. Discussion ensued between Commissioner Chang and Mr. Tabata over Petitioner Exhibit 3 to clarify what kind of evidence Commissioner Chang was seeking about the “Old Government Road”. Mr. Tabata stated that he had metes and bounds information about the Petition Area to contribute.

Commissioner Aczon also requested to know who would be testifying and Mr. Tabata described the slate of witnesses that were available to respond to various questions that the Commission might have on the FEIS subject matter.

Commissioner Wong requested clarification on the *loi* and pig hunting in the area.

Commissioner Okuda requested clarification of what the purpose of an FEIS was, how detailed it needed to be, how different reviewers might arrive at different conclusions; what the binding powers and weight Mr. Dahilig’s letters regarding the FEIS might have; and what effect the FEIS and General Plan might have. Mr. Ezer provided his perspective on those matters and Mr. Tabata described how County ordinances enabled the Kaua’i Planning department operations.

Vice Chair Cabral declared a recess at 10:35 a.m. and reconvened the meeting at 10:50 a.m.

Commissioner Okuda requested clarification on where the FEIS was inconsistent with the General Plan. Discussion ensued to clarify the nature of Commissioner Okuda’s question. Commissioner Okuda stated that he would accept the record “as is” and was prepared to move on and withdrew his question.

Commissioner Chang requested clarification on the General Plan process. Mr. Ezer shared his knowledge of what was involved in the construction of a County General Plan and what promotional outreach was done.

There were no further questions by Commissioners, County or OP.

Mr. Tabata called his next witness, Dr. Hal Hammett

2. Dr. Hallet Hammatt PhD, Archeological and Cultural Assessments

Dr. Hammett provided his professional background and described his involvement with Petitioner's FEIS in the areas of archeology and cultural assessments.

County and OP had no questions.

Commissioner Chang requested clarification on Dr. Hammett's scope and depth of research on what information on the "Old Government Road" he had found, how various collection techniques had been chosen; and what findings were made. Dr. Hammatt described how he had assessed the Petition Area and decided on how he would conduct his research; what his findings were and shared his perception of why the "Old Government Road" was mentioned in the title report and the AIS.

Vice Chair Cabral declared a recess at 11:45 a.m. and reconvened the meeting at 12:49 p.m.

Mr. Tabata stated that he had been notified that the County had time constraints and offered to allow County Planning Director Hull to testify before beginning the remainder of his presentation. Vice Chair Cabral consented to allowing Mr. Hull's testimony.

AGENCY COMMENTS

County

Mr. Hull stated the County supported the adoption of the FEIS and that it was in line with the County's General Plan.

There were no questions from Petitioner and OP

Commissioner Okuda requested clarification on how the County evaluated the FEIS and determined its position on it. Mr. Hull described how the County determined whether an FEIS was acceptable.

Commissioner Giovanni requested clarification on County's support of a traffic roundabout. Mr. Hull confirmed County's position.

Commissioner Chang requested clarification on the limits of County's statements to the Commission. Mr. Hull described how the County factored existing infrastructure elements and resources in determining its position and how any concerns were addressed.

Commissioner Wong asked if any other County agencies were opposed to the FEIS. Mr. Hull responded that there had been no negative responses.

There were no further questions for Mr. Hull.

Vice Chair Cabral stated that Petitioner would resume its presentation. Mr. Tabata offered Matt Nakamoto as his next witness.

Petitioner's Witness

3. Matt Nakamoto, Traffic Study

Mr. Nakamoto described his professional background and contributions to the FEIS.

County and OP had no questions.

Commissioner Giovanni requested clarification on traffic mitigation measures and viable alternatives considered by the FEIS.

Commissioner Wong requested clarification on Traffic Impact Analysis Report (TIAR) findings and projections.

Commissioner Giovanni requested additional information on annual growth measurements used in the TIAR.

There were no further questions for Mr. Nakamoto. Mr. Tabata called his next witness, William Eddy.

4. William Eddy, Civil Engineer

Mr. Eddy provided his professional background and shared his perspective on the existence of "Old Government Road" by referring to metes and bounds descriptions and an American Land Title Association (ALTA) map.

Vice Chair Cabral requested clarification on what exhibit the map was. Mr. Tabata responded that the map was not in evidence and introduced it as a new additional exhibit; and requested that Mr. Eddy provide a map orientation.

Mr. Eddy described the various features of the map and demonstrated the disparity between where the existing "Old Government Road" was in relation to the older references used in the title report and AIS; and concluded that the "Old Government Road" was not in the Petition Area.

County and OP had no questions.

Mr. Tabata stated that the new exhibit would be Petitioner Exhibit 6.

Commissioner Chang requested clarification on the effective dates of the ALTA Tax Map Key (TMK) maps and AIS references that were used by Mr. Eddy. Mr. Tabata provided the effective dates and argued how the “Old Government Road” was not included in the Petition Area.

Commissioner Ohigashi suggested that the Commission move on to further questions from Commissioners. Vice Chair Cabral acknowledged his request and recognized Commissioner Okuda.

Commissioner Okuda requested clarification on the differences between a TMK and ALTA map. Mr. Eddy described the different information that each type of map contained.

There were no further questions for Mr. Eddy. Mr. Matsubara offered the next witness, Todd Beiler.

5. Todd Beiler- Acoustic Engineer

Mr. Beiler provided his professional background and described his contributions and findings to the FEIS.

County, OP and Commissioners had no questions.

Vice Chair Cabral declared a recess at 1:58 p.m. and reconvened the meeting at 2:05 p.m. Mr. Matsubara call his next witness, Thomas Holliday.

6. Thomas Holliday- Housing Market Conditions

Mr. Holliday described his professional background and FEIS research findings for the Commission.

County, and OP had no questions.

Vice Chair Cabral requested clarification on how Proposed Project housing units would be marketed. Mr. Holliday shared possible methods that could be used for offering the housing units.

There were no further questions for Mr. Holliday. Mr. Matsubara had no other witnesses to call and concluded Petitioner's portion of the proceedings.

Vice Chair Cabral asked if County had anything further to add to Mr. Hull's testimony.

AGENCY COMMENTS

County

Mr. Roversi stated that County supported the acceptance of the FEIS and found that the proposed project was consistent with the General Plan.

County, OP and Commissioners had no questions.

OP

Ms. Apuna summarized OP's position of why the FEIS was acceptable for the LUC; and commented that the existence of "Old Government Road" on the Petition Area had not been mentioned in DLNR's review of the FEIS and no road jurisdiction had been determined during OP's review.

There were no questions for Ms. Apuna from County, Petitioner and Commissioners.

REBUTTAL

Mr. Matsubara summarized his presentation and argued why the Commission should accept the FEIS.

There were no further questions.

CLOSING REMARKS

County

Mr. Roversi stated that County had no objections to the FEIS.

OP

Ms. Apuna stated that OP had no further comments.

Commissioners

Commissioner Okuda shared his observations on the Public input and the procedural process to determine the acceptance of the FEIS by the Commission.

DECISION MAKING

Commissioner Giovanni moved to approve the FEIS. Commissioner Ohigashi seconded the motion.

Discussion on the Motion

Commissioner Chang shared her concerns about the “Old Government Road” and whether the FEIS had adequately addressed AIS and CIA matters.

Commissioner Okuda stated his disagreement with Mr. Tabata’s remarks about the compliance of the Petition with the General Plan but acknowledged that it wasn’t a basis to deny the FEIS and would be voting in favor of the Motion.

Commissioners Aczon and Wong stated that they would be voting in favor of the FEIS and shared their respective comments supporting the motion.

Vice Chair Cabral stated that she supported the motion and commented on how the need for housing required balancing several factors to provide a project to meet the demand.

There was no further discussion.

Vice Chair Cabral had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion with the friendly amendment. (7-0-2 excused).

Post Deliberation Remarks

Commissioners Chang and Okuda described to the Petitioner what type of information that they would be seeking when the proposed project returned for Commission consideration in the future.

Due to time constraints, Vice Chair Cabral adjourned the meeting at 2:43 p.m.