

LAND USE COMMISSION
MEETING MINUTES

November 18, 2015 – 9:30 a.m.

Maui Arts & Cultural Center
One Cameron Way, Kahului, Hawaii 96732-1137

COMMISSIONERS PRESENT: Edmund Aczon
Kent Hiranaga
Arnold Wong
Linda Estes
Aaron Mahi
Jonathan Scheuer

COMMISSIONERS EXCUSED: Chad McDonald
Nancy Cabral
(There are currently 8 seated Commissioners out of 9 positions)

LUC STAFF PRESENT: Daniel Orodener, 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 9:31 a.m. and introduced Maui Arts & Cultural Center Representative Mya Awai to provide facility and housekeeping information to the audience gathered for the hearing. (The meeting had been moved to the McCoy Studio Theater from the Haynes Meeting Room to accommodate the large crowd.) Ms. Awai concluded her presentation and Chair Aczon began the proceedings.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the November 4th, 2015 minutes. There were none. Commissioner Estes moved to approve the minutes and Commissioner Mahi seconded the motion. The minutes were approved by voice vote (5 ayes- 1 abstained (Commissioner Scheuer) and 2 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- November 19, 2015 is planned for continued action on this agenda item and Docket No. SP94-386 Lanai Landfill.
- December 9-10 is planned for a status update on A94-706 Ka'onoulu Ranch and a site visit for the anticipated Ma'alaea Plantation 201H project.
- The January 13-14th, 2016 meeting is planned for hearing a Special Permit application on Kauai
- The January 27-28th, 2016 meeting is to adopt the form of the order for the Kauai Special Permit.
- The February 12-13th, 2016 meeting is planned for a hearing on the 201H Ma'alaea Plantation docket.
- The February 24-25, 2016 meetings are planned to complete hearings on the Ma'alaea Plantation docket; and to hear the Motion for Reconsideration for DR08-36 Ko Olina Resort and a follow-up status report for SP09-403 Waimanalo Gulch Sanitary Landfill.
- Any questions or conflicts, please contact LUC staff.

Commissioner Scheuer commented that doing the Ma'alaea site visit in the afternoon might provide the Commission with a better sense of the conditions in the Petition Area. Mr. Orodenker responded that staff would check with the Petitioner on whether a later visit was possible.

ACTION

A10-786 Olowalu Town LLC and Olowalu Ekolu LLC (Maui)

Chair Aczon announced that this was an action meeting to consider the acceptance of Olowalu Town LLC and Olowalu Ekolu LLC's Final Environmental Impact Statement relating to the petition for the reclassification of approximately 320 acres of land situated at Olowalu, Island of Maui, State of Hawaii, from the Agricultural District to the Rural and Urban Districts, Portions of Tax Map Key Nos. (2) 4-8-003:084, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110,111, 112, 113, 114, 115, 116, 117, 118 and 124.

APPEARANCES

Jennifer A. Lim, Esq., Olowalu Town LLC and Olowalu Ekolu, LLC's (OT)

Representative

Onaona Thoene, Esq., OT's Representative

Bill Frampton, (OT)

David Ward, (OT)

Will Spence, Director, Maui County Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel, County
Danny Dias, Planner, County
Bryan Yee, Esq., Office of Planning's (OP) Representative
Rodney Funakoshi, Land Use Administrator (OP)

Chair Aczon updated the record, described the procedures for the hearing and asked if Petitioner had been made aware of and was agreeable to the LUC's hearing expenses reimbursement policy. Ms. Lim noted that the record should also reflect the motion that she had filed prior to the start of the meeting requesting a 15 day extension to the acceptance period of the Final Environmental Impact Statement (FEIS), and acknowledged that Petitioner was aware of and would comply with the reimbursement policy. There were no additional questions or comments on the procedures.

Chair Aczon acknowledged Ms. Lim's remarks about her late filing and then asked if there were any Public Witnesses who wished to testify. Chair Aczon announced that due to the large number of testifiers, a three minute limit on testimony would be enforced.

PUBLIC WITNESSES

Due to the large amount of public witnesses, the minutes will provide a list of the witnesses in the order they testified. (Accept notation indicates that testimony was in favor of the LUC accepting the FEIS. Reject notation indicates that testimony was against the LUC accepting the FEIS. Other notation indicates that the testimony was unclear on accepting or denying the FEIS.)

Please refer to the transcripts for further details of public testimony. Only comments and/or questions asked of testifiers are noted. No notation indicates that no questions were posed to the testifier.

1. Bob Hansen- Accept
2. Clint Hansen- Accept

Commissioner Scheuer thanked Mr. Hansen for his testimony and echoed Chair Aczon's introductory comments; and stated that the intent of this meeting was to determine whether the FEIS, as submitted, met the legal qualifications to be accepted by the Commission. and asked whether Mr. Hansen had any specific comments on the FEIS acceptance. Mr. Hansen replied that he was familiar with the EIS process since his business had required him to have one prepared and provided his perspective of why he thought the FEIS should be accepted.

3. Hinano Kaleleiki - Reject
4. Katherine Kama'ema'e Smith -Accept
5. Kaneloa Kamana -Other

6. Russell Kahookele -Reject

7. Richard Mayer-Reject

Mr. Mayer submitted written testimony to support his stated reasons for the Commission to not accept the FEIS.

Commissioner Scheuer requested clarification on portions of Mr. Mayer's testimony regarding "ohana units", water, schools and beach access issues. Mr. Mayer provided additional details as requested.

8. Hans Michael-Accept

9. Donna Sterling-Reject

Ms. Sterling stated that she was providing testimony on behalf of someone else and read testimony that described why the EIS was not acceptable.

Ms. Lim asked who Ms. Sterling was testifying for. Ms. Sterling replied that she read the written testimony of Donna Brown-Reject.

The Commission went into recess at 10:22 a.m. and reconvened at 10:34 a.m.

Chair Aczon recognized Commissioners Hiranaga and Scheuer.

Commissioner Hiranaga disclosed that he had served on the Maui Planning Commission during the period of time that the Maui Island Plan had been reviewed and had participated in the review of the proposed Olowalu project.

Vice Chair Scheuer noted how the public could contribute to facilitating the hearing process.

10. Patricia Hoskins-Reject

Ms. Hoskins shared her reasons for asking the Commission to reject the EIS.

Commissioner Estes requested clarification on the topic of school overcrowding.

Ms. Hoskins provided her perspective of how this problem could be addressed.

11. Ananda Stone-Reject

Ms. Stone provided her reasons why the Commission should reject the FEIS and displayed pictures of fresh water runoff into the ocean. Commissioner Mahi requested clarification of where the pictures were taken. Ms. Stone replied that they were of West Maui, Honolua and DT Fleming beaches.

12. Laura Van Wagner-Reject

13. Ray Van Wagner-Reject

Mr. Van Wagner shared his concerns regarding traffic and access to Olowalu.

Ms. Lim requested clarification on whether Mr. Van Wagner had any comments regarding the FEIS acceptance. Mr. Van Wagner responded that he thought the purpose of the hearing was to review the project.

14. Sarah McLane Bryan-Reject

Ms. Bryan shared why she thought the EIS was flawed and expressed other environmental threats that she thought the proposed project posed.

Ms. Lim requested clarification on Ms. Bryan's awareness of the Maui Island Plan and the Olowalu Master Plan area. Ms. Bryan responded that she was aware of the plans, and provided her opinion of them.

15. Christine Lamb-Reject

Ms. Lamb stated that she was speaking on behalf of Francois Seneca (Reject) and read his written testimony.

Mr. Hopper asked if a copy of Mr. Seneca's written testimony had been submitted. Ms. Lamb replied that it had not been submitted.

There were no further questions regarding Mr. Seneca's testimony.

Ms. Lamb requested and was allowed to provide additional personal testimony and expressed her perspective on the need for affordable housing in the area and her concerns about the future of her school students.

16. Hannah Bernard-Reject

17. Richard Nelson -Reject

18. Alana Kay -Reject

19. Adeline Kamaile-Olihau Ka'ahui Rodrigues- Accept

20. Kawai Rodrigues- Accept

21. Tiare Lawrence- Reject

Ms. Lawrence stated her opinion that Adeline Rodrigues' comments regarding Auntie Nahooikaika were not accurate and described why she thought the Cultural Assessment portion of the EIS was inadequate; and that the habitat of the Nene goose in the area was being threatened.

Commissioner Hiranaga requested clarification on the remarks made regarding the Nene goose nesting areas.

Commissioner Mahi requested a copy of her testimony.

Commissioner Scheuer asked if Ms. Lawrence was familiar with a place called Kalua Kanaka. Ms. Lawrence replied that she was not.

22. Alicia Kalepa -Other

23. Jay Kalepa -Other

[Mr. Orodener excused himself at 11:36 a.m. and returned at 11:38 a.m.]

24. Michaellyn Blando -Reject

Vice Chair Scheuer asked how many people had already testified, and how many were on the list. Mr. Orodener responded that there were 24 that had testified out of approximately 126 who had signed up to testify.

25. Glenn Kamaka -Reject

26. Brent Schlea – Reject

27. Dana Reed- Reject

Ms. Reed displayed pictures of offshore reefs and opined on why the FEIS failed to demonstrate how reef destruction would be prevented.

Commissioner Estes asked what would provide assurance that no threats to the reef were posed. Ms. Reed replied that she was not sure since there was no clear understanding yet of how to properly develop near shore areas.

Commissioner Scheuer requested clarification on whether Ms. Reed was referring to the construction phase of the development. Ms. Reed described how construction occurring in Mahana Beach Estates was negatively impacting the environment despite using Best Management Practices (BMPs).

Commissioner Hiranaga stated that he was not familiar with the Mahana Beach Estates project and requested clarification on the details of the development. Ms. Reed provided her recollection of the development particulars.

28. Heather Riverstone - Reject

29. Mike Moran - Reject

The Commission went into recess at 12:03 p.m. and reconvened at 1:08 p.m.
Chair Aczon resumed calling Public Witnesses.

30. Gary Savage Reject

31. Mary Tuananio Tahiti- Reject

32. David Jenkins - Reject

33. Jennifer Karaca- Reject

34. Peter de Aquino- Reject

Mr. de Aquino expressed why, as a cultural practitioner/fisherman, he felt the LUC should deny the FEIS.

Chair Aczon declared a recess at 1:26 p.m. and reconvened the meeting at 1:29 p.m.

Commissioner Scheuer asked Mr. de Aquino if fishermen were consulted during the EIS process. Mr. de Aquino responded that he was not aware of EIS inquiries about traditional and cultural practices and shared additional reasons why he felt the FEIS was inadequate and did not offer any mitigations in regards to his concerns.

35. Mark Hyde -Reject
36. Thomas Cook - Accept
37. Alex Dreher -Reject
38. Kellie Pali-Cruz - Accept
39. Amy Fonarow (testified on behalf of Megan Daylor- Reject)
40. Cheryl King- Reject
41. Leonard Nakoa III-Reject
42. Jaclyn Mae Santos-Reject
43. Lawrence Carnicelli- Reject

Mr. Carnicelli shared his concerns about affordable housing and the environment and why he felt more time to review the EIS was necessary.

Ms. Lim stated that she had no questions but wished to state her position that Mr. Carnicelli did not accurately describe the response letter to OP that Petitioner had filed at the start of the proceedings with the Commission.

44. Summer Kupau Odo- Earth Justice and Maui Tomorrow Representative- Reject

Ms. Odo submitted written testimony and provided the reasons why her organization, EarthJustice, felt that the FEIS was inadequate; and that procedural violations had occurred by Petitioner's failing to obtain Federal Agency cooperation during the EIS process.

Commissioner Scheuer asked if Petitioner had received Ms. Odo's testimony and would be prepared to respond to the allegations that had been made. Ms. Lim replied that she had received the testimony.

Chair Aczon declared a recess at 2:16 p.m. and reconvened the meeting at 2:28 p.m.

Ms. Lim requested clarification From M. Odo on where a 404 Permit trigger could be found in the EIS. Ms. Odo replied that Mr. Hodby's Aquatic Features report appeared to be a trigger and explained why jurisdictionally, a Federal Agency should have been included. Ms. Lim described the communications with various Federal Agencies that were part of the EIS. Ms. Odo responded that jurisdictional determinations were not included and that NEPA should be followed. Ms. Odo also described why she thought that a proposed bridge over the Olowalu stream triggered the need for a 404 permit.

Ms. Lim asked if Ms. Odo acknowledged that there had been no jurisdictional determination by the Army Corp of Engineers regarding the offshore waters. Ms. Odo replied that she did and stated that she believed that the FEIS should include a jurisdictional determination of the waters and that since the FEIS did not contain enough information, she could not figure out what communications the Petitioner had with the Army Corp of Engineers.

Ms. Lim requested clarification on Ms. Odo's perception of how the FEIS addressed the proposed highway and realignment; and bridge for the Petition Area.

Ms. Odo described how “dredge and fill” activities might trigger the need for permits and why NEPA policies and guidelines need to be considered further before moving forward. Ms. Odo also cited how the Olowalu Master Plan needed to work in conjunction with other Federal development plans for the region and how addressing NEPA concerns was an integral part of the process.

Ms. Lim asked if Ms. Odo was aware of any Federal funds being designated for highway construction. Ms. Odo responded that she was not and described her understanding of plans that were projected to go into effect in the future as additional development on the island evolved and why funding considerations should be part of the process.

Mr. Yee requested clarification on the Earth Justice letter and on how HEPA/NEPA triggers and cooperation would occur. Ms. Odo shared her perception of why joint cooperation was required during an environmental review and how it should have been applied to the plans for the Petition Area.

Commissioner Wong requested clarification on the interpretation of what “cooperation” meant in the Earth Justice letter and the draft FEIS. Ms. Odo stated that although there was communication, she felt there was no “cooperation” as defined in HAR §11-200-25 and provided her understanding of “cooperation”.

Commissioner Scheuer requested clarification on why Ms. Odo felt a 404 permit would be required and what the LUC had to do procedurally while addressing the acceptance of the FEIS. Ms. Odo provided her understanding of why a 404 permit was required and what procedures the LUC should take.

Commissioner Wong asked for a status report on the number of witnesses that had testified and were waiting to testify. Mr. Orodener provided an update.

Commissioner Wong asked what the legal consequences would be if the Commission were unable to complete its proceedings on this matter. Ms. Erickson described how an automatic acceptance of the FEIS would occur under HAR§11-200-23 (d).

Ms. Lim commented that Petitioner had filed for an extension and provided the reasons why the extension request had been filed. Discussion ensued over the timing of the extension request submittal and to clarify the reasons why Petitioner requested the 15 day extension and that the extension was not for the benefit of the Commission but for the benefit of the Petitioner.

Chair Aczon declared a recess at 3:06 p.m. and reconvened the meeting at 3:17 p.m.

Chair Aczon asked if there were any other questions for Ms. Odo. Commissioner Estes stated that she had a question for Ms. Lim. Chair Aczon excused Ms. Odo.

Commissioner Estes requested clarification on whether the Petitioner was asking for more time. Ms. Lim stated that Petitioner was requesting additional time and provided additional explanation for filing for an extension.

Chair Aczon resumed hearing Public Witnesses and described how the hearing would proceed over the course of the two days allotted for it.

45. Austin Kalama- Reject

46. Mike Foley- Reject

Mr. Foley submitted written testimony and described why he thought the draft FEIS was deficient.

Commissioner Scheuer requested clarification on Mr. Foley's comments regarding fires. Mr. Foley described how wildfires posed a threat to the community and impacted area traffic.

47. Joe Kent- Other

48. Frank Caprioni- Reject

49. Susan Bradford- Reject

50. Okiana Kalama-Reject

51. John Fitzpatrick- Reject

52. Dr. Kelii Akina- Accept

Dr. Akina described why the LUC should accept the draft FEIS.

Commissioner Scheuer requested clarification on Dr. Akina's comments on caring for the land. Dr. Akina expressed how he thought the land would be better cared for if the proposed project was developed.

53. Doris Lang- Reject

54. Gordon Firestein- Reject

55. Peter Fallon- Reject

56. Gerald Durkan, MD- Reject

57. Kalei Kauhane- Other

58. Mahie Atay- Reject

59. Albert Perez- Maui Tomorrow Foundation- Reject

Mr. Perez submitted written testimony and shared the reasons why his organization opposed the LUC's accepting the FEIS.

Commissioner Scheuer requested clarification on whether the proposed FEIS could meet the legal standards as described in Mr. Perez's testimony. Mr. Perez responded that it was possible and stated what he felt was needed for the FEIS to be acceptable.

60. Iris Riverstone- Reject

61. Jerry Riverstone- Reject

62. Keamalu Akina- Reject

63. Lucienne de Naie- Sierra Club- Maui Chapter Representative- Reject

Ms. de Naie provided the reasons why her organization did not want the LUC to accept the FEIS.

Commissioner Scheuer requested clarification on Ms. de Naie's remarks regarding water originating from State lands and who was responsible for managing this issue. Ms. de Naie provided her understanding of the situation.

Chair Aczon declared a recess at 4:32 p.m. and reconvened the meeting at 4:50 p.m.

64. Robert Wintner- Reject

65. Zane Kekoa Schweitzer- Reject

66. Snake Ah Hee- Reject

Mr. Ah Hee stated he objected to the proposed project and shared his reasons why.

Commissioner Scheuer requested clarification on Mr. Ah Hee's participation during the Cultural Impact Assessment portion of the EIS and how the proposed project would negatively impact the environment. Mr. Ah Hee responded that he had not been consulted during the EIS process and shared how his traditional and customary native Hawaiian practices would be affected by the proposed project.

67. Joseph Barone- Reject

68. Lauren Blickley- Surfrider Foundation- Reject

69. Ryan Aspili- Reject

70. Linda Nahina Magalianes- Reject

71. Carol Lee Kamekona- Other

72. Anu Yagi-Reject

73. Jan Ferguson- Reject

74. Sara Tekula- Reject

75. Rikki Torres-Pestana- Other

76. Ed Kaahui- Accept

77. Myrna Ah Hee- Reject

Ms. Ah Hee shared her reasons for the LUC to not accept the FEIS.

Commissioner Hiranaga thanked Ms. Ah Hee for her testimony.

78. Robin Niebold-(on behalf of Pauline Fine)-Reject

79. Tegan Hammond- Reject

80. Connie Applegate- Accept

81. Mark Deakos.- Reject

Commissioner Scheuer asked if Mr. Deakos had written testimony to submit. Mr. Deakos responded that he did.

82. Thelma Kaahui- Accept

Chair Aczon asked if there were any other public witnesses. There were none.

Chair Aczon stated that the Public Witness portion for A10-786 Olowalu of the November 18-19, 2015 hearing had concluded and described the proceedings for the remainder of the docket.

Discussion ensued to clarify how the proceedings would move forward. Chair Aczon stated that the proceedings would resume on November 19th, 2015 at 08:30 a.m. at the MACC theater and declared a recess at 6:19 p.m.