

- A86-599 Kona Beach Dev. Venture Vol. 2

MOTION FILED:	ATTORNEY FOR PETITIONER	
DOCKET NO./PETITIONER:		
8 A06-599 Kona Beach Development Venture LP Kohanaiki, Kona, Hawaii		
STATE	ATTORNEY FOR STATE	
Laura Thielen, Director Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804-2359	Bryan Yee, Esq. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, HI 96813	
COUNTY	ATTORNEY FOR COUNTY	
Christopher Yuen, Director County of Hawaii, Planning Department Aupuni Center 101 Pauahi Street, Suite 3 Hilo, Hawaii 96720	Lincoln Ashida, Esq. Corporation Counsel County of Hawaii 101 Aupuni Street, Suite 325 Hilo, Hawaii 96720	
INTERVENOR		
PUBLIC WITNESS		
DATE		Initial
10/25/06	Mailed agenda for Nov 2-3, 2006 meetings to parties and mailing lists.	SM
11/2/06	Field trip conducted at project site.	SM

PUBLIC WITNESS SIGN IN SHEET

Please indicate your address if you would like to receive future notices regarding this docket.

DATE: _____

DOCKET NO.: _____

Please PRINT name	Organization	Address	Zip Code
1. National Park Service (Sallie Beavers)	NPS	Kalo Ko Honokohau NHP 73-4786 Kana Iani St #14 Kailua-Kona, HI	96745
2. Ruby Leunaaime McDonald	Na Hoapili Kaloko-Honokohau Advisory Commission SAN FRANCISCO	P.O. Box 85 Kailua-Kona, HI 96745-0085	
3. Norma & Boag	Ret SF WATER DEPT	73-4102 Kauai PL K-1467460	
4. Mikahala Ray	Kūlana Huli Honua	P.O. Box 596 Kailua-Kona, HI 96745	
5. Ray Palauat	Kūlana Huli Honua	P.O. Box 696 Kailua-Kona, HI 96745	96745
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7.			
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arrived
after
close
of
public
testimony

ME

LAND USE COMMISSION
NOTIFICATION OF LAND USE COMMISSION MEETING
DATE, TIME AND PLACE

November 2, 2006 – 10:00 a.m.

November 3, 2006 – 8:30 a.m.

King Kamehameha's Kona Beach Hotel
75-5660 Palani Road
Kona, Hawaii

A G E N D A

I. CALL TO ORDER

II. ADOPTION OF MINUTES

September 21, 2006 and September 22, 2006

III. TENTATIVE MEETING SCHEDULE

IV. ACTION – November 2, 2006

1. A05-761 ERIC A. KNUDSEN TRUST (Kauai)

To consider acceptance of Eric A. Knudsen Trust's Final Environmental Impact Statement for the reclassification of approximately 127.4 acres of land currently in the Agricultural District to the Urban District at Poipu, Koloa, Kauai for residential, park, and archaeological preserve uses.

2. A06-763 KAPELEI PROPERTY DEVELOPMENT, LLC (Oahu)

To consider acceptance of Kapolei Property Development, LLC's Final Environmental Impact Statement for the reclassification of approximately 344.519 acres of land currently in the Agricultural District to the Urban District at Ewa, Oahu, Hawaii for business industrial park uses.

V. FIELD TRIP – November 2, 2006

3. A86-599 KONA BEACH DEVELOPMENT VENTURE, L.P. (Hawaii)

Meet at the King Kamehameha's Kona Beach Hotel at 3:00 p.m.

VI. ACTION – November 3, 2006

1. A86-599 KONA BEACH DEVELOPMENT VENTURE, LP (Hawaii)

Status report and appropriate action.

The Commission may elect to consult with counsel in executive session pursuant to Section 92-5, HRS. Persons with disabilities who need accommodation should call (808) 587-3822 no later than 12:00 noon, 2 business days before the date of the meeting. The mailing address for the Land Use Commission is P.O. Box 2359, Honolulu, Hawai'i, 96804-2359. Some materials for these agenda items may be available on our website at <http://luc.state.hi.us>.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the matter of the Petition

Of

)

)

) CERTIFICATE OF SERVICE

- A86-599 Kona Beach Development Venture,)
L.P. (Hawaii))
• A05-761 Eric A. Knudsen Trust (Kauai))
• A06-763 Kapolei Property Development,)
LLC (Oahu))
)

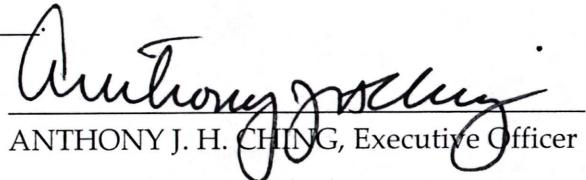
CERTIFICATE OF SERVICE

I hereby certify that a copy of the November 2-3, 2006 amended agenda was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular mail as noted:

DEL:	Laura Thielen, Director Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804	Bryan Yee, Esq. Deputy Attorney General 425 Queen Street Honolulu, Hawaii 96813	Lincoln Ashida, Esq. Corporation Counsel County of Hawaii 101 Aupuni Street, Suite 325 Hilo, Hawaii 96720
	Christopher Yuen, Director Planning Dept. County of Hawaii 101 Pauahi Street, Suite 3 Hilo, Hawaii 96720	Carrie Okinaga, Esq. Corporation Counsel City and County of Honolulu 530 South King Street Honolulu, HI 96813	Mr. Henry Eng, Director Department of Planning and Permitting 650 South King Street Honolulu, Hawaii 96813
	Ian Costa, Director Department of Planning County of Kauai 444 Rice Street, Suite A473 Lihue, Hawaii 96766	Lani Nakazawa, Esq. Corporation Counsel County of Kauai 444 Rice Street, Suite 220 Lihue, Hawaii 96766	Walton D.Y. Hong, Esq. 3135-A Akahi Street Lihue, Hawaii 96766
	Benjamin A. Kudo, Esq. 745 Fort Street Twr, 17 th Fl Honolulu, Hawaii 96813	R. Ben Tsukazaki, Esq. 85 W. Lanikaula Street Hilo, Hawaii 96720	

OCT 25 2006

Dated: Honolulu, Hawaii, _____


ANTHONY J. H. CHING, Executive Officer

(2) Sandy file

U.S. Fish & Wildlife Service**Fax**

To: 1) Tony Ching / Max Rogers - LUC
2) Salte Bela - KATHO

Fax Number: 1) (808) 587-3827
2) (808) 329-2597

From: Gordon Smith
USFWS - DI-FWDO

Date: 11/2/06

No. of pages, including cover: 3

Notes/Comments:

Please ensure that the attached comments
are considered by the Land Use Commission.

LAND USE COMMISSION
STATE OF HAWAII
LUCB NOV-3 A 9:37

Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
P.O. Box 50088 • Honolulu, HI 96850
Phone: (808) 792-9400 • Fax: (808) 792-9581



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850



In reply refer to:
PN 06-390

NOV

Anthony Ching, Executive Officer
Land Use Commission
Department of Business, Economic Development
and Tourism
P.O. Box 2359
Honolulu HI 96804

42 2006
4pm NOV - 3 A 9:37
LAND USE COMMISSION
STATE OF HAWAII

RE: Shores at Kohanaiki/LUC Docket No. A86-599

Dear Mr. Ching:

The State Land Use Commission (LUC) is scheduled to meet on November 2 and 3, 2006. On the agenda is a status review the proposed Shores at Kohanaiki project. To assist with the LUC evaluation of the project the U.S. Fish and Wildlife Service offers the following comments.

The Shores at Kohanaiki project includes construction of a golf course, 500 single family homesites and related infrastructure in the North Kona District of the Island of Hawaii. The project location is adjacent to Koloko-Honokohau National Historical Park. Proposed project infrastructure lies in close proximity to the park's high-value natural resources and historical features.

It is our understanding that the Land Use Commission directed the project developer to design a storm water drainage system that does not adversely impact wildlife habitat at Koloko Pond, in coordination with the U.S. Fish and Wildlife Service (Service) and other resource agencies. The developer was also directed to design and implement an anchialine pond management plan in coordination with the Hawaii Department of Land and Natural Resources and other appropriate agencies, presumably including the Service.

Although our office has occasionally received copies of permit applications, studies, and reports related to the proposed project, no specific request was made to the Service to participate in cooperatively planning for protection of Koloko Pond, anchialine ponds, or other natural resources of concern in the project area in compliance with the conditions of the land use order. Our environmental review of potential project impacts is incomplete and important issues, such as potential indirect impacts to endangered species and their habitat at Kaloko Pond, have not been fully addressed. As a result, we recommend that the LUC direct the project developer to work with the Service and other resource agencies to ensure satisfactory compliance with the special conditions of the land use decision in order to fully achieve the resource conservation goals at the Kohanaiki project site and adjacent areas.

Mr. Anthony Ching

Page 2

If you have questions regarding these comments contact Fish and Wildlife Biologist Gordon Smith at (808) 792-9400.

Sincerely,



Patrick Leonard
Field Supervisor

cc DOFAW, Honolulu
DLNR-DAR, Honolulu
Kaloko-Honokohau NHP

FIELD TRIP
November 2, 2006
3:00 p.m.

A86-599 Kona Beach Development Venture, L. P.

COMMISSIONERS PRESENT: Michael Formby
Steven Montgomery
Randy Piltz

COMMISSIONERS ABSENT: Tom Contrades
Kyong-su Im
Lisa Judge
Duane Kanuha
Nicholas Teves, Jr.
Reuben Wong

STAFF PRESENT: Anthony Ching
Maxwell Rogers
Diane Erickson

PARITIES PRESENT: Petitioner:
Dave Eadie
Dennis Frost
Richard Brock

Office of Planning:
Abe Mitsuda
Bryan Yee

Public:
Walter Mensching
Richard Boston
Rick Gmirkin
Ruby McDonald
Les Inafuku
Trish Malone
Sallie Beavers
Brenda Lee

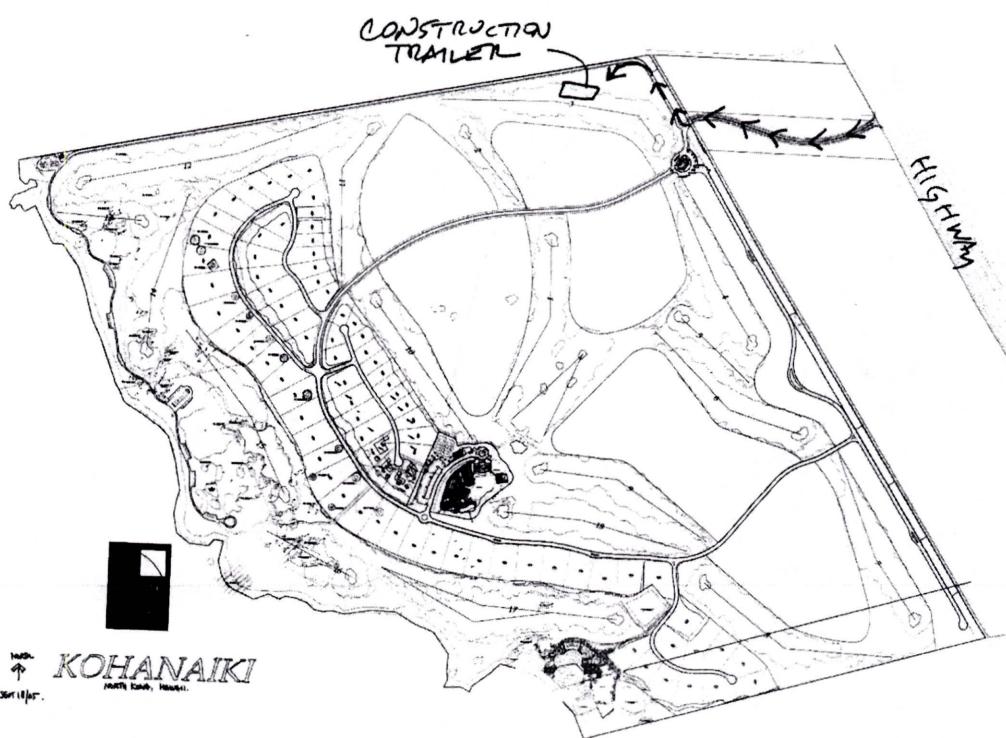
The field trip began at 3:25 p.m.

The attendees met at the Project's on-site construction trailer for an introduction and orientation to the Petition Area. The attendees then proceeded to the first stop of the field trip which was the makai limits of the Project's residential lots to view several of the nearby anchialine ponds.

The attendees then proceeded to the second stop of the field trip which is a future residential pod identified on the Project's construction plans as "area 4".

The third and final stop of the field trip was to examine the historically significant "Kings Trail" as it bisects the Petition Area from the vantage point of the Project access road.

The field trip concluded at 4:40 p.m.



↑ KOHANAKI



Harry Kim
Mayor

✓ sandy-rie
X-LUC, Diane, Max
have a copy

Christopher J. Yuen

Director

LAND USE COMMISSION
STATE OF HAWAII

Brad Kurokawa, ASLA

LEED® AP

Deputy Director

2006 OCT 31 A 459

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

October 30, 2006

Ms. Lisa Judge, Chair
and Members of the Land Use Commission
LAND USE COMMISSION
PO Box 2359
Honolulu, HI 96804

Dear Chair Judge and Members of the Land Use Commission:

SUBJECT: KOHANAIKI

This letter is to give the members of the Land Use Commission and its staff some background on the Kohanaiki project. The project is being reviewed by the LUC for one issue: the 40' anchialine pond buffer. The Planning Department has interpreted that condition to forbid major construction within 40' of the edge of any anchialine pond, but consistent with at least one other project, has approved an anchialine pond management plan that allowed some actions closer than 40', such as turf for the golf course, provided that it not be closer than 20' from the pond edge.

I will discuss the pond issue in more detail later in this letter, but first wanted to review the overall history of Kohanaiki to put this in a context. The decision about the anchialine pond buffers was just one of literally hundreds of decisions that have been made in the management of this project. We have a 2.5" thick binder of "Regulatory Documents" for this project that the Planning Department must administer, including the LUC Decision and Order, county zoning ordinance, SMA permit, archaeological preservation plan, burial treatment plan, anchialine pond management plan, Army Corps of Engineers permit, and several other permits. Most of the issues we deal with are the result of the very detailed and stringent SMA permit conditions. We have conditions on the height of the houses, the overall sightlines, the historic site buffers, landscaping and many other issues.

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and Members of the Land Use Commission
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This project was originally reclassified from Conservation to Urban by the Land Use Commission by Decision and Order dated January 30, 1987. The project at that time contained a total of 1,850 residential and hotel units (two hotels), a golf course, a 150-250 slip marina, and 20,000-35,000 square feet of commercial space. The LUC reclassified the property to the Urban District from the Mamalahoa Trail (which is about 3,000'-4,000' inland) right up to the shoreline. The D&O did not have the condition that one sometimes sees in later LUC actions stating that the "project must be developed in substantial conformance to representations made" or similar language.

In 1988, Hawaii County rezoned most of the property from Open to hotel, commercial, and single-and multi-family residential use. The rezoning ordinance described a project of about 1,950 units, although considerably more units actually could have been built under the zoning. The zoning included hotel sites adjacent to the shoreline, and one hotel site and a separate multi-family building site abutting the Kaloko-Honokohau National Historical Park boundary.

In 1990, the project received an SMA permit from the Hawaii County Planning Commission for a project of about 1,850 units. The project still included two hotel sites, with some buildings located no more than the minimum 40' from the certified shoreline. This SMA permit was overturned on appeal by the Hawaii Supreme Court in 1993 on the grounds that the Planning Commission had failed to adequately address native Hawaiian rights and had improperly denied standing to intervenors.

The project then had little action for a decade because of the weak development climate and litigation over title.

After the current county administration came into office in December 2000, we identified several long-term goals for Kohanaiki. Over the years, it had become one of the favorite areas in Kona for ocean recreation. People had grown accustomed to access along the coast via 4WD trail. Our goals were to preserve public use and public access to the coastline, and protect the sensitive natural and cultural resources, particularly the anchialine ponds, historic sites and burials. The final objective was that any development had to be compatible with those goals, and had to include a substantial open space buffer from the shoreline.

Although we respected and sympathized with the fact that many people who cherish Kohanaiki wanted to see no development at all, the county was not in a financial position to purchase the property in 2001-2002, and although any development would still need an

Ms. Lisa Judge, Chair
and Members of the Land Use Commission
LAND USE COMMISSION
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SMA permit, the property did have valid zoning. There were also significant management problems with the informal use of the area, so an indefinite continuation of the status quo did not seem like the best course.

The county administration met with several prospective developers whose plans were not compatible with these goals in the 2001-2002 period. We then began meeting with the current developer, Rutter Development, and after a long series of negotiations and discussions with members of the public with special affinity and concern for Kohanaiki, were able to agree on a development scenario that achieved a general consensus of support within the Kona community. This development was approved by the Planning Commission in December 1993, with an SMA permit including 88 specific conditions, and a use permit (for the golf course) with 52 conditions.

This involved many compromises between what the developer would have wanted and some of the desires of the county and public, but it is a project that protects the important resources and has tremendous public benefits. Hawaii County is proud of the collaborative process between community and developer that led to this, and is happy that we were able to come to a resolution that provides an economic use of the property to the owner while securing these overall public benefits.

The key points are:

- The entire shoreline, about a mile long, and comprising about 40 acres, will be donated to the county as a public beach park.
- The developer will construct the beach park, including public access road, public restrooms, camping areas, 121 parking stalls, a canoe halau, and will pay 1/3 of the annual maintenance cost of the park.
- The area immediately mauka of the county beach park, consisting of approximately 63 acres, will also be donated to the county; the developer will retain an easement to operate the golf course on this property.
- The development will not include any hotels. It is limited to 500 single-family and duplex units, which will be set back a minimum distance of 500'-800' from the shoreline. The only private facility that approaches the shoreline is a residents' beach club limited to 8,000 square feet.

Ms. Lisa Judge, Chair
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LAND USE COMMISSION
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- The anchialine ponds, and all historic sites recommended for protection by the State Historic Preservation Division, will be preserved.

Turning now to the specific issue of the anchialine pond buffer, the LUC D&O, condition No. 3, required an anchialine pond management plan. It stated that the management plan should include a 40' buffer, but did not specify exactly what this meant, for example, whether it was a buffer against buildings, or whether it also included things like landscaping or golf course turf. There was precedent on this, however: the Kuki'o Resort has a similar anchialine pond 40' buffer requirement in its LUC D&O, but Hawai'i County later approved a pond management plan, in 1991, amended in early 2000, that allowed some minor construction such as footings and supports and landscaping within the 40' buffer. We are not aware of any complaint about this anchialine pond management plan, which has been followed at Kuki'o for many years.

Rutter commissioned a more detailed anchialine pond survey in 2003, done by Dr. Richard Brock. It had been known since the 1970's that Kohanaiki had the largest assembly of anchialine ponds in the state, but Dr. Brock's 2003 study greatly expanded the number and scope of the ponds from that in the 1986 EIS, which had been the basis for the LUC action in 1987.

After reviewing Dr. Brock's 2003 maps, we saw that certain elements of the overall land use compromise would be difficult to implement if the 40' anchialine pond buffer meant that a 40' buffer around the edge of each pond had to be kept in absolutely natural condition. For example, there is one spot where it is almost impossible to build the lateral coastal public access road without being within 25' of an anchialine pond. The land use plan involved the use of the golf course as an open space buffer between the private residential area and the public park, to keep a sense of open space along the shoreline. This is also the area that includes most of the ponds.

We believed that a 20' distance was adequate to protect the ponds from the possible negative effects of turf. It is enough to prevent dirt from being deposited into the ponds during construction of the golf course, and to protect them from the direct application of fertilizer. The potential change in nutrient levels of groundwater from golf course fertilization is a major concern, but that is best controlled by good management of the golf course. A 20' distance versus a 40' distance is not significant for the movement of groundwater. There are a number of conditions in the SMA permit that cover golf course fertilization.

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For these reasons, the SMA permit specifically allowed some minor construction, such as portions of the lateral access road, within the 40' pond buffer, and allowed turf within 20'. Again, we considered this a reasonable interpretation of the LUC condition.

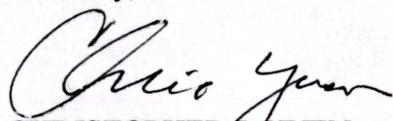
The 40' and 20' buffer requirements are specifically stated in the SMA permit conditions, which were publicly available before the Planning Commission hearing. The approved anchialine pond management plan has a similar condition, and has more details about how the ponds should be managed.

Most of the ponds are clustered together in the makai side of the property, and for the most part, are surrounded by natural lava. The areas where turf will be placed between 20' and 40' from the pond edges are primarily at the mauka edges of some of the pond complexes, and around a few isolated ponds that are in mauka areas.

We understand that the developer will be bringing Dr. Brock to discuss anchialine ponds at the LUC meeting November 3, and that he will discuss the survival of the anchialine pond ecosystems near golf courses at other West Hawaii resorts.

I will be at the hearing and available to answer questions the commissioners may have about the Kohanaiki project. I hope that the commissioners find this letter helpful, and those that went on the site visit had a chance to look at our future county beach park.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

CJY:pak
Wpwin60/Chris2/Kohanaiki LUC letter

cc: Mr. Anthony Ching, LUC
Office of Planning
Rutter Development
Dr. Richard Brock
SMA 439



JOHN MICHAEL WHITE
<JMW@HAWAII LAND.COM>
10/26/2006 07:28 PM

To LUC - FRED <luc@dbedt.hawaii.gov>
cc
bcc
Subject A86-599 KONA BEACH DEVELOPMENT VENTURE

Aloha Tony, Fred,

I saw the notice on the above today setting a "field trip" for 11/2/06 and while I remember a proposal by Kona Beach years ago I have not seen anything recently on it in your notices. I looked up:

KONA BEACH DEVELOPMENT VENTURE
KONA BEACH DEVELOPMENT CORPORATION

and I note that BOTH have been "INVOLUNTARILY DISSOLVED" by the state of Hawaii long ago.

Can you please enlighten me as to what's up with this matter now and as the entities show as being dissolved when I check with the state site Hawaii.gov a few minutes ago who the current principals are and their current plan?

Please email me or feel free to call me on my cell 927-1010. I'll be Kona tomorrow, Oahu Monday and note that the field trip is coming up soon.

Mahalo,

John Michael White
JMW:m

::

SENDER ID FOR REPLY:

COMPANY:	HAWAII LAND COMPANY
SENDER/TITLE:	John Michael White, President
E-MAIL ADDRESS:	jmw@HawaiiLand.com
P-MAIL ADDRESS:	PO Box 10, Honolulu, HI 96810
TELEPHONE:	(808) 523-1000 ext 10
FACSIMILE:	(808) 524-6010

::

LAND USE COMMISSION
STATE OF HAWAII
OCT 27 A 7:56

National Park Service
U.S. Department of the InteriorKaloko-Honokohau
National Historical Park73-4786 Kanalani Street # 14
Kailua-Kona, Hawai'i 96740808 329-6881 Phone
808 329-2597 Fax

✓ Sandy file
for Max
me

Kaloko-Honokohau Fax

To:

Anthony Ching, LWC

Fax Number:

808 587-3827

From:

Sallie Beaver

Date:

10/11/06

Pages to Follow:

2

LAND USE COMMISSION
STATE OF HAWAII
2006 OCT 10 P 2:10

Comments: Tony - Here is the County of Hawaii's response to NPS letter of 21 June 2006 regarding, among other things, LWC conditions. You are not on the cc list. We are also concerned about condition #6, storm water drainage. The developer's current plan has connected the watershed drainage basin to their development and routes it directly to Kaloko fishpond. The developer is aware of our concern and is hopefully creating a new grading plan for drainage.

Thanks, Sallie

EXPERIENCE YOUR AMERICA

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

Harry Kim
Mayor



Christopher J. Yuen
Director
Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

August 11, 2006

Ms. Geraldine K. Bell
Superintendent
National Park Service
U.S. Department of Interior
73-4786 Kamalani Street #14
Kailua-Kona, HI 96740

Dear Ms. Bell:

**SUBJECT: SHORES AT KOHANAIKI: SPECIAL MANAGEMENT AREA
USE PERMIT NO. 439, USE PERMIT NO. 197, AND USE
PERMIT NO. 198**

I am writing in response to your letter of June 21, 2006, raising some questions about the ongoing Kohanaiki development. I apologize for this late response.

The County of Hawaii shares the commitment of the National Park to preserving the natural and cultural resources within Kohanaiki and Kaloko-Honokohau. Because of these concerns, we negotiated a development with the landowners that has a much lower density, and a much lower impact on those natural and cultural resources, than allowed by the zoning of the property, which included a hotel site and multi-family apartment zoning immediately adjacent to the Park boundary. The resulting development is far more compatible with the National Park than the development allowed by the 1988 zoning, or by the previously approved SMA permit, or by many of the development proposals that the County administration considered and rejected before deciding to work with Rutter Development.

Hawai'i County is an Equal Opportunity Provider and Employer.

Ms. Geraldine K. Bell
Superintendent
National Park Service
U.S. Department of Interior
Page 2
August 11, 2006.

We will work to protect the viewplanes from the Park, and to protect the Park from direct impacts from runoff or other aspects of the Kohanaiki development.

We are also looking forward to working closely with the National Park during the establishment of the County public coastal park at Kohanaiki. We believe these can be highly complementary projects and that we have much to share for the public good.

We also know that in a major development project such as Kohanaiki, which is subject to several sets of land use regulations, including the LUC Decision and Order, the County zoning, the SMA permit and Use permit, an anchialine pond management plan, historic sites preservation and burial plans, a water quality monitoring plan, and others, that there will be issues over the interpretation of various permit conditions. When there are gray areas in the interpretation of conditions we try to take a reasonable approach and look at the ultimate purposes served by the permit conditions and regulations, and make sure that the intent of the condition is protected in any interpretation.

Turning to the specific questions:

You have a concern about the depth of fill in Area 4, an area of about 12 acres next to the park boundary. The SMA permit limits fill to five feet above natural grade, but there are locations within Area 4 where the fill is as much as ten feet above the former surface of the land immediately below it. Much of Area 4 is little elevated by fill, however. Rutter filled up some low areas basically to the level of the highest natural surface in Area 4. The permit is not entirely clear on how to interpret this "five foot" requirement on an undulating, irregular surface. In this case, we must go back to the basic purpose of the condition. In recent years, we have seen developments which greatly increased the elevation of property, building artificial hills, to make better views for homesites. The purpose of this condition was to prevent that at Kohanaiki: to keep the views from the Queen Kaahumanu Highway to the sea, and to reduce visual intrusion into the National Park or on the experience of beachgoers. In Area 4, however, the extra fill is not going to result in taller structures because Condition 7 limits houses to no more than 30' above natural grade. Where the fill is 10' deep directly below a homesite, the home cannot be more than 20' tall, measured from the top of the fill. The fill may actually make it easier to implement the landscaping plan to screen this area from the Park, by giving the plants a head start.

Ms. Geraldine K. Bell
Superintendent
National Park Service
U.S. Department of Interior
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August 11, 2006

Number of lots in Area 4: Condition 10-C provides that "the number of lots and setbacks in Area 4 may not be altered with respect to the present National Park boundary." The clause "with respect to the present National Park boundary" means that the number of lots adjoining the boundary in Area 4 cannot be increased from the approved Site Plan. This remains at 3 lots. We are concerned, as I am sure that the Park is, with the potential visual impact from Area 4 into the Park. The applicant must follow up on Condition 9, which requires that a landscaping plan be implemented to shield the residences from views from the National Park. This requires a more specific viewplane analysis than has been done to date. We would like to see some sensitive combination of design controls and landscaping to limit visual impacts from Area 4. We do not believe, however, that the addition of one lot in Area 4 materially changes the viewplane impacts. The additional lot was added at the northeast corner of Area 4, which is the farthest part of Area 4 from the park boundary.

Buffer area adjoining National Park: Condition 10-D says that "no facilities may be developed within 400' of the present National Park boundary except as shown on the Site Plan." The Site Plan shows Area 4, so the development of homes in Area 4 is allowed. You refer to a "100' buffer and building setback" shown on Ex. 2-3 to the SMA Permit application, which shows the zoning of the property. On this map, this buffer extends from the shore inland a distance of about 1500' along the Park boundary. This is the only mention of this buffer in the SMA permit application. It is not on the various site plans showing how the applicant intends to develop the property. (Rutter believes it was mistakenly included when they copied something from an earlier application.) Because this 100' buffer is not on the Site Plan, and is not an express condition of the SMA permit or any other land use regulation, it is not a requirement, and the only setback from the National Park boundary is the normal building setback. There will, however, have to be some setback to accommodate the landscaping.

Drainage: The Planning Department received a preliminary drainage plan, which showed that all project-generated water was detained on-site, and that the off-site flow from mauka would also be substantially detained within the Kohanaiki property, to a greater extent than existing conditions. They now have final plans and Rutter has assured me that they will review them with the National Park as required by the condition.

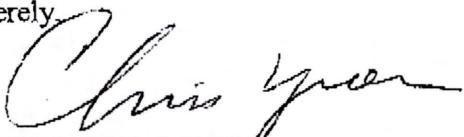
Anchialine ponds, particularly the 40' buffer in the LUC Decision and Order. First, to put this in perspective: the LUC was working from the 1986 EIS, which showed far fewer anchialine ponds than we now recognize. Rutter commissioned a pond study by

Ms. Geraldine K. Bell
Superintendent
National Park Service
U.S. Department of Interior
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August 11, 2006

Dr. Brock which identified more anchialine ponds, and all of these are now being protected. The Decision and Order was not specific as to what was prohibited within the 40' buffer, and clearly anticipated that there would be a more specific management plan. That plan was prepared by Dr. Brock, one of the leading authorities on anchialine ponds. We interpret the 40' as applying to major structures, consistent with other situations in West Hawaii. The SMA permit and management plan are more specific in limiting turf and other plantings requiring irrigation and fertilization to at least 20' from the edge of ponds. We believe that this is adequate to prevent fertilizer or pesticide/herbicide drift into the ponds. Nutrient loading of ponds from water leaching through the golf course is a major concern, but that is best handled by good management of the golf course, rather than distance.

I hope these answer your questions and I look forward to meeting with you, your staff and the Advisory Council on September 1st.

Sincerely,

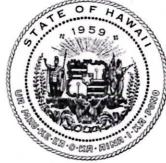


Christopher J. Yuen

CHRISTOPHER J. YUEN
Planning Director

CJY:pak
Wpw1n60/Chris2/Kohanaiki Geni Bell letter

cc: Mayor Harry Kim
Mr. Norman Hayashi
Mr. Bennett Mark
Mr. Daryn Arai
Mr. Dave Eadie



STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

LAND USE COMMISSION

P.O. Box 2359
Honolulu, Hawaii 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

September 20, 2006

Mr. Dave Eadie, Chief Executive Officer
Rutter Development Corp.
18012 Cowan #200
Irvine, California 92614

Dear Mr. Eadie:

Subject: LUC Docket No. A86-599/Kona Beach Development Venture, L. P.
Tax Map Key Nos.: 7-3-009: 003 and 016

In response to concerns raised by the superintendent of the National Park Service Kaloko Honokohau National Historical Park that "development at Kohanaiki has the potential to greatly impact the valuable resources" within the national park, Land Use Commission (LUC) staff has:

- conducted a site visit of your development in May 2006;
- reviewed materials developed by your staff and consultants; and
- engaged in telephone discussions with you and your POND MANAGER and SCIENTIST – Dr. Richard Brock.

Although you and your staff have been most cooperative and have indicated that all of your actions have been consistent with the Commission's 1987 order in this docket, you and/or your representative are requested appear before the Land Use Commission at its meeting on November 2 & 3, 2006 in West Hawaii, to present a status report on the progress of the Project and for the Commission to take any appropriate action.

Your status report will give you an opportunity to describe efforts made by the Petitioner to comply with: 1) the conditions of approval imposed in the Findings of Fact, Conclusions of Law, and Decision and Order dated January 30, 1987; and 2) the

Mr. Dave Eadie, Chief Executive Officer
September 20, 2006
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representations and commitments made by the Petitioner in securing the district boundary amendment. You will be notified of the specific time and location prior to the meeting.

It is important to note that while LUC staff is authorized to conduct site visits, assemble information and complete its analysis, it is only the Commission itself that is empowered by law to administer the State Land Use Law (Chapter 205 Hawaii Revised Statutes). Accordingly, the occasion of your status report will enable the Commission to receive any public comment on the docket, hear your report addressing compliance with the Commission's order dated January 30, 1987 and issue any rulings on matters relative to this docket.

Please feel free to contact Max Rogers of my office at 587-3822, should you require clarification or any further assistance.

Sincerely,

Anthony J. H. Ching
ANTHONY J. H. CHING
Executive Officer

c: Bobby Jean Leithead-Todd, Deputy Corporation Counsel
 Christopher Yuen, County of Hawaii, Planning Department
 Bryan Yee, Deputy Attorney General
 Laura Thielen, State of Hawaii, Office of Planning
 Geraldine Bell, National Park Service