

LAND USE COMMISSION  
MINUTES OF MEETING

November 3, 2006

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

COMMISSIONERS PRESENT: Michael Formby  
Lisa Judge  
Duane Kanuha  
Steven Montgomery  
Ransom Piltz

COMMISSIONERS ABSENT: Thomas Contrades  
Kyong-su Im  
Nicholas Teves  
Reuben Wong

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Anthony Ching, Executive Officer  
Maxwell Rogers, Staff Planner  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 8:40 a.m.

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

Chair Judge stated that is was an action meeting on Docket No. A86-599 Kona Beach Development Venture, LP for a status report and appropriate action, if any.

Chair Judge noted that no action or pleading has been filed by the petitioner as of this date. Yesterday, the Commission had the opportunity to visit this docket site.

### APPEARANCES

Dave Eadie, represented Rutter Development

Richard Brock, Consultant for Rutter Development

Chris Yuen, Director, County of Hawaii Planning Department

Bobbie-Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

### Public Witnesses

#### 1. Sally Beavers

Ms. Beavers stated that she was an ecologist at the Koloko-Honokohau National Park and that the National Park Service (NPS) was a non-party in this matter. Ms. Beavers stated that the NPS is requesting that the LUC protect the park and the shorelines and expounded on their concerns relating to the significant cultural and natural resources in the project area. Ms. Beavers stated that the NPS is concerned that the EIS is 20 years old and does not represent the current impacts. Ms. Beavers also discussed a need for the buffer between the development and the national park, protecting the cultural and natural resources, storm drainage plans, the coastal zone management, and the anchialine ponds.

Commissioner Kanuha commented that the NPS was not involved during the approval process when this project was reclassified in 1987. Commissioner Kanuha asked if the NPS took that opportunity to comment on the project at that time.

Ms. Beavers stated that the NPS did not intervene at that time, although they submitted written testimony indicating their concerns. Ms. Beavers added that she was not employed there during that time and believed that there was nothing else on file at the NPS.

Commissioner Piltz commented that he understood that the EIS is 20 years old, although the project is scaled down from its original plan and that the Commission will be receiving petitioner's updated concept.

Vice Chair Formby commented that he appreciated the testimony and the concerns of the NPS, and noted that the NPS had the right to intervene in 1987 but chose not to do so.

After a brief discussion, there were no further questions for Ms. Beavers.

## 2. Ruby Keanaaina McDonald

Ms. McDonald stated that this area is a traditional native Hawaiian resource and requested that the LUC proceed very carefully with this project. Ms. McDonald urged the LUC to have the applicant prepare a cultural impact assessment in light of the new discoveries.

Vice Chair Montgomery asked if Ms. McDonald contacted the Native Hawaiian Legal Corporation (NHLC) for clarification of their native Hawaiian rights and responsibilities.

Ms. McDonald replied that she has not contacted the NHLC.

Commissioner Kanuha noted that there was some type of agreement between the developer and other families in the community. Commissioner Kanuha asked if Ms. McDonald was one of those involved in this agreement.

Ms. McDonald replied that she was not a part of this agreement and was not sure who participated in it. Ms. McDonald added that the only contact she experienced with the developer was at a public meeting two years ago at the Kealakehe High School cafeteria.

After a brief discussion, there were no further questions for Ms. McDonald.

A recess break was taken at 9:45 a.m. The meeting reconvened at 9:55 a.m.

## 3. Norman Boyd

Mr. Boyd stated that he is a retired foreman from the San Francisco Water Department. Mr. Boyd discussed his concerns of a natural disaster (earthquake damage to water lines), development on the makai side instead of the mauka side, traffic congestion, and overbuilding of hotels with limited workers.

There were no questions posed for Mr. Boyd by the parties or the Commission.

4. Brenda Luana Machado Lee

Ms. Lee stated that Ruby McDonald is close to this land and expressed her objections to the project.

There were no questions posed for Ms. Lee by the parties or the Commission.

Petitioner's Presentation

Mr. Eadie began his presentation and briefly commented on the history of the Nansey Development plans and the Rutter Development succession. Mr. Eadie stated that they went through a series of discussions with the community and working groups which drew a number of goals and objectives. During 2002-2003, there were approximately 12 working group meetings to tackle each of the issues and concluded with a proposed site plan consisting of a project that is different from the Nansey plan. Mr. Eadie described the new plan consisting of a 500 lot residential community with no resort hotel, the coastline to remain in open space, and efforts to protect Koloko-Honokohau Park. Mr. Eadie added that they have hired a caretaker, not a guard, but a person who maintains order at the area. Mr. Eadie noted that the good faith agreement memorializes everything that was on the site plan and that the contract gave the people comfort to move forward with the project. Mr. Eadie also discussed the golf course easement and stated that the 109 acres dedicated to the county will remain in permanent open space. The golf course requires Audubon Silver certification and specifically addresses water quality and environmental issues.

Mr. Eadie also discussed condition 3 regarding management plan and condition 6 which references the buffer area and storm drainage system. Mr. Eadie noted that he believed that they have adhered to each condition and that they are full in compliance to all of the LUC conditions.

A recess break was taken at 10:45 a.m. The meeting reconvened at 11:00 a.m.

Presentation by Richard Brock

Mr. Brock presented a slide show presentation of the anchialine ponds in the petition area.

Vice Chair Montgomery posed a few questions regarding threats to the shrimps in the ponds besides the alien fish, pesticides, etc. that could destroy the shrimps. Vice Chair Montgomery also discussed the candidate species of endangered shrimp and working with the appropriate government agencies.

Commissioner Piltz posed questions and concerns regarding the alien fish in the ponds.

Chair Judge clarified if the U.S. Fish and Wildlife Service will be receiving all the information collected.

Dr. Brock replied in the affirmative and added that they need to have a permit from the Army Corps of Engineers and that the Fish and Wildlife agency has been included in these discussions.

Vice Chair Formby posed questions related to the current pond management plan and the minimum 40-foot buffer versus the 20-foot buffer as referenced in Mr. Yuen's letter.

Dr. Brock clarified that the minimum buffer is 40 feet and that the county has allowed (under the SMA permit) the 20 feet. The LUC condition requires that the anchialine pond management plan echo the 40-foot buffer and that the 20 feet is within the anchialine pond where Dr. Brock lists certain things that could take place within the 40-foot buffer area, such as walls for protection, low impact construction, golf course turf, etc.

Mr. Yuen stated that the County of Hawaii is committed to the protection of its natural and cultural resources and that the SMA permit is far more stringent than any of the other land use controls applied to the area. Mr. Yuen discussed the buffer zone and the drainage plan. Mr. Yuen added that this project is in compliance with the conditions of approval and that the anchialine pond management plan is also in compliance with the LUC conditions.

Vice Chair Formby asked Dr. Brock if maintenance of golf turf within 20 feet around the ponds would impact the ponds significantly.

Dr. Brock noted that it would impact the ponds and the shrimps if there were historical features like retention walls, etc.

Vice Chair Formby also had a concern with the golf cart paths and questioned if the paths were within the 40-foot buffer area.

Mr. Eadie noted that they are allowed within the area and are considered to be low impact construction.

Vice Chair Montgomery commented that he saw a lot of progress yesterday during the site visit. Vice Chair Montgomery questioned if the drainage plan was still in progress and asked when it would be completed.

Mr. Yuen stated that the site drainage plan was in progress and that the developer has completed its plan and has submitted it to the NPS for review. The county has already approved the grading plan.

Mr. Eadie added that the hydrology plan is being reviewed in Denver and noted that all of the drainage and runoff is being directed away from the park and the ocean.

Commissioner Kanuha commented that upon Dr. Brock's further study of the pond system, he located more ponds than previously determined. Commissioner Kanuha question if there needs to be an adjustment in the buffer areas based on this new information.

Mr. Yuen replied in the affirmative.

Commissioner Piltz raised a few questions related to the golfer's alien golf balls and the personnel who will enter the ponds to retrieve the balls.

Mr. Eadie noted that they will be required to use best management practices as set forth in the Audubon Silver Certification.

Commissioner Kanuha noted that in the letter addressed to Mr. Yuen, there were discussions with the public which resulted in a type of good faith agreement. Commissioner Kanuha asked if a copy of this letter could be submitted to the LUC.

Mr. Eadie stated that the document was filed with the Bureau of Conveyances.

Vice Chair Formby also had a concern regarding the alien golf balls and the 20-foot versus 40-foot buffer. Vice Chair Formby questioned if there were any protections in place.

Mr. Eadie stated that there will be rules for golfers and that a person will be driving around to assure that these rules are enforced.

A recess break was taken at 12:35 p.m. The meeting reconvened at 12:45 p.m.

Ms. Leithead-Todd discussed the SMA permit and the anchialine pond buffer zone. Ms. Leithead-Todd added that there is no activity within the 20-foot buffer area of the ponds, but that other activity is allowed within that 40-foot buffer, such as maintenance, restoration, and construction of retaining walls to mark pond boundaries and for safety reasons.

Mr. Yee stated that the OP had no position on this matter.

Chair Judge commented that the Commission has heard a lot of information today and that they will be taking this matter up again.

Ms. Mikaala Roy voiced her concern for not being able to provide any public testimony at this time. Ms. Roy will be submitting her written concerns.

The meeting adjourned at 1:00 p.m.

*(Please refer to LUC Transcript of November 3, 2006 for more details on this matter.)*