

LAND USE COMMISSION
MINUTES OF MEETING

November 16, 2007

Lanikeha Center
Ho`olehua, Molokai, Hawaii

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Lisa Judge
Duane Kanuha
Normand Lezy
Ransom Piltz
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: Vladimir Devens

STAFF PRESENT: Anthony Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Sandra Matsushima, Chief Clerk
Fred Talon, LUC Staff
Holly Hackett, Court Reporter
Wade Kersey, Audio Technician

Chair Judge called the meeting to order at 9:25 a.m.

A06-764 MOLOKAI PROPERTIES, LIMITED (Molokai)

Commissioner Wong commented that the LUC had heard a voluminous amount of public testimony yesterday for and against the acceptance of the EIS. Commissioner Wong added that he applauded Molokai Properties for their extensive work on the EIS,

however, he felt that the LUC needs to balance the natural resources of the community. Commissioner Wong then noted that he believed the EIS fell short of its requirements.

EXECUTIVE SESSION

Commissioner Contrades moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Piltz.

The Commission entered into executive session at 9:40 a.m.

The open meeting reconvened at 9:50 a.m.

Commissioner Wong noted his concerns regarding the issues involving groundwater and the transmission of water to the proposed project. Commissioner Wong also noted his concerns for the Hawaiian Monk seals, and whether there is adequate electricity.

Petitioner's Presentation

Ms. Izu stated that after yesterday's proceeding, the Molokai Properties Limited would request that the item be removed from the LUC agenda in order for the petitioner to amend their proposed FEIS in response to the comments heard yesterday.

After a brief discussion, Chair Judge asked that Ms. Izu and her co-counsel Mr. Hall to clarify what their basis was for requesting the removal of the item on the agenda.

A recess break was taken at 10:15 a.m. The meeting reconvened at 10:30 a.m.

Chair Judge noted that this is a technical legal issue and entertained a motion to move into executive session.

EXECUTIVE SESSION

Commissioner Contrades moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Lezy.

The Commission entered into executive session at 10:32 a.m.

The open meeting reconvened at 10:45 a.m.

Chair Judge referenced §11-200-23 and chapter 343-5, regarding the removal of an item on the agenda.

Ms. Izu referenced and discussed chapter 343-5(c) relating to a 30 day period to process a request to accept a proposed FEIS.

After a discussion, Commissioner Wong moved to approve the request of the petitioner to remove their request for acceptance of the EIS from the agenda. The motion was seconded by Commissioner Piltz.

Commissioner Contrades noted that he would not support this motion and would prefer to continue with the proceedings.

Commissioner Lezy noted that he also would not support the motion for technical reasons.

Commissioner Teves stated that he concurred with Commissioners Contrades and Lezy and indicated that he would not support the motion.

After a discussion, an amended motion was made by Commissioner Wong and seconded by Commissioner Piltz to grant petitioner's request to remove the request for acceptance pursuant to chapter 343-5 of the proposed FEIS:

The Commission was polled as follows:

Ayes: Wong, Piltz, Kanuha, and Judge.

Nays: Teves, Lezy, Contrades, Chock.

The motion failed with 4 ayes, 4 nays, and 1 absent.

A recess break was taken at 11:15 a.m. The meeting reconvened at 11:30 a.m.

Mr. Hall referenced §11-200-23 (f) and requested that the petitioner be allowed to withdraw their proposed FEIS.

A recess break was taken at 11:35 a.m. The meeting reconvened at 11:40 a.m.

Ms. Izu stated that on behalf of Molokai Properties Limited, they withdrew their proposed FIES at this time pursuant to HAR §11-200-23(f).

Chair Judge noted that to withdraw the FEIS, the petitioner needs to physically send a letter to the LUC informing the LUC of that action.

Ms. Izu replied that such a letter would be filed with the LUC on Monday.

Chair Judge noted that notwithstanding the withdrawal of the FEIS, the LUC would continue receiving public testimony.

Public Witness Testimony (continued)

80. Degray Vanderbilt – deny
81. Kanoho Wailuku Helm – comments
82. Timmy Leong – deny
83. Leimana Naki – deny
84. Kawika Estrella – deny
85. David Frankel – discussed the FEIS withdrawal and noted that section (f) did not apply.

Generally the Commissioners had few questions for the public witnesses.

EXECUTIVE SESSION

Commissioner Kanuha moved to go into executive session pursuant to § 92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues relating to a personnel matter. The motion was seconded by Commissioner Teves.

The Commission entered into executive session at 12:40 p.m.

The open meeting adjourned at 12:40 p.m.

(Please refer to the summary of LUC proceeding prepared by Court Reporter of November 16, 2007 for more details on this matter.)