

Minutes of Meeting

Approved  
2/16/01

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

January 19, 2001

COMMISSIONERS PRESENT: Bruce Coppa  
Pravin Desai  
M. Casey Jarman  
Lawrence N.C. Ing  
Merle A. K. Kelai  
Stanley Roehrig (portion of proceedings)  
Peter Yukimura

COMMISSIONERS ABSENT: P. Roy Catalani  
Isaac Fiesta, Jr.

STAFF PRESENT: Bert Saruwatari, Acting Executive  
Officer  
Charleen Aina, Esq., Deputy Attorney  
General  
Russell Kumabe, Staff Planner  
Teri Hee, Chief Clerk  
Esther Ueda, Consultant

Andrea Vasconcellos, Court Reporter

Chairperson Kelai called the meeting to order at 9:35 a.m.

ACTION

SP70-85 - WAIKOLOA DEVELOPMENT COMPANY

Chairperson Kelai announced that this matter before the Commission was an action to consider an amendment to the Special Use Permit which allowed the establishment of the Puu Hinai Quarry (Site 1) and the Village Quarry (Site 2) and allied uses on approximately 152.6 acres of land situated within the State Land Use Agricultural District at Waikoloa, South Kohala, Hawaii.

On January 12, 2001, the Commission received a facsimile letter from Robert D. Triantos, notifying the Commission that Carlsmith Ball will be unable to assist Waikoloa Development Company in this matter before the Commission.

Appearances

Audrey Ng, Esq., representing Waikoloa Development Company

Bill Moore, Waikoloa Development Company

On January 18, 2001, the Commission received a facsimile Letter of Authorization dated January 15, 2001, from Audrey Ng of Goodsill Anderson Quinn & Stifel.

Deputy Attorney General, Charleen Aina, recused herself from sitting in on this docket due to a conflict of interest.

Bert Saruwatari, acting executive officer, oriented the Commission to the special permit area on the Land Use District Boundaries and tax maps and gave a summary of the special permit request.

Arguments on the special permit were heard from Ms. Ng.

Questions were asked by the Commissioners.

Commissioner Coppa moved to approve Petitioner's motion to extend the special permit to the year 2005. The motion was seconded by Commissioner Ing and polled as follows:

Ayes: Commissioners Yukimura, Desai, Ing, Jarman, Coppa and Kelai

A00-733 - HARRISON J. & SHARENE Z. KLEIN

Chairperson Kelai announced that this was an action meeting to consider whether the anticipated effects discussed in Petitioner's Final Environmental Assessment to reclassify approximately 2.621 acres of land currently in the Conservation District into the Agricultural District at Keonepoko Iki, Puna, Hawaii for the cultivation of ti-leaf plants, coconut trees and palms and recommence a commercial farming operation constitutes a "significant effect" pursuant to Chapter 343, H.R.S.

On January 18, 2001, the Commission received Petitioner's Final Environmental Assessment.

Appearances

Steven S.C. Lim, Esq., representing petitioner

MINUTES - January 19, 2001

Page 3

John Chang, Esq., Deputy Attorney General, Office of Planning

Lorene Maki, Land Use Division, Office of Planning

Arguments were heard from Mr. Lim and Mr. Chang.

Questions were asked by the Commissioners.

Commissioner Jarman reported that since she only received her copy of the Final Environmental Assessment this morning, more time was needed for her to review it before she could vote. She also noted that on page 27 of the Final EA, number 11 stopped in the middle of a sentence.

Commissioner Jarman moved to defer action until the February 16, 2001 meeting. The motion was seconded by Commissioner Coppa and unanimously approved by voice votes.

#### MISCELLANEOUS

##### 1. ADOPTION OF MINUTES

Commissioner Jarman moved to approve the minutes for the meeting date of December 8, 2000. The motion was seconded by Commissioner Ing and unanimously approved by voice votes.

##### 2. ADOPTION OF DECISION AND ORDER

Commissioner Jarman moved to adopt the Order Of Preliminary Determination Of A Finding Of No Significant Impact For An Environmental Assessment for Docket No. A99-729 - The Newton Family Limited Partnership. The motion was seconded by Commissioner Ing and unanimously approved by voice votes.

Commissioner Roehrig was present to the proceedings at this time.

#### A93-701 - KAUPULEHU DEVELOPMENTS

Chairperson Kelai announced that this was an action meeting to consider how the Commission should proceed, including the disposition of Kaupulehu Developments' Motion For Establishment of Procedure on Remand, in light of the Hawaii Supreme Court's decision in *Ka Pa'akai O Ka'aina, et al. v. Land Use Commission, et al.*, Sup. Ct. Nos. 21124 and 21162.

A prehearing conference was held on December 19, 2000.

On January 2, 2001, the Commission received Ka Pa'akai O Ka 'Aina's Brief on Remand filed by Michael J. Matsukawa.

On January 5, 2001, the Commission received Memorandum In Support of Office of Planning, State of Hawaii Position On How To Proceed filed by John W.K. Chang.

On January 5, 2001, the Commission received Kaupulehu Developments' Memorandum Concerning The Scope Of And Procedure Applicable To The Remand Proceedings filed by R. Ben Tsukazaki.

On January 9, 2001, the Commission received Plan to Protect's Memorandum On How To Proceed filed by Robert D.S. Kim.

On January 12, 2001, the Commission received Memorandum In Response To Prehearing Conference Order of December 26, 2000, filed by Patricia K. O'Toole.

Chairperson Kelai announced that Patricia O'Toole from the County of Hawaii, Office of the Corporation Counsel would not be attending the hearing today.

Appearances

R. Ben Tsukazaki, Esq., representing petitioner

John Chang, Esq., Deputy Attorney General, Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

Michael J. Matsukawa, Esq., representing Intervenor Ka Pa'akai O Ka`aina)

Commissioner Jarman noted that a representative for Intervenor Plan to Protect was not present.

At this time, Commissioner Ing made a disclosure. There were no objections by the Petitioner or State to have Commissioner Ing participate in the proceedings.

Bert Saruwatari, Acting Executive Officer, oriented the Commission to the subject area on the Land Use District Boundaries and tax maps and gave background information on the Petition.

Arguments were heard from Mr. Tsukazaki, Mr. Chang, and Mr. Matsukawa.

Questions were asked by the Commissioners.

Commissioner Jarman suggested that the following procedure be established to respond to the Supreme Court's remand in docket A93-701:

1. The parties as well as the staff shall review the record and make recommendations as to what those valued cultural historic or natural resources were both in reference to the pages so that they could be found in the record and in proposed findings that are related to those issues. Both tasks shall be done within 30 days.
2. Cite those portions of the record by showing the extent to which the resources and the native Hawaiian rights would be affected or impaired by the proposed action.

Mr. Tsukazaki did not have any objections to Commissioner Jarman's suggestions but commented that he would still like to have the Commission provide the opportunity to the parties in phase one or phase two to present what each party thinks the findings of fact should be.

Mr. Matsukawa added that each party should make just one filing, with no counter-filing, or rebuttal filing.

Mr. Chang reported no objections.

Commissioner Jarman moved that the following procedure be established to respond to the Supreme Court's remand in docket A93-701:

1. The parties as well as the staff shall review the record and the parties shall make recommendations as to what those valued cultural, historic or natural resources were both in reference to the pages so that they can be found in the record and in proposed findings related to those issues.
2. Cite those portions of the record that show the extent to which the resources and the native Hawaiian rights were being affected or impaired by the proposed action.

3. A hearing will be conducted after receiving each parties' document, at which time a determination will be made as to the need of additional testimony before a decision is made.

The motion was seconded by Commissioner Coppa and polled as follows:

Ayes: Commissioners Roehrig, Desai, Coppa, Ing, Jarman, Yukimura and Kelai

#### MISCELLANEOUS

Commissioner Jarman moved to amend the agenda to include discussion of pending matters. The motion was seconded by Commissioner Yukimura and unanimously approved by voice votes.

#### OTHER PENDING MATTERS

1. Mr. Saruwatari announced that he was invited to give a presentation to the Kaanapali Community Association on February 5, 2001 regarding the Commission duties and responsibilities.
2. Mr. Saruwatari reported that with respect to Docket No. A00-732, the Kaloko-Honokohau National Historic Park may be intervening in this proceeding. The Commission instructed staff to arrange a field trip to the National Historic Park.
3. Pending legislation. Commissioner Ing requested that they receive copies of the bills on which testimony will be provided.

The meeting was adjourned at 11:30 a.m.