

LAND USE COMMISSION
MINUTES OF MEETING

November 2, 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
Bert Saruwatari, Staff Planner
Maxwell Rogers, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 10:55 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the Land Use Commission meeting minutes of September 21, 2006 and September 22, 2006. Vice Chair Montgomery seconded the motion. The minutes of September 21, 2006 and September 22, 2006 were approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported that the next meeting will be a video conference for a Kauai matter in two locations. The parties, LUC staff, and two commissioners will be assembled at the Lihue State Building's teleconference center. The other LUC commissioners will be assembled on Oahu at the Kalanimoku Building's video conference center.

There were no questions posed by the Commission.

A05-761 ERIC A. KNUDSEN TRUST (Kauai)

Chair Judge stated that this was an action meeting to consider the 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.

APPEARANCES

Walton Hong, Esq., represented Petitioner

Stacy Wong, Eric A. Knudsen Trust

Kim Yuen, PBR Hawaii

Tom Wilton, PBR Hawaii

James Tagupa, Deputy Director, County of Kauai Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that there were no public witnesses.

Mr. Tagupa requested that this matter be continued to allow members of the public to comment. Mr. Tagupa added that this area contains significant archeological sites and reiterated that the county requests continuing this matter until the Monday video conference in Lihue to allow the public to address the EIS.

EXECUTIVE SESSION

Vice Chair Formby moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Piltz seconded the motion. The motion was unanimously approved by a show of hands.

The Commission entered into executive session at 11:10 a.m.

The open meeting reconvened at 11:20 a.m.

Chair Judge noted that it has been determined that this matter cannot be continued until Monday due to the legal notification requirements contained in Chapter 92-7, Hawaii Revised Statutes.

Mr. Yee posed questions and concerns of the lava tubes, their locations, and the endangered species that might be contained in these tubes. Mr. Yee added that the U.S. Fish and Wildlife Service is willing to get involved.

Mr. Hong began his presentation and stated that the petitioner is requesting that the LUC accept the EIS as submitted. Mr. Hong commented on the history of the EIS and provided a brief summary of how the proposed FEIS meets the statutory criteria for Chapter 343. Mr. Hong added that all concerns have been addressed and believed that the petitioner have met all the requirements.

Mr. Hong also noted that the petitioner previously had a phone conversation with Lorene Wada of the U.S. Fish and Wildlife Service, but that petitioner had not subsequently received any written comments from them during the 45-day comment period. Mr. Hong commented that the petitioner is willing to work with them to address any concerns.

A recess break was taken at 11:55 a.m. The meeting reconvened at 12:05 p.m.

Vice Chair Formby posed questions related to the pier and post foundation systems, slab grading and leveling. Vice Chair Formby also had a few questions on the impacts should the lava tubes be breached and the impact upon any endangered species which might be found in the known and unknown lava tubes.

Mr. Yee noted that they had been informed that the cave spider may also be found outside of the lava tubes in lava rock above ground.

Vice Chair Formby commented that he had concerns regarding due process and noted that although the Fish and Wildlife staff procedurally had the opportunity to comment on these concerns, they did not.

Vice Chair Montgomery posed questions and concerns on the care and management of these resources and asked if the County would join with the State to assure that any development of these areas would not endanger the wildlife.

Mr. Tagupa stated that the County would join with the State in recommending that a construction or grading survey is conducted by the Fish and Wildlife staff or an archeologist prior to any work done in this area.

Commissioner Piltz questioned if this matter had come before the County's Planning Commission.

Mr. Tagupa commented that their ordinance allows for the LUC to grant the redistricting and the petitioner is subsequently not required to go through the county for zoning approval. Mr. Tagupa added that since the County will not have that opportunity to process this applicant or to provide comment, the County will be offering conditions for the LUC to consider during its hearings on the matter.

Staff's Report

1. Anthony Ching

Mr. Ching briefly summarized the staff's report and stated that after review of the issues and comments raised, the petitioner has generally complied with the content of the FEIS and staff is recommending acceptance of the document.

Vice Chair Formby moved to accept the FEIS for the reclassification of approximately 127.4 acres of land currently in the Agricultural District to the Urban

District at Poipu, Koloa, Kauai, with the amended language and proposed revisions as modified by this Commission today. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Commissioners Formby, Kanuha, Montgomery, Piltz, and Judge.

The motion passed with 5 yes, 4 absent.

Vice Chair Montgomery stated that he was impressed with the willingness by the parties to protect the resources and is looking forward to the hearing in February.

A recess break was taken at 12:25 p.m. The meeting reconvened at 12:35 p.m.

A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (Oahu)

Chair Judge stated that this was an action meeting to consider the 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.

APPEARANCES

Ben Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Jeff Overton, Group 70

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Judge noted that on November 1, 2006, the Commission received correspondence from the City and County of Honolulu indicating that they had no position on this matter and would not be in attendance today.

Chair Judge commented that there were no public witnesses.

Mr. Yee stated that they had no objection to the acceptance of the final EIS, however, they had a concern on the timeline of the submittal of the EIS as the OP had only 6 days to review and solicit comments from other state and federal agencies.

Mr. Kudo began his presentation and briefly summarized the contents of the FEIS.

Mr. Overton stated that he prepared the FEIS and briefly summarized the contents of the FEIS and its compliance with applicable sections of Chapter 343.

Mr. Kudo stated that the petitioner has satisfied all requirements of the FEIS and respectfully requested that the LUC accept this document.

Vice Chair Montgomery noted that a comment letter indicated a concern related to protecting the sinkhole as a natural resource and questioned if there was a specific preservation plan for the sinkhole site.

Mr. Overton stated that although there is no formal preservation plan developed at this time, there will be further preservation steps being discussed and would be presented during the course of the LUC's hearings.

Mr. Kudo noted that the Estate fully realizes the importance of these resources and that steps will be taken to ensure their protection given their level of importance.

Staff's Report

1. Anthony Ching

Mr. Ching briefly summarized staff's report and noted that petitioner has met its requirements and recommends that the proposed FEIS be accepted.

Chair Judge raised a question on why copies of the FEIS were sent to the DLNR's Forestry and Wildlife Division even if they had not requested that they be consulted.

Mr. Overton stated that 5 copies were circulated to the DLNR and during the comment period, the issue of potential impacts to the Blackburn's Sphinx moth was raised by the Forestry and Wildlife Division. Mr. Overton added that since then, they had requested follow-up information and specifically requested that the FEIS be submitted to them. Copies of the materials were distributed to Forestry and Wildlife. Subsequently, no moths were found.

Vice Chair Formby moved that the LUC accept the FEIS for the reclassification of approximately 344.519 acres of land currently in the Agricultural District to the Urban District at Ewa, Oahu, Hawaii, as supplemented by the petitioner today. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

Ayes: Commissioners Formby, Montgomery, Piltz, Kanuha, and Judge.

The motion passed with 5 yes, 4 absent.

A recess break was taken at 12:25 p.m. The meeting reconvened at 12:35 p.m.

Chair Judge announced that the action items were concluded for today. The LUC will be conducting a field trip and will be meeting in the lobby area at 3:00 p.m. and will depart from there.

The meeting adjourned at 1:15 p.m.

(Please refer to LUC Transcript of November 2, 2006 for more details on this matter.)