

LAND USE COMMISSION
MINUTES OF MEETING

February 15, 2007

Ali`i Room
Aloha Beach Resort Kaua`i
3-5290 Kuhio Highway
Kapa`a, Kaua`i, Hawai`i

COMMISSIONERS PRESENT: Michael Formby
Steven Montgomery
Duane Kanuha
Nicholas Teves
Thomas Contrades

COMMISSIONERS ABSENT: Lisa M. Judge
Kyong-su Im
Ransom Piltz
Reuben Wong

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

Presiding Officer Formby called the meeting to order at 9:46 a.m.

ADOPTION OF MINUTES

The Land Use Commission meeting minutes of February 1 and 2, 2007 were adopted by unanimous voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- February 23 on Oahu;
- March 1 on the Big Island;
- March 15-16 Oahu;
- April 12-13 on Oahu;
- 2nd April and 1st May meetings may be on Kaua`i

There were no questions posed by the Commission.

A06-771 D. R. HORTON – SCHULER HOMES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, D.B.A D. R. HORTON-SCHULER DIVISION (Oahu)

Presiding Officer Formby stated that this was an action meeting to determine whether the Land Use Commission is the appropriate accepting authority pursuant to Chapter 343, Hawaii Revised Statutes, for the reclassification of approximately 1,553.844 acres of land from the State Land Use Agricultural District to the State Land Use Urban District for residential, school, park and open space, and commercial uses at Honouliuli, `Ewa District, Oahu; and to determine whether the proposed action may have a “significant effect” to warrant the preparation of an Environmental Impact Statement pursuant to Chapter 343, Hawai`i Revised Statutes.

APPEARANCES

Ben Kudo, Esq., represented Petitioner

Austin Ching, Esq., represented Petitioner

Dean Uchida, Petitioner

Bryan Yee, Esq., represented State of Hawai`i Office of Planning

Laura Thielen, State of Hawai`i Office of Planning

Abe Mitsuda, State of Hawai`i Office of Planning

Public Witness

1. Terry Lee Hayes

Ms. Hayes discussed House Bill 1948 and indicated that the project must consider Native Hawaiian rights.

Mr. Kudo stated that the LUC is appropriate accepting authority pursuant to chapter 343(5)(c), HRS. The chapter 343, HRS trigger is the proposed use of state and county lands. The Petitioner believes that the project will have a significant affect on the environment based on the large number of residential units proposed – including its short term and cumulative affects. Particularly, the project will: curtail the range of beneficial uses of the environment; affect the economy; generate secondary impacts; result in the loss of agricultural lands; and require substantial energy consumption.

The Office of Planning stated no objection and concurred with the Petitioner's position.

Presiding Officer Formby noted that the City and County of Honolulu Department of Planning and Permitting was not in attendance but had earlier notified LUC staff that it had no objections to the matter before the Commission today.

Commissioner Kanuha moved that the LUC is appropriate accepting authority and that the project warrants the preparation of and EIS pursuant to chap 343, HRS. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

Ayes: Commissioners Kanuha, Montgomery, Contrades, Teves, and Formby.

The motion passed with 5 ayes and 4 absent.

A recess break was taken at 10:05 a.m. The meeting reconvened at 10:15 a.m.

A05-761 ERIC A. KNUDSEN TRUST

Presiding Officer Formby stated that this was a hearing to consider the reclassification of approximately 127.49 acres of land currently in the Agricultural District to the Urban District at Po`ipu, Koloa, Kaua`i for residential, bicycle and pedestrian path, and archaeological preserve uses.

APPEARANCES

Walton Hong, Esq., represented Petitioner

Kimi Yuen, Petitioner

Stacy Wong, Petitioner

James Tagupa, Esq., represented County of Kaua`i Planning Department

Dale Cua, County of Kaua`i Planning Department
Bryan Yee, Esq., represented State of Hawai`i Office of Planning
Laura Thielen, State of Hawai`i Office of Planning
Abe Mitsuda, State of Hawai`i Office of Planning
Sherry Broder, Esq., represented Intervenor OHA
Heidi Guth, OHA

Public Witness

1. Louis Abrams, President of Koloa Community Association.

Mr. Abrams stated that the market has changed since the 2005 economic study was performed for the EIS – which is not up to date. Mr. Abrams indicated that absorption of units will likely take much longer and it is not prudent to urbanize this parcel at this time. Mr. Abrams also noted that there are archaeological concerns within the Petition Area.

Ms. Broder questioned the witness regarding his knowledge of archaeological issues in the vicinity and what makes the petition area significant in relation to the vicinity. Ms. Broder posed questions about the Koloa Community Association.

Commissioner Kanuha questioned the witness regarding his vocation.

Presiding Officer Formby questioned the witness regarding the constituency of the Koloa Community Association.

2. Randy Rego

Mr. Rego stated that he has concerns about native Hawaiian sites and concern regarding over-development on the island. He noted that most housing is not affordable for locals. Mr. Rego noted that he is not very familiar with petition area but supported those who wish to protect it, and stated that he was concerned about the protection of native Hawaiian sites and storm water runoff into protected areas.

Mr. Hong questioned the witness regarding where he resides in relation to the petition area and what the scope of the project entails.

Ms. Broder asked the witness what are the enforcement problems that occur regarding protected native Hawaiian sites.

3. Terry Lee Hayes

Ms. Hayes stated that she has several concerns about the project. Ms. Hayes indicated that she lives below the property and is familiar with the site. Ms. Hayes stated concerns regarding fragmentation of the *ahupua`a*, the damage that the persistent rainfall did last year, vacation rentals, storm water runoff affecting downstream properties and the *heiau*, Waita Reservoir safety, loss of agricultural land, adequacy of food supply, the dangers of Waikomo Stream during storm events, archaeological issues in the area, and the over-development of Kaua`i.

Mr. Hong questioned the witness regarding the ownership of Waita Reservoir, the proximity of Waikomo Stream, the scope of the project, and the location of the *heiau*.

Mr. Tagupa questioned the witness regarding regional drainage issues.

Ms. Broder questioned the witness regarding the significance of the archaeological sites in the area and current construction work in the area, which may be impacting native Hawaiian sites on the petition area.

4. James Alalem

Mr. Alalem stated that he is the caretaker of *heiaus* in Wailua. He stated that he got cited for cleaning the *heiau* and got fined and was required to perform community service. Mr. Alalem stated that he is homeless and cannot afford a house here. Mr. Alalem raised a concern that all of the development in the area is limiting the places that are appropriate to put all of the bones that are discovered. Mr. Alalem stated that he had a vision that he was to protect the sacred sites. Mr. Alalem stated that there is enough development and we must protect the sacred sites including the petition area.

Mr. Hong questioned the witness regarding his mailing address, the location of the petition area, and if there is a *heiau* within the petition area.

5. Elaine Dunbar

Ms. Dunbar stated that she is in support of her native Hawaiian friends. She noted that she is tired of development and the way the native Hawaiians are treated. Ms. Dunbar stated there isn't much undeveloped land left for the native Hawaiians. She stated that the LUC should preserve all agricultural land. She stated that the Petitioner is not a steward of the land. Ms. Dunbar stated that she has been to two of the historical sites on the property – there is a *heiau* there and an *ahu*. Ms. Dunbar stated

that the whole area is a cultural site and that the proposed buffer zones are appalling and will ruin the site.

Mr. Hong questioned the witness regarding the site visits she has made to the petition area, the alleged arena site, and her knowledge of archaeology.

A recess break was taken at 11:23 a.m. The meeting reconvened at 11:38 a.m.

6. Theresita (Tessie) Balmores Kinnaman

Ms. Kinnaman stated that she does not want the property to be reclassified. Ms. Kinnaman stated concerns regarding lava tubes, drainage – including proposed drainage area number 2 along the shoreline. Ms. Kinnaman also noted that floodwater is pumped over to the Sheraton Hotel and that the bikeway and sidewalk along Hapa Road is degraded.

Mr. Hong questioned the witness about the use of Hapa Road.

7. Cheryl Lovell-Obatake

Ms. Lovell-Obatake stated concerns about drainage in the *heiau*, underground lava tubes, and letters she has sent out to agencies regarding the area's drainage problems, developers taking land commission awards by quieting title, and sacred rocks being stolen. Ms. Lovell-Obatake stated that she was a member of citizen's advisory council for the Kauai General Plan. Ms. Lovell-Obatake noted that native Hawaiian culture is in jeopardy and that this project should not be built.

Mr. Hong questioned the witness regarding Dr. Hammett's ability as an archaeologist and her support for the General Plan.

Ms. Broder questioned the witness regarding rocks that may have stolen from the petition area and if those were from archaeological sites.

8. Lourdes S. Akana

Ms. Akana concurred with all of previous public witnesses today. Ms. Akana is the activities coordinator for the Aloha Beach Resort. Ms. Akana stated that the petition area was a part of a native Hawaiian village and within the site was a temple to the god Ku. Ms. Akana urged the LUC to control development and respect the area. Ms. Akana noted that we should not change the native Hawaiian names of places. Ms. Akana

stated that the Kaloko Dam tragedy resulted from building residences where people should not have built. Ms. Akana expressed concern regarding newcomers who think they own the beach; the positive attributes of the bike pathway to open up access to the beach and sacred sites; and that people have been disrespecting the sacred sites.

9. Leslie Poole

Ms. Poole read a written statement regarding native Hawaiian values. Ms Poole is against changing the agricultural land to urban. She noted there are important *`aumakua* in the area and there is cumulative traffic congestion problem. She requested that the LUC place culture first and foremost.

Staff gave its report and map orientation.

A recess break was taken at 12:27 p.m. The meeting reconvened at 2:00 p.m.

Mr. Hong identified the Petitioner's exhibits and described the numbering system that he used to label his exhibits.

Ms. Broder questioned who prepared the map in Petitioner's Exhibit N. Ms. Broder objected to the Petitioner's submittal of title insurance without attaching the title search with chain of title back to the Royal Patent.

Presiding Officer Formby noted Ms. Broder's objection.

Mr. Tagupa listed the County's exhibits and described them.

Mr. Hong noted that the Petitioner hasn't received the County's or OHA's rebuttal exhibits.

Mr. Yee listed the OP's exhibits and described them.

Ms. Broder listed the OHA's exhibits and described them.

Mr. Hong again noted that the Petitioner had not been provided with OHA's additional exhibits.

Presiding Officer Formby admitted all of the parties' exhibits to the record. Presiding Officer Formby instructed the Petitioner begin their case.

Mr. Hong called Kimi Yuen as his first witness.

Petitioner's Witness

1. Kimi Yuen, Project Manager for PBR Hawaii

Mr. Hong reviewed her qualifications and offered Ms. Yuen as an expert in land use and environmental planning.

Voir Dire

Mr. Tagupa questioned the witness regarding her experience testifying as an expert planner in court.

Ms. Broder questioned the witness regarding her experience testifying as an expert in land use and environmental planning in court, LUC, or any other administrative agencies and how many instances has the witness been the lead author for an EA/EIS.

Presiding Officer Formby asked if the witness has ever been offered as an expert and been denied.

Presiding Officer Formby stated that the witness is now so qualified before the LUC.

Ms. Yuen gave a PowerPoint presentation consisting of: an orientation of the site; map clarifications; clarification on petition area unit counts; description of conceptual master plan; and existing state land use districts in vicinity.

A recess break was taken at 2:55 p.m. The meeting reconvened at 3:07 p.m.

Ms. Yuen continued the PowerPoint presentation which addressed the following: conformance to general plan; county zoning; Hawaii State Plan; endangered/threatened species; soils maps; impact on agriculture; natural hazards; flood insurance rate map; coastal zone management program and special management area conformance; and urban district standards.

Ms. Yuen stated that the Petitioner will work with USFWS to protect endangered species. The witness stated that the Project does not require a near shore water monitoring given its relatively small size and discussed LEED certification noting that

that no LEED designation program exists for single-family homes. The witness stated that the Petitioner intends to improve Hapa Road and emphasized the importance of adding a new *mauka-makai* access.

Mr. Tagupa asked what the proposed number of units in the project area was. Mr. Tagupa noted that the county open ordinance would allow more units than what is proposed and that a CPR process would allow higher density without improving infrastructure. Mr. Tagupa questioned the witness regarding the need for a full biological survey and the Petitioner's current plan to protect endangered species.

Mr. Yee questioned the witness regarding the need to make light shielding a requirement on the deed; affordable housing and sales and construction; CZM criteria – cultural preservation dependant on cultural consultant opinions; risk of flooding from Waita Reservoir; if the CPR process is the intent of Petitioner; limitation on number of units; CPR approval process; who makes CPR decision; LEED certification and energy conservation measures; EIS has nothing to require petitioner to implement energy conservation measures; EIS did not include a biological survey; the need for such a survey in the EIS; familiarity with the habitat conservation plan; obligation of the Petitioner to protect the endangered species; and a timeline of when an agreement with USFWS would be made.

Ms. Broder questioned the witness regarding the need to follow the recommendation of the SHPD; requirements for Petitioner to meet state law regarding cultural/historical preservation; if the EIS is in compliance with SHPD requirements; mitigation measures and outstanding issues in the SHPD letter (OP Exhibit 10) – recommending that no action be taken before site work is done; steps that have been take to implement the agreed-to mitigation measures; the 50-foot buffer to be provided; proper procedures for planning; consideration of irreplaceable resources; estimate that the SHPD approval for phase 2 will be done in relation to the expected timeline for LUC approval; relationship of the archaeological sites in phase 1 and 2; timing of archaeological data recovery mitigation plans; long-term preservation and burial treatment plans; submittals to burial council; agricultural uses within the petition area; site visits to cave 6 and 8 with USFWS; and the *`aumakua* for the Koloa area.

Commissioner Contrades objected to the line of questioning of Ms. Broder. He requested that Ms. Broder stop badgering the witness and direct her questions to the appropriate expert.

Presiding Officer Formby noted for the parties and the public that Commissioner Contrades had expressed his own opinion and that action in this docket would involve

a majority of the Commission to concur. He subsequently asked that Ms. Broder move on. Presiding Officer Formby noted the LUC was aware of the limitations of the witness regarding certain matters.

Commissioner Kanuha questioned if the witness was the author of the petition and on what date was EIS accepted. Commissioner Kanuha questioned the witness regarding comments that come in after the final EIS; her opinion regarding the need for a biological survey; and the need for a graphic regarding archaeological, cultural and historical sites in relation to the site plan.

Presiding Officer Formby asked the witness if the Petitioner would implement the mitigation measures recommended by SHPD prior to ground disturbing activities.

Mr. Hong asked the witness if a common driveway can serve more than 4 units without building a county-standard road; if the witness consulted with USFWS in early planning stages and if the USFWS indicated that a biological survey for the petition area would be required; if LEED certification exists for any other residential subdivision; and what required protection of endangered species is required by federal law.

The meeting was recessed for the day at 4:47 p.m.