

LAND USE COMMISSION  
MINUTES OF MEETING

January 24, 2008

Alii Ballroom  
Waikoloa Beach Marriott  
69-275 Waikoloa Drive  
Waikoloa, Hawaii

COMMISSIONERS PRESENT: Vladimir Paul Devens  
Lisa Judge  
Duane Kanuha  
Ransom Piltz  
Nicholas Teves, Jr.  
Reuben Wong

COMMISSIONERS ABSENT: Kyle Chock  
Thomas Contrades  
Normand Lezy

STAFF PRESENT: Diane Erickson, Deputy Attorney General  
Rodney A. Maile, Interim Executive Officer  
Sandra Matsushima, Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 10:40 a.m.

## ADOPTION OF MINUTES

Commissioner Wong noted a correction to page 12, sixth paragraph, to delete the words “to proceed” and substitute it with “of submitting it” to the Executive Branch.

Commissioner Wong then moved to adopt the amended minutes of January 10, 2008. Commissioner Piltz seconded the motion. The minutes were approved by voice votes.

Vice Chair Kanuha entered the meeting at this time.

## TENTATIVE MEETING SCHEDULE

Chair Judge noted that the next meeting would be held on Maui. The proposed meeting dates would remain the same.

## A06-770 THE SHOPOFF GROUP, L.P. (Hawaii)

Chair Judge stated that this was a hearing to consider the reclassification of approximately 127.94 acres of land currently in the Agricultural District to the Urban District at North Kona, Hawaii for single-family residential and affordable housing units.

## APPEARANCES

Naomi Kuwaye, Esq., represented Petitioner

Jesse Souki, Esq., represented Petitioner

Brooks Bancroft, Esq., represented County of Hawaii Planning Department

Norman Hayashi, County of Hawaii Planning Department

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Lorene Maki, State Office of Planning

Chair Judge asked petitioner if staff had informed them of the Commission’s policy regarding reimbursement of hearing expenses.

Ms. Kuwaye replied in the affirmative and added that they had no objections to the policy.

Ms. Kuwaye noted that on January 23, 2008, the petitioner filed a motion to amend the exhibit list to include four new exhibits. Ms. Kuwaye then described the exhibits and respectfully requested that the additional exhibits be allowed into evidence.

Mr. Bancroft stated that the County had no objections.

Mr. Yee noted that the State also had no objections.

Chair Judge introduced the new interim Executive Officer, Rodney Maile.

Commissioner Piltz moved to amend the exhibit list to include the new exhibits. The motion was seconded by Commissioner Wong.

The Commission was polled as follows:

Ayes: Piltz, Wong, Devens, Judge, Kanuha, and Teves.

The motion passed with 6 yes, 3 absent.

### Public Witnesses

1. Geraldine Bell

Ms. Bell summarized her written testimony from the National Park Service (NPS) regarding their withdrawal of the application for intervention. Ms. Bell noted their concerns of non-point source pollution controls and recommended that protective conditions be imposed.

Mr. Yee posed questions related to the agreement between the NPS and the petitioner, and the condition regarding a homeowner's protection plan and the IWS certification form with the DOH.

Vice Chair Kanuha posed a few questions regarding the impacts of the non-point source pollution to the watershed, and the extent of the watershed.

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

2. Elizabeth Lee

Ms. Lee testified in her native Hawaiian language. After her testimony, her granddaughter translated her testimony in English.

Shawn Makaiau read Ms. Lee's testimony and stated that she was born in 1929 and raised in the Kule Nei area. Ms. Lee supports the project and was pleased that the project would be taking care of the land and grateful for the value that Kula Nei will bring to the family and the public.

There were no questions posed for Ms. Lee.

3. Curtis Tyler

Mr. Tyler thanked the LUC for holding this hearing in West Hawaii. Mr. Tyler noted that he was a lifelong resident of Kona, and was testifying as a resident and on behalf of the Kona Acres Property Owner's Association. Mr. Tyler commented on his numerous meetings with the developer and discussions regarding the Holoholo Street connection. Mr. Tyler encouraged the State of Hawaii to work proactively with the Shopoff Group, Stanford Carr, and others to ensure that the roadway access through the lands are negotiated in an expeditious manner.

Mr. Yee had a few questions related to the Holoholo Street connection, Lot 105, and the proposed transportation plans.

After a brief discussion, there were no further questions posed for Mr. Tyler.

4. Mark McGuffie

Mr. McGuffie stated that he was the Executive Director of the Hawaii Island Economic Board and commented that he has met with the developer and discussed infrastructure proposals. Mr. McGuffie noted his support for the project.

There were no questions posed for Mr. McGuffie.

5. Barbara Scott

Ms. Scott stated that she is a resident of North Kona and the Co-Chair of the Kona Traffic Safety Committee (KTSC). Ms. Scott was testifying on behalf of the KTSC and noted their concerns related to the project's impacts. Ms. Scott requested that the LUC consider the regional traffic impacts from this project and require that the developer mitigate these impacts before occupancy.

Ms. Kuwaye posed a few questions regarding public transportation in the area, if any, and wondered how that could be arranged.

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

Chair Judge noted that there were no other public witnesses.

A recess break was taken at 11:45 a.m. The meeting reconvened at 12:05 p.m.

Chair Judge noted that the LUC had received written public testimony from the National Park Service, Marney Herkes, and the Hawaii Island Economic Board (Mr. McGruffie).

Admission of Exhibits

Chair Judge noted that the exhibits were to be filed no later than close of business January 1, 2008. The LUC would then need to consider the acceptance of any untimely filings.

Ms. Kuwaye described petitioner's exhibits 1 to 6a, 7 to 9, 10 to 12, 13 to 15, 16 to 21c, 22 to 24, 25 to 27, 28 to 32, 33 to 38, 39 to 41, 42 to 46, and 47.

The County and the State had no objections. Petitioner's exhibits were admitted into the record.

Mr. Bancroft described the County's exhibit 1. There were no objections to the admittance of County's exhibit 1. The exhibit was admitted into evidence.

Mr. Yee briefly described the OP's exhibits 1, 2a, 2b, 2c, 2d, 3, 4, 5, and 6.

Ms. Kuwaye stated that the petitioner had no objections to the admittance of OP's exhibits and amended witness list, however, they would reserve the right to add a new rebuttal witness.

The County had no objections. OP's exhibits were admitted into evidence.

### Qualification of Expert Witnesses

Ms. Kuwaye briefly described petitioner's 12 witnesses, of which 11 were requested to be qualified as experts in their fields. Both the County and State had no objections. Petitioner's 11 witnesses were qualified as experts for purposes of this hearing.

Mr. Bancroft noted that the County had no expert witnesses.

Mr. Yee described the OP's two expert witnesses. The County and the Petitioner had no objections. The OP's two witnesses were qualified as experts for the purposes of this hearing.

A lunch break was taken at 12:20 p.m. The meeting reconvened at 1:45 p.m.

### Petitioner's Presentation

Ms. Kuwaye briefly summarized the proposed development of Kula Nei noting that the project will consist of low density residential market and affordable housing lots on 129 acres of the property. Ms. Kuwaye added that the petitioner is committed to being a good neighbor and has made commitments to preserve historical, traditional cultural resources, and continues to have consultation with the groups.

### Petitioner's Witnesses

#### 1. Lee Sichter

Mr. Sichter summarized his written testimony, submitted as petitioner's exhibit 1. Mr. Sichter referenced exhibit 4, the map of the Big Island and project location; exhibit 5 location of the property over-laid on an aerial photo; and exhibit 6 location of the property with surrounding subdivisions. Mr. Sichter also discussed wastewater, the

homestead road, project conformance with land use policies, the Hawaii state plan, and functional plans, the criteria found in §15-15-18, HRS, and added that he recommends approval of the reclassification based upon his participation with the Kula Nei project.

Mr. Bancroft raised a few questions regarding the potable water source off-site of the petition area.

Mr. Yee posed questions related to the educational agreement with the DOE, the total number of units and the size of the lots, affordable housing lots, individual wastewater systems and treatment plant, public access to the park, energy efficiency opportunities, and the various forms of transportation.

Chair Judge referenced page 1-15 in the FEIS and inquired on the status of the unresolved issues that were listed.

A recess break was taken at 2:45 p.m. The meeting reconvened at 3:00 p.m.

## 2. Phillip Bruner

Mr. Bruner stated that his written testimony was admitted as petitioner's exhibit 7. Mr. Bruner noted a correction on page 4, item 26, as the study was conducted on April 15-16, 2006 rather than on July 20-21. Mr. Bruner noted that he had conducted studies in this area for the past 30 years and summarized his study of the petition area. Mr. Bruner commented on the three objectives i) to document species of the birds on the property; ii) examine the site to identify natural resources; and iii) to look for native and threatened endangered species. Mr. Bruner discussed the methodology used for the study. Mr. Bruner added that none of the birds and mammals seen unique, federally protected, or endangered, and that he believed that urbanization of the property would not create any impacts.

Mr. Bancroft stated that the County had no questions for Mr. Bruner.

Mr. Yee posed questions regarding installation of shielded lights for protection of the seabirds and the Hawaiian Hoary Bat.

Chair Judge had a few questions related to the nesting sites of the Hawaiian Hawk.

After a brief discussion, there were no further questions posed for Dr. Bruner.

Commissioner Wong left the meeting at this time.

3. Robert Rechtman

Dr. Rechtman stated that his written testimony was admitted as petitioner's exhibit 16. Dr. Rechtman noted a typo on page 2, item 9. The dates 1997 should read 1995, and 2000 should be 1997. Also, page 5, item 32 the status of the DLNR reports should be amended that the DLNR has responded to the submittal of the inventory surveys and the status is that all the archaeological reports have been approved. On item 40, since the SHPD has now approved the reports, the answers have changed and SHPD has concurred with the recommendations. The inclusion of new exhibit 21c contains the SHPD correspondence letters. Dr. Rechtman summarized his written testimony and discussed matters of the archaeological inventory surveys, the cultural impact assessment, and the traditional and customary rights practiced in the area. Dr. Rechtman added that he believed that the reclassification would not have an adverse impact to the project site.

Mr. Bancroft posed a few questions regarding recommended protocol in case of an inadvertent discovery.

Mr. Yee raised questions related to the lava tubes, the existence of sub-grade lava tubes in the area that have not been examined, the sites for preservation, and mitigation measures for public access to the preservation sites.

Ms. Kuwaye clarified that there were no ongoing cultural and/or traditional practice sites identified on the property.

After a brief discussion, there were no further questions posed for Dr. Rechtman.

4. Stephen Bowles

Mr. Bowles stated that his written testimony was admitted as petitioner's exhibit 28. Mr. Bowles summarized his testimony and discussed issues on the planning, design and construction of a well. Mr. Bowles stated that he had determined that there was adequate water resources available to support the proposed well for the project. Mr. Bowles referenced exhibit 32, the Keahou aquifer, and discussed water demand, water



resources, sustainable yield, and recharge. Mr. Bowles added that in his opinion, the project would not affect the ground water quality or the sustainable yield.

Mr. Bancroft stated that the County had no questions.

Mr. Yee posed questions regarding the estimated average daily gallons per day, water units, sustainable yield, and leakage, if any, to the ocean and its impacts.

Vice Chair Kanuha posed questions regarding the NPS' concern of potential pollution from non-point sources entering the watershed and resulting in future long term adverse effects at the Kaloko National Park.

After a brief discussion, there were no further questions posed for Mr. Bowles.

A recess break was taken at 3:55 p.m. The meeting reconvened at 4:25 p.m.

#### 5. Bruce Plasch

Dr. Plasch stated that his written testimony was admitted as petitioner's exhibit 25. Dr. Plasch noted a few corrections to his testimony. Dr. Plasch then summarized his testimony and stated that the petition area has poor economic conditions for farming. The rain fall is relatively low and 94% of the land is extremely rocky soil. Dr. Plasch discussed the U.S. Department of Agriculture's soil classification system I to VIII (being the worst), noting that the project land is classified as VII, with very severe conditions for cultivation. The remainder lands are rated VIII which precludes their use for agriculture. Dr. Plasch also discussed the rating system of the Hawaii Land Study Bureau of A to E (being the worst) and noted that 118 acres of the petition area is rated E. Dr. Plasch commented that there has been no commercial activities on the project site for the past century and that none of the lands are classified as IAL. Dr. Plasch stated that the reclassification would not have an adverse impact on the region.

There were no questions posed for Dr. Plasch.

#### 6. John Kirkpatrick

Mr. Kickpatrick stated that his written testimony was admitted as petitioner's exhibit 22. Mr. Kickpatrick summarized his findings regarding the market assessment and socio-economic conditions. Mr. Kirkpatrick stated that the Kula Nei project will

meet the demand for homes in the area in both market and affordable housing. Mr. Kirkpatrick added that it was his opinion that the Kula Nei project would not have a negative socio-economic impact to the community.

Mr. Bancroft stated that the County had no questions for Mr. Kirkpatrick.

Mr. Yee posed questions regarding the market assessment on page 1 of appendix A, and the proposed number of residential market lots, the final lot sizes, the prices of the lots, and public access to the park.

Ms. Kuwaye clarified that there is a total count of 270 lots.

Ms. Kuwaye noted that petitioner had no further witnesses to call upon for the day.

The meeting adjourned at 5:00 p.m.

*(Please refer to LUC Transcript of January 24, 2008 for more details on this matter.)*