

LAND USE COMMISSION  
MEETING MINUTES

October 7, 2010

Waikoloa Beach Marriott Resort  
Naupaka Rooms V, VI, and VII  
69-275 Waikoloa Beach Drive  
Waikoloa, Hawai`i 96738

COMMISSIONERS PRESENT:

Vladimir Devens  
Kyle Chock  
Duane Kanuha  
Ronald Heller  
Normand Lezy  
Charles Jencks

COMMISSIONERS EXCUSED:

Nicholas Teves, Jr.  
Thomas Contrades  
Lisa Judge

STAFF PRESENT:

Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER:

Holly Hackett

AUDIO TECHNICIANS:

Hotai Zerba

**CALL TO ORDER**

Chair Devens called the meeting to order at 10:00 a.m.

**APPROVAL OF MINUTES**

Chair Devens asked if there were any corrections or additions to the minutes. There were none. Commissioner Kanuha moved to adopt the minutes. Commissioner

Lezy seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

### **TENTATIVE MEETING SCHEDULE**

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2010 was distributed in the handout material for the Commissioners.
- The next meeting will be on October 15<sup>th</sup> on Oahu and copies of the agenda were included in handout material.
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

### **ACTION**

#### **A10- 788 HHFDC/Forest CityHawai`i , Kona LLC**

Chair Devens announced that this was an action hearing to consider the Queen Lili`uokalani Trust`s Petition for Intervention.

### **APPEARANCES**

Stephen Lim, Esq., represented Forest CityHawai`i Kona LLC  
Craig Iha, Esq., representedHawai`i Housing Finance Development Corp.,(“HHFDC”)  
Gerald Takase, Esq., representedHawai`i County Department of Planning  
Bobbie-Jean Leithead-Todd, Director,Hawai`i County Department of Planning  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, Director, State Office of Planning  
Mary Alice Evans, State Office of Planning  
Benjamin Kudo, Esq., represented Queen Lili`uokalani Trust  
Yuko Funaki, Esq., represented Queen Lili`uokalani Trust

## PUBLIC WITNESSES

None

## QUEEN LILI'UOKALANI TRUST ("QLT")

Mr. Kudo provided the background and circumstances of how and why the Petition for Intervention had developed and argued the reasons why it should be granted. Mr. Kudo described how the proposed project and its impacts within the Petition Area would affect QLT's property; and why the scope of QLT's intervention participation should not be limited.

## PETITIONER

Mr. Lim argued why the Intervenor's Participation should be limited and described how the Petitioner would be affected if the Petition for Intervention was granted without limitations.

## HAWAII COUNTY

Mr. Takase argued why Hawai'i County supported the Petition for Intervention and stated that Hawai'i County favored granting the Petition and allowing full QLT participation.

## STATE OF HAWAII OFFICE OF PLANNING ("OP")

Mr. Yee described the concerns that OP had regarding QLT's intervention due to the 201H timeline requirements of the Project and argued that OP needed to better understand why the Intervenor QLT opposed the proposed project and what QLT interests would be impacted by it, other than utility easements and traffic.

Mr. Kudo described how recently applied for county exemptions needed to be assessed and argued why QLT should be allowed to fully participate in the proceedings without limitations.

Mr. Lim argued that the Petitioner shared OP's concerns about delaying the 201H process and requested that QLT be given the opportunity to intervene if QLT would be timely and file its Petition for Declaratory Order, if any, no later than Monday, October 11, 2010 if QLT's Petition for Intervention was granted.

Chair Devens inquired if Intervenor QLT would be willing to file its anticipated Petition for Declaratory Order, if any, by October 11, 2010. Mr. Kudo responded affirmatively that the October 11, 2010 deadline could be met.

Commissioner Lezy requested clarification on OP's concerns regarding delays in the 201H hearing process if the proposed Intervenor was not limited. Mr. Yee provided alternative situations that could occur.

Commissioner Lezy requested clarification on the "original intent" of the contract between QLT and the current landowner and what had been envisioned by it, and if QLT were contemplating filing a civil suit. Mr. Kudo expressed how QLT might react to the different situations that would develop.

There was no further discussion or questioning.

Commissioner Chock moved to approve the QLT Petition for Intervention with its scope limited to traffic. There was no second on the Motion.

Commissioner Kanuha moved to approve the QLT Petition for Intervention and allow full participation if the Petition for Declaratory Order, if any, was filed by Monday, October 11, 2010. Commissioner Jencks seconded the motion.

The Commission was polled as follows:

Ayes: Commissioners Kanuha, Jencks, Heller, Lezy, and Chair Devens.

Nays: Commissioner Chock.

The Motion passed 5-1 with 3 excused.

The Commission went into recess at 10:25 a.m. and reconvened at 10:36 a.m.

### **ACTION**

**A07-774 NORTH KONA VILLAGE, LLC (‘O‘oma 2<sup>nd</sup> – Kaloko, North Kona, Hawai‘i)**

**Chair Devens announced that this was an action meeting on Docket No. A07-774 NORTH KONA VILLAGE, LLC, to consider Petitioner's Motion to Change Name and Amend Caption from North Kona Village LLC to ‘O‘oma Beachside Village, LLC.**

### **APPEARANCES**

Jennifer Benck, Esq., represented Petitioner ‘O‘oma Beachside Village LLC (North Kona Village)

Steven Lim, Esq., represented Petitioner ‘O‘oma Beachside Village LLC (North Kona Village)

Gerald Takase, Esq., represented Hawai‘i County Planning Department

B.J. Leithead-Todd, Director, Hawai'i County Planning Department  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, Director, State Office of Planning  
Gregory Lind, Esq., Department of the Interior Solicitor's Office represented National  
Park Service  
Sally Beavers- Buchal, National Park Service

PUBLIC WITNESSES

None

PETITIONER

Ms. Benck argued the reasons for the name change request. There was no opposition by the Parties or questions on the matter.

Commissioner Kanuha moved to approve the Motion to Change Petitioner's Name and Amend Caption from North Kona Village LLC to 'O'oma Beachside Village, LLC. Commissioner Jencks seconded the Motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Kanuha, Jencks, Chock, Heller, Lezy, and Chair Devens.

Nays: None

The Motion passed 6-0 with 3 excused.

ORAL ARGUMENT

**A07-774 NORTH KONA VILLAGE, LLC ('O'oma 2<sup>nd</sup> – Kaloko, North Kona, Hawai'i )**

Chair Devens announced that this was Oral Argument on Docket No. A07-774 NORTH KONA VILLAGE, LLC, to consider Petition to reclassify land from the State Conservation Land District to the State Urban District and explained the planned procedures for the hearing.

There were no questions on the planned procedures for the hearing.

APPEARANCES

Jennifer Benck, Esq., represented Petitioner 'O'oma Beachside Villages LLC (North Kona Village)

Steven Lim, Esq., represented Petitioner 'O'oma Beachside Villages LLC (North Kona Village)

Gerald Takase, Esq., represented Hawai`i County Planning Department  
B.J. Leithead-Todd, Director, Hawai`i County Planning Department  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, Director, State Office of Planning  
Gregory Lind, Esq., Solicitor's Office represented National Park Service  
Sally Beavers- Buchal, National Park Service

## **PUBLIC WITNESSES**

**1. Keao Simeona**

**Ms. Simeona provided her reasons for opposing the Petition.**

**There were no questions for Ms. Simeona.**

**2. Adam Jardine**

**Mr. Jardine expressed his opinions on why he supported the proposed project.**

**There were no questions for Mr. Jardine.**

**3. Mana Simeona**

**Ms. Simeona shared her reasons for opposing the Petition.**

**There were no questions for Ms. Simeona.**

**4. Allison Castro**

**Ms. Castro voiced her concerns and opposition to the Petition.**

**There were no questions for Ms. Castro.**

**5. Tim Hershman**

**Mr. Hershman expressed his reasons for supporting the Petition.**

**There were no questions for Mr. Hershman.**

**6. Subhadra Corcoran**

**Ms. Corcoran shared her reasons why the Petition should be denied.**

There were no questions for Ms. Corcoran.

7. George Watkins

Mr. Watkins described findings on subterranean freshwater flow from past studies that he had conducted in the area.

There were no questions for Mr. Watkins.

8. Kama Hopkins

Mr. Hopkins read the written testimony of Robert Lindsey, trustee for the Office of Hawaiian Affairs (OHA), in support of the Petition and submitted his written testimony for the record.

There were no questions for Mr. Hopkins.

9. Michelle Tomas

Ms. Tomas expressed her reasons for opposing the Petition.

There were no questions for Ms. Tomas.

10. Winfield Chang

Mr. Chang submitted written testimony and expressed his opposition to the Petition.

There were no questions for Mr. Chang.

11. Robert Freitas Jr.

Mr. Freitas described his family's involvement with the Petition Area lands and shared his concerns about its development.

There were no questions for Mr. Freitas.

12. David Carlson

Mr. Carlson voiced his concerns about the Petition Area development based on his experience as an aviator.

There were no questions for Mr. Carlson.

13. Shaianne Moniz-Metcalf

Ms. Moniz-Metcalf expressed her reasons for opposing the Petition.  
There were no questions for Ms. Moniz-Metcalf.

14. Gabby Waite

Ms. Waite voiced her concerns and opposition to the Petition.

There were no questions for Ms. Waite.

15. Megan Kaipo

Ms. Kaipo shared her concerns and opposition to the Petition.

There were no questions for Ms. Kaipo.

16. Nancy Piscchio

Ms. Janice Palma-Glennie read Ms. Piscchio's testimony in opposition to the Petition.

There were no questions on Ms. Piscchio's testimony.

17. Janice Palma-Glennie

Ms. Palma-Glennie expressed that she was testifying on behalf of the local chapter of the Surfrider Foundation and provided the reasons why the Surfrider Foundation opposed the Petition.

There were no questions for Ms. Palma-Glennie.

18. Shannon Rudolph

Ms. Rudolph provided her reasons for opposing the Petition.

There were no questions for Ms. Rudolph.

19. Gemma Ley

Ms. Ley requested that the hearings be held in Kona after working hours and shared her reasons for opposing the Petition.

There were no questions for Ms. Ley.

The Commission went into recess at 11:20 a.m. and reconvened at 11:27 a.m.

20. Representative Cindy Evans

Representative Evans shared the concerns of her constituents and expressed her desire to achieve a “win-win” decision. Chair Devens asked Representative Evans what a “win-win” decision would be. Representative Evans provided her perspective of a “win-win” decision.

There were no other questions for Rep. Evans.

21. Judy Lane

Ms. Lane provided her reasons for opposing development in the region.

There were no questions for Ms. Lane.

22. Ron Mitchell

Mr. Mitchell stated that he had already submitted written testimony in support of the Petition.

There were no questions for Mr. Mitchell.

23. Malu Simeona

Ms. Simeona shared her reasons for opposing the Petition.

There were no questions for Ms. Simeona.

24. Daisy Mitchell

Ms. Mitchell shared her reasons for supporting the Petition.

There were no questions for Ms. Mitchell.

There were no other public witnesses.

CLOSING ARGUMENT

Chair Devens inquired if Ms. Benck wished to reserve time for rebuttal. Ms. Benck responded that she would like to have 5 minutes. Chair Devens acknowledged her request.

**Petitioner**

Ms. Benck thanked the participants in the proceedings for their efforts and

argued the reasons why the Land Use Commission should grant the Petition. Ms. Benck provided her perspectives on why Conservation Land classification changes were allowed in the past and why it should be granted for the proposed project; how the proposed project conformed to the County General Plan and the Kona Community Development Plan; how it provided for the primary residential market and included an affordable housing component onsite; how conditions included in the proposed project mitigated airport noise and provided sustainable housing units and employment; and provided for a “win-win” opportunity.

## Hawaii County

Mr. Takase argued the reasons why the County supported the Petition, and expressed how it conformed to the County General Plan and the Kona Community Development Plan and satisfied other of the Hawai`i County Planning Department considerations.

Commissioner Chock excused himself at 12:01 p.m. and returned at 12:03 p.m.

## OP

Mr. Yee stated that OP did not oppose the Petition since the County supported it and if OP's stipulated Conditions were adopted and argued why the Petition should be approved if it included the Department of Transportation's 8 Conditions, the National Park Service agreement, a waiver from the developer to seek damages for airport noise, the LUC adoption of an avigation easement, the OP energy conservation considerations and automatic Order to Show Cause, and observed the NELHA setback requirements.

The Commission went into recess at 12:06 p.m. and reconvened at 12:12 p.m.

## National Park Service (“NPS”)

Mr. Lind recited the reasons why the NPS decided to intervene and described the considerations that were involved in arriving at the `O`oma Beachside Village-NPS Agreement; and argued why the perspectives and proposals of the NPS should be included while deliberating and arriving at a decision to continue to protect and preserve the local natural and cultural resources.

## REBUTTAL

Ms. Benck summarized her argument for granting the Petition and described and explained the differences that Petitioner and OP had and were unable to resolve regarding the NELHA condition and the energy conservation condition.

There was no further discussion.

Chair Devens thanked the Parties, the LUC staff and the Public for their participation in the hearing and asked if there were any questions from the Commissioners.

Commissioner Kanuha requested clarification from the Petitioner and County regarding how consistent the proposed open space buffer/remaining Conservation lands were with the Open Space Designation of the General Plan land use maps. Ms. Leithead-Todd responded that based on her interpretation of the General Plan land use maps, the Open Space designation was consistent with the proposed open space buffer/remaining Conservation land. Ms. Benck replied that the Petitioner had nothing to add to Hawai'i County's statements.

Commissioner Kanuha requested confirmation of the Petitioner's representations for the Mauka Village since that portion of the proposed project was not within the petition area, and the Commission could not impose conditions on that part of the project. Ms. Benck replied that the Petitioner has proposed a condition that the Petitioner shall come back to the Commission to modify conditions applicable to the Mauka Village to be identical to the Petition Area development conditions and apply to both parcels.

Commissioner Heller requested clarification from the Petitioner and OP regarding the LEED-Silver designation for the Project and the use of an alternative standard. Mr. Yee provided his perspective of why LEED standards for the energy conditions were used and why alternative standards were not used. Ms. Benck provided the Petitioner's reasoning for not using LEED standards in the conditions and explained how the Petitioner could keep the Commission advised of its energy conservation efforts through its annual reports.

Commissioner Lezy stated that he joined Chair Devens' appreciation of the efforts put forth by the Parties and the Public into the proceedings and requested clarification on the preservation and access to the beach area portion of the Petition Area. Ms. Benck explained how the Petitioner planned to handle open space and access issues and represented that the Petitioner would be willing to agree to record an easement to provide for them.

Commissioner Jencks requested clarification on how the Petitioner would handle noise issues for the proposed project and deal with OP's essential conditions. Ms. Benck shared her perspectives on how the Petitioner planned to deal with the issues and conditions and provide mitigation measures. Discussion ensued to clarify the information contained in the noise map contour maps.

Commissioner Jencks requested clarification on how costs to maintain the proposed water system, wastewater treatment, and open space areas would be covered with the Project's affordable housing component included. Ms. Benck provided her perception of how Petitioner planned to handle the infrastructure maintenance costs with higher residential density levels.

There were no further questions.

Chair Devens announced that the Commission would take this matter under advisement and adjourned the meeting at 12:50 p.m.