

LAND USE COMMISSION  
MEETING MINUTES  
October 19, 2012

Natural Energy Lab of Hawai`I Authority Training Room  
73-970 Makako Bay Drive  
Kailua-Kona, Hawai`i 96740

COMMISSIONERS PRESENT: Kyle Chock  
Sheldon Biga  
Thomas Contrades  
Ronald Heller  
Lance Inouye  
Ernest Matsumura

COMMISSIONERS EXCUSED: Jaye Napua Makua  
Chad McDonald  
Nicholas Teves, Jr.

STAFF PRESENT: Daniel Orodener, Executive Officer  
Sarah Hirakami, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIANS: Walter Mensching

**CALL TO ORDER**

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

**APPROVAL OF MINUTES**

Chair Chock asked if there were any corrections or additions to the October 4-5, 2012 minutes. There were none. Commissioner Heller moved to adopt the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

## TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The A09-406 Ka`ono`ulu Ranch docket will be heard on Maui, November 1-2, 2012, with any continued hearings planned for November 15-16, 2012.
- The A12-795 West Maui docket's oral arguments and decision making will be on December 6, 2012 and a site visit for A12-796 Waiko Industrial Investment is planned for the same day.
- Docket A10-787 Maui R&T Partners LLC is expected to begin on December 7, 2012.
- The A12-795 West Maui docket's Adoption of Order will be on January 10, 2013 and the A09-406 docket's Motion to Bifurcate on January 11, 2013.
- The 2013 LUC calendar has been circulated and will be adopted as is.
- Any questions or conflicts, please contact LUC staff.

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

## ACTION

### **A81-525 Y-O Limited Partnership (Hawai`i)**

Chair Chock announced that this was an action meeting on **A81-525 Y-O Limited Partnership (Hawai`i)** to consider Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II.

## APPEARANCES

Steven Lim, Esq., and Jennifer Benck, Esq., represented Kaloko Heights Associates, LLC  
Peter Phillips, Project Manager, Kaloko Heights Project

William Brillhante, Esq., represented Hawaii County Department of Planning  
("County")

Bobbie Jean Leithead-Todd, Director, County

Bryan Yee, Esq., represented State Office of Planning ("OP")

Rodney Funakoshi, OP

Chair Chock updated the record and described the procedures for the day. There were no questions or comments.

#### PUBLIC WITNESSES

None

#### MAP ORIENTATION

LUC staff planner Scott Derrickson provided the Commission with a map orientation of the Petition Area. There were no questions for Mr. Derrickson.

#### OFFERING OF EXHIBITS

Petitioner

Ms. Benck stated that she had already provided Petitioner's Exhibits "A-D" and had recently added Exhibits "E-G". She described her exhibits and offered them to the Commission. There were no objections, comments or questions on the exhibits and they were admitted.

Hawaii County and OP had no exhibits to offer.

#### PRESENTATION

Petitioner

Ms. Benck stated that Mr. Phillips would provide background and updated information on Petitioner's activities and on why Petitioner needed more time to apply for redistricting Phase II of the proposed project and called him as a witness.

##### 1. Peter Phillips

Mr. Phillips stated that he was project manager for the proposed Kaloko Heights Development and provided background history and updated information for the proposed project. Mr. Phillips described the activities that his parent organization, Stanford Carr Development, had been involved with for the proposed development and how delays had been incurred from 2009-2012 due to litigation; and why more time was needed. Mr. Phillips stated that the upcoming deadline date for complying with conditions of the decision and order was January 2013 and shared details of the past litigation and how the Petitioner had already improved portions

of the Petition Area and was prepared to move forward after the extension was granted.

Mr. Phillips also described progress that had been made in both increments of the proposed project and how County zoning requirements and permit approvals for the Petition Area had been obtained; and how financing for continued construction of improvements relied on gaining the approval for the time extension from the Commission.

## QUESTIONS

### County

Mr. Brillhante stated that County had no opposition to Petitioner's Motion since it was timely and the applicant and its predecessors had contributed to the infrastructure improvements for the community and had not significantly deviated from the original development plan.

### OP

Mr. Yee requested clarification on the completion of improvements to both project increments and on what Increment II portions relied on Increment I completions. Mr. Phillips described the current status of improvements already made and on how future improvements needed parts of Increment I to be in place before they could continue.

Mr. Phillips also described how Petitioner planned to come before the Commission in the future for incremental approval for Increment II with an analysis of what potential impacts and mitigations would be; and would be open to any conditions or revisions to existing conditions that the Commission might deem necessary to impose within its authority.

### Rebuttal

Ms. Benck requested clarification on why Petitioner was appearing before the Commission just before the previously established deadline. Mr. Phillips stated that the litigation had just been resolved in August, 2012 and described how various other obstacles and delays needed to also be overcome before the Petitioner was ready to appear; and how over 18 million dollars had already been invested for the benefit of both project increments. Mr. Phillips also shared how financing to complete the Petition Area improvements depended on LUC approval of the request for time

extension and what kind of performance timetable the Petitioner planned use going forward.

### Commissioner Questions

Commissioner Inouye requested clarification on the number of units planned for Increment I and Increment II and on the Petitioner's required affordable housing component. Discussion ensued to determine the units planned for each increment and Mr. Phillips stated that the reason why Increment II had a lower unit count was to accommodate archaeological inventory survey findings and required county conditions; and described where the first 92 unit affordable housing component would be built.

Further discussion on how the affordable housing requirement would be met by the Petitioner on parcels D1 and D2 also occurred. (Mr. Phillips also showed Commissioner Inouye where on Exhibit B the developments would occur.)

Commissioner Heller requested clarification on traffic studies done for the proposed project. Discussion occurred regarding updates to the traffic studies since 1983. Ms. Benck stated that Mr. Phillips did not have the information but she was aware of studies being done at the time of the county re-zoning and that there hadn't been subsequent studies except for the archaeological study work.

Commissioner Heller also requested clarification on access to preservation areas indicated on the maps. Mr. Phillips described how easement provisions had been made to allow for public access to the preservation areas and stated that the maintenance issues for the preservation areas had not been addressed yet, but it was likely there would be rules and regulations put into place in the future.

### ADDITIONAL QUESTIONS FOR MR. PHILLIPS

Mr. Brillhante requested permission to question Mr. Phillips further. Chair Chock acknowledged his request.

Mr. Brillhante requested clarification on how Petitioner planned to proceed when approaching County for approvals for additional re-zoning for Increment II and meeting County requirements for mitigation, infrastructure, and compliance with the general plan and the Kona Community Development Plan. Mr. Phillips replied that Petitioner was not opposed to cooperating with the County.

### ARGUMENT

OP

Mr. Yee stated that OP was not opposed to the motion and argued that this action was not an extension of a public benefit or a mitigation; and was just an extension of time to allow the Petitioner to approach the Commission for incremental approval for its second phase; and when the incremental approval was sought in the future, there would be an analysis of the impact and possible mitigations from the project at that time.

COUNTY

Mr. Brillhante stated that the only significant County activity that had occurred during the period since the decision and order had been issued was the approval of the Kona Community Development Plan (“CDP”) and argued how County requirements would need to be satisfied by the Petitioner in the future.

Chair Chock requested clarification on what CDP requirements would need to be met for Increment II. Ms. Leithead-Todd described the various concurrency issues of the CDP that the Petitioner would be expected to comply with.

COMMISSIONER QUESTIONS

Commissioner Inouye requested clarification of OP’s perspective of substantial compliance and what the expectations were for the Commission if they were not met. Mr. Yee described how he perceived OP’s concerns as they related to substantial compliance for the proposed project; and how substantial compliance could be analyzed for both increments.

There were no further questions, comments, or discussions.

Commissioner Matsumura moved and Commissioner Biga seconded the Motion to grant Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II.

The Commission voted as follows:

Ayes: Commissioners Matsumura, Biga, Contrades, Heller, Inouye and Chair Chock.

Nays: None

The Motion passed 6-0 with 3 excused.

Chair Chock thanked the Parties for their cooperative efforts in working on the motion and stated that the Commission would address the next agenda item-Discussion of Administrative Rules Revisions.

### **DISCUSSION RE: ADMINISTRATIVE RULES REVISIONS**

Executive Office Orodenker, Deputy Attorney General Hirakami, and LUC staff planner Derrickson described the various proposed revisions for the Administrative Rules that had been circulated for the Commissioners to review for the meeting.

Executive Officer Orodenker summarized the proposed changes for the Commission and described how the process for instituting the revisions would proceed. He stated that the Commission meetings provided a public forum for Commission's discussion on the rules and clarified how future changes could be made and what the various stages of approval were before the final draft of revised changes were presented to the Governor's office.

Discussion ensued to address different concerns that the Commissioners had and Chair Chock suggested that more time till the first November meeting to study the suggested revisions might be necessary. Commissioners Heller and Biga agreed that the next meeting on November 1-2, 2012 might be a better time to discuss this matter.

Chair Chock confirmed with all the Commissioners present that the general consensus was to continue this matter at the November 1-2 meeting and moved on to the Executive Session portion of the agenda.

### **EXECUTIVE SESSION**

Commissioner Contrades moved and Commissioner Matsumura seconded the Motion to enter Executive Session at 11:15 a.m. The room was vacated for the Executive Session and the Commission reconvened at 11:40 p.m.

There being no further business, Chair Chock adjourned the meeting shortly thereafter.