

LAND USE COMMISSION
MEETING MINUTES

December 7, 2015 – 10:00 a.m.

Maui Arts & Cultural Center
One Cameron Way, Kahului, Hawaii 96732-1137

COMMISSIONERS PRESENT: Edmund Aczon
Kent Hiranaga
Arnold Wong
Linda Estes
Aaron Mahi
Jonathan Scheuer
Nancy Cabral

COMMISSIONERS EXCUSED: Chad McDonald
(There are currently 8 seated Commissioners out of 9 positions)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus (from meeting start till 3:32 p.m.)
Sandra Gran (from 3:52 p.m. to adjournment)

CALL TO ORDER

Chair Aczon called the meeting to order at 10:20 a.m. and introduced Maui Arts & Cultural Center Representative Sam Bittner to provide facility and housekeeping information to the audience gathered for the hearing. Ms. Bittner concluded her presentation and Chair Aczon began the proceedings.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the November 18-19th, 2015 minutes. There were none. Commissioner Mahi moved to approve the minutes and Commissioner Estes seconded the motion. The minutes were approved by voice vote (7 ayes- 1 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- December 10 is planned for the adoption of the form of the order for Docket No. A10-786 and a status update on A94-706 Ka`onoulu Ranch and a site visit for the impending Ma`alaea Plantation 201H affordable housing project.
- The January 13-14th, 2016 meeting is planned for hearing a Special Permit on Kauai and for a site visit for a proposed 201H project on Maui and to hear a possible Motion to Intervene associated with the 201H project.
- The January 27-28th, 2016 meeting is to adopt the form of the order for the Kauai Special Permit.
- The February 10-11th, 2016 meeting is planned for a hearing on the 201H Ma`alaea Plantation docket.
- The February 24-25, 2016 meetings are planned to complete hearings on the Ma`alaea Plantation docket; and to hear the Motion for Reconsideration for DR08-36 Ko Olina Resort and a follow-up status report for SP09-403 Waimanalo Gulch Sanitary Landfill.
- Any questions or conflicts, please contact LUC staff.

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

ACTION

A10-786 Olowalu Town LLC and Olowalu Ekolu LLC (Maui)

Chair Aczon announced that this was an action meeting to consider the acceptance of Olowalu Town LLC and Olowalu Ekolu LLC's Final Environmental Impact Statement (FEIS) for the reclassification of approximately 320 acres of land situated at Olowalu, Island of Maui, State of Hawaii, from the Agricultural District to the Rural and Urban Districts, Portions of Tax Map Key Nos. (2) 4-8-003:084, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118 and 124.

APPEARANCES

Jennifer A. Lim, Esq., Olowalu Town LLC (OT)'s Counsel

Onaona Thoene, Esq., OT's Counsel

Bill Frampton, (OT)

David Ward, (OT)

Will Spence, Director, Maui County Planning Department (County)

Rochelle Thompson, Esq., Deputy Corporation Counsel, County's Counsel

Bryan Yee, Esq., Office of Planning (OP)'s Counsel

Rodney Funakoshi, Land Use Administrator (OP)

Chair Aczon updated the record and described the procedures for the hearing. Ms. Lim requested that the record also reflect Petitioner's December 4th response to Commissioner Comments and Concerns correspondence that she had filed earlier.

Chair Aczon acknowledged Ms. Lim's remarks about her filing and announced that due to the large number of testifiers, public testimony would be taken after the Petitioner presented its case and comments from County and OP had been received on the FEIS.

There were no questions or comments on the procedures.

Chair Aczon announced the protocol that would be observed during the meeting and called for the Petitioner's presentation.

PETITIONER

Ms. Lim stated that she would call her expert witnesses to provide further details about their specialty areas and contributions to Petitioner's FEIS for the benefit of the Commission.

Petitioner Witnesses

1. Michael Munekiyo- Munekiyo Hiraga- FEIS

Mr. Munekiyo described his role in the FEIS process and provided details on what information the FEIS contained and how it was gathered and distributed for review.

County requested clarification on the hotel component of the proposed development mentioned in the FEIS and on the extent the Traffic Impact Analysis Review (TIAR) document considered different future scenarios and resulting expected Levels of Service (LOS) associated with it. Mr. Munekiyo described how the proposed hotel factored in the future plans for the Petition Area; and how the TIAR findings and LOS projections were reported.

OP requested clarification on how Accessory Dwelling Units (ADU) were considered with respect to anticipated impacts during the EIS process. Mr. Munekiyo provided his understanding of what residential living units capacities were used as a basis during the planning process.

Commissioner Estes requested clarification on the expected types of workforce housing occupations that comprised the target market used in the EIS process. Mr. Munekiyo stated that income levels were used for determining workforce housing households and described some of the types of occupations that he thought would be included for the described income brackets.

Commissioner Hiranaga requested clarification on whether the statements of the witness could be accepted as representations made by the Petitioner. Ms. Lim responded that the statements of her witnesses were representations of the Petitioner.

Commissioner Hiranaga requested clarification on how the 1500 residential unit limit for the proposed project would be regulated and controlled. Mr. Munekiyo described how the Petitioner expected to work with the Planning Department to respect the 1500 unit limit.

Commissioner Hiranaga requested clarification on what land use boundary limits and designations were part of the EIS. Mr. Munekiyo described how the EIS had reported land use designations and proposals; and had considered different boundary alignment alternatives.

Commissioner Scheuer requested clarification on the price and income ranges used for the EIS and how the 1500 unit capacity would be monitored and controlled. Mr. Munekiyo shared his perspective of how a project district concept might be used in planning and establishing guidelines for controlling the capacities described in the EIS; and described how the price and income ranges were determined.

Commissioner Wong requested clarification on what government agencies or entities were included in the EIS information gathering process and what their responses or comments were. Mr. Munekiyo described the selection criteria that was used to determine which government agency or entity to contact and shared his recollection of what their responses were.

Chair Aczon requested additional clarification on what Federal agency comments were received and what the total number of agencies contacted was. Mr. Munekiyo replied that 9 Federal agencies had been contacted and shared his recollection of what their responses were.

Commissioner Cabral requested clarification on how the 1500 living unit maximum capacity had been established and what considerations were involved in arriving at that number. Mr. Munekiyo provided his perspective of how the 1500 unit limit had been determined; and what factors and considerations were involved in establishing that limit. Mr. Munekiyo also described the planned unit permitting process that would be used if the development proceeded and how that would assist in controlling the number of units built.

Commissioner Scheuer requested clarification on how the recreational access for the Petition Area had been determined and what kind of inputs were collected to arrive at that conclusion for the EIS. Mr. Munekiyo shared how the recreational access had been conceptualized and how it would evolve as the proposed project advanced.

Commissioner Scheuer requested clarification on the location of findings discovered during the Cultural Impact Assessment (CIA) that had been

conducted on the Makai side of the Petition Area and whether Mr. Munekiyo was familiar with Hekili Point. Mr. Munekiyo indicated the location of the findings on a map of the Petition Area and shared his awareness of Hekili Point and stated that while it was not on the Master Plan, it would be addressed.

Commissioner Hiranaga requested clarification on the urban and rural growth boundaries and what conditions regarding traffic and parking capacities were considered during the EIS process. Mr. Munekiyo described how the Maui Island Plan was considered by Petitioner and what provisions were made during the planning process for the proposed project

Commissioner Wong requested clarification on what assumptions were made for estimating the number of individuals living in each unit and whether an estimate for the number of potential cars in the area caused by multi-generational living was included. Mr. Munekiyo described how the human population figures were calculated and responded that the potential car population numbers were not part of the report.

Commissioner Mahi expressed his concerns about the tentativeness of the facts and figures used for the report and how more specifics on matters that could be addressed was needed.

Commissioner Scheuer requested clarification on the infrastructure needs and impact levels from the proposed alternatives 1 and 2. Mr. Munekiyo described how the 1500 unit cap was applied and how it limited the amount of differences between both alternatives.

Ms. Lim asked some questions of Mr. Munekiyo on redirect.

Chair Aczon acknowledged and announced the receipt of a comment letter from OHA and ensured that copies were provided to the Parties and the Commission; and that a copy was available for the Public to review.

The Commission went into recess at 1200 noon and reconvened at 1:09 p.m.

Ms. Lim called her next witness.

Petitioner Witnesses (continued)

2. Tanya Lee Greig- Cultural/Traditional Practices

Ms. Greig described her role and contribution to the FEIS.

County had no questions.

OP requested clarification on Ms. Greig's professional experience and whether an Archeological Literary Review (ALR) had been performed by her. Ms. Greig replied that she had done an ALR for the Petition Area and described her past work history. Ms. Greig described how she had conducted various

surveys and studies for the Petitioner and how her collected information was included in the EIS. Ms. Greig also described what actions she had recommended to be taken if the proposed project moved forward.

Commissioner Mahi requested clarification on what organizations and individuals Ms. Greig had contacted during her surveys and studies. Ms. Greig recalled her contact history with program participants and information collection efforts.

Commissioner Scheuer requested clarification on what preservation efforts were made and how the State Historic Preservation Department (SHPD) had assessed and approved those efforts. Ms. Greig described how Petitioner reported and accommodated the initial findings and had made arrangements to situate open spaces nearby the preservation sites.

Commissioner Wong requested clarification on why no additional studies were done after the findings were made in 2011/2012. Ms. Greig provided her recollection of how SHPD had responded to her findings report and why no further studies were performed.

Commissioner Cabral requested additional information on Ms. Greig's work background and experience. Ms. Greig provided further information on her work history.

Commissioner Scheuer requested clarification on whether water concerns or issues relevant to Cultural/Traditional Practices were addressed. Ms. Greig provided her perspective of how water issues were addressed and deferred to the expert on water to respond to details regarding water diversion and Mauka/Makai water flow issues.

Ms. Thoene asked questions on redirect. Mr. Yee objected to the witness being asked for legal opinions. Ms. Lim conceded and acknowledged Mr. Yee's comments.

The Commission went into recess at 2:19 p.m. and reconvened at 2:29 p.m.

Ms. Lim offered her next witness.

3. Craig Lekven P.E.- Stormwater Management

Mr. Lekven described his contributions to the FEIS and the types of studies, findings and recommendations he had made and reported on

County requested clarification on water recycling plans, service capacity levels, visitor count impact factors, and stormwater/sewer infrastructure details. Mr. Lekven provided the additional information requested.

OP had no questions.

Commissioner Hiranaga requested clarification on the location of the proposed Waste Water Treatment Plant (WWTP). Mr. Lekven described what

factors had been considered in selecting the proposed site for the WWTP to service the proposed project.

Commissioner Scheuer requested clarification on the proposed WWTP site location in relation to tsunami evacuation setbacks and provisions made for sea level rise and climate change scenarios; and whether the type of technology that would be used during operation of the plant was already in use in Hawaii. Mr. Lekven described the criteria used to evaluate whether the WWTP site location was appropriate; and replied that the proposed technology was currently in use in the Puget Sound/Chesapeake Bay areas on the mainland. Mr. Lekven also described how stormwater and sewage capacities had been calculated and what provisions to mitigate any negative impacts were in place.

Commissioner Hiranaga requested further clarification on criteria used for choosing the WWTP site and what design considerations and features were included. Mr. Lekven provided additional details on why the WWTP site had been situated in its current designated area and what kinds of design features were contained in the proposed plan.

The Commission went into recess at 3:32 p.m. and reconvened at 3:52 p.m.
(Court Reporter McManus is replaced by Court Reporter Sandra Gran)

Chair Aczon asked Ms. Lim how much more time she needed for her presentation. Ms. Lim replied that she thought she would need another 3 ½ hours. Mr. Yee expressed his concerns about the pace of the hearing and suggested measures that he thought might speed up proceedings. Ms. Lim acknowledged Mr. Yee's comments and replied that she would try to comply with his request.

4. Mark Matsuda- Civil Engineer

Mr. Matsuda described his contributions to the FEIS and shared his understanding of how Best Management Practices (BMPs) had been used for similar construction projects; and whether the proposed project plans adequately provided for sufficient retention basins and other infrastructure and tsunami/flood zone requirements.

County requested clarification on how far out of the tsunami zone the proposed WWTP plant was. Mr. Matsuda estimated that it was approximately 300-400' away.

OP had no questions.

Commissioner Hiranaga requested clarification on the design criteria used to plan the proposed infrastructure for the Petition Area. Mr. Matsuda described the types of rainfall and runoff volume criteria that had been used.

Commissioner Scheuer requested clarification of how calculations for possible flooding were made. Mr. Matsuda described the design criteria for flooding that was used in his planning.

Commissioner Hiranaga sought further details on the calculations and design criteria used. Mr. Matsuda described how the Petition Area was initially assessed and evaluated to determine what criteria would be applied, and what scenarios were considered and applied in the planning process.

There were no further questions for Mr. Matsuda.

5. Tom Nance- Hydrologist

Mr. Nance described his role in the EIS process and provided details about his contributions to the FEIS document.

County and OP had no comments or questions.

Commissioner Hiranaga requested clarification on the subsurface flow of water to the ocean. Mr. Nance described his findings and how stream flow diversions factored in his reports.

Commissioner Scheuer requested clarification on the impacts that proposed water pumping might have on the Petition Area and its surroundings and how those impacts had been measured or determined. Mr. Nance stated that no calculations had been made for kalo cultivation and described how flow rates, water levels and water needs had been determined. Mr. Nance also stated that demands by Kuleana users had not been reported in the EIS.

There were no further questions for Mr. Nance.

Mr. Orodener excused himself at 4:51 p.m. and returned at 4:53 p.m.

6. Steve Dollar- Marine Resources

Mr. Dollar described his contributions to the FEIS and stated that he was not connected to the Makana Estates project. Mr. Dollar also shared his knowledge of offshore reef conditions in the Petition Area and how sediment loading and contamination was occurring.

The Commission went into recess at 5:01 p.m. and reconvened at 5:14 p.m. Chair Aczon asked if there were any questions for Mr. Dollar.

County and OP had no questions or comments.

Commissioner Scheuer requested Mr. Dollar's perspective regarding Makana Estates' runoff problems. Mr. Dollar shared his opinion of how those runoff problems were occurring.

There were no further questions for Mr. Dollar.

7. Roger Dyar

Mr. Dyar described his contributions to the FEIS and reported on the traffic analysis criteria and findings included in the TIAR that had been submitted.

Ms. Thompson requested clarification on Petitioner's responses to County comments that had been provided in 2012 regarding levels of service and traffic rates; and what kinds of situational conditions were being assumed. Mr. Dyar described the methodology that was utilized to collect, assess and report his findings.

Mr. Spence requested clarification on how much the Petition Area TIAR considered areas outside of the proposed project limits. Mr. Dyar stated that the TIAR was limited to the Petition Area only.

Mr. Orodenker excused himself at 5:47 p.m. and returned at 5:49 p.m.

Mr. Yee requested clarification on the scope of the proposed project and how much consultation the Petitioner had with the County's Department of Transportation regarding highway realignments, construction timing, and the criteria and methodology involved in the traffic studies. Mr. Dyar described the scope of his study and what it entailed; and how much involvement he had with Maui County.

Commissioner Wong requested clarification on how the anticipated traffic from the proposed development could be accurately determined for the proposed 1500 residential units and how the proposed future highway would impact the Petition Area. Mr. Dyar described how trip generation, not cars per household, was used for the traffic study and shared the types of service levels and traffic management alternatives that might be implemented to handle future traffic volumes and conditions.

Commissioner Scheuer requested further clarification on what assumptions were used to determine levels of service and cumulative impacts in the Petition Area. Mr. Dyar described the basis for his calculations.

Ms. Thoene had Mr. Dyar provide further specifics to clarify his responses to the County, OP and Commissioner's questions.

8. Will Frampton

Mr. Frampton stated that he was the Petitioner's representative and described how the FEIS had been planned and managed for its presentation to the LUC and shared the conceptual details of the proposed project.

Commissioner Hiranaga requested clarification on changes to the proposed project since it had been presented to the Maui Planning Commission in 2009. Mr. Frampton described the changes and the reasons for making them.

The Commission went into recess at 6:27 p.m. and reconvened at 6:36 p.m.

Questions:

County had no questions.

Mr. Yee requested clarification on traffic matters and asked if Petitioner would commit to funding its proposed 4 lane realignment of the Hoopiilani Highway. Mr. Frampton stated that Petitioner had included the realignment funding in the proposed project costs and would work with the State DOT concurrently as the proposed development progressed.

Commissioner Hiranaga requested clarification on representations made regarding stormwater runoff to the Maui Planning Commission and the LUC. Mr. Frampton described why the representations were different and also described how the proposed Olowalu Master Plan included changes to reduce park area and preserve Hekili Point.

Commissioner Scheuer requested clarification on the Petitioner's commitment to use CC&Rs and other mitigation plans to observe the projected 1500 maximum living unit capacity; to protect the offshore reef, and participate in the proposed highway realignment. Mr. Frampton replied that Petitioner would follow form-based zoning code at County level to control the living unit numbers; and stated that Petitioner was aware of the need to preserve the offshore reef; and had allotted \$18 million for future highway improvements that were still to be determined.

Commissioner Hiranaga requested clarification on proposed future infrastructure improvements. Mr. Frampton described how future infrastructure improvements were dependent on how the proposed project evolved both for Petition Area wastewater treatment hookups and State DOT highways linkages.

Commissioner Cabral requested clarification on the dated Cultural Impact Statement used for the FEIS. Mr. Frampton described how the FEIS had used the Archaeological Impact Study which had been done and updated with a Cultural Impact Assessment.

Commissioner Scheuer requested clarification on whether the maps used for the AIS and CIA were to the same scale. Mr. Frampton described how the maps were similar.

Ms. Lim had Mr. Frampton provide further details to clarify his responses to the Commissioners questions.

FINAL COMMENTS:

COUNTY

Ms. Thompson described County's concerns regarding traffic bottlenecks and how traffic impacts would extend beyond the limits of the proposed project; and stated that the County took no position on what action the LUC should take regarding the acceptability of the FEIS.

There were no questions or comments for County.

OP

Mr. Yee stated that OP recommended denial of the FEIS and described why the TIAR, CIA and AIS used in the FEIS were inadequate.

Ms. Lim requested clarification on why OP felt the AIS was insufficient. Mr. Yee described how Ms. Greig's testimony had indicated the need for further investigations of the Petition Area due to the passage of time since the 1997/98 survey, subsequent SHPD requirements, and comments made during Ms. Greig's testimony regarding the need for additional walk-throughs and trenching.

There were no further questions or comments for OP.

REBUTTAL

Ms. Lim argued that the FEIS should be found to be acceptable and why the AIS was sufficient; and stated how the late response by OP had impacted Petitioner.

There were no further questions for Petitioner.

The Commission went into recess at 7:51 p.m. and reconvened at 8:01 p.m. Chair Aczon called for public witnesses.

PUBLIC WITNESSES

Due to the large number of public witnesses, the minutes will provide a list of the witnesses in the order they testified. (Accept notation indicates that testimony was in favor of the LUC accepting the FEIS. Reject notation indicates that testimony was against the LUC accepting the FEIS. Other notation indicates that the testimony was unclear on accepting or denying the FEIS.)

Please refer to the transcripts for further details of public testimony. Only comments and/or questions asked of testifiers are noted. No notation indicates that no questions were posed to the testifier.

PUBLIC WITNESSES

1. Lucienne de Naie-Reject
2. Mike Foley-Reject
3. Trineete Furtado-Reject
4. Alicia Kalepa (represented by Abraham Ah Hee)- Other

5. Archie Kalepa- Reject
(Chair Aczon declared a recess at 8:15 p.m. and reconvened the meeting at 8:16 p.m.)
6. David Jenkins-Reject
7. Andy Hood-Reject
8. Malihini Keahi-Reject
9. Tiare Lawrence-Reject
10. Cynthia Matzke-Reject
11. Lauren Blickley, Surfrider Foundation- Reject
12. Joyclynn Costa-Reject
13. Ke`eaumoku Kapu-Reject
14. Ryan Kamilea Aliinea Aspili-Reject
15. Albert Dizon-Reject
16. Alin Peterson-Accept
17. George Rixey-Accept
18. Mark Deakos-Reject
19. Dick Mayer-Reject
20. John Gelert-Reject
21. Fred Ruge-Accept
22. Albert Perez-Reject
23. Mike Kitagawa-Accept
24. Leonard Nakou-Other/Reject?
25. Deborah Mader, Sierra Club-Reject
26. Kyle Turner-Reject
27. Dennie Becker-Reject
28. Dana Reed-Reject
29. Terez Amato Lindsey-Reject
30. Kaneloa Kamaunu- Reject
31. John Fitzpatrick-Reject

There were no further Public Witnesses.

The Commission went into recess at 9:02 p.m. and reconvened at 9:06 p.m.

DELIBERATION

Chair Aczon asked if Commissioner Cabral had reviewed the November transcripts on this matter and was ready to deliberate on it. Commissioner Cabral acknowledged that she had read the transcripts and was prepared to deliberate.

Chair Aczon asked for the Commission's pleasure.

Commissioner Scheuer moved to deny the FEIS since it did not meet Chapter 343, 11-200 standards. Commissioner Mahi seconded the motion.

Discussion

Commissioner Scheuer referenced the Price decision language (a portion of which had been referred to by Ms. Lim) and shared why he felt the FEIS had not adequately answered questions he had regarding the proposed project.

Commissioner Wong thanked the Parties and the Public for their participation and shared why he was in favor of the motion.

Commissioner Hiranaga stated that he was confused about the adequacy of the FEIS and uncertain of what action the Petitioner would have going forward.

Chair Aczon described the alternative actions that the Petitioner could take if the FEIS were rejected at this time.

Commissioner Estes stated that she agreed with Mr. Yee's argument and was in favor of the motion.

Commissioner Mahi stated that he agreed for the same reasons and had seconded the motion because of it.

Commissioner Hiranaga stated that he did not support the motion.

Commissioner Cabral stated that although she appreciated the need for housing, she was voting for the motion.

Chair Aczon thanked the Parties and the Public and stated that he was in support of the motion.

The Commission voted as follows:

Ayes: Commissioners Scheuer, Mahi, Wong, Cabral, Estes and Aczon

Nays: Commissioner Hiranaga

Excused: Commissioner McDonald

The Motion passed 6-1 with 1 excused (There are currently 8 members on the Commission)

There being no further business, Chair Aczon adjourned the meeting at 9:29 p.m.