

LAND USE COMMISSION
MEETING MINUTES

December 10, 2015 – 09:30 a.m.

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

COMMISSIONERS PRESENT: Edmund Aczon
Kent Hiranaga
Arnold Wong
Linda Estes
Jonathan Scheuer
Nancy Cabral
Chad McDonald

COMMISSIONERS EXCUSED: Aaron Mahi
(There are currently 8 seated Commissioners out of 9 positions)

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

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Chair Aczon stated that LUC staff had advised that the minutes for the December 7, 2015 meeting was not ready due to the limited time between meetings and deferred approval of the minutes till January.

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 January 13-14th, 2016 meeting is planned for hearing a Special Permit on Kauai and for a site visit for a proposed 201H affordable housing project on Maui and to hear a possible Motion to Intervene associated with it.
- The January 27th, 2016 meeting is to adopt the form of the order for the Kauai Special Permit via videoconference.
- 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 was a brief discussion to clarify meeting dates in February. There were no other 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 adopt the form of the order to deny 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

Onaona Thoene, Esq., Olowalu Town LLC and Olowalu Ekolu LLC (OT)'s Counsel
Bill Frampton, (OT)

David Ward, (OT)

Ann Cua, 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. There were no questions or comments about the record.

Chair Aczon called for public witnesses. There were no public witnesses.

Chair Aczon entertained a motion by Commissioner Estes to adopt the form of the order. Commissioner Wong seconded the motion.

There was no discussion.

Chair Aczon asked Mr. Orodenker to poll the Commission. The Commission voted as follows (6-0-1-1) to approve the form of the order:

Commissioners Estes, Wong, Scheuer, Hiranaga, Cabral and Chair Aczon voted in favor of the motion.

No Commissioners voted against the motion.

Commissioner McDonald abstained and Commissioner Mahi was excused.

Ms. Thoene thanked the Commission for its efforts and stated that Petitioner would review the findings and reasons for the rejection of the FEIS and would revise their EIS accordingly. Chair Aczon acknowledged Ms. Thoene's remarks and called for a brief recess.

The Commission went into recess at 9:37 a.m. and reconvened at 9:44 a.m.

Chair Aczon reconvened the meeting and stated that the next agenda item was a status report on Docket No. A94-706 Ka'ono'ulu Ranch and called for the Parties to identify themselves and for the Petitioner to provide its report.

APPEARANCES

Randall Sakumoto, Esq., Piilani Promenade North and South's (PP) Counsel

Charles Jencks, PP Representative

Tom Pierce Esq., Intervenors South Maui Citizens for Responsible Growth, Maui

Tomorrow Foundation, Inc., and Daniel Kanahele (INT) Counsel

Mark Hyde, South Maui Citizens for Responsible Growth

Albert Perez, Maui Tomorrow Foundation

Daniel Kanahele

Ann Cua, Maui County Planning Department (County)

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

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

Rodney Funakoshi, Land Use Administrator (OP)

PETITIONER PRESENTATION

Mr. Sakumoto submitted an informational booklet for the Commission and the Parties to use during his presentation and referred to it while he described how the ownership and plans for the Petition Area had changed in response to different factors from 1995 to current day; and how it anticipated to move forward in 2016.

QUESTIONS ABOUT PRESENTATION

Mr. Pierce stated that he had no questions regarding Petitioner's presentation but would like the opportunity to later clarify some points on the record.

County had no questions.

OP requested clarification on about who the current owners of the Honuaula Partners (HP) portion of the Petition Area were for notification purposes. Mr. Sakumoto responded that he did not know who the current owners were. Mr. Yee requested that OP be provided the information when it became available. Mr. Sakumoto acknowledged Mr. Yee's request.

The Commissioners had no questions.

COMMENTS

INTERVENORS

Mr. Pierce asked if Petitioner had concluded its presentation. Mr. Sakumoto responded that additional information was available and offered Mr. Jencks to respond to any questions regarding further details about the status report. Mr. Jencks, after being sworn in by Chair Aczon, provided additional details about the maps and exhibits contained in the informational booklet that had been distributed.

Mr. Jencks also described how the present EIS process had stalled due to the unavailability and need to replace the original traffic engineer for the project; and what plans were in process to ensure that needed updates to the Traffic Impact Analysis Report (TIAR) would be done to allow the delivery of the EIS to the Commission by the second quarter of 2016.

Discussion ensued for procedural clarification on how proceedings would move forward since the Petitioner was involved in a lawsuit involving the Petition Area. Mr. Jencks described how he planned to proceed once the lawsuit was settled and stated that though the ownership entity of HP was not an applicant for the EIS, the EIS would include the entire original Petition Area (both PP and HP portions included).

Mr. Pierce requested clarification on how the Motion to Amend would be presented to the Commission and why Intervenor's Order to Show Cause (OSC) Motion should continue to be stayed. Discussion ensued to clarify the rationale involved and how the Motion to Amend might address INT's concerns regarding its OSC.

COUNTY

Ms. Thompson had no questions or comments.

OP

Mr. Yee requested clarification on what the future plans were for both portions of the original Petition Area. Mr. Sakumoto described how only the PP portion would be addressed in the anticipated Motion to Amend and how Petitioner planned to move forward if the Motion to Amend was granted.

COMMISSIONERS

The Commissioners had no questions or comments.

Chair Aczon called for Public Witnesses.

PUBLIC WITNESSES

1. Mike Moran

Mr. Moran read his submitted written testimony and thanked the Commission for its service.

There were no questions for Mr. Moran.

2. Daniel Kanahale

Mr. Kanahale stated that he was speaking on behalf of Maui Cultural Lands and summarized his submitted written testimony.

There were no questions for Mr. Kanahale.

3. Lucienne de Naie

Ms. de Naie described what considerations she would like the Commission to make when the EIS was under LUC review.

There were no questions for Ms. de Naie.

There were no further public witnesses.

FINAL QUESTIONS/COMMENTS

PETITIONER

Mr. Sakumoto stated that he had no further comments.

INTERVENORS

Mr. Pierce provided INT's perspective of its OSC efforts and its outlook on how the future proceedings might progress.

COUNTY

County had no questions or comments.

OP

Mr. Yee summarized OP's perspective on the current state of the proceedings and OP's expectations regarding how the future proceedings should move forward. Mr. Yee also expressed the need to know who the owners were for HP's portion of the Petition Area and how representatives from both PP and HP would need to be actively involved during the EIS process.

COMMISSIONERS

Commissioner Hiranaga shared his perspective of how County zoning might address and/or correct some of the issues confronting the Petition Area.

Mr. Pierce commented on Commissioner Hiranaga's remarks and shared the concerns that had triggered INT's motion for OSC and described the perceived disconnect that the Intervenor felt the County had from the LUC's conditions mentioned in the original D&O.

There were no further questions or comments.

Chair Aczon stated that the A94-706 agenda item was a status report only and the Commission would not be taking any action; and that the requirement for continued status reports would remain and the docket would continue to be open.

Chair Aczon asked if there was any further business.

Commissioner Hiranaga moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities during contentious hearings. Commissioner Cabral seconded the motion. By a unanimous voice vote, the Commission voted to enter into Executive Session.

The Commission went into Executive Session at 10:55 a.m. and reconvened at 12:05 p.m.

There being no further business, Chair Aczon adjourned the meeting at 12:05 p.m.