

LAND USE COMMISSION
MEETING MINUTES
December 17, 2019- 09:30 a.m.
SHERATON KAUAI COCONUT BEACH RESORT
MAKAI ROOM
650 Aleka Loop, Kapaa, HI 96746

COMMISSIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Nancy Cabral
Edmund Aczon
Dan Giovanni
Arnold Wong

COMMISSIONERS EXCUSED: Dawn Chang
(8 Seated Commissioners) Lee Ohigashi

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

COURT REPORTER: Jean McManus

CALL TO ORDER

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

APPROVAL OF MINUTES

Chair Scheuer asked if there were public witnesses to testify on the minutes. There were none. Chair Scheuer then asked if there were any corrections or additions to the December 4-5, 2019 meeting minutes. There were none.

Commissioner Cabral moved to approve the minutes and Commissioner Wong seconded the motion. There were no comments or discussion on the minutes.

The minutes were unanimously approved by voice vote.
(8 ayes-0 nays- 1 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.
- - DEC 18 Kauai – A11-791 Hokua Place -Accept FEIS- if needed
 - JAN 8- Kona for A02-737 U of N Bencorp & A90-660 HHFDC status reports
 - JAN 9- HNL- A87-610 Waiawa continued hearing and SP09-403 Motion to Terminate Order Regarding Written Status Reports
 - JAN 22-23 on Oahu for A17-804 Hawaiian Memorial Life Plan (JAN 22 at Koolau Ballroom/ JAN 23 at HNL airport)

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

ACTION

A11-791 KAPA`A HIGHLANDS II (HG Kaua`i Joint Venture –HoKua Place) (Kaua`i)

To Consider Acceptance of Final Environmental Impact Statement for the Petition To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kaua`i, State of Hawai`i, Consisting of 97 Acres from the Agriculture and Rural District, to the Urban District, Tax Map Key No. (4) 4-3-03; por. 01

Chair Scheuer stated that this was an action meeting on Docket No. A11-791 Kapa`a Highlands Phase II (HoKua Place LLC) to consider acceptance of the Final Environmental

Impact Statement (FEIS) for the Petition To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kaua`i.

APPEARANCES

William Yuen, Esq., HG Kaua`i Joint Venture LLC's (HG) Representative
Ron Agor, HG Consultant
Wendell Bandmann, HG Project Manager
Scott Sullivan, HG Developer
Andrew Michaels, Deputy County Attorney representing Kaua`i County Planning Department (County)
Jody Higuchi Sayegusa, Deputy Director, County
Dawn Takeuchi-Apuna, Esq., Deputy Attorney General, Office of Planning (OP)
Lorene Maki, Planner, OP

Chair Scheuer the record, described the procedures for the hearing and asked if there were any Public Witnesses who wished to testify. There were no questions or comments on the procedures.

Chair Scheuer asked if Mr. Yuen had been advised of the LUC reimbursement policy and whether his client would comply with it. Mr. Yuen acknowledged that he had been advised and that his client would abide by it.

DISCLOSURES

Commissioner Wong disclosed that he knew Mr. Yuen socially but that he felt that he could remain fair and impartial during the hearing. There were no objections to Commissioner Wong's continued participation in the proceedings.

Chair Scheuer disclosed that he was a member of the Sierra Club (a Potential Intervenor) but had no active role and felt that he could remain fair and impartial during the proceedings. There were no objections to Chair Scheuer's continued participation.

There were no other disclosures.

Chair Scheuer called for Public Witnesses.

PUBLIC WITNESSES

1. Gabriella Taylor

Ms. Taylor submitted written testimony, shared her concerns about the FEIS and spoke against granting the Petition.

2. Noreen Dougherty

Ms. Dougherty submitted written testimony and spoke against the proposed project and the FEIS.

Chair Scheuer clarified the land use District Boundary Amendment process (DBA) for Ms. Dougherty.

There were no other public witnesses.

Chair Scheuer called for Mr. Yuen to make his presentation.

PRESENTATION

Petitioner

Mr. Yuen made his presentation to the Commission, described how Petitioner had worked to produce the FEIS and argued why the FEIS was legally sufficient and should be accepted by the Commission.

Commissioner Okuda requested clarification on the legal standards involved with determining whether a FEIS should be accepted and extensively questioned Mr. Yuen on his perspective on the matter.

Commissioner Wong requested and was granted a recess in the proceedings.

The Commission went into recess at 10:25 a.m. and reconvened at 10:35 a.m.

Commissioner Okuda resumed questioning Mr. Yuen on various sections of the FEIS that did not address concerns that Commissioner Okuda felt were important. Mr. Yuen shared how more detail could be provided during the DBA approval process and described why Petitioner felt that the current version of the FEIS was legally sufficient for the Commission to approve it.

Commissioner Giovanni requested clarification on how traffic concerns had been analyzed and studied. Mr. Yuen described how Petitioner would proceed if the FEIS was granted by updating the traffic impact analysis report (TIAR) and address concerns that County had voiced earlier.

Commissioner Wong requested clarification on the housing and school facilities portion of the FEIS. Mr. Yuen described how more details would be available during the formal hearing on the proposed project and that the Department of Education concerns had a minimal effect on the FEIS.

Chair Scheuer described his concerns about the water resources section of the FEIS and questioned the adequacy of the analysis that was performed to arrive at the

conclusions that were reported. Chair Scheuer also noted that the Ka Pa`akai analysis was questionable and that the Cultural Impact Analysis Appendix M appeared to be missing. Mr. Yuen responded that no known cultural practices had been discovered and could not confirm whether Appendix M had been submitted.

Chair Scheuer sought comments from the County.

County

Ms. Higuchi-Sayegusa stated that County had no position on the acceptability of the FEIS.

Commissioners Cabral, Giovanni, Okuda, and Wong requested clarification on County's position on traffic concerns, unresolved issues that were mentioned in County's September 1, 2017 letter, the completeness of the FEIS, how the affordable housing element of the proposed project affected the County General Plan and other details. Ms. Higuchi-Sayegusa responded that she would defer responses on traffic engineering and housing to other County officials and was unsure of the County position on the TIAR, had no official opinion on whether checking boxes on the FEIS form without regard for the viability of the content, and described how East Kauai would rely on the TIAR for updating County records.

There were no further questions for County.

Chair Scheuer called for OP's comments.

OP

Ms. Apuna stated that OP had reviewed the FEIS and had determined that it was legally adequate.

Commissioner Okuda requested clarification on whether the LUC had discretionary power to accept or reject an FEIS and sought OP's position on whether the considerations for a "no build" alternative were adequate and whether the Petitioner had met its burden of proof for this Petition. Ms. Apuna described the considerations and evaluations that OP had made during its analysis of the FEIS and to determine its position on this matter.

Chair Scheuer shared his concerns that no evidentiary basis had been provided in the water resource report stating that a non-pervious layer of rock existed to protect existing water resources. Ms. Apuna replied that OP felt that a good faith effort had been made to produce the report and had no objections to accepting the FEIS.

Commissioner Aczon 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 on FEIS matters. Commissioner Cabral seconded the motion. By a voice vote (6-0- 2 excused) the Commission voted to enter Executive Session.

The Commission went into Executive Session at 11:37 a.m. and reconvened in the regular meeting at 11:58 a.m. Chair Scheuer announced the Commission still had further questions and declared a recess at 11:59 a.m. The Commission resumed proceedings at 1:00 p.m.

Chair Scheuer asked if the Commission had any further questions.

Commissioner Wong requested clarification when Petitioner expected updates to its traffic and school facilities reports. Mr. Yuen shared that the TIAR had been performed in 2017 and did not have an update and that the Department of Education had updated its 2017 report in 2018.

FINAL COMMENTS

Petitioner

Mr. Yuen summarized why the FEIS should be accepted since it had met the existing standards of adequacy.

County

None

OP

None

DECISION MAKING

Commissioner Cabral expressed her concerns regarding the inadequacies of the FEIS submitted for consideration but conceded that it met the minimums for acceptance and moved to find that the Petitioner's Final Environmental Impact Statement complied with the content requirements for an FEIS and is accepted pursuant to HRS Chapter 343, and HAR Chapter 11-200, and that the Commission authorize the Executive Officer to notify and submit a record of this acceptance to the applicant and the Office of Environmental Quality Control by the December 23, 2019 deadline for Commission action

Commissioner Giovanni seconded the motion.

Discussion

Commissioner Giovanni echoed Commissioner Cabral's remarks and described how the FEIS technically met the requirements for acceptance but required additional work for future presentation to the Commission. He also expressed his disappointment with County since it had not sought clarification on future traffic issues and concerns.

Commissioner Aczon stated that he also echoed Commissioners Giovanni and Cabral's concerns and how County could have taken a more active role in this matter.

Commissioner Okuda described why he was voting against the Motion and shared how the "no build" alternative could have been better investigated.

Commissioner Wong stated that he supported the Motion since the Petition had procedurally "checked the boxes" but would be expecting more substantial information when the Petitioner returned.

Chair Scheuer described the areas of the FEIS that he had serious concerns with but acknowledged that the standards for FEIS acceptance were minimal and had been met; and that he would be voting in favor of the Motion.

The Commission voted as follows;

Yea- Commissioners Cabral, Giovanni, Wong, Aczon, and Chair Scheuer.

Nay- Commissioner Okuda

The Motion passed. (5-1- with 2 excused)

Chair Scheuer commented that the upcoming January 8-9 and 22-23, 2019 meetings would require the Commission to provide meals as an integral part of the meeting due to time constraints and remote locales of the meeting to complete business in the allotted time. Mr. Orodenker acknowledged the comment and confirmed that preparations to provide for "working lunches" would be taken.

Chair Scheuer declared the meeting adjourned at 1:26 p.m.