

LAND USE COMMISSION  
Minutes of Meeting  
King Kamehameha's Kona Beach Hotel  
Kamakahonu Room, Ballroom Eha  
75-5660 Palani Road  
Kailua-Kona, Hawaii

February 20, 2003

COMMISSIONERS PRESENT: P. Roy Catalani  
Bruce Coppa  
Pravin Desai  
Isaac Fiesta  
Lawrence Ing  
Randall Sakumoto

COMMISSIONERS ABSENT: Steven Montgomery  
Stanley Roehrig  
Peter Yukimura

STAFF PRESENT: Diane Erickson, Esq., Deputy Attorney General  
Anthony J. H. Ching, Executive Officer  
Russell Kumabe, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter

Chair Ing called the meeting to order at 11:00 a.m.

ADOPTION OF MINUTES

Commissioner Fiesta moved to adopt the minutes of the January 9 and 10, 2003 as circulated. Commissioner Desai seconded the motion, and the motion was unanimously approved by voice votes.

Commissioner Fiesta moved to retain conditions 1, 2, 4, 6, 7; and to delete conditions 3, 5, 8 and 9. The motion was seconded by Commissioner Desai. The commissioners were polled as follows:

Ayes: Commissioners Fiesta, Desai, Catalani, Coppa, Sakumoto, and Ing

The motion passed with 6 ayes and 3 absent.

DR02-25 ERIKA AND ACHIM GINSBERG-KLEMMT; and DR02-28 ERIKA AND ACHIM GINSBERG-KLEMMT (Oahu)

Because the two motions are related to each other, Chair Ing introduced both dockets together.

This was an action meeting to consider Petitioner's Motion for Reconsideration of Decision and Order filed January 16, 2003, and to consider Petitioner's Petition for Declaratory Order seeking that the November 14, 2002 minutes be revised and reissued, giving a true reflection of the matters discussed at the meeting and the views of the participants.

#### Appearances

Dennis Krueger, Esq., representing Petitioner

John Chang, Esq., Deputy Attorney General, representing Office of Planning

Abe Mitsuda, Land Use Division, Office of Planning

There was no public testimony. Commissioner Sakumoto moved to enter into executive session to consult with its deputy attorney general to discuss procedures that bears upon Petitioner's motion. The motion was seconded by Commissioner Coppa, and said motion was unanimously approved by voice votes.

The Commission entered into executive session at 12:01 p.m.

The Commission reconvened at 12:09 p.m.

Mr. Krueger asked the Commission that this matter be deferred to another session.

In regards to the first motion for Reconsideration of Decision and Order filed January 16, 2003, Chair Ing provided the Petitioner with two options because the Petitioner's motion was ruled out of order: 1) The Petitioner may file another Petition; or 2) The Petitioner may appeal LUC's decision to the Circuit Court. As the matter before the Commission was not a contested case, but an administrative meeting conducted in accordance with Chapter 91 and Robert's Rules of Order, motions for reconsideration can only be brought before the Commission by a member who voted with the prevailing side. As the petition for reconsideration was brought by other than a member, the petition was ruled out of order.

However, Chair Ing subsequently provided opportunity for any appropriate member to sponsor a motion for reconsideration if they so chose. As no member sponsored such a motion, the matter was closed.

As far as the second motion to consider Petitioner's Petition for Declaratory Order seeking that the November 14, 2002 minutes be revised and reissued, giving a true reflection of the matters discussed at the meeting and the views of the participants, Chair Ing ruled the motion out of order for the same reason noted before. Chair Ing did again provide an opportunity for any member to sponsor a motion seeking correction of the Commission's November 14, 2002 minutes. There being no response, the Chair closed the matter.

#### A92-683 HALEKUA DEVELOPMENT CORPORATION (Oahu)

Commissioner Catalani moved to adopt the Order Granting Office of Planning's Motion for an Order to Show Cause to Rescind the Decision and Order dated on October 1, 1996. Commissioner Desai seconded the motion, and said motion was unanimously approved by voice votes with 3 absent.

#### A02-737 U of N BENCORP (Hawaii)

Mr. Ching reported that the Commission will take a field trip to view the project site for LUC Docket No. A02-737 U of N Bencorp on Friday, February 21, 2003 at 9:00 a.m. The parties to the proceeding and members of the public who wish to testify at the hearing were invited to participate in the field trip. Those interested can meet

staff at the turnaround of the King Kamehameha's Kona Beach Hotel at 8:30 a.m. for directions to the project site, which is a short drive south along Kuakini Highway to the project site. Those interested can also meet at the existing University of the Nations campus at 9:00 a.m. at which time the field trip will begin.

A00-730 LANIHAU PROPERTIES LLC (Hawaii)

This was an agenda item of the Land Use Commission to discuss and take action, if any, relating to correspondence received regarding Docket No. A00-730 Lanihau Properties, LLC (Hawaii).

Appearances

R. Ben Tsukazaki, Esq., representing the Petitioner  
Norman Hayashi, County of Hawaii Planning Department  
Patricia O'Toole, Esq., County of Hawaii Corporation Counsel  
John Chang, Esq., Deputy Attorney General, representing Office of Planning  
Abe Mitsuda, Land Use Division, Office of Planning

There was no public testimony.

Commissioner Sakumoto moved to enter into executive session to ask a legal question of the Deputy Attorney General. The motion was seconded by Commissioner Fiesta, and said motion was unanimously approved by voice votes.

The Commission entered into executive session at 12:48 p.m.

The Commission reconvened at 12:52 p.m.

Mr. Tsukazaki presented Petitioner's position, contained in its letter dated February 10, 2003, that the Commission deferred its action on Petitioner's Motion for Reconsideration at its meeting on May 2, 2003. Petitioner felt that, in the Commission's rejection of Petitioner's Final EIS, the intention was to have Petitioner revise the EIS without going back to the Draft EIS process, which would include a re-solicitation of public comments with a 45-day public comment period. Petitioner felt the required revisions did not include any new information and revisions will be based upon reorganization of existing information. It also stated it had been working with the

National Park Service (NPS) on reaching agreements on those issues that the NPS was concerned with. Commissioner Catalani disagreed with Petitioner's position and felt that the Commission's rejection required Petitioner to make substantial new disclosures, which would require public review and comment. Petitioner offered to provide its revisions to those reviewing agencies and individuals that provided substantive comments on the EIS, and reiterated that there is a review period when the Final EIS is published in the Environmental Notice.

Commissioner Fiesta moved to rescind the Commission's rejection order. Commissioner Coppa seconded the motion and the Commissioners were polled as follows:

Ayes: Commissioner Fiesta, Coppa, Sakumoto, Desai, and Ing

Nayes: Commissioner Catalani

The motion passed with 5 ayes, 1 nay, and 3 absent.

Commissioner Fiesta moved to allow the Petitioner to replace its Final EIS of March 21, 2002 with an amended EIS. Commissioner Coppa seconded the motion, and the Commissioners were polled as follows:

Ayes: Commissioner Fiesta, Coppa, Desai, Sakumoto, and Ing

Nayes: Commissioner Catalani

The motion passed with 5 ayes, 1 nay, and 3 absent.

The meeting was adjourned at 1:11 p.m.