

LAND USE COMMISSION
MINUTES OF MEETING

March 15, 2007

Leiopapa A Kamehameha
4th Floor
Conference Room 405
235 So. Beretania Street
Honolulu, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Kyong-su Im
Lisa Judge
Duane Kanuha
Steven Montgomery
Ransom Piltz
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: None

STAFF PRESENT: Anthony Ching, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Judge called the meeting to order at 10:50 a.m.

ADOPTION OF MINUTES

Commissioner Piltz moved to adopt the minutes of January 18 and 19, 2007. Vice Chair Montgomery seconded the motion. The minutes of January 18 and 19, 2007 were approved by voice votes.

Vice Chair Formby moved to adopt the minutes of February 15 and 16, 2007. Vice Chair Montgomery seconded the motion. The minutes of February 15 and 16, 2007 were approved by voice votes.

Vice Chair Montgomery moved to adopt the minutes of February 23, 2007. Vice Chair Formby seconded the motion. The minutes of February 23, 2007 was approved by voice votes.

Chair Judge noted that the approval of minutes for March 1 and 2, 2007 should only be for March 1, 2007 because the Commission did not meet on March 2.

Vice Chair Montgomery then moved to adopt the minutes of March 1, 2007. Commissioner Teves seconded the motion. The minutes of March 1, 2007 was approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Anthony Ching reported the following schedule:

- April 12-13 the LUC will be meeting on Oahu. The agenda may support only a one-day meeting to be held on Thursday, April 12.
- April 26-27 the LUC will be meeting on Kauai to continue the Knudsen Trust docket.
- May 3-4 the LUC will be meeting on Kauai. On May 3, the Commission is scheduled to take a field trip to the project site. Mr. Ching noted that attendees should dress appropriately, as the tour would cover some rough terrain.

Mr. Ching added that the tentative dates would remain the same and noted that the calendar is filling up.

There were no questions posed by the Commission.

Chair Judge entertained a motion to amend the agenda to allow for consideration of the petitioner's Motion to Amend the Written Direct Testimony of Gregory J. Brenner and Exhibit List.

Vice Chair Formby moved to amend the agenda to consider petitioner's motion for amendment of the written testimony of Gregory Brenner and exhibit list. Vice Chair Montgomery seconded the motion.

Commissioner Kanuha entered the meeting at this time.

The Commission was polled as follows:

Ayes: Formby, Montgomery, Teves, Piltz, Kanuha, Im, and Judge

The motion passed with 7 yes, 2 absent.

Commissioner Contrades entered the meeting at this time.

A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC (Oahu)

Chair Judge stated that this was a continued hearing on Docket No. A06-763 Kapolei Property Development LLC to consider the reclassification of approximately 344.519 acres of land currently in the Agricultural District to the Urban District for business industrial park uses at Ewa, Oahu, Hawaii.

APPEARANCES

Benjamin Kudo, Esq., represented Petitioner

Naomi Kuwaye, Esq., represented Petitioner

Jesse Souki, Esq., represented Petitioner

Lori Sunakoda, Esq., represented City & County of Honolulu, Department of Planning and Permitting

Ray Sakai, City & County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

Chair Judge noted that there were no public witnesses.

Admission of Additional Exhibits

Ms. Kuwaye respectfully requested that the LUC accept and admit the written testimony of Gregory Brenner to reflect new information that became known at the last proceedings regarding the opae ula in the project sinkhole area. Ms. Kuwaye noted that exhibit 6A reflects these findings and also exhibit 50, the State Historic Preservation Division's (SHPD) acceptance of the report. Ms. Kuwaye added that petitioner was also requesting approval of their amended exhibit list.

Ms. Sunakoda stated that the City and County of Honolulu had no objections to the additional exhibits and the amendment to the exhibit list.

Mr. Yee noted that the State also had no objections.

Vice Chair Formby moved to accept the written testimony of Gregory Brenner, exhibits 6A and 50, and the amended exhibit list. The motion was seconded by Vice Chair Montgomery.

The Commission was polled as follows:

Ayes: Formby, Montgomery, Contrades, Im, Kanuha, Piltz, Teves, and Judge.

The motion passed with 8 yes, 1 absent.

Mr. Kudo then summarized their witness list and called upon their first witness.

Petitioner's Eitness

1. David William Shideler

Mr. Shideler stated that his written direct testimony was admitted as exhibit 28 and the newly admitted exhibit 50. Mr. Shideler referenced and discussed exhibit 50, the SHPD letter accepting the archaeological inventory report prepared by Cultural Surveys Hawaii for the petitioner. Mr. Shideler noted that he is very familiar with the project lands and summarized the scope of his report. Mr. Shideler added that he believed that the project would not impact the cultural resources and practices and that the reclassification will not have any adverse impacts on the project area.

Ms. Sunakoda stated that the City had no questions for Mr. Shideler.

Mr. Yee raised a few questions regarding the sinkholes in the preserved area, the 25 new bird species identified, and the utilization of the sinkholes by the Hawaiians for agricultural and burial purposes.

Commissioner Piltz had questions and concerns related to the industrial waste area adjacent to the project site and the impacts to the nearby sinkholes and seepage into the ocean.

Vice Chair Montgomery raised concerns over the suggestions from the public witnesses that the sinkholes should be preserved as a state natural preserve and the nationwide focus on native birds.

Mr. Kudo noted that (Mr. Myers) another witness scheduled to testify on behalf of the petitioner would be better equipped to answer these questions.

Vice Chair Formby posed a few questions regarding the stone formations and referenced exhibits 12 and 13.

Commissioner Im also raised questions regarding these stone formations, their purpose, the uses of the sinkholes by the Hawaiians, cultural habitation in the sinkholes, and the cultural resource preservation plan.

After a discussion, there were no further questions posed by the parties or the Commission for Mr. Shideler.

A lunch recess was taken at 12:00 p.m. The meeting reconvened at 1:25 p.m.

Commissioner Wong entered the meeting at this time.

Mr. Kudo noted that as a result of the public testimony of Mike Yamamoto, Aquatic Biologist of the DLNR during the LUC's February 1, 2007 hearing, petitioner's entomologist Dr. Brenner has conducted supplemental research to confirm or deny the presence of opae ula in the sinkhole preserve area.

2. Gregory J. Brenner

Dr. Brenner stated that he is a professional entomologist and a natural resource consultant providing services in natural resource conservation and assessment. Dr. Brenner noted that he was contracted by Group 70 International to conduct an arthropod inventory and assessment of the project site. Dr. Brenner stated that he conducted an arthropod inventory in September 2006 and a follow up investigation in February 2007. Dr. Brenner described the sampling techniques used, the search for particular species (i.e., Blackburn's Sphinx moth, opae ula), and the time of year the search was conducted. Dr. Brenner noted that he did not find any caterpillars and found one wet sinkhole in the preserve with a species of opae ula, which was not designated as a candidate species nor listed as threatened or endangered.

Ms. Sunakoda stated that the City had no questions for Dr. Brenner.

Mr. Yee posed questions regarding the influence of tide levels in the sinkholes, brackish water, the depth of the sinkholes, and fencing.

Vice Chair Formby raised a few questions in reference to the adventive species not native to Hawaii, and the distance that Dr. Brenner needed to descend into the sinkhole to reach these ponds.

Dr. Brenner noted that the water level in the sinkholes were not easily visible from above and the distances were approximately 12 to 15 feet. Dr. Brenner added that the water levels fluctuated during the low and high tide.

Commissioner Im asked if Dr. Brenner had discovered any other forms of life in the sinkholes.

Dr. Brenner noted that he found algae and other bacterial matter but did not see anything else moving around, except the opae ula.

After a discussion there were no further questions posed by the parties or the Commission for Dr. Brenner.

3. Jeffrey Morrell

Mr. Morrell was previously qualified as an expert in environmental engineering. His written testimony was admitted as petitioner's exhibit 33. Mr. Morrell noted 2 clarifications in his written testimony. On page 5, question 29 regarding the HWS waste pile of 6 ½ acres; the entire area is 12 ½ acres. Also on page 9, question 36 regarding the Malakole site description should be 3 acres and not 25 acres.

Mr. Morrell then summarized his testimony and described the waste pile and the remedial activities conducted at the Malakole site (Chevron), the current conditions, and regulatory status of both sites. Mr. Morrell added that there would be very low risk of exposure to dangerous levels of toxic chemicals as long as containment, institutional controls, and construction procedures were maintained and enforced.

Ms. Sunakoda raised questions regarding the waste pile, the inorganic metal containments (lead and cadmium), flooding from hurricanes and heavy storms, and the drainage channel.

Mr. Yee posed questions related to the EIS, the removal of the monitoring wells at the waste pile, and a water monitoring well for water resource management.

A recess break was taken at 2:45 p.m. The meeting reconvened at 3:05 p.m.

Vice Chair Formby posed questions related to the four inactive monitoring wells, groundwater monitoring, metals underground, and the post closure requirements.

Commissioner Im raised questions in reference to the Chevron site, the hydrocarbons found, the proximity of the drainage channel, the boundary of the contaminated site, and the ground water levels and flows. Commissioner Im also had concerns regarding the risk assessment and specific institutional controls, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act), and the kind of potential liability the public may be facing in the event of a disaster.

Commissioner Wong had a few questions on the waste pile monitoring program, the post closure period, care and maintenance on the waste pile cap, DOH reports, and the landowner's responsibility for maintenance and inspection.

Chair Judge posed questions on the RCRA (Resource Conservation and Recovery Act), closure and implementation, the 3 additional areas which were capped, and DOH reports.

Vice Chair Formby asked when the 30-year closure permit would expire.

Mr. Morrell noted that the closure was completed in 1995 and that the 30-years would end in 2025. Mr. Morrell added that to ensure the integrity of the cap is maintained, he believed that they should continue conducting semi-annual monitoring and visual inspections.

Commissioner Im posed questions regarding internal drainage patterns and the potential that surface water to flow underground or seep into the ground.

Commissioner Piltz had a few questions related to the possibility of contaminants collecting in the sinkholes.

Mr. Morrell continued to discuss the implications of a 100 year flood, Potential for Maximum Flooding (PMF) events, action levels, safety factors, and the post closure report.

After a discussion, there were no further questions posed for Mr. Morrell by the parties and the Commission.

4. Craig Arakaki

Mr. Arakaki stated that he was a registered civil engineer and specialized in land development. Mr. Arakaki was previously qualified as an expert in the field of civil engineering. His written testimony was admitted as petitioner's exhibit 42. Mr. Arakaki stated that he prepared the preliminary engineering report for the project and summarized his report. Mr. Arakaki discussed the infrastructure necessary to serve the project, drainage, wastewater, water and power requirements.

Ms. Sunakoda referenced exhibit 42, page 8 and questioned the non-potable water master plan to be submitted to the BWS.

Mr. Yee posed questions regarding the presence of a 6 inch monitoring well in the area and its potential for contaminants, and the drainage system.

Commissioner Im left the meeting at this time.

Vice Chair Formby raised a few questions related to the drainage system, gravity flow, the mauka makai slope, and mitigative measures to ensure that the water is cleaned up before entering the ocean.

Commissioner Piltz posed questions in reference to the FEIS; page 4-46 the existing condition on a 10 year one-hour storm, the 100 year storm, mitigative measures, and controls on the high velocity areas.

Vice Chair Formby left the meeting at this time.

Chair Judge had a few questions in reference to exhibit 44, the executive summary, regarding the major drainage channel being sized to accommodate the entire watershed and the basin area in figure 5.

After a discussion, there were no further questions posed by the parties or the Commission for Mr. Arakaki.

A recess break was taken at 4:45 p.m. The meeting reconvened at 5:00 p.m.

5. Barry Neal

Mr. Neal was previously qualified as an expert in meteorology. Mr. Neal summarized his testimony and discussed the air quality study's short and long term impacts, dust control measures and monitoring air quality.

Ms. Sunakoda noted that the City had no questions for Mr. Neal.

Mr. Yee raised questions regarding industry malfunctions and referenced the Campbell Industrial Park and other areas that have since developed emergency evacuation plans incorporated.

After a discussion, there were no further questions posed for Mr. Neal by the parties or the Commission.

6. Todd Beiler

Mr. Beiler was previously qualified as an expert in acoustical engineering. Mr. Beiler summarized his testimony and discussed ambient noise measurements and traffic noise compliance levels.

Vice Chair Montgomery left the meeting at this time.

Ms. Sunakoda noted that the City had no questions for Mr. Beiler.

Mr. Yee posed a few questions regarding the impacts caused by aircraft using the airport's alternate flight paths.

Chair Judge posed questions regarding typical industrial business noise levels and the DOH noise control rules.

After a brief discussion, there were no further questions posed by the parties or the Commission of Mr. Beiler.

The meeting adjourned at 5:20 p.m.

(Please refer to LUC Transcript of March 15, 2007 for more details on this matter.)