

LAND USE COMMISSION
MEETING MINUTES

May 15, 2009

Leiopapa A Kamehameha
Conference Room 405, 4th Floor
235 S. Beretania St.
Honolulu, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha
Ransom Piltz
Vladimir Devens
Kyle Chock
Lisa Judge
Normand Lezy
Nicholas Teves, Jr.
Reuben Wong

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney
Riley Hakoda, Staff Planner

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Stephen Crowell

CALL TO ORDER

Chair Kanuha called the meeting to order at 9:08 a.m. May 15, 2009

ACTION:

Chair Kanuha stated that this was an action meeting on Docket No. A06-771 D.R. Horton-Schuler Homes to consider Petitioner's motion to amend Its Revised List of Witnesses, List of Exhibits, List of Rebuttal Witnesses, and List of Rebuttal Exhibits.

APPEARANCES

Benjamin Kudo, Esq., Naomi Kuwaye, Esq. and Yuko Funaki, Esq. represented Petitioner

Dawn Takeuchi-Apuna, Esq., and Tim Hata represented the City & County of Honolulu, Dept. of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning
Abbey Mayer, State Office of Planning

Scott Derrickson, State Office of Planning

Dr. Kioni Dudley-Friends of Makakilo, Intervener

Yvonne Izu, Esq.-represented Haseko (Ewa) Inc., Intervener

PUBLIC WITNESSES

None

PETITIONER

Ms. Kuwaye stated that this Motion was submitted in response to the Commission's Order to submit witness and exhibit lists during pre-hearing conference. Petitioner had submitted an additional witness, Jim Charlier, to answer questions raised by Commission at the March 20, 2009 hearing.

The City and County, OP, and Intervener Haseko (Ewa) had no objections or questions.

FRIENDS OF MAKAKILO

Dr. Dudley conditionally objected based on the problem of needing more time to handle and process the material being submitted.

There were no further comments or discussion.

Commissioner Wong moved to grant the motion. Commissioner Piltz seconded the motion. The Commission was polled as follows:

Ayes: Commissioner Chock, Devens, Judge, Lezy, Piltz, Teves, Wong and Chair Kanuha. The motion passed 8-0 with 1 absent.

HEARING

A06-771 D.R. HORTON- SCHULER HOMES, LLC.

Chair Kanuha announced that this was a continued hearing on Docket A06-771 D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company, to Amend the Agricultural Land Use District Boundaries Into the Urban Land District

for approximately 1,553.844 Acres of Land at Honouliuli, Ewa District, Oahu, Hawaii, Tax Map Key Nos.: 9-1-17:4, 059 and 072 (por); 9-1-18: 1 and 4 (por).

APPEARANCES

Benjamin Kudo, Esq., Naomi Kuwaye, Esq. and Yuko Funaki, Esq. represented Petitioner

Dawn Takeuchi-Apuna, Esq., and Tim Hata represented the City & County of Honolulu, Dept. of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Scott Derrickson, State Office of Planning

Dr. Kioni Dudley-Friends of Makakilo, ("FoM"), Intervener

Yvonne Izu, Esq.-represented Haseko (Ewa) Inc., Intervener

PUBLIC WITNESSES

1. Gene Awakuni, UH West Oahu Chancellor

Mr. Awakuni testified in support of the Petition. He stated that he appreciated the cooperation and support that D.R, Horton had provided to the development of the West Oahu Campus and acknowledged that there were issues which confront the approval of this Project. He stated that the possibilities of developing a community using the University campus as a catalyst offered benefits which weighed in favor of the development.

There were no questions of the witness.

2. Celeste Lacuesta

Ms. Lacuesta stated that she was appointed by the Ewa Neighborhood Board to attend the hearing to ask for a deferral on meetings regarding Hoopili. She explained that many Ewa residents are not aware of the Hoopili project and that information regarding the development has not been readily available.

The Petitioner and County had no questions of the witness.

Dr. Dudley asked how long a deferral would be needed. Ms. Lacuesta responded that the Ewa Beach Neighborhood Board would be talking to the Neighborhood Board Commission to arrange a town hall meeting to inform

residents about the project. She also asked that D.R. Horton provide community mailings similar to what other area developers/builders have done to keep the residents apprised of the situation and allow the Ewa neighborhood opportunities to provide community input.

There were no other questions of the witness.

Mr. Kudo commented that Petitioner had allowed FoM leeway with witness testimonies and asked that the Commission take into account that some individuals who are providing public witness testimony are members of Friends of Makakilo, a party to the proceedings. Chair Kanuha replied that the Commissioners would weigh each testimony on its own merits.

Commissioner Judge asked if Ms. Lacuesta was aware that the Commission had certain time frames to act on a Petition and that the hearings were ongoing, with opportunities for public testimony and for a concurrent education process to occur within the community. Ms. Lacuesta answered that she was. Ms. Lacuesta commented that the Ewa Neighborhood Board had tried to be a participant in the discussions regarding the Horton project but could not participate since the members included in the meetings were “handpicked”. She added that they wanted to be included in the informational meetings to hear what was going on and that the project plan had been completed without their input.

There were no further questions of the witness.

3. Glenn Oamilda

Mr. Oamilda is a Ewa Beach resident. He asked the Commission to help keep the proceedings transparent and commented on the Ewa Development Plan and the problems that the City had not addressed with its permitting process. He added that the Legislature had also not done anything to help matters. He stated that there are concerns about traffic, transit, loss of agricultural lands and lack of oversight on what is happening in the area that need attention. He also asked that the Commission consider deferring any decision on the Petition since not enough discussion pro and con had occurred. Mr. Oamilda stated that the opposition to the project had not been heard due to “handpicked” committee members and no governmental oversight.

He stated there is a need for sustained, balanced growth in the area to

complete Second City planning that would connect existing residential pockets within the area.

There were no questions of the witness.

4. John Howell, CEO Easter Seals Hawaii

Mr. Howell testified in support of the D.R. Horton Project and explained how D.R. Horton had helped Easter Seals with its community mission in West Oahu. Mr. Howell stated that his organization is trying to provide more services in West Oahu and has had difficulty hiring and retaining employees due to the lack of suitable, affordable housing that could provide for their needs.

There were no questions of the witness.

5. Leonard Leong, VP Royal Contracting Co.

Mr. Leong testified in support of the Hoopili project. He stated that Hoopili was a well-thought out master plan that completed the Second City with the West Oahu UH facility and the rail transit system, and would provide jobs which would be good for the economy.

There were no questions of the witness.

6. Tom Berg from Representative Kymberly Pine's Office

Mr. Berg stated that Rep. Pine from House District 43 had submitted written testimony at the March 20, 2009 meeting which contained concerns about the project. Mr. Berg said that Rep. Pine's concerns advance what the Ewa Neighborhood Board had solidified the previous night. The first issue involved the East-West Connector Road which would link the North/South Road with Ft. Weaver Road. Mr. Berg stated that this road should be built first prior to homes being sold as a requisite for this project. The second issue was in regards to the placement of a school in the Northeast quadrant of the project area near Konowai Street and Kunia Road. Mr. Berg stated that the Ewa Neighborhood Board took the position that the Hoopili project's configuration should be designed so that no traffic signal would be warranted to accommodate traffic in the area. Mr. Berg also asked for a delay in deliberations due to the problems he had experienced trying to get the Ewa Neighborhood Board involved with the project.

Commissioner Judge asked Mr. Berg who he was testifying for- Rep. Pine or himself? Mr. Berg answered that he was speaking on his own behalf as a Ewa Beach resident but was reiterating the two action points that were omitted at Board action and was conveying Rep. Pine's concerns in her absence.

Chair Kanuha asked Mr. Berg if he was a Neighborhood Board member and if he had attended the meeting the previous night. Mr. Berg answered that he was a Neighborhood Board member and had attended the meeting. Chair Kanuha asked if the recommendation that the Commission defer action on the Petition was by a vote taken by the Board. Mr. Berg answered that it was.

7. Nada Mangialetti

Ms. Mangialetti stated that she was a Makakilo resident and wanted to speak about the loss of Aloun Farms and the agricultural lands. She had concerns about the consequences of losing prime agricultural lands and the impact it would have in the event Hawaii needed to grow its own food.

Commissioner Teves excused himself at 9:55 a.m. and returned at 9:58 a.m.

There were no questions of the witness.

The Commission went into recess at 10:00 a.m. and reconvened at 10:18 a.m.

PETITIONER WITNESSES

TOM NANCE

Ms. Kuwaye recalled her expert witness, Tom Nance, to testify and answer questions about hydrology.

Dr. Dudley asked Mr. Nance to describe de-salinated water needs for the future projects that were going to be in the area. Mr. Nance answered that the Board of Water Supply would be making the decisions about water supply for the area and explained the different alternatives that would be available for water sources. Dr. Dudley asked Mr. Nance to quantify the capacity demands for the project and how any shortage would be resolved. Mr. Nance stated the requirements for the area in which de-salinated water would be the option if the Board of Water Supply decided that water from other sources would be re-directed to different parts of the island.

There were no further questions for the witness.

REGINALD DAVID

Mr. David was qualified as an expert in fauna. Mr. David identified his report and written testimony as Petitioner's Exhibits 62 and 63 and described his findings and methodology in conducting his studies to the Commission. Dr. Dudley asked Mr. David if Pueo had been sighted and if there was a Pueo reserve/refuge in the area. Mr. David stated that no Pueo had been sighted and that he was not aware of any reserve/refuge in the area for Pueo.

There were no further questions for the witness from the parties or the Commission.

JAMES CHARLIER

Mr. Kudo noted that he had submitted Mr. Charlier's Curriculum Vitae as Petitioner's Exhibit 74- and requested that Mr. Charlier be qualified as an expert in transportation planning. There were no objections by the other parties in the proceeding. Chair Kanuha admitted Mr. Charlier as an expert witness in transportation planning.

Mr. Charlier confirmed that he had submitted written testimony as Petitioner's Exhibit 79 and that there would be a modification to Petitioner's Exhibit 79 in that there would be no visual aid used for question 27.

Mr. Charlier explained his involvement with the Hoopili project with the layout and planning for the street network, and other preliminary transportation planning. Mr. Charlier also stated his work history with other projects in Hawaii, and shared his opinions on local transportation needs. He stated that once cities reach the size that Honolulu has, a more strategic planning approach was needed and that congestion could not be eliminated system wide, but that unnecessary congestion caused by poorly timed signals, or inefficient use of major corridors like H1 could be. Mr. Charlier added that congestion could be managed by cities providing more connective street networks, shifting travel to other modes, and helping reduce the exposure to congestion.

Mr. Charlier explained the concept of induced traffic. He also stated his reasons why Honolulu needed a high-capacity transit system and explained how land

development patterns could be used to steer growth into the transit oriented development area as well as why the associated urban needs should be addressed. Mr. Charlier stated that a method to avoid congestion was to avoid building overly wide suburban highways in favor of connected local networks to reduce or eliminate the need to travel on arterials. He suggested collectors and connectors, and mixed use communities to provide better access for residents, with public transit being readily available to make the area more walkable.

Mr. Charlier stated that these design principles were incorporated into Hoopili. Mr. Charlier explained the term “connectivity” for the Commission and identified the lack of collectors and connectors in the current way that the Ewa area was being developed. Mr. Charlier also explained the term “complete neighborhoods” which are about 40 to 200 acres in size and about a half-mile across where most places are within a five-minute walk. Complete neighborhoods are described as being compact, connected, and complete.

Mr. Charlier described collector and connector streets and explained their role in neighborhoods. He stated that an urban street network was necessary for a city’s traffic capacity since it would disperse traffic and provide alternative routes of travel for its users. Mr. Charlier also described how Hoopili was incorporating transit into its development plan. He stated that since it is still barren fields that it would be easier to situate transit-oriented development in the area. Mr. Charlier testified that the planning for Hoopili was designed with and without the rail system being included since the completion of the rail project was uncertain. The City’s planning for Ewa had transit nodes for medium density which could be supported without rail transit, and the higher densities extend into Kapolei and the West Oahu UH campus. Mr. Charlier stated that their planning had been consistent with this planning.

Mr. Charlier stated that transportation should be in service toward community objectives and that he had advised the Petitioner on what an urban transportation system should look like, how it functions and what the land plan would need to be to accommodate it. Mr. Charlier described other work he had done for the project and what beneficial effects he thought the Hoopili project would have. Mr. Charlier stated that Hoopili represented an important segment to completing the Second City concept that the City had and other factors besides transportation were taken into consideration to improve the quality of life in the project.

STATE OFFICE OF PLANNING

Mr. Yee referred Mr. Charlier to pg. 12, lines 33 & 34 from his original testimony and asked what he meant by "preliminary". Mr. Charlier stated that they had looked at street plans but without knowing the direction of where the transit line will be located, there will only be design guidelines in place with connectivity standards for now. Mr. Charlier stated that there are performance measures that exist to use as standards to measure success which include publications by the Center for Transit Oriented Development, the Environmental Protection Agency, and other sources for criteria. He explained the various ways his industry measures successful performance for specific systems and how he would be working with the Petitioner to ensure that these measures were being properly applied.

Commissioner Lezy excused himself at 11:27 a.m. and returned at 11:30 a.m.

Mr. Charlier described the various tools and sources to use to measure and evaluate outcome results. He stated that performance measurements could be set but that it was too early at this stage. Mr. Charlier stated that he had reviewed the TIAR and had made certain assumptions within the project relative to possible connection points to external roadways. Mr. Charlier represented that the external roadway issues are being handled by someone else and his assignment had been to achieve an urban vision for Hoopili as part of the Ewa Development Plan (EDP) and to focus on the overall development issues.

Mr. Yee asked if there were performance measures for TOD. Mr. Charlier replied that multi-modal levels of service could be used for pedestrians or transit-level of services which could be written. Mr. Charlier also stated that connectivity standards were important to include and that the City had a project in process to do this. He cited a publication by Dr. Susan Handy at UC Davis on street connectivity as being the most comprehensive on the subject and offered to provide it along with other information to Mr. Yee after the hearing. Mr. Charlier testified that issues regarding jobs and commercial spaces were handled to remain consistent to the General Plan. Mr. Charlier represented that much of what had been done so far was on a hypothetical basis and that the real details would be handled as they arose during the County Zoning Process.

The Commission went into recess at 11:45 a.m. and reconvened at 1:10 p.m.

Commissioner Lezy did not return. Commissioner Judge returned at 1:18 p.m.

Dr. Dudley asked Mr. Charlier to describe the different types of streets that were identified in his presentation. Mr. Charlier described the various types of streets and explained how he thought traffic could be managed and mitigated in the neighborhood. Mr. Charlier described the “no build” alternative and the consequences of not building up the area and the shortcomings of “park and ride” for the transit system. Mr. Charlier stated that building the project after the rail system had been constructed would affect the feasibility projections on which the rail system was based among other forecasts.

Commissioner Piltz asked Mr. Charlier to describe how walkability, connectivity, and connector/collector roads would factor into street design. Mr. Charlier described how traffic calming measures could be used, how roundabouts worked, how bike paths and other factors are implemented.

Commissioner Judge asked Mr. Charlier how Hoopili would fit in regionally with the existing roadway network. Mr. Charlier described how he envisioned Hoopili would connect to the system.

Commissioner Devens asked how long Mr. Charlier had been working on the Project and if he had a chance to review the TIAR. Mr. Charlier replied that he had been working on the Project for about 4 years and had reviewed the TIAR. Mr. Charlier described the factors involved in creating the “critical mass” for the area.

Commissioner Chock asked about the type of vertical structures that had been recommended to the Petitioner. Mr. Charlier replied that they had tried to remain consistent with the Ewa Development Plan and would adjust density accordingly. Mr. Charlier explained how development incentives worked and how they might be used for Hoopili just by building the rail system. Mr. Charlier described what he thought would happen if no rail system developed, and the types of obstacles a developer might be confronted with.

Commissioner Piltz asked about parking design components. Mr. Charlier described how sidewalks on both sides of the street or alley developments would work.

Commissioner Judge asked about what should be integral to making an outstanding traffic pattern. Mr. Charlier stated that a connected street network was really important.

Chair Kanuha asked Mr. Charlier to comment on the six lane Kapolei Parkway and the East-West connector road. Mr. Charlier stated his general opinions on the shortcomings of large arterials in the neighborhoods. He indicated that the East-West connector road was in the Hoopili plan.

Chair Kanuha referred to Mr. Charlier's earlier testimony on describing "preliminary" from pg. 12, lines 33 and 34 and asked if there were a lot of assumptions that had to be calculated into the transportation program because of the uncertainty of the rail planning. Mr. Charlier stated that locating the streets and roads was difficult until the sites of the rail stations were established and described the general areas and design and facility details that were under consideration in the project area. Mr. Charlier described the transit influence zone distances and the factors that were considered in making their calculations.

Commissioner Piltz asked about how roadside walls are used in community design. Mr. Charlier explained the term "contact sensitive streets" that incorporated features to reduce the impact of streets and roads in the neighborhood.

There were no further questions or re-direct of the witness.

MAYA LAGRANDE

Ms. Kuwaye qualified Ms. LaGrande as an expert witness in Botany. Ms. LaGrande had submitted written testimony as Petitioner's Exhibit 76, and a botanical research survey which was Petitioner's Exhibit 65. Ms. LaGrande had no changes to her written testimony or survey. Ms. LaGrande described the methodology used in conducting her research and summarized her findings for the Commission.

The City and OP had no questions of the witness.

Dr. Dudley asked if any red ilima had been found. Ms. LaGrande replied that none had been located in the Petition Area, but she had found some outside the Petition Area in the North-South Road area.

Haseko (Ewa) and the Commission had no questions of the witness.

Ms. Kuwaye asked Ms. LaGrande to confirm that the red ilima finding was in the State's portion of the North-South Road. Ms. LaGrande stated that her findings were on State property.

DAVID SHIDELER

Mr. Shideler submitted written testimony as Petitioner's Exhibit 77 and had been qualified as an expert witness in archaeology. Mr. Shideler described the cultural history of the Petition Area for the Commission and the data collection methods used in his research. Mr. Shideler referred to Petitioner's Exhibits 50- 54 to describe and summarize his findings.

There were no questions of the witness.

The Commission went into recess at 2:30 p.m. and reconvened at 2:43 p.m.

STATUS REPORT

DR08-36 KO OLINA DEVELOPMENT, LLC

Chair Kanuha announced that this was a meeting on Docket No. DR08-36 Ko Olina Development Company to receive a status report from Petitioner and take appropriate action, if any.

APPEARANCES

Benjamin M. Matsubara, Esq., represented Petitioner

Wyeth Matsubara, Esq., represented Petitioner

Ken Williams, Petitioner

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Scott Derrickson, State Office of Planning

Chair Kanuha announced receipt of Petitioner Ko Olina Development, LLC's Status Report and Exhibits "A" to "D" on April 14, 2009.

PUBLIC WITNESSES

- 1) Creighton Chang (submitted written testimony)

Mr. Chang noted that the boaters had met with Petitioner's legal team on May 7, 2009, for an informational meeting on Petitioner's proposal to construct the new boat ramp. He related his concerns about the proposal, including the lack of two ramps and the completion time. He preferred that the old ramp be put back into use temporarily until the new ramp was completed. Mr. Chang also believed that Petitioner's argument against opening the old ramp to boaters in view of liability concerns was only an excuse to not open the ramp. He noted that boaters were more careful when trailering.

There were no questions for Mr. Chang.

2) Rodney Ajifu

Mr. Ajifu also raised concerns about the proposed new boat ramp. He particularly noted the lack of two ramps. He wanted the equivalent of what the boaters had at the old marina where there were two launch ramps, at least three washdown facilities, and at least 30 parking stalls for trailers. He also expressed concern about the lack of space for launching the boats and the proposed location of the commercial building, which he believed hindered the visibility of boaters to promptly and safely launch their vessels into the water and to retrieve them.

Commissioner Judge asked Mr. Ajifu whether the items that he identified were being provided with the new ramp or whether his concerns centered just on the size of the boat ramp. Mr. Ajifu clarified that Petitioner's conceptual plan only showed one launch ramp and the turn around area was so confined even without the proposed building.

There were no further questions for Mr. Ajifu.

3) Ronald Tam (submitted written testimony)

Mr. Tam requested that the existing ramp within the Ko Olina Marina be reopened immediately pending completion and opening of a better or equal replacement facility. He noted that there were two reasons to justify the reopening of the existing ramp: the long timeframe in which the new ramp is proposed to be completed and the single ramp design of the new ramp.

In response to Petitioner's concerns that boaters traversing through a parking lot increased the probability of an incident, he noted that boaters were compelled to

drive slower and more carefully/safely in a parking lot with speed bumps and potholes.

Commissioner Devens asked Mr. Tam whether Mr. Wyeth Matsubara, upon hearing the concerns of the boaters at their May 7, 2009, meeting, was willing to take their concerns back to Petitioner. Mr. Tam responded that it was a two-way discussion and Mr. Matsubara was willing to take their concerns back to Petitioner.

There were no further questions for Mr. Tam.

Commissioner Piltz exited the meeting at 3:03 p.m.

4) Warren Von Arnswaldt

Mr. Von Arnswaldt stated that he agreed with the previous testifiers. He raised additional concerns about the location of the parking lot relative to the proposed ramp. He also pointed out that the liability issue was not with the boaters but with the vehicles that entered the resort grounds without insurance. Finally, he noted that to address the liability issue of the makai parking lot, Petitioner could put in another access road on the mauka side of the parking lot just for the trailered boats and fence off the lower parking lot for the beachgoers. He believed that the old ramp should be opened now.

There were no questions for Mr. Von Arnswaldt.

5) Roy Morioka (submitted written testimony)

Mr. Morioka stated that the existing boat ramp within the marina should be temporarily repaired and reopened or, in the alternative, that the Phoenicians facility should be properly configured to provide a boat launching facility. He also raised concerns about the fees charged by Phoenicians, the liability argument put forth by Petitioner, and the use of California standards for trailer boat launching ramps.

Commissioner Devens asked Mr. Morioka for his thoughts on where the process would end given the continuing concerns that have been raised. He noted that at some point, there needed to be a happy medium so that the ramp could be opened. Mr. Morioka responded that it was his fear too that it would be an endless process. He reiterated that in all fairness, the existing ramp should be opened until the new one was built. He believed that was a reasonable solution. He added that

Petitioner knew who the boaters were that provided insurance coverage, so that Petitioner could communicate to that community and they would respond accordingly.

Commissioner Devens then asked Mr. Morioka to describe how Petitioner explained the liability issue associated with reopening the old ramp. Mr. Morioka explained that the liability issue stemmed from trailer boats traversing a parking lot that was dedicated for the beach users. If a fence was built and an access road was provided to segregate the trailer access to the facility, he believed that the problem would be resolved. Upon questioning, Mr. Morioka confirmed that was Petitioner's liability concern regarding the reopening of the old ramp. He pointed out that another liability concern he heard about in a previous discussion was trailer boats entering Ko Olina property. He noted that boaters would be going slower than an automobile and they would be more cautious. Commissioner Devens questioned whether there were any other liability concerns raised by Petitioner. Mr. Morioka noted that there was some concern about placing a boat ramp at the front of the marina.

Chair Kanuha noted that one of the concerns in this matter related to the issue of 24/7 access to the ramp. He asked whether in this new configuration the ramp would be open 24/7 and whether the boaters would be amenable if it were not. Mr. Morioka explained that the original intent was for the ramp to be open from sun up to sun down, so he could live with the ramp not being open on a 24/7 basis although his fellow boaters may not. He further explained that originally the public understood the ramp to be a public launching facility so 24/7 was a reasonable expectation like all other public ramps. However, he noted that somewhere along the way the definition was revised and accepted by the Commission that this was a ramp with public access. He remarked that the change in definition put the boaters "at the short end of the stick." Chair Kanuha then asked whether this particular group was amenable to having the ramp open from sun up to sun down. Mr. Morioka stated that if it was the Commission's interpretation that this was a boat ramp with public access, they had no recourse. He did not know if the boating community would be willing to challenge that definition because they did not know what had transpired since the original facility was to be provided for the public in consideration for the development at Ko Olina.

Commissioner Devens asked whether the 200 fishermen referenced in Mr. Chang's testimony were the fishermen on record as having used the existing ramp at Ko Olina. Mr. Morioka pointed out that there were over 2,000 fishermen on record by permit number. Commissioner Devens then asked whether Mr. Morioka was

part of the 200 fishermen represented by Mr. Chang. Mr. Morioka stated that he was representing himself.

There were no further questions for Mr. Morioka.

6) Steven Lee

Mr. Lee noted that he agreed with the concerns expressed by the previous testifiers. He pointed out that he could live with the sun up to sun down schedule as this was already in place when he first signed up to use the ramp. He noted that virtually all of the fishermen lived with those rules. Historically, he related that Ko Olina did not want to make any changes to the ramp. He believed that there was a concerted effort to close down the existing ramp at Ko Olina as there was no notice of its closure. His solution was to take the blueprint of the existing ramp, which was an adequate ramp, and place it in the back of the marina where the new proposal seeks to have the new ramp. Finally, he thought that the liability issue was a non-issue since all of the boaters carried insurance and signed waivers.

There were no questions for Mr. Lee.

7) Al Farm

Mr. Farm expressed his thanks for letting him speak his peace.

There were no questions for Mr. Farm.

PETITIONER'S STATUS REPORT

Mr. Wyeth Matsubara commenced with the status report. He noted that Petitioner had two things in mind: to create a good boat ramp and to put it in an existing operating marina. Utilizing Exhibit "B" to the written status report, he related that Petitioner looked at the matter in two different sections: the makai section and the mauka section of the marina. The original boat ramp was placed in the makai area. From a legal standpoint based on the comments from the consultants, he stated that it would be difficult to advise Petitioner to continue the old boat ramp location. He noted that the trailer access would go through the heavily used parking lot which would create liability issues. There were also existing boat slips that were currently used. Based on these factors, he explained that the makai area did not appear to be a good location to place the boat ramp. The mauka area was then examined and three different sites were analyzed, taking into

account Kekai Place, the displacement of existing slips, the underlying infrastructure, and the access and design of the area. Mr. Matusbara noted that Site C ended up being the most beneficial location for the boat ramp.

Mr. Matsubara then described the concept plan for Site C using Exhibit "C." He clarified that an existing slip would be removed to allow for two tie ups to ease the launching and retrieval of boats. He noted that the prior location of the ramp at the mouth of the marina did not allow for such tie ups. With regard to parking, he pointed out that there will be 33 stalls. In addition, there will be three washdown areas and a restroom facility that will service the site. According to Mr. Matsubara, the future building, the development of which was on hold for now, will be a marina support facility to service the boaters with ice, food, fuel, etc.

Mr. Matsubara next discussed the timeframe for the new boat ramp as identified in Exhibit "D." He pointed out that there were two main permits that would be required. The first, a Department of Army Permit through the U.S Army Corp of Engineers, was sent to 12 various federal, state, and county agencies for review and input. Petitioner will also be required to apply for and obtain a Section 401 Water Quality Certification Permit from the Department of Health. He explained that another major permit that would be required was a Conditional Use Permit (Minor) from the DPP. It was Petitioner's position that a Special Management Area (SMA) Permit and a Conservation District Use Permit (CDUP) were not needed for the facility. The total timeframe for the permitting was estimated at 12 months.

Mr. Matsubara noted that they also met with OP, specifically, John Nakagawa of the Coastal Zone Management (CZM) program, who along with other OP staff confirmed that Petitioner's proposed scheduling timeframe was accurate and consistent with the timeframe that they would expect for the construction of a ramp in a waterway. Petitioner was advised to have its consultants preemptively discuss with the affected departments, including the DPP and DLNR, any issues or questions they may have on the development to streamline the process. Mr. Matsubara confirmed that such discussions took place, substantiating Petitioner's position that an SMA Permit and a CDUP were not needed. He also related that they met with the public last week to present Petitioner's concept plan and obtain input to gauge the issues and concerns of the boating public, so that Petitioner could address them if possible in the design of the facility. At the meeting with the boaters, he explained that Petitioner wanted to be as open as possible during this process.

Lastly, Mr. Matsubara pointed out that on Exhibit "C," there was an area identified as "Exist'g Drainage Culverts Below." He noted that nothing could be built in this area because there were six or eight fairly large drainage pipes that took in flood waters from the mauka area and brought it down there. He reiterated that no ramp could be put in that area. As a result of this limitation, Petitioner needed to balance the need for developable space for the marina support facility and the need for a ramp, which resulted in the single ramp design. He related that Petitioner was willing to provide written status reports on an annual basis to keep the Commission apprised as development of the boat ramp proceeded.

Mr. Mayer corroborated Mr. Matsubara's statements regarding Petitioner's permitting schedule. Mr. Mayer believed that the permitting portion of Petitioner's timeline was accurate and was what to be expected. He added that the CZM program will have to issue a federal consistency review as part of the Corp permit process, so OP will be reviewing the matter again for consistency with the objectives and the policies of the program and will be able to issue additional conditions that have a nexus to those objectives and policies. Because the matter involved putting in a public facility on private property, he understood that both sides needed to compromise. If Petitioner felt that there were liability concerns with the use of the old ramp, he believed that Petitioner should be allowed to address it in ways that were reasonable as it was located on Petitioner's property. On the other side, he questioned the continued use of the Kalaeloa or Phoenicians Ramp and the liability issues that existed with its use. He did not have a clear recommendation as to whether the old ramp should be reopened. Mr. Mayer concluded his remarks noting that the declaratory process in this docket was very thorough and that there will be more permits issued with conditions by the City, the Army Corp, and OP. He believed in the process and the declaratory order as it was drafted. He noted that it was unfortunate that the boaters were without a solution for the amount of time that has passed.

Chair Kanuha asked whether new permits were necessary to reopen the old ramp. Mr. Matsubara responded that he had not looked at that issue; however, based on what Petitioner's consultant stated at the last meeting on this docket, there was now a structural integrity problem with the ramp and he assumed that meant underwater work would be required. He pointed out that it was not a simple matter of pouring above land because the consultant noted the bottom of the ramp had moved and its stability was in question.

Upon questioning from Commissioner Teves, Mr. Matsubara confirmed that the new facility was proposed to have one launching facility and two tie-ups and be

opened from sun up to sun down. Commissioner Teves asked whether Petitioner would consider extending the hours, possibly two hours before sunrise and two hours after sunset, given that there would only be one ramp. Mr. Matsubara noted that at the public meeting Petitioner had with the boaters, Mr. Morioka asked Petitioner to consider allowing the boaters in earlier so that they can get ready to launch at the crack of dawn or allowing them to come in a little later than sun down. Mr. Matsubara told him that he would take his suggestion back to see what, if anything, Petitioner can do to address that. Commissioner Teves commented that it would be fine if the boaters agreed with the extended hours. Otherwise, he would like to see two launching ramps.

Commissioner Judge asked whether the design process has been completed or was still evolving given the concerns raised by the boaters. Mr. Matsubara responded that it was a continuing process. He noted that Petitioner was required to file a status report so the concept plan represented what Petitioner has at this time. He added that currently Petitioner still had another consultant review in its plans to determine whether the concept plan was an appropriate design plan. Commissioner Judge then asked whether the timeframe identified in Exhibit "D" had already started. Mr. Matsubara responded that the timeframe has not started yet as Petitioner needed to get a better plan first.

There were no further questions for Mr. Matsubara.

Chair Kanuha announced that Executive Officer Davidson indicated the Commission will continue its consideration of Petitioner's status report at its meeting on June 25-26, 2009.

Chair Kanuha adjourned the meeting at 3:49 p.m.

(For more details on this matter, see LUC transcript of May 15, 2009.)