

LAND USE COMMISSION  
MEETING MINUTES

December 3, 2010

Leiopapa A Kamehameha  
Conference Room 406, 4th Floor  
235 S. Beretania St.  
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Vladimir Devens (left at 9:50 a.m.)  
Duane Kanuha  
Ronald Heller  
Normand Lezy  
Charles Jencks  
Thomas Contrades  
Nicholas Teves, Jr.  
Kyle Chock (arrived at 10:20 a.m.)

COMMISSIONERS EXCUSED: Lisa Judge

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
(present for Docket No. A07-774 and a portion  
of Docket No. A09-782)  
Scott Derrickson, Staff Planner  
(present for Docket No. A07-774 only)  
Bert Saruwatari, Staff Planner  
(present for Dockets No. SP06-400 and A09-782  
only)  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIANS: Hotai Zerba

**CALL TO ORDER**

Chair Devens called the meeting to order at 9:46 a.m.

## ACTION

### **A07-774 O'oma Beachside Village, LLC**

Chair Devens announced that this was a continued action meeting from December 2, 2010 where the Commission voted to grant in part and deny in part the Motion for Reconsideration of Findings of Fact, Conclusions of Law, and Decision and Order Issued November 22, 2010, Deny the Motion to Extend Time, and Deny the Motion to Reopen Hearing in Docket No. A07-774 ` O`oma Beachside Village, LLC.

Chair Devens stated that the Commission would be voting on the Motion to Approve as to Form, the Supplemental Findings of Fact, Conclusions of Law, and Decision and Order that would supersede the Findings of Fact, Conclusions of Law, and Decision and Order Issued November 22, 2010, which would be considered the Final Decision and Order that would start the clock for any appeals that may be considered by the Parties.

Chair Devens moved to procedurally amend the agenda to accommodate the voting on the Motion to Approve as to Form of the Supplemental Findings of Fact, Conclusions of Law, and Decision and Order that would supersede the prior Findings of Fact, Conclusions of Law, and Decision and Order Issued November 22, 2010 for Docket No. A07-774.

Commissioner Jencks seconded the Motion.

The motion was unanimously approved by a voice vote (7-0).

## APPEARANCES

Jennifer Benck, Esq., represented ` O`oma Beachside Village, LLC  
William Brilhante, Esq., represented Hawai`i County Department of Planning  
Bryan Yee, Esq., represented State Office of Planning  
Abe Mitsuda, State Office of Planning  
Ruby Edwards, State Office of Planning  
Melia Lane-Kamahele, National Park Service

Commissioner Heller moved to approve the Supplemental Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Teves seconded the Motion.

There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Heller, Teves, Jencks, Lezy, and Kanuha, and Chair Devens.

Nays: None

Excused: Commissioners Chock and Judge.

The Motion passed 7-0 with 2 excused.

The Commission went into recess at 9:50 a.m. and reconvened at 9:59 a.m. (Chair Devens excused himself from the meeting at 9:50 a.m. Vice-Chair Contrades assumed presiding over the meeting. There were now 6 Commissioners present)

### **ACTION**

#### **A09-782 Tropic Land LLC**

Vice-Chair Contrades announced that this was a continued hearing on Docket No. A09-782 TROPIC LAND LLC to amend the Agricultural Land Use District Boundaries into the Urban Land Use District for approximately 96.0 acres in Lualualei, Wai`anae District, O`ahu, Hawai`i, Tax Map Key No. (1) 8-7-09:02 (por.)

### **APPEARANCES**

William Yuen, Esq., represented Tropic Land LLC

Arick Yanagihara, Tropic Land LLC

Dawn Takeuchi-Apuna, Esq., represented City and County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Ruby Edwards, State Office of Planning

Martha Townsend, Esq., Intervenor- Concerned Elders of Wai`anae

Alice Greenwood, Concerned Elders of Wai`anae

### **COMMISSIONER JENCKS' MOTION**

*(Please refer to LUC Transcript for more details on this matter.)*

December 3, 2010 LUC meeting minutes

Commissioner Jencks moved that prior to its next meeting on this docket, the Commission be provided the following by the Petitioner:

1. A letter from the Navy certifying its willingness to provide an access easement to the subject property for a minimum term of 50 years subject to any conditions the Navy feels necessary.
2. A letter from Petitioner attesting to its willingness to accept the conditions put forth by the Department of the Navy in its easement offer for access.
3. A letter from Petitioner that it agrees to fund and improve the access easement per the terms and conditions provided by the Department of the Navy and as required by the State Department of Transportation.
4. A letter from Petitioner that it will not allow or permit the use of Hakimo Road by users within the Petition Area nor will it allow for the construction or establishment of any access between Lualualei Road or Hakimo Road and is willing to record a covenant providing for this restriction against all land owned by the Petitioner, and
5. The Petitioner provides to the Commission, a written summary of all representations it agrees to implement and abide by during and after the development of the project.

Commissioner Lezy seconded the Motion.

Commissioner Teves questioned whether the Motion was procedurally correct. Vice-Chair Contrades noted that the Parties would be given an opportunity to respond to the Motion after discussion in regards to Commissioner Jencks' Motion.

Commissioner Lezy noted that absent a long-term access agreement with the Navy of fifty years or more, he could not see the Commission granting the Petition and joined in agreeing with Commissioner Kanuha that the Petition was premature.

Commissioner Heller moved for an Executive Session. Commissioner Teves seconded the Motion.

By a unanimous voice vote, the Commission entered Executive Session at 10:07 a.m. and reconvened the hearing at 10:22 a.m. (Commissioner Chock arrived at 10:20 a.m.- there were now 7 Commissioners in attendance.)

#### POSITIONS OF THE PARTIES ON COMMISSIONER JENCKS' MOTION

### Tropic Land LLC

Mr. Yuen acknowledged the Commission's concern and recognized that the proposed Project could not proceed without long-term access to Lualualei Road and objected procedurally on the nature of the request. Mr. Yuen expressed that Tropic Land LLC was attempting to move forward and accomplish several objectives simultaneously to make as much progress as possible and argued that delaying the next hearing before receiving the requested items would negatively impact the Petitioner and explained the difficulties in obtaining the agreements that Commissioner Jencks was proposing to require before continuing the hearing.

### City and County

Ms. Takeuchi-Apuna stated that the City supported Commissioner Jencks' proposal to obtain a 50 year commitment from the Navy, but took no position on the other issues of his Motion.

### OP

Mr. Yee stated that OP supported Commissioner Jencks' proposal and cited the legal references that provided for the Commission's authority to obtain or require additional documents or evidence. Mr. Yee suggested that additional time beyond January be given and that additional letters of agreement from users of and/or parties along Lualualei Road may need to be included; and that other access connection issues between Hakimo Road and Lualualei Road still needed to be addressed.

### Concerned Elders of Wai`anae

Ms. Townsend stated that the Intervenor also supported Commissioner Jencks' Motion and agreed that the deadlines set were reasonable; that other entities using the road should be included in the agreement; and that the Commission consider requiring a longer Navy lease term than fifty years.

There were no further comments on Commissioner Jencks' Motion.

Commissioner Jencks stated that he would like to rescind his Motion.  
Commissioner Lezy withdrew his second.

Vice-Chair Contrades determined that the Commission would require that the Petitioner provide a letter confirming a lease agreement with the Navy before the end of Petitioner's case.

Mr. Yuen acknowledged that what the Commission was requiring was acceptable.

Vice-Chair Contrades announced the Commission's projected adjournment time and Mr. Yuen advised that his cultural practitioner witness, William Aipoolani would not be able to appear. Mr. Yuen requested that he be able to have Mr. Aipoolani appear at a later date after he had closed his portion of the case.

Intervenor and City had no objections to Mr. Yuen's request. Mr. Yee stated that OP had no objection and was prepared to move forward on his portion of the case but would like to have his representative return after Mr. Aipoolani's testimony.

#### PETITIONER'S WITNESSES (continued)

##### 3. Glenn Kimura- Kimura International, Project Planning Consultant

Mr. Yuen offered Mr. Kimura as an expert in land use planning and stated that Mr. Kimura would be using Petitioner's Exhibit #65 (PowerPoint presentation). There were no objections to Mr. Kimura's qualification as an expert witness.

Mr. Kimura provided his perspective on Tropic Land LLC's objection to OP's Leadership in Energy and Environmental Design (LEED) silver standard requirements and used Petitioner's Exhibit 13, Figure 2 to identify public services near the Petition Area. Mr. Kimura described how the Petition Area conformed to various State and County plans and boundaries; and designated uses and zoning.

Ms. Takeuchi-Apuna requested clarification on the Urban District criteria used by Petitioner for the Petition Area. Mr. Kimura described how he interpreted the Urban District criteria; and gathered and analyzed his data in preparing his report.

Ms. Takeuchi-Apuna inquired if the proposed Project might impact the agricultural/development land values near the Petition Area. Mr. Kimura replied that he couldn't answer that question and noted that an assemblage of properties might be needed since several of the parcels were not very large.

Mr. Yee requested clarification on the Petitioner's cost concerns about LEED and controlling urban "creep". Discussion ensued over Mr. Kimura's inability to respond to questions and Mr. Kimura provided his perception of

what a planner's role was and replied that it was the owners who decided financial matters regarding the proposed Project and its affordability.

Mr. Yee requested clarification on mitigation and pollution prevention measures for water runoff into Ulehawa stream from the proposed Project or in the surrounding areas. Mr. Kimura replied that he had relied on the results of the engineering analysis report to arrive at his findings of "no impact" regarding coastal zone impact.

Mr. Yee requested clarification on agricultural use notifications to neighboring properties and the 5 year sustainable community plan adoption process. Mr. Kimura provided his understanding of what kind of notifications were required and stated that he believed that 5 years was an adequate amount of time for the proposed project to be included in the sustainable community plan.

Commissioner Lezy excused himself at 11:10 a.m. and returned at 11:12 a.m.

The Commission went into recess at 11:13 a.m. and reconvened at 11:30 a.m.

Ms. Townsend requested clarification on portions of the PowerPoint presentation regarding the 2000 and 2010 Wai`anae sustainable community plan and the urban growth boundary; and the general topographic characteristics of the Petition Area.

Ms. Townsend requested clarification on traffic to and from Wai`anae and its impact on the proposed Project. Mr. Kimura stated that he would rely on the traffic consultant's report.

Ms. Townsend requested clarification on the effects to nearby communities, and on portions of the Project Area's EIS that used nearby industrial areas' EIS information and land use zoning and boundaries. Mr. Kimura responded to the best of his knowledge on similar industrial area physical characteristics, runoff patterns, EIS/LUO information and community concerns about dust.

Commissioner Jencks inquired about FAR limits and what height limit was allowed in the Petition Area. Mr. Kimura replied that he thought the height limit was 40' and that no FAR studies had been conducted yet.

Commissioner Jencks inquired if Mr. Kimura had experienced any discussions with the City and County regarding restrictions on light industrial land as a percentage of the total site coverage as a way to limit "commercial creep" and whether there were any FAR limits for a light industrial area. Mr. Kimura was not aware of any efforts underway to limit commercial intrusion and responded that the LUO prescribed the FAR limits.

Commissioner Lezy requested clarification on how Mr. Kimura determined that the Petitioner had the financial capacity to proceed with the proposed Project. Mr. Kimura replied that he had made his determination based only on the representations made to him by the Petitioner. Mr. Yuen stated that Petitioner's financial statements for 2008 had been submitted as Exhibit 10.

There were no further questions for Mr. Kimura.

## CITY AND COUNTY

### 1. Michael Watkins- City and County Planner

Ms. Takeuchi-Apuna offered Mr. Watkins as the project manager for the Tropic Land LLC Petition. Mr. Watkins stated that the City had taken "no position" on the Petition and described the County's activities surrounding the proposed Project and its assessment of the Petition Area; and noted that the City would only be providing potable water to it.

Mr. Yuen requested clarification on what factors were considered in making amendments to the Waianae Sustainable Communities Plan that would include the proposed Project. Mr. Watkins stated that there were three factors that were considered- the existing Waianae Sustainable Communities Plan, the Petitioner's request to consider its proposed project in the Waianae Sustainable Communities Plan, and the support of the Nanakuli community through its Neighborhood Board and Hawaiian Home Lands Association.

Mr. Yee had no questions.

Ms. Townsend inquired if there had been any feedback in regards to the proposed amendments to the Waianae Sustainable Communities Plan. Mr.

Watkins replied that he had not personally received any feedback and that the minutes of the November 10, 2010 community meeting made clear that the opponents to the proposed Project showed up in force. Discussion ensued over the contents of the minutes and how, if submitted and accepted as an Exhibit, the minutes would speak for itself. Vice-Chair Contrades requested that an example of the comments made at the community meeting be read and that the City submit the minutes as an exhibit.

Ms. Townsend requested clarification on the consequences of amending the district boundary for the Petition Area. Mr. Watkins stated that he had not been recognized as an expert and preferred to speak in general about the location and zone changes. Mr. Watkins provided his perspective of what might occur if new zoning changes in the community were granted and how the City relied on long-range development plans to guide its zone planning recommendations

Ms. Townsend requested clarification on the planned development of a regional park near the Petition Area. Mr. Watkins described his involvement with the regional park's planning and development and provided his understanding of how it might come about and what features it might include.

Ms. Townsend requested clarification on how parks might be incompatible with industrial areas and how access to the Waianae regional park would be achieved. Mr. Watkins provided his opinion on industrial park and regional park proximities and described the access solution that the City would use.

Ms. Townsend requested clarification on what consideration the City might have given to Navy munitions storage and its proximity to the planned regional park. Mr. Watkins stated that the City had no position on the Petition and that he was unaware of how it might have impacted changing the sustainable communities plan.

Commissioner Kanuha requested clarification of what was involved in adopting the Waianae sustainable communities plan and changing the rural community boundary. Mr. Watkins provided his understanding of how sustainable community plans were adopted and how rural community boundaries were changed.

Commissioner Heller requested clarification on how the City interpreted the term "significant agricultural area" and whether the Petition Area could be used for active agriculture. Mr. Watkins described how the term was used for the Lualualei valley in the community plan and provided his personal opinion of the agricultural feasibility of the Petition Area.

There were no further questions for Mr. Watkins.

Mr. Yee offered Exhibits 1A, 24 and 25 and stated changes in his presentation of Exhibits and witnesses and offered his revised changes to the Commission. There were no objections to Mr. Yee's revised slate of Exhibits and Witnesses.

OP

1. Michael Vitousek- Archaeologist

Mr. Yee offered Mr. Vitousek as an expert in archaeology from the State Historic Preservation Division (SHPD).

Mr. Yuen requested clarification on SHPD written memorandum dated May 20, 2010. Mr. Vitousek acknowledged that he had prepared the memorandum in response to complaints of rocks being disturbed in the Petition Area and described the activities he had been involved with related to historic preservation efforts in the Petition Area.

Ms. Takeuchi-Apuna had no questions.

Ms. Townsend inquired if the Architecture Division had reviewed the impact of the proposed project on the railway system in the Petition Area. Mr. Vitousek responded that he was not sure if it had been reviewed.

Ms. Townsend requested clarification on how an archaeological survey was conducted. Mr. Vitousek explained the methodology involved and described what triggered excavation on the site for further investigation. Discussion ensued to clarify what the archaeological survey involved, and what the SHPD assessment involved to accept the report. Mr. Vitousek stated that the May 17, 2010 report was based on the field visit to the Petition Area and described the other resources that were used in preparing the report.

There were no other questions for Mr. Vitousek

2. Earl Yamamoto- Department of Agriculture Planner

Mr. Yee offered Mr. Yamamoto as a representative from the State Department of Agriculture. Mr. Yamamoto stated the concerns that the Department of Agriculture had with regards to the loss of agricultural land if the Petition were granted and described how the "impermanence syndrome" of urbanizing areas near agriculturally zoned land occurs.

Mr. Yuen requested clarification on Mr. Yamamoto's role in preparing the Department of Agriculture Director's written correspondence on this matter. Mr. Yamamoto acknowledged that he had assisted in the preparation of the documents and Exhibits and was aware of a letter from Tadashi Araki describing farming in the Petition Area and had driven by it. Mr. Yuen inquired if Mr. Yamamoto had experience as a farmer and whether the Department of Agriculture had made any input in regards to designing the condition requiring that an agricultural easement be imposed on the Petition Area. Mr. Yamamoto provided his understanding of his department's role in conditions requiring an agricultural easement.

Ms. Takeuchi-Apuna had no questions.

Ms. Townsend requested clarification on farming techniques in rocky soils and on related correspondence stating concerns about negative impacts to area agriculture. Mr. Yamamoto provided his understanding on how rocky soils were farmed and described the concerns set forth in the submitted written correspondence and how agricultural areas could be stabilized.

Commissioner Heller inquired if Mr. Yamamoto had an opinion on whether or not the Petition Area could be actively used for agriculture. Mr. Yamamoto replied that the Land Study Bureau study did not indicate any organized agricultural activity.

Commissioner Kanuha inquired if there was a process to update the classifications in the Land Study Bureau. Mr. Yamamoto replied that no update process existed and no changes had been made to it since December 1972 for Oahu and that the Department of Agriculture did not have the authority to impose agricultural easements.

There were no further questions for Mr. Yamamoto.

### 3. Ed Sniffen – Highways Administrator, Department of Transportation

Mr. Sniffen described the changes that had been made to the analysis for the proposed Project and stated that the DOT could accept the methodology that had been used for the Petition Area, but could not accept the TIAR as being sufficient or complete. Mr. Sniffen stated the concerns that the DOT had with the TIAR and the lack of a long term agreement with the Navy; and the direct impact and costs that needed to be paid by the Petitioner. Mr. Sniffen expressed that the

DOT was also waiting for additional information to be submitted on other parts of the TIAR and described the DOT's experience with historical and safety concerns in the community and associated improvement and mitigation efforts that were underway.

Mr. Yuen requested clarification on the initial DOT correspondence to OP-Abbey Mayer from DOT-Brennon Morioka regarding the TIAR. Mr. Sniffen described how the DOT reacted if there were subsequent concerns discovered in a TIAR after a decision had been made; and how its actions were initiated in this matter to re-examine the TIAR.

Mr. Yuen requested clarification on highway improvements that were being made in the Petition Area. Mr. Sniffen described the various locations and types of improvements that were underway or being planned; and how the improvements were prioritized. Discussion ensued over the continued questioning of Mr. Sniffen in regards to a traffic impact study done for an intersection near the Petition Area. Vice-Chair Contrades stated that all the questioning of Mr. Sniffen was expected to be concluded during this hearing.

Mr. Sniffen stated that despite what the traffic study might say, the prioritization for the projects was based on safety.

Ms. Townsend requested clarification on consultations required to SHPD or other agencies if work was done in the railroad preservation area. Mr. Sniffen provided his understanding of what consultations were performed by his staff with the various agencies involved.

Commissioner Lezy inquired if Mr. Sniffen's division had any communication with the Navy. Mr. Sniffen responded that it did but could not identify the Navy decision-making personnel involved.

There were no further questions for Mr. Sniffen.

There being no other business, Vice-Chair Contrades adjourned the meeting at 2:00 p.m.