

LAND USE COMMISSION
MEETING MINUTES

January 23, 2014 – 9:30 a.m.

235 S. Beretania Street, Leiopapa A Kamehameha Bldg.
Room 405
Honolulu, HI, 96813

COMMISSIONERS PRESENT: Lance Inouye
Sheldon Biga
Ernest Matsumura
Dennis Esaki
Chad McDonald
Carol Torigoe
Ronald Heller (arrived at 9:56 a.m.)

COMMISSIONERS EXCUSED: Kyle Chock
Aaron Mahi

STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Hotai Zerba

CALL TO ORDER

Vice Chair McDonald called the meeting to order at 9:45 a.m.

APPROVAL OF MINUTES

Vice Chair McDonald asked if there were any corrections or additions to the January 8, 2014 minutes. There were none. Commissioner Biga moved to approve the minutes. Commissioner Matsumura seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

ACTION

DR13-50 Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools (Kaua`i)

Adoption of the Form of the Order

Vice Chair McDonald stated that this was an action meeting to adopt the form of the order on DR13-50, In the Matter of the Petition of the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools for a Declaratory Order to Designate Important Agricultural Lands for approximately 190 acres at Hanalei, Kaua`i; TMK 5-6-003:001 (por.), 5-6-004:023 (por.), 5-6-004:024, 5-6-04:025 (por.), 5-7-002:001 (por.), and 5-7-003:001 (por.)

APPEARANCES

William Meheula, Esq., represented Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("KSBE")

Bryan Yee, Esq., represented State Office of Planning ("OP")

Rodney Funakoshi, OP

(Michael Dahilig, Director, Kaua`i County Planning Department ("KCPD") and Maunakea Trask, Esq. Deputy Corporation Counsel, advised the Commission on January 16, 2014 that they would not be appearing.)

Vice Chair McDonald updated the record and described the procedures for adoption of the form of the order and called for public witnesses. Vice Chair McDonald also stated that the tentative meeting schedule would be addressed later in the meeting.

PUBLIC WITNESSES

None

Vice Chair McDonald stated that the form of the order for granting the IAL Petition DR13-50 was before the Commission and asked what the pleasure of the Commissioners was.

Commissioner Inouye asked if OP had any comments regarding Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order. Mr. Yee responded that OP had suggested some minor context language and stylistic changes via email to Petitioner and had included LUC in the email exchange. Discussion occurred over the substance of OP's comments. Mr. Saruwatari, LUC planner, described how the Finding of Fact ("FOF") 25A on pages 14 and 15 of the order under consideration by the Commission contained similar language. Mr. Meheula commented that Petitioner had not raised any objections to the comments and suggested changes that OP had made to the proposed order. Commissioner Inouye read LUC's FOF 25 A aloud for the Parties to ensure that they concurred with it, and no objections or comments were made by the Parties.

Commissioner Esaki questioned the accuracy of the map lines defining the Petition Area and asked whether the map line representations used by Petitioner were acceptable and would not pose any problems in the future. Executive Officer Orodener described the mapping process used by the LUC to define the Petition Area and stated that the accuracy of the LUC map was within an acceptable margin of 50'; and explained how boundaries could be further defined if need be in the future. Discussion occurred over details of the LUC mapping process and how the LUC's determination for acreage was derived and acceptable for IAL determinations; and how any future problems could be resolved with more scrutiny using devices designed for better accuracy or amendments to the Decision and Order. Commissioner Esaki asked if Ms. Erickson agreed with the explanation of the LUC mapping process provided by Mr. Orodener. Ms. Erickson replied that she agreed with Mr. Orodener.

There were no further questions.

Commissioner Esaki moved and Commissioner Torigoe seconded the motion to adopt the form of the order for DR13-50 as presented by staff. There was no further discussion.

The Commission voted unanimously (7-0) to adopt the form of the order for DR13-50 (Chair Heller had arrived at 9:56 a.m.).

Vice Chair McDonald thanked the Parties and declared a brief recess.

The Commission went into recess at 9:59 a.m. and Chair Heller reconvened the meeting at 10:01 a.m.; and stated that the tentative meeting schedule would be the next agenda item.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- February/March had no LUC meetings currently scheduled; but LUC staff was awaiting information on DR12-49 Kunia Loa Ridge Farmlands (Pending dismissal on 1/31/2014 or a possible hearing on March 27, 2014.)
- April 9-10, 2014 may have a scheduled hearing for a motion on Kauai. (A76-418 Moana Corporation)
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

HEARING & ACTION (if necessary)

DR08-36 KO OLINA DEVELOPMENT, LLC

Status/Update Report-Boat Launch Ramp

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

APPEARANCES

Wyeth Matsubara, Esq., represented Petitioner

Curtis Tabata, Esq., represented Petitioner

Ralph Harris, Petitioner's Representative

Bryan Yee, Deputy Attorney General, represented State Office of Planning ("OP")

Rodney Funakoshi, OP

(Rodney Hara, Department of Planning and Permitting ("DPP"), City and County of Honolulu had advised LUC that DPP would not be making an appearance.)

Chair Heller updated the record and explained the procedures to be followed for the proceedings. There were no questions on the proposed procedures.

Chair Heller called for Public Witnesses. Executive Officer Orodenker stated that although there were two witnesses signed up, the first witness, Roy Morioka, had

informed LUC staff that he would defer to Warren Von Arnswaldt to provide testimony on this docket.

PUBLIC WITNESSES:

1. Warren Von Arnswaldt

Mr. Von Arnswaldt provided his perspective of the Ko Olina Boat Ramp's history and expressed his frustration with the slow progress and lengthy delays to the start of construction experienced by Petitioner. Mr. Von Arnswaldt also described how he had investigated the various agencies involved with the permitting and approval process in a personal attempt to advance getting the boat ramp construction started.

Mr. Matsubara asked if Mr. Von Arnswaldt had been present in prior status hearings on this matter; and was aware of Petitioner's efforts to obtain the proper permits and approvals to start construction. Mr. Von Arnswaldt responded that he had attended prior hearings but was not satisfied with the pace and explanations for delays associated with the project.

There were no further questions for Mr. Von Arnswaldt and no further public witnesses.

PRESENTATIONS:

Petitioner

Mr. Wyeth Matsubara described the progress made by Petitioner to secure permits and approvals on the boat ramp construction project; what future benchmarks and timelines could be expected once the start of construction began; and summarized the remaining details that needed to be monitored as the proposed project moved closer to its start date; and offered to answer any specific questions that the Commission had regarding progress on the boat ramp.

Mr. Matsubara also stated that Petitioner was waiting on the results of a public comments period conducted by the Department of Health ("DOH") regarding a required National Pollution Discharge Elimination System water quality permit ("NPDES") and would be ready to move forward once the permit was obtained and clearance to proceed from the DOH was received.

OP

Mr. Yee described OP's interaction with the State Historic Preservation Division (SHPD) and other agencies about the proposed boat ramp, and reported how OP perceived rate of progress being made by Petitioner.

COMMISSIONER QUESTIONS

Commissioner Esaki requested clarification on the status of NPDES permit and whether the construction schedule included the time to obtain it. Mr. Matsubara shared his understanding of the NPDES permit process and stated that he would know what the DOH determination was in a few days; and that the construction schedule included an allowance for obtaining the permit.

Commissioner Inouye requested clarification on when the application for a building permit had been made. Mr. Matsubara stated that the permit had been applied for in May, 2011 and provided his estimate of how construction might progress after all approvals and permits were received. Commissioner Inouye requested updated information on the NPDES permit status after the public comment deadline period was over. Mr. Matsubara agreed to comply with Commissioner Inouye's request.

Commissioner McDonald requested clarification on the estimated construction timeline. Discussion ensued regarding how the proposed project had been initially assessed; how certain time periods had been determined and allocated, and whether Petitioner was prepared to provide firmer schedules regarding construction once the project began. Mr. Matsubara estimated that construction alone might take 9 months, and that if a "go ahead" was obtained, that it might be possible to start by the end of March, 2014.

Chair Heller asked if Petitioner would be able to provide the Commission with a letter advising what the NPDES permit approval outcome was. Mr. Matsubara responded that he would provide that information to the LUC.

Commissioner Biga asked if it were possible to advise the interested public members of the NPDES permit outcome also. Mr. Matsubara stated that he would inform Mr. Morioka, who could share the information with other interested public members. Discussion on how to further circulate the information regarding the NPDES permit outcome ensued and it was noted that the information would also be posted to the LUC website.

There were no further questions for Mr. Matsubara; and no discussion or suggestions for action by the Commissioners.

Chair Heller noted that no action would be taken other than for the Commission to receive Petitioner's impending NPDES report, and to continue monitoring the boat ramp's progress.

ACTION

Amendment to LUC Administrative Rules (amended October 13, 2013) to conform to a recent Supreme Court Ruling regarding LUC votes needed to approve the form of the order regarding a district boundary amendment (HAR § 15-15-13)

Chair Heller stated that the Commission would now consider whether an amendment to LUC Administrative Rules (amended October 13, 2013) was necessary to conform to a recent Supreme Court Ruling regarding LUC votes needed to approve the form of the order regarding a district boundary amendment (HAR § -15-13) and called for Executive Officer Orodener to update the Commission on the effects of the Supreme Court ruling and to explain what options the Commission had.

Mr. Orodener summarized the alternatives for action that the Commission had in order to have the LUC administrative rules conform to the Supreme Court's decision.

Discussion began on what action the Commission needed to take to adjust its administrative rules.

Commissioner Esaki moved and Commissioner Biga seconded a motion to grant LUC staff authority to start the process to amend HAR § 15-15-13. There was no further discussion.

The Commission voted unanimously (7-0) to grant the motion to authorize LUC staff to begin efforts to amend HAR § 15-15-13.

Chair Heller asked if any public members or Commissioners wished to comment on the proposed amendment.

Public Comments

1. Wyeth Matsubara

Mr. Matsubara suggested that the Commission consider reviewing its quorum requirements and consider what action to take in case a Commissioner was determined to be ineligible.

Discussion occurred on the feasibility and need for the suggested rule change. Mr. Matsubara provided additional details of why he thought his proposed

revision would benefit the Commission. Chair Heller asked if any other members of the public wished to make comments and called for other witnesses.

2. Dan Purcell

Mr. Purcell noted that the Commission took public testimony after voting on the administrative rules agenda item and stated that he did not believe that was appropriate. Chair Heller acknowledged and thanked Mr. Purcell for his observation, and noted that the vote was simply to start the process of drafting a proposed amendment.

Discussion on Mr. Matsubara's proposed amendment to the Administrative rules resumed. Commissioner Esaki expressed why he felt a Commissioner's vote should be valid and why anticipating a disqualification of a Commissioner was not reasonable. Mr. Orodenker stated that the approval for LUC to start the amendment process was a preliminary administrative step and that the public would have ample opportunity to provide comments later when the action to amend the rules occurred.

LEGISLATIVE UPDATE

Chair Heller noted that the Commission would next receive a legislative update. Mr. Orodenker stated that LUC staff had not submitted any bills to the Legislature and described the issues and bills that he considered to be concerns for the LUC.

Commissioner concerns, questions and thoughts on the various legislative bills affecting the Commission were offered and noted by Mr. Orodenker. Mr. Funakoshi described issues of concern for OP that could also affect the LUC and how any funding decisions by the Legislature could affect both agencies. Commissioner Inouye inquired about what OP could do to stir County compliance with State IAL efforts. Mr. Yee described how the language of the IAL law guided County compliance and how funding for the IAL effort occurred. Mr. Funakoshi added that OP could monitor and report County IAL efforts to the Commission.

There were no further questions or comments.

Chair Heller requested that LUC staff continue to monitor the Legislature and advise the Commission if any action was necessary. Mr. Orodenker acknowledged Chair Heller's request.

There being no further action, the Commission adjourned at 11:13 a.m.