

LAND USE COMMISSION
MEETING MINUTES
March 23, 2017 – 9:00 a.m.
County of Kaua`i Moikeha Building Conference Room 2A/2B
4444 Rice Street, Lihu`e, Kaua`i, Hawai`i, 96766

COMMISSIONERS PRESENT: Edmund Aczon
Gary Okuda
Arnold Wong
Kent Hiranaga
Aaron Mahi
Jonathan Scheuer
Linda Estes
Nancy Cabral
Dawn Chang

COMMISSIONERS EXCUSED: None

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

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon reconvened meeting to order at 09:00 a.m.

HEARING AND ACTION (Continued from March 22, 2017)

A16-801 UNIVERSITY OF HAWAI`I COMMUNITY COLLEGES (Kaua`i)

To amend the Agriculture Land Use District Boundary into the Urban District for approximately 148.37 acres at Puhi, Lihu`e, Island of Kaua`i, State of Hawai`i, (TMK): (4) 3-4-07: 01, 02, 03 and 06

Chair Aczon called for public witnesses.

PUBLIC WITNESSES:

None

APPEARANCES

Laurel Loo, Esq., Counsel for University of Hawai`i Community Colleges-Kaua`i (UHCC)

Earl Matsukawa, Petitioner Representative, Wilson Okamoto & Company

Jodi Higuchi, Esq., Deputy Corporation Counsel, for County Planning Department ("County")

Michael Dahilig, Director, County

Marisa Valenciano, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Rodney Funakoshi, Land Use Administrator, OP

Lorene Maki, Planner, OP

PRESENTATIONS

Chair Aczon called for the Parties to make their presentations.

Petitioner

Ms. Loo introduced University of Hawai`i Community College personnel in attendance at the meeting and stated that she had obtained a stipulation from the County and OP to admit the four proposed expert witnesses. County and OP confirmed that they had no objections to the four witnesses testifying as experts.

Ms. Loo 's opening statement explained the reasons why the Petition should be granted and she then called her witnesses.

Petitioner Witnesses

1. Earl Matsukawa- Wilson Okamoto- Vice President (Expert Witness)

Mr. Matsukawa, after being sworn in, summarized his role in preparing the Environmental Assessment portion of the Petition for Kaua`i Community College and described what planning, environmental impacts and land use issues were unique to the Petition Area using Petitioner`s Exhibit 2 - Maps of the Petition Area..

County Questions:

Ms. Higuchi requested clarification of what the components of the Petition Area were. Mr. Matsukawa described what components were included in the Petition Area.

OP Questions:

Ms. Takeuchi-Apuna asked if Mr. Matsukawa had the authority to make commitments and representations on behalf of University of Hawai`i, whether he had reviewed the conditions contained in OP's proposed conditions, and if he was agreeable to them. Mr. Matsukawa acknowledged that he had commitment and representation authority for the University of Hawai`i and had reviewed and was agreeable to OP's proposed conditions.

Ms. Takeuchi-Apuna requested clarification on the irrigation systems, the quality of the agricultural land that was in the Petition Area and what the impact to the island's agriculture would be by changing the land use designation to urban and details for various archaeological and geographical features within the Petition Area. Mr. Matsukawa stated that there would be no adverse impacts on agriculture, and shared his recollection of what the Petition Area soil ratings were and provided additional details for development plans; the irrigation system and archaeological and geographical features that were on site.

Ms. Takeuchi-Apuna also requested clarification on the glint/glare analysis performed for the EA. Mr. Matsukawa shared his understanding on how the analysis was performed and what its findings included.

Commissioner Questions

Commissioner Wong requested clarification on how the "full time equivalent for students (FTE)" unit of measurement was used for the report and how it factored in making projections when planning for the future. Mr. Matsukawa described how the FTE unit measurement was used for planning and forecasts in his reports.

Commissioner Scheuer requested clarification of the reported amount of water use by the irrigation system for the agricultural program and its sources; and on details regarding the Puhi cemetery. Mr. Matsukawa replied that he was unsure of the irrigation water use agreement terms and that the likely origin water source was Puhi Stream. Mr. Matsukawa acknowledged that he was aware that sometimes burials were discovered outside of cemetery boundaries and deferred more detailed questions regarding the Puhi cemetery to Dr. Hammett. Mr. Matsukawa also acknowledged previously appearing before the Commission in regards to requesting a waiver for the proposed project and stated that he had not yet acted on any suggestions to consult with the Island Burial Council and would be talking to Dr. Hammett about doing so.

Commissioner Chang requested clarification on details regarding Puhi Stream and the Puhi Cemetery. Mr. Matsukawa described how the stream passed through parts of the Petition Area, what activities, buffers, access issues and drainage matters were considered and resolved; and deferred more detailed questions regarding the Puhi cemetery and site archaeology to Dr. Hammett. Mr. Matsukawa acknowledged that the Puhi Cemetery was landlocked and that there was no objection to any condition providing for visitation access to families at the cemetery and establishing reasonable protective boundaries around it.

Commissioner Mahi requested clarification on solar farm matters. Mr. Matsukawa shared his knowledge of solar farm considerations for the Petition Area and stated that there were no immediate plans to implement solar panels in methods similar to those used on the Maui Community College Campus parking lot; and acknowledged that he would look into it.

Commissioner Chang requested additional clarification on activities involving Puhi Stream. Mr. Matsukawa provided his understanding of what activities and tributaries/downstream water resources were involved with the stream and deferred questions regarding historic uses of the stream to Dr. Hammett.

(Mr. Orodener exited the meeting at 9:35 a.m. to return to Honolulu. Mr. Derrickson took his place.)

Chair Aczon recognized the departure of Mr. Orodener and stated that it was due to a required appearance for Legislative testimony in Honolulu and that Mr. Derrickson would take his place.

Commissioner Hiranaga stated his concerns regarding the care and maintenance of the reservoirs within and nearby the Petition Area and requested clarification on how the University monitored the reservoirs. Mr. Matsukawa replied that the reservoirs were owned and maintained by Grove Farm and that the University was satisfied with relying on Grove Farm, as owner, to continue its inspection and maintenance programs. Discussion ensued regarding inspection programs for the reservoirs and deterioration of the existing reservoir systems.

Commissioner Okuda called for personal privilege and stated his concerns with creating additional State liability and/or challenging existing obligations of the law and their legal basis by statements made during the hearing and noted that it was not the intent of the Commission to assume that obligation.

There were no further questions for Mr. Matsukawa and Ms. Loo called her next witness.

2. Hallett Hammett- Archaeological and Cultural Surveys Hawai`i President (Expert Witness)

Dr. Hammett, after being sworn in, summarized his findings, studies, and conclusions in regards to the archaeological and cultural aspects of the Petition Area.

County Questions:

County had no questions for Dr. Hammett

OP Questions:

Ms. Takeuchi-Apuna requested that Dr. Hammett point out the various archaeological/historical sites located in the Petition Area. Dr. Hammett used Petitioner's Exhibit 2 to indicate the location and boundaries involved with the various archaeological/historical sites and described the testing that would need to be used to establish site preservation plans. Dr. Hammett also stated his agreement with various recommendations suggested by the State Historic Preservation Division (SHPD).

Commissioner Questions:

Commissioner Scheuer requested clarification on how buffer areas and boundaries would be implemented to protect the Puhi cemetery and whether the Island Burial Council had been consulted. Dr. Hammett described the various types of protections that he had recommended and how consultation with the Department of Health and the Island Burial Council needed to be done.

Commissioner Chang inquired whether there had been any Land Commission awards. Dr. Hammett stated that there was one large land grant and shared his findings regarding the remaining remnants of Puhi camp and how water use in the area had evolved and needed to be preserved and protected.

The Commission went into recess at 10:00 a.m. and reconvened at 10:05 a.m.

Commissioner Chang requested clarification on access to hunting/fishing areas or areas involved with cultural/traditional practices in or nearby the Petition Area. Dr. Hammett replied that he wasn't aware of any hunting/fishing or cultural/traditional practices activities but that it was still possible that members of the community did use the area.

Commissioner Okuda requested clarification on Land Commission Awards and the associated practices involved during the Great *Mahele*. Dr. Hammett described the prevailing procedures that were associated with land commission award ownership and *kuleana* lands and confirmed that he had only found one large land grant.

Commissioner Scheuer requested clarification on how applications for more complex Land Commission Awards were addressed. Dr. Hammett described the complexities involved and how the ancient Land Commission Awards were determined.

Ms. Loo requested clarification on how a preservation/buffer plan would be implemented. Dr. Hammett described how any such plans would be within the UH's boundaries around the cemetery.

Commissioner Hiranaga requested clarification on the agencies that had jurisdiction over navigable/perennial streams. Dr. Hammett stated that he was not an authority on such matters and deferred to Reginald Davis, the next witness, to respond.

There were no further questions for Dr. Hammett.

3. Reginald Davis- Biologist (Expert Witness)

Mr. Davis, after being sworn in, summarized his findings, studies, and conclusions in regards to the fauna aspects of the Petition Area and described his professional association with Eric Guinther, and how his long collaboration with Mr. Guinther on flora and fauna matters enabled him to also report and respond to questions regarding the flora in the Petition Area.

County and OP Questions:

County and OP had no questions for Mr. Davis.

Commissioner Questions:

Commissioner Chang requested clarification on why the possibility of an "adverse effect" on wildlife was reported for Docket No. A16-800 Island School and not for Docket No. A16-801 when the two Petition Areas were next to each other. Mr. Davis responded that it was probably due to the reservoir waters attracting more endangered bird species to it.

Commissioner Chang also requested clarification on traditional/cultural practices that may have occurred in the Petition Area. Mr. Davis described how hunting/food gathering practices occurred in early Hawai'i and had been impacted by modern influences.

Commissioner Hiranaga requested clarification on the extent of jurisdiction that the Army Corp of Engineers had over stream waters. Mr. Davis provided his understanding of what streams the Army Corp of Engineers had jurisdiction over and stated that he was not an authority in this matter and deferred to Mr. Matsukawa to respond to the question. Mr. Matsukawa stated that the Army Corp of Engineers had jurisdiction over what would be considered "U.S. waters" and described the geological features and considerations involved in making that determination.

There were no further questions for Mr. Davis.

Ms. Loo stated that she wished to have Mr. Matsukawa clarify the area where the water tank was located within the Petition Area. Chair Aczon allowed Mr. Matsukawa to state that the identifying Tax Map Key number 3-4-7-06 for the water tank site was not part of the Petition Area, but had mistakenly been incorporated into reports about the Petition Area.

There were no objections to Mr. Matsukawa's correction. Ms. Loo offered her final witness.

4 . Pete Pascua- Traffic Engineer (Expert Witness)

Mr. Pascua, after being sworn in, summarized his findings, studies, conclusions and recommendations in regards to the traffic impact analysis report (TIAR) for the Petition Area. Commissioner Scheuer requested that Ms. Loo limit the testimony to matters relevant to the current docket under discussion. Ms. Loo acknowledged Commissioner Scheuer's request and clarified that her questioning related to the Kaua'i Community College specifically and did not include Docket No. A16-800 Island School. Commissioner Scheuer thanked Ms. Loo for the clarification.

County Questions:

County had no questions for Mr. Pascua.

OP Questions:

Ms. Apuna requested clarification on how enrollment increases and measurement standards factored in the TIAR report. Mr. Pascua described how projected enrollment figures were used, how "levels of service" grading was applied and set off certain "triggers"; and that a "D" level of service was an acceptable level contrary public perception. Mr. Pascua stated that "E" and "F" levels of service called for mitigation measures to be considered and expanded on how student enrollment increases would trigger traffic demands and the need for traffic improvements and an updated TIAR.

Commissioner Questions:

Commissioner Cabral requested clarification on the roles of the County and State in handling traffic matters. Chair Aczon requested that such questions be deferred till County's presentation and that the focus be on the witness' testimony. Commissioner Cabral acknowledged the Chair's request.

Commissioner Chang requested clarification on when a TIAR update was required. Mr. Pascua described how County permitting processes involved submitting a traffic analysis and how FTE measurements factored into the TIAR calculations and update schedules.

Commissioner Estes requested clarification on how the generating sources of traffic at intersections were determined. Mr. Pascua described how the intersection studies were able to isolate the traffic from different sources to identify their respective volumes.

Chair Aczon asked if the County might review the study during the permitting process. Mr. Pascua responded that the State would be first to review it before the County.

Commissioner Hiranaga requested clarification on Table 3-3 of the TIAR. Mr. Pascua explained what the different service levels represented and why service level “D” was desirable and acceptable and why “E” and “F” levels were not.

Commissioner Wong requested clarification on how data for the study was collected. Mr. Pascua described the methodologies and time frames used to collect the traffic information.

Commissioner Scheuer thanked Mr. Pascua for explaining the service level grading system.

Commissioner Cabral posed various scenarios with no significant permits or changes that might still generate traffic pressures but not be categorized as “triggers” and requested clarification on how the traffic study might be initiated and by what entity/agency. Mr. Pascua provided an example of how the University of Hawaii-Manoa had engaged his firm to develop traffic management systems in response to County and State transportation departments’ reporting to the University that local residents were complaining about traffic in the area and how the complaint system alleviated the situation without generating a study.

Commissioner Hiranaga commented that he noticed using additional police officers to monitor intersections whas been helpful. Mr. Pascua acknowledge that based on his experience, besides facilitating traffic operations, the additional officers added to the safety of the public.

Chair Aczon asked if Ms. Loo had any more follow-up questions for Mr. Pascua. Ms. Loo replied that she did not but wanted to make the Commission aware that KCC students receive a complimentary bus pass upon enrollment.

There were no further questions for Mr. Pascua.

Commissioner Questions for Ms. Loo

Commissioner Scheuer requested clarification on missing appendices for Petitioner’s Exhibit #3. Ms. Loo responded that the appendices were included. Chair Aczon stated that staff would review the situation over the next break.

Commissioner Chang requested confirmation that Petitioner had no objection to a reasonable buffer within the Petition Area around the Puhi cemetery made in consultation with SHPD for potential sub-surface burials. Ms. Loo asked if the trigger would be upon development in the vicinity. Commissioner Chang clarified that it may be by a proposed activity or improvement. Ms. Loo confirmed that Petitioner had no objection.

Commissioner Chang also stated the importance of Puhi Stream as a water source and requested confirmation that Petitioner had no objection to providing buffers to prevent activities that might erode or degrade the area. Commissioner Chang shared what her concerns were for protecting Puhi Stream and clarified how looking beyond the buffered zones might be necessary. Ms. Loo stated that she would share the concerns with the UH Director of Facility to consider Commissioner Chang’s remarks and that she was open to the Condition requiring mitigation measures to protect the stream.

Commissioner Cabral suggested measures to shelter the cemetery.

Commissioner Hiranaga requested clarification on disruptions to the Puhi Streamflow as it related to development. Ms. Loo replied that according to Mr. Matsukawa, there was no diversion occurring but rather water was being drawn from the reservoir for use for the UH

agricultural program under a water use agreement with Grove Farm. Discussion ensued to clarify the use of the water resources and its sources. Ms. Loo stated that Petitioner was open to meeting with the Commission on Water Resource Management and Grove Farm to better define the issue.

Commissioner Scheuer provided his perspective of the situation and stated that he felt there were two issues 1) impacts resulting from land altering activity/runoff on the UH campus to surrounding and downstream areas of Puhi Stream and 2) the need to be “good stewards” of the water resources received from the Grove Farm irrigation ditch. Ms. Loo volunteered to follow up and have a conversation with the Community College and ask for them to follow up with Grove Farm.

Chair Aczon acknowledged Ms. Loo’s remark and confirmed that she had concluded her presentation.

Ms. Loo confirmed that she was finished and Chair Aczon declared a recess.

The Commission went into recess at 11:12 a.m. and reconvened at 11:20 a.m.

Chair Aczon asked Mr. Derrickson to comment on the website content for Docket No. A16-801. Mr. Derrickson confirmed that the appendices for Exhibit 3 were not appearing on the website but that LUC records indicated that they were received.

Commissioner Scheuer commented that he wanted to be sure that the Commission had the full and complete record of the document. Chair Aczon acknowledged Commissioner Scheuer’s comment and called for County to make its presentation.

County

Ms. Higuchi stated that County of Kaua`i was in support of the Petition and argued her position. Ms. Higuchi stated that she had two witnesses to provide testimony.

1. Marisa Valenciano – Planner, County of Kaua`i Planning Department

Ms. Valenciano, after being sworn in, provided her educational and professional background and described the various considerations made in evaluating the Petition and determining what County of Kaua`i’s position should be on it.

There were no questions for Ms. Valenciano.

2. Michael Dahilig- Director, County of Kaua`i Planning Department

Mr. Dahilig, after being sworn in, provided his educational and professional background and described his department’s role and responsibilities in evaluating Important Agricultural Land (IAL) study results and how they were part of the analysis of the Petition and in developing County’s position on it. Mr. Dahilig explained the role

his department would play during the permitting process and detailed the various studies and reports that would be required to secure approval for the permits.

Petitioner and OP Questions:

Ms. Loo and Ms. Apuna had no questions for Mr. Dahilig.

Commissioner Questions:

Commissioner Cabral requested clarification on the role TIARs played during the development process. Mr. Dahilig described how the County's permitting process included consideration of a multitude of factors and how the TIAR assisted County officials in determining impacts and needs for roadway/intersection improvements and funding requirements and sources.

Commissioner Chang requested clarification on what the LUC could be helpful in crafting a condition for a timely TIAR update. Mr. Dahilig explained how the complexities of overlapping State/County/Departmental jurisdictions and activities in the area could complicate matters and how the current disclosure processes for the respective entities were being evaluated and might allow for gathering more specific information. Mr. Dahilig also mentioned how information was evaluated to ensure it wasn't "stale".

Commissioner Mahi requested clarification on how negative impacts to Puhi Stream might be prevented and managed. Mr. Dahilig described how the County's Department of Public Works had the responsibility for such matters and included Federal standards and best management practice standards in its work.

Commissioner Mahi also requested clarification on how the public was advised of activities requiring permits. Mr. Dahilig described how the County intake process for permits had different requirements for different activities and determined what specific public notifications for the activity were required.

Commissioner Okuda asked what Mr. Dahilig's educational and professional background was. Mr. Dahilig shared his educational and career background with the Commission and stated that he had served as a University of Hawaii Regent in the past but did not think it raised any conflict in this matter. Commissioner Okuda agreed that it did not and shared that he felt it may have helped provide insight into how the University operated. Discussion occurred ensued over Mr. Dahilig's past Regent duties and relationship to the Kaua'i community college campus.

There were no further questions for Mr. Dahilig.

OP

Ms. Apuna called Rodney Funakoshi as a witness.

1. Rodney Funakoshi- OP Planning Program Administrator

Mr. Funakoshi, after being sworn in, described his background, what standards were used to evaluate the Petition, and what concerns, findings and recommendations OP had in determining its position. Mr. Funakoshi read the conditions that OP would like to have included in the Decision and Order and stated that OP recommended approval of the Petition subject to approval of its recommended conditions.

Petitioner Questions:

Ms. Loo requested clarification of the future plans for the Puhi intersection. Mr. Funakoshi replied that he was not aware of the specifics of the future plans and that OP's recommendation for an updated TIAR were pursuant to input from DOT.

There were no further questions for Mr. Funakoshi.

Ms. Apuna concluded her presentation.

There were no further comments or questions for Ms. Apuna.

Chair Aczon stated that the evidentiary portion of the proceedings was officially closed subject to receipt of various follow-up reports and/or answers that may have been requested during the course of the hearing which included Petitioner's TIAR if the LUC's research concludes that it was not submitted and provided the filing schedule for the Parties. There were no objections to the established filing schedule from the Parties.

County stated that it stipulated to the Petitioner's Findings of Fact, Conclusions of Law and Decision and Order.

OP waived its right to provide their respective proposed Findings of Fact, Conclusions of Law and Decision and Order (D&O) but retained their rights to comment and object on Petitioner's proposed D&O.

Commissioner Chang requested clarification on whether the LUC included the appendices. Chair Aczon replied that LUC would confirm the receipt of the documents. Mr.

Derrickson stated that the LUC had the appendices and that they had been misfiled in Docket A16-800, but were received.

Commissioner Scheuer requested clarification on the County's statement during the close of evidence. Ms. Higuchi replied that she had misspoken and state the County would waive its right to provide a Findings of Fact, Conclusions of Law and Decision and Order but retained its right to comment and object on Petitioner's proposed D&O.

Chair Aczon stated that final arguments for the Petition would be heard on June 15, 2017. There were no further questions or comments.

There being no further business, Chair Aczon stated that the Commission was adjourned at 12:10 p.m.