

LAND USE COMMISSION
MINUTES OF MEETING

April 27, 2007

Hilton Kauai Beach Resort
4331 Kauai Beach Drive
Lihue, Kauai, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Lisa Judge
Duane Kanuha
Ransom Piltz
Nicholas Teves
Reuben Wong

COMMISSIONERS ABSENT: Michael Formby
Kyong-su Im
Steven Montgomery

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

Chair Judge called the meeting to order at 8:35 a.m.

A05-761 ERIC A. KNUDSEN TRUST

Chair Judge stated that this was a continued hearing on Docket No. A05-761 Eric A. Knudsen Trust.

APPEARANCES

Walton Hong, Esq., represented Petitioner
Kimi Yuen, PBR Hawaii

James Tagupa, Esq., represented County of Kauai Planning Department
Dale Cua, County of Kauai Planning Department
Bryan Yee, Esq., represented State of Hawaii Office of Planning
Lorene Maki, State of Hawaii Office of Planning
Abe Mitsuda, State of Hawaii Office of Planning
Sherry Broder, Esq., represented Intervenor OHA

Petitioner's Witness (cross-examination)

1. Hal Hammett

Ms. Broder posed questions regarding the major sources of destruction of prehistoric native Hawaiian sites in the Koloa area, the sugar plantations in Koloa, and the Lahainaluna study in 1885 that listed 14 heiau and a fishing shrine. Ms. Broder reference exhibit K, pages 28-29 and posed questions regarding the ongoing data recovery program in Kukuiula. Ms. Broder also posed questions related to the various land commission awards in the area, the Montserrat map, the standards for establishing or designating a site as either for data recovery to preservation, and standards for cultural significance category E.

Commissioner Piltz left the meeting at this time.

Ms. Broder continued with her discussion and raised more questions regarding how sites designated for data recovery might be designated instead for preservation.

A recess break was taken at 9:35 a.m. The meeting reconvened at 9:55 a.m.

Ms. Broder posed questions related to the C-shaped sites and the possibility that they were burial sites, the process for changing certain sites from data recovery to preservation, and the possession of artifacts.

Commissioner Wong asked when was the last time Dr. Hammett was at the project site.

Dr. Hammett stated that he was at the site on Wednesday of this week and have two full time staff at the site conducting studies daily. Dr. Hammett noted that the 1991 report is a baseline that was accepted by SHPD and that he stands by the conclusions and recommendations reached to date. However, Dr. Hammett added that they are always flexible and open to including the consideration of new findings.

Chair Judge commented on the improved work methods in archaeological data recovery. Chair Judge asked if the methods used in 1991 would differ from work performed today.

Dr. Hammett stated that they have more drawings of the sites and a graphic representation of each individual site since there are GPS maps available. In general, the techniques and standards used today are not that different from those used in 1991 and that the draft long-term preservation plan should be completed sometime in June 2007. Dr. Hammett added that discovery of major findings during data recovery might cause him to adjust his recommendations, especially if there was a major find. This would cause him to re-examine his recommendation as to preserve or simply discover data.

After some discussion, there were no further questions posed for Dr. Hammett by the parties or the Commission

A recess break was taken at 10:55 a.m. The meeting reconvened at 11:10 a.m.

2. Philip Bruner

Dr. Bruner stated that he is the Assistant Professor of Biology at Brigham Young University-Hawaii and provided his background and qualifications. Dr. Bruner discussed his avifaunal and feral mammal field survey and noted that there have not been any significant changes in the array or abundance of species to this date. Dr. Bruner described the study and methods used, the native or migratory species, the natural resources important for native species, the major focus on the native *Pueo* or Hawaiian owl (ground nesters), and the migratory species. Dr. Bruner commented that his work did not include amphipods and the Kauai cave spider.

Mr. Tagupa posed questions regarding the *Pueo*, their potential loss of habitat since they are ground nesters, and the common barn owl.

Dr. Bruner noted that the *Pueo* is endangered in the other Hawaiian Islands, but not on Kauai, possibly because there are no mongoose on Kauai. They are active in the day and are not night hunters. Dr. Bruner added that he observed two *Pueo* in the petition area.

Mr. Yee asked for the extent of species in Dr. Bruner's study.

Dr. Bruner stated that he only studied birds, feral animals, and animals that are no longer under human control. He did not study invertebrates, anthropoids, insects, or sea animals.

Ms. Broder posed questions regarding Dr. Bruner's letter dated April 19, 2006 indicating that there has not been any significant changes in the array or abundance of species based upon the 2002 study.

Chair Judge asked if the feral cats pose a significant problem to native birds and the Hawaiian Hoary bat.

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

3. Barry Neal

Mr. Neal provided his background and education in meteorology and air quality. His resume was admitted as exhibit DD. Mr. Neal was qualified as an expert in the area of air quality testing for this hearing.

Mr. Neal stated that he had prepared the report for the project which involved assessing the air quality impacts from project traffic roadway intersections and various locations on the project site. Mr. Neal described the scope of his study and the methodology used for assessing the potential air emission impacts and dust control measures. Mr. Neal added that based on the projected impacts, implementing mitigation measures for traffic related air quality impacts is unnecessary and unwarranted, as any long-term impacts on air quality in the area should be minimal.

Chair Judge asked how the solid waste disposal requirements of the project might affect air quality.

Mr. Neal stated that emissions from the disposal would create indirect off site impacts

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

4. Tom Nance

Mr. Nance was qualified as an expert in the field of water resources. Mr. Nance discussed his involvement in the preparation of the master plan, distribution system, transmission, and the non-potable water use, drinking water sources, transmission and storage, and the surface zones based on elevation. Mr. Nance also discussed the Koloa 245 and 366 surface zone transmission distribution systems.

Mr. Tagupa raised questions in reference to the master plan submitted to the Department of Water, the sources of the water, storage and the master plan analysis for Piwai 1 and Piwai 2.

Mr. Yee posed questions regarding the dual water system for the project area, the approval of the master plan contingent upon construction of the non potable system, the off site non-potable well, and the agreement between Grove Farms and the Knudsen Trust.

Ms. Broder noted that OHA had no questions for Mr. Nance.

Chair Judge raised a few questions in reference to the storage reservoir and a need to acquire the 2-acre adjacent property, the dual system, and the cost for nonpotable water.

Mr. Nance stated that the petitioner will have no problems acquiring the 2-acre parcel and noted that the cost for potable water would be two dollars per thousand gallons but irrigation water would be half that cost at one dollar per thousand, and its pricing could encourage greater use of non-potable water.

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

5. Aulii Mitchell

Mr. Mitchell stated that he is employed by Cultural Surveys of Hawaii and had participated in the archeological cultural impact study for this project. Mr. Mitchell discussed his background in conducting cultural assessments, his formal and informal training. Mr. Mitchell was qualified as an expert in cultural impacts for purposes of this hearing.

Mr. Mitchell discussed the scope of work for the study, the examination of historical documents, land commission awards, identifying traditional Hawaiian activities, review of existing archaeological information, cultural practices, beliefs, and his interviews with the people who had knowledge of the area. Mr. Mitchell also discussed the methodology for interviewing kupuna.

Mr. Tagupa posed questions as to the number of people interviewed during the study and whether or not Mr. Mitchell had spoken to Rupert Rowe.

Mr. Mitchell stated that he has spoken to Mr. Rowe and commented that Mr. Rupert is righteous in his path as a *kanaka maole* and that he supports his continued efforts. Mr. Mitchell noted that Mr. Rowe has a concern for the areas below the outside of the petition area known to hold an arena for training warriors. Mr. Mitchell added that he personally would like to see all the sites saved, but that it is inevitable that development happens here in Hawaii and expressed hope for balance in trying to save the best sites.

Mr. Yee raised questions on the number of those listed as contacted for the purpose of his study.

Mr. Mitchell stated that 41 people had been contacted. Mr. Mitchell added that there needs to be a balance for both sides to come together. Mr. Mitchell noted that native Hawaiian people believe that every stone, grass, plant, animal, have *mana*, a supernatural life force and that the destruction of these archaeological sites hurt their hearts. Mr. Mitchell added that although he works as a bridge between the two sides, each side has a value and being of a broad ethnic background (Scottish, Chinese, and Hawaiian), it gives him an ability to look at things in perspective.

Chair Judge noted that the LUC would continue with the cross-examination of Mr. Mitchell by OHA at the next meeting.

The meeting adjourned at 2:50 p.m.

(Please refer to LUC Transcript of April 27, 2007 for more details on this matter.)