

LAND USE COMMISSION
MINUTES OF MEETING

November 6, 2008

Leiopapa A Kamehameha
4th Floor
Conference Room 405
235 So. Beretania Street
Honolulu, Hawaii

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

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Holly Hackett, Court Reporter
Walter Mensching, Audio Technician

Chair Kanuha called the meeting to order at 9:32 a.m.

ADOPTION OF MINUTES

Commissioner Judge moved to adopt the minutes of October 16, 2008. Commissioner Contrades seconded the motion. The minutes were unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson reported on the following:

- The notice of intent to file petition regarding the Kula Ridge development on Maui, a chapter 201H affordable housing project, was withdrawn. Accordingly, the December 3rd meeting that had been tentatively scheduled on Maui as the first of three hearing dates for this matter has been cancelled. The remaining December 4th and 5th dates will be for a meeting on the island of Hawaii, probably at Waikoloa.

ADOPTION OF ORDER

DR08-36 KO OLINA DEVELOPMENT LLC (OAHU)

Chair Kanuha announced that this was a meeting on the adoption of the form of the Order.

APPEARANCES

Benjamin Matsubara, Esq., represented Petitioner
Wyeth Matsubara, Esq., represented Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abbey Seth Mayer, State Office of Planning
Scott Derrickson, State Office of Planning

PUBLIC WITNESSES

There were no public witnesses on this matter.

Commissioner Judge moved to adopt the form of the Findings of Fact, Conclusions of Law, and Decision and Order. Commissioner Devens seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Judge, Devens, Lezy, Piltz, Chock, Contrades, Teves, and Kanuha.
The motion passed with 8 ayes and 1 excused.

SP73-147 PACIFIC CONCRETE & ROCK CO., LTD. (OAHU)

Chair Kanuha announced that this was a meeting on the adoption of the form of the Order.

APPEARANCES

Douglas Ing, Esq., represented Petitioner
Robert Creps, Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abbey Seth Meyer, State Office of Planning
Scott Derrickson, State Office of Planning

PUBLIC WITNESSES

There were no public witnesses on this matter.

Commissioner Devens moved to adopt the form of the Findings of Fact, Conclusions of Law, and Decision and Order Approving with Modifications the Recommendation of the City and County of Honolulu Planning Commission to (1) Extend the Life of the Makakilo Quarry Resource Extraction and Aggregate Processing Operations to 2032; and (2) Expand the Resource

Extraction and Buffer Areas of the Quarry. Commissioner Teves seconded the motion. The Commission was polled as follows:

Ayes: Commissioners Devens, Teves, Contrades, Chock, Piltz, Judge, Lezy, and Kanuha.
The motion passed with 8 ayes and 1 excused.

ACTION

A07-777 HAWAIIAN MEMORIAL LIFE PLAN, LTD. (OAHU)

Chair Kanuha announced that this was a meeting to consider the acceptance of Hawaiian Memorial Life Plan, Ltd.'s Final Environmental Impact Statement (FEIS) relating to the reclassification of approximately 56.459 acres of land currently in the Conservation District to the Urban District at Kaneohe, Oahu, Hawaii, for cemetery expansion on TMK No. 4-5-33: por. 1.

APPEARANCES

William Yuen, Esq., represented Petitioner

Robert Moskin, Petitioner

Jay Morford, Petitioner

Scott Ezer, Petitioner

Mike Watkins, City and County of Honolulu Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abbey Seth Mayer, State Office of Planning

Scott Derrickson, State Office of Planning

PUBLIC WITNESSES

1. Grant Yoshimori

Mr. Yoshimori raised several procedural and substantive concerns about the environmental review process and the proposed FEIS in this matter. Mr. Yoshimori noted that an environmental assessment (EA) was never filed for this project, which he believed deprived the public of the EA's additional 30-day public comment period and prevented public notice of the development in the Office of Environmental Quality Control's (OEQC) *The Environmental Notice*. He also asserted that Petitioner and its consultant violated §11-200-20(b), HAR, by failing to file four copies of the proposed FEIS with the OEQC at the same time it filed the signed original proposed FEIS with the Commission. He believed that this omission prevented publication of the document's availability in *The Environmental Notice* and deprived the public of notification and adequate time to review the document. He further commented that the recommendations of the State Historic Preservation Division (SHPD) were being ignored in the revised development proposal by the inclusion of a road between the Kawaewae Heiau and the remainder of the historic sites, which he believed undermined the

SHPD's comments that the sites be preserved as a complex rather than individually.

Mr. Yoshimori also testified to his belief that Petitioner ignored §11-200-23, HAR, by not identifying the verbatim changes to the document in its response letters. He further questioned the adequacy and accuracy of the botanical resources assessment, the survey of native invertebrate resources, and the avifaunal and feral mammal field survey. Finally, he noted that there was no discussion on the impact of the retention areas on the Kawa Stream flow.

Mr. Yee questioned Mr. Yoshimori about his assertion that the copies of the proposed FEIS were not filed with the OEQC simultaneously with the filing of the document with the Commission. Mr. Yoshimori reiterated and further explained the basis for his concerns.

2. Julianne McCreedy

Ms. McCreedy raised concerns about potential groundwater contamination and storm water runoff impacts from the proposed cemetery use. She noted that the Kawa Stream watershed was a part of the Koolaupoko watershed region that was listed as a Category 1 watershed region due to cultural and habitat resource issues and pointed out that Kawa Stream and Kaneohe Bay were on EPA's list of impaired waters since 1998.

Ms. McCreedy was asked on what grounds she based her conclusion that the subject property was a water recharge area. She stated that she researched it by going on the Department of Health's (DOH) website.

3. Ernest Harris

Mr. Harris expressed concern about potential flooding onto his property from the proposed cemetery expansion.

4. Jeannine Johnson

Ms. Johnson raised concern about the impact of the proposed cemetery expansion on critical watershed areas and expressed the need to protect the quality and supply of water.

5. Liam Gray

Mr. Gray expressed concern about the impact of the proposed cemetery expansion on plants used by native Hawaiians.

Mr. Gray was asked whether the fern that he mentioned in his testimony was different from the fern that Petitioner was trying to protect. Mr. Gray responded in the affirmative.

The Commission went into recess at 10:20 a.m. The meeting reconvened at 10:35 p.m.

6. Ty Hooper

Mr. Hooper raised concern about the potential flooding and landslides as a result of the proposed cemetery expansion.

7. Rich McCreedy

Mr. McCreedy expressed concern about the visual impacts from the proposed cemetery expansion. He also noted that the expansion was proposed on too large an area, and that the property should be kept in the Conservation District.

8. Patricia Gardner

Ms. Gardner raised concern about viewplane impacts from the proposed cemetery expansion. Ms. Gardner also expressed concern about the sufficiency of the proposed retention areas.

9. Henry Liljedahl

Mr. Lydendahl expressed concern that the view from Pohai Nani will be adversely affected by the proposed cemetery expansion. He subsequently noted that he was the vice president of the hui at Pohai Nani and represented about 250 residents.

10. William C. Vinet

Mr. Vinet seconded the remarks of the previous public witnesses. He added that he did not think there was sufficient outtake for the water that will be generated by the proposed cemetery expansion.

11. Glenn Ida

Mr. Ida noted that his aunt lives at Pohai Nani and was concerned about the visual impact of the proposed cemetery expansion on her morale.

STAFF REPORT

Bert Saruwatari, staff planner, provided a summary of the staff report in this matter. Upon questioning, Mr. Saruwatari noted that it has been the practice of the Commission to send

the required number of copies of the FEIS to the OEQC along with the publication form and project summary for publication in *The Environmental Notice* after the Commission accepted the document, and not before any decision was rendered.

PETITIONER'S PRESENTATION

Mr. Yuen provided a presentation on the proposed FEIS and how it complied with the requirements of chapter 11-200, HAR.

Mr. Yuen noted that §11-200-23(b), HAR, provided the criteria for the acceptance of an FEIS. With respect to the first criterion, he pointed out that the procedures for assessment, consultation process, review, and the preparation and submission of the FEIS have been satisfactorily completed.

Mr. Yuen noted that OEQC has acknowledged an ambiguity in its rules in that they did not specify whether the FEIS should be submitted to the OEQC before or after acceptance of the document. He believed that for the most part agencies that either prepared or accepted FEISs generally did not make the acceptance decision at a public meeting like the Commission. He noted that the OEQC rules and chapter 343 provided for public comment to be confined to the DEIS during the 45-day public comment period following publication of the notice of its availability in *The Environmental Notice*. He added that once the FEIS was prepared, most accepting agencies did not accept public comment and because the Commission made its determination at a public meeting, it was obligated to accept public comment at the meeting. He pointed out that there was no requirement that the Commission publish or Petitioner disseminate the proposed FEIS prior to its acceptance. As a matter of courtesy, he noted that the OEQC and the Commission had put links to the document on their respective websites. In addition, he related that Petitioner had received over 20 inquiries about obtaining hard copies of the proposed FEIS. Petitioner offered to make electronic copies available and only one person took Petitioner up on the offer.

Mr. Yuen then discussed the second criterion as to whether the content requirements of chapter 11-200, HAR, have been satisfied. He noted that in Price vs. Obayashi and Life of the Land vs. Ariyoshi, an FEIS was required to be compiled in good faith and set forth sufficient information to enable the decision maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action as well as to make a reasoned choice between the alternatives. He added that Petitioner has worked in good faith to disclose sufficient information to enable the Commission to fully consider the various environmental factors involved in the petition. He further pointed out that the acceptance of the proposed FEIS was not the final decision on the project, and that the Commission will conduct a hearing on the matter at which time the public will again be given an opportunity to present their concerns. At that time, Petitioner will address in greater detail and present testimony on all of the environmental factors involved with the project.

Finally, Mr. Yuen addressed the third criterion that substantive comments submitted during the review process have received responses satisfactory to the accepting authority and have been incorporated in the FEIS. He affirmed Petitioner's efforts in this regard. He specifically noted that the removal of the 20-lot residential subdivision from the project was a result of Petitioner's consideration of the comments received. With the change in the scope of the project and the removal of the residential part of the project, Petitioner believed that it significantly reduced some of the adverse impacts of the project on the environment. Mr. Yuen concluded his presentation by asserting that Petitioner had satisfied all of the criteria for the acceptance of an FEIS.

Mr. Yee stated that the State Office of Planning (OP) had reviewed the proposed FEIS and believed that it generally was in compliance with chapter 343. He noted that in regard to the substantive matters that were raised, he believed that they were more appropriately addressed in the subsequent hearing on the petition. With regard to the procedural objections raised to the document, he noted that it was his understanding that the practice of OEQC was to accept an FEIS for publication after the agency has accepted the document. He understood the confusion given OEQC's rules, as rules were subject to interpretation. He noted that the definition of an FEIS was not clear in the rules. He added that the notice requirements were more clearly restricted to either the DEIS or to the accepted FEIS. He pointed out that even if there were a requirement for filing, it did not affect the issue of notice to the public. Based on OP's understanding of the practice of OEQC, OP was willing to accept the document as it has been submitted, and therefore had no objections to its acceptance by the Commission.

Commissioner Wong entered the proceeding at 11:05 a.m.

Commissioner Chock asked Petitioner to address the public concerns regarding the content in the proposed FEIS and the lack of disclosure in the document regarding the fauna on the subject property. Mr. Yuen explained that the material was contained in the proposed FEIS. Mr. Yuen noted that the consultant who was retained to study the fauna observed no rats or pueo. He clarified that while no rats were observed, the consultant did observe remains that rats left, and while no pueo were observed, that did not preclude the presence of pueo on the subject property.

Commissioner Contrades moved to accept the proposed FEIS in this matter. Commissioner Piltz seconded the motion. Commissioner Contrades clarified that the acceptance of the proposed FEIS did not mean that the Commission accepted the project, and that the public will be able to voice their concerns again at the hearing on the petition. The Commission was polled as follows:

Ayes: Commissioners Contrades, Piltz, Devens, Judge, Lezy, Teves, Chock, and Kanuha.
The motion passed with 8 ayes and 1 abstention.

The Commission went into recess at 11:16 a.m. Commissioner Devens left the meeting at this time. The meeting reconvened at 11:26 a.m.

A85-595 KUILIMA DEVELOPMENT CO. (OAHU)

Chair Kanuha announced that this was a continuation of the meeting to receive a status report from Petitioner and to take appropriate action, if any.

APPEARANCES

Sharon Lovejoy, Esq., represented Petitioner
Stanford Carr, Petitioner
Keith Kurahashi, Petitioner
Bryan Yee, Esq., represented State Office of Planning
Abbey Seth Mayer, State Office of Planning
Lorene Maki, State Office of Planning

PUBLIC WITNESSES

Public witnesses 1 through 16 below expressed opposition to the Motion for Order to Show Cause. The witnesses raised concerns about the lack of employment opportunities and affordable housing in the community. The Commission also received written testimony only from Gaylene Nikora opposing the Motion for Order to Show Cause.

1. Junior Ah You
2. Toni Cano (also provided written testimony)
3. Fina Ongoy (also provided written testimony)
4. Meleana Becicka (also provided written testimony)
5. Grace Kamae (also provided written testimony)
6. Lilia Tani (also provided written testimony)
7. Bonnie Holmbeck (also provided written testimony)
8. Lata Sua (also provided written testimony)
9. Jan Kribell
10. Sandy Marr
11. Jason Kahaialii
12. Jaybrielle Akoi
13. Dain Kamakaala

14. Michelle Auelua
15. Bob Comeau
16. Tom Picard (also provided written testimony)
17. Mark Cunningham

Mr. Cunningham noted that part of the reason for the Motion for an Order to Show Cause was that the jobs and housing that were promised have not been created. He argued that the addition of five more hotels and doubling the amount of condominiums would impact the tax rates for residents. He further pointed out that the last housing that was built by Turtle Bay was \$2 million condominiums. He reiterated that he was not against growth but was for smart growth. With the current state of the tourism industry, he questioned the need for additional hotels. Instead of hotels, he preferred that the land be used for local people to grow their own food instead of relying on imports. He noted that the shoreline around Turtle Bay Hotel was some of the last undeveloped shoreline on the island.

18. Bob Nakata

Mr. Nakata spoke in support of the Motion for Order to Show Cause. He stated that he was opposed to the expansion of Kuilima. He explained that certain parts of the island needed to be kept as country so that people have open spaces and not feel locked in. Mr. Nakata commented on the original promises made by the developers in 1986 in regard to the provision of parks, affordable housing, and jobs. Despite the original assertions that this area was the best place on Oahu to develop luxury hotels and condominiums, he questioned why resort development has not occurred as it has in Ko Olina, Waikiki, and the neighbor islands despite the economic conditions. He believed that, for one, gambling was never legalized to attract tourists to the area; second, the ocean conditions and the lack of good beaches have been barriers. He noted that there were nowhere near the number of people out there looking for the 3,500 jobs proposed by Kuilima. He asserted that people would either have to move out there or commute and face the same problem commuters in that area have when they commute to town. He added that while there was a need for affordable housing, with the decision to proceed on the rail mass transit system, such housing would need to be built along its corridor to make it economically possible instead of in Kahuku. He further asserted that decision also meant Kamehameha Highway would not be expanded in our lifetime and, in fact, was not in DOT's plans for expansion. He further noted that if the promises that were made 23 years ago had been immediately implemented it would have made sense; however, the current conditions were such that it did not make economic sense to have that

development and affordable housing out there. He added that the State was in such a bad financial state, he would not be surprised if Kahuku Hospital closed down.

Mr. Nakata concluded that he believed the developers were simply attempting to preserve what they claimed were their vested rights to develop. Since they did not have all their approvals, he did not think that they were vested yet.

Chair Kanuha reminded the audience that the item on the agenda related to the status report for this project. He clarified that the actual Motion for Order to Show Cause was not the subject of the agenda today but will be scheduled as a separate action.

The Commission went into recess at 12:55 p.m. The meeting reconvened at 2:08 p.m.

19. Robert Harris

As the counsel to Defend Oahu, Mr. Harris reminded the Commission that the Motion for Order to Show Cause was briefed and already heard, and that the Commission decided to take the matter under advisement to receive legal counsel. He offered to provide any further briefing if there were legal issues that the Commission was concerned about. He noted that Defend Oahu has not encouraged its members to testify today because these status report hearings were supposed to be procedural, and Defend Oahu has not been given the opportunity to cross-examine witnesses or present evidence. To the extent that the Motion for Order to Show Cause and substantive issues were being discussed, Mr. Harris reminded the Commission that Kuilima has taken the legal position that it has no obligation to fulfill the conditions or to meet the promises made in 1986 in terms of providing public beach access, shoreline access, public parks, jobs, and affordable housing. He added that since there was no timetable, Kuilima could fulfill the conditions at any time while enjoying the benefits of the increased value of the property with the ability to buy and sell the land. He noted that to the extent the public testimony today seemed to differ, there may have been new promises made, and he hoped that the Commission would query Kuilima as to their plans and when they expect to fulfill the conditions. Finally, he hoped that the Commission would hear the Motion for Order to Show Cause on the North Shore.

Following the receipt of public testimony, Ms. Lovejoy provided a status report on the project. She noted that there was a vast amount of work done to move the project forward. She pointed out that out of the 236 acres covered by the boundary amendment, development on 49 percent of the subject property has been completed. She added that they have worked extensively with the governmental agencies to get the necessary permits and approvals. She noted that they have not received final subdivision approval as the Department of Transportation (DOT) has not yet approved the addendum to the traffic impact analysis report (TIAR). She also reported that the infrastructure to support the development has been largely

built out in terms of the wastewater treatment plant, the Opana Wells 1 and 2, and certain major transmission lines connecting through the roadways. She noted that work was about to begin on upgrading the equipment relative to the wells to bring them up to standards and work was currently being done to widen Kuilima Drive and Marconi Road. She concluded that the project has moved forward and has continued to do so but given that there were approvals that were outside the control of Kuilima, she could not give a specific timeframe by which certain things would be done, including final subdivision approval.

Mr. Carr also provided information on the status of the project and efforts to address the concerns of the DOT. He noted that they were currently in the process of collaborating with Kuilima East/West homeowners in the design modifications for Kuilima Drive with respect to landscape plant material. He also reiterated that they were working on getting final subdivision approval which will create the separate parcels of record that will enable the continuation of project expansion. He pointed out that this has to be done first and foremost. It was Kuilima's intent to master plan the community with the vision of diversity of product types that were present in the resort community. Once Kuilima worked on that vision and the master plan, they will take it out to the neighborhoods and the different community associations to engage them in the process and get their input. He also reiterated that the timeframe was predicated on when final subdivision approval was obtained from the County, which in turn was dependent on DOT's approval of Kuilima's TIAR. He related that the DOT asked Kuilima to do a roundabout analysis for the intersection of Kuilima Drive and Kamehameha Highway, including Kuilima's alpha road east and west intersections. He pointed out that this was a new issue that was never brought up in previous discussions or meetings through the two-year process with the DOT on the TIAR. He added that they were meeting with the DOT on Monday morning (November 10, 2008) as a follow-up to address this analysis.

Commissioner Wong raised concerns that there was no information on when the outstanding issues associated with the development would come to a conclusion. He noted that there was a need for projected completion dates.

Mr. Carr reiterated that they needed to obtain final subdivision approval which hinged on the DOT's acceptance of the TIAR. He again noted that they will be meeting with the DOT on Monday and he would be better able to respond to Commissioner Wong's inquiries in the future.

Mr. Yee noted that while Kuilima has provided complete and comprehensive reports regarding their past actions, what was left unanswered was what was Kuilima going to do, where were they going to do it, and when was it going to be finished, and if they did not know, when were they going to know. He asserted that Kuilima's statement that they could not give the Commission a timeline was not acceptable or credible. He noted that the Commission received petitions for district boundary amendments all the time and they all contained deadlines albeit they may not be precise and may be subject to change.

In response to OP's comments, Ms. Lovejoy pointed to the land use master plan of the development which has not changed. She referenced the various development parcels and

components of the project. Upon questioning, she confirmed that the lands on the master plan were fully zoned. Mr. Kurahashi pointed out that subdivision was necessary to subdivide out the development parcels from the larger lots comprised by the development. He noted that the park site needed to be subdivided out before it could be dedicated.

Commissioner Wong asked whether the park on the extreme left side of the master plan has been carved out as a separate parcel. Mr. Kurahashi confirmed that it has been subdivided, and that they have been working toward dedicating the site to the City in advance of the requirement for dedication. He added that a plan for the site has been approved, but that improvements needed to be constructed. He noted that the DOT has a concern about access to the site. He explained that they were looking at running a separate driveway lane to access the site. In response to further questioning, he believed that the City would not accept the park site without approved access.

Commissioner Wong asked Kuilima whether their uncertainty as to when the hotels would be built was the result of market conditions. Ms. Lovejoy replied that was the practical reality, but at this point they could all be built out as they had all of the entitlements for all five hotels. Commissioner Wong expressed concern that Kuilima was sitting on the entitlements and based on their statements, there could be another 30 years before Kuilima decided to build. Unless there was a timeframe, he remarked that there was no approximate date as to when the hotels would be built.

Chair Kanuha asked Kuilima to clarify the purpose of subdividing out the entitled areas of the project. Ms. Lovejoy replied that subdivision was a necessary precursor to moving forward with further development of infrastructure for those parcels. Mr. Kurahashi added that the reason for subdivision was to create individual parcels for sale or joint development or for an investor to develop. Chair Kanuha noted that this information was not in the status report. Chair Kanuha then questioned how jobs and affordable housing factored in the project. Mr. Kurahashi replied that they were looking at mauka property offsite that Kuilima owned and were in preliminary discussions. He noted that the affordable housing was tied to the development of the condominiums.

Commissioner Wong asked Kuilima what the development would do for the community. Ms. Lovejoy stated that Mr. Carr, who would be able to respond to that question, had left the meeting.

At this time, Commission Wong moved to go into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's power, duties, privileges, immunities, and liabilities. Commissioner Judge seconded the motion.

The Commission exited the meeting at 2:50 p.m. and entered executive session immediately thereafter.

The meeting reconvened at 3:13 p.m.

Ms. Lovejoy clarified that Mr. Carr had a 4:00 p.m. flight so he did not just leave for want of concern. It was her understanding that it was something that he could not reschedule. Chair Kanuha noted that was the understanding of the Commission as well.

Commissioner Wong asked Executive Officer Davidson to clarify the status of the Motion for Order to Show Cause. Mr. Davidson noted that the motion was heard several months ago and deferred pending discussion with the Commission's attorney and receipt of Kuilima's status report. Since then, he pointed out that the Commission has had two sessions of reporting so the motion was still pending and could be scheduled at the Commission's pleasure.

Commissioner Piltz asked whether it would be appropriate to schedule the Motion for Order to Show Cause at the Commission's next Oahu meeting in February. There were no objections by the other commissioners to scheduling the matter at the next appropriate meeting date. Mr. Davidson duly noted the Commission's intention in this regard and will place the matter for the Commission's consideration at the next appropriate meeting date.

The Commission went into recess at 3:18 p.m. The meeting reconvened at 3:22 p.m.

SP87-362 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (OAHU)

Chair Kanuha announced that this was a meeting to receive a status report from Petitioner and to take appropriate action, if any.

APPEARANCES

Gary Takeuchi, Esq., represented Petitioner
Eric Takamura, Petitioner
Frank Doyle, Petitioner
Wilma Namumnart, Petitioner
Joe Whalen, Petitioner

PUBLIC WITNESSES

1. Councilmember Todd Apo

Mr. Apo stated that the status report provided little information on how the City would reach closure of the landfill. He noted that he has been advocating that the City did not need to find another landfill. He asserted that the expansion of H-POWER and the shipping of waste would at a minimum account for 400,000 tons of waste that could be dealt with by the City without going into the landfill. He reiterated his position that although a place may be needed for emergencies, the City did not need a daily operating landfill.

Mr. Apo expressed concerns about the Mayor's administration and the Department of Environmental Services (DES) in regard to the representations

made to close the Waimanalo Gulch Sanitary Landfill. He informed the Commission that as budget chair, the City Council had budgeted \$80 million for H-POWER to be acquired by the City to get to a point where an extra 300,000 tons of waste could be burned instead of landfilled. In addition, he stated that \$7 million was budgeted for the shipping of waste. He noted that from a council standpoint, they made sure the administration had the money to reach a solid waste solution. He believed that for the City to come to a status hearing to address the closure of the landfill and instead report that they will be seeking a 15-year expansion was beyond what they should be looking at.

Upon questioning, Mr. Apo clarified that the \$80 million for H-POWER was approximately split between the purchase and the expansion. Upon further questioning, he stated that he did not know of the timeframe for the expansion although COVANTA, the operator of H-POWER, was working on the planning and permitting side of that, including obtaining DOH permits for the expansion.

Commissioner Lezy asked Mr. Apo how much municipal solid waste could be shipped off the island. Mr. Apo noted that the winning bid was at \$99/ton so with \$7 million budgeted, the City would have the ability to ship approximately 70,000 tons. According to him, the thought was that the City would ship 100,000 to 150,000 tons the first year. Because they were budgeting starting July 1, they knew the operation probably would not start until January at the earliest, so they budgeted half than what was necessary on an annual basis. He pointed out that the 70,000 tons was the minimum amount. He explained that the Council budgeted a large pot of money in which at least \$7 million needed to be used for shipping. He noted that this did not preclude the DES from using additional monies out of that pot for additional shipping should that cost be necessary.

Commissioner Teves asked whether a landfill for emergency purposes had been chosen yet. Mr. Apo stated that it has not and that part of the reason was that the DES has not had the mentality of locating such a landfill. He believed that if there was a discussion with the community, they could even get to a point of saying there may be a portion in the back of Waimanalo Gulch that could be used as that emergency site. He stated that he was willing to have that discussion.

Commissioner Judge asked whether the ash would be landfilled or shipped. Mr. Apo replied that both the ash and residue could be shipped. Greenwaste, however, could not be shipped because of the organisms that would be in the waste. He added that the ash could also be landfilled in a different way than municipal solid waste.

2. Cynthia Rezendes

She expressed the need for moving toward putting processes in place to reduce the amount of waste that was landfilled but making sure that also came with an end date for the daily closure of the landfill.

PETITIONER'S PRESENTATION

In response to Councilmember Apo's testimony, Mr. Takamura noted that they had never said that the landfill would be closed. He pointed to the FEIS for the Waimanalo Gulch Sanitary Landfill expansion, which was completed. He noted that when Mayor Hanneman came on board, the decision was already made to select a new landfill site. He discussed the alternative sites, including the five sites identified by the Blue Ribbon Committee. He noted that while technology may some day negate the need for a daily landfill, the question was at what cost. He pointed out that they issued a competitive sealed proposal (CSP), a two-step bid process with qualifications first and price second, and they opened it up to existing technologies. According to Mr. Takamura, the only proposals they received were from mass burn technologies; there were no proposals submitted involving the newer technologies. He related that they could not find a reasonable time schedule and price with these proposals, and therefore cancelled the CSP and decided to expand H-POWER. Because of the difficulties of segregating waste to come up with refuse derived fuel, he explained that the City decided to expand using the mass burn technology. He noted that the 300,000 ton per year expansion of H-POWER will be undertaken with a mass burn facility. The present schedule called for this facility to be on line at the end of 2011, with full operational capabilities by summer 2012. He also explained that they were in negotiations with the contractor for the construction of the facility; however, there were some financing issues because of the downturn in the financial markets. Because floating general obligation bonds was difficult, he pointed out that they were pursuing a public-private partnership wherein a private owner would build the facility and at the end of a predetermined time period, the City would purchase the facility.

Mr. Takamura then discussed the expansion of its recycling efforts across the island. He noted this presented more of a logistical situation for his department because of staffing and financial planning. He pointed out that they had to buy \$24 million of garbage bins so they were trying to execute the effort over a 2½-year period. He noted that to give residents twice a week pick up and implement a third pick up day for recycling would cost upwards of \$10-12 million per year. So they went out to Mililani and Hawaii Kai and announced that they would come out once a week for trash with a second day for curbside recycling. From this pilot study, they discovered that there was little demand among Mililani residents who were offered the option of a second day trash pick up at \$10 a month. He explained that in Hawaii Kai, because residents had no option of a second day pick up, they started recycling. As a result, the DES cancelled the Mililani program and rolled out the Hawaii Kai model in Kailua, Manoa to Kuliouou, and the North Shore, Mokuleia to Sunset Beach, as the next phase. He emphasized that the reason why they were doing this was to change peoples' habits and behaviors.

Mr. Takamura pointed out that shipping of waste off island was an interim measure to reduce the burden on the landfill. They estimated the City could afford \$10 million a year to ship. With a bid price of \$99 per ton, they were looking at spending \$10 million per year to ship 100,000 tons per year. He expressed the need to look at their economic situation because property tax revenues were forecasted to be anywhere from 5 to 10 percent lower in the coming years. When the H-POWER expansion was put on line, they would need to review how much waste should be shipped for the next three years. He pointed out that H-POWER's present capacity of 600,000 tons coupled with the additional 300,000-ton capacity brought about by the expansion could last for about 10 years. In that 10-year period, he explained, the newer technologies could be developed sufficiently where they could be implemented on Oahu. Finally, Mr. Takamura stated that with the decreased number of tourists on Oahu, the inflow rate to the landfill has actually decreased, and therefore he did not think that they would see 300,000 tons at the end of the year if the current economic situation continued.

Joe Whalen, general manager of the Waimanalo Gulch Sanitary Landfill, provided a presentation on the operations of the landfill. He pointed out that the amount of waste landfilled has continually declined. He noted that some of the environmental protocols they have in place consisted of the landfill gas system installed in 2005. He explained that this active gas removal system involved a series of 40 wells that created a vacuum within the decomposing waste. As methane gas and other gases were formed, they were collected through this gas system under vacuum and directed toward the flare. At this time, he noted, they did not produce enough landfill gas to have a gas to energy plant facility. He further testified that they have a series of groundwater monitoring wells surrounding the site that were sampled on a quarterly basis. He pointed out that there were three leachate sumps, the levels of which were checked on a weekly basis. Appropriate sampling was also done throughout the year.

Mr. Whalen then discussed the storm water management plan. He noted that all of the rainfall that fell on the active portions of the site was directed to swales and ditches. He explained that they have an NPDES discharge system where they conducted semi-annual sampling and monitored the discharge so that no pollutants from the storm water were taken offsite.

Mr. Whalen also referenced the landscaping that has been done at the facility. He reported that they had put in additional landscaping to make the site as close to the natural surrounding areas as possible. Finally, he noted that there was one complaint in January from their neighbors at Ko Olina. Upon investigation, they found that the complaint was actually the result of kids knocking over some trash cans that were on the public beach area.

Commissioner Chock asked Mr. Whalen whether they measured the greenhouse gas emissions that came out of the landfill. Mr. Whalen replied that they do an annual stack test of the flare to verify the efficiency of the unit. He also noted that the landfill gas system has a vacuum on the entire area and they were required on a monthly basis to utilize a surface emissions scanner to ensure that there were no emissions entering the atmosphere. As far as greenhouse gases, he clarified that they did not have those kinds of emissions except what may come off of the top of a truck. Commissioner Chock then asked how much methane would

need to be produced at the landfill to create a recapture facility. Mr. Whalen explained that the smallest engine that Waste Management has at other locations made 1.5 MW of electricity, and 350 scfm (a unit of gas) were needed in order to put that in. Currently, they were at 600 scfm; however, they have to burn off the natural gas condensate onsite first and that took up 350 or 400 scfm, so they were right below the threshold of where they would have enough gas.

Frank Doyle, chief of the Refuse Division, DES, followed Mr. Whalen's presentation with information on H-POWER. He noted that they submitted the air permits to the DOH. They were also in the process of issuing purchase orders for the large items such as the boiler and turbine. He further noted that they have \$40 million appropriated for the project so far and they were going into the next budget cycle and request additional funds for the upcoming expenditures that they will incur. H-POWER was on schedule for 2011 to light fires in the boiler and be in full operation in the middle of 2012. He explained that they were about to issue an RFP this month for a 100,000-ton facility to address greenwaste, food waste, and sewage sludge. According to him, that facility will be operational at the end of 2011 or the beginning of 2012 depending on which technology they get. They opened the RFP up not only to composting technology but also to biogas technology, syngas, and biofuels. With respect to recycling, given the world conditions they were experiencing some difficulties in the area with some of the markets closing up rather quickly so they were looking at storing some of that material over time. With respect to the shipment of waste, he noted that it was more of a legal matter rather than one of getting it done.

Upon questioning, Mr. Doyle clarified that in his testimony, he was referring to the expansion of H-POWER. He noted that the existing facility diverted 600,000 tons per year, and that the City just completed purchase of it so it was now City property. He pointed out that the City made some money on the sale leaseback portion of that. He also related that they just came up out of a shutdown to refurbish as they did twice a year. Commissioner Wong asked whether financing of the expansion would be accomplished in the same manner as the existing facility. Mr. Doyle pointed out that they were looking at the best way to finance it at this time. Commissioner Wong questioned him if he knew whether State tax credits would be available if a private entity built the facility. Mr. Doyle commented that special purpose bonds were available. He added that State and Federal tax credits might be available for a private entity that leased the facility, which was the way the City proceeded with the existing facility.

Commissioner Lezy asked Mr. Takamura about the City's plans relative to the expansion of the landfill. Mr. Takamura replied that the FEIS was for the expansion for the useful life of the property. He explained that the whole parcel on which the landfill was located was owned by the City, and that was one of the reasons why the City Council picked that property for the expansion. Commissioner Lezy questioned how the administration reconciled the landfill expansion plans with the Commission's March 8, 2008, Decision and Order. Mr. Takeuchi interjected that it was very clear in the City's testimony at those hearings, which resulted in that Decision and Order, that the City intended to expand the landfill to take advantage of the remaining capacity. He pointed out the extension that was sought and approved was to allow the City sufficient time to complete the EIS and to seek further approvals for that expansion. He noted that the City never took the position or understood that

the City would be required by that Decision and Order to take the steps to close the landfill. Commissioner Lezy asked whether any work was underway to effect closure as an option of the landfill. Mr. Whalen noted that the facility has an active closure and post closure plan that included certain requirements, but they have not implemented those at this time. Upon questioning, he clarified that this was a generic plan for the existing landfill footprint, not the expansion. In the City's expansion request, he related that there should be a modified closure plan that would deal with the entire 200-acre site.

Commissioner Wong asked whether the expansion of H-POWER would address the solid waste and negate the need to expand the landfill area. Mr. Takamura replied that a landfill was still necessary to dispose of ash and residue and there were certain non-combustible trash that could not be burned. He added that the expansion included a new cell for ash and for other difficult solid waste that could not be either recycled or converted to energy. Commissioner Wong then asked whether the material that would be placed in the expansion area would not encompass degradable material. Mr. Takamura pointed out that was what they were trying to avoid. He added that they eventually want to reach a point where the only items that were landfilled were waste that could not be recycled or converted to energy. Commissioner Wong questioned whether the expansion of H-POWER would give them that result. Other than ash and non-combustible items, he inquired as to whether garbage would still be dumped at the landfill. Mr. Takamura replied that while municipal solid waste would not be landfilled, there were some semi-industrial waste streams that were a lot more difficult to handle. Commissioner Lezy followed up by asking Mr. Takamura why the shipping of waste could not be used as a solution in and of itself. Mr. Takamura replied that the initial thought was to reduce the burden on the landfill by shipping municipal solid waste. When it came to the more difficult waste streams such as the sludges and semi-liquids that may contain heavy metals, he noted that the cost may be driven upwards. Upon additional questioning, he pointed out that the ash could be potentially shipped as they did not see the same restrictions that were present with the semi-industrial waste streams.

Commissioner Contrades left the meeting at 4:33 p.m. He returned at 4:35 p.m.

Commissioner Judge asked Mr. Takeuchi what process the City would use for its expansion request. Mr. Takeuchi noted that the intention was to prepare a new SUP application with the expectation that the application would be filed by the first of next month.

Commissioner Lezy moved to go into executive session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Chock seconded the motion.

The Commission exited the meeting at 4:36 p.m. and entered executive session. At this time, Chair Kanuha and Commissioner Contrades left the meeting.

The meeting reconvened at 4:48 p.m. At this time, Vice-Chair Piltz presided over the meeting.

Commissioner Wong asked whether the expansion of the landfill should be processed as a district boundary amendment or a special use permit. He requested that the Commission's attorney look into this issue and advise them at the appropriate time. Mr. Takeuchi pointed out that they were seriously looking at whether a boundary amendment proceeding would be more appropriate, although they understood that it was a more lengthy process and given that they only received an 18-month extension rather than the two years that they were seeking, it was not clear whether they would complete that process in a timely manner.

Following Petitioner's presentation, Vice-Chair Piltz announced that the Commission would take the status report under advisement.

DISCUSSION

ACT 233 (SLH 2008), IMPORTANT AGRICULTURAL LANDS ADMINISTRATIVE RULES

Vice-Chair Piltz announced that the meeting to discuss Act 233 (SLH 2008), Important Agricultural Lands Administrative Rules, has been postponed until the Commission's next meeting.

The meeting was adjourned at 4:52 p.m.

(Please refer to the LUC Transcript of November 6, 2008 for more details on this matter.)