

LAND USE COMMISSION
MINUTES OF MEETING

February 11, 2005

Alii Ballroom
Waikoloa Beach Marriott
69-275 Waikoloa Drive
Waikoloa, Hawaii

COMMISSIONERS PRESENT: P. Roy Catalani
Isaac Fiesta, Jr.
Michael Formby
Lisa Judge
Kyong-su Im
Steven Montgomery
Randall Sakumoto
Peter Yukimura

COMMISSIONERS ABSENT: None

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

Chair Catalani called the meeting to order at 8:40 a.m.

Chair Catalani stated that the Commission would like to modify the agenda to allow the Hiluhilu Development docket to be heard first, followed by the Kamehameha Investment Corporation. Vice Chair Sakumoto moved to amend the agenda's schedule to hear the Hiluhilu Docket first. The motion was seconded by Commissioner Fiesta. The motion was approved unanimously by voice votes.

Chair Catalani stated that this was a continued hearing to reclassify approximately 725.2 acres of land currently in the Conservation and Agricultural Districts into the Urban District at the ahupua`a Kau, North Kona, Hawaii.

APPEARANCES

Alan Okamoto, Esq. represented Petitioner

Norman Hayashi, County of Hawaii Planning Department

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

John Chang, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Admission of Exhibits by the Parties

Mr. Chang noted that the state has a new submittal, Exhibit 8, a letter dated February 10, 2005 from Rodney Haraga, Department of Transportation regarding follow up negotiations between the State and the Petitioner for access to Queen Kaahumanu Highway. There were no objections by the parties. Said exhibit was admitted into evidence as the State's Exhibit 8.

Mr. Yamamoto indicated that the Petitioner has submitted Exhibit 20, the Final Traffic Analysis Report and TIAR, and Exhibit 37, the Final Integrated Cultural Plan. There were no objections by the parties. Said exhibits were admitted into evidence.

Chair Catalani noted that there were no public witnesses.

PETITIONER'S WITNESS

1. Patrick Hart

Dr. Hart was recognized as an expert in ecology and biology and summarized his report and discussed the 3 main goals of his study. Basically, the first goal was to look for rare and threatened bird species; the second to identify all the plants; and the third was to identify the general vegetation. Dr. Hart also reported on the endangered native plants, species of concern, the native birds and fauna, Hawaiian hawk and bats, and the dry land forest.

Ms. Leithead-Todd had a few questions regarding the landscaping plan and the buffer area for the dry land forest.

Mr. Chang's questions and concerns were related to the impact of the proposed project upon the endangered animals of the area during construction and Dr. Hart's recommendation of a monitor to ensure that the habitats are not disturbed.

Vice Chair Montgomery raised questions in reference to the active management of the area, the restoration of endangered plant species in the reserve area, and questioned why the scope did not include invertebrates.

Commissioner Im had a few questions related to the native and endangered species in the lower and middle areas, and the intent to also preserve the endangered species and the dry land forest on the state-owned property adjacent to this project.

Commissioner Judge raised questions regarding the active management plan and other dry land forests in the state, and the 11 goals that were recommended to be implemented by the petitioner.

Vice Chair Sakumoto also raised questions related to the goals in the plan, efforts on coordination with the state for preservation of the forest on the common boundaries, buffer areas, funding for maintenance, and time periods for protection during grubbing and tree trimming.

Chair Catalani raised questions related to the 11 goals, costs and financing mitigation, and compliance by the contractors during construction phase.

A recess break was taken at 10:00 a.m. The meeting reconvened at 10:30 a.m.

Chair Catalani noted that the Office of Planning has not scheduled a state witness to testify on the dry land forest and asked if a DLNR or similar witness could testify on the issue of the forest preservation on the state-owned lands adjacent to the project.

Mr. Chang replied in the affirmative and noted that they could possibly have a person to discuss this matter at the next scheduled meeting.

2. Francis Howarth

Mr. Howarth stated that he is from the Bishop Museum in Honolulu and described the term entomology. Mr. Howarth's resume was submitted as Exhibit 36 and he was qualified as an expert in ecology and entomology. There were no objections by the parties.

Mr. Howarth reported on the biological assessment of lava tubes under the lands at Kau. He summarized his report and noted that it was submitted as Appendix O, Exhibit 15, volume 3.

Commissioner Formby entered the meeting at this time.

Commissioner Im expressed his appreciation to Mr. Howarth for his testimony and posed a few questions related to the cave catchment system, lava tubes, and enhancement of the project,

A recess break was taken at 11:30 a.m. The meeting reconvened at 11:50 a.m.

Chair Catalani extended birthday wishes to Commissioner's Formby and Yukimura and expressed appreciation to both of them for their continued public service on the commission.

3. Maria Orr

Ms. Orr stated that she prepared the cultural impact study and assessment and summarized her report for the Commission. Ms. Orr's resume was submitted as Exhibit 27 and she was qualified as an expert in cultural impact assessment. There were no objections by the parties.

Ms. Leithead-Todd had a few questions regarding cultural assessments for new developments, a monitoring/advisory group, and those interested in gathering rights to the area.

Mr. Chang raised a few questions related to issues of joint efforts between the University of Hawaii and the other educational facilities in the area, such as Kamehameha Schools and the University of the Nations, and also inquired about recommendations for the view planes.

Vice Chair Sakumoto had questions and concerns related to the report on cultural practices and access to medicinal plants, gathering rights, access to trails, and the cultural monitoring group.

Commissioner Im raised a few questions on the archeological study that identifies cultural significance in the entire area and the recommended monitoring to

ensure that these significant plants and animals will not be disturbed during development and construction.

Chair Catalani had questions and concerns regarding the responsibilities of the cultural advisory committee versus the community association.

Commissioner Yukimura raised a few questions on Exhibit 37 relative to the caves. He also asked what would happen in the event that there is a dispute between the developer and the cultural advisory group and added that there should be a mechanism for some type of agreement or conclusion.

A lunch break was taken at 1:45 p.m. The meeting reconvened at 1:55 p.m.

Commissioner's Im and Judge left the meeting at this time.

A04-747 KAMEHAMEHA INVESTMENT CORPORATION (Hawaii)

Chair Catalani stated that this was a continued hearing to consider the reclassification of approximately 487.246 acres of land currently in the Agricultural District into the Rural District at Keauhou I and II and Kahaluu, North Kona, Hawaii, for the development of a single-family residential subdivision.

APPEARANCES

R. Ben Tsukazaki, Esq. represented Petitioner

Norman Hayashi, County of Hawaii Planning Department

Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department

James Nagle, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Catalani noted that there were no public witnesses at this time, however, the Commission has received written testimony today from Janice Palma-Glenna objecting to the project for reasons of destruction to archeological and native habitats, and denied public access to the area.

Chair Catalani stated that the Commission has received from the Petitioner, a stipulated decision and order.

Mr. Tsukazaki noted the corrections to the latest version of the stipulated order and also addressed some issues that were in discussion at yesterday's hearing during the public witnesses testimony.

After a discussion, Mr. Tsukazaki noted the petitioner has not been able to submit a complete document on time and also apologized for the lateness of this document. Mr. Tsukazaki then requested for a continuance on the action of the hearing to allow the Commission more time to review the stipulated order.

Commissioner Fiesta raised a few questions related to the revenues from this development and if the project would be in jeopardy if not approved. He also asked if they included any conditions which references the county's Civil Defense and emergency plans for tsunamis, etc.

Vice Chair Sakumoto noted that there is a number of items that were still pending and progressing and suggested that petitioner include some mechanism to indicate the status of progress.

Ms. Leithead-Todd noted that the County has reviewed the second stipulated order and is comfortable with it and has no objections.

Mr. Chang also indicated that the state has reviewed the stipulation with new additions and have no objections.

Mr. Tsukazaki noted that he would like to clarify that presently there is a basic conceptual agreement with the DOE that still needs to be finalized.

A recess break was taken at 2:50 p.m. The meeting reconvened at 3:05 p.m.

Commissioner Yukimura left the meeting at this time.

A04-744 HILUHILU DEVELOPMENT LLC (Hawaii)

Chair Catalani stated that this was a continued hearing on Hiluhilu Development LLC.

APPEARANCES

Alan Okamoto, Esq. represented Petitioner
Jerel Yamamoto, Esq. represented Petitioner

Norman Hayashi, County of Hawaii Planning Department
Bobbie Jean Leithead-Todd, Esq., represented County of Hawaii Planning Department
John Chang, Esq., represented State Office of Planning
Abe Mitsuda, State Office of Planning

PETITIONER'S WITNESSES

1. Steven Bowles

Mr. Bowles was recognized as an expert in groundwater and his resume was submitted as Exhibit 23. There were no objections by the parties.

Mr. Bowles summarized his groundwater study for the project and presented petitioner's exhibit 40, a chart drawn up by him, and figures 1 and 2 of the study. He discussed the fundamentals of the freshwater well developments of the project area, the brakish water wells and location, the golf course layout, the underline geology of the area, and the pumpage and sustainable yields.

Ms. Leithead-Todd noted that the County had no questions.

Mr. Chang raised questions relative to the drilling of the 2 brakish wells and plans for the wells after the wastewater plant becomes on line, the golf course development and impacts to the ocean waters due to chemicals used on the courses, groundwater impacts, potable water usage at full build out, and other developments in the vicinity of this project.

Commissioner Formby raised a few questions relative to the hydro geologic section, the width of the dikes, replenishment, and the water level lines.

Vice Chair Sakumoto had a few questions in reference to the sustainable yield of the brakish water wells and its salinity levels.

Chair Catalani expressed his appreciation for providing clear testimony and posed a few questions regarding conservation issues and the Kahului Shaft.

A recess break was taken at 4:00 p.m. The meeting reconvened at 4:20 p.m.

Mr. Yamamoto noted that they were to call upon Mr. Harris today to provide testimony and to answer some concerns raised by the Commission related to finance and preservation. However, there is no time remaining for the day and at the next

hearing, will provide an explanation on the roles of the advisory committee, the commitments of the developer, the preservation plan and resources, the role of the monitors to minimize impacts, and coordination efforts with the state on the adjacent property.

Mr. Chang indicated that they will have a witness from the DOT to testify and will make every effort to also have a person from the DLNR, Forestry Division, to discuss preservation efforts of the dry land forest situated on the state-owned property.

Vice Chair Sakumoto noted that at yesterday's hearing, there was a public witness who testified about his subdivision mauka of the project and the steepness of the road there. He suggested a response to his concern also be addressed.

Mr. Yamamoto replied in the affirmative and noted that they will also be addressing that concern as well.

The meeting adjourned at 4:25 p.m.

(Please refer to LUC Transcript of February 11, 2005 for more details on this matter.)