

LAND USE COMMISSION
MINUTES OF MEETING

February 16, 2007

Ali`i Room
Aloha Beach Resort Kaua`i
3-5290 Kuhio Highway
Kapa`a, Kaua`i, Hawai`i

COMMISSIONERS PRESENT: Michael Formby
Steven Montgomery
Duane Kanuha
Nicholas Teves
Thomas Contrades

COMMISSIONERS ABSENT: Lisa M. Judge
Kyong-su Im
Ransom Piltz
Reuben Wong

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

Presiding Officer Formby called the meeting to order at 8:35 a.m.

A89-649 LANAI RESORT PARTNERS

Presiding Officer Formby stated that this was a meeting to receive a status report from the parties.

APPEARANCES

Bruce Lamon Esq., representing Petitioner
Bryan Yee Esq., representing the State of Hawai`i Office of Planning
Laura Thielen, State of Hawai`i Office of Planning

Presiding Officer Formby noted that the County of Maui Department of Planning and Intervenor Lanaians for Sensible Growth were not present.

Mr. Lamon referenced OP's written status report and noted that the Petitioner has had several meetings with the other parties; and had recently received a proposal by LSG that was divergent from LSG's earlier position. The Petitioner does not accept the proposal made by Intervenor to build a desalination plant and abandon the use of certain wells. Petitioner intends to make a counter-proposal to LSG, and work with the state and county to see what the Petitioner, OP, and the County could agree upon.

Mr. Yee apologized that his letter was not timely sent to the LUC. Mr. Yee noted that the letter reflects what happened at the most recent meeting and that it is unlikely that there will be a four-way settlement.

Presiding Officer Formby expressed concern about the way the settlement process has gone so far. Presiding Officer Formby noted that the Supreme Court gave two options and believes that the record is complete. He expressed his desire to appoint a hearings officer because the record is complete and does not believe that it is productive to continue with further hearings. Presiding Officer Formby was displeased to hear that the parties cannot find a solution and hope that all of the parties can work together to resolve this in a timely manner.

Vice Chair Montgomery questioned OP about LSG's representation at the meetings and why didn't LSG present a memo today

Mr. Yee stated that he believes that the parties may have accepted OP's status report as adequate to explain the present status of negotiations

Vice Chair Montgomery questioned OP about former Chair Sakumoto's recommendations that the parties find a negotiated solution and if the parties have taken those recommendations seriously.

Mr. Yee stated that he believes that the parties are aware that an imposed solution from the LUC would not make all of the parties happy. OP does not want to characterize the parties' position for those who are not here today.

Vice Chair Montgomery stated that he is willing to allow further negotiations if something productive could be achieved. Vice Chair Montgomery was disappointed

that the process has moved so slowly and supports Presiding Officer Formby's recommendation of appointing a hearings officer.

Commissioner Contrades also hoped that the parties could have made more progress by now. Commissioner Contrades supports the idea of appointing a hearings officer to make a recommendation to the LUC.

Commissioner Kanuha supported the appointment of a hearings officer for the same reasons and agreed that the record is fairly substantial and that the parties seem to be heading in the wrong direction with the negotiations.

Mr. Lamon thanked the state and county for their efforts as mediator between LSG and the Petitioner.

Mr. Yee noted that it may be appropriate to give the parties a clear deadline to resolve the matter.

Vice Chair Montgomery offered that the LUC's next hearing on Maui could be the deadline.

Executive Officer Ching stated that the 2nd meeting in July could be a potential hearing date on this matter. Mr. Ching noted that there are no other dates so far on Maui before then, but the schedule could be amended to put this matter on earlier.

Presiding Officer Formby asked Deputy Attorney General Erickson if a public hearing is required to decide if a hearing officer will be appointed.

Deputy Attorney General Erickson stated that a public hearing will be necessary.

Presiding Officer Formby stated that the Executive Officer will decide on the appropriate date to schedule that matter at a latter time.

A recess break was taken at 8:55 a.m. The meeting reconvened at 9:01 a.m.

A05-761 ERIC A. KNUDSEN TRUST

Presiding Officer Formby stated that this is a continued hearing on the matter. The Chair noted that after the LUC accepted the FEIS, several persons objected to the

reclassification of the petition area and those comments will be admitted into the record.

Mr. Hong called Maya LeGrande as a witness

Petitioner's witness

1. Maya LeGrande, President, Hawai'i Botanical Survey

After Mr. Hong had reviewed Ms. LeGrande's qualifications, Presiding Officer Formby accepted Ms. LeGrande as an expert in botany.

Ms. LeGrande discussed indigenous plants that have native Hawaiian cultural value that exist within the petition area.

Mr. Tagupa questioned the witness regarding what is involved in the preparation of a botanical survey.

Mr. Yee questioned the witness about talks with USFWS regarding endangered species and the relationship between plant and animal endangered species.

Ms. Broder questioned the witness about the consultation with native Hawaiian groups and OHA regarding which plants should be deemed important.

Vice Chair Montgomery questioned the witness about extreme habitats such as sink holes or step areas, or caves that may harbor plants. Vice Chair Montgomery noted that the caper plant occurs along the coast and should be considered to put in the archaeological preserves.

Mr. Hong called Dr. Hal Hammett as a witness.

2. Dr. Hal Hammett, Cultural Surveys Hawai'i

Mr. Hong reviewed Dr. Hammett's qualifications and offered him as an expert in archaeology.

Voir Dire

Ms. Brody questioned the witness regarding his experience with the archaeology of different cultures besides that of Hawaii.

Presiding Officer Formby accepted Dr. Hammett as an expert in archaeology.

Dr. Hammett noted that the national register has five significance criteria for importance. Dr. Hammett explained the method used to identify cultural sites on the property; the preparation of reports, which were sent to SHPD; how sites selected for data recovery are subject to review and approval of a data recovery plan by the SHPD; and data recovery field work and another report submitted to SHPD. Dr. Hammett stated that the preservation plan requires the preparation and approval of an interim plan, then long-term preservation plan and finally treatment of the sites. Dr. Hammett reviewed letters from SHPD regarding the petition area.

A recess break was taken at 9:51 a.m. The meeting reconvened at 10:03 a.m.

Dr. Hammett explained that an archaeological survey should be prepared before the petition is filed with the LUC and that the approval of an archaeological mitigation plan should be done to SHPD's satisfaction before any ground disturbance begins. Dr. Hammett discussed preservation measures for the property; distance between a protected site and the improvement should be set back in accordance with the type of site; burials should have an appropriate setback; cattle walls don't require a large setback; preference that more sites can be preserved, even if the wall had breached; the proximity of the corral within the area of site 926 – for which a major portion would be preserved; the entire corral should be preserved; the difficulty of preserving all of the disconnected portions of the raised *auwai* within the petition area; the project's connecting trails between preserve areas are generally reflected in the project design; the effect of sugar cultivation in the past having destroyed and disjointed the ancient landscape in this area; the importance of preserving archaeological sites as an emphasis rather than trying to connect disjointed areas; how connectivity to sites can be done in several ways; the importance of preserving the actual sites; the location of two baseyards located in the petition area that were not properly permitted; preservation enforcement; and the location of the amphitheatre. Dr. Hammett commented on the SHPA letter and doesn't believe that there are *heiau* within the property – according to archaeological definition of a *heiau*. Dr. Hammett noted that the wall referred to in public testimony is out side and *makai* of petition area – but should be preserved in place.

Mr. Tagupa questioned the witness regarding the extent of surveys and what portions covered the petition area. Mr. Tagupa sought clarification why there is a discrepancy regarding the acreage of the petition area and the acreage reported in the surveys and how does the witness intend to locate the sites and how long would that

take. Mr. Tagupa also asked the witness to rate the relative importance of the *Kukuiula*, *Kiahuna*, and project area in terms of their archaeological significance.

A recess break was taken at 11:09 a.m. The meeting reconvened at 11: 22 a.m.

Mr. Tagupa questioned the witness regarding the cultural significance of the petition area and the vicinity; the population of the area in ancient times; the historical uses within the petition area; the use of lava tubes in Hawaiian culture in ancient times; the extent of study conducted in the lava tubes; and the areas of the property that were used for sugar cane cultivation.

Dr. Hammett clarified that the initial survey was 168 acres, of which not all was in the petition area or the project area. The project has been adequately covered by the previous surveys.

Mr. Tagupa questioned the witness regarding the presentation of the project to the KHPRC and their recommendations; and the adequacy of buffers in relation to the KHPRC recommendation.

The meeting was adjourned at 12:01 p.m.