

LAND USE COMMISSION
MINUTES OF MEETING

May 4, 2007

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

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Duane Kanuha
Ransom Piltz
Reuben Wong

COMMISSIONERS ABSENT: Lisa Judge
Kyong-su Im
Steven Montgomery
Nicholas Teves

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

Presiding Officer Formby called the meeting to order at 8:40 a.m.

A05-761 ERIC A. KNUDSEN TRUST

Presiding Officer Formby 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

Public Witness

1. Robert Tek Nickerson

Mr. Nickerson stated that he lives in Kapaa. Mr. Nickerson commented that he attended last week's hearing on this matter and believed that the continued hearing would reconvene at 8:30 a.m. yesterday (May 3). Upon arrival at the conference room, he learned that the meeting was cancelled and that the LUC was on a site visit.

Presiding Officer Formby noted that the site visit was published with formal notice given to the community. The site visit commenced at 9:30 a.m., adding that someone was at the hotel to inform the public that there would be no 1:00 p.m. hearing on May 3.

Mr. Ching stated that the LUC published the agenda at the office of the Lieutenant Governor and at the LUC website 6 days prior to the meeting date. The site visit did commence at the published location and time. Unfortunately, the 1:00 p.m. hearing had to be cancelled due to a lack of quorum. Mr. Ching apologized to Mr. Nickerson adding that the hotel staff should have also provided a notice of cancellation as the LUC had conferred with the hotel staff and informed them that the LUC had cancelled the May 3 meeting and had cancelled the use of the conference room for May 3.

There were no questions posed for Mr. Nickerson by the parties or the Commission.

2. James Kimokeo

Mr. Kimokeo stated that he was born in Koloa and raised in Poipu. Mr. Kimokeo expounded on the need to preserve this land because of the significant resources, such as the historic salt ponds, fish ponds, *lo'i*, etc. Mr. Kimokeo commented on the need to take care of the resources that their ancestors left for the future of the children.

Mr. Ching commented that many of the resources that Mr. Kimokeo described are outside of the LUC's jurisdiction. Mr. Ching added that the LUC has a decision making criteria according to State law to carefully consider the pros and cons of each docket and that it was their responsibility to administer the law as best they could. Mr. Ching also noted that the commissioners are volunteers and many are part-Hawaiian and feel strongly about the issues that Mr. Kimokeo had raised.

After a brief discussion, there were no questions raised by the parties or the Commission for Mr. Kimokeo.

3. Cheryl Lovell- Obatake

Ms. Lovell-Obatake noted her working relationship with Dr. Hammett and commented on the FEIS. Ms. Lovell-Obatake noted the land commission award number 3415 referenced on page 13 of the FEIS, appendix K, referenced TMK 2-18-03. However, the correct TMK is TMK 2-18-13. Ms. Lovell-Obatake added that extensive title searches should be done to determine whether these resources could be restored or preserved. Ms. Lovell-Obatake also referenced the map locating archaeological resources, which had been previously distributed at the LUC site visit.

There were no questions raised by the parties or the Commission for Ms. Lovell-Obatake.

Admission of Exhibit

Mr. Hong described and offered petitioner's exhibit EIS-R, the map indicating the preserved sites that was distributed at the site visit. There were no objections by the parties. Said exhibit was admitted into the record. Mr. Hong commented that sufficient copies in color would be provided to the LUC and the parties.

After a brief discussion and clarification of the colored version and its size of the map, Presiding Officer Formby requested that the petitioner also provide the parties and LUC with an errata sheet for the changes made.

Mr. Hong indicated that these changes would be made as requested by the Presiding Officer.

4. Ken Taylor

Mr. Taylor communicated his concern for the artifacts and historic foundations. Mr. Taylor added that this entire area is one cultural unit and believed that these sites should not be fenced or developed, but instead preserved for the future of the children.

There were no questions raised by the parties or the Commission for Mr. Taylor.

5. Tommy Perreira

Mr. Perreira stated that he came from the *lo`i kula*. Mr. Perreira noted his strong opposition to the project.

There were no questions raised by the parties or the Commission for Mr. Perreira.

6. Terrie Hayes

Ms. Hayes stated her concern for the burial sites, which are located in the project and petition areas, and for the long term status of the sites currently listed for data recovery only.

Ms. Hayes read a note from Meryl Klaif indicating her concern for the natural environment and her opposition to the project.

There were no questions raised by the parties or the Commission for Ms. Hayes.

7. Jane Dinnie

Ms. Dinnie noted her concerns for preserving the sacred sites adding that this land should be preserved for our children to see their heritage.

There were no questions raised by the parties or the Commission for Ms. Dinnie.

8. Tessie Kinnaman

Ms. Kinnaman voiced her opposition to the project stating that in the early 1970s archaeologists conducted a massive study of the area and located at least 600 sacred sites, and that a thriving community was living in Koloa. Ms. Kinnaman humbly requested that the LUC preserve the sites and not approve this petition.

There were no questions raised by the parties or the Commission for Ms. Kinnaman.

9. Sharon Pomroy

Ms. Pomroy noted her opposition to the project and stated that in 1986, she opposed the Hyatt project in Poipu and as a cultural representative, she was told that the Hyatt would be the only hotel built in that area. Ms. Pomroy further discussed the development of the stone walls, and the alignment of the heiau during the summer solstice. Ms. Pomroy added that the Hawaiian culture is the principal attraction for tourists

There were no questions raised by the parties or the Commission for Ms. Pomroy.

A recess break was taken at 10:05 a.m. The meeting reconvened at 10:25 a.m.

Admission of Exhibits

Ms. Broder described and offered Intervenor's exhibit 13, 14, and 15 that was filed with the LUC on May 2, 2007. There were no objections by the parties and the Commission. Said exhibits were admitted into evidence.

Petitioner's Witness (cross-examination)

1. Aulii Mitchell

Ms. Broder began her cross examination of Mr. Mitchell and posed questions regarding Mr. Mitchell's ability to speak fluently and read the Hawaiian language.

Mr. Mitchell stated that he was fluent in speaking and reading Hawaiian. Mr. Mitchell described his work on the cultural survey as including the interviews with kupuna, review of historical documents and maps from different sources; such as the libraries, the Kauai Historic Society, Mission House Museum, and the previous archaeological documents pertaining to the project area. Mr. Mitchell also discussed the significance of the Maulili pool, and the Koloa field system.

Presiding Officer Formby asked if the individuals interviewed by Mr. Mitchell were provided with the same map (EIS-R) that was distributed at the site visit.

Mr. Mitchell noted that a similar map was given to those interviewed, although the colored map (EIS-R) was provided to them after the interviews. Mr. Mitchell also noted that this was his fourth time visiting the site.

Mr. Hong posed questions regarding the Maulili pond, and the possibility of modifying an existing environment or keeping it righteous.

Mr. Mitchell commented that it was important to keep the stone *mana* together and that it be *pono* to remove rocks from a site if appropriate protocol was followed. Proper protocol would involve *pule*, prayers, or chants in the handling of the stones removed for data recovery. Mr. Mitchell added that protocol in the transplanting of plants would vary on the different islands and amongst practitioners.

Commissioner Piltz posed a few questions related to the clarification of 47 heiau sites in the general area.

After a brief discussion, Mr. Mitchell spoke in his native language.

Presiding Officer Formby commented that at the site visit, he noticed several pink tags which indicated that these sites were still in the process of being inspected or identified and have not yet been determined. Presiding Officer Formby added that many of these sites seemed to be in between the sites designated as preserved.

Mr. Mitchell stated that he believed that relocating stones to another site would maintain their cultural significance as they would still be located in the areas to be preserved. Mr. Mitchell also stated that the stones should stay together.

2. Clyde Kodani

Mr. Kodani was qualified as an expert in civil engineering. Mr. Kodani's preliminary engineering report was admitted as petitioner's exhibit P. Mr. Kodani briefly summarized his report in the areas that covered drainage, water, and wastewater. Mr. Kodani discussed matters of drainage runoff, drainage areas 1, 2, 3, and 4, and the detention basin.

Mr. Tagupa raised questions regarding the study on the drainage water and sewage system for the entire project area, culverts, storm runoff, and the detention basin.

A lunch recess was taken at 11:50 a.m. The meeting reconvened at 1:15 p.m.

Ms. Broder questioned whether petitioner would be providing the full size map of EIS-R or a reduced version.

Mr. Hong noted that the original map is large in size and added that petitioner could provide the larger version, however, he noted that it would not have the colored areas.

Presiding Officer Formby noted that the petitioner could distribute the color marked version to all, and the larger map distributed to the parties and the LUC staff.

Ms. Broder asked if they could also receive the GPS mapping that was done by the petitioner.

Mr. Hong stated that the production of the GPS map could take approximately 8 weeks and clarified that Dr Hammett would not be conducting a new determination, as SHPD had already approved his previous report. Should Dr. Hammett find something significant during data recovery, an adjustment would be made at that time.

Dr. Hammett was recalled to the stand at this time. Dr. Hammett clarified that there are a series of steps that are somewhat related but distinct involved in GPS mapping and developing a preservation plan. The GPS mapping is one; data recovery is another. There is no way that he could possibly get the excavation results in 2 to 3 months. However, a GPS map could be reproduced in 8 weeks. The estimate completion date of June or July was discussed for the petitioner to produce the long term preservation plan (provisional), and that would include components of the already accepted inventory survey long term measures with the addition of the GPS map.

There were no further questions for Dr. Hammett.

Petitioner's Witness (cross examination - continued)

2. Clyde Kodani

Mr. Yee posed questions related to the Waita Reservoir, runoff flow into the stream, the 100 year storm at 24 hour standards, clarified that the 1 acre feet equals 1 land acre, and the various C factors and soil conservation study.

Ms. Broder raised questions regarding the infrastructure improvements, storm water drainage, the location of culverts and drainage pipes in the ground, and the potential for drainage water from the detention basin to flow into the *Kane i olo uma* site.

Presiding Officer Formby had a few questions related to the drainage plan and the potential impacts to any of the preserved areas.

Commissioner Piltz had questions and concerns regarding the area makai of the road and the heiau site, the detention basin, the wrestling site, and the impacts of a 100-year storm.

Mr. Kodani noted that the water channeled to the detention basin is designed to flow thru the wrestling site in a 100 year storm and that the peak flow runoff would never, at any time, be greater than it is today with or without the proposed development.

Commissioner Kanuha commented that this existing natural flow from drainage area 2 would accumulate at the proposed detention basin then flow to the low spot off site and wondered if it was possible to alter that situation.

Commissioner Wong commented that the present design was based on engineering concerns without regard to the cultural resources. Commissioner Wong asked if there could be some assurance that the ultimate design of the retention basin takes into account the cultural concerns and preservation areas both on and off site.

Mr. Kodani stated that the design of the retention basin would be incorporated during the construction plan and that the construction plans will be reviewed by the state and county agencies.

Presiding Officer Formby sought to distinguish between figure 6 on page 6 versus figure 3 on page 5, that the detention basin will eventually drain into the existing 48 inch culvert, then flow under the highway into the wrestling site.

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

A recess break was taken at 2:10 p.m. The meeting reconvened at 2:15 p.m.

2. Ian Kagimoto

Mr. Kagimoto's report was admitted as petitioner's exhibit X. Mr. Kagimoto was qualified as an expert in the areas of wastewater. Mr. Kagimoto discussed the future needs for wastewater and disposal for the project area, and commented that there was sufficient capacity to meet the demand for the wastewater treatment under the current facility and its future expansion. Mr. Kodani reported that the wastewater treatment facilities are currently being expanded in phases. Their PUC tariff allows them to collect contributions to expand the wastewater facilities and they are also required to serve the petition area. The Phase 1 upgrade will process 500,000 gallons of activated sludge; Phase 2 would increase the capacity at the facility from 500,000 to 800,000 gallons a day and would upgraded the quality of effluent produced from R2 to R1. The petition area of 124 units would produce 62,000 gallons of R1 effluent per day. Phase 3 would be completed in 2008 with a capacity of 1 million gallons a day and they are currently planning on Phase 4.

Mr. Tagupa raised questions related to the sewer lines and culverts for the finished project, and the need for blasting or use of hydraulic jacks for drilling.

Mr. Kodani stated that they do not install the sewer lines and are not involved with the drilling excavations.

Mr. Yee posed questions regarding the off site improvements needed for Phase 1 and 2, and the pump station. Mr. Yee asked if the PUC regulates their financial situation.

Mr. Kodani replied that the PUC sets their rates and reviews their financial capability. Mr. Kodani added that they operate 23 wastewater treatment plants within the State on every island except Molokai.

Ms. Broder asked if Mr. Kodani's company was involved with the use of blasting and hydraulic jacks for wastewater lines.

Mr. Kodani stated that they do not do any line work, but they do install pump controls. Mr. Kodani added that they do not have the heavy equipment or the capacity to do blasting.

Commissioner Kanuha asked about the type of facilities, private or municipal, that Mr. Kodani's company operates and manages.

Mr. Kodani stated that beside the private facilities, they operate several State and Federal facilities. Mr. Kodani added that they are financially capable of operating all of these facilities.

Commissioner Wong commented that the petitioner has the burden of producing evidence in their presentation and suggested that petitioner produce evidence of mitigating measures concerning the sensitive cultural issues within the petition area. Commissioner Wong added that when a master plan for water detention only considers the engineering requirements and fails to consider the sensitive cultural issues, that would be deemed inadequate because it failed to meet the mitigative measures.

Presiding Officer Formby noted that at times, the Commissioners might express their opinions as the hearing proceeds, adding that he also shared the same concerns as Commissioner Wong. Presiding Officer Formby commented that he also had some concerns related to the inventory survey and the data recovery program and the possibility that Dr. Hammett may change his assessment of sites that are currently only designated for data recovery.

There were no further questions posed by the parties or the Commission for Mr. Kodani.

The meeting adjourned at 2:55 p.m.

(Please refer to LUC Transcript of May 4, 2007 for more details on this matter.)