

LAND USE COMMISSION  
MEETING MINUTES  
February 6, 2009  
Leiopapa A Kamehameha  
Room 204

COMMISSIONERS PRESENT:

Kyle Chock  
Duane Kanuha  
Normand Lezy  
Ransom Piltz  
Nicholas Teves Jr.

COMMISSIONERS ABSENT:

Thomas Contrades  
Vladimir Devens (recused from Docket No. A85-595  
Kuilima Resort Company)  
Lisa Judge  
Reuben Wong

STAFF PRESENT:

Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Riley Hakoda, Staff Planner  
Caroline Lorenzo, Acting Chief Clerk  
Holly Hackett, Court Reporter  
Walter Mensching, Audio Technician

CALLED TO ORDER

Chair Kanuha called the meeting to order at 9:35 a.m.

APPROVAL OF MINUTES

Commissioner Chock moved to adopt the January 22 & 23, 2009 meeting minutes. Commissioner Teves seconded the motion. The motion was unanimously approved by voice votes.

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The next meeting will be held on February 19, 2009 (a one-day meeting) on Maui. The tentative agenda will include Docket No. A05-760 Pukalani Associates; and three special permit applications. The intent is to have the meeting closer to the airport, have a longer meeting if needed, and not stay overnight.

- The March 6, 2009 meeting will be held at the Windward Community College. The intent is to have the meeting at a location closer to the petition area (A07-777 Hawaiian Memorial Life Plan).
- The first meeting in April will tentatively include Bridge Aina Le`a.
- Darlene Benton from the HHFDC will tentatively start work with the LUC on February 17, 2009, where she will be on temporary assignment for the Secretary II position while Caroline Lorenzo goes on maternity leave from March 1, 2009.

**ACTION**

**A92-686 AMFAC PROPERTY INVESTMENT CORP. AND HOUSING FINANCE & DEVELOPMENT CORPORATION (MAUI)**

Chair Kanuha stated that this was an action meeting on Docket No. A92-686 Amfac Property Investment Corp. and Housing Finance & Development Corporation (Maui) to approve the form of the order.

**APPEARANCES**

Scott Radovich, Esq., represented Petitioner  
 Janis Yee, Petitioner Representative  
 Bryan Yee, Esq., represented State Office of Planning  
 Lorene Maki, State Office of Planning  
 Abbey Mayer, State Office of Planning

Executive Officer Davidson recommended that the form of the order be looked at more carefully as far as the conditions regarding the two different parcels and to clarify the education condition. This item was deferred.

**ACTION**

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

Chair Kanuha stated that this was an action meeting on Docket No. A07-777 HAWAIIAN MEMORIAL LIFE PLAN, LTD. (OAHU) to consider Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy, Lianne Ching, Ernest Harris, Bettie Harris, Jesse Reavis and Hui O Pikoiloo's Petition to Intervene in the Hawaiian Memorial Life Plan, Ltd.'s Petition for Land Use District Boundary Amendment.

**APPEARANCES**

William Yuen, Esq., represented Petitioner  
 Jay Morford, Petitioner Representative  
 Jesse Souki, Esq., represented Department of Planning and Permitting,  
 City & County of Honolulu  
 Mike Watkins, Department of Planning and Permitting, City & County of Honolulu

Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, State Office of Planning  
Grant Yoshimori, Intervener, along with Richard McCreedy , Ernest Harris, and Jessie Reavis

### PUBLIC WITNESSES

There were no public witnesses.

Mr. Yoshimori spoke on behalf of the parties listed on its Petition to Intervene, as well as Hui O Pikoiloa. Mr. Yoshimori made his presentation before the Commission and summarized his Petition to Intervene. He indicated that its interest was to protect property interests and ensuring that flooding, rock falls, historic preservations, and native Hawaiian gathering rights were adequately represented. He also indicated that he will be the single spokesperson on behalf of the Petition to Intervene.

Mr. Yuen indicated that the Petitioner was in opposition of the petition. Mr. Yuen suggested that if the Commission grant the Petition to Intervene, that only one person should speak on behalf of all the parties listed on the petition to intervene. Mr. Yuen further indicated that the Petitioner strongly objects to Hui O Pikoiloa being allowed to intervene because of no showing that this corporation exists.

Mr. Souki stated that the City & County of Honolulu does not oppose the Petition to Intervene.

Mr. Yee clarified that the State does not oppose intervention, but that its concerns was the number of interveners requesting for intervention. He suggested that Hui O Pikoiloa would be the more appropriate party since the parties listed on the Petition to Intervene are members of Hui O Pikoiloa. He felt that the State's concerns can be alleviated or mitigated if there is an understanding that there will be only a single spokesperson. Mr. Yee indicated that Grant Yoshimori be authorized and be the one allowed to make oral arguments and presentation and sign documents on behalf of the Intervener.

Commissioner Lezy complimented Mr. Yoshimori on his presentation. Mr. Yoshimori stated that he was a computer programmer by trade, and has researched and studied the LUC rules, and expects to comply with the LUC rules. Mr. Yoshimori indicated that the individuals listed on the Petition to Intervene are also members of Hui O Pikoiloa, and that there's also a larger group of members aside those individuals listed, but did not have a list to provide to the Commission. He also indicated that the Hui O Pikoiloa was a very loosely formed organization, and that at the first meeting of the Hui, he was then nominated to represent the group.

Commissioner Lezy moved that the Commission enter into executive session, pursuant to §92-5 to consult with legal counsel on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Vice Chair Piltz seconded the motion. The motion was unanimously approved by voice votes.

The Commission went into executive session at 10:00 a.m. The Commission reconvened its regular meeting at 10:10 a.m.

Commissioner Lezy voiced his concerns, coming from a procedural legal standpoint and taking into account the State's comments, and agreed that the number of interveners needed to be controlled. Commissioner Lezy felt that Mr. Yoshimori would do a fine job on behalf of the parties listed and the Hui in order to keep the docket in order. The original thought was to allow the Hui to intervene but questions arise because of its unincorporated status and whether it is a "person" for intervention purposes. Commissioner Lezy suggested that the Commission allow the individuals to intervene with the proviso that Mr. Yoshimori will speak on behalf of the interveners and be the sole person to speak at the proceedings, and to conditionally approve the Hui to intervene getting legal friction status.

Commissioner Lezy moved to allow the Petition for Intervention of Grant Yoshimori, Mavis Suda, Richard McCreedy, Juliane McCreedy, Lianne Ching, Ernest Harris, Bettye Harris, Jesse Reavis and Hui O Pikoiloa that the Commission allow the intervention of the individuals and deny the intervention of Hui O Pikoiloa, subject to the specific condition that the individual interveners will be represented in all matters before the Commission by Grant Yoshimori. The motion was seconded by Vice Chair Piltz. The Commission was polled as follows:

Ayes: Commissioners Lezy, Piltz, Chock, Teves, and Kanuha.

The motion passed with 5 ayes and 4 absent.

The Commission went into recess at 10:15 a.m. and reconvened at 10:25 a.m.

## **ACTION**

### **A85-595 KUILIMA DEVELOPMENT (Oahu)**

Vice Chair Devens was recused from this docket due to a conflict of interest.

Chair Kanuha stated that this was a meeting on Docket No. A85-595 KUILIMA DEVELOPMENT (Oahu) to consider Defend Oahu Coalition's Motion for Issuance of an Order to Show Cause Why the Boundary Classification of Kuilima Development Company Should Not Be Revoked for Failure to Perform Conditions, Representations and Commitment by Kuilima Development Company in Docket No. A85-595 filed on April 1, 2008. He further stated that this Motion was briefed and argued by the parties on July 11, 2008, and taken under advisement by the Commission. However, Kuilima Resort Company was requested to file a status report on the development that was the subject of this docket.

## **APPEARANCES**

Gregory Kugle, Esq., represented Defend Oahu Coalition  
Sharon Lovejoy, Esq., represented Kuilima Resort Company  
Stanford Carr, Stanford Carr Development, Kuilima Resort Company  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, State Office of Planning  
Lorene Maki, State Office of Planning

Given the number of people who signed up to provide public testimony, the Chair asked (as the Commission rules allow and to promote efficiency in its proceedings) that all individuals who provided public testimony to limit their comments to not more than 3 minutes. The Chair also noted that the Commission had received over one thousand emails regarding the Kulima development.

## PUBLIC WITNESSES

### 1. Mark Cunningham

Mr. Cunningham testified that many of the conditions promised on this docket have not been met, and that no improvements on hotels, condos, jobs, park easements, or Right-of-Way access were made. He also testified that the Commission should issue an Order to Show Cause as to why the property should not revert back to its former classification. He also testified that the Commission act on behalf of the people.

There were no questions by the parties and Commissioners.

### 2. Pat Caldwell

Ms. Caldwell testified that green space was a valuable asset, mankind can make many structures, and if not maintained, it could fall apart. She further testified that existing hotel can draw business based on asset. She stated that she was an oceanographer by trade, and that there was a need for a corporate retreat on Oahu. She further testified that she loves this resort, loves the horseback riding, and that green space is an asset that needs to be preserved.

There were no questions by the parties and Commissioners.

### 3. Ben Shafer

Mr. Schafer testified that he felt the development was a money-making speculation and given the timetable, developer has not complied with conditions. He also testified that there are no housing improvements and no road improvements.

There were no questions by the parties and Commissioners.

### 4. Kent Fonoimoana

Mr. Fonoimoana testified that Turtle Bay was a resource for employment opportunities for the neighborhood. He felt that the project hasn't moved forward and that it was unfair that nothing has been done for 23 years. He also felt that there needed to be more inquiry from the communities because there were other needs other than having visitors to the island, such as affordable housing and employment. He testified that he supported Turtle Bay but doesn't want the expansion and to revert the land back to Agriculture.

There were no questions by the parties and Commissioners.

5. Maria Pacheco

Ms. Pacheco stated that she was an owner of a condo within the petition area. She testified that she supported Turtle Bay Resort and its functions. She expressed her concerns as to why hotels were needed when there was not enough population to run the 5 hotels. She felt that monies should be spent on schools and not on tourism, and that to proceed with the project would be a mistake.

There were no questions by the parties and Commissioners.

6. Carol Ann Philips

Ms. Philips stated that she grew up in Kahului and on the North Shore. She testified that the Petitioner has not demonstrated its commitment to the project, and that there was enough reasonable doubt for the Commission to issue an Order to Show Cause to find out more about the development and whether or not the Petitioner can fulfill its commitment.

Commissioner Teves asked if the North Shore Neighborhood Board have taken any position on the matter. Ms. Philips indicated yes and that other boards have taken position asking for a supplemental EIS as far as getting more updated information on the situation.

There were no other questions for this witness.

7. Carrie Harrington

Mr. Harrington indicated that she represented Surfing Medicine International. She testified that she did not want any further development at Turtle Bay. She also testified that she cannot see the logic in adding further development in the area. She stated that she enjoyed going to the North Shore because of no traffic and solitude. She testified that an Order to Show Cause would protect mental stability and protect what we have left.

There were no questions by the parties and Commissioners.

8. Wesley Johnson

Mr. Johnson stated that he was from Laie and was currently employed at Turtle Bay. He also stated that before being employed at Turtle Bay, he was born in Kahuku, attended Laie Elementary and Kahuku High Schools, and also attended BYU-Hawaii. He stated that he worked in town for a year and a half and drove for an hour and a half to town and back. He testified that he personally felt the development was good and the jobs were good at Turtle Bay. He stated that he came from a home where three families were living in one home. He further stated that while growing up, his family went through a lot and none of them are no longer living in the North Shore because of the lack of job opportunities. He felt that he believed family and friends were more important than the

environment and would rather spend his life with family and friends. He then testified that the development would be a good thing.

There were no questions by the parties and Commissioners.

#### 9. Brandy Burke

Ms. Burke stated that she was an active member of community and an employee at Turtle Bay. She stated that commuting to and from home to work at Turtle Bay took a beating, and wanted something that would allow professional growth. She stated that she was first hired as a pool attendant, and after one year, she began working in administration. She testified that the Commission's decision will set a precedent for all, and asked that the Commission think about the bigger picture of those who worked each day to make ends meet.

There were no questions by the parties and Commissioners.

A recess was taken at 11:00 a.m., and the meeting reconvened at 11:10 a.m.

#### 10. Philip Cadiz

Mr. Cadiz testified that he supported the development and growing need for employment in the North Shore area. He testified that Kuilima provided employment for former plantation employees. He stated that he was employed at Turtle Bay for 24 years, and that it was an educational tool for advancement anywhere in the work force.

There were no questions by the parties and Commissioners.

#### 11. Sam Aea

Mr. Aea stated that he was from the Hauula community, and testified that he was in favor of the development. He further testified that no matter what decision was made on this matter both sides will be hurt. He felt that plans for the project will help the community find jobs, and that the community should go with the changes.

There were no questions by the parties and Commissioners.

#### 12. George Wallace

Mr. Wallace stated he was on the Board on emersion schools. He testified that the people of Kahuku were being challenged by outsiders. He further testified that he supported the expansion of Turtle Bay, and supported the community for the expansion in regards to needed housing and jobs. He indicated that it was time to end the confusion and time to support the children and their future careers so that you don't have to export them away.

There were no questions by the parties and Commissioners.

13. Tim Vandever

Mr. Vandever stated that he was from the Sunset Beach area and employed by Turtle Bay at the horse stables for 5 years. He indicated that he's a student of history and appreciate the lineage. He requested that any future meeting be moved to the North Shore. He testified that he supported the current hotel but was concerned of the lack of performance and unfulfilled promises made to the community. Mr. Vandever asked that the Commission issue an Order to Show Cause to stop the speculation.

There were no questions by the parties and Commissioners.

14. Margaret Primacio

Ms. Primacio stated that she was from Kahuku and lived in the former plantation camps. She also stated that she has worked for Turtle Bay for 7 years. She testified that 23 years was long enough for the owners to provide something for the community, and asked for support that the Commission will issue an Order to Show Cause as to why the 236 acres of land should revert back to Agricultural land.

There were no questions by the parties and Commissioners.

15. Cody Rose

Mr. Rose stated that he was a new father of a one-and-a-half year old and was expecting another child. He stated that the North Shore was a beautiful place. He testified that his support was in the people and asked that the Commission represent the people and not the money.

There were no questions by the parties and Commissioners.

16. Mark Manley

Mr. Manley asked that the Commission stay focused on the 236 acres, and that the Commission issue an Order to Show Cause as to why nothing has been done. He also asked that future hearings be scheduled on the North Shore.

There were no questions by the parties and Commissioners.

17. Doug Cole

Mr. Cole stated that he grew up on the North Shore and attended Kahuku High School. He stated that his goals were to live and work on the North Shore. He testified that most jobs of this large expansion would not support the cost of living on the North Shore. He testified that he was opposed to the expansion, and that nothing has taken place to advance this project, and encouraged the Commission to make the right decision.

There were no questions by the parties and Commissioners.



18. Fina Ongoy

Ms. Ongoy stated that she was from 3<sup>rd</sup> generation living in Hawaii, and was currently working at guest services at Turtle Bay. She testified that she was in support of the project, and felt that the dream must go on for the future and the opportunities this project may bring for the people.

There were no questions by the parties and Commissioners.

19. Aliitasi Ponder

Ms. Ponder stated that she was from the Kahuku area, and teaches in Kahuku. She indicated that she has heard the sacrifices from the people traveling from one part of the island to the other and appreciate that kind of sacrifice from the people. She indicated that she was sad to hear that we would have to chose family over the environment, and felt that it shouldn't be a choice over family, cultural, or survival. She also indicated that she has witnessed enough broken promises and if we allow broken promises to be our culture, then we create a culture of distrust and dishonor. She asked for support in this effort.

There were no questions by the parties and Commissioners.

20. Katherine Killebree

Ms. Killebree stated that she was from Honolulu. Ms. Killebree referred to the LUC district regulations, paragraph 6-3, Performance Time, and testified that the Commission should rule on Defend Oahu Coalition's Motion on an Order to Show Cause.

There were no questions by the parties and Commissioners.

21. Meleana Judd

Ms. Judd stated that she was a town and country resident. She indicated her interest in the renewable energy business and has become familiar with issues of global climate change and oil use. She stated that she was an aspiring farmer and an advocate for sustainable agricultural. She testified that the State relies on tourism income source stream and is a limited perspective and that we can do better.

There were no questions by the parties and Commissioners.

22. Toni Cano

Ms. Cano stated that she lives in Waiahole and was a manager at Turtle Bay. She testified that you cannot control what is currently happening but you still have the dream for our families and children. She indicated enough delaying, and that she supports the project.

There were no questions by the parties and Commissioners.

### 23. Janna Plant

Ms. Plant stated that she was from Haleiwa. Ms. Plant stated that she works at Turtle Bay with the horses, and testified that she supported the existing hotel but does not support the expansion. She pointed out the following four points:

1. That Turtle Bay is currently struggling to prevent layoffs.
2. That affordable housing serves as servant quarters for the larger resort and complex if this development does go through.
3. That Hawaii needs to serve the community base rather than tourist base; that she felt Governor Lingle did address this in her state of address when she said that we cannot depend on expansive development anymore; and
4. That the LUC is formed to prevent land speculation.

There were no questions by the parties and Commissioners.

### 24. Tinker Bloomfield

Ms. Bloomfield stated that she was from Haleiwa, and grew up on the Waialua plantation. She indicated that she new the North Shore when agriculture was a major form of employment, which tied the community together. She stated that she was employed by Turtle Bay. She indicated that her children and grandchildren have found jobs at Turtle Bay.

She referred to the petition dated March 31, 1986, page 21, #60 incremental districting: "Petitioner proposes to complete substantial portions of the infrastructure as described in FOF #17, as well 315 of the proposed 1000 resort condominium units within 5 years of Commission's approval and to complete the entire development by 1996."

She asked that the Commission consider coming out to the North Shore to hearing other opinions of the whole community.

There were no questions by the parties and Commissioners.

Chair Kanuha indicated that a lunch break would be taken at 12:09 p.m. and would reconvene at 1:30 p.m. at which time the Commission would hear oral arguments by all of the parties.

The meeting reconvened at 1:38 p.m.

## PUBLIC WITNESSES (continued)

### 25. Jr. Ah You

Mr. Ah You stated that he was from the Kahuku area, and testified that he was in support of the project. He indicated that work and homes were desperately needed. He stated that he was raised in the Kahuku/Laie area all of his life and

stated that his children deserved the right to obtain an affordable home in the country.

There were no questions by the parties and Commissioners.

**26. Gaylene Nikora Lolofie**

Ms. Lolofie stated that she was from Laie and has been a North Shore resident for the past 30 years. Ms. Lolofie read her written testimony which she provided to the Commission. She testified that she was in favor of the development on the North Shore but that some concessions must be made on both sides that can build a better life for the children. The goal was to seek a brighter future for the children.

There were no questions by the parties and Commissioners.

**27. Reverend Bob Nakata**

Reverend Nakata stated that he was the former co-chair of Defend Oahu Coalition. He reminded the Commission that this was about the 236 acres converted from agricultural to urban. He felt nothing has happened on construction on the property since 1991. He indicated that if the action were to be rescinded, then the developer can request urban designation. He also felt that the developer has not shown financial ability to move ahead.

There were no questions by the parties and Commissioners.

**ORAL ARGUMENTS**

**DEFEND OAHU COALITION**

Mr. Kugle made its oral arguments for the Defend Oahu Coalition. He highlighted statements made by the oral testimonies before the Commission with regards to needed affordable housing and employment, and promises not being fulfilled. He indicated the undisputed factors with regards to no public access, no hotels, no affordable housing, no jobs, and no highway improvements made as yet. He indicated that this project has not gone forward and promises have yet to be fulfilled. He believed that if Petitioner has not lived up to its commitments, then the Commission shall issue an Order to Show Cause.

Mr. Kugle indicated that he had questions for the developer in regards to the order that Petitioner proposes to start construction by 1988 after obtaining government approvals, and that one of the conditions require a buildout of at least 10% of the 1000 units for affordable, low to moderate income, and employee housing. The Petitioner also proposed the project to be substantially completed by 1996. He referred to Hawaii Administrative Rules 6-3 that was in effect at the time the order was applied, in regards to Performance Time – that the developer shall make substantial progress.

Mr. Kugle also indicated land speculation and that the developer hasn't come forward as to when any of this would occur. He referred to developer's status report and felt that the dates provided were merely estimates. He further indicated that the developer made commitments about jobs, affordable housing and promises made to the LUC and the community.

Mr. Kugle asked that the Commission grant and issue an Order to Show Cause and suggested that future hearings be held on the North Shore.

#### KUILIMA RESORT COMPANY

Ms. Lovejoy made its oral arguments for the Petitioner. She indicated that Defend Oahu Coalition was not a proper Movant, not a party to the original proceeding, and did not have legal standing. She indicated that Defend Oahu Coalition was not a proper party and thought this motion for an Order to Show Cause was not appropriately before the Commission. She indicated that the Commission requested status reports from the Petitioner, which were provided, and an Order to Show Cause should not be issued.

Ms. Lovejoy indicated that very important parts of the project have moved forward, such as sewage, water, golf courses, and the Punaluu marsh was on-going. She indicated that Petitioner hoped the DOT hurdle would be clear at this point but has not, and she made it clear that the one-third of the entire property would be developed.

Ms. Lovejoy indicated the challenges of fulfilling the conditions regarding hotel and affordable housing which were tied to the resort development, funding and designing of construction improvements to the highway, and free public parking and access. She indicated that the only way you can go forward with an Order to Show Cause was if the Commission finds that there's been a violation of the conditions.

In conclusion, Ms. Lovejoy indicated that there will be jobs and open space when you look at what is being planned for this project, and a huge amount of open space that can be balanced. She also indicated that there has not been a violation, and that the Commission can continue to ask for status updates.

#### STATE OFFICE OF PLANNING

Mr. Yee made its oral arguments for the State Office of Planning (OP). He indicated that the 1986 LUC order required hotels, affordable housing and traffic improvements which the Petitioner has not yet complied with. He indicated that OP felt that the 1986 Order was flawed because it failed to provide time limits. He further indicated that OP felt that LUC cannot revert the property at this time, and suggested that the LUC could issue an order to amend the original Decision & Order.

#### REBUTTAL

#### DEFEND OAHU COALITION

Mr. Kugle indicated that everybody seems to be ignoring the administrative rule that was being applied, which was, when the Commission has reason to believe that the

developer has failed to perform the conditions of the Order, that the Commission has the right to issue an Order to Show Cause.

### KUILIMA RESORT COMPANY

Ms. Lovejoy indicated that in the actual Decision & Order, Petitioner stated when it “anticipates” that the project will be completed and that Petitioner “proposes” to build by a certain time. These are not deadlines. The issue about Defend Oahu Coalition not being a proper party to the proceedings is an issue to be decided by the Commission, and felt that Defend Oahu Coalition was clearly not a party to the proceeding. She indicated that what was before the Commission was the Petitioner’s failure to comply with conditions, and that there was still no violation.

### STATE OFFICE OF PLANNING

Mr. Yee noted that with respect to whether or not an Order to Show Cause was to be issued based upon the representations at the time this decision was made, he doesn’t believe a similar rule existed. He believed that there was a counterpart in the statute that which he felt did not exist at that time of the Decision & Order. Rule 6-3, in effect at that time indicated that Petitioner would have to substantially commenced within a period specified by the Commission not to exceed 5 years. Mr. Yee indicated that OP took the term “specified by the Commission” as the flaw, so there were no deadlines in the order. He indicated that you could correct the flaw if you so choose but you would first need to acknowledge that the flaw existed. He further indicated that on the issue on standing, the State did not reach a conclusion. OP suggested that whatever standard you use that it be higher for people coming in after the case is done versus the standard at the beginning of the process. OP has not concluded that Defend Oahu Coalition lack standing. Mr. Yee simply suggested that there may not be the same standard that you’re going to apply at the beginning of a case.

### QUESTIONS BY THE COMMISSIONERS FOR THE PARTIES

Commissioner Chock questioned the Petitioner to catalog the significant steps that have been taken and quantify the value of what those steps have been.

Ms. Lovejoy turned to Mr. Carr to answer Commissioner Chock’s question.

Mr. Carr stated that with respect to the 236 acres, a large portion was the construction of the golf course and related infrastructure and comfort stations. In addition to the golf course improvements which was a million dollars a hole to build, as well as the related water and sewer infrastructure, they dug the moat around the Punahoolapa Marsh in order to protect and create a wildlife preserves for the birds and prevent feral animals from breaching into the marsh for the protection of the birds. Petitioner has worked and cooperated with Fish and Wildlife on surveys of the birds completed a month ago. He indicated that what remains to proceed was the development of Marconi Road, which is subject to the DOT approving the TIAR. He indicated that a week from the hearing date, Petitioner will be submitting a revised TIAR in response to the DOT’s September 17, 2008, requesting Petitioner to provide a roundabout analysis. He stated that on January 7, 2009, Petitioner finally received guidelines for the roundabout of the designs. With respect to the Kahuku Park 2 that

Petitioner plans to improve along Marconi Road to lead up to Park 2 to have access to parking and comfort stations was subject to the tentative division approval, which is waiting for tentative approval of the TIAR from the DOT. In addition, the parkway road that was illustrated in the master plan in the exhibits that was provided was called "Alpha Road East". About 30% of the drawings have been engineered and are in process, and there's considerable about of money invested in the engineering of the drawings. Alpha Road West engineering have been completed and would proceed with any commencement of any further expansion on the West side of the resort.

Commissioner Chock asked what the current status was of the State's offer to buy and purchase Kuilima Resort. Mr. Carr responded that the State made a second offer in December that did not meet the price or terms required by the owners.

Vice Chair Piltz asked for a timeline as far as the \$1.7 million dollars that Petitioner has been working on with various organizations in trying to obtain funding. Mr. Carr responded that it was in the U.S. Congress and going through the process.

Vice Chair Piltz asked if Petitioner was working on a proposal for affordable housing. Mr. Carr stated that Kuilima was in discussions with other Kahuku landowners in order to collaborate with construction of affordable housing. On a personal note, Mr. Carr proposed to the owners that Petitioner should proceed on building the affordable homes on condominium resort site A-4. That is for discussion purposes only. Mr. Carr felt that building housing within a resort would be beneficial not only to the greater community, but also for the attraction and retention of the workforce.

Commissioner Chock moved that the Commission enter into Executive Session to consult with Deputy Attorney General as to the powers and duties of the Commission. Vice Chair Piltz seconded the motion. The motion was unanimously approved.

The Commission went into Executive Session at 2:50 p.m. The meeting reconvened at 3:25 p.m.

#### QUESTIONS BY THE COMMISSIONERS FOR THE PARTIES (continued)

Chair Kanuha asked the Petitioner if its goal is trying to achieve compliance with all of the conditions of the project as it was originally intended. Mr. Carr responded that its goal was to meet all of the conditions of the Decision & Order as well as the unilateral agreement with the City & County of Honolulu.

Chair Kanuha asked if Petitioner had submitted a timeframe for the Commission to consider. Mr. Carr responded that the supplemental status report provided updates on ongoing endeavors and disciplines, and that the critical path was the approval of the TIAR with DOT and the roundabout analysis that will be submitted next week. He indicated that they are proceeding with the master CC&Rs, and have ongoing widening of Kuilima Drive from two lanes to four lanes and ongoing improvements to Opana wells to upgrade the system, which will avail to BWS approximately 300,000 gallons of water per day for the community. He also indicated that they were in amidst to designing Park 1 along Kawela Bay, and that they are working on mauka lands in order to provide retention that if storms occur, it would prevent runoff into Kawela Bay.

Chair Kanuha asked if all of these projects mentioned was directly related to the compliance with the condition of the 236-acre parcel. Mr. Carr responded yes, and that Marconi Road was subject to channelized intersection, a roundabout, and the Right-of-Way design of 8-feet along Marconi Road and access to Park 2.

Chair Kanuha asked if Petitioner has the financial capability to carry out the project. Mr. Carr responded yes, and stated the property will be conveyed to a new entity that will be owned by the lenders.

Chair Kanuha asked if the 236 acres included a portion of the golf course. Mr. Carr responded yes.

Chair Kanuha asked if implementing any of the projects mentioned would cause any relocation adjustment or deletion of any portion of the golf course. Mr. Carr responded no.

Chair Kanuha asked if the golf course was a component of the overall plan that Petitioner was implementing related to that piece. Mr. Carr responded yes.

Chair Kanuha asked that in the event the Commission decides to move for proceedings related to the Order to Show Cause and in the event the property is reverted from urban to agriculture, how would it affect the game plan. Mr. Carr responded that it would severely impact the ability for the Petitioner to fulfill the conditions of the Decision & Order and unilateral agreement, and that it would severely impact the overall master plan. He indicated that the impact would impact other studies completed such as the EIS, and the ability of the overall master plan.

Chair Kanuha indicated that in the supplement status report, Petitioner represented that construction of the golf course is represented as 49 per cent of the petition area in compliance with the conditions. Mr. Carr responded that was correct.

Chair Kanuha asked if the remaining percentage would involve the higher condominiums, infrastructure improvements. Mr. Carr responded yes and it includes the parkway road, the development of resort condos, as well as Park 2 and 3.

Chair Kanuha asked Mr. Carr that the purpose of him doing this was to comply with conditions as imposed when this property was designated. Mr. Carr responded yes.

Vice Chair Piltz referred to Park 2 area that half of it was within the petition area, and developing Park 2 which is in the petition area and partly outside the petition area. Mr. Carr responded yes.

Vice Chair Piltz indicated that if the Commission decides to go along with the State's suggestion to correct the order, he asked how much time would the Petitioner need to do the affordable housing portion, and if Petitioner would consider affordable housing onsite be the employee housing and Petitioner has looked elsewhere in an area closer to the access road. Mr. Carr responded yes.

Vice Chair Piltz indicated his personal feeling that the Petitioner should look at A4 location for employee housing. Mr. Carr indicated that the docket did not require annual reports to the Land Use Commission, and would like to submit a proposal to come back to the Commission along with an updated status report a year from now, at that time, Petitioner would have obtained the TIAR and subdivision approval.

Chair Kanuha asked if Petitioner had any timelines for performing various aspects that the Commission needs to know about. Mr. Carr indicated that they are working diligently on a daily basis and that the critical path was the TIAR with the DOT. He indicated that any pending hearing casts a certain cloud over the project and its ability to make firm commitments to go forward with the project. He added that a considerable amount of money is spent every month, and would like to come back in a year with a status report and make headway in affordable housing.

Commissioner Lezy indicated that whenever developing, there are proceedings pending, which has a direct or indirect impact as to how a proposed development proceeds. He indicated that as a Commission, it is their duty to try and resolve these issues. He further indicated that it is the Commission's intent to seek compliance with the conditions of the original order, to understand the entitlement issues and discretionary issues with the State. He stated that the Commission needs concrete timelines necessary to comply with conditions of the Decision & Order. He asked that if the Commission were inclined to go along with the State's suggestion that the Decision & Order be modified by imposing deadlines lacking in the original order, how much time would Petitioner need, and this would solely be the 236-acre parcel.

Commissioner Lezy referenced Exhibit 5 on Petitioner's latest status report, and asked Mr. Carr to confirm that it showed completion of and that the condominium resort complex will be completed by 2018. Everything in the petition area is to be completed by that date. Mr. Carr responded that is the earliest possible date, yes.

Commissioner Lezy asked if the Commission modified the prior Decision & Order solely with regard to the affordable housing component, what kind of timeframe would Petitioner need to comply. Mr. Carr stated that if he fully controlled the property, it would be three years. However, Mr. Carr stated that he did not want to commit on behalf of the owner a date that would further encumber the property and the obligations.

Commissioner Lezy asked, as far as in full compliance with conditions. Mr. Carr responded in excess of 10 years.

Commissioner Lezy asked if any consideration has been given, by the developer and owner of the parcel to be proactive on its part and seek amendments to the prior Decision & Order. Mr. Carr indicated that it was never been brought forth to Petitioner as an option in the past, that is has been an adversarial proceedings from the time Defend Oahu Coalition filed its motion back in April of 2008.

Chair Kanuha indicated that there were several issues the Commission has concerns about. One of them was whether or not modification of the Order as part of the Order to Show Cause process was an option available to the Commission. The Commission was also inclined to consult with counsel on issues of standing and where



the Commission would be in terms of the Order to Show issues related to the original Decision & Order. If there were no objection from the rest of the Commission, the Chair suggested that the Commission defer action on this item pending consultation with legal counsel on those issues mentioned.

Commissioner Chock moved to defer action on this item pending consultation with legal counsel on issues mentioned by Chair Kanuha. The motion was seconded by Vice Chair Piltz. The Commission was polled as follows:

Ayes: Commissioner Chock, Piltz, Lezy, Teves, and Kanuha.

The motion passed with 5 ayes, 3 absent, and 1 recused.

*(For more details on the above matters, please refer to the February 6, 2009 LUC transcripts.)*

## **UPDATE ON LEGISLATIVE MATTERS**

Executive Officer Davidson distributed draft testimony on House Bill 1055 to the Commission for their review and approval. Mr. Davidson indicated that he would like to offer testimony at Monday's hearing on the bill, in opposition relative to automatic reversion.

There was discussion between Mr. Mayer of the State Office of Planning and the Commission regarding this bill. Mr. Mayer provided his comments on the bill before the Commission, and stated that it was an administration bill and that he supported it.

Commissioner Lezy moved to approve Executive Officer Davidson's draft testimony on House Bill 1055. Commissioner Teves seconded the motion. The motion was unanimously approved by voice votes. Therefore, the Executive Officer will present its testimony to the Committee on Water, Land & Ocean Resources at its Monday public hearing.

The meeting was adjourned at 4:14 p.m.