

LAND USE COMMISSION
MEETING MINUTES

June 5, 2009

Leiopapa A Kamehameha
Conference Room 405, 4th Floor
235 S. Beretania St.
Honolulu, Hawai`i

COMMISSIONERS PRESENT: Duane Kanuha
Ransom Piltz
Vladimir Devens
Thomas Contrades
Kyle Chock
Lisa Judge
Normand Lezy

COMMISSIONERS ABSENT: Nicholas Teves, Jr.
Reuben Wong

STAFF PRESENT: Orlando Davidson, Executive Officer
Russell Suzuki, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Wade Kersey

CALL TO ORDER

Chair Kanuha called the meeting to order at 9:04 a.m.

ACTION

A07-775 CASTLE & COOKE HOMES HAWAII, INC. (O`AHU)

Chair Kanuha stated that this was an action meeting to consider acceptance of the Final Environmental Impact Statement (FEIS) for the reclassification of the

Agricultural Land Use District Boundary into the Urban Land Use District for approximately 766.327 acres at Waipio and Waiawa, Island of O`ahu, State of Hawai`i, TMKs: 9-4-06: por. 1, por. 2, por. 5, por. 29, por. 31, 38, por. 39; 9-5-03: por. 1 and por. 4; and 9-6-04: 21.

APPEARANCES

Benjamin M. Matsubara, Esq., represented Petitioner

Curtis T. Tabata, Esq., represented Petitioner

Dawn Takeuchi-Apuna, Esq., represented the Department of Planning and Permitting,
City and County of Honolulu

Matthew Higashida, Department of Planning and Permitting, City and County of
Honolulu

Bryan C. Yee, Esq., represented State Office of Planning

Abe Mitsuda, State Office of Planning

Scott Derrickson, State Office of Planning

Chair Kanuha announced the following events in this docket:

- 1) Petitioner's Amended Petition for Land Use District Boundary Amendment covering approximately 766.327 acres of land; Verification; Exhibits 1 through 6 filed on May 16, 2008.
- 2) The Sierra Club, Hawai`i Chapter's Notice of Intent to File Petition to Intervene in Docket No. A07-775 Castle & Cooke Homes Hawaii, Inc., filed on June 16, 2008.
- 3) Order Determining (1) That The Land Use Commission Agrees To Be The Accepting Authority Pursuant To Chapter 343, Hawai`i Revised Statutes; And (2) That The Proposed Action May Have A Significant Effect Upon The Environment To Warrant The Preparation Of An Environmental Impact Statement filed on July 14, 2008.
- 4) On December 11, 2008, the Commission received and forwarded the Draft Environmental Impact Statement (DEIS) to the Office of Environmental Quality Control for publication.

- 5) Notice of Intent to File Petition to Intervene from Mililani/Melemanu/Waipio Neighborhood Board No. 25 from Chair, Richard G. Poirier, filed on April 2, 2009.
- 6) Correspondence from OP to Petitioner providing comments on the DEIS filed on April 30, 2009.
- 7) FEIS (Volumes 1 & 2), April 2009, from Laura Kodama, Director, Planning and Development, Castle & Cooke Homes Hawaii, Inc., filed on May 7, 2009.
- 8) Correspondence from Hawaii Building and Construction Trades Council, AFL-CIO, William "Buzz" Hong filed on June 2, 2009.
- 9) Resolution from Mililani/Waipio/Melemanu Neighborhood Board No. 25 requesting LUC not accept Castle & Cooke's FEIS filed on June 4, 2009.
- 10) Correspondence from Helber Hastert & Fee to Abbey Seth Mayer, Director, OP, dated June 3, 2009, regarding the DEIS filed on June 5, 2009.
- 11) Correspondence from Helber Hastert & Fee to Brennon T. Morioka, Director, Department of Transportation, dated June 4, 2009, filed on June 5, 2009.
- 12) Correspondence from Petitioner to Orlando Davidson dated June 3, 2009, responding to the resolution from the Mililani/Waipio/ Melemanu Neighborhood Board No. 25 filed on June 5, 2009.

PUBLIC WITNESSES

Michael Dau

Mr. Dau noted that he was the manager of the Kipapa Water System. He expressed concern that the project will affect the groundwater resources. He thought that the project should not be built on Zone C of the Kipapa Water System as it would take longer for the existing TCPs in the groundwater to come out. He also raised concerns about potential flooding and mudslides.

Ms. Takeuchi-Apuna asked Mr. Dau whether he lived downstream or upstream from the project. He responded that Kipapa Stream was actually below him and the flooding originated from runoff from the field.

Mr. Yee asked Mr. Dau to clarify the nature of the ownership of the Kipapa Water System. Mr. Dau responded that it was an agricultural condominium property regime with six owners and, because he lived where the houses were, he ended up taking care of the water system by default. Upon additional questioning, Mr. Dau stated that he was not testifying on behalf of the six owners but for Kipapa Water System and the pollution that they were getting.

There were no further questions for Mr. Dau.

Joe Francher

Mr. Francher testified that the project would make traffic worse. He believed that the proposed mitigation measures would not improve traffic. He suggested that the Waiawa portion of the project should be swapped with State land somewhere else to maintain the green belt.

There were no questions for Mr. Francher.

Doug Thomas (submitted written testimony)

Mr. Thomas raised concerns about traffic and the need for concurrency in the construction of traffic mitigation measures and other infrastructure.

There were no questions for Mr. Thomas.

Darrlyn Bunda (submitted written testimony)

Ms. Bunda testified in support of the project and urged the acceptance of the FEIS.

There were no questions for Ms. Bunda.

Dick Poirier

Mr. Poirier testified on behalf of the Mililani/Waipio/Melemanu Neighborhood Board No. 25 and read their resolution requesting the Commission not accept the FEIS for the project into the record.

There were no questions for Mr. Poirier.

Buzz Hong (submitted written testimony)

Mr. Hong testified in support of the acceptance of the FEIS.

There were no questions for Mr. Hong.

Karen Loomis (submitted written testimony)

Ms. Loomis testified about the issue of concurrency with respect to educational facilities. She believed that the FEIS should not be accepted until it adequately addressed this issue.

There were no questions for Ms. Loomis.

Elizabeth Dunne (submitted written testimony)

Ms. Dunne believed that the FEIS did not adequately assess the project's impact on climate and air quality, prime farmland, surface water, and groundwater, and did not consider alternatives to the project and mitigation measures.

Commissioner Lezy entered the proceedings at 9:45 a.m.

Chair Kanuha asked Ms. Dunne to clarify whether she was testifying on behalf of the Sierra Club, O`ahu Group, and whether she was a board member. She stated that she was a board member and was the vice-chair of the O`ahu Group. Chair Kanuha then asked whether the board convened to ratify their position on this matter. Ms. Dunne related that the board had convened and agreed to file a notice of intent to intervene in this proceeding and further delegated her as the representative to present the board's position on the FEIS to the Commission.

Melissa Vomvoris

Ms. Vomvoris stated that although she supported the project, she believed that the FEIS did not assess primary and secondary impacts regarding traffic and asked that the Commission not accept the FEIS.

There were no questions for Ms. Vomvoris.

Chair Kanuha called a recess at 9:57 a.m. The Commission reconvened at 10:21 a.m.

Bert Saruwatari, staff planner, provided a summary of the staff report. Upon questioning, Mr. Saruwatari stated that he believed Petitioner adequately addressed the concerns raised by the testifiers and met the requirements of chapter 343, Hawai`i Revised Statutes (HRS), and chapter 11-200, Hawai`i Administrative Rules.

PETITIONER'S PRESENTATION

Mr. Tabata stated that the FEIS met the statutory and regulatory requirements for acceptance of an FEIS.

Ms. Takeuchi-Apuna stated that the DPP had no comments on the matter.

Mr. Yee noted that OP recognized there was a difference between the acceptance of an FEIS and the final decision-making standards. He further pointed out that it was sometimes difficult to look at different EISs and maintain a consistent standard among them as to what should be required for one should be required for all. Based on this, OP believed that the FEIS was adequate. He noted that there were issues that will need to be addressed in greater detail, such as transportation (e.g., the H-1/H-2 merge and the timing of the improvements), energy and sustainability, and agricultural lands, at the time of the hearing.

Commissioner Chock moved to accept the FEIS in this matter. Commissioner Devens seconded the motion.

Commissioner Lezy acknowledged the significant amount of public testimony. He echoed OP's comments and believed that it was important for the public to understand that the purpose of the EIS was not to necessarily address the issues that may be raised in it now but instead to bring them to the floor so that during the decision-making process those issues can be dealt with effectively.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Chock, Devens, Judge, Piltz, Lezy, Contrades, and Kanuha.

The motion passed with 7 ayes and 2 absent.

Commissioner Contrades moved to go into executive session to consult with counsel pursuant to section 92-5, HRS. Commissioner Judge seconded the motion. The Commission went into executive session at 10:30 a.m. and reconvened at 11:37 a.m.

A87-617 BRIDGE AINA LE`A, LLC (Waikoloa, South Kohala, Hawaii)

Chair Kanuha stated that this was a hearing and action meeting regarding A87-617 Bridge **Aina Le`a LLC** to Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 1,060 Acres of Land Situated at Waikoloa, South Kohala, Island, County and State of Hawai`i, Tax Map Key Nos.: 6-8-001: portion of 25, portion of 36, portion of 37, portion of 38, portion of 40.

Commissioner Judge excused herself at 11:41 a.m. and returned at 11:50 a.m.

Chair Kanuha stated that after completion of the public testimony, the Commission would consider DW Aina Le`a's 1) Petition to be a Co-Petitioner with Bridge Aina Le`a, LLC ("Bridge"), or in the alternative to be given party status or to intervene; Exhibits J-Y; Affidavit of Robert J. Wessels and 2) Motion to Stay Entry of Decision and Order on the Land Use Commission's Action on April 30, 2009 pending its consideration of evidence presented in movant DW Aina Le`a Development, LLC's petition to be a co-petitioner with Bridge Aina Le`a, LLC or in the alternative to be given party status or to intervene.

APPEARANCES

Alan Okamoto, Esq., represented DW Aina Le`a Development
Robert Wessels and Sidney Fuke represented DW Aina Le`a Development
Bruce Voss, Esq., represented Bridge Aina Le`a LLC
Norman Hayashi represented County of Hawaii
Amy Self, Esq. representing County of Hawaii
Bryan Yee, Esq., Abbey Mayer, and Lorene Maki represented Office of Planning

PUBLIC WITNESSES

There were no public witnesses

Chair Kanuha disclosed that the attorney for DW Aina Le'a, Alan Okamoto, was counsel for his employer. Mr. Yee asked for clarification of the relationship of Chair Kanuha's company and Mr. Okamoto. There were no objections to Chair Kanuha's participation in the hearing.

DW AINA LE'A DEVELOPMENT'S PRESENTATION

Mr. Okamoto stated that DW Aina Le'a Development ("DW") had filed a petition to participate in the proceedings and described the manner in which DW would be participating during the hearing. Mr. Okamoto represented that DW had been continuing to attempt to fulfill the conditions of the docket and requested that the Commission not enter the formal Decision and Order until DW had a chance to demonstrate what it could do to fulfill its development role. Mr. Okamoto offered, if allowed to participate, to make Mr. Wessels available for questions about DW and would submit accompanying exhibits.

Mr. Yee stated that he objected to Mr. Wessels testifying on matters outside of the motion to stay or the motion to intervene. There was discussion on how Mr. Wessels would testify and Chair Kanuha allowed Mr. Wessels to be a witness. Mr. Okamoto submitted exhibit lists and exhibits and described how the exhibits were arranged for the Commission to refer to.

Chair Kanuha stated that both motions were going to be considered at once.

Mr. Wessels described the details and timeline of the sales contract (Exhibit A) between DW Aina Le'a and Bridge Aina Le'a, LLC. Mr. Wessels stated that the delays on the contract were due to the contract's complicated terms and conditions, the current financial crisis and the difficulty in obtaining lenders/investors for the project. Mr. Wessels represented that he now had financial commitments for his project and described the method in which title for the property would be obtained. Mr. Wessels represented that the property was acquired on February 9, 2009 and as installment payments were made, how the property would be transferred to DW Ana Le'a and to Island Vistas LLC which is 95% owned by DW Aina Le'a and 5% by Bridge Aina Le'a LLC. Mr. Wessels stated that Bridge Aina Le'a would have no management function in the urban property. Mr. Wessels testified that there is an agreement between DW and Bridge for easement access where necessary for the development of the Petition Area.

Mr. Wessels identified different parts of Exhibits K (Implementation Phase I Community Commitments), F (Final Subdivision Approval letter from County of

Hawaii) and Z (Goodfellow Bros. Task List Timeline) and stated how they related to the affordable housing development.

Mr. Yee objected to the testimony being given and stated that it appeared to be outside of the scope of the motion to stay or intervene and not relevant. Chair Kanuha allowed the testimony stating that it seemed to speak to the motion to be a co-petitioner and the ability to perform as a co-petitioner. Mr. Wessels described the plans for coordinating the vertical construction by True Style and the infrastructure building by Goodfellow Bros. and stated that the housing pads for vertical construction were scheduled to be ready by November, 2009.

Mr. Wessels represented that he was familiar with the affordable housing conditions of the docket and had been working with the County Housing Department to address them. Mr. Wessels described the types of units that would be built and confirmed that the units satisfied the County Housing Department requirements for affordable housing units. Mr. Wessels stated that he had reviewed and would comply with all of the Commission's conditions imposed on the Petition Area.

QUESTIONS

The representative for Bridge Aina Le'a LLC and the County of Hawaii had no questions.

OP

Mr. Yee asked if there had been any timeline submitted for the certificates of occupancy. Mr. Wessels replied that nothing had been submitted yet and described the anticipated process for constructing and selling the units. Mr. Wessels represented that there were plans to have at least two entrances to the property to stage and move materials and for employee access. Mr. Wessels described the anticipated activity that would occur on the Petition Area to comply with the certificate of occupancy requirements and discussed Exhibit Z's details. Mr. Wessels stated that he did not have a detailed written vertical construction schedule and described the building process and construction timetable for each housing pad. Mr. Wessels represented that the schedules had been worked through verbally and that the builder is still doing the buydown of materials and coordinating the delivery of approximately \$40 million worth of materials and was still in the process of developing a final schedule.

Mr. Wessels described the financing arrangements with Redwood Capital and Capital Asia and stated that a breakdown of costs had been calculated but not submitted as an exhibit.

Mr. Yee asked if there was a similarity of interests between the members of Bridge Aina Le'a and DW Aina Le'a. Mr. Wessels stated that aside from Bridge needing to be paid and DW needing the purchase to go through to move forward, there were no similar interests. Mr. Wessels testified that the individuals who would benefit from DW's success were completely individual and separate from those who would benefit from the success of Bridge Aina Le'a LLC. Mr. Wessels stated that the closing date for the affordable housing portion of the property was June 30, 2009 and would have to look at the contract to answer questions on representations and warranties for the Petition Area.

Mr. Yee referred to parts of Exhibit A-The Amended Sales Agreement and asked Mr. Wessels to confirm his understanding of these sections of the contract and what actions DW might be entitled to take if Bridge could not represent what was contained in the contract. Mr. Wessels replied that he had received different opinions from different legal sources and that it was DW's intent to go forward and work things out.

Mr. Yee asked what the consequences would be if Bridge Aina Le'a could not represent that the property could be used for an Urban use. Mr. Wessels replied that there would definitely be a lawsuit but would leave the technical part of the matter to attorneys. Mr. Wessels stated that both DW and Bridge Aina Le'a have the same interests in retaining the Urban classification.

COMMISSIONERS

Commissioner Judge asked if Mr. Wessels was familiar with the 1991 Condition for a Wastewater Facility. Mr. Wessels replied that he was and his intent was to work with the Mauna Lani sewer system but the process was taking too long. Mr. Wessels stated that an amendment might be required to allow that a "package plant" be installed for the affordable units and to make a later determination on how to proceed to handle the greater Petition Area needs. Mr. Wessels represented that considerations for remedying this condition had been made and the decision was to install a "package plant" instead of using more traditional methods.

Commissioner Piltz asked Mr. Wessels how water and electricity would be supplied to the Petition Area. Mr. Wessels described the plans for obtaining and supplying water and electricity. Mr. Wessels stated that HELCO had been very

supportive and the easements and power lines had been grubbed with plans for overhead lines to supply the area. Commissioner Piltz stated that he would like to see some set dates from Goodfellow Bros. Mr. Wessels stated that progress reports and notices of delay problems could be provided.

Commissioner Lezy asked Mr. Wessels how DW would take title to the property. Mr. Wessels replied that DW took possession on February 9, 2009; and when the affordable parcel is released from the First Hawaiian Bank loan, DW would take title to the parcel with the designated affordable housing. The balance of the urban land would be transferred into Island Vistas LLC subject to the balance on the First Hawaiian Bank loan. Mr. Wessels described the ownership and management arrangement between Island Vistas LLC and DW Aina Le'a.

Commissioner Lezy asked what the role of Bridge Aina Le'a was as a 5% owner. Mr. Wessels described the ownership arrangement and represented that having Bridge as a partial owner assisted with obtaining easements, and transferring rights and agreements to provide for an orderly transition.

Commissioner Lezy asked if there were any individual who had an interest in Bridge Aina Le'a that now had an interest in DW, and if there were any individual who had an interest in Bridge Aina Le'a that now had an interest in Island Vistas LLC aside from the 5 % interest. Mr. Wessels replied that there were none.

Commissioner Lezy asked if, during the contract negotiation process, Bridge Aina Le'a had offered any development plans for the affordable housing component. Mr. Wessels replied that during the discussions and due diligence period, Bridge had shared their plans but DW did not agree with them and developed their own. Mr. Wessels stated that though some of the basic items had been done, the current plans were mostly by DW.

Commissioner Lezy asked if DW would attempt to move to amend the prior decision and order and amend or change the conditions if DW were allowed to be a party to the proceeding and no reversion was done. Mr. Wessels stated that DW was submitting building plans for units to be constructed and there was no intent to do so. If a delay problem developed, Mr. Wessels stated that they would approach the Commission for more time but he did not foresee that occurring. Mr. Wessels represented that he would need to review the conditions, but thought that several had already been met and that there may be a need to revise some of the findings of fact to reflect current market conditions.

Commissioner Piltz asked who DW would be using as a vertical builder and if Goodfellow was a turnkey partner. Mr. Wessels stated that True Style Pacific Builders would be doing the vertical building and Goodfellow was doing the groundwork. Commissioner Piltz stated that he would be seeking a timetable schedule for this work.

Mr. Okamoto stated that he would like to move Exhibits A through U and W through AA (AA is a replacement for V which was withdrawn) into evidence.

Bridge Aina Le'a and Hawaii County did not object.

Mr. Yee commented that OP would not have a problem; with the understanding that the documents were received as part of the motion and OP was not agreeing to the relevance of the documents.

Mr. Okamoto stated that he agreed with OP's understanding for the filing of the documents and noted that the purpose of the documents was to serve as a reference when making determinations.

There were no objections by the Commissioners to the filing of the documents. Mr. Okamoto concluded his presentation

POSITIONS ON THE MOTIONS

BRIDGE AINA LE'A LLC

Mr. Voss stated that Bridge joins in the petitions on file. Mr. Voss represented that Bridge retains a legal interest and DW has the beneficial equitable interest under the law and that Bridge should be allowed to remain as co-petitioner. Mr. Voss cited Dockets A76-412 Pacific Basin Resorts and Taiyo Fudosan; and A00-734 Castle & Cooke Homes Hawaii and Pacific Health Community; as precedent cases for allowing a co-petitioner and asked that both petitions be granted.

COUNTY

Ms. Self stated that County had nothing to add.

OP

Mr. Yee stated that a motion for intervention and a motion to stay was being considered; not a motion for reconsideration, and OP was not prepared to argue the question of reconsideration and would object to any decision on this basis.

Mr. Yee stated for the record that OP had not addressed the failure to comply with representations for providing affordable housing that would be completed by November 2010 because it was not relevant to what was being discussed today.

Mr. Yee argued on the motion to intervene stating that DW was not the owner and did not have legal title at this time. Mr. Yee stated that it was still unclear how DW would handle this situation and suggested an alternative method for DW to be considered a co-petitioner. Mr. Yee noted that OP was not aware of any rule providing for the addition of a co-petitioner after the reclassification decision had been made. He stated that OP was not arguing that it was impossible to have co-petitioners, but that the property had already been reclassified, the reversion had occurred and the case was almost administratively over. Mr. Yee stated that there was no rule for the co-petitioner action in this situation, only a rule for intervention and the focus should be on provisions for intervention.

Mr. Yee stated that the intervention action was untimely since it was not filed prior to the reclassification and the interventions should be denied if the position of the applicant was essentially the same as a party already admitted to the proceeding. Mr. Yee argued that the motion to intervene should be denied since DW did not presently qualify under any of the provisions.

Mr. Yee argued that the motion to stay should be denied since it was not necessary in the form it was presented and the action that was being asked to stay had not occurred.

COMMISSIONERS

Commissioner Judge requested the County of Hawaii to provide comments on whether or not it supported the petitions. Ms. Self replied that the County was in support of both petitions and that their position had not changed. Ms. Self testified that the County would like the land designation to stay the same since it conformed to the general plan and wanted the project to go forward.

Commissioner Judge asked why the Commission had not been advised of the County subdivision approval at the April 30, 2009 meeting. Ms. Self deferred to Mr.

Hayashi to respond to her question. Mr. Hayashi described the circumstances that contributed to the information not being provided to the Commission.

Commissioner Piltz asked if the County was in support of just the affordable housing portion or the whole Petition Area. Ms. Self responded that the County was in support of the whole project.

Chair Kanuha asked if there had been any discussions related to the affordable housing component between the County Housing Office and DW or Bridge. Ms. Self stated that there had been meetings and ongoing discussions.

Commissioner Lezy asked Mr. Hayashi if he could provide an estimate on the chances for the project to be completed by November 2010. Mr. Hayashi stated that a timeline had been provided (Exhibit X) and there was a possibility that it could be met but it depended on whether the infrastructure was completed. Mr. Hayashi was not able to answer with certainty if the certificates of occupancy could be provided by the November 2010 deadline.

Chair Kanuha asked Mr. Hayashi what the status of the County's Waikaloa Housing Project was. Mr. Hayashi responded that he was not familiar with the Project, but his understanding was that the County had taken back the Project and discussions were being conducted to determine what actions to take on it.

Commissioner Judge moved that the motion for DW Aina Le'a to be a Co-Petitioner with Bridge Aina Le'a, LLC, or in the Alternative to be Given Party Status or to Intervene be taken under advisement; that Motion to Stay Entry of Decision and Order on the Land Use Commission's Action on April 30, 2009 be granted; and that the Commission direct the Executive Officer to schedule a one day hearing to hear arguments on why the Decision and Order of April 30, 2009 reverting the land use classification should be vacated. Commissioner Judge noted that Bridge Aina Le'a LLC was still the Petitioner of record and should work with DW Aina Le'a Development to present the case.

Commissioner Piltz seconded the motion.

Commissioner Devens offered a friendly amendment on directing the Executive Officer to have a hearing and addressed the issue of "vacating". Commissioner Devens stated that as opposed to "vacating", that perhaps the Commission have the hearing to consider additional evidence the parties may have related to the Order to Show Cause.

Commissioner Devens stated that this might focus the issues and that time limits for the hearing be imposed. Discussion on the motion and the friendly amendment ensued.

Commissioner Devens clarified that his amendment was for reopening the hearing to hear additional evidence on a limited basis in terms of time and the Commission could proceed from there. Chair Kanuha asked if the additional evidence was for the Commission to decide on the motion to stay. Commissioner Devens replied that "vacate" should be removed and that "to hear additional evidence on the Order to Show Cause" should be made the issue. Commissioner Devens stated that the Commission could re-affirm the decision that had already been made or if there were reconsideration, it would be based on the new evidence that would be presented at the limited hearing. Commissioner Lezy stated that he was comfortable with the amendment if Commission Counsel was.

Commissioner Judge acknowledged that the Attorney General was comfortable with the friendly amendment and accepted it. Commissioner Piltz accepted the friendly amendment as the motion's seconder.

Mr. Davidson restated that the motion was in three parts- 1) to take under advisement DW's motion to be Co-Petitioner; 2) to grant the motion to stay and; 3) to direct the Executive Officer to schedule a one day hearing for the submission of additional evidence regarding the Order to Show Cause.

Commissioner Contrades stated for the record that he could not support the motion and questioned the legality of DW Aina Le'a's motions and requested a written opinion on the legality of a party that was not part of the Petition to request the Commission to provide a stay.

The Commission was polled as follows:

Ayes: Commissioners Judge, Piltz, Lezy, Devens, Chock, and Chair Kanuha.

Nays: Commissioner Contrades

The motion passed 6-1 with 2 absent.

Commissioner Contrades confirmed with Mr. Suzuki that he would receive a written opinion.

The Commission went on recess at 1:12 p.m. and reconvened at 2:28 p.m.

A06-771 D.R. HORTON- SCHULER HOMES, LLC.

Chair Kanuha announced that this was a continued hearing on Docket A06-771 D.R. Horton-Schuler Homes, LLC, a Delaware limited liability company, to Amend the Agricultural Land Use District Boundaries Into the Urban Land District for approximately 1,553.844 Acres of Land at Honouliuli, Ewa District, Oahu, Hawaii, Tax Map Key Nos.: 9-1-17:4, 059 and 072 (por); 9-1-18: 1 and 4 (por).

APPEARANCES

Benjamin Kudo, Esq., Naomi Kuwaye, Esq. and Yuko Funaki, Esq. represented Petitioner

Dawn Takeuchi-Apuna, Esq., and Tim Hata represented the City & County of Honolulu, Dept. of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, State Office of Planning

Dr. Kioni Dudley-Friends of Makakilo, ("FoM"), Intervener

Yvonne Izu, Esq.-represented Haseko (Ewa) Inc., Intervener

PUBLIC WITNESSES

1) Kehaulani Padilla, Waimanalo Market, testified in favor of denying the D. R. Horton Petition. Ms. Padilla stated that Prime Agricultural lands are irreplaceable and should be preserved for raising local produce in the interest of a local living economy.

There were no questions for Ms. Padilla.

2) Jean Kaohelaulii, Waimanalo Market. testified to support Aloun Farms of Makakilo and local farmers. She stated the importance of supporting the local farm industry and asked that the Commission consider this in their decision making.

There were no questions for Ms. Kaohelaulii.

COMMENTS ON THE MOTION TO CONSIDER FRIEND'S OF MAKAKILO'S REQUEST FOR EXTENSION OF TIME FOR DR. PANOS PREVEDOUROS TO SUBMIT WRITTEN TESTIMONY.

INTERVENER

Dr. Dudley argued that his witness, Dr. Panos Prevedourous, had been extremely busy with various activities and would be unable to participate till after July 7, 2009.

PETITIONER

Ms. Kuwaye stated that Petitioner did not object to the testimony but objected to the extension of time for the testimony since it would not allow them to properly review and prepare cross-examination or rebuttal before the hearing. Ms. Kuwaye noted that this matter had been discussed and agreed upon at the pre-hearing but that Dr. Dudley continued to disregard the agreement and Commission procedures with his actions.

CITY

Ms. Takeuchi-Apuna stated that the City had no objections.

State of Hawaii

Mr. Yee stated that the State had no objections.

INTERVENER- HASEKO (EWA)

Ms. Izu stated that Intervener Haseko (Ewa) had no position.

Dr. Dudley stated that Dr. Prevedourous was a very important witness and that Friends of Makakilo had reserved the right to call him as a lay witness if this motion was denied. Dr. Dudley represented that he was trying to follow the rules as best as he could and was not making any effort to do anything wrong.

Commissioner Judge asked if Dr. Dudley had a timeframe for receiving Dr. Prevedouros's testimony that all parties could agree upon. Dr. Dudley replied that he could not meet the hearing deadlines and would have to move Dr. Prevedouros to a lay witness position.

Commissioner Chock moved to deny the motion to extend time for Dr. Prevedourous. Commissioner Devens seconded the motion.

The Commission was polled by voice vote as follows:

Ayes: Commissioners Chock, Devens, Lezy, Piltz, Judge, Contrades and Chair Kanuha.

The motion passed 7-0 with 2 absent.

COMMENTS ON THE MOTION TO CONSIDER FRIEND'S OF MAKAKILO'S
REQUEST FOR EXTENSION OF TIME FOR DR. PAUL BREWBAKER TO SUBMIT
WRITTEN EXPERT TESTIMONY

INTERVENER

Dr. Dudley stated that Petitioner had agreed that they would have no objection if Dr. Paul Brewbaker could submit his testimony by 4:30 p.m., June 5, 2009 and that it was expected that Dr. Brewbaker would make this deadline.

PETITIONER

Ms. Kuwaye stated that Petitioner had no objection if the testimony was submitted and received by Petitioner by the deadline.

CITY and STATE had no objection. INTERVENER-HASEKO (EWA) had no position.

Commissioner Judge moved to grant the time extension till 4:30 p.m., June 5, 2009. Commissioner Piltz seconded the motion.

The Commission was polled by voice vote as follows:

Ayes: Commissioners Chock, Devens, Lezy, Piltz, Judge, Contrades and Chair Kanuha.

The motion passed 7-0 with 2 absent

COMMENTS ON THE MOTION TO CONSIDER THE OFFICE OF PLANNING'S
REQUEST FOR EXTENSION OF TIME FOR PROVISION OF WRITTEN TESTIMONY

OP

Mr. Yee stated that the extension had been filed to obtain the written testimony of Terry Miller and that it had been received on June 3, 2009.

CITY, INTERVENER- FRIENDS OF MAKAKILO and PETITIONER had no objection.

INTERVENER-HASEKO (EWA) had no position.

Commissioner Judge moved to approve Office of Planning request for the extension of time. Commissioner Piltz seconded the motion.

The Commission was polled by voice vote as follows:

Ayes: Commissioners Chock, Devens, Lezy, Piltz, Judge, Contrades and Chair Kanuha.

The motion passed 7-0 with 2 absent.

COMMENTS ON PETITIONER'S MOTION TO STRIKE OR LIMIT THE SUBJECT MATTER AND/OR USE OF CERTAIN WITNESSES AND EXHIBITS FROM FRIENDS OF MAKAKILO'S AMENDED WITNESS LIST, LIST OF EXHIBITS AND COPIES OF EXHIBITS, AMENDED EXHIBIT LIST, AND REBUTTAL EXHIBIT LIST, AND TO HAVE FRIENDS OF MAKAKILO IDENTIFY JAMES DANNEMILLER AS AN EXPERT WITNESS.

PETITIONER

Ms. Kuwaye stated the reasons why Petitioner brought the motion to the Commission. She described the considerations and concerns that went into renewing the proposed motion to justify having the Commission revisit it.

CITY

No comments

OP

Mr. Yee stated that the current number of witnesses for agriculture seemed to be too many and that two witnesses was a reasonable number, unless there was something unique and special that would not be covered by other witnesses. Mr. Yee stated that with respect to the rest of the motion that OP deferred to the Commission.

INTERVENER-HASEKO (EWA) had no position.

INTERVENER-FRIENDS OF MAKAKILO

Dr. Dudley requested procedural clarification and was advised to proceed with his defense to keep his witnesses and exhibits. Commissioner Judge stated that it was not necessary for him to read his testimony since he had provided it to the Commissioners.

Dr. Dudley stated the Dr. Prevedouros would be speaking about freeway traffic, and Cliff Slater would be speaking about the rail situation. Dr. Dudley

would be testifying on the impact of sitting in traffic on people and business.

Dr. Dudley stated that Donna Wong had been scheduled to speak about open space and the history of movements in Hawaii, such as Keep Hawaii Green, however, that that he would be willing to drop Donna Wong and have Peter Apo speak on part of her topic regarding movements.

Dr. Dudley stated that Peter Apo is an expert on tourism and provided a portion of a transcript from an LUC meeting held earlier in the year as evidence to get Mr. Apo admitted. Dr. Dudley stated that Mr. Apo could also provide the Native Hawaiian view and speak on the project's effects on tourism.

Dr. Dudley argued that Cheryl Kaster should be allowed and that it appeared that the Petitioner had a problem with the petition itself. Dr. Dudley referred to FoM's Exhibit #17 and said that Cheryl Kaster would be presenting the signed petitions to the Commission. Dr. Dudley stated his reasoning for submitting a blank petition as an exhibit to ensure that the petitions could be presented during subsequent testimony.

Dr. Dudley argued that Representatives Cabanilla, Karamatsu, and Ito, and Governor Ariyoshi should be allowed since no formal written testimony from them was anticipated. Dr. Dudley represented that these elected officials were not expected to submit written testimony and would only voice their testimony during the proceedings.

Dr. Dudley stated that "Yet to be determined" had been inserted to cover "carrying capacities of the island". Dr. Dudley argued that there is no current way to control immigration or to stop people from moving into the state and that "carrying capacity" was a concept being explored to prevent immigration. Dr. Dudley stated that he still had not found someone to speak on this subject, but that it was important since it was a tool to have open space.

Commissioner Piltz stated that "yet to be determined" was not acceptable since enough time had been allowed to obtain a witness and that information sources such as the State of Hawaii Data Book were available for reference.

Dr. Dudley stated that James Dannemiller should be allowed to present the findings of a Hawaii 2050 Survey Results report. Dr. Dudley represented that Mr. Dannemiller would not be used as an expert witness.

Commissioner Devens asked if Mr. Dannemiller would be offering any expert opinions. Dr. Dudley replied that Mr. Dannemiller would be. Commissioner Devens

asked Dr. Dudley to identify the witnesses that he had provided “in advance” testimony to for all parties. Dr. Dudley stated that Goro Uehara, James Brewbaker, John McHugh, Melvin Matsuda, Leon Stollenberger and Dr. Paul Brewbaker.

Chair Kanuha stated that Dr. Dudley could offer whoever he wanted as an expert witness but that it was up to the Commission to make the determination to accept them or not.

Dr. Dudley stated his reasons why he had so many witnesses on agriculture. Dr. Dudley noted that problems with the EIS section on agriculture, the Petitioner’s exhibits on agriculture, and the written material in the testimony of Bruce Plasch required different experts to respond to different aspects of these problems within their own field. Dr. Dudley identified Dr. Rohter as a proposed presenter on future problems, and stated that Petitioner seems to have accepted Paul Brewbaker as a witness since they had accepted his late testimony.

Dr. Dudley argued to have Exhibit 4, a revised Exhibit 4, Exhibit 5 and a revised Exhibit 5 retained. Dr. Dudley identified the information represented on the Exhibits to justify their retention.

Dr. Dudley stated that Exhibit 8 was a Dr. Ira Rohter’s PowerPoint presentation which the Commissioners might find very informational and that Exhibit 13 contained errors which had been corrected on the revised Exhibit 13 submittal. Dr. Dudley argued that Exhibit R9 should be retained since it represented the amount of vacant houses on Oahu available and indicated that more houses were not needed.

Dr. Dudley stated that he would be willing to relinquish the following exhibits- 16A, 22, R1, R4, R6, R7, R8, and R10.

Commissioner Judge asked Dr. Dudley to pick three agricultural witnesses. Dr. Dudley selected Goro Uehara, James Brewbaker, and Leon Stollenberger.

Mr. Kubo suggested that to streamline matters, that since, with the exception of the agriculture witnesses, most of the witnesses were lay witnesses, that their testimonies could be provided during the public hearing testimony portion of the proceedings. There was subsequent discussion on how to expedite the hearing.

The Commission went into recess at 3:30 p.m. and reconvened at 3:38 p.m.

Commissioner Devens moved to grant in part and deny in part the Petitioner's request to strike witnesses and exhibits. Commissioner Devens stated that his motion did not preclude that an offer of proof could be asked for prior to testimony being given by witnesses to confirm that they are giving lay testimony relative to the issue that the Intervener represented would be addressed.

Commissioner Devens proposed to:

deny the motion to strike- Cliff Slater, Peter Apo, "Yet to be determined", James Dannemiller, requirements that must be satisfied for the admission of scientific evidence, Exhibits # 4, 5, 13, R9, and 30;

grant the motion to strike- Cheryl Kaster, Representatives Karamatsu, Ito, Cabanilla and Governor Ariyoshi, Exhibit 8, and 17; and those exhibits withdrawn by the Intervener (#16, 22, R1, R4, R6, R7, R8, and R10)

grant in part- to allow agriculture witnesses Goro Uehara, James Brewbaker, and Leon Stollenberger.* To disallow agriculture witnesses John McHugh and Melvin Matsuda.

(Witness Donna Wong had been withdrawn by Intervener and was declared moot.)

Commissioner Judge seconded the motion.

The Commission was polled by voice vote as follows:

Ayes: Commissioners Chock, Devens, Lezy, Piltz, Judge, Contrades and Chair Kanuha.

The motion passed 7-0 with 2 absent

Chair Kanuha adjourned the meeting at 3:43 p.m.

* These in addition to Paul Brewbaker, who was the subject of an earlier motion.