

LAND USE COMMISSION

June 26, 2009

Conference Room 405, 4th Floor, Leiopapa A Kamehameha
235 South Beretania Street
Honolulu, Hawaii 96813

COMMISSIONERS PRESENT: Thomas Contrades
Kyle Chock
Lisa Judge
Nicholas Teves, Jr.
Rueben Wong
Vladimir Devens (arrived at 09:04)
Ransom Piltz
Normand Lezy (arrived at 1:30 p.m)

COMMISSIONERS ABSENT: Duane Kanuha

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Mikel Humerickshouse

CALL TO ORDER

Vice-Chair Piltz called the meeting to order at 9:02 a.m.

APPROVAL OF FORM OF ORDER

Vice-Chair Piltz announce that this was a meeting on Docket DR09-38 to approve the Petition for Declaratory Ruling filed by Alexander & Baldwin Inc. to designate approximately 27,102 acres of land as Important Agricultural Land at Wailuku and Makawao, Maui, Hawaii.

PUBLIC WITNESSES

There were no public witnesses

APPEARANCES

Benjamin Matsubara, Esq., represented Alexander & Baldwin, Inc.
Meredith Ching, Alexander & Baldwin, Inc.
Bryan Yee, Esq., represented the State Office of Planning
Abbey Mayer and Mary Alice Evans, State Office of Planning

Commissioner Judge moved to approve the Petition. Commissioner Contrades seconded the motion. There was no discussion.

The Commission was polled by voice vote as follows:
Ayes: Commissioners Chock, Contrades, Judge, Devens, Teves, Wong and Vice-Chair Piltz.

The motion passed 7-0 with 2 excused.

Mr. Matsubara thanked the Commission for its work.

CONTINUED HEARING

Vice-Chair Piltz stated that this was a continued hearing for Docket A06-771 D. R. HORTON- SCHULER HOMES, LLC., a Delaware limited liability company, d.b.a. D. R. Horton –Schuler Division Honouliuli, Ewa, Oahu To Amend The Agricultural Land Use District Boundaries Into The Urban Land Use 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. represented the City and County of Honolulu (Don Kitaoka, Esq. appeared in the afternoon for the City and County)
Tim Hata, City and County of Honolulu, Department of Planning and Permitting
Bryan Yee, Esq., represented the State Office of Planning

Abbey Mayer, State Office of Planning
Doug Mellor, State Dept. of Transportation
Dr. Kioni Dudley, Friends of Makakilo, Intervenor
Yvonne Izu, Esq., represented Haseko (Ewa), Intervenor

PETITIONER'S WITNESSES

Bryant Terry Brothers

The hearing resumed with the continuation of the June 25, 2009 cross-examination of Mr. Brothers.

Mr. Yee asked Mr. Brothers to identify the number of intersections with transit that would have impacts that were significant and unavoidable after mitigation. Mr. Brothers replied that 2 had been identified and the same 2 intersections were identified without transit.

Mr. Brothers described the conditions of Ft. Weaver and Renton Road without transit and without the Project and explained the details of Table 4-3. Mr. Brothers represented that his TIAR did not assume any new access points to Ft. Barrette Road and clarified pages 6-2 and 6-3; page 3-21- Figure 3-5: and Figure 5-6 on page 5-25 of his report.

Mr. Brothers did not recall sharing his findings and information with Mr. Kirkpatrick and stated he was not present during Mr. Kirkpatrick's testimony. Mr. Yee requested and was granted a recess.

The Commission went into recess at 9:27 a.m. and reconvened at 9:34 a.m.

Mr. Brothers stated that he was aware of some discussion regarding the timing of backbone infrastructure and was uncertain if any mitigation actions would be in place or necessary before the first home was occupied. Mr. Brothers described his current understanding and action responses to ongoing roadway construction in response to Mr. Yee's questions.

Dr. Dudley asked Mr. Brothers about issues with regard to present access to the freeway and Mr. Brothers provided his understanding of the current situation. Mr. Brothers provided his perception of what would happen in the area with the completion of the North-South Road and what types of traffic patterns could develop. Mr. Brothers stated how the TIAR analysis

considerations were arrived at and described how “adequate freeway capacity” figured in the Ewa Development Plan-Levels of Service comparisons and clarified his report’s findings for freeway access with or without transit.

Mr. Brothers stated how his figures for traffic flow in and out of the area at different times of the day were arrived at.

Haseko (Ewa) had no questions.

The Commission went into recess at 10:08 a.m. and reconvened at 10:15 a.m. Commissioner Chock returned at 10:16 a.m.

Commissioner Judge asked for clarification on mitigation efforts that were mentioned in response to Mr. Yee’s question and referred to page 17 #55 of Mr. Brothers’ written direct testimony. Mr. Brothers responded that he was not sure if mitigation measures would occur and had merely recommended them. He said that reports that he was currently working on were to determine the measures needed in 2020 and there were other studies for different time periods before then.

Commissioner Wong asked Mr. Brothers what conditions might be like if mitigation measures were not taken. Mr. Brothers described what he thought would occur and referred to Petitioner’s Exhibit #42, Table 3.1 in his explanation. Mr. Brothers identified mitigation measures by others that were funded, underway and not funded. Commissioner Wong asked if constructing the Project and mitigation measures in phases would be more practical. Mr. Brothers responded that it appeared that things were moving that way with the use of interim TIARs at the beginning of each stage of development. Commissioner Wong indicated to the Petitioner that he would like to know whether or not the Project was going to be done in phases as mitigation measures are being done.

Mr. Kudo stated that the areas of concern that Commissioner Wong had were the basis for current talks between D. R. Horton, the State Dept. of Transportation, the Dept. of Planning and Permitting for the City; and that Mr. Jones would be providing the details of these negotiations during his testimony.

Mr. Kudo asked for clarification on funding for the roadway improvements in the Ewa District and for Mr. Brothers to identify the role and purpose of OMPO. Mr. Brothers stated that communities with populations over 50,000 were required to have a metropolitan planning organization in order to

receive Federal funding for transportation projects and explained the makeup and functioning of OMPO.

Commissioner Teves excused himself at 10:25 a.m. and returned at 10:28 a.m.

Mr. Kudo asked about the requirements for processing Federally Funded Projects from the Regional Transportation Plan (RTP) to the Transportation Improvement Project List (TIP). Mr. Brothers described the funding requirements, OMPO's role and how State and County projects were impacted. Mr. Brothers clarified how the 8 Projects he had noted earlier were categorized on the RTP and the TIP relative to their funding timelines.

Commissioner Judge moved for an Executive Session for the Board regarding their duties, privileges and liabilities. Commissioner Wong seconded the motion.

The Commission unanimously voted to enter into executive session. The Commission went into Executive Session at 10:39 a.m. The Commission reconvened at 10:52 a.m.

David Bills

Mr. Kudo stated that Mr. Bills had been qualified as an expert in Wastewater Treatment and Drainage Systems and would be addressing the issues of solid waste management and major backbone infrastructure development. Mr. Bills identified his written direct testimony as Exhibit # 83 and stated that he had 2 items to change- 1) Petitioner's Exhibit #71- a 228 water tank was no longer part of the infrastructure portion of the Project, and 2) he would be addressing backbone infrastructure as part of the project.

Mr. Bills stated that a waste water master plan and drainage master plan had been prepared for the Project and described the methodology and findings of his report. Mr. Bills identified current infrastructure components and explained plan for installing the infrastructure for the Project. He stated that he would need to review and obtain approval for his master plan at the County level with the Dept. of Planning and Permitting and the Dept. of Environmental Services.

Mr. Bills referred to Petitioner's Exhibit #11 and testified that he concluded that there would be no adverse impact on adjacent property owners or surrounding wastewater facilities if the items listed in the master plan were implemented.

Mr. Bills described his Drainage Master Plan and identified and described the characteristics of 3 separate drainage basins or watersheds (Honouliuli, West Loch, and Kaloi) for the Hoopili Project on Petitioner's Exhibit #71. He stated his planned methods for retention and detention of water for each area and noted that for the West Loch Basin, there were two options being considered- creating an overflow discharge channel which would require obtaining approvals from the Navy or enlarging existing detention basins to accommodate anticipated drainage. Mr. Bills testified that he concluded that there would be no adverse impact on adjacent properties or lands if the features listed in the master plan were implemented.

Mr. Bills stated that he was responsible for drafting the plans and programs for handling solid waste for the Project and discussed the proposed plans for handling solid waste. Mr. Bills referred to the Environmental Impact Statement and described the methodologies of his plan used to comply with State and County requirements.

Mr. Bills referred to Petitioner's Exhibit #1 and described the installation process for the major backbone infrastructure components and discussed the timeline the Project would be following. Mr. Bills represented that due to the opposing directions of approach for water and sewage to the Project, it was difficult to develop phases and plan engineering operations. Mr. Bills stated that once the entitlements were in place, infrastructure would have to begin immediately to be accomplished in 10 years.

The County had no questions.

Mr. Yee requested clarification on why it was difficult to phase the Project. Mr. Bills demonstrated how he planned to access existing water and sewage systems to framework the backbone infrastructure for the Project in order for construction to begin. Mr. Yee questioned the positioning of the access points and asked for a specific location at where vertical construction was planned to begin.

Mr. Bills represented that he had principles and goals for recycling

but had no specifics on how to accomplish them since he had to work with the City's plan for integrated waste management. Mr. Bills stated that there had been discussions with the Navy in regards to obtaining easements to their property and still had not gained approval but the contingency plan for this area was to be able to contain water from a 100 year storm. Mr. Yee asked if there would be any coastal zone issues. Mr. Bills replied that he was complying with a number of agency requirements and if coastal zone management was included, the Project would be compliant. Mr. Bills stated by default, electrical stations should be included as part of the infrastructure but were not part of his exhibit.

Intervenor-Friend of Makakilo had no questions.

Intervenor-Haseko (Ewa) noted that questions to Mr. Bills would be referring to the Kaloι Drainage Basin unless otherwise indicated and asked how under current undeveloped conditions, storm water runoff from mauka of the Petition Area enters the Petition Area. Mr. Bills described how storm water entered via the North-South road corridor. Mr. Bills represented that water exited the Petition Area from an area which did not affect the Kaloι gulch. Mr. Bills stated that there were two undeveloped 50 acre parcels in the Petition Area that have stormwater sheetflowing into the Kaloι gulch drainage basin and described his perception of what discharge and level of infiltration occurred under different storm conditions. Mr. Bills clarified a passage from Section 3 of his drainage master plan regarding channelization, and described his assumptions and methodology in designing his system.

Mr. Bills described the interim drainage standards he was familiar with and stated the City requirements for them. He stated that these standards would continue to be called "interim" till an alternate ocean outlet was obtained. Mr. Bills could not predict if the Hoopili drainage plan would be altered if the interim restrictions were lifted and stated that it would depend on the development schedule and evaluations of conditions at that time. Mr. Bills testified that alternatives to the Navy denying access would not result in water being directed to Kaloι Gulch.

Ms. Izu referred to page 13 of Mr. Bills' written direct testimony where he cited the Ewa Development Plan relating to green waste network and grass lined channels. She asked if he was aware of a provision that spoke to conforming to the Ewa Villages Master Plan and he replied he was not. Ms. Izu provided a copy of the Ewa Development Plan, Sec. 4.6.2 and Mr. Bills stated that he referred to the provision on using natural features wherever possible and not this

one and that he had not performed an analysis with this provision in mind. Mr. Bills testified that after reading this provision that it did apply.

Commissioner Teves asked for clarification on who installed the sewer lines. Mr. Bills stated that lines that he had referred to were existing lines and provided the capacity improvement specifications that were proposed. Mr. Bills described the proposed capacity specification for the water systems, identified DHHL as one of the parties involved in the upgrades and described plans for non-potable water use in the Petition Area.

There were no further questions for Mr. Bills.

Mike Jones

Mr. Jones stated that he was Division President for D. R. Horton-Schuler Homes and was authorized to accept any conditions that might be attached to potential approval of this Petition.

Commissioner Chock excused himself at 11:51 a.m. and returned at 11:53 a.m.

Mr. Jones provided historical background on his company and explained the goals and objectives of the Project. Mr. Jones described how D.R. Horton-Schuler had worked with the community through the Task Force and stated the development plan details for the Commission. Mr. Jones stated that the Project needed to be flexible and was working with different agencies to best handle all the different components to best achieve satisfactory results.

Commissioner Wong stated his concern that the Project's 20 year timeline, which was mentioned during testimony, might conflict with LUC's rules, section 15-15-50 (c) (19) regarding a 10 year completion deadline and asked the Petitioner to consider how this might be resolved.

The Commission went into recess at 12:19 p.m. and reconvened at 1:36 p.m. Commissioner Lezy arrived and was present when the meeting reconvened. Commissioner Contrades returned at 1:42 p.m.

Mr. Kudo provided his perspective of section 15-15-50 (c) (19). He argued that Petitioner had submitted a development timetable which Mr. Jones had described during his testimony. Mr. Kudo stated that the Petitioner

was committed to building the Project and was prepared to commit \$30 million to build the backbone infrastructure.

Commissioner Wong stated that section 15-15-50 (c)(19) addressed what needed to be submitted if a project extended beyond 10 years and no such schedule had been submitted yet.

Mr. Jones described the national ranking of his company, its performance over the last five years and how it provided for first-time home buyers. Mr. Jones asserted that incremental districting would have the negative impact of potential delays, reducing flexibility and adding costs to the project.

City- Mr. Don Kitaoka, Esq., represented that he was Deputy Corporation Counsel and asked Mr. Jones to explain how traffic concerns would be addressed by the Project. Mr. Jones described how the Petitioner had been working with the State DOT and interim TIARs on initial plans for the Petition Area while taking into consideration the County plans for mass transit. Mr. Jones testified about different ways that TOD would mitigate traffic concerns and identified some of the density requirements needed for successful TOD to occur. Mr. Jones described how proposed alternative transportation considerations would operate in the Project.

Mr. Yee asked if Hoopili would be completed by 2030. Mr. Jones responded that his planning schedule was to have everything done by 2030 and he did not have a geographical sequencing for vertical construction yet. Mr. Jones represented that Petitioner's Exhibit #2 was the current development schedule, and that Exhibits #4 and #9 accurately described what and where things would be built in the Project. Mr. Jones stated that the acreages might change depending on zoning requirements and could be affected by the alignment of transit but that adjustments to the exhibits would be very minor since the transit route may already be accurately depicted in them.

On cross-examination, Mr. Jones stated that the energy-saving features shown in his PowerPoint presentation were only examples of what might be used in Hoopili and not items that were commitments at this time. He stated it was his intention to use those measures in his construction if they were required by code. Mr. Jones represented that since his market was the first-time buyer, it was important to keep prices affordable and he identified what he would commit to offer as energy-saving features options. Mr. Jones conditionally committed to

offer the bike paths illustrated in Exhibit #18 depending on how his project was affected by City and County zoning and permitting.

Mr. Jones testified that he could not say where he would build the first 650 homes per year and did not have a development schedule for the “gradual development” mentioned in Bruce Plasch’s testimony. Mr. Jones identified energy-saving appliances and low-flush toilets as the energy saving measures Mr. Shigekuni was referring to for home energy saving measures and was not willing to commit to building “energy star” units at this point. Mr. Jones committed to using non-drinking water for irrigation as long as it was permissible and described the different sizes for the living units proposed for the Petition Area.

Mr. Jones explained the considerations made in determining the housing mix, job availability, and other factors for the development. He stated that he did not apply LEED-ND considerations in the plans for the Project. Mr. Jones described TOD considerations that were made and stated that he was not an expert in the area of TOD and its guiding principles and standard objectives and measures were not familiar to him.

Commissioner Judge excused herself at 2:16 p.m. and returned at 2:18 p.m.

Mr. Kudo objected to Mr. Yee's line of questioning. Mr. Yee replied that he was trying to get the answers to questions that were deferred to Mr. Jones by earlier witnesses. Mr. Jones described the considerations and decisions that went into providing community service facilities for cemeteries, churches, and schools.

Dr. Dudley asked how the Task Force Committee members were selected. Mr. Jones described the selection process and how the Task Force meetings were conducted.

Haseko (Ewa) had no questions.

Commissioner Teves asked Mr. Jones for an explanation on why cemeteries were not included in his plan and Mr. Jones stated the reasons why cemeteries were not part of the Project. Mr. Jones described the considerations for proposed rental apartments and elderly housing and acknowledged that he would not commit to including rental apartments or elderly housing.

Commissioner Judge asked if D.R. Horton would be willing to submit an incremental development plan based on rule 15-15-78. Mr. Jones replied that he did not feel it was appropriate at this time due to potential delays and increased costs associated with it.

Commissioner Contrades asked if selling the proposed development homes would be a problem considering the traffic situation. Mr. Jones responded that over time, he hoped that growth that was projected for the area would be realized and described how he perceived jobs in the area would to be created.

Commissioner Lezy asked about the timeframe of the development and the reluctance of D.R. Horton to consider incremental development. Mr. Jones stated the reasoning for not using incremental development and explained the difficulties in making such planning decisions.

Commissioner Judge moved for an Executive Session. Commissioner Wong seconded the motion. The Commission voted unanimously by a show of hands 8-0 to enter Executive Session at 2:40 p.m. The Commission reconvened at 3:15 p.m.

Mr. Kudo stated that due to the concerns raised by several of the Commissioners with regard to the size of the Project and the development time table and Section 15-15-50, HAR, Petitioner was asking leave of the Commission to submit an incremental districting plan that would divide the Petition Area into two parts- the first ten-year increment, and the second ten-year increment. If this was acceptable, Mr. Kudo stated that the plan would be submitted before the next hearing.

Vice-Chair Piltz commented that it had been a concern and acknowledged Mr. Kudo's proposal. Mr. Davidson stated that if this matter were to be reconvened, it would be at the first or second hearing in August and requested that the incremental plan be submitted in a little over two weeks before the date of the continued hearing. Mr. Kudo stated that Petitioner would do so.

Mr. Yee inquired if Mr. Jones would be available for cross-examination on the incremental plan. Mr. Kudo stated that Mr. Jones would be available. Mr. Jones acknowledged that he agreed with Mr. Kudo's proposal for an incremental plan.

The meeting was adjourned at 3:17 p.m.