

LAND USE COMMISSION
MEETING MINUTES

May 20, 2010

Leiopapa A Kamehameha
Conference Room 406, 4th Floor
235 S. Beretania St.
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Vladimir Devens
Nicholas Teves, Jr.
Ransom Piltz
Reuben Wong
Kyle Chock
Thomas Contrades

COMMISSIONERS ABSENT: Duane Kanuha
Normand Lezy
Lisa Judge

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Hotai Zerba

CALL TO ORDER

Chair Piltz called the meeting to order at 9:39 a.m.

APPROVAL OF MINUTES

Chair Piltz asked if there were any corrections or additions to the May 5, 2010 minutes. There were none. Commissioner Contrades moved to approve the minutes. Commissioner Devens seconded the motion. The minutes were unanimously approved by a voice vote (6-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2010 was distributed in the handout material for the Commissioners.
- The upcoming meeting on June 4, 2010 will be a video conference. There is concern about quorum and LUC staff will be monitoring attendance.
- Any questions or concerns- please contact LUC staff.

ACTION A09-782 Tropic Land LLC

Chair Piltz announced that this was an action meeting to consider the acceptance of Tropic Land LLC's Final Environmental Impact Statement.

APPEARANCES

William Yuen, Esq., represented Petitioner Tropic Land LLC

Nancy Nishikawa, Planning Consultant, Kimura International

Arick Yanagihara, Tropic Land LLC

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

Mike Watkins, City and County of Honolulu, Department of Planning and
Permitting,

Bryan Yee, Esq. represented State Office of Planning

Abbey Mayer, Director, State Office of Planning

Mr. Yuen confirmed that LUC staff had advised him of Commission's policy regarding the reimbursement of hearing expenses and that his client had no objections to the reimbursement of expenses.

Commissioner Teves disclosed his personal and company's relationship to the Petitioner and two of its Principals. Commissioner Teves stated that he had no financial interests in Tropic Land LLC and that he could be fair and impartial in this docket. There were no objections to Commissioner Teves' participation in the hearing.

PUBLIC WITNESSES

1. Alice Greenwood

Ms. Greenwood provided the background of her organization, The Concerned Elders of Waianae, and read her submitted written testimony regarding her concerns and objections to the Project. There were no questions for Ms. Greenwood.

2. Paulette Kaanoahi Kaleikini

Ms. Kaleiikini expressed her concerns over cultural matters, rock mining activity and burial remains that she felt were not being properly handled in the Petition Area. Ms. Kaleiikini submitted photographs of the Petition Area to the Commission to substantiate her remarks. There were no questions for Ms. Kaleiikini.

3. Allen Stack Jr.

Mr. Stack shared his concerns and experiences as a neighbor to the Petition Area. There were no questions for Mr. Stack.

4. Elizabeth Stack

Ms. Stack stated that she owned the neighboring property and provided her concerns over the impacts that could result from further development of the Petition Area. There were no questions for Ms. Stack.

5. Marti Townsend

Ms. Townsend stated that she opposed the Project but wanted the Environmental Impact Statement approved to begin discussions on the Petition Area. Ms. Townsend submitted written testimony on behalf of Kahea, the Hawaiian-Environmental Alliance, and provided reasons why her organization felt that the Petition should not be granted. There were no questions for Ms. Townsend.

6. Kyle Kajihiro

Mr. Kajihiro stated that he represented the American Friends Service Committee and submitted photos of the Petition Area and provided his reasons for opposing the development of the Petition Area. Mr. Yuen asked what Mr. Kajihiro's basis was for determining the agricultural value of soils in the Petition Area. Mr. Kajihiro responded that farmers in the area reported that the Lualualei soils were of good quality. There were no further questions for Mr. Kajihiro.

7. Lucy Gay

Ms. Gay had photos that she said depicted activities that were occurring on the Petition Area and shared her concerns about how the property was being developed. There were no questions for Ms. Gay.

8. Karla Noa

Ms. Noa shared her family history with caring for the land and provided her perspectives on development in her community. There were no questions for Ms. Noa.

Chair Piltz called upon LUC staff to provide its report. LUC staff planner Bert Saruwatari referenced a posted map of the Petition Area and provided the staff recommendation to accept the FEIS pursuant to chapter 343, HRS, and chapter 11-200, HAR. There were no questions for Mr. Saruwatari.

PETITIONER

Mr. Yuen described Petitioner's efforts to prepare the Environmental Impact Statement (EIS) and provided the reasons why the EIS should be accepted by the Commission.

Mr. Yee stated that OP would take no position on the acceptance of the proposed EIS and would raise their concerns during the hearing on the Petition.

Commissioner Contrades displayed a photograph provided by a public witness and inquired if the Petition Area had paved areas and equipment storage on it as depicted in the photograph. Mr. Yuen provided his perception of what the Petition Area contained.

Ms. Takeuchi-Apuna stated that the City and County had submitted a letter to the Commission addressing a correction to the location of the rural community boundaries in the Petition Area that the Department of Planning and Permitting had made.

Commissioner Wong requested clarification on the effect of acceptance of the EIS on future Commission action with respect to the Petition. Mr. Yuen responded that the Commission would not be bound to grant the Petition merely because it accepted the EIS.

Commissioner Wong moved to accept the EIS. Commissioner Contrades seconded the motion. Chair Piltz encouraged the Public Witnesses who appeared to return and contribute their concerns and comments during the future hearings on this docket.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Wong, Contrades, Devens, Chock, Teves, and Chair Piltz

Nays: none

The motion passed 6-0 with 3 absent and excused.

Commissioner Teves requested that LUC staff make arrangements for a site visit to investigate the existing condition of the Petition Area. Executive Officer Davidson responded that arrangements for a site visit will be made as soon as possible.

The Commission went into recess at 10:33 a.m. and reconvened at 10:45 a.m.

HEARING

A07-775 Castle & Cooke Homes Hawaii Inc. (OAHU)

Chair Piltz announced that this was a continued hearing on Docket No. A07-775 to amend the Agricultural Land Use District Boundary into the Urban District for approximately 767.649 acres at Waipio and Waiawa, Island of Oahu, State of Hawaii.

APPEARANCES

Ben Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq.,
represented Castle & Cooke Homes Hawaii Inc.

Laura Kodama, Castle & Cooke Homes Hawaii, Inc.

Rodney Funakoshi, Castle & Cooke Homes Hawaii, Inc.

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

Matthew Higashida, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Abbey Mayer, Director, State Office of Planning

Robert Harris, Intervenor-The Sierra Club

Colin Yost, Esq., represented Intervenor-The Sierra Club

Richard Poirier, Intervenor-Mililani/Waipio/Melemanu Neighborhood Board
No.25

Karen Loomis, Intervenor-Mililani/Waipio/Melemanu Neighborhood Board
No.25

PUBLIC WITNESSES

1. Senator Clayton Hee

Senator Hee read his submitted written testimony and provided his reasoning and concerns for opposing the Petition.

Commissioner Contrades requested clarification on Senator Hee's perception of the Commission's position on requiring a condition for the replacement of farmlands. Senator Hee stated that the Department of Agriculture's written testimony relating to a proposed condition for a change in land use designation requirement for "an acre for acre replacement" led him to believe that.

Discussion ensued regarding the difficulties that the Commission faced in making land use change decisions and Senator Hee provided his perception of the factors he felt should be most important and how he would make his decisions. Senator Hee stated that his appearance before the Commission

was to protect prime agricultural land and shared his concerns about the future if too much agricultural land was lost to development.

Chair Piltz inquired how much prime agricultural land Senator Hee felt would be necessary to support Hawaii's population. Senator Hee provided his opinion of what Hawaii needed for its future. There were no further questions for Senator Hee.

2. Dave Arakawa

Mr. Arakawa stated that he was Executive Director of the Land Use Research Foundation of Hawaii (LURF) and summarized his submitted written testimony regarding concerns about the proposed requirements for agricultural easements being imposed on the Petitioner.

Mr. Yee requested clarification on LURF's perception on legal methods available to protect Important Agricultural Lands (IAL). Discussion ensued on methods available to conserve Hawaii's agricultural land resource base. Mr. Arakawa stated that he had no position for or against the Petition but argued that agricultural easements should be determined by legislative means.

Mr. Yost requested clarification on who Mr. Arakawa was testifying for. Mr. Arakawa replied that he was testifying on behalf of LURF. Discussion ensued over whose interests LURF was representing, IAL preservation and what the nature of Mr. Arakawa's testimony was intended to achieve.

There were no further questions for Mr. Arakawa.

3. Shaina Hunt

Ms. Hunt stated that she had a petition against the proposed Project comprised of Native Hawaiian students from the University of Hawaii Manoa and UH Community Colleges. Ms. Hunt provided the reasons why she organized the petition and explained her concerns about the proposed Project. There were no questions for Ms. Hunt.

Chair Piltz halted Public Testimony to allow Intervenor Neighborhood Board No. 25's witnesses to testify due to time constraints.

INTERVENOR NEIGHBORHOOD BOARD NO. 25 WITNESSES

Mr. Poirier presented his witnesses before the Commission.

1. Senator Michelle Kidani

Senator Kidani stated that she was appearing at the request of Neighborhood Board No. 25 and was not testifying either for or against the Project and shared her familiarity with the proposed Project. Senator Kidani provided her district's concerns about traffic and educational facilities issues that the proposed Project might produce.

Commissioner Devens asked if Senator Kidani was in favor of the Project or not taking a position. Senator Kidani replied that she believed that affordable housing was needed and if the Petition was granted, that provisions be made by the developer to be more environmentally conscious about the type of housing that it would produce. There were no further questions for Senator Kidani.

2. Representative Marilyn Lee

Representative Lee provided her concerns about traffic and educational facilities problems that the proposed Project might create and suggested conditions that she thought should be included if the Petition was granted. There were no questions for Representative Lee.

3. Representative Ryan Yamane

Representative Yamane stated that he was appearing at the request of Neighborhood Board No. 25 and his constituents to share their concerns about traffic and public facilities if the proposed Project was approved. Representative Yamane shared his experiences in meeting with the Petition Area and neighboring property owners, as well as the Department of Transportation (DOT) about issues of community concern.

Mr. Yost requested clarification on a million dollar appropriation that the DOT declined to use for a traffic study on the H1/H2 merge. Discussion ensued as to the reasons why the DOT declined the funding. Representative

Yamane provided his perspective of why the DOT declined the appropriation.

Commissioner Devens requested clarification on how the Commission should view the traffic study/data presented by the Petitioner if the State had not presented the counter-point to mitigate traffic concerns. Representative Yamane shared his opinions on what he thought might help to clarify the evidence and representations made. There were no further questions for Representative Yamane.

Chair Piltz resumed the Public Testimony portion of the hearing.

PUBLIC WITNESSES (cont.)

4. Karla Noa

Ms. Noa expressed her reasons for opposing the proposed Project. There were no questions for Ms. Noa.

5. Elaine Kam

Ms. Kam shared her concerns about food security and loss of Hawaiian agricultural land. There were no questions for Ms. Kam.

6. Kevin Killeen

Mr. Killeen provided his concerns about energy and his reasons for opposing the Project. There were no questions for Mr. Killeen.

Commissioner Wong excused himself at 11:50 a.m. and returned at 11:55 a.m.

7. Dwight Synan

Mr. Synan shared his concerns about the loss of agricultural land and reasons for opposing the Project. There were no questions for Mr. Synan.

8. Michael Kliks

Mr. Kliks submitted written testimony and shared his perception on what

Hawaii would be like in 35 years. There were no questions for Mr. Kliks.

9. Jeffery Pedersen

Mr. Pedersen shared his concerns about loss of agricultural lands to development. There were no questions for Mr. Pedersen.

Commissioner Teves excused himself at 12:02 p.m. and returned at 12:07 p.m.

10. Lucas Miller

Mr. Miller provided his reasons for opposing the Petition. There were no questions for Mr. Miller.

11. Charles Carole

Mr. Carole stated that he was the Vice-President for the Hawaii League of Women Voters and provided the reasons that his organization opposed the Project. There were no questions for Mr. Carole.

12. Dr. Kioni Dudley

Dr. Dudley shared his concerns and reasons for opposing the Project and submitted written testimony. There were no questions for Dr. Dudley.

13. Michael Doyle

Mr. Doyle provided his reasons for opposing the Project. There were no questions for Mr. Doyle.

14. Lydi Morgan

Ms. Morgan stated that she represented the Hawaii Farmers Union and shared the reasons why her organization opposed the Project. There were no questions for Ms. Morgan.

15. Amy Kimura

Ms. Kimura shared her concerns about the Project and provided the

reasons why she opposed it. There were no questions for Ms. Kimura.

The Commission went into recess at 12:30 p.m. and reconvened at 1:57 p.m.

PRESENTATION OF EXHIBITS

Mr. Matsubara offered Petitioner's Third Amended Exhibit List and Exhibits 54 and 55. There were no objections. Mr. Yost stated that he had a concern over the late submittal of the Exhibit List and not having sufficient time to prepare a response to it, and that Petitioner's Witness Rodney Funakoshi did not submit written testimony for review. Discussion ensued over why Mr. Funakoshi did not submit written testimony. Chair Piltz noted Mr. Yost's concerns. Commissioner Chock stated that he welcomed written comments in rebuttal that Mr. Yost planned on submitting.

Mr. Matsubara offered Petitioner's First Amended List of Rebuttal Witnesses which included Ronald Nishihara in response to questions raised by Commissioner Wong at the last hearing. There were no objections. Mr. Yost stated that he again had the same concerns as before regarding late submittal and lack of time to prepare. Chair Piltz acknowledged Mr. Yost's concerns.

PETITIONER'S REBUTTAL WITNESSES

Ronald Nishihara

Mr. Matsubara stated that Mr. Nishihara was appearing to respond to questions raised by Commissioner Wong regarding offering photo-voltaic systems on 10% of the residential homes built, and providing 50% of the energy for commercial units from renewable energy sources. Mr. Nishihara described the reasoning and methodology used in determining energy requirements for the proposed Project and how the strategies devised by the Petitioner were expected to achieve desired outcomes by retaining the flexibility of choosing from the latest technological developments in renewable energy.

Mr. Nishihara expressed his opinion on the effectiveness of incentive versus mandated driven change for photo-voltaic systems and described how incentives had been successfully implemented.

Mr. Yee requested clarification on the amount of proposed energy usage for air conditioning, lighting and appliances. Mr. Matsubara referenced Petitioner's Exhibit 20 and discussion ensued on the various energy consumption rates for each category. Mr. Nishihara described alternative methods of how energy needs could be reduced and how target numbers could be determined for fossil fuel reduction at the time of design.

Mr. Yost requested clarification on air conditioning usage and design alternatives to reduce the need for air conditioning. Mr. Nishihara described the considerations that were made in determining the home building design models that the Petitioner proposed offering. Discussion ensued regarding the calculation and achievement of energy efficiencies based on assumptions made in establishing the measurement standards.

Mr. Nishihara shared the costs and calculations involved in the installation of his personal residence's photo-voltaic system and discussion ensued on the economic feasibilities of having a photo-voltaic system and whether or not incentives or mandates would be effective in achieving desired energy efficiency goals.

Commissioner Wong requested clarification of what factors were used in the calculations for energy savings. Discussion ensued over the methodology and reasoning used to compute the energy savings for a single family dwelling and on how feasible using improved energy technology could be more attractive in the future.

Commissioner Devens requested clarification on how Mr. Nishihara defined a "normal home" with four people. Mr. Nishihara described how the factors for determining a home with 2 adults and 2 children were determined.

There were no further questions for Mr. Nishihara.

2. Rodney Funakoshi

Mr. Matsubara offered Mr. Funakoshi to answer questions that Commissioner Judge had regarding discrepancies in the reported amount of "green space" in the proposed Project's EIS. Mr. Funakoshi referred to Petitioner's Exhibit 55 and explained that based on his findings, the differences in

the reported amounts was due to common areas and other open spaces that were considered “green space” but not itemized and added to the grand totals.

Mr. Funakoshi described how the Petitioner had considered the urban growth boundaries in its development plans and what mitigation efforts had been taken to reduce the proposed Project’s impact on agricultural operations in Hawaii. Mr. Funakoshi stated that Petitioner was committed to preserving agricultural lands via the IAL process and was considering submitting a petition to the LUC for designating agricultural land outside the Petition Area that it owns as IAL by year’s end. Mr. Funakoshi provided the reasons why his company felt that it had complied with mitigating agricultural impacts.

Mr. Funakoshi stated that the Petitioner concurred with the energy findings of Mr. Nishihara and described his company’s efforts in helping Hawaii become more sustainable with various energy projects.

Mr. Yee requested clarification on whether or not open space requirements were included in the CC&R’s for the Project. Mr. Funakoshi replied that the figures that had been presented were planning estimates and had not been finalized yet. Mr. Yee requested clarification on Petitioner’s plans for requesting approval for IAL designation. Mr. Matsubara stated that Petitioner’s representations would be appropriately included in the proposed Findings of Fact, Conclusions of Law and Decision and Order proposed by Petitioner. Discussion ensued over specific details regarding Petitioner’s IAL efforts. Mr. Funakoshi expressed that the IAL plans were still being studied and he was not at liberty to disclose certain matters for confidentiality reasons or commit to various conditions at the present time. Mr. Funakoshi provided his perspective on Petitioner’s efforts to mitigate the loss of agricultural land base and indicated that IAL was a different issue from this Petition.

Mr. Yee requested clarification on why Petitioner was reluctant to commit to having a 10% photo-voltaic (PV) system requirement on its Project’s residential homes. Mr. Funakoshi expressed the reasons why Petitioner was concerned about building homes with PV systems already installed for the housing market. Discussion ensued over the anticipated problems with offering PV equipped homes in the marketplace.

Mr. Yee requested clarification on Mr. Funakoshi's understanding of various legislative efforts being pursued to protect agricultural lands. Discussion ensued over methods available to protect agricultural lands.

Mr. Yost requested clarification of Petitioner's position on the State's public policy on agricultural zoning. Mr. Funakoshi provided his perception of what the State's public policy on agricultural zoning was and explained his company's involvement with the City and County's Sustainable Communities Plan review cycle and community meetings.

Mr. Yost requested clarification on lands reserved for solar farms and lease terminations being served on farmers currently using those lands. Mr. Funakoshi replied that he was not aware of advisory termination notices being sent to the farmers. Mr. Yost stated that he would provide separate information to the Commission about the terminations.

Mr. Yost requested clarification on how the Petitioner had accounted for the loss of agricultural land in its mitigation efforts. Mr. Funakoshi described the efforts that the Petitioner had exerted in mitigating the loss of agricultural land located in the Petition Area.

Mr. Yost requested clarification on how the costs for PV systems would impact housing prices if the systems were used on a mass scale. Mr. Funakoshi replied that he had not experienced using the systems on a mass scale.

Commissioner Teves requested clarification on how many acres of undeveloped land the Petitioner held on Oahu and if the land was agricultural, what the soil classifications were. Mr. Funakoshi replied that he did not have the numbers available and would provide the figures later.

Commissioner Wong requested clarification on the Petitioner's plan to relocate farmers currently working on Petition Area lands. Mr. Funakoshi represented that Petitioner had made 667 acres available to the relocated farmers. Discussion ensued over the lease terms for the land and if any differences would occur if an agricultural easement existed on the land for the term of the lease.

Commissioner Wong requested clarification on the Petitioner's calculation of energy costs when the PV system was bundled with the mortgage for the home. Discussion ensued on how the costs of installing PV would impact the

price of homes and on the economies and feasibilities of using renewable energy sources for 50% of commercial units as well.

Chair Piltz requested clarification on the location of the proposed solar farms in the Petition Area and if Petitioner was agreeable to offering 10% of its homes with PV systems already installed. Mr. Funakoshi described the sites to be developed and responded that the equipping of 10% of the new homes with PV systems was not desired by the Petitioner.

Commissioner Teves excused himself at 3:52 p.m. and returned at 3:55 p.m.

Mr. Matsubara asked if the lands planned for solar farm use was classified D or E. Mr. Funakoshi acknowledged that they were. Mr. Matsubara inquired what the quality of the replacement agricultural land was. Mr. Funakoshi described the soil conditions of the replacement agricultural land and expressed that PV systems were planned to be offered as an option for single family homes that were going to be sold in the future.

Mr. Matsubara inquired if IAL designation was an overlay over existing agricultural land. Mr. Funakoshi replied that it was and discussion ensued over what could be done to the land if the IAL designation was in place.

Commissioner Wong requested clarification on whether it would be more acceptable to the Petitioner if the PV requirement wording was phrased “use a photo-voltaic system or a system with better than photo-voltaic technology”. Mr. Funakoshi agreed that the suggested wording would address his concerns about being forced to use obsolete technology.

Mr. Yost noted that comments had been made regarding the difficulties of concentrating PV systems in the Petition Area and that these comments did not seem consistent with the Petitioner’s representation that PV systems would be offered to all prospective homeowners. Mr. Funakoshi explained how the Petitioner anticipated the consumer demand for PV ready homes and discussion ensued over how preparing for a larger demand for PV ready homes might make the planning process easier.

Chair Piltz declared the evidentiary portion of the hearing closed and provided the timetable for the Parties to comply with in filing their closing

proposals by close of business on June 21, 2010, all comments or objections to the respective proposals shall be served upon the other parties no later than the close of business on July 7, 2010, and any responses to objections must be filed by close of business on July 19, 2010.

There were no further questions. Commissioner Chock commented that he would like to respond to a remark made by one of the Neighborhood Board's witnesses regarding potential conflicts of interest by Commissioners. Commissioner Chock stated that he had researched the matter and felt that for his personal situation, he had no conflict and could be objective in this Petition as he had been in every other Petition, and could consider and weigh the evidence on the record and make decisions accordingly.

Chair Piltz acknowledged Commissioner Chock's comment.

The hearing was adjourned at 4:02 p.m.