

LAND USE COMMISSION
MEETING MINUTES

April 5, 2012

**Leiopapa A Kamehameha
Conference Room 204
235 South Beretania Street, Honolulu, Hawai`i 96404**

COMMISSIONERS PRESENT: Kyle Chock
Thomas Contrades
Lisa Judge
Jaye Napua Makua
Chad McDonald
Nicholas Teves, Jr.
Normand Lezy

COMMISSIONERS EXCUSED: Ronald Heller
Ernest Matsumura

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Lezy called the meeting to order at 9:08 a.m. (Lunch was provided onsite to facilitate the timely completion of docket business.)

CONTINUED HEARING

A11-793 Castle & Cooke Homes Hawaii Inc. (OAHU)

APPEARANCES

Benjamin Matsubara, Esq., Wyeth Matsubara, Esq. and Curtis Tabata, Esq., represented Castle & Cooke Homes Inc.
Laura Kodama, Castle & Cooke Homes, Inc.
Don Kitaoka, Esq., represented City and County of Honolulu Department of Planning and Permitting (until 11:23 a.m.),
Krishna Jayaram, Esq., represented City and County of Honolulu Department of Planning and Permitting (from 12:07 p.m.)
Mike Watkins, Department of Planning and Permitting
Bryan Yee, Esq., represented State Office of Planning (OP)
Jesse Souki, Director, OP
Richard Poirier represented Intervenor-Mililani/Waipio/Melemanu Neighborhood Board No.25 (NHB#25)
Karen Loomis, Intervenor- NHB#25
Eric Seitz, Esq., and Sarah Devine, Esq., represented Intervenor-The Sierra Club and Intervenor Senator Clayton Hee

Chair Lezy announced that this was a continued hearing on Docket No. A11-793 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.

Chair Lezy updated the record and described the procedures to be followed for the hearing. Chair Lezy stated that public testimony, as posted on the agenda, would be taken at 2 p.m. and that an LUC Executive Session was also scheduled for approximately 1:30 p.m.

Mr. Sietz proposed having his witnesses, William Tam and Dr. Flaschbart and OP's witness Russell Kokubun appear early in the proceedings to allow them to conclude their testimonies and resume their regular activities. Mr. Yee acknowledged that Russell Kokubun was an OP witness for direct and had no objection to the early witness appearances. Chair Lezy agreed to Mr. Seitz's suggestion and asked if the remaining Parties had any objections.

There were no objections to Mr. Seitz's proposal.

There were no further comments or objections to the procedures for the day.

ADMISSION OF EXHIBITS-

Petitioner

(Please refer to LUC Transcript for more details on this matters)
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Mr. Matsubara offered Petitioner's new exhibits "53" and "54" for the record and described how Mr. Seitz had concurred with using the testimonies of his witnesses as exhibits. Mr. Seitz acknowledged that he concurred with Mr. Matsubara's statements.

There were no objections to Petitioner's exhibits.

DPP

Mr. Kitaoka stated that he had no exhibits to offer and confirmed that he rested his case.

OP

Mr. Yee offered new exhibits "18"- "20".
There were no objections to OP's exhibits.

NHB#25

Mr. Poirier and Mr. Seitz stated that they had no further exhibits to offer.

Chair Lezy asked if Mr. Seitz was prepared to proceed with his witnesses. Mr. Seitz acknowledged that he was.

THE SIERRA CLUB/SENATOR HEE

1. William Tam, Deputy Director- Department of Land and Natural Resources for the State Water Commission

Mr. Tam stated that his organization had prepared a report regarding water resources and that he was prepared to summarize the contents of his report.

Mr. Matsubara noted that what Mr. Tam was going to report on was a surprise and beyond what had been agreed upon with Mr. Seitz regarding Mr. Tam's testimony. Mr. Seitz noted the misunderstanding and described what he intended to have Mr. Tam testify about. Chair Lezy determined that he would allow Mr. Tam's testimony and afforded Mr. Matsubara the opportunity to cross-examine the witness and to recall Petitioner's expert witness, Mr. Nance, for rebuttal if necessary.

Mr. Tam described the concerns that his department had in regard to declining sustainable water yield projections, the lack of a Board of Water Supply Central Oahu County Water Development Plan, and future land use and available water resources after the year 2030.

Mr. Matsubara requested clarification on how the decline in the water sustainable yield numbers were being processed by the Water Commission; how the preparation and approval process for the Central Oahu Water Development Plan affected the Petitioner, and on how the projections for future water use pertained to the incremental plan for the proposed project. Mr. Tam described the considerations and methodology used in determining the sustainable yield figures, how the Water Commission utilized the Board of Water Supply Central Oahu

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Development Plan, and explained how the water forecast for the future was a more generalized forecast and not specific to certain incremental timelines of the proposed project.

There were no further questions for Mr. Tam.

2. Dr. Peter Flachsbart- Associate Professor, Department of Urban/Regional Planning, University of Hawaii-Manoa

Dr. Flachsbart described how the proposed project failed to conform to various “Smart Growth” principles and what his concerns were about the Petition.

Mr. Matsubara requested clarification on Dr. Flachsbart’s perception and assessment of “Smart Growth” principle applications and how they applied to the proposed project and how alternative urban development could occur. Dr. Flachsbart provided details of why he felt that the proposed project did not conform to “Smart Growth” principles and why he maintained his position about the Petition.

Mr. Kitaoka requested clarification on Dr. Flachsbart’s position regarding “no further development” in Central Oahu. Dr. Flachsbart stated that he meant that he would not recommend further development in Central Oahu until the existing transportation capacity in the region was increased to accommodate the current and projected growth for the area and described why he opposed further development till all his various criteria for “Smart Growth” had been met.

Mr. Yee requested clarification on how “Smart Growth” principles “1-5”, and “9” and “10” were deemed satisfied and what caveats remained to be addressed. Dr. Flachsbart provided his perception of why he felt certain “Smart Growth” principles had been met and what still needed to be addressed.

Mr. Poirier requested clarification on whether peak hour travel times cited in Dr. Flachsbart’s testimony had been updated and whether travel conditions had continued to deteriorate. Dr. Flachsbart responded that his testimony had not been updated and provided his personal opinion on how traffic conditions had not improved, and why he had emphasized the need for state and county concurrency on traffic infrastructure issues and maintaining satisfactory levels of service for traffic.

Chair Lezy asked where Dr. Flachsbart felt development would be appropriate if the proposed rail system did not get built and whether driving development to the urban core could force or limit housing choices. Dr. Flachsbart responded that there were two choices- 1) consider more development in the town area, or 2) to manage the existing demand using “travel demand management” and described how both concepts could be used to handle residential development and traffic; and how urban core development could add to housing choices due to changing demographics and economic conditions.

Commissioner Judge requested clarification on traffic congestion and the need for added capacity; and pending legislation that might help provide for adding capacity. Dr. Flachsbart described three paradigms of transportation planning that needed to be considered for residential development- increasing capacity, improving the efficiency of using existing traffic systems and improving access; and noted that there was Federal legislation under consideration by Congress to provide for additional capacity; and provided his understanding of what State and County improvements were being planned. Dr. Flachsbart expressed that although there were plans for adding capacity, he was skeptical about the availability of funding for the needed projects.

There were no further questions for Dr. Flachsbart.

OP WITNESS

1. Russell Kokubun- Chair, Department of Agriculture

Mr. Kokubun stated that his department supported the Petition with conditions and described the concerns, considerations and methodology of how his organization developed its position

Petitioner and DPP had no questions.

Mr. Poirier requested clarification on how City and County Act 183- a resolution regarding important agricultural lands, would impact the DOA's position on the Petition. Mr. Kokubun responded that he had not had time to review the act and described how he perceived a resolution affected government decision making as opposed to an ordinance for the different counties of Hawaii.

Mr. Seitz requested clarification on whether Mr. Kokubun was expressing his department's position or his own. Mr. Kokubun responded that he was representing his department's position and described the quality of lands in the Petition Area and how the County urban growth boundary needed to be observed; and shared his perception of recently passed state legislation (HB2703) regarding food self-sufficiency and its impact on existing agricultural operations and the funding of their supporting infrastructures.

Mr. Seitz requested clarification on Hawaii's 2050 Sustainability Plan and whether the concerns and issues identified by the plan were being adequately met. Mr. Kokubun expressed how his department assessed sustainability concerns for the State.

Mr. Yee requested clarification on replacement lands that would be involved with the Petition. Mr. Kokubun shared his understanding of where and how much land would be used to replace the farm lands contained in the Petition Area.

Commissioner Makua requested additional clarification on how the DOA determined its support for a Petition. Mr. Kokubun described how his staff collected and assessed the information to determine whether or not to support a Petition and how various costs could be mitigated.

There were no further questions for Mr. Kokubun.

The Commission went into recess at 10:37 a.m. and reconvened at 10:52 a.m.

Discussion over the out of order appearance of Senator Hee occurred. Mr. Matsubara had no objection to Senator Hee appearing out of order. Chair Lezy allowed Senator Hee's appearance as discussed.

THE SIERRA CLUB/SENATOR HEE

2. Senator Hee

Senator Hee stated his concerns about Hawaii's future and why he was interested in agriculture/food security; and why he was intervening in the docket; and described how he had interviewed some of the current Land Use Commissioner during their confirmation processes.

Commissioner Contrades requested clarification on why his responses to questions asked during his confirmation hearing were being portrayed in a manner different from his recollection of events of the hearings. Senator Hee referred to his notes and expressed that the comments were documented as part of the confirmation committee's records. Commissioner Contrades disputed appearing and making statements before the confirmation committee and discussion ensued over what had actually occurred during the confirmation proceedings.

Commissioner Teves requested clarification on Senator Hee's position on OP's appearance of not supporting the Constitution and the LUC rules. Senator Hee described how he perceived the differences of opinions between his position and OP's; and what experiences he had during his terms of office; and the difficulties he had with different pieces of legislation and the philosophies he followed for guidance.

There were no further questions for Senator Hee.

The Commission went on recess at 11:23 a.m. and reconvened at 12:07 p.m.

Chair Lezy asked if Mr. Seitz had rested his case. Mr. Seitz replied that he would be presenting the prior written testimony of Hector Valenzuela as an exhibit as agreed upon by the Parties and would rest his case subject to submitting this exhibit. Chair Lezy confirmed that all Parties were in agreement with Mr. Seitz's proposal. There were no objections.

PETITIONER'S WITNESS

(Please refer to LUC Transcript for more details on this matters)

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1. Peter Pascua-Traffic Engineering and TIAR Preparation Expert
Mr. Pascua described traffic deficiencies in the Petition Area and the work that was done by his company to assess the potential impacts and possible mitigation measures required for the proposed project by the DOT between 2007 and 2012.

Questions

DPP

Mr. Jayaram had no questions

OP

Mr. Yee requested clarification on who would pay for certain traffic improvements noted in various exhibits. Mr. Pascua described what portions of the improvements that the Petitioner would be responsible for associated with the proposed project and how closely his company had been consulting with the DOT to provide a revised TIAR that would satisfy DOT and DPP zoning requirements for the proposed project.

NHB#25

Mr. Poirier requested clarification on the proposed RI/RO intersection access off of Kamehameha Highway and whether Mr. Pascua had been involved in “fair share” negotiations for traffic improvements to mitigate “downstream” congestion beyond the Petition Area. Mr. Pascua described how the RI/RO intersection was designed to function in handling traffic for the area and stated that it was included in the Petition Area’s current TIAR; and provided his understanding of why DOT would later remove the Kamehameha Highway access point upon the completion of the Pineapple Road junction and described how subsequent studies could assess conditions and provide information to alter or reconsider current plans. Mr. Pascua also stated that he had not been involved in “fair share” discussions regarding the proposed project and described what his portion of the traffic studies encompassed.

The Sierra Club/Senator Hee

Mr. Seitz requested clarification on the number of vehicles that the proposed project would add to current traffic conditions and what their impact would be when they reach the H1/H2 merge. Mr. Pascua estimated that about 2000 vehicles would be added and distributed throughout the region and described how the H1/H2 merge would be impacted by the additional vehicles. Mr. Pascua also described what the current levels of service were for the H1/H2 merge and stated that he was not familiar with any negotiations being conducted to address the H1/H2 traffic conditions; and provided his understanding of what Petitioner would be financially responsible for regarding various traffic improvements for the area and for completing TIARs required by DOT for the proposed project.

Redirect

Mr. Matsubara requested clarification on what Mr. Pascua had been asked to study regarding the H1/H2 merge and the levels of study and entitlements that were involved for project zoning requirements. Mr. Pascua responded that the H1/H2 merge was considered to be a regional traffic issue requiring regional traffic improvements and described how such issues were resolved by DOT; and described what was required in subsequent TIARs when the proposed project reached the zoning and sub-division approval stages of development.

OP WITNESSES

2. Alvin Takeshita- DOT Highways Division Administrator

Mr. Takeshita described how his organization had assessed the proposed project's impact on the existing transportation network and determined what improvements needed to be made to accommodate the anticipated traffic demands, what results were expected from implementing the DOT improvements and how the implementation process was planned to accommodate the phasing and timing of the proposed project's development and to satisfy various agency approval requirements. Mr. Takeshita also described the various memorandums of understanding/agreement that were necessary during each level or phase of the proposed project and what would occur at each threshold during the approval process.

Questions

Petitioner

Mr. Matsubara requested clarification on what improvements were planned to relieve traffic congestion for the area. Mr. Takeshita further described how the H1/H2 merge was going to be studied and how TIARs and memorandum of agreements were used when accomplishing various phases of construction.

DPP

Mr. Jayaram had no questions.

NHB#25

Mr. Poirier requested clarification on how "pro-rata" share negotiations were going and what provisions were being made to allow Central Oahu residents to benefit from the proposed rail system. Mr. Takeshita responded that his staff was currently working on determining what the appropriate "pro-rata" share would be for the major stakeholders in the region and described how the State needed to work with the County on plans for future developments like the proposed rail system.

The Sierra Club/Senator Hee

Mr. Sietz requested clarification on future plans that the DOT was involved in and on how enforceable commitments made by Petitioner in a memorandum of understanding would be. Mr. Takeshita described various projects that were proposed, underway, or in the design/planning stages and the amount of funding available from different sources to implement them; and stated that he was not aware of any violations of memorandums of understanding.

Redirect

Mr. Yee stated that he had no redirect.

Commissioner Contrades excused himself at 1:14 p.m. and returned at 1:18p.m.

Commissioner questions

Commissioner Judge requested clarification on the rationale involved with the installation and removal of the RI/RO access on Kamehameha Highway after the completion of the Pineapple Junction interchange and on what improvements were planned for the H1/H2 merge. Mr. Takeshita described how his department evaluated access points to State highways and what alternatives were available to the Petitioner to have the DOT reconsider its current plans in the future; and how the regional impacts needed to be examined to determine appropriate “pro rata” traffic mitigation contribution amounts. Commissioner Judge also inquired whether the \$760 million worth of highway improvements was totally funded and how adding additional lanes to the Punahou to Middle Street corridor would be done. Mr. Takeshita described how the funding was allocated but not received and stated that a press release regarding the lane additions would soon be forthcoming.

Commissioner McDonald requested clarification on how traffic impacts were determined for the proposed projects in the region. Mr. Takeshita described how the methodology differed for different projects in determining “fair share pro rata” amounts.

Commissioner Makua requested clarification on how regional impacts and improvements to mitigate them were determined and whether they were sufficient to meet projections. Mr. Takeshita described how defined general plans were developed for each island and how the DOT relied upon them in decision making.

Commissioner Teves requested clarification on how and where the Middle Street to Punahou lane additions would be installed. Mr. Takeshita provided additional details of where the added lanes would start and end.

Mr. Yee stated that he wished have an opportunity to clarify the issue that Commissioner Judge had raised about the Pineapple Junction interchange access

situation when Mr. Matsubara had concluded. Chair Lezy acknowledged Mr. Yee's request.

Mr. Matsubara requested additional clarification regarding the H1/H2 merge and its associated regional impact and the methodology used to determine the "fair share pro rata" Petitioner amounts. Mr. Takeshita replied that a different methodology was uniquely applied to each developer to determine the specific "pro rata" share that would be assessed to them.

Mr. Yee requested clarification on whether there would be surface street access in the Petition Area after the proposed Pineapple Junction was completed. Mr. Takeshita described the access street conditions he expected would occur in the Petition Area.

Commissioner Judge requested further clarification on whether emergency vehicle access could be accommodated in the Petition Area if the RI/RO intersection were closed after the completion of the Pineapple Junction and where other various access points that had been mentioned were located. Mr. Yee referred to exhibit maps of the Petition Area to help clarify the relative locations of the access points for Commissioner Judge.

Commissioner Teves excused himself at 1:25 p.m. and returned at 1:27 p.m.

Commissioner McDonald requested clarification on who would identify needed traffic improvements. Mr. Takeshita described how project TIARs would disclose what improvements were needed.

There were no further questions for Mr. Takeshita.

3. Jesse Souki- Director, State Office of Planning

Mr. Souki stated he wished to first address issues that had come up earlier in the proceedings about OP following the State Constitution and described how his department followed the Constitution and the State statutes in fulfilling its obligations; and that OP supported the proposed project with conditions and described the considerations and details of the proposed conditions for the Petition.

Questions

Petitioner, DPP, and NHB#25 had no questions.

The Sierra Club/Senator Hee

Mr. Seitz requested clarification on why the current OP position differed from the position taken in an earlier petition on the same Petition Area and how OP might review the docket under different legal circumstances. Mr. Souki

described the criteria used for the current docket and stated that he did not know whether the same criteria had been used in the earlier docket on the same Petition Area and expressed how OP would abide by and react to different legal requirements. Mr. Seitz also requested clarification on how OP assessed the traffic impacts that would be caused by several developments adding their projected traffic to existing conditions. Mr. Souki responded that the respective developments would have to mitigate the impacts that were attributed to them and contribute their “pro rata” shares that were currently being negotiated.

Mr. Seitz requested clarification on the infrastructure development for replacement agricultural lands as mentioned in Chair Kokubun’s earlier testimony and on the proposed medical facility for the Petition Area. Mr. Souki replied that he was not privy to the discussions on replacement agricultural land and provided his understanding of how the replacement agricultural lands would have crops to replace current crops being raised in the Petition Area and could not provide further details about the proposed medical facility.

Executive Officer Davidson excused himself at 1:42 p.m. and returned at 1:46 p.m.

Mr. Yee requested clarification on whether there were sufficient educational facilities available in the region for the proposed project if the proposed Waiawa project portion were not developed. Mr. Souki shared his understanding of how the regional educational facilities could handle community demands with mitigation.

Commissioner Teves clarified that his earlier remarks about OP were to better understand OP’s role in the review process and asked who made the decision to support or not support a Petition. Mr. Souki described how his department reviewed petitions with different agencies to determine whether or not they satisfied the different agencies’ criteria to advance in the approval process and gain OP support. Commissioner Teves also requested clarification on how many Petitions for district boundary amendment OP had not supported in the last six years. Mr. Yee commented on his recollection of OP’s historical record regarding non-support of petitions before the LUC. Discussion ensued as to what cases were similar to the current docket.

There were no further questions for Mr. Souki.

Chair Lezy asked if Mr. Yee rested his case. Mr. Yee confirmed that he rested.

INTERVENOR- NHB#25

Chair Lezy asked if Mr. Poirier was ready to proceed. Mr. Poirier replied that he was not. Chair Lezy noted that LUC staff had advised Mr. Poirier to be prepared to make his presentation at this meeting and commented that it was his expectation that Mr. Poirier would be ready since he was the sole witness and offered Mr. Poirier the

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opportunity to provide his testimony now to avoid delaying the proceedings or he would find that NHB#25 would have rested their case. Discussion ensued on the notification that had been provided to Mr. Poirier and how LUC staff had made him aware of the gravity of the situation.

Mr. Seitz stated that he objected and argued how difficult it had been to meet the LUC's imposed deadlines. Chair Lezy acknowledged Mr. Seitz remarks and shared how the LUC expected case presentations to proceed; and noted that it was his understanding that Mr. Poirier did not have his PowerPoint presentation ready. Mr. Poirier argued that he could not make his presentation without his PowerPoint presentation. Chair Lezy again offered Mr. Poirier the opportunity to make his presentation, understanding that it would not be supported by a PowerPoint display. Mr. Poirier declined making any presentation and stated that Chair Lezy "do what you have to do". Chair Lezy found that NHB#25 rested its case.

The Commission went into recess at 2:15 p.m. and reconvened at 2:22 p.m.

PUBLIC WITNESSES

1. Michael Dow

Mr. Dow stated that he represented the Kipapa Water System and described the concerns that his company had about the proposed project and what types of conditions it would like to have imposed within the final decision and order to prevent contamination of their water resources and control future water well drillings that might affect their operations.

There were no questions for Mr. Dow.

2. Kika Bukowski- Building and Construction Trades Council

Mr. Bukowski stated that he represented the Building Construction and Trades Council and described why his organization supported the Petition and what its perception of Important Agricultural Lands legislation was; and how he disagreed with Senator Hee's testimony.

There were no questions for Mr. Bukowski.

There were no other public witnesses.

Commissioner Judge excused herself at 2:30 p.m. and returned at 2:32 p.m.

Chair Lezy declared the evidentiary portion of this proceeding to have been completed, subject to the receipt of various follow-up reports and/or answers that may have been requested during the course of this hearing and directed that each party file its proposal with the Commission and serve copies on the other parties no later than the close of business on May 2, 2012; and all comments or objections to the parties' respective proposals should be filed with the Commission and served upon the other parties no later than the close of business on May 14, 2012. Any responses to the

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objections must be filed with the Commission and service on the other parties no later than the close of business on May 21, 2012; and prevailed upon the parties to consult with staff early in the process to ensure that technical and non-substantive formatting protocols observed by the Commission are adhered to.

Mr. Yee requested that OP not be required to submit a separate decision and order and stated that OP would cooperate and work with all parties in the Findings of Fact, and waived the right to file a final response and are requesting the right to file a response to the initial decision and orders filed by each Party. Chair Lezy asked if there were any objections to Mr. Yee's request. There were no objections. Chair Lezy stated that he would suspend the Commission's rule on filing for good cause.

There were no further questions or comments and Chair Lezy thanked the Parties for their efforts.

Chair Lezy entertained a motion for Executive Session. Commissioner McDonald moved for an Executive Session. Commissioner Teves seconded the motion. By a voice vote of 7-0, the Commission exited to enter into Executive Session.

The Commission reconvened at 3:07 and Chair Lezy adjourned the meeting at that time.