

LAND USE COMMISSION
SITE VISIT

**Site Visit for DR13-50 Trustees of the Estate of Bernice Pauahi Bishop
dba Kamehameha Schools**

January 8, 2014

9:30 a.m.

Briefing for Site Visit at Kauai County Courthouse Parking Area

Lihue, Kaua`i, Hawai`i

With Site Visit to Follow

COMMISSIONERS PRESENT: Chad McDonald
Ernest Matsumura
Lance Inouye
Carol Torigoe
Sheldon Biga
Dennis Esaki
Kyle Chock
Ronald Heller
Aaron Mahi

COMMISSIONERS EXCUSED:

STAFF PRESENT: Daniel Orodener, Executive Officer
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

Executive Officer Orodener announced that this was a site visit for Docket No. DR13-50 Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools. There were no members of the public and no questions regarding the protocol to be observed during the site visit.

Mr. Tom Whitten, Planning Consultant for the Petitioner, described the route of travel and the stops that were included in the site visit and the group left Lihue for the Petition Area.

Mr. William Meheula, Petitioner's Representative, provided briefings to the Commission and OP staff at the various stops that the site visit encompassed; and the assembled group viewed the landscape vistas to assess the Petition Area.

The site visit commenced at 9:34 a.m. and ended at 12:58 p.m.

LAND USE COMMISSION
MEETING MINUTES

January 8, 2014

1:30 p.m.

Kauai State Office Bldg., Conference Rooms A, B, C-2nd Floor
3060 Eiwa Street
Lihue, Kaua`i, Hawai`i

COMMISSIONERS PRESENT: Chad McDonald
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Lance Inouye
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Kyle Chock
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COMMISSIONERS EXCUSED:

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

AUDIO TECHNICIAN: Walter Mensching (recorded proceeding for Court Reporter Holly Hackett who was unable to attend the meeting due to a schedule conflict)

CALL TO ORDER

Chair Heller called the meeting to order at 1:30 p.m.

APPROVAL OF MINUTES

Commissioner Biga moved to approve the November 22, 2013 minutes. Commissioner Torigoe seconded the motion. The minutes were unanimously approved by voice vote (9-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule for the calendar year 2014 was distributed in the handout material for the Commissioners.
- The January 23, 2014 meeting will be on Oahu and is planned for a status/update report on DR08-36 Ko Olina Boat Ramp, Legislative Report, and Adoption of the Form of the Order for DR13-50 if granted.
- February and March 2014 meeting dates are currently open.
- If there were conflicts or problems with the scheduling, Commissioners should advise LUC staff.

Commissioner Esaki requested clarification on agenda matters that would be included for the January 23, 2014 meeting and inquired if it was premature to include the adoption of the form of the order for DR13-50. Executive Officer Orodener clarified that the adoption of the form of the order would be included whether the Commission granted or denied the approval to the docket at this hearing.

There were no further questions or comments regarding the tentative schedule.

Chair Heller welcomed and introduced Commissioner Mahi to the audience and commenced the hearing on DR13-50.

ACTION

DR13-50 Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools

Chair Heller announced that this was a hearing and action meeting on DR13-50 Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools' Petition for Declaratory Order to Designate Important Agricultural Lands for approximately 190 acres at Hanalei, Kaua'i; TMK5-6-003:001 (por.), 5-6-004:023 (por.), 5-6-004:024, 5-6-04:025 (por.), 5-7-002:001 (por.), and 5-7-003:001 (por.)

APPEARANCES

William Meheula, Esq., represented Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools (“KSBE”)

Michael Dahilig, Director, Kaua`i County Planning Department (“KCPD”)

Maunakea Trask, Esq. Deputy Corporation Counsel, represented KCPD

Bryan Yee, Esq., represented State Office of Planning (“OP”)

Rodney Funakoshi, OP

PERSONS REQUESTED TO PROVIDE INFORMATION TO THE COMMISSION
DURING THE HEARING:

Tom Whitten, PBR Hawaii- Planner for Petitioner KSBE

Darryl Hamamura- KSBE Representative

Leanora Kai`aokamālie - Planner, KCPD

Chair Heller updated the record and asked if Petitioner was willing to abide by the Commission’s policy on reimbursement of hearing expenses. Mr. Meheula replied that Petitioner would comply

Chair Heller described the procedures to be followed for the day’s hearing and asked if there were any questions or objections to them. There were none.

Chair Heller disclosed that his law firm’s practice involved matters dealing with the County of Kauai and KSBE and was offering his disclosure to inform the Parties and allow for any comments or objections regarding his continued participation in the docket’s proceedings. Commissioners McDonald, Torigoe, Inouye and Mahi also disclosed that they had business relationships with KSBE. There were no comments or objections to Chair Heller, Commissioners McDonald, Torigoe, Inouye and Mahi’s disclosures and continued participation in the proceedings.

Chair Heller declared that the documents submitted by the Department of Agriculture, Office of Planning, Kaua`i County and Petitioner’s response would become part of the record. Mr. Yee asked if the letter to OP from the Commission on Water Resource Management (CWRM) would also be made a part of the record. Chair Heller acknowledged that it would be. There were no further questions or objections regarding what documents would be included in the record, and Public Witnesses were called to testify.

PUBLIC WITNESSES

None

PRESENTATIONS

Petitioner

Mr. Meheula provided a summary of the Petition and Petitioner's development and why the Petitioner was seeking an IAL designation; and argued that the Petition Area qualified for and met IAL designation criteria and why the Commission should grant the Petition. Mr. Meheula provided a brief description of how the 8 criteria for IAL designation had been met. Mr. Meheula recalled the features that had been highlighted at the various site visit stops and described how they factored into the IAL Petition.

Mr. Meheula also described how the Petitioner had discussed the CWRM letter of findings with OP; and had addressed the problem issues associated with the after-the-fact Stream Diversion Works Permit for Lumahai Stream that was needed and still required attention; and stated the Petitioner had agreed and was making a commitment for the record, to obtain an after-the-fact stream diversion work permit for the Lumahai Stream portion of the Petition Area to satisfy CWRM. Mr. Meheula also described how Petitioner could benefit from the various IAL incentives provided for by State of Hawaii rules and statutes.

Chair Heller asked if the Commissioners had any questions for the Petitioner.

Commissioner Esaki requested clarification on why OP supported the Petition despite CWRM's correspondence and OP's recommendation that Petitioner obtain an after-the-fact Lumahai stream diversion work permit be filed with the Commission prior to designating the proposed Lumahai parcels as IAL. Mr. Yee described how OP had assessed CWRM's report and arrived at its decision to support the IAL designation despite CWRM's recommendation for Petitioner to obtain a stream diversion permit and in-stream flow amendment prior to seeking its IAL designation since obtaining the recommended permits did not seem to be difficult and a reason to delay its application.

Commissioner Esaki requested clarification on the use of surface water; provisions for dealing with area flooding; and the accuracy of the topographic map contour lines and scale intervals and elevations for the Waipa land area. Mr. Meheula described how Petitioner usually diverted stream water and utilized the selected proposed IAL land area for agriculture. Mr. Whitten stated that the contour lines of the map had been determined by GIS data and described how the steeper portions of the Waipa land area were being currently farmed. Mr. Hamamura described how the contour line scale measurements were accurate to within 100'-150'.

Commissioner McDonald requested further clarification on why OP supported the Petition despite CWRM's finding about the need for an after-the-fact permit and in-stream flow amendment and why OP did not make it a condition for granting this petition. Mr. Yee described the factors that OP considered when evaluating the CWRM letter and explained why OP did not consider obtaining an after-the-fact permit to be a problem or cause for a condition to granting the petition for IAL designations in declaratory rulings.

Commissioner McDonald asked whether OP had required specific conditions in other past IAL designations. Mr. Yee recalled how the waiver of the 15% requirement had been a condition that OP had requested for some of the Petitions, and how a residential condition for DR12-49 Kunia Loa Ridge Farmlands had been included.

Commissioner McDonald requested clarification on the County's IAL ratings threshold levels and how it had been applied to evaluating the Petition Area. Mr. Dahilig described how the County had engaged and formulated its IAL study rating system and developed the IAL criteria levels for determining IAL designations for land areas.

Commissioner Inouye requested clarification on the IAL rating scale scoring. Mr. Dahilig provided a general overview of the scoring system and deferred to his planner, Ms. Kai`aokamālie, to provide details on the criteria development process for the IAL study and how the scoring had been weighted to accurately evaluate whether or not IAL requirements were being met. Discussion ensued over the variables, formulas, weighting and other considerations involved with how Kaua'i County's rating system modeling occurred. Commissioner Inouye requested that information regarding the details of the County's rating system be provided to the Commission for review. Mr. Dahilig obliged the Commission and submitted informational materials.

Commissioner Inouye requested clarification on the 3 approved Waipa stream diversions; what the current and future planned uses might be for the other Waipa landowners' parcels; and what infrastructure improvement plans were for the Petition Area. Mr. Meheula described the 3 Waipa stream diversion points and explained that at the Lumahai site, the Haradas were the only stream users and needed to apply for permits. Mr. Meheula stated that he did not know what the other landowners in and around the Petition Area intended to do with their properties and described the proposed facilities to support the agricultural activities that were to be built.

Chair Heller requested clarification on the time frame issue involved with resolving the CWRM's findings regarding the application for an after-the-fact permit and whether its timing within the IAL designation process was a significant issue. Mr. Meheula described the 90 day time limit that was part of the permit application process discussed with CWRM and how Petitioner would proceed in seeking it; and why the Petitioner preferred to proceed with seeking its IAL designation now rather than delay it any further.

Chair Heller asked if Petitioner would agree that it would submit an application to CWRM within ninety days of Commission action. Mr. Meheula conferred with his client and stated that Petitioner would commit to submitting it within ninety days, but would reserve the right to ask the CWRM for more time; and if CWRM granted additional time, it would allow for further resources to be applied ensuring the accuracy of the data being submitted with the application.

Commissioner Matsumura requested clarification on what legal administrative rules, regulations and laws were being applied on activities/procedures for the Petition Area. Mr. Meheula replied that Petitioner would adhere to all the legal requirements that were imposed upon it.

Commissioner Biga requested clarification on how the gas-powered water pumps were being used in the fields. Mr. Meheula responded that the current practice would continue unless otherwise directed by CWRM.

The Commissioners had no further questions or comments for Mr. Meheula.

Chair Heller asked if KCPD wished to make any comments

KCPD

Mr. Trask stated that KCPD would stand on its stipulation and on the letter that had been submitted to the LUC earlier. There were no questions for Mr. Trask.

OP

Mr. Yee provided a brief overview of his understanding of the IAL process and how it related to the petition at hand and stated that DOA would rest on its testimony.

Mr. Funakoshi, OP Land Use Division, presented OP's position on the Petition and stated that OP supported the Petition and described the various reasons why. Mr. Funakoshi shared how OP agreed that all the criteria for designating IAL lands had

been met and that the desired IAL acreage amount was far below what KSBE's total land holdings were; and that the Petition should be granted in its entirety. Mr. Funakoshi also addressed the CWRM findings of the need for an after-the-fact permit and for an amendment to the interim in-stream flow standards and shared why OP felt that the Petition should be granted despite these requirements due to the minimal amounts of water currently being diverted and the existing stream flow volumes..

DECISION-MAKING

Chair Heller asked if the Commission had any questions for OP.

Commissioner Inouye requested clarification on whether the 50% IAL requirement applied to the County or State. Mr. Yee replied that he was not certain and would have to review the statute more closely.

There were no further questions.

Commissioner Esaki moved to grant the Petition for declaratory order to designate Important Agricultural Land (IAL) for approximately 190 acres at Hanalei, Kaua'i; TMK5-6-003:001 (por.), 5-6-004:023 (por.), 5-6-004:024, 5-6-04:025 (por.), 5-7-002:001 (por.), and 5-7-003:001 (por.). Commissioner Chock seconded the motion.

There was no discussion regarding the motion

The Commission voted unanimously to grant the Petition. (The Motion passed 9-0.)

Chair Heller asked if there were any questions, comments or concerns regarding action on DR13-50. There were none.

EXECUTIVE SESSION

Commissioner Esaki moved and Commissioner Biga seconded the motion to enter into Executive Session to consult with counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to the Supreme Court's decision on Koa Ridge (SCWC-11-0000625) and other legal matters. By a voice vote, the Commission unanimously entered into Executive Session at 2:42 p.m. and reconvened at 3:15 p.m.

There being no further business, the meeting was adjourned by Chair Heller at 3:15 p.m.