

LAND USE COMMISSION
MEETING MINUTES

October 22, 2015 – 9:30 a.m.
Airport Conference Center
400 Rodgers Blvd. Suite 700, Room #3
(In Hawaiian Airlines Terminal Building)
Honolulu, HI 96819

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Linda Estes
Kent Hiranaga
Aaron Mahi
Chad McDonald
Jonathan Scheuer
Arnold Wong

COMMISSIONERS EXCUSED: There are currently 8 Commissioners seated out of 9 positions.

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

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 9:33 a.m.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the October 16, 2015 minutes. There were none. Commissioner Mahi moved to approve the minutes. Commissioner Estes seconded the motion. The minutes were unanimously approved by a voice vote (8-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- On October 23, 2015, the Commission will hear Docket No. A06-771 D.R. Horton-Friends of Makakilo Motion for Order to Show Cause.
- November 4, 2015 is planned for a continued hearing on Docket No. A89-643 McClean Honokohau Properties in Kona. (The November 4th meeting is being held in remote locales and will require a “working lunch” to complete LUC business within the allotted time frames. The Commission will provide meals for Commissioners and staff.)
- The November 18-19, 2015 meeting will be on Maui to consider acceptance of the FEIS on A10-786 Olowalu LLC and to receive a status report on A94-706 Kaonoulu Ranch.
- The December 9-10, 2015 meeting will be on Maui for Commissioner training on the 9th and a site visit for the Ma`alaea Plantation 201H project (Docket No. To be assigned) on the 10th.
- The January and February, 2016 dates are reserved for hearing the Ma`alaea Plantation 201H project on Maui
- Any questions or conflicts, please contact LUC staff.

Chair Aczon reaffirmed that the November 4th meeting would be in remote locale and would require “working lunch” to conclude LUC business in the time allotted.

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

SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (WAIMANĀLO GULCH SANITARY LANDFILL), (O`ahu)

APPEARANCES

Dana Viola, Esq., represented City and County of Honolulu, Department of Environmental Services (ENV)

Calvert Chipchase, Esq., represented Intervenors-the Ko Olina Community Association (KOCA) and Senator Maile Shimabukuro

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

Rodney Funakoshi, OP

(Neither Intervenor Colleen Hanabusa nor Richard Wurdeman, Esq., representative for Intervenor Colleen Hanabusa, were present)

Chair Aczon updated the record, described the procedures to be followed for the hearing, and reminded the audience that the Commission would not be considering the merits of the Special Use Permit No. 2008/SUP-2 petition; but rather, the Commission was interested in learning what the current state of the proceedings related to this Special Permit pending before the Honolulu Planning Commission was.

Chair Aczon stated that Public Testimony in regards to this report would be heard after the Applicant's presentation, and the completion of questioning by the intervenors, OP and the Commission. After the completion of the public testimony, the Intervenors and OP would be given an opportunity to comment and the Commission would ask any final questions.

There were no objections, comments or questions regarding the procedures.

PRESENTATIONS

Petitioner

Ms. Viola described the activities that the ENV had been involved in since it last appeared before the Commission and provided additional details on the status of the landfill and how the City was hoping to achieve its objectives in diversion of its waste streams in two more months and then file a stipulated agreement with the Planning Commission to memorialize matters including a provision that ENV and KOCA would continue settlement negotiations and present a final proposed stipulated findings of fact and conclusions of law to the Planning Commission within 18 months of the filing of the first stipulation. Ms. Viola also offered to continue providing updates on the negotiation process every three months to the Commission if requested.

Mr. Chipchase echoed Ms. Viola's description of the status of negotiations and commented that the frequency of the reporting dates could be adjusted to be more in line with when meaningful progress on the matter occurred.

Mr. Lewallen had no questions.

Mr. Yee requested clarification on the status of Intervenor Hanabusa but no one was able to respond to his question.

Commissioner Questions

Commissioner Wong asked what the status of the Special Use Permit (SUP) for the landfill was. Ms. Viola responded that in ENV's opinion it was valid and current and provided a brief historical background of how it had been remanded back to the Planning Commission. Commissioner Wong sought additional details regarding

the Supreme Court's action in this matter and when the Planning Commission was expected to take it up. Ms. Viola described the scenarios that she thought could occur and why it might take 18 months to negotiate a settlement agreement with KOCA.

Commissioner Scheuer requested further clarification on the waste diversion efforts described in the presentation and why 18 additional months were necessary. Ms. Viola described how ENV was still working on the waste processing issue and how the residual ash would be diverted, how alternative disposal methods were being studied and what would ultimately go to the landfill. Ms. Viola deferred to Mr. Chipchase to provide additional details on the negotiations between the Parties and what kinds of issues would be addressed in the stipulated order.

Commissioner Wong requested clarification on how the H power plant was being used to process solid waste and how that use impacted the lifespan of the landfill and search for alternative landfill sites. Ms. Viola described how the 3 boilers were contributing to extending the current landfill's lifespan and how the search for alternative landfill sites had progressed from searching for locations to assessing the viability of 11 alternative sites that had been proposed.

Commissioner Scheuer requested clarification on the status of Intervenor Hanabusa's participation during this process and commented that she needed to be involved with the stipulation. Mr. Chipchase stated that he had not heard from Mr. Wurdeman and would reach out to him on that matter.

There were no further Commissioner questions and Chair Aczon called for Public Witnesses.

PUBLIC WITNESSES:

None

There were no public witnesses.

Chair Aczon asked if there were any further comments or questions. There were none.

Chair Aczon stated that no action would be taken at this time and that the Commission would continue to monitor the Applicant's reports.

COMMISSIONER QUESTIONS

Commissioner McDonald requested clarification on whether the requirements for filing reports were still necessary in light of the information provided by Ms. Viola and Mr. Chipchase.

Discussion ensued on whether the 2014 Decision and Order requirements were still necessary. Executive Officer Orodenker stated that the Commission could choose to make an adjustment to the reporting schedule. Ms. Viola stated that it was possible that the information contained in the reports could be duplicative if no progress had been made during the reporting period. Commissioner Scheuer commented that with the timeline provided by ENV, action could be taken after the next 2 month update if necessary. Mr. Chipchase stated that he had no objections to any proposed reporting schedule changes. Commissioner Wong pondered whether taking no action and waiting for matters to sort out was feasible. Ms. Viola replied that she had no objection to retaining the current reporting schedule.

There was no further discussion. Chair Aczon excused the Parties and declared a recess at 10:07 a.m. and reconvened the meeting at 10:10 a.m.

EXECUTIVE SESSION

Commissioner Wong moved and Commissioner McDonald seconded the Motion to enter into Executive Session to consult with the board's attorney on questions and issues pertaining to the board's duties, privileges, immunities and liabilities.

By a unanimous voice vote (8-0), the Commission elected to enter into Executive Session at 10:11 a.m.

Commissioner Cabral exited the meeting at 11:02 a.m. and did not return.
(7 Commissioners remained in Executive Session.)

The Commissioners exited Executive Session at 11:05 a.m. and reconvened the hearing immediately thereafter.

There being no further action for the day, Chair Aczon declared that the Commission would recess till 08:30 a.m. October 23, 2015.

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COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 8:59 a.m. (The meeting was delayed awaiting the arrival of Mr. Seitz.) Mr. Seitz provided his explanation for arriving late. Chair Aczon noted his comments.

HEARING AND ACTION

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

Chair Aczon stated that this was a hearing and action meeting regarding **A06-771 D.R. HORTON-SCHULER HOMES, LLC**, A Petition to Amend The Agricultural

Land Use District Boundaries Into The Urban Land Use District For Approximately 1,525.516 Acres Of Land at Honouliuli, Ewa District, Oahu, Hawaii, Tax Map Key Nos.: (1) 9-1-17:4 (por.), 059 and 072; (1)9-1-18: 001 and 004 ; and a Motion for Order to Show Cause filed July 24, 2015 by Friends of Makakilo

APPEARANCES

Dr. Kioni Dudley-Friends of Makakilo, ("FOM"), Intervenor- Movant
Eric Seitz, Esq. and Sarah Devine, Esq., represented Intervenors Hee and the Sierra Club
Benjamin Kudo, Esq., and Gregory Kugle, Esq. represented Petitioner D.R. Horton-Schuler Homes, LLC
Richard Lewallen Esq., represented the City & County of Honolulu, Dept. of Planning and Permitting (DPP)
Bryan Yee, Esq., represented State Office of Planning (OP)
Rodney Funakoshi (OP)

Chair Aczon disclosed his affiliation with the Carpenters Union and stated that despite his affiliation he felt that he could remain fair and impartial during the proceedings. There were no objections to Chair Aczon's continued participation in the meeting.

Chair Aczon updated the recorded and explained the procedures for the hearing. There were no questions regarding meeting procedures.

Mr. Kudo expressed his concerns about Commissioner Scheuer's participation in the proceedings based upon Commissioner Scheuer's membership in the Sierra Club. Commissioner Scheuer stated that he was not on the Board of Directors of the Sierra Club as Mr. Kudo thought and had no financial interests in the organization. Commissioner Scheuer stated that he only paid membership dues. Mr. Kudo expressed his continued concerns about Commissioner Scheuer's membership and participation in the proceedings.

Commissioner Scheuer moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's duties, privileges, immunities and liabilities.

By a unanimous voice vote (8-0), the Commission elected to enter into Executive Session at 9:11 a.m.

The Commissioners exited Executive Session at 9:23 a.m. and Chair Aczon reconvened the hearing at 9:25 a.m.

Chair Aczon addressed the Parties and stated that based upon the advice of counsel the Commission concluded that Commissioner Scheuer's participation as a dues paying member in the Sierra Club did not rise to the level of recusal and stated that Mr. Kudo's concerns were noted for the record.. Chair Aczon then called for Public Witnesses.

Public Witnesses

1. Rodney Boucher

Mr. Boucher stated that he opposed the Motion for Order to Show Cause (OSC) and shared why he supported the Ho`opili development.

There were no questions for Mr. Boucher.

2. Tom Berg

Mr. Berg described why he supported the Motion for OSC.

There were now questions for Mr. Berg.

3. Victoria Cannon

Ms. Cannon testified that she felt the Project would have a negative impact on the community and explained her reasons why she supported the Motion for OSC.

There were no questions for the witness.

4. John Bond

Mr. Bond described his concerns about endangered species and voiced his support for the Motion for OSC.

Dr. Dudley asked where a picture of a Pueo owl that Mr. Bond was holding had been taken. Mr. Bond provided additional comments about his concerns regarding the environmental threats to the Pueo owl's habitat area.

Commissioner Hiranaga requested clarification on the location where the owl had been photographed. Mr. Bond responded that it had been taken in the North-South road area and not on the Petition Area.

There were no further questions for Mr. Bond.

5. Melvin McAulton

Mr. McAulton shared his concerns about Petitioner's compliance with disclosure laws and the proposed project's impact on agricultural viability; and why he supported the Motion for OSC.

There were no questions for Mr. McAulton.

6. Henry Kwok

Mr. Kwok asked that the Commission deny the Motion for OSC and described why he took that position.

There were no questions for Mr. Kwok.

7. Michael Lee

Mr. Lee described his credentials as a cultural practitioner and stated his support for the Motion for OSC.

There were no questions for Mr. Lee.

8. Maelani Lee

Ms. Lee shared her reasons for supporting the Motion for OSC.

There were no questions for Ms. Lee.

9. Alan Gottlieb

Mr. Gottlieb stated that he opposed the Motion for OSC and provided his reasons why.

Commissioner Cabral requested clarification on the displacement and relocation of farming operations affected by the proposed development. Mr. Gottlieb provided his perspective of how farming operations were being impacted by the proposed project.

10. Shin Ho

Ms. Ho shared her experiences with farming and why she supported the proposed project.

Mr. Seitz requested clarification on how she and other farmers would conduct farming operations in the Petition Area if the proposed project moved forward. Ms. Ho described how she planned to operate in the future and how she was preparing to do so and did not know what the plans of her fellow farmers were.

There were no further questions for Ms. Ho.

11. Jebson Quartero

Mr. Quartero stated that he supported the Motion for OSC and described why he took that position.

There were no questions for Mr. Quartero.

Chair Aczon declared a recess at 10:12 a.m. and reconvened the meeting at 10:21 a.m.

12. Phylis Kacher

Ms. Kacher shared her concerns about lack of housing and stated her support for the proposed project and opposition to the Motion for OSC.

There were no questions for Ms. Kacher.

13. Keith Timson

Mr. Timson stated that he was a longtime area resident and asked the Commission to deny the Motion for OSC.

There were no questions for Mr. Timson.

14. Mike Golojuch

Mr. Golojuch stated his support for the proposed project and asked that the Commission deny the Motion for OSC.

There were no questions for Mr. Golojuch.

15. Rich Hargrave

Mr. Hargrave stated his support for the proposed project.

There were no questions for Mr. Hargrave.

16. Jack DeFeo

Mr. DeFeo shared his perspective of what the negative impacts of allowing the proposed project would be and voiced his support for the Motion for OSC.

There were no questions for Mr. DeFeo.

17. Shannon Alevado

Ms. Alevado submitted written testimony and described her reasons for opposing the Motion for OSC.

Dr. Dudley requested clarification of Ms. Alevado's background and involvement with the agricultural industry. Ms. Alevado provided additional details of her background and her perception of the future of agriculture.

There were no further questions for Ms. Alevado.

18. Georgette Steven

Ms. Steven shared her support for the proposed project.

There were no questions for Ms. Steven.

19. Al Frenzel

Mr. Frenzel shared his perception of the problems that the proposed project could create and stated his support for the Motion for OSC.

Dr. Dudley requested clarification on the issues that Mr. Frenzel addressed during his testimony. Mr. Frenzel provided additional details on his concerns about endangered species, traffic and the displacement of agriculture.

Commissioner Estes requested clarification on comments made about farmers affected by the proposed development not being allowed to testify. Mr. Frenzel shared his perception of why farmers did not testify during earlier hearings.

There were no further questions for Mr. Frenzel.

20. Cynthia Frith

Ms. Frith stated her support for the Motion for OSC.

Commissioner Scheuer requested clarification on whether Ms. Frith had a specific comments on the Motion at hand as stated in the agenda. Ms. Frith replied that she was not prepared to address whether any violation of conditions had occurred to justify the motion; and provided additional comments on traffic conditions related to the proposed project.

There were no further questions for Ms. Frith.

21. Denise Boisvert

Ms. Boisvert stated that she supported the Motion for OSC.

There were no questions for Ms. Boisvert.

22. Alicia Maluafiti

Ms. Maluafiti shared why she supported the proposed project and opposed the Motion for OSC.

There were no questions for Ms. Maluafiti.

23. Ricky Cassiday

Mr. Cassidy shared his concerns and described why he did not support the Motion for OSC.

There were no questions for Mr. Cassidy.

24. Stuart Scott

Mr. Scott submitted written testimony and described why he supported the Motion for OSC.

There were no questions for Mr. Scott.

25. Michele Matsuo

Ms. Matsuo described why she supported the Motion for OSC.

There were no questions for Ms. Matsuo.

26. Kaukaohu Wahilani

Mr. Wahilani stated his opposition to development and described why he supported the Motion for OSC.

There were no questions for Mr. Wahilani.

27. Choon James

Ms. James described why she supported the Motion for OSC.

There were no questions for Ms. James.

28. Nomi Carmona

Ms. Carmona shared why she supported the Motion for OSC.

There were no questions for Ms. Carmona.

29. Anthony Alto, Sierra Club Volunteer Chair for Oahu

Mr. Alto described why the Sierra Club intervened in this matter and why his organization was in support of the Motion for OSC.

There were no questions for Mr. Alto.

30. Elain Kam

Ms. Kam voiced her support for the Motion for OSC.

There were no questions for Ms. Kam.

There were no further public witnesses.

Chair Aczon declared a recess at 11:34 a.m. Chair Aczon reconvened the hearing at 12:34 p.m.

Chair Aczon inquired if Dr. Dudley intended to amend his motion and if all Parties had received the amended motion filed by the Movant and were prepared to move forward. Dr. Dudley affirmed that he did intend to amend his motion and had provided all the Parties with copies of his additional exhibits. The Parties all responded that they had received the amended petition and all exhibits filed by the Movant and were prepared to move forward.

Chair Aczon stated that since the Parties did not need additional time to review documents, the Commission would move forward and hear arguments in the case. Discussion ensued regarding the amount of time each Party would have for argument. Mr. Kudo stated that OP and County had yielded 15 minutes each to Petitioner to allow him additional time to address the issues raised by the Movant. Mr. Seitz stated that he would use 10 minutes and yielded 20 minutes to Dr. Dudley for his argument; and that Mr. Seitz would present first. Dr. Dudley requested additional clarification on how the time would be allocated.

Commissioner Wong moved for an Executive Session. Commissioner McDonald seconded the Motion. Commissioner Scheuer described his understanding of what was being proposed to the Commission by the Parties. Dr. Dudley concurred with Commissioner Scheuer's perception of how time would be allocated.

Commissioner Wong stated that he would retract his motion and Commissioner McDonald withdrew his second. Chair Aczon had the Parties begin their arguments.

ARGUMENTS

Intervenors Hee and the Sierra Club

Mr. Seitz argued why the Intervenors believed the Conditions regarding traffic, and ground water had been violated and why an evidentiary hearing was justified. Mr. Seitz also noted that there were other considerations that might arise based on the outcome of the Supreme Court's decision in this matter. Mr. Seitz described scenarios that the LUC might be involved with in different circumstances and suggested that the Commission could take the OSC under submission and await the Supreme Courts' decision while having Petitioner agree to not move forward with development and construction efforts.

Commissioner Questions

Commissioner Estes requested clarification on why Mr. Seitz thought that the Supreme Court would render a decision any time soon. Mr. Seitz shared his perspective of how much time the Supreme Court had been taking for various cases that he was aware of.

Commissioner Scheuer requested clarification on when the OSC might be considered moot if the Supreme Court ruled in favor of FOM and the Intervenors. Mr. Seitz responded that he felt that the OSC would still remain active since the issues of traffic and stormwater would still need to be resolved.

Friends of Makakilo

Dr. Dudley argued how the various Conditions involving Traffic (Condition 10b), Stormwater Runoff (Condition 11), and Ownership (Condition 22) had been violated; and how representations regarding Agriculture were inaccurate; and why an Order to Show Cause was justified.

Commissioner Questions

Commissioner Estes requested verification that 4 crops of corn could be produced in Ho`opili. Dr. Dudley stated that Dr. James Brewbaker, had indicated that it was possible based on his research.

Commissioner McDonald requested clarification on the acceptance of the Traffic Impact Analysis Report (TIAR) by State and County agencies in regards to Condition 10b. Dr. Dudley stated that the TIAR had been accepted by the Department of Transportation (DOT), DPP and the Department of Transportation Services (DTS) and described why he felt that Condition 10b had been violated in further detail.

Commissioner McDonald requested clarification on whether Petitioner had obtained subdivision approval in regards to Condition 11- Stormwater. Dr. Dudley stated that no subdivision approval had been granted and provided additional details about why he felt Condition 11 had been violated.

Commissioner Scheuer requested clarification on whether the TIAR inconsistencies Dr. Dudley was concerned about had been presented to the approving bodies while they were considering the zoning change. Dr. Dudley replied that he did not have the information at that time and had only discovered the information after Petitioner had submitted its application for zoning change.

Commissioner Scheuer also requested clarification on the drainage concerns, possible FOM's reactions to Supreme Court decision outcomes, and agricultural misrepresentations described by Dr. Dudley. Dr. Dudley provided additional details about how he would continue to make comments on drainage situation at the County level and described why he would not consider his motion moot regardless of the

Supreme Court's decision. Dr. Dudley also described that he had included the topic of Agriculture in his motion due to a misrepresentation and not due to a violation of a Condition.

The Commission went into recess at 1:46 p.m. and reconvened at 1:57 p.m.

Chair Aczon recognized Mr. Yee and allowed him to voice his request to adjust the order of presentations and the amount of time allotted for arguments by OP, City, and Petitioner. Chair Aczon granted the request to allow OP and City to yield 15 minutes each to Petitioner and argue for 15 minutes each. (Petitioner originally had 30 minutes and now could argue for an hour using the additional yielded time from OP and City).

OP

Mr. Yee stated that OP had recommended the Motion for OSC be denied and explained the reasoning for that position.

Mr. Yee argued that it was the Movant's burden to prove non-compliance and referred to OP's Exhibit 1- Revised TIAR and the subdivision procedural approval sequencing process to dispute Mr. Seitz's argument. Mr. Yee also noted how it was unfair to Petitioner to be subjected to waiting for a Supreme Court decision and described how uncertain and costly that could be.

Mr. Yee then questioned whether Dr. Dudley had sufficiently proved that Conditions regarding traffic, stormwater and ownership had been violated and whether the topic of Agriculture had been misrepresented. Mr. Yee also shared his perception of why the Motion should be denied.

Commissioner Questions

Commissioner Estes requested clarification on why a notice of ownership change was included as a Condition and that this information should be provided to the LUC. Mr. Yee described how knowledge of who owned the property was needed by State authorities.

Commissioner Scheuer requested clarification on how enforcement of Conditions was decided. Mr. Yee provided his opinion on how Condition violations were assessed for enforcement action.

Commissioner Scheuer requested clarification on how page 173 of the 2012 Decision and Order pertained to the updated TIAR being accepted by the DOT, DPP and DTS and limited what action the LUC could take. Mr. Yee stated that he believed that the LUC could not take any action and explained his position.

Chair Aczon requested clarification on who had the authority to determine if a violation of Condition 22 had occurred. Mr. Yee stated that he thought it would either be the LUC or the City. Chair Aczon called for the County to make its presentation.

County

Mr. Lewallen argued that the City's conduct regarding the TIAR acceptance was appropriate and described how the City had handled the TIAR, how the Motion for OSC had mischaracterized the passing of a zoning ordinance, and how other aspects of the Motion's allegations against the City were inaccurate. Mr. Lewallen joined with Mr. Yee in arguing that there had been no cause demonstrated to grant the Motion for OSC.

Commissioner Questions

Commissioner Wong requested clarification on County's position after hearing Dr. Dudley's account of the numbers included in the TIAR. Mr. Lewallen replied that the City relies on an applicant to provide truthful information and described how he perceived the assessment of such submittals was made. Mr. Kudo stated that he would address questions regarding the substance of the TIAR during his argument.

Commissioner Scheuer requested clarification on the subdivision approval process and complying with Condition 11. Mr. Lewallen stated that he believed the subdivision approval process was a ministerial one and shared his perception of how people with concerns could bring them to the attention of the City in a variety of ways.

Commissioner Scheuer requested further clarification on how the impact to Native Hawaiian cultural practices and traditional gathering rights could be addressed.

Commissioner Hiranaga requested clarification on whether the proposed project drainage plans required a special area management permit. Mr. Lewallen replied that he was not positive. Mr. Kudo commented that he would address that topic during his presentation.

Petitioner

Mr. Kudo argued why the Commission should not grant the Motion for OSC and provided his perspective of why the allegations made and evidence provided to the LUC were insufficient to prove an OSC was warranted.

Mr. Kudo reviewed Conditions 10b (Traffic), 11 (Stormwater), 22 (Ownership), 14 (Native Hawaiian Access Rights), and HRS § 205-17 as it applied to representations made to the LUC; and provided the details why Petitioner felt that no violations of Conditions had occurred and no misrepresentations had been made.

The Commission went into recess at 3:17 p.m. and reconvened at 3:36 p.m.

Commissioner Questions

Commissioner Wong requested clarification on how the Supreme Court's involvement in Docket No. A06-771 would affect matters. Mr. Kudo stated his opinion that the Supreme Court case involved different issues regarding Important Agricultural Lands, Chapter 205, and Constitutional issues and provided his perception on what might happen in different situations based on various decision outcomes by the Supreme Court.

Commissioner Wong requested clarification on what effect the LUC's deferring action and waiting for a Supreme Court decision might have. Mr. Kudo opined on what might occur if such action were taken and agreed with Mr. Yee's assessment that the OSC should not be a burden to Petitioner. Mr. Kudo informed Commissioner Hiranaga that the Petition Area was not in an SMA area in regards to the drainage plan.

Commissioner Scheuer requested clarification on whether Condition 14 applied to areas on and off the Petition Area. Mr. Kudo explained how the jurisdiction of the LUC was confined to the Petition Area and what measures were taken to comply with Conditions. Commissioner Scheuer also requested clarification of how Condition 11 might be affected by jurisdictional issues. Mr. Kudo shared his perspective of how jurisdiction would apply to control conditions on site to prevent affecting off site areas.

Commissioner Mahi requested clarification on who had assessed any existence of a Karst system. Mr. Kudo referenced LUC transcripts and advised that Tom Nance, hydrologist had performed the study and had filed the report regarding the Karst system within the Petition Area.

Commissioner McDonald requested clarification on the status of the drainage master plan. Mr. Kudo replied that the draft plan had been submitted to the Department of Health (DOH) and DPP.

There were no further questions for Mr. Kudo.

REBUTTAL

Friends of Makakilo

Dr. Dudley argued the reasons why the FOM's Motion should be granted and summarized the reasons why the topic of Agriculture had been misrepresented, why the TIAR details were inconsistent and inaccurate and why his Motion for OSC should be granted.

Intervenor Hee and the Sierra Club

Mr. Seitz requested and was granted time for a short rebuttal by Chair Aczon. Mr. Seitz described how the Intervenors had properly observed procedures

during the case and had observed that the problems with Conditions related to traffic and stormwater runoff still remained and had not been resolved or properly addressed by Petitioner; and why the Intervenors joined FOM's OSC.

Commissioner Questions

Commissioner Wong requested clarification from Mr. Yee on what the LUC's authority was while the Supreme Court was considering this case's appeal. Mr. Yee gave his opinion on what jurisdiction the LUC would have and argued that the LUC should deny the Motion on its merits and not on jurisdictional grounds.

Commissioner Cabral asked Dr. Dudley what proof he had to support his allegations regarding agency authorities improperly reviewing the traffic reports. Dr. Dudley replied that was why an evidentiary hearing was needed and referenced comments made by FOM's traffic expert on the mainland.

There were no further questions or comments.

Decision Making

Commissioner Wong moved to deny the Motion because the Commission did not have a reason to believe that there has been a failure to perform according to the Conditions imposed. Commissioner Cabral seconded the motion.

Discussion

Commissioner McDonald stated that he thought the FOM's OSC motion was premature and supported Commissioner Wong's motion.

Commissioner Scheuer stated that he would be voting in favor of Commissioner Wong's motion and described how the Commission was currently addressing a very narrow legal issue on whether Conditions had been violated and why the arguments for the OSC had not been convincing to him.

Commissioner Mahi echoed Commissioner Scheuer's concerns about the issues raised by the Movant and stated that he supported Commissioner Wong's motion based on the narrow context for action that the Commission had to consider.

Commissioner Estes stated that she would vote to support Commissioner Wong's motion based on Mr. Yee's remarks regarding considerations for reversion and appropriate remedies.

Commissioner Hiranaga requested clarification on the basis of the motion. Chair Aczon repeated the motion made by Commissioner Wong. Commissioner Hiranaga sought additional clarification and discussion ensued to clarify the motion. Commissioner Wong provided additional background on why he had stated his motion in the manner that he did. Commissioner Hiranaga asked whether the motion needed to contain reasons. Ms. Erickson advised that the motion needed to contain a reason for the action the Commission was going to take as described in the motion. Commissioner

Hiranaga stated that he would vote to support Commissioner Wong's motion to deny but did not necessarily agree with the reason stated for denial.

There was no further discussion.

The Commission was polled as follows:

Ayes- Commissioners Wong, Cabral, Scheuer, Mahi, McDonald, Hiranaga, Estes and Chair Aczon.

No- None

The Motion passed unanimously 8-0.

There being no further business, Chair Aczon adjourned the meeting at 4:02 p.m.