

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Kamakahonu Ballrooms
King Kamehameha Hotel
75-5660 Palani Road
Kailua-Kona, Hawaii

June 8, 1989

Approved
6/28/89

COMMISSIONERS PRESENT: Renton Nip, Chairman
Lawrence Chun, Vice-Chairman
Allen K. Hoe
Toru Suzuki
Robert Tamaye
Frederick P. Whittemore
Sharon R. Himeno
Allen Kajioka

COMMISSIONERS ABSENT: Teofilo Phil Tacbian

STAFF PRESENT: Esther Ueda, Executive Officer
Russell Suzuki, Esq, Deputy Attorney
General
Raymond Young, Staff Planner
Teri Oki, Secretary

Jean McManus, Court Reporter

Chairman Nip called the meeting to order.

ACTION

A83-554 - FARMS OF KAPUA (Hawaii)

Chairman Nip announced that the Commission would take action to consider supplementing or modifying the Commission's February 28, 1985 Decision and Order pursuant to an Order of Remand from the Third Circuit Court requiring the Commission to receive additional evidence regarding substantially greater archaeological reconnaissance survey of the mauka areas regarding the implementation of the 1983 Hawaii Senate Resolution No. 65, Requesting Further Action on the Designation of the State Natural Recreational and Historic Park at Kapua, Honomalino, Okoe, Kaulanamauna, and Manuka Districts in South Kona and Ka'u, Island of Hawaii, and regarding the impact that the reclassification will have on the implementation of Senate Resolution No. 65.

Appearances

Jan Sullivan, Esq., Attorney for Petitioner

Roy Takeyama, Esq., Attorney for Petitioner

Duane Kanuha, Director, Planning Department, County of
Hawaii

Connie Kiriu, Planning Department, County of Hawaii

Ann Ogata-Deal, Esq., Deputy Attorney General, Office
of State Planning

Abe Mitsuda, Land Use Division, Office of State
Planning

Paul Lucas, Esq., Esq., Attorney for Intervenor

Alan Murakami, Esq., Attorney for Intervenor

Commissioner Tamaye did not participate in this
proceeding due to a previously declared conflict of interest.

Petitioner's attorney noted for the record their
objection to the admission of the intervenor's response to
OSP's proposed findings and facts due to the untimeliness of
the filing.

Closing arguments were heard from Jan Sullivan, Duane
Kanuha, Abe Mitsuda and Paul Lucas. After hearing arguments,
the parties were questioned by the Commissioners.

Commissioner Hoe moved to adopt certain findings of
fact proposed by the Office of State Planning, Petitioner and
Intervenor as modified. The motion was seconded by
Commissioner Kajioka and unanimously approved as follows:

Ayes: Commissioner Hoe, Chun, Himeno, Whittemore,
Kajioka, Suzuki and Chairman Nip.

Commissioner Hoe also moved that pursuant to Chapter
205 of the Hawaii Revised Statutes, and the Hawaii Land Use
Commission Rules, the Commission concludes that the provisions
of the May 28, 1986, Third Circuit Court Order Remanding Case
for Further Proceedings have been satisfied, and that based
upon a preponderance of the evidence, that the reclassification
of the property, except for a 2000-foot wide area along the

coastline of the property subject to the conditions in the Order is reasonable, and non-violative of Section 205-2 of the Hawaii Revised Statutes, and is consistent with the policies and criteria set forth in Sections 205-16, and 205-17 of the Hawaii Revised Statutes as amended.

Commissioner Hoe further moved that the Land Use Commissioner order the following:

It is hereby ordered that the Commission's Decision and Order shall be amended to require that the southwest portion of the property located between the makai boundary of the property to a parallel inland boundary with a minimum depth of 2000 feet from the certified shoreline, and consisting of not less than 478 acres, and approximately identified on Exhibit A attached, and incorporated by reference, shall be and hereby is denied reclassification into the Agricultural District, and shall remain in the Conservation District.

It is further ordered that the remainder of the property consisting of not more than 5,624 acres shall be reclassified from the Conservation District to the Agricultural District subject to the conditions imposed by the Commission in its February 28, 1985 Decision and Order, and that the following additional condition be attached:

Petitioner shall develop a historic preservation plan to treat the 181 significant historic sites in the areas to be developed and the sites in the areas left in conservation. This plan shall have two elements: a preservation plan and (b) an archaeological data recovery plan. The preservation plan will cover at least the 64 sites recommended for preservation with the understanding that other sites may be shifted from data recovery to preservation. This preservation plan must include protection of sites in the lands to be left in Conservation as well as in the lands to be developed. This preservation plan must clearly delineate adequate buffer zones around all sites to be preserved in the lands to be developed, buffers that are adequate to protect the visual integrity of the sites. This plan must also cover short-term protection measures--measures that will ensure protection of these sites during construction. This plan must also cover long-term preservation measures to include such concerns as greater access, visual intrusion of development elements, interpretive signs' location and text, potential vandalism, litter control, etc. The archaeological data recovery plan will cover the 117 sites recommended to undergo data recovery with the understanding that some of these sites may be preserved as an

alternative--in which case they will be covered in the preservation plan. This plan must ensure the recovery of a reasonable and adequate amount of the significant information in these sites. This plan must discuss major relevant research questions, data needed to address these questions, specific tasks to be undertaken at each site, the schedule for the report completion, and procedures for archiving the recovered remains. Both component plans must be approved by the State's Historic Sites Section before they are executed to ensure adequacy. The Historic Sites Section must also verify the successful completion of these plans to ensure they were adequately executed. Construction shall not occur in the vicinity of the significant historic sites until these plans are approved, until the archaeological data recovery fieldwork is successfully executed, and until the short-term protection element of the preservation plan is put into effect.

The motion was seconded by Vice-Chairman Chun.

Commissioner Kajioka moved to amend the motion to delete the word "minimum depth" so that the inland boundary shall be 2000 feet from the certified shoreline.

It was determined by Chairman Nip that all of the Commissioners present were eligible to participate in the action on the petition.

The motion was unanimously carried as follows:

Ayes: Commissioner Hoe, Chun, Himeno, Whittemore, Kajioka, Suzuki, and Chairman Nip.

A lunch recess was taken at 12 noon to reconvene at 1:30 p.m.

- 1:50 p.m. -

Commissioner Suzuki and Himeno were absent from the proceeding at this time.

CONTINUED HEARING

A88-632 - PUALANI DEVELOPMENT COMPANY (Hawaii)

Chairman Nip announced that the present matter before the Commission is a continuation of the hearing which had opened on April 6, 1989.

Appearances

Steven Lim, Esq., Attorney for Petitioner

Robert Daniel, Petitioner

Charles McCarthy, Petitioner

Duane Kanuha, Director, Department of Planning, County of Hawaii

Connie Kiriu, Deputy Director, Department of Planning, County of Hawaii

Ann Ogata-Deal, Esq., Deputy Attorney General, Office of State Planning

Karen Yamamoto, Land Use Division, Office of State Planning

Mark Van Pernis, Esq., Attorney for Intervenors

EXHIBITS

1. Petitioner's Exhibits No. 1 through 26 were admitted into evidence by the Land Use Commission.

2. County's Exhibit No. 1 was admitted into evidence by the Land Use Commission.

3. State's Exhibit No. 1 was admitted into evidence by the Land Use Commission.

4. Intervenor's Exhibits I-1 through I-9 and I-12 were admitted into evidence by the Land Use Commission.

Raymond Young, Staff Planner, oriented the Commission to the area being request for reclassification on the Land Use District Boundaries and tax maps.

PUBLIC WITNESSES

1. James Sogi

2. William Ferreira

3. Christine Nylén

4. Tom Stifler

Petitioner's attorney, Steven Lim announced that they reached an agreement with the Intervenor in which the Petitioner agrees to two conditions, one being that they would be agreeable to a condition, assuming approval by the Land Use Commission and appropriate county zoning, that there would be no ohana dwellings constructed within the subject property, and that would be accomplished through an agreement that the developers would transfer any lots in the subdivision with deeds of restrictions in perpetuity. The second condition would be that the zoning for the mauka lots in the upper area of the subdivision would be at least 20,000 square feet to preserve Intervenor's concerns of property values.

Intervenor withdrew his case from the proceedings.

Steven Lim, Esq., Attorney for Petitioner, moved the Commission for approval to file the metes and bounds survey map for this petition area after the close of the hearings. There were no objections by the parties and the motion was approved by Chairman Nip.

PETITIONER'S WITNESSES

1. Sidney Fuke

Chairman Nip was absent from the proceeding at this time. Commissioner Suzuki joined the proceeding at this time.

2. Jim Morrow
3. Hajime Tanaka
4. Winona Char
5. Tom Holliday
6. Paul Rosendahl
7. Leon Daniell

The meeting was adjourned at 5:30 p.m.