MEETING OF THE PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

Minutes
Wednesday, February 21, 2018

The Planning Commission held a meeting on
Wednesday, February 21, 2018, at 1:30 p.m., at the Mission
Memorial Conference Room, Mission Memorial Building, 550
South King Street, Honolulu, Hawaii. Chair Sodaro presided.

COMMISSIONERS PRESENT: Ka'ūlani K. Sodaro, Chair
Theresa C. McMurdy, Vice Chair
Arthur B. Tolentino
Steven S. C. Lim
[departs early; recused on Other Business]
Wildred A. Chang, Jr.
Ken K. Hayashida

COMMISSIONERS EXCUSED: Cord D. Anderson
[prior notice given]
Gifford K. F. Chang
[prior notice given]
Arthur D. Challacombe
[prior notice given]

DEPUTY CORPORATION COUNSEL: Rozelle A. Agag
[Advisory to the Commission]

COMMISSION STAFF: Gloria Takara,
Secretary-Hearings Reporter

DFP REPRESENTATIVES: Thomas Blair, Staff Planner
[Agenda Item No. 1, 2017/2-6]
Raymond Young, Staff Planner
[Agenda Item No. 2 - Other Business]

Chair Sodaro: Aloha, good afternoon. Welcome to
Wednesday, February 21st, 2018 meeting of the Planning
Commission. First on the agenda, I'd like to open, I'd like
the staff presentation to come up first, and then we'll
follow with public hearing for agenda item Koolau Poko,
zone change request 2017/5-6.

Mr. Blair: Good afternoon, Chair Sodaro, members
of the Planning Commission. My name is Thomas Blair. I'm a
staff planner with the Department of Planning and
Permitting. The Department is currently processing a zone
change application from R4 of Hawaii. Represented today by
Richard Maruya, the owner. The property is located in
Kaneohe. It's about 10,000 square feet or approximately a
quarter of an acre, a little bit less than that. The
proposal from the Applicant is to change the zone from R-5
Residential District to the B-6 Community Business District.
The Department has recommended the B-6 Neighborhood
Business District. And, I'll get into the differences and
why we did that in a minute.

In the Applicant's application, the stated purpose
of the rezoning is to allow the Applicant to continue to
operate the existing convenience store without the need for a
variance, to restore to previous commercial zoning district
that had before being down zoned in the 80s when the new
set of development plans were initiated and just to kind of
clean up what's currently there. So, on the map that's
4 where the property is located. It's located on the corner
5 of Kaneohe Bay Drive and Mikiola Drive. The map is--I mean,
6 that's the zoning map. It is accurate but it doesn't reflect
7 what's currently on the ground or the historical use. It
was previously zoned B-2 under the comprehensive zoning
code, the CZC, and it was down zoned in the 80s to R-5 along
with many other properties throughout the islands. It's
now currently being used as a convenient store, Bay Drive
Market. On the adjacent L-shape parcel it's currently being
used as a car lot and 3-story apartment building and then
further to the west are two other commercial uses including
an eating establishment, P&L Drive-Inn and another
convenient store, Angie's Market. Beyond that it is all
single family residential homes.

On October 30th, the Department sent notifications
and copies of the application to City and State agencies for
review and comment. Those responses have been included in
your packages. The Department also received one comment of
support from a community member. The Kaneohe Neighborhood
Board No. 30 also unanimously supports the approval. So,
that's also been included. In addition, we received one
comment of support from the adjacent owner of the L-shape
1 This concludes my testimony. If you have any questions, I
2 can answer them, and the Applicant is here as well.
3 Chair Sodaro: Commissioners, any questions for
4 staff at this time? [no response] If I could ask you a
5 quick question. In the background section, it references
6 50s through 1985 the property was used as an automobile
7 service station.
8 Mr. Blair: Yes, gas station.
9 Chair Sodaro: Were the underground storage tanks
10 removed when that use concluded?
11 Mr. Blair: Yes. The Applicant is also here, and
12 he can talk about that more. I was in contact with the
13 Department of Health. That's a condition if they want a
14 condition for the studies of soils. Currently, if there is,
15 you know, some contamination be found that be triggered. So
16 they didn't ask for a condition be included. It's not
17 necessarily a concern, but the Applicant has more knowledge
18 on the condition of the soil. But we do have a soil report
19 from the Department of Health that I reviewed.
20 Chair Sodaro: So, you don't know if it was
21 removed or not?
22 Mr. Blair: It was remediated to the Department. I
23 can't remember the term that they used. It's not active or
24 I can't remember--
25 Chair Sodaro: Does the Applicant want to come

1 recommended down zoning the B-2 to B-1 while upzoning from
2 R-5 or R-7.5. I can't remember. So, this is just a
3 transition zone and to reflect that this is within a
4 residential community as a whole.
5 We were also—if we were to have B-2 zoning we
6 would likely have a more extensive list of recommendations
7 as conditions. So, right now the current condition we have
8 is a transportation impact analysis report be included. If
9 it was B-2, likely the restrictions would be much greater
10 than they are. So, that's something that we can also work
11 with the Applicants on, and if they do seek to go this
12 route.
13 So, upon the Department's review of facts
14 contained in the application, the request for comments and
15 responses, the existing conditions observed by staff. A
16 December 6th site visit and the review of applicable codes
17 and standards including the General Plan and the Koolau
18 Sustainable Community Plan. The recommendation of the
19 Director is to approve the requested zone change from R-5 to
20 the B-1 Neighborhood Business District with the condition of
21 TIAR would be required prior to a building permit for a
22 commercial residential building which represents an
23 intensification of the use. So, if something burns down,
24 then they can still rebuild if it's not intensification.
25 And then also just these standard conditions be included.

1 forward to say anything to the Commission or to clarify if
2 the tank was removed. Please state your name, sir, for the
3 record.
4 Mr. Maruya: Richard Maruya, president R&G of
5 Hawaii.
6 Chair Sodaro: Welcome, Mr. Maruya. I didn't hear
7 yes or no. So was the underground storage tanks removed?
8 Mr. Maruya: The underground storage tanks were
9 removed back in 1986.
10 Chair Sodaro: Thank you. Okay, Do you have any
11 supplemental information to the application?
12 Mr. Maruya: We had an agreement with Unocal at
13 that time and they went to the Board of Health and got a no
14 further action letter because soil sample tests were taken
15 in the area. They found a very minor populated area
16 no more than 3 feet in diameter and about less than a foot
17 and a half deep. So they figured it wasn't worth doing all
18 the excavation just for that. And it was in the, what they
19 call, the grey area at that time. So, the Board of Health
20 issued a no further action letter.
21 Chair Sodaro: Okay. Is there anything supplemental
22 you'd like to share with us before we move to public
23 testimony?
24 Mr. Maruya: I beg your pardon?
25 Chair Sodaro: Would you like to share anything
1 else with the Commission?
2 Mr. Maruya: Yes. The only reason why we need to
3 do this—-I'm here to do this is because if in case some
4 unfortunate thing happens to the building, and if it's in a
5 residential 5, I would have a very difficult time in
6 rebuilding. The second thing is I have a mortgage with
7 First Hawaiian Bank, and they wouldn't look very favorably
8 to me to allow me to forgive the mortgage for a while until
9 I get this whole thing resolved. So, naturally I'm in a
10 situation where I have to think ahead now because my hair
11 isn't getting any whiter, you know, lighter. So, of course,
12 I have to think that anything should happen to me and some
13 catastrophic disaster should happen, I don't want to leave
14 it for my family to be burdened with such a problem. That's
15 the reason why I'm in here to try to get this zone change.
16 Chair Sodaro: Any questions from the
17 Commissioners for Mr. Maruya.
18 Member Lim: Mr. Maruya, you've applied for a B-2
19 Community Business District, but the Department is
20 recommending B-1. Are you okay with that change?
21 Mr. Maruya: Well, you see, the reason why I
22 applied for a B-2 is way back when Mayor Aileen Anderson
23 changed it without anyone knowing it was B-2. So, I thought
24 if it was a coconut here, put the coconut back, you know.
25 So, that's why I suggested B-2. I don't know too much more

1 about it. But my main concern is the situation that I have
2 there. Plus, there's my neighbors around like the Pineyas
3 [phonetic] who has a used car lot next door to me. You
4 know, we've all been caught in this predicament. I'm the
5 first one to take the step forward.
6 Member Lim: Are you okay with the B-1 zoning?
7 Mr. Maruya: I'm okay with it, but if a B-2 can be
8 done, yeah, I'll take it. Because I'd rather put it back to
9 what it was, you know. That's my feeling, but what can I
10 say at that point. Time has passed.
11 Chair Sodaro: Any further questions?
12 Member Tolentino: I just have a question for
13 Administration. Back in the 80s, would there be a reason
14 for the downzone. What was the reason for the downzone?
15 Mr. Maruya: That was Mayor Aileen Anderson's
16 theory of making country, country. So, she wanted to clear
17 off all of these commercial lots and just turn everything
18 into residential. We didn't know about it. It was done so
19 quickly that we never found out about it.
20 Mr. Blair: Yes. That's mostly correct. And the
21 idea was these are non-conforming uses around the island.
22 It's just not here and that overtime they would fall to the
23 current designation of residential or the underlying zone
24 behind that.
25 Chair Sodaro: Welcome. Please state your name.

1 Mr. Takahashi: Eugene Takahashi, Second Deputy
2 Director, DPP. That's part of it. But also in line with
3 couple policy decisions made by City Council in which the
4 decision was moved. The proposed second city from Windward,
5 Oahu to Kapolei. That's set for a policy motion which
6 identified access lands that had zoning that was not being
7 utilized. You see, that zoning would remain in place, then
8 the density that was originally envisioned in Kapolei, I
9 mean Windward could still occur and not be consistent with
10 the City policy. So as a result of that the DPs were
11 amended to reflect a more rural setting in Windward, Oahu,
12 and a more urban setting out in Kapolei. So, the DPs were
13 amended to reflect that. As a result the zonings were
14 amended to be consistent with the Development Plans.
15 Chair Sodaro: Thank you for the clarification.
16 Any further questions at this time? [no response] Seeing
17 none, thank you, Department.
18 Member Lim: I had a question.
19 Chair Sodaro: Oh, please.
20 Member Lim: With respect Mr. Maruya's request for
21 B-2 zoning, was there any thought to doing B-2 zoning with
22 conditions that would control some of the (inaudible).
23 Because you got a car operation next door, which is a B-2.
24 So--
25 Mr. Blair: So, I'll address the comment just

1 for--Mr. Maruya probably looks forward talking about the
2 adjacent property. We had a similar proposal on Kapahulu
3 where the Applicant came forward asking B-2 and there was
4 discussion between the Department and the Applicants, saying
5 if we grant you B-2 the list of restrictions would be great
6 or we could go to B-1 and reduce some of those restrictions.
7 And it came to agreement that B-1 was the more appropriate
8 zoning. So, it's just a matter of discussion between--So, 
9 we do have B-2, there is going to be greater restrictions
10 there.
11 Based on our discussions with him, before and
12 during the application process, we were looking at what the
13 uses that he was interested including continuation of the
14 convenient store and the potential a veterinary clinic and
15 potential caretaker dwelling on the property as an accessory
16 to whatever the commercial use is, which were appropriate
17 for the B-1 district as well.
18 Member Lim: Just looking forward to the next
19 application by the next door neighborhood comes in for his
20 B-2. So--
21 Mr. Takahashi: And, again, one thing I want to
22 point out is the transition between the comprehensive zoning
23 code to the LUO is not one-for-one. So, some of the uses
24 that may have been identified as being appropriate in a B-2
25 zoning district under the CEC may now be under the B-1

2017z-6 (TB)
1 zoning under the current LJD. So, it's not exactly a
2 one-for-one. Other things that we looked at is again as in
3 the past, as we process these type of proposals, we had
4 proposals with respect to unilateral agreement conditions,
5 which for example, not allowing cabarets, nightclubs,
6 restricting hours of operation, locations of drive thurs,
7 you know, not being adjacent to adjacent residential areas.
8 So, the list would've been very long with respect to all
9 these uses that the Applicant may not be--He intends to put
10 in that property but then you would've been stuck with all
11 these long lists of restricted covenants, the UA conditions
12 that we attach to the property.
13 So, in the past the previous applicants have
14 evaluated, and they have opted for the less restrictive,
15 which is the B-1 zoning, which is more compatible with the
16 abutting residential zoned lands. We do acknowledge that
17 there is some non-conforming uses that is residential zoned
18 lands abutting the parcel. But as of today they're still
19 zoned for residential use. They could be redeveloped for
20 residential use because that is their legal entitlements.
21 So, it is pertinent for the City to address potential
22 impacts on these potential uses that could occur on the land
23 and that's why we again looked at it and reevaluate with
24 respect to what is most compatible to the abutting
25 residential areas because there is a residential use parcel
1 can continue use. The car lot doesn't go away in the same
2 way Maruya's convenient store didn't go away when it was
downzoned. It's still allowed to continue as a
3 non-conforming use or use with a variance.
4 Chair Sodaro: Yes, Commissioner.
5 Member McMurdo: It would just help me to visualize
6 if you could tell me which ones, which are the existing uses
7 around the property, if you could just point it out where
8 each one is.
9 Mr. Blair: So, this is the Applicant's property.
10 This is the adjacent property. So, there's two uses on this
11 property. This lower section is where the 3-store apartment
12 is and this little corner, between these two, where they
13 they could be a potential line. That's where the car lot is
14 on little side. These two units right to next to it, this
15 is the market and convenient store with driveway parking lot
16 right there. So, these four is where it is.
17 Member McMurdo: And otherwise everything else is
18 single family?
19 Mr. Blair: Yes. All single family.
20 Chair Sodaro: Any additional questions? [no
21 response] Seeing none now. Thank you, Department and
22 Applicant. We'll move to open public testimony on our first
23 agenda item.
24 First, Robert Peine, if you'd like to move
1 next door after that. So, again, with respect to what is
2 the character.
3 Also, things that we looked at is under B-1 zoning
4 and relationship to the sustainable community plans, at what
5 point are you supporting a more intense use in commercial
6 and certain residential neighborhoods. So, the SCPs does
7 identify the more intense of commercial centers. By B-2
8 zoning, you could have a more intense commercial use than
9 originally intended. But B-2 you allow support, commercial
10 uses that would support the adjacent residential community,
11 but yet at the same time you made it allow a new commercial
12 center being established some place else, which is not what
13 we really wanted or intended to do as part of sustainable
14 communities plan.
15 Member Lim: My question is just to what are you
16 going to do when the next door comes in with B-2?
17 Mr. Blair: Yes. I can address that. So, a
18 representative of the adjacent owner is here as well today,
19 so I'm sure they're going to submit testimony. They did ask
20 to be included and that last letter of testimony is included
21 in your package. And they said they wanted to be included
22 as B-1 because that's a discussion that we had with them in
23 the event that he also wants to develop potential convenient
24 store, is what he said. If he's included in the zoning to
25 be B-1 and a car lot is not allowed in there, his car lot
1 forward. Thank you.
2 Mr. Pine: Good afternoon.
3 Chair Sodaro: Welcome, sir. If you could state
4 your name for the record.
5 Mr. Peine: Robert Peine. I represent the lot
6 next door and for over 10 years now, there's been a car lot
7 there, and we paid the commercial rate for taxes on that,
8 and there's also an apartment building on the upper portion
9 on the back side of that building, his particular lot.
10 And let's see, we're not opposed to the B-1 change.
11 Chair Sodaro: For yourself or for the applicant?
12 Mr. Peine: For us.
13 Chair Sodaro: Okay.
14 Mr. Peine: Yes. I just wanted to make that
15 clear.
16 Chair Sodaro: Thank you.
17 Mr. Peine: Thank you.
18 Chair Sodaro: Any questions for the testifier?
19 [no response] Hearing none, thank you, sir. Mr. Muraya,
20 Richard Muraya, did you want to testify again or you're
21 fine?
22 Mr. Maruya from the audience: No.
23 Chair Sodaro: You're fine. Okay.
24 In support. Thank you. Malia Evans for this agenda item
25 or for the next?
Mr. Evans from the audience: No. It's for the other one.

Chair Sodaro: Okay. No problem. Rebecca Green.

Ms Green from the audience: Same.

Chair Sodaro: Same. Ann Gombers.

Ms. Gombers from the audience: Same.

Chair Sodaro: Okay. Jennifer Nunez.

Ms. Nunez from the audience: Same.

Chair Sodaro: Okay. Thank you. Are there any additional people in the audience that would like to testify for R&R's application? [no response] Seeming none, may I have a motion to close public testimony?

Member Lim: So moved.

Member W. Chang: Second.

Chair Sodaro: Okay. Public testimony is now closed. Commissioners, I'd like to move us into discussion for the first matter. Any open points or would you like me to bring back the Department? Commissioner Tolentino.

Member Tolentino: We're just discussing specific property--

Chair Sodaro: We're in discussion. Correct.

Member Tolentino: Not the second testifier?

Chair Sodaro: We're not discussing the neighboring parcel, correct.

Member Tolentino: Okay.

Chair Sodaro: Any other need to bring the Department forward? [no response] None? Okay. Any open discussion before I call for a motion? [no response] Seeing none, Commissioners like to offer a motion. Commissioner McMurdo?

Member McMurdo: I move that we approve the recommended zone change to B-1 as recommended by staff.

Chair Sodaro: Do I hear a second?

Member Tolentino: Second.

Chair Sodaro: Commissioner Tolentino. Any discussion?

Member Hayashida: You'll put the condition on to the motion also or is the condition--

Chair Sodaro: Clarification from the Department.

The recommendation is for B-1, do we need a condition?

Mr. Blair: Yes. The condition's still condition for a traffic impact analysis report would be required prior to building permit for a commercial or residential building, representing a intensification of use. That's just in the event the they want to build a larger convenient store, any other--But that's still within the B-1. They could still--I don't know what the lot build out is right now, but they could still increase the foot print of the--

Chair Sodaro: Thank you. Just a point of clarification, Corp Counsel. So, we're recommending their recommendation which is conditioned. We don't need to supplement a condition as suggested? Okay. Thank you for the clarification. Any desired discussion? [no response] Seeing none, I'd like to call for the vote to approve the Koolau Poko zone change request for 2017/2-6 as stated and offered by the Department. All those in favor, say aye.

Chair Sodaro: Aye.

Chair Sodaro: Any opposed? [no response]

Hearing none, motion passes. Thank you, Commissioners.

If I could request DPP staff to introduce our next business, please.

Member Lim: For the record, I'll be recusing myself.

Chair Sodaro: Excused. Thank you, Commissioner Lim.

Member Lim: Disclosure of conflict of interest.

Chair Sodaro: Thank you for doing such.

Mr. Young: Good afternoon, Madam Chair.

Chair Sodaro: Welcome staff.

Mr. Young: Madam Chair, members of the Planning Commission. My name is Raymond Young. I'm the staff planner involved in this proposed rescinding of a special use permit. As of this time, the Department doesn't have a written report, but I can tell you that we don't have any objections.

The history behind this has to do with a proposed subdivision which cross the through the boundaries of the special use permit that was originally issued by the Land Use Commission back in 1972. Along with that, there was a conditional use permit that was issued by the City and County. That has been terminated or rescinded by the Director. So, now it's just a matter of removing the special use permit, which there is no sand mining going on this point. And, we have the Applicant here today, which is Dillingham. The other owners of those properties under the special use permit is the City and County of Honolulu and a private landowner as Touching the Earth, who by the way has those properties on the market for sale.

I would like to defer to the Applicant, which is Dillingham Ranch to make their presentation, and I'm open for questions.

Chair Sodaro: Okay. Commissioners, can we hold staff questions until--Thank you, staff Young.

Mr. Young: Thank you.

Chair Sodaro: May I call forward the Applicant, please, representative from Dillingham Ranch? [no response]

None present? Okay. No Applicant.

Mr. Young, can I ask you to come back so we can--So, in the absence of them being here, could you give

2017z-6 (TB)
1 us your best summation of what they would have said?
2 Mr. Young: Okay. What we have before you, I
3 think you have a copy of it, is the letter requesting that
4 the special use permit be terminated, rescinded or at least
5 withdraw their portion of the special use permit under their
6 ownership. And that is because they want to go through a
7 subdivision process, and they intend to pretty much cut
8 through the special permit area. So, since we don't want to
9 end up with various parcels still be covered by the SUP that
10 is no longer actually, sand mining is no longer occurring,
11 it kind of makes sense to have the SUP be rescinded, somehow
12 terminated or withdrawn. So, rather than go through the
13 typical process of amending an SUP, which requires a full
14 blown process. We got through the agency review, public
15 input, and come back with a recommendation, which is kind of
16 a long drawn out process. I think it's like six months just
17 before the county without the other provision allowed under
18 the Planning Commission rules is for a revisit and also
19 possibility of opening up a hearing, if it's warranted and
20 then perhaps end up doing the rescinding of the SUP as
21 permitted under, I think is Section 2-50 of the Planning
22 Commission rules.
23 Chair Sodaro: Thank you. You opened up with a
24 comment "their portion" or "theirs". So, does that equate
25 to a partial? You said there's multiple parcels covered by

1 the same SUP?
2 Mr. Young: Yes.
3 Chair Sodaro: So, this is a parcel of the parcel.
4 One of the parcels or members to the SUP wanting to be
5 released from the SUP?
6 Mr. Young: Yes. And, see, part of the issue has
7 to do with getting all owners consent. Unfortunately, they
8 were not able to get Touching the Earth's consent. And the
9 City was informed and essentially it's the Department of
10 Parks. I don't think they're here today, but we didn't hear
11 any objections from them.
12 Chair Sodaro: Okay.
13 Mr. Young: And this process is to go--whether or
14 not we should go to a hearing. So--
15 Chair Sodaro: Right. We'll have corp counsel
16 clarify for the Commission. Okay. Are there any other
17 questions of staff at this time?
18 Member McMurdo: What is the Touching the Earth
19 do?
20 What is their--
21 Mr. Young: I believe they're the Campbell Soup
22 owners.
23 Member McMurdo: But their property is--
24 Mr. Young: It's vacant. All their--
25 Member McMurdo: Just vacant.
the flag to the DPP as well as to Kennedy Wilson that there
many different things that are at risk here. Open space,
and we must try to be aware of the devices that they have
because they have deep pockets to be able to try to overcome
the will of the people. This is ag land, and it would not be
developed as ag land. We are losing our small farmers on
this island. We have six days of food, and we have to stop,
make mansions from being built on ag land. So, that's my
hope. So, I hope you don't withdraw the special use permit.

Chair Sodaro: Any questions for the testifier?

Ms. Gomers: Yes. Thank you very much.

Chair Sodaro: You're welcome.

Ms. Gomers: Appreciate what you all do. Thank
you.

Chair Sodaro: Mahalo. Judy Machian.

Ms. Machian from the audience: I just want to say
what I agree--

Chair Sodaro: For it to be on record, I would need
you to come forward to the microphone. Thank you. We want
to hear you.

Ms. Machian: I'm Judy Machian, and my husband and
I live out at Mokuleia Beach Colony, and I agree that it
serves many, many concerns about this development. We had

Chair Sodaro: Well said. Okay. Thank you. Is
there a representative from Councilmember Martin's office,
Heidi Tsuneyoshi. Please correct me on record. Thank you.

Ms. Tsuneyoshi: Hello, good afternoon, Chair, and
members of the Planning Commission. Heidi Tsuneyoshi
representing the office of Councilmember Martin,
councilmember representing the district of the parcel in
concern. And we have submitted written testimony, and we
stand on that written testimony, requesting for a public
hearing to be put out into the community at a date, time,
and location that's convenient for the community. As you
have heard, there has been considerable concern from the
community and surrounding owners regarding the activities
that have happened on this parcel, and just to clear up any
concerns, we would appreciate your consideration for the
having the public hearing to discuss it further within the
community. Thank you.

Chair Sodaro: Thank you. Any questions? [no
response] Seeing none, thank you. Rebecca Lee Green.
1. Introduce yourself. Thank you.
2. Mr. Sonogini: Aloha everybody.
3. Chair Sodaro: Aloha.
4. Mr. Sonogini: My name is Ryan Sonogini. I usually say that I represent the average Hawaiian when I come and testify at these types of hearings. I've been following this issue since when they first began asking for community input up their ranch several years ago. They had a big meet-and-greet so to speak. They had overwhelming negative community input at that meeting. In fact, there was a lot of questions that didn't get answered in terms of the cultural sites. They had a cultural practitioner on their board, but he was not aware of the handling of iwi kupuna. They had stated that was just inaudible property. They had stated that they are aware of burials within their property that they said would be included in their community ag plan. Some of the other issues was the water that was in question. At that time, they didn't state that they were going to have a waste water treatment facility on their property. Looks like they revised it to show that they are going to process the human waste on their parcel. I am a kuleana land owning undivided, I guess of family lands on that side of the island. But we're fortunate that we still get to malama these parcels in our family's name. The continued expansion of the Hele'wa area

1. and the Waialua ahupua'a in general really disturbs us as we've visually seen the negative impacts of over development in that area. I agree that there should be further community opportunities to speak whether for or against this new subdivision being planned. I applaud you guys for taking the time to even hear it. Clearly, everybody in this room feels as if their voice should be heard pertaining to this issue. I would think that if this was also priority for the Dillingham Ranch, that they would've also have a representative here. I would think that in their failure to produce someone at every meeting or opportunity to receive public support shows a derelict of their stewardship of their land. And, I would hope that they're not leaving dollars on the floor or the table, so to speak, to speak for them. So, that is all. I just appreciate you guys.

16. Hopefully this will continue to get mediated in the public.
17. Thank you very much. You folks have a great day.

18. Chair Sodaro: Any questions? [no response]
19. Seeing none, thank you, sir. I wrote your name down, but I may have misspelled your last name.
20. Mr. Sonoginni from the audience:
22. Chair Sodaro: Thank you. Thank you for that.
23. Anyone else in the audience wishing to testify? [no response] Seeing none, may I ask for a motion to close public testimony?

1. review the permit we would need to take a motion so that we can reevaluate or what would be an evaluation for us since it passed in '72, so that we can reevaluate the permit that the—I guess, they're not even an applicant that Dillingham Ranch through a letter to DPP is asking for a partial release. Does that make sense?

7. Counsel Aiga: It's really a finding of probable cause. It's finding a probable cause of whether or not the complaint and the evidence shows probable cause to reevaluate the special use permit. And that's how it is written. Once, if you find probable cause it will go to public testimony. There will be proper notice given to the public, and a public hearing may be held. And that can only be determined once this Commission finds there's probable cause to go forward.

16. Member McNurdo: I guess, I have a question then.
17. Evaluate the permit, it's because—the reason would be because Dillingham Ranch wants us to rescind the permit, correct? Is that why—
18. Chair Sodaro: Rescind the permit in whole or release them—
19. Member McNurdo: Right--
20. Chair Sodaro: ...from the permit.
21. Member McNurdo: Right. Yet they sent a letter but are not present today. Is that--
Chair Sodaro: See no—yes. So, there's no action. So, for us to get more information we either decide... we want more information and if the answer is "no", then this doesn't go anywhere.

Member McMurdo: Right. If we don't do anything and we don't have a public hearing, the permit stands.

Counsel Agag: The permit remains.

Member McMurdo: The permit remains, which is what they don't want, correct? Okay. All right. Just so that I'm clear. I just don't understand.

Chair Sodaro: Please, staff planner. Thank you, Raymond.

Mr. Young: Again, Raymond Young, staff planner at DPP. You heard testimony from the public that implies if the permit is retained, it might be a method of stopping the subdivision. I would like to clarify the permit has not real mandatory bearing on whether or not the subdivision may be approved by the Director, which is an administrative process. We prefer that it be removed to make life easier for the future buyer, assuming that the subdivision is approved, they wouldn't be saddled by the requirements of the SUP. And, since there is no applicant today, that's been dissolved, and the ultimate responsibility of the SUP are the landowners. So, it doesn't really matter whether or not the permit is rescinded, although we would like to have that, we prefer that to make things easier on the subdivision and the future owners. If it were not rescinded, the subdivision process is a separate process. They could probably still proceed and if they wanted to make it slightly easier, they could subdivide around it.

Member McMurdo: So that's why they're not here?

Mr. Young: I'm not sure why they're not here.

They didn't tell me they weren't coming.

Member McMurdo: Okay.

Chair Sodaro: Could I ask the Deputy Director to come forward just to make sure I understand what the Department's position is. Staff Young shared it's the Department's preference that the permit be rescinded or does the Department have a desire so that we can consider what our action is or not. In the absence of staff report like--

Mr. Takahashi: The Department has no objections to the rescinding. We leave the matter before the Commission to make that determination.

Chair Sodaro: Okay. Thank you for clarifying. Any additional questions?

Member Kayashida: This SUP is covered by multiple owners and only one owner is--

Chair Sodaro: Requesting--

Member Kayashida: So, that's very odd, right?

Chair Sodaro: Yes. I think that's yes. Am I correct, corp counsel? Commissioner Tolentino.

Member Tolentino: I'm trying to wrap my head around this thing. Even under the SUP, would they—from what I've heard from public testimony, would they be in compliance with the SUP based on what I heard that they're doing with the property?

Mr. Young: Well, right now, there is no conditions of the SUP that requires continuous compliance, so to speak. There's no sand mining going on. And even if the owners were to request that they return to do sand mining processes, they couldn't. They would need a new conditional use permit.

Member Tolentino: It says sand mining. What is the borrowing?

Mr. Young: Oh, the borrowing is after you dig out your sand, there's a pit left. So, you would take some dirt from the borrowed site to refill that.

Member Tolentino: But are they doing that?

There's no activities than?

Mr. Young: There's no activity as far as I could tell. There is no hole at the borrowed site, so to speak. They might've grubbed it and, you know, put it into the sand mining. But I could not find in the record that there was any sand mining that actually occurred.

Chair Sodaro: It sounded like they were rock mining, from what I've heard from the public testimony.

Mr. Young: I'm not sure if that's the same property, though.

Member Tolentino: I'm not sure either. I'm just, you know, taking it from what it is, and there was somebody who thought it was important enough to come up and give testimony about rocks and other things being removed from the property, and possible burial sites that they may have encountered during the process. Okay. So, if rocks were moved the borrowing part, was there compliance there?

I don't know. You probably don't know.

Mr. Young: And, again, there are no conditions of the SUP for us to monitor it and determine whether or not they are in compliance.

Member Tolentino: Right, right. Okay.

Chair Sodaro: I don't have any more questions for staff. I did have a clarifying question for corp counsel. So, if we deem so that there's probable cause to set for public hearings so that we can all learn more about this permit, the decision at that—is that just the public hearing or is there an action that is then also agendaed associated to the public hearing? Do we have to state that action now or is it just the public hearing to consider, to reevaluate and/or revoke. So, it can both open the permit, it can leave the permit whole or it could revoke?
Counsel Agag: The rule say that it is a public hearing to determine the merit of the complaint.

So, right now we have a proposal. The question now is whether or not you guys have enough information to make the decision on probable cause. Whether or not you need to go further for more information. It's whether or not right now there's enough probable cause for you to either even go forward.

Chair Sodaro: Okay.

Counsel Agag: And to follow-up with that, once the public hearing happens, it's to determine whether or not there's a merit to the request or the complaint. It's a complaint in the rules, but at this point, it's a request. And there are further actions after that. The Commission can impose further conditions or sanctions including the revocation of the special use permit as the Commission deems appropriate. So, there are further steps to this, but at this phase right now, it's just to determine whether or not based on the facts in the evidence and the complaint that has been provided to you today, whether or not the Commission feels that there is probable cause to even further reevaluate this request for reevaluation or revocation of the special use permit. It's a small step towards a bigger movement.

Chair Sodaro: May I ask the Department, has the complaint been established? Is this letter from Kennedy Wilson the definition of complaint?

Mr. Young: I would gather that's a request, which in my mind would be a form of a complaint.

Chair Sodaro: Okay. I just want to make sure that--So, the basis, so what was just said. So, the complaint is this letter that we have. I just want to make sure we have a complaint.

Mr. Young: Yes. I believe that is the case.

Chair Sodaro: Okay.

Member Hayashida: But you don't have--You have two landowners that--

Mr. Young: There's three landowners.

Member Hayashida: Three landowners. So, how do you justify something when the other two people aren't in the system?

Chair Sodaro: Do complaints require all owners or agents of the permit?

Mr. Young: Well, we and the Applicants consulted with the Land Use Commission staff, and they are saying that you will need all owners to consent by process.

Member Hayashida: I don't think you have a complaint until you get three people--

Chair Sodaro: Yes. I feel like you need a--make sure we have a complaint first.

Mr. Young: But it's not clear because this is new ground. We've never done this before whether or not a single owner of the special use permit area could file a complaint legitimately and request relief for their portion.

Member Hayashida: So, someone has to determine that before we hear the complaint, right?

Mr. Young: Yes. And even though the Commission moves forward and does whatever it deems appropriate, your recommendation, unless it's a denial would still have to move forward to the Land Use Commission including the record for final determination.

Member Hayashida: I think someone should make a determination if it's a complaint or not and whether the three landowners need to step up and file it.

Member McMurdo: We don't have enough information.

Member Hayashida: I don't think we have a complaint.

Chair Sodaro: Okay. Any clarifying comments, corp counsel, Commissioner Tolento, Chang? [no response]

Thank you, staff. Okay. So, corp counsel we don't need to take action then on the other business or do we?

Member Hayashida: Defer or until we get a complaint.

Chair Sodaro: We have to--
1 counsel?
2 Counsel Agag: No. I mean, if you find no probabl
3 cause, then this can go no further. Of course, of other
4 complaint can come forward.
5 Chair Sodaro: A new complaint can come forward?
6 Counsel Agag: Right. Either under this rule or a
7 different rule. But for right now this was brough on your
8 2-50, and this agenda item was to determine or whether or
9 not there was probable cause. There's enough evidence and
10 the complaint produced enough probable cause for you to
11 decide whether or not to go forward. So, that's your
12 determination today.
13 Member Tolentino: But if we don't forward, the SUP
14 stands?
15 Counsel Agag: It stands.
16 Chair Sodaro: Yes. My only discussion, comment
17 would be, I agree we definitely don't have the makings of a
18 complaint and if there was a applicant or if there was a
19 complainant, is that word, they would be before us
20 identifying themselves as a complainant. So, I'm
21 comfortable that, I'm not certain that we actually have a
22 complaint before us, and we've not done anything to prevent
23 any future complaint be come before us should that be the
24 case on the same matter. Okay. I'll take that call to vote
25 for denial probable cause to move forward with a public

1 hearing. All those in favor.
2 All Commissioners: Aye.
3 Chair Sodaro: Hearing none, passes with five.
4 Thank you. Any other open matters from Gloria?
5 Hearings Reporter: None.
6 Chair Sodaro: None. Corp Counsel? [no response]
7 Hearing none, could I ask for a motion to close the meeting.
8 Member Tolentino: So move.
9 Member W. Chang: Second.
10 Chair Sodaro: Thank you. [bangs gavel]
11 [meeting adjourned at approximately 2:45 p.m.]
12 --00--
13
14 I certify that the foregoing is
15 a true and correct transcription
16 of the proceedings, prepared to
17 the best of my ability, of the
18 meeting held on Wednesday,
19 February 21, 2018.
20
21 Gloria Takara
22 Secretary-Hearings Reporter
23
25 Adopted on: May 30, 2018