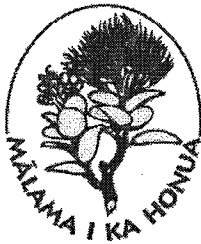


TESTIMONY
GM 338
LATE



Sierra Club

Hawai'i Chapter

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LATE TESTIMONY

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

March 24, 2010, 2:45 P.M.

(Testimony is 6 pages long)

TESTIMONY IN OPPOSITION TO GM 338 (APPOINTMENT OF DUANE KANUHA TO THE LAND USE COMMISSION)

Aloha Chair Hee and Members of the Committee:

The Hawai'i Chapter of the Sierra Club opposes the appointment of Duane Kanuha to the Land Use Commission not necessarily because of a poor record, but because his professional experience exacerbates the one-sided imbalance of the Land Use Commission towards serving a development interest. The one-sided focus of the Commission causes it to fail in fulfilling its mission and purpose under the law and our state constitution.

I. Purpose of the Land Use Commission.

In discussing potential candidates for the Land Use Commission, it is important to underscore that our venerable land use law was passed in 1961 in order to protect natural beauty and natural resources, to prevent scattered and premature development, to protect prime agricultural land, and to limit land speculation of urban areas. (1961 House Journal 855; 1961 Sess. Laws 299; *see also*, Haw. Rev. Stat. § 226-104). As the Hawai'i Supreme Court noted:

In sum, the overarching purpose of the state land use law is to "protect and conserve" natural resources and foster "intelligent," "effective," and "orderly" land allocation and development. *See* 1961 Haw. Sess. L. Act 187 § 1 at 299 ("[I]n order to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited for the public welfare . . . , the power to zone should be exercised by the State.") *See also* Pearl Ridge Estates Community Ass'n v. Lear Siegler, Inc., 65 Haw. 133, 144 n. 9, 648 P.2d 702, 709 n.9 (Nakamura, J., concurring) ("Thus, conservation lands must be reserved if practicable, agricultural lands should be protected, and urban lands should be developed in orderly fashion.")

Curtis v. Board of Appeals, County of Hawai'i, 90 Hawai'i 384, 396 (1999), 978 P.2d 822, 834.



Recycled Content

Robert D. Harris, Director

The Hawai'i Supreme Court has further observed that the emphasis of the Land Use Law is on controlling growth and protecting resources:

By enacting HRS ch. 205 in 1961, the legislature intended, *inter alia*, to "[s]tage the allocation of land for development in an orderly plan," H.Stand.Comm.Rep. No. 395, 1st Haw.Leg., 2d Sess., reprinted House Journal 855-56, and to redress the problem of "inadequate controls [which] have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in long-term loss to the income and growth potential of our economy. Act 187, 1961 Haw.Sess. Laws 299.

Neighborhood Board v. State Land Use Commission, 64 Haw. 265, 272-3, 639 P.2d 1097 (1982).

Hawaii's Land Use Law was enacted in an effort to manage growth on islands of limited resources:

Scattered subdivisions with expensive, yet reduced public services; the shifting of prime agricultural lands into non-revenue producing residential uses when other lands are available that could serve adequately urban needs . . . these are evidences of the need for public concern and action.

Act 187, 1961 Haw Sess. Laws 299.

II. Failure of the Land Use Commission to Fulfill the Law.

The current constitution of the Land Use Commission is plainly slanted towards serving development interests. This imbalance has created a perception, based on some particular examples, that the Commission has become a rubber stamp for developers. Time after time, the LUC has elected to support rapid growth or ignore the law in order to avoid addressing hard questions about smart growth and sustainability.

A. Turtle Bay/Kuilima Development Company

The Commission's failure to enforce conditions imposed on the proposed development at Turtle Bay is an example of a body ignoring the law in order to further development interests and to the detriment of the public at large.¹

In 1986, the Land Use Commission reclassified 236 acres in Kahuku based on a fifteen year market analysis and representations by Kuilima Development Company that the project would

¹ In the spirit of complete disclosure, Robert Harris previously represented Defend O'ahu Coalition, a petitioner that requested the Land Use Commission consider this matter. He has no current relationship with Defend O'ahu Coalition.

The Sierra Club, Hawai'i Chapter is also a plaintiff in a lawsuit pending before the Supreme Court of Hawai'i as to whether Kuilima Development Company's environmental impact statement is legally sufficient.

be completed by 2000.² Kuilima repeatedly promised that thousands of new jobs would be created "over the next 20 years." Dozens of residents testified in support of the project based largely on the promise of new jobs and affordable homes.

Unfortunately, Kuilima lied. Upon receiving this reclassification, ownership interest in the property exchanged hands several times. Little or no development on the property occurred. No new jobs. No new affordable housing.

Over twenty years elapsed. Few of the conditions imposed by the Land Use Commission were followed. For example, it is relatively uncontested that:

- A 4.8 acre park at Kawela Bay was never dedicated to the County;
- A 2-acre privately owned park was never opened to the public;
- Full-service hotels were never finished;
- Low and moderate income housing was never built;
- Improvements to Kamehameha Highway were never finished;
- Continuous pedestrian access along the shoreline was never provided; and
- Free public parking was not provided at the property.

On April 1, 2008, Defend Oahu Coalition filed a motion with the Land Use Commission pointing out Kuilima Development Company's failure to comply with the Commission's conditions. This is seemingly an easy motion. Numerous conditions were not satisfied. More than twenty years had elapsed. Pursuant to the Land Use Commission rules³ it seemed abundantly clear that SOMETHING should occur. The Commission, as urged by the Petitioner and suggested by the State Office of Planning, could have:

- 1) Granted the Motion and held a hearing asking Kuilima to prove why the land should not revert back to its prior reclassification or
- 2) Amended the Order granting the reclassification and established a "drop dead" date as to when the conditions needed to be fulfilled.

Instead, the Commission chose to simply defer action and hope the problem would go away. Specifically,

- 4/24/08: Land Use Commission ("LUC") hearing at which the LUC moves to set the Motion for hearing at its next Oahu meeting on 6/5 and 6/6/08. This meeting was eventually changed to 7/10 - 7/11/08.

² The Environmental Impact Statement indicated the project would be completed by 1994-1995.

³ Haw Admin. R. §15-15-93 states "[a]ny party or interested person may file a motion with the commission requesting an issuance of an order to show cause **upon a showing that there has been a failure to perform a condition, representation, or commitment on the part of the petitioner.**" (Emphasis added.).

- 7/11/08: Hearing before LUC. LUC voted to defer ruling on the Motion to receive additional legal advice, but also voted to require the submission of a status report by KDC, due 8/18/08.
- 10/2/08: LUC held a hearing at which it considered KDC's status report and questioned KDC about progress made.
- 11/6/08: LUC held another hearing on the status report. They voted to set the hearing on the Motion for the next Oahu meeting.
- 2/6/09: LUC hearing on the Motion. The LUC moved to defer ruling on the Motion until it could further consult with its deputy attorney general on legal issues.
- 4/3/09: LUC Executive Director Dan Davidson sent a letter to DOC stating that the LUC was receiving legal advice and was also giving hearing priority to matters with statutory deadlines.
- 2/4/10: Further hearing on DOC Motion. After public testimony and party arguments, a motion to deny DOC's motion failed for lack of a majority and a motion to grant DOC's Motion failed for lack of a second. A motion to modify the D&O was withdrawn after the LUC met with its counsel.

At each one of these hearings, dozens of North Shore residents made the long trek to the Land Use Commission downtown office hoping that -- perhaps finally -- the Commission would make an up or down vote on the Motion. As each hearing occurred, it became increasingly clear that the Commission has no desire to enforce its own conditions.

The two-year failure to take action on Defend Oahu Coalition's Motion has sent a clear signal to other developers that the Commissions' conditions will not be enforced. This fundamentally undermines our land use laws and the express purpose of land use law -- to protect valuable resources and to ensure orderly planning. Further, the only logical rationale for the Commission's actions was to preserve a developer's interests.

B. *Protection of Agricultural Land.*

Our constitution and land use laws plainly direct the Commission to preserve agricultural land with adequate water. The Hawai'i State Constitution, article XI, section 3 is explicit about the need to "conserve and protect agriculture lands, promote diversified agriculture, increase self-sufficiency," and about the need to "assure the availability of agricultural suitable lands." Haw. Rev. Stat. § 266-7 (10) states the Commission must "[a]ssure the availability of agricultural suitable lands with adequate water to accommodate present and future needs."

Despite this relatively clear direction, over the past fifty years *approximately 53% of Class A and B land have been reclassified from agricultural to urban use.* On O'ahu alone, over 3,200 acres of prime land have been reclassified over the past twenty years.

This is a crisis. Unfortunately, it looks like external problems are going to make this problem worse. Hawai'i has been experiencing droughts over the past decade. If, because of global warming, water resources become severely limited in the state, it is imperative we preserve prime agricultural lands that are characterized by high production efficiencies (which allow for greater yields or productivity with less inputs such as water, fertilizers, and labor) and that are in proximity to key population centers.

Two of the last large parcels of agricultural land on O'ahu -- Koa Ridge⁴ and Ho'opili -- are some of the last areas that have ready access to irrigation water. This explains why these parcels are succeeding commercially. The remaining 7,750 acres on O'ahu's north shore do not have access to adequate irrigation water for the production of edible crops, like vegetables. It will be up to the Commission and its new appointees to protect these lands for future generations.

Looking at the current constitution of the Commission -- almost all developers, representative of developers, or representatives of the construction industry -- it's unclear how the public could reasonably expect this body to fulfill its charge to protect agricultural land as it hears petitions to develop key remaining parcels. In the past, there has been somewhat of a greater balance of individuals. Plainly there is now a tremendous lack of experience with regard to agricultural, environmental, and cultural issues among the Commission's current members.

We need diversity in order to ensure public confidence and to make decisions that benefit the entire state and not simply short-term development interests. As one commentator⁵ recently noted:

[C]lear public sentiment has not been matched by a equally forceful governmental response -- the type of bold political strokes needed to ensure a strong agricultural potential for future generations. The majority of the good farmland is owned by private entities that generally seek the highest-priced use through rezoning for development. Since developments can also provide a quick boost to the local economy, as well as adding housing or addressing other present-day issues, they consistently succeed.

As Hawaii looks at sustainability and, in effect, accepts future generations as equal partners in planning, the erosion of agricultural land must be reassessed immediately. Many reasoned arguments can be made about competing uses so perhaps we need to be reminded of a basic fact: Food is fundamental to life, and the bulk of what we eat -- from the fast-food hamburger to the latest culinary concoction -- are derived from a farm. There are no realistic alternatives. In this context, we might ask: **Would citizens in 2050, looking back, wish we had urbanized a piece of farmland? Or might they wish we had kept it available to agriculture, both to cultivate fresh food, and as a buffer to the unpredictable vagaries of shipping food from suppliers at least half an ocean away? What**

⁴ According to the Petitioner, Castle & Cooke.

⁵ "Agriculture" by C.N. Lee and H.C. "Skip" Bittenbender, at 6.



would they consider the highest and best use of the land? And what might they want to pass along to their descendants?

(Emphasis added.). Thank you for the opportunity to testify.

From: Robert Bethea [bethea@hawaii.rr.com]
Sent: Tuesday, March 23, 2010 10:21 PM
To: WTLTestimony
Cc: bethea@hawaii.rr.com
Subject: RE: COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS HEARING MARCH 24, 2010 RE CONSIDERATION/CONFIRMATION OF MR. DUANE KANUHA FOR HAWAII LAND USE COMMISSION

GM 338

I concur completely with the e-mail from John Michael White recommending the confirmation of Mr. Duane Kanuha to the Land Use Commission of the State of Hawaii.

Aloha, Robert E. Bethea

From: JOHN MICHAEL WHITE [mailto:JMW@HawaiiLand.com]
Sent: Monday, March 22, 2010 12:16 PM
To: WTLTestimony@Capitol.hawaii.gov
Subject: COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS HEARING MARCH 24, 2010 RE CONSIDERATION/CONFIRMATION OF MR. DUANE KANUHA FOR HAWAII LAND USE COMMISSION

March 22, 2010

To: The Committee on Water, Land, Agriculture and Hawaiian Affairs

Attention: Honorable Senator Clayton Hee, Chair, Honorable Jill N. Tokuda, Vice Chair

Re: Consideration/confirmation of Mr. Duane Kanuha for Hawaii Land Use Commission

Aloha Honorable senators Hee, Tokuda and committee members,

I strongly recommend your consideration and confirmation of Mr. Duane Kanuha to the State of Hawaii Land Use Commission. Mr Kanuha is highly qualified for this position, due to his many years as a staff planner for the County of Hawaii, where he eventually became the director of planning for the county and particularly considering his years of dedication to the state of Hawaii as a member of Hawaii's Land Use Commission. Mr. Kanuha's service to the community, over many years, has been exemplary. Please consider and confirm him.

Mahalo,

John Michael White
JMW:m

.....
Sender ID for reply:

LATE TESTIMONY

State Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs Committee
Hawaii State Capital
Honolulu, Hawaii 96813

Benjamin D. Shafer
Hauula, Hawaii 96717
808.222.3138

March 24, 2010

RE: **Strong Oppose GM 338**, Duane Kanuha reappointment to LUC
March 24, 2010
2:45 pm
Rm. 229

Aloha Kakou Chairman Clayton Hee, Vice Chair Jill Okuda and Members of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs Committee,

I am in strong opposition to GM 338, the reappointment of Duane Kanuha to the Land Use Commission, for the following reasons.

The Land Use Commission is suppose to be looking out for the keiki o ka aina on land development issues now and into the future. Mr. Kanuha conflict of interest issues places him in a position against the LUC's stated purposes.

I am a supporter of development of the aina, but it needs to be sustainable, contributory to the aina, and supportive of the aina and its people. To develop with no thought of its mitigating impacts is irresponsible and unacceptable. We presently grow only 15% of our food, which needs to change to at least 75%. We need to preserve all good farmlands for the survival of future generations.

Mr. Kanuha expressed views of expansion of Turtle Bay and more development of prime farm land like Hoopili and elsewhere is short-sighted and irreversible. Mr. Kanuha's actions and votes do not reflect LUC purpose and mission.

Therefore, I strongly oppose GM 338, the reappointment of Duane Kanuha.

My recommendation is that this position be balanced out by someone who is an environmentalist.

Mahalo nui loa Kakou,

LATE TESTIMONY

Frank Brandt

From: Frank Brandt
Sent: Wednesday, March 24, 2010 9:16 AM
To: 'WTLTestimony@Capitol.hawaii.gov'
Subject: COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS HEARING
MARCH24, 2010 RE CONSIDERATION /CONFIRMATION OF MR. DUANE KANUHA FOR
STATE LAND USE COMMISSION

GM 938

March 24, 2010

To: The Committee on Water, Land, Agriculture and Hawaiian Affairs

Attention: Honorable Senator Clayton Hee, Chair; Honorable Senator Jill Tokuda, Vice Chair

RE: CONSIDERATION/CONFIRMATION OF MR. DUANE KANUHA FOR STATE LAND USE
COMMISSION

Dear Senators Hee, Tokuda and Committee Members,

I am writing to offer my wholehearted endorsement of Duane Kanuha to the State Land Use Commission. Duane is an environmentally responsible professional planner who has contributed significantly for many years to the living and natural environment of Hawaii.

As past Planning Director of Hawaii County, as a member of the State Land Use Commission and through his many years within and outside of government, Duane has an in-depth knowledge of the State of Hawaii. He is sensitive to community needs and desires while understanding statewide policy issues and resultant decisions. He will continue to bring to the Land Use Commission an invaluable wealth of knowledge and experience to make sound and responsible decisions in the best interests of the State.

Mahalo,



W. Frank Brandt
4039 Papu Circle
Honolulu, HI 96816

TESTIMONY
GM 338
LATE
(END)