

LAND USE COMMISSION
MEETING MINUTES
January 20, 2011

Waikoloa Beach Marriot Resort
Ali`i Room #3
69-275 Waikoloa Beach Drive
Waikoloa, Hawai`i 96738

COMMISSIONERS PRESENT: Vladimir Devens
Charles Jencks
Ronald Heller
Kyle Chock (arrived at 2:23 p.m.)
Thomas Contrades
Duane Kanuha
Lisa Judge
Normand Lezy

COMMISSIONER ABSENT: Nicholas Teves, Jr.

STAFF PRESENT: Orlando Davidson, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Devens called the meeting to order at 2:19 p.m.

APPROVAL OF MINUTES

Chair Devens asked if there were any corrections or additions to the January 6-7, 2011 minutes. There were none. Commissioner Jencks moved to approve the minutes. Commissioner Heller seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2011 was distributed in the handout material for the Commissioners.
- The upcoming major items for the February 2-3, 2011 meeting are the remainder of the A09-782 Tropic Land LLC hearing, status report for SP09-403 Department of Environmental Services- Waimānalo Gulch Sanitary Landfill on February 2, 2011, and the Moloka`i Site Visit/Hearing on February 3, 2011.
- Any questions or concerns- please contact LUC staff.

A87-617 Bridge `Āina Le`a, LLC and DW `Āina Le`a Development, LLC

Chair Devens announced that this was a hearing and action meeting on A87-617 DW `Āina Le`a Development LLC (Bridge `Āina Le`a) regarding the following:

- Pending Order to Show Cause
- Bridge `Āina Le`a LLC's Motion Re: Order to Show Cause filed November 12, 2010
- Office of Planning's Motion for Order to Show Cause filed December 23, 2010.

Chair Devens noted that the fourth item on the agenda, DW `Āina Le`a's Motion to Amend Conditions 1, 5 & 7 filed August 31, 2010 would be deferred from this agenda.

APPEARANCES

Bruce Voss, Esq., represented Co-Petitioner Bridge `Āina Le`a LLC

Alan Okamoto, Esq., represented Co-Petitioner DW `Āina Le`a Development LLC

William Brilhante, Esq., Deputy Corporation Counsel, Hawai`i County

Bobbie Jean Leithead-Todd, Planning Director, Hawai`i County

Bryan Yee, Esq., represented the State Office of Planning

Mary Lou Kobayashi, Acting Director, State Office of Planning

Chair Devens provided the planned procedures for the hearing and asked if there were any questions. Mr. Okamoto stated that his prepared argument included the Motion to Amend Conditions 1, 5, and 7 and noted his argument might be impacted due to the decision to defer it from the agenda, but he would do his best. Chair Devens acknowledged Mr. Okamoto's remarks.

There were no further questions or comments in regards to the planned procedures for the hearing.

PUBLIC WITNESSES

1. Robert Meier Diercks

Mr. Diercks provided his perception of how the proposed Project would benefit the local community and construction industry.

There were no questions for Mr. Meier Diercks.

2. Jessica Arruda

Ms. Arruda stated that she was a long-time resident and shared her opinion on why she supported the proposed Project and why it should be allowed to continue.

There were no questions for Ms. Arruda.

3. Nicole Kanda-Heath

Ms. Kanda-Heath provided her reasons for supporting the proposed Project and requested that the Commission grant more time for its completion.

There were no questions for Ms. Kanda-Heath.

4. Shawn O. Kelly

Mr. Kelly described his experiences of working with the Petitioner and provided his reasons for supporting the proposed Project.

There were no questions for Mr. Kelly.

5. Alethea Lai

Ms. Lai shared her reasons for supporting the Petitioner's proposed Project.

There were no questions for Ms. Lai.

6. Brooke Derby

Ms. Derby described how she felt the proposed Project would benefit the community.

There were no questions for Ms. Derby.

7. Irene Britton

Ms. Britton stated that she was a prospective buyer for Petitioner's proposed Project and provided her reasons for supporting it.

There were no questions for Ms. Britton.

8. Anika Glass

Ms. Glass stated her concerns about the proposed Project and described why she opposed granting any further time extensions to it.

There were no questions for Ms. Glass.

9. Dan Fasso

Mr. Fasso provided his perspective of why he supported the proposed Project.

There were no questions for Mr. Fasso.

10. Frank Snow

Mr. Snow provided his reasons for opposing the proposed Project and

stated that he advocated reverting its land use classification.

Commissioner Judge inquired why Mr. Snow did not consider DW to be a good neighbor to Puakō and the surrounding area. Mr. Snow provided his perception of why DW was not being a good neighbor and why the proposed project was not a “good project”.

There were no further questions for Mr. Snow.

11. Rob Shallenberger

Mr. Shallenberger stated his reasons for supporting the Office of Planning’s request for an Order to Show Cause and expressed his concerns about the EIS that had been done on the proposed Project.

There were no questions for Mr. Shallenberger

12. George Fry

Mr. Fry expressed his reasons for supporting the Order to Show Cause and described the actions that he thought the Commission should take.

There were no questions for Mr. Fry.

13. Gretchen Lambeth

Ms. Lambeth provided her perception of the proposed Project’s financing, its conformance with the County General and Community plans, and why the Commission should allow more time to it.

There were no questions for Ms. Lambeth.

14. Byron Harris

Mr. Harris provided his reasons why he supported the proposed Project and described the work that he was performing in the Petition Area.

Chair Devens requested clarification on Mr. Harris' remarks about the installation of a solar farm. Mr. Harris described the installation of solar energy devices on the roofs of carports in the Petition Area.

There were no further questions for Mr. Harris.

15. Philip Harris

Mr. Harris stated his reasons for supporting the proposed Project and described features that he thought this development would have that would benefit the community.

There were no questions for Mr. Harris.

16. Brent Butcher

Mr. Butcher stated that he applauded Petitioner's efforts and supported the proposed Project; and provided his recommendations for actions that he felt the Commission should take.

There were no questions for Mr. Butcher.

17. Robert Jack

Mr. Jack provided his perception of how the Petitioner had made and failed to keep promises and described why he opposed allowing more time to the proposed Project.

There were no questions for Mr. Jack.

18. George Robertson

Mr. Robertson submitted a copy of draft minutes for a meeting of the South Kohala CDP Action Committee dated November 22, 2010 and stated that the Action Committee had not provided any endorsement or perspective of the proposed Project; and provided his reasons for not supporting the Petitioner.

There were no questions for Mr. Robertson.

19. Peter Hackstedde

Mr. Hackstedde described how he thought the Petitioner had failed to meet its deadlines and why no further time extensions should be granted.

There were no questions for Mr. Hackstedde.

20. John Hoover

Mr. Hoover described why he opposed granting more time to the proposed Project.

There were no questions for Mr. Hoover.

21. Pua Correa

Ms. Correa expressed her reasons for supporting the proposed Project.

There were no questions for Ms. Correa.

The Commission went into recess at 3:14 p.m. and reconvened at 3:31 p.m.

ORAL ARGUMENTS

DW `Āina Le`a

Mr. Okamoto described development activity in the surrounding area and argued the reasons why the Commission should allow the proposed Project to continue; and how DW was prepared to move forward to complete it. Mr. Okamoto also described what might occur if DW was unable to complete its proposed Project.

Chair Devens confirmed Mr. Okamoto's attendance at the November 2010 LUC meeting on this docket and inquired if Mr. Okamoto had a full and fair opportunity to present additional evidence and witnesses. Mr. Okamoto responded that he had attended the November LUC meeting and had opportunities to submit additional briefs on the docket; and that he had no further argument or evidence to present to the Commission other than those regarding the Motion to Amend Conditions 1, 5 and 7.

Bridge `Āina Le`a

Mr. Voss argued the reasons why the Commission should allow the proposed Project to continue and provided the Commission with his perception of 8 facts that pertained to the Docket that he felt could not be disputed- 1) that the Petition Area was not appropriate for agriculture use, but was appropriate for urban use, 2) that there had been commencement of substantial site work and use of the land, 3) that there had never been a reversion of land use classification when substantial work had been done on a Petition Area, 4) that all action by the LUC must conform to the Hawai`i State Plan, 5) that when the Order to Show Cause was issued in 2008, it was stated that the hearing was to be conducted in accordance with Chapter 91, Subchapter 7 of the Commission's rules, 6) that the Commission did not provide notice and conduct its hearing in compliance with Chapter 91, Subchapter 7, 7) that the LUC has treated this project differently and less favorably than other projects and 8) that the public testimony supports the proposed Project with the exception of a few local residents. Mr. Voss also stated that the project conformed to the Hawai`i State Plan, would benefit the community in various ways and had the support of Hawai`i County.

Chair Devens inquired if Mr. Voss had attended the November 2010 LUC meeting on this docket and had a full and fair opportunity to present additional evidence and witnesses. Mr. Voss responded that he had attended the November LUC meeting and had opportunity to submit additional briefs on the docket; and that he had nothing further to present to the Commission.

Hawai`i County

Mr. Brillhante stated that Hawai`i County supported the proposed project and affirmed the County's previous testimony and argued why the Commission should not revert the Petition Area.

Chair Devens inquired if Mr. Brillhante had a full and fair opportunity to present additional arguments, evidence and witnesses at the November 2010 LUC meeting on this docket. Mr. Brillhante responded that he had attended the November LUC meeting and had opportunities to submit additional arguments, exhibits and witnesses on the docket; and that he had nothing more to add and no further argument to present to the Commission.

Office of Planning

(Please refer to LUC Transcript for more details on this matter.)
January 20, 2011 LUC meeting minutes

Mr. Yee argued why the pending Order to Show Cause and OP's motion for Order to Show Cause should be granted, why the Commission should revert the Petition Area to its former land use classification; and why the Bridge `Āina Le`a LLC's Motion should be denied. Mr. Yee offered that the Commission could consider the alternative of reverting all of the Petition Area with the exception of the 61 acre portion that DW had purchased, and described how OP envisioned this alternative could work if the Commission did not decide on a reversion of the entire Petition Area.

Mr. Yee provided his perspective on the 8 facts that Mr. Voss had presented and argued how OP's position disagreed with them.

Chair Devens inquired if Mr. Yee had attended the November 2010 LUC meeting on this docket and had a full and fair opportunity to present additional evidence and witnesses. Mr. Yee responded that he had attended the November LUC meeting and had opportunity to submit additional briefs on the docket; and that he had nothing further to present to the Commission

REBUTTAL

Bridge `Āina Le`a

Mr. Voss provided his perspective of why Mr. Yee's suggestion of a partial reversion was not appropriate and argued why the Petitioner had made its proposal that included various features other than residential units, and that he believed that 6 votes were required to revert the Petition Area's land use classification.

DW `Āina Le`a

Mr. Okamoto argued why Mr. Yee's suggested alternative for partial reversion was not acceptable and why the proposed Project should be given a chance to continue. Mr. Okamoto also stated that he had submitted a supplemental memorandum as part of his Motion to Amend Conditions 1, 5 and 7 which provided information on EXIM financing and acknowledged that EXIM had not provided its promised funding.

Chair Devens thanked the Parties for their presentations and recapped the docket record background dates, events and history to check for their accuracy.

Discussion ensued to clarify various details of the record. Mr. Yee provided his recollection of the facts associated with the Petition. There were no objections or comments made by the Co-Petitioners or Hawai'i County in regards to Mr. Yee's clarifications.

COMMISSIONER QUESTIONS

Commissioner Kanuha

Commissioner Kanuha had a series of questions regarding facts related to the Petition Area that he requested clarification on.

Mr. Brilante responded to Commissioner Kanuha's question regarding whether the County had rezoned the Petition Area, and stated that it was undisputed that the County had also issued permits for subdivision, grading and construction for the proposed Project.

Mr. Yee offered his perception of the term "subdivision" in the manner that he thought Commissioner Kanuha was seeking. Ms. Leithead-Todd clarified how "subdivision" applied to the proposed Project and described what actions Hawai'i County had taken, what information she felt was relevant to them; and confirmed that Hawai'i County had issued grading and construction permits but not final subdivision approval.

Commissioner Kanuha inquired if certificates of occupancy had been issued. Ms. Leithead-Todd responded that certificates had not yet been issued and described the County requirements that had to be met beforehand.

Commissioner Kanuha asked what would happen if the Petition Area were reverted to its former land use classification. Ms. Leithead-Todd stated that she did not know and provided her perception of what might need to occur and the type of problems that might confront her department and the County; and described the County zoning process.

Commissioner Kanuha inquired if the County zoning included considerations for affordable housing. Ms. Leithead-Todd provided her recollection of the applicable County affordable housing requirements and policies for the proposed Project.

Commissioner Jencks

Commissioner Jencks requested clarification on the County large lot subdivision approval process and whether there were County bonding requirements that needed to be met before allowing construction to commence. Ms. Leithead-Todd stated that bonds were required for subdivision improvements and could not recall what happened in regards to this docket.

Commissioner Jencks inquired what infrastructure and associated requirements needed to be in place before certificates of occupancy could be issued. Ms. Leithead-Todd provided her understanding of certificate of occupancy requirements.

Commissioner Jencks requested clarification on the County's perception of the EIS that had been submitted for the proposed Project and how much active construction was occurring in the area. Ms. Leithead-Todd described her perception of the EIS document and provided her understanding of State and County construction activity in the area and other activity on the eastern side of Hawai'i island.

Commissioner Heller

Commissioner Heller requested clarification on the County's change of position on this docket since April, 2009.

Ms. Leithead-Todd described how the County had determined and adjusted its position on this docket since the land was not suitable for agriculture and the issue of affordable housing was important.

Commissioner Jencks

Commissioner Jencks asked Mr. Voss for an update on the status of various permits and approvals for the proposed project that had been discussed at the November 2010 hearing.

Mr. Voss referred the question to Mr. Okamoto.

Chair Devens called for a recess at 4:40 p.m. and reconvened the hearing at 4:50 p.m.

Mr. Okamoto provided his understanding of the current status of various permits and applications based on Petitioner's design/build contract and on progress reported by the Petitioner. Mr. Okamoto stated that attorney Michael Lau had been engaged to handle the Petitioner's PUC work and described what other permits and approvals needed to be obtained to get certificates of occupancy for the proposed Project.

Commissioner Lezy

Commissioner Lezy inquired if DW `Āina Le`a disputed the fact that the first condition of the 2005 Decision and Order had not been satisfied.

Mr. Okamoto responded that DW `Āina Le`a did not dispute that the first condition of the 2005 Decision and Order had not been satisfied.

Commissioner Lezy requested clarification on why Mr. Okamoto was asking the Commission to look beyond the undisputed fact that the first condition of the 2005 Decision and Order had not been satisfied.

Mr. Okamoto responded that it was his belief that the Commission should examine the suitability of the land for the land use category that it was proposed be reverted to and argued why the Commission should not revert the Petition Area back to Agricultural.

Commissioner Kanuha

Commissioner Kanuha requested clarification from the Office of Planning in regards to its position in 2005, when the reduction in affordable housing units from 60% to 20% was granted. Mr. Yee responded that OP had supported the reduction in the affordable housing component and described his understanding of the considerations that factored into OP's support in 2005.

Commissioner Kanuha requested clarification on OP's experience with making determinations on activities and Conditions that were imposed in its recommendations for Decisions and Orders; and how proactive OP was in coordinating matters with other State agencies for projects that were moving forward. Mr. Yee described how OP was involved with development issues and not with actual construction activities when making its decisions; how OP was involved with assisting and coordinating issues for projects as a State agency, and what the role of the Land Use Division of OP was.

Commissioner Kanuha inquired if OP had the ability to enforce Conditions of Decisions and Orders. Mr. Yee described how OP took action to seek enforcement and stated that it did not have the authority to directly enforce conditions.

Commissioner Kanuha stated that he had earlier asked a series of questions of the County in regards to its permit/approval process and inquired why OP did not acknowledge such matters in its motion. Mr. Yee responded that none of that was relevant to the question of whether or not Petitioner had complied with Condition 1.

Chair Devens

Chair Devens inquired if Mr. Okamoto was aware of the representations made to the Commission at the April 30, 2009 meeting in regards to DW `Āina Le`a LLC's assuming Bridge `Āina Le`a's developer role and meeting the Conditions of the Decision and Order. Mr. Okamoto acknowledged that he had read the transcripts and believed that the representation had been made; and described how DW had planned to proceed and fulfill its role to meet its deadlines.

Chair Devens inquired if Mr. Okamoto was aware of the representations made during Commissioner Lezy's questioning at the June 5, 2009 meeting that DW `Āina Le`a LLC did not intend to return to the Commission to request amendments to the Decision and Order. Mr. Okamoto responded that he could not recall the specifics of the DW responses and that DW did not intend to request further amendments at that time and was focused on completing the required units on time.

Chair Devens inquired if Mr. Okamoto was aware of the representations made by Mr. Wessels at the June 5, 2009 meeting that DW `Āina Le`a LLC would have close to a hundred units ready to go by January/February. Mr. Okamoto replied that he believed that there was a plan to have the units constructed by that point in time.

Chair Devens moved to enter into Executive Session. Commissioner Judge seconded the Motion. There was no discussion. By voice vote, the

Commission unanimously elected to enter into Executive Session (8-0) and exited the hearing room at 5:13 p.m.

The Commission reconvened at 5:30 p.m.

DELIBERATION

Chair Devens requested that Executive Officer Davidson perform a roll call confirmation to determine if the Commissioners attending this hearing had an opportunity to review and become familiar with the record of this Order to Show Cause case and were prepared to deliberate and decide on it.

The Commission was polled as follows:

Yes: Commissioners Lezy, Kanuha, Judge, Jencks, Heller, Contrades, Chock and Chair Devens.

No: None

All 8 Commissioners in attendance acknowledged that they had reviewed and were familiar with the record.

Commissioner Jencks offered comments on his experiences as a developer and described the difficulties that confront his industry that he felt the Commission should consider while deliberating on whether to revert the land use classification of the Petition Area.

Commissioner Lezy moved to revert the Petition Area to an Agriculture Land Use Designation for failure to show cause why it should not be reverted. Commissioner Contrades seconded the motion.

Commissioner Kanuha stated that he would be voting against the Motion and provided the reasons for his action based on his observations and experiences with the entitlement process at the County level.

Commissioner Heller commented on events that occurred in early 2009 before the Commission and described how Hawai'i County had indicated at that time that a November, 2010 completion date for the proposed Project was reasonable; and that it was unfortunate that the failure to meet the deadline for satisfying Condition 1 of the Decision and Order left the Commission with no alternative other than reverting the land use of the Petition Area.

Commissioner Contrades provided his recollection of the promises that had been made to the Commission by Petitioner Bridge `Āina Le`a LLC when he started as a Commissioner in 2005 and described how the Petitioner had repeatedly failed to honor the promises and representations over the years despite the amendments that the Commission had made in response to Petitioner's motion. Commissioner Contrades expressed that the continued failure of the Petitioner to honor its commitments prompted him to second the Motion to revert the land use and that he would be voting for the Motion.

Commissioner Lezy commented that the remarks of Commissioners Kanuha and Jencks were well taken and noted that the remarks regarding financing difficulties for the construction industry was not a position that was taken by the Petitioner in its argument about failure to meet conditions; and that his motion to revert the land use classification seemed like the only alternative that could be taken in this matter.

Commissioner Kanuha provided his perception of the purpose and mission of the Land Use Commission, described the possible consequences and impacts that he thought would result from a decision to revert the Petition Area's land use classification by the LUC; and restated his opposition to the motion.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Lezy, Contrades, Heller, Chock and Chair Devens.

Nays: Commissioners Kanuha, Judge and Jencks.

The motion passed 5-3 with 1 excused.

Chair Devens directed the LUC staff to prepare the Findings of Fact, Conclusions of Law and Decision and Order for the Commission and noted that two remaining items- the OP Order to Show Cause and the Bridge `Āina Le`a motion re: Order to Show Cause filed November 12, 2010, were still on the agenda and needed to be addressed.

Commissioner Heller moved to deny both of the remaining motions since they appeared to be moot at this point. Commissioner Contrades seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Heller, Contrades, Lezy, Kanuha, Judge, Jencks Heller, Chock and Chair Devens.

Nays: None.

The motion passed 8-0 with 1 excused.

Chair Devens asked Mr. Okamoto what he wished to have done with his motion to amend conditions 1, 5 and 7 given the outcome of the vote to revert the land use of the Petition Area. Mr. Okamoto replied that he wished to have his motion heard by the Commission. Discussion ensued regarding the Commission's decision.

Mr. Voss argued that Chapter 205-4 states that any district boundary amendment decision requires six affirmative votes and that he felt that no reversion of the land use had occurred and that the Commission was obligated by law to hear the motion to amend conditions.

Chair Devens questioned the Co-Petitioners about whose motion it was.

Mr. Okamoto acknowledged that it was DW's motion and argued that he had filed his motion with the expectation that the Commission would hear it and that he agreed with Mr. Voss' argument that six affirmative votes were required for a district boundary amendment decision.

Mr. Yee argued that this was not a hearing for a district boundary amendment but for an Order to Show Cause that does not require six affirmative votes and that the statutory provision that Mr. Voss cited did not apply; and suggested that if Mr. Okamoto insisted on his motion being heard, that the LUC could re-schedule it and that OP would recommend that it be dismissed as moot at that time.

Chair Devens stated that he understood the positions of Mr. Voss and Mr. Okamoto and that the Motion to Amend Conditions 1, 5 and 7 would be scheduled on the next appropriate agenda and would be addressed then.

There being no further business on this docket, Chair Devens declared a recess at 6:02 p.m. and stated that the Commission would reconvene at 9:00 a.m. on January 21, 2010 to hear and act on SP70-85.

LAND USE COMMISSION
MEETING MINUTES
January 21, 2011

Waikoloa Beach Marriot Resort
Ali`i Room #3
69-275 Waikoloa Beach Drive
Waikoloa, Hawai`i 96738

COMMISSIONERS PRESENT: Vladimir Devens
Charles Jencks
Ronald Heller
Kyle Chock
Duane Kanuha
Lisa Judge
Normand Lezy

COMMISSIONER ABSENT: Thomas Contrades
Nicholas Teves, Jr.

STAFF PRESENT: Orlando Davidson, Executive Officer
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Chair Devens called the meeting to order at 9:10 a.m.

SP70-85 Edwin DeLuz Trucking & Gravel, LLC

Chair Devens announced that this was an action meeting to consider granting an Amendment to Condition No. 2 (Extend Life of Permit) to extend the special permit for 5 years, to December 11, 2015.

APPEARANCES

Ed Haitzuka, Esq., represented Edwin DeLuz Trucking and Gravel, LLC
Kevin Balog, Edwin DeLuz Trucking and Gravel, LLC
William Brillhante, Esq., Deputy Corporation Counsel, Hawai'i County
Bobbie Jean Leithead-Todd, Planning Director, Hawai'i County
Bryan Yee, Esq., represented the State Office of Planning
Mary Alice Evans, State Office of Planning

PUBLIC WITNESSES

None

Chair Devens stated that the Commission had the complete record from the Hawai'i County Planning Commission and had had the chance to review the entire record.

Chair Devens stated that his understanding of Condition 2 of the motion included a request for the extension of time for Condition 2 by 5 years from December 10, 2010 to December 11, 2015 and that quarrying operations at Site 1 (Pu`u Hina`i) shall be terminated by December 11, 2015, or prior to final subdivision approval of the increment of adjacent RA zoned lands which abut the quarry boundaries, or prior abandonment, whichever occurs first.

The Petitioner, Hawai'i County and OP agreed that Chair Devens' understanding was correct.

Chair Devens stated that additional Planning Commission recommendations included adding new Conditions 3 and 5 which were:

Condition 3. Mining of Pu`u Hina`i shall immediately cease to protect and preserve the pu`u in compliance with the South Kohala Community Development Plan.

Condition 5. The applicant shall submit a soils report of the minded area of Pu`u Hina`i by an engineer qualified in the field of soil mechanics and licensed within the State of Hawai'i within ninety (90) days from the effective date of this amendment. The soils report, which shall provide recommendations for the stabilization of Pu`u Hina`i, shall be submitted to the Planning Director for review and approval, in consultation with the

Department of Public Works. The applicant shall comply with the recommendation(s) of the approved soils report to stabilize the pu`u and bring it into a non-hazardous condition. Additionally, the applicant shall comply with any other measures determined by the Planning Director to provide reasonable assurance of the stability of Pu`u Hina`i and the safety of people who may work or have reason to be in close proximity to the pu`u.

The Petitioner, Hawai`i County and OP agreed that it was their understanding that the suggested recommendations were correct.

Chair Devens inquired if any of the Parties had any objections to the suggested recommendations as stated.

The Petitioner, Hawai`i County and OP stated that they had no objections to the suggested recommendations as stated.

There were no questions from the Petitioner, Hawai`i County and OP.

Commissioner Heller requested clarification on the status of public access to the Petition Area. Mr. Haitsuka responded that the Petition Area was on private land and was gated and secured from public access.

There were no further questions.

Chair Devens moved to approve the request for time extension for the special use permit and the new conditions 3 and 5 as recommended by the Planning Commission. Commissioner Kanuha seconded the motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Heller, Lezy, Kanuha, Judge, Jencks Heller, Chock and Chair Devens.

Nays: None.

The motion passed 7-0 with 2 excused.

There being no further business, Chair Devens adjourned the meeting at 9:15 a.m.