

LAND USE COMMISSION  
MEETING MINUTES

**May 31, 2017 – 9:30 a.m.**

Department of Transportation – Maui - Highways  
650 Palapala Drive, Kahului, HI, 96732

COMMISSIONERS PRESENT: Edmund Aczon  
Aaron Mahi  
Arnold Wong  
Linda Estes  
Dawn Chang  
Nancy Cabral

\*COMMISSIONERS EXCUSED: Gary Okuda  
Jonathan Scheuer  
(\*There are currently 8 seated Commissioners)

COURT REPORTER Cynthia Murphy

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Diane Erickson, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

**CALL TO ORDER**

Chair Aczon called the meeting to order at 9:30 a.m. and announced that there was a need to amend the agenda to deal with LUC administrative matters and entertained a motion to amend the agenda.

Commissioner Wong moved and Commissioner Cabral seconded the motion to amend the agenda to add a discussion on election of officers after addressing the adoption of the form of the order (agenda item III) for Docket No. A89-649, Lāna`i Resorts. There was no discussion. By a unanimous voice vote (6-0-2 excused), the Commission voted to amend the agenda.

**APPROVAL OF MINUTES**

Chair Aczon asked if there were any corrections or additions to the May 24, 2017 minutes. There were none. Commissioner Estes moved to approve the minutes. Commissioner Chang seconded the motion. The minutes were unanimously approved by voice vote 6-0 (6-0--2 excused).

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- June 14, 2017 has been reserved for site visit to Kaua`i-for Docket No. A17-802 Kaua`i County Housing Agency- 201H Lima Ola Project.
- Jun 28-29, 2017, the Commission will be on Kauai for A17-802 County of Kaua`i Housing Agency
- On July 19-20, 2017, the Commission will be on Maui for A94-706 Ka`ono`ulu Ranch to consider FEIS acceptance.
- On July 26, 2017, the Commission will be on Kaua`i to finish A17-802 Lima Ola, and A16-800 Island School and A16-801 UH-Kaua`i Community College.
- August 9-10, 2017 is reserved for O`ahu Solar Special Permits.
- August 23-24, 2017 is reserved for A94-706 Ka`ono`ulu Ranch's Motion to Amend.
- September 6-7, 2017 currently open.
- HCPO is September 20-22, 2017 on Oahu.
- Any questions or conflicts, please contact LUC staff.

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

## **ACTION**

### **A89-649 LĀNA`I RESORT PARTNERS**

To hear and consider Exceptions and argument of the parties on Hearings Officer's Recommended Findings of Fact, Conclusions of Law, and Decision and Order on further matters relating to an Order to Show Cause as to whether certain land located at Mānele, Lāna`i, should revert to its former Agricultural and/or Rural land use classification due to Petitioner's failure to comply with Condition No. 10 of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Conclusions of Law, and Decision and Order filed April 16, 1991, Tax Map Key No. 4-9-002:049 (por.), formerly Tax Map Key No. 4-9-002:001 (por.)

Chair Aczon announced that the next agenda item would be a hearing on Docket No. A89-649 Lāna`i Resort Partners to adopt the form of the order regarding the remand of an Order to Show Cause as to whether certain land located at Mānele, Lāna`i, should revert to its former Agricultural and/or Rural land use classification due to Petitioner's failure to comply with Condition No. 10 of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Conclusions of Law, and Decision and Order filed April 16, 1991,

## **APPEARANCES**

LUC Meeting Minutes (*Please refer to LUC transcript for more details on this matter*)  
May 31, 2017

David Kopper, Esq., Native Hawaiian Legal Corporation (NHLC), Counsel for Lāna`ians for Sensible Growth (LSG)  
Benjamin Kudo, Esq., Counsel for Lāna`i Resort Partners (LRP)  
Michael Hopper, Esq., Deputy Corporation Counsels for County of Maui (County)  
William Spence, Director, Planning Department (County)  
Bryan Yee, Esq., Deputy Attorney General, State Office of Planning (OP)

Chair Aczon updated the record and called for Public Witnesses.

#### PUBLIC WITNESSES

None.

Mr. Kopper asked if there would be an opportunity to provide comments. Chair Aczon responded that it would depend on the nature of the comments. Ms. Erickson clarified that public witnesses could provide testimony at this point of the meeting. Mr. Kopper stated that he would like to have an opportunity to state objections and make comments on procedural matters since he had not had the opportunity to at the previous meeting on this matter. Chair Aczon granted Mr. Kopper permission to provide his comments.

Mr. Kopper stated that the record incorrectly stated the voting results and that the correct vote was 5-1 and that 6 Commissioners had participated in the deliberations (Hiranaga-recused, Scheuer-excused). Mr. Kopper also stated that he had requested, but had not received, a copy of the final form of the order for his review; and objected to any Commissioner voting on this matter who had not attended the hearing; and that the Commission had not addressed LSG's exceptions during its deliberations. Chair Aczon responded that his recollection of events was that the deliberations were comprehensive and complete and discussion ensued to clarify Mr. Kopper's comments.

Mr. Kopper argued why he felt the Commission had only considered LSG's objections and not its exceptions and stated that he had observed, upon returning from the lunch break, that LUC staff had prepared changes to the order for the Commission to review; and that no review of LSG's exceptions was performed.

#### **EXECUTIVE SESSION**

Commissioner Wong moved to enter Executive Session. Commissioner Cabral seconded the Motion. By a unanimous voice vote (6-0-2 excused), the Commission voted to enter into Executive Session.

The Commission entered Executive Session at 9:41 a.m. and reconvened at 9: 53 a.m.

Chair Aczon stated that the correct vote count was 5-1, with 2 excused (8 serving Commissioners). Ms. Erickson described how Hawai`i Revised Statutes Chapter 91 allowed for Commissioner Mahi to vote on this matter and that the document the LUC staff had LUC Meeting Minutes (*Please refer to LUC transcript for more details on this matter*)  
May 31, 2017

provided to the Commission to review after lunch was a list of issues that had been addressed; and was not an amendment or changes to the order as Mr. Kopper may have thought.

Commissioner Cabral stated that she believed the Commission had thoroughly reviewed the submitted materials from all the Parties during deliberations and had discussed relevant points regarding the arguments and presentations by all the Parties. Mr. Kopper reasserted that LSG's exceptions still were not part of what the Commission had reviewed or mentioned during deliberations.

Chair Aczon stated that he would allow the other Parties an opportunity to respond to Mr. Kopper's comments.

Mr. Kudo commented that Commissioners could vote if they had reviewed the transcripts of the meeting involved with the matter under consideration, and described why exceptions might not necessarily need to be discussed by the Commission in certain situations.

Mr. Hopper commented that County did not have objections to the process.

Mr. Yee stated that the Commission did not issue a copy of the proposed order to any of the Parties and described how the LUC customarily handled adoptions of the form of its orders in the past without providing advance copies. Mr. Yee also described how a review of the order might not require addressing exceptions and recalled that the document circulated to the Commission by LUC staff was an updated record of the changes that had been made or suggested during deliberations for record-keeping purposes.

There were no further comments.

Chair Aczon stated that the Commission would begin deliberations concerning whether to adopt the form of the order for A89-649 Lāna`i Resorts, and that he would not entertain additional input from the parties or the public. Chair Aczon then confirmed that each participating Commissioner in attendance had reviewed the record and was ready to deliberate. All attending Commissioners acknowledged that they were ready to deliberate.

Chair Aczon entertained a Motion to approve the form of the Order in this matter.

Commissioner Wong moved to approve the form of the order. Commissioner Estes seconded the motion. Chair Aczon asked Mr. Orodener to poll the Commission. The motion was unanimously approved 6-0 (6-0--2 excused).

Chair Aczon thanked the Parties for their efforts. Commissioner Wong requested and was granted a short recess.

The Commission went into recess at 10:02 a.m. and reconvened at 10:05 a.m.

### **DISCUSSION ON ELECTION OF OFFICERS**

Chair Aczon stated that he wanted to address the election of officers to serve during Fiscal Year 2018 and opened the floor to discussion on the matter.

Commissioner Wong recalled how in the past, a sub-committee had been created to develop and present a slate to the Commission consider.

Commissioner Estes questioned why an election had not been conducted during the 2017 Fiscal Year.

Commissioner Chang moved to assemble a committee for the purpose of developing a proposed slate of officers by working with the Executive Officer to propose to the Commission for its consideration. Commissioner Estes seconded the motion. By a voice vote, the Commission unanimously voted to assemble a committee.

Chair Aczon sought volunteers to serve on the committee. Commissioners Estes, Wong and Mahi consented to serve.

Commissioner Cabral requested clarification on how Commissioners on "holdover" status could be involved in Commission matters. Mr. Orodener explained how "holdover" terms functioned.

Chair Aczon summarized and confirmed that the Commission had decided that the election committee would be comprised of 3 volunteers (Commissioners Estes, Wong and Mahi); and that they would be tasked to provide a slate of officers as soon as possible and asked if there were any further comments or objections on the matter. There were none.

Chair Aczon asked if the Executive Session posted in the agenda was still necessary. Mr. Orodener responded that it did not require immediate attention and could be deferred.

There being no further business. Chair Aczon adjourned the meeting at 10:10 a.m.