

LAND USE COMMISSION
MEETING MINUTES
October 18, 2017 – 1:30 p.m.
Kulana O’iwi, DHHL / OHA Conference Room,
600 Maunaloa Highway, Kaunakakai, Molokai, Hawai i

COMMISSIONERS PRESENT: Lee Ohigashi
Arnold Wong
Nancy Cabral
Linda Estes
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Dawn Chang

COMMISSIONERS EXCUSED: Edmund Aczon

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

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Wong called the meeting to order at 1:30 p.m.

APPROVAL OF MINUTES

Chair Wong asked if there were any corrections or additions to the October 11th, 2017 meeting minutes. There were none. Commissioner Estes moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (8 ayes).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

- OCT 19- Continuation of Docket DR 17-60 if necessary.
- NOV 8-9 – SP17-408 AES Lawai Kauai Solar Special Permit, A17-803 Kealia –LUC Accepting Authority for EIS and LUC OEQC Training, Adopt DR17-59 and DR17-60 Orders
- NOV 21- Hono`uli`uli Special Permits on Oahu, Adopt SP17-408 AES Lawai Solar
- DEC 6- 7- A15-798 Waikapu (Maui) and Adopt SP17-409 Hono`uli`uli Special Permit
- JAN 10- A15-798 Waikapu (Maui) cont., A04-751 Pulelehua (Maui Land & Pine)- Motion to Amend
- JAN 24- Status reports A00-791 Lanihau and A10-788 HHFDC (NELHA in Kona)
- Any questions or concerns- please contact LUC staff.
- Any questions or conflicts, please contact LUC staff.

HEARING AND ACTION

DR17-60 MONSANTO COMPANY-Molokai IAL (Molokai)

To Consider Petition for Declaratory Order to Designate Important Agricultural Lands for approximately 1,084.079 acres at Naiwa, Manowainui, Kahanui, Moloka`i, identified by TMK No. (2) 5-2-012-004

APPEARANCES

Jennifer Lim, Esq. and Mark Murakami, Esq., attorneys for Petitioner Monsanto Company

Kathleen Aoki, Planner-County of Maui Planning Department (County)

Will Spence, Director (County)

Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)

Lorene Maki, Planner, OP

Chair Wong updated the record and asked if Petitioner was aware of and agreeable with the Commission’s policy on reimbursement. Ms. Lim replied that Petitioner had no objections to the Commission’s policy and would comply. Ms. Lim

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requested that the record reflect that she had submitted additional documents before the start of proceedings.

Commissioner Scheuer inquired if the latest submitted materials had been made available to the Public. Chair Wong confirmed with LUC staff that the aforementioned documents had been submitted and posted to the LUC website and acknowledged the receipt of the latest Petitioner submittals.

Chair Wong stated that he was aware that the Petitioner had adjusted its presentation schedule to accommodate the public comments of OP, County and the State Department of Agriculture (DOA) on Wednesday and to continue its presentation on Thursday if necessary. Chair Wong asked if OP and County were agreeable to the proposed order of presentation. Both OP and County acknowledged that they were.

Ms. Lim inquired how public testimony would be handled. Chair Wong described how public testimony would be conducted on Wednesday, and how agency public comments from OP, County and DOA and other new public testimony would be entertained.

Chair Wong declared that all documents submitted by OP, County, DOA and the general public would be considered part of the record. Ms. Lim did not object.

DISCLOSURES

Commissioner Okuda stated that he was a personal friend of Carl Kobayashi, Chairman of the Board for the law firm, Carlsmith Ball, representing Petitioner, but did not feel that his relationship with Mr. Kobayashi would interfere with his remaining impartial during the proceedings.

There were no objections to Commissioner Okuda's continued participation.

Commissioner Chang stated that she had previously performed work for Dow Agribusiness on Molokai, but did not feel that this past employment would affect her impartiality during the proceedings.

There were no objections to Commissioner Chang's continued participation.

Commissioner Ohigashi stated that he was a personal friend of Stephen Lim, husband of Ms. Lim, from the law firm, Carlsmith Ball, appearing before the Commission on behalf of the Petitioner; but did not feel that his relationship with Mr. and Mrs. Lim would interfere with his remaining impartial during the proceedings.

There were no objections to Commissioner Ohigashi's continued participation.

Commissioner Scheuer stated that he had previously been employed by the Department of Hawaiian Home Lands as a consultant related to the Molokai Irrigation System; but did not feel that it would affect his impartiality during the proceedings.

There were no objections to Commissioner Scheuer's continued participation.

There were no further disclosures.

Chair Wong called for public testimony.

PUBLIC TESTIMONY

1. Tom DeCoursey

Mr. DeCoursey stated that he was in support of the proposed Petition and described his reasons for taking that position.

Commissioner Scheuer requested clarification on Mr. DeCoursey's understanding of the purpose of the IAL designation.

There were no further questions for Mr. DeCoursey.

2. Kauhane Adams

Mr. Adams stated that he wished to testify towards the end of public testimony.

3. Aaron Boswell

Mr. Boswell stated that he was in opposition to the Petition and described why.

There were no questions for Mr. Boswell.

4. Rob Stevenson

Mr. Stevenson stated that he wished to testify towards the end of public testimony. Chair Wong acknowledged his request.

5. Adolph Helm

Mr. Helm shared the reasons why he was in favor of the proposed Petition.

There were no questions for Mr. Helm.

6. Artice Swingle

Ms. Swingle stated that she was in favor of the IAL designation but had concerns regarding the use of pesticides and described agricultural matters that she was opposed to.

Commissioner Chang requested clarification on whether Ms. Swingle supported or opposed the proposed Petition. Ms. Swingle replied that she supported the Petition.

7. Lori Buchanan

Ms. Buchan submitted written testimony and stated that she supported the Petition with conditions.

There were no questions for Ms. Buchanan.

8. Walter Ritte

Mr. Ritte described why he did not support the farming methods used by Petitioner and what conditions he would like to have imposed on the proposed Petition.

Ms. Lim addressed the Commission and noted that the focus of the Petition was to designate important agricultural land and did not involve the issues that Mr. Ritte had mentioned.

Commissioner Estes requested clarification on how the IAL designation would worsen conditions. Mr. Ritte provided his perception of the negative impacts of agriculture to the community.

Commissioner Scheuer requested clarification on the extent of Mr. Ritte's participation in the cultural research surveys done for the Petition. Mr. Ritte responded that he had not participated in the research surveys.

There were no other questions for Mr. Ritte.

9. Judy Caparida

Ms. Caparida shared her concerns about protecting the land and its water resources.

There were no questions for Ms. Caparida.

10. Keoni Rawlings-Fernandez

Ms. Fernandez shared her concerns regarding erosion, water and soil resources and the need for a land use management plan.

There were no questions for Ms. Fernandez.

11. Kauhane Adams

Mr. Adams stated that he opposed the Petition and shared his concerns about chemicals in the soil.

Commissioner Scheuer requested clarification on where Mr. Adams farmed *kalo*. Mr. Adams provided the location of his farm.

12. Robert Stevenson- Molokai Chamber of Commerce President

Mr. Stevenson stated that he supported the Petition and shared his reasons why.

Commissioner Estes asked how IAL designation would help his community. Mr. Stevenson described how he felt the IAL designation would help preserve agriculture for his community.

There were no further questions for Mr. Stevenson.

13. Justin Avelino

Mr. Avelino stated that he was not in support of the Petition.

There were no questions for Mr. Avelino.

14. Lawrence Lasua

Mr. Lasua stated that he supported the Petition and shared his reasons why.

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Ms. Lim requested clarification on water access and water reduction concerns.

Mr. Lasua described why he had no problems in either area.

There were no further questions for Mr. Lasua.

15. Sheila Awai

Ms. Awai shared her concerns about water resources.

There were no questions for Ms. Awai.

16. Liko Wallace

Ms. Wallace shared her concerns about the local economy.

There were no questions for Ms. Wallace.

Chair Wong recalled Lori Buchanan to clarify her position related to the proceedings. Ms. Buchanan stated her intention to intervene in the proceedings that she was requesting a contested case proceeding.

Commissioner Cabral moved for an Executive Session to consult with the Commission's Counsel regarding the Commission's decision-making rights, duties, responsibilities and liabilities. Commissioner Mahi seconded the motion. The Commission unanimously voted to enter Executive Session (8-0).

The Commission entered into Executive Session at 2:59 p.m. and reconvened at 3:51 a.m.

Chair Wong recalled Lori Buchanan for questioning but she was not present.

Chair Wong recalled Walter Ritte for questioning to clarify his position related to the proceedings. Mr. Ritte responded to questions from Commissioners Chang, and Scheuer and stated that he was withdrawing his stated intent to intervene.

Chair Wong recognized public witness Artice Swingle. Ms. Swingle stated that she wished to clarify her testimony as it related to Ms. Buchanan's and described how her concerns were reflected in the conditions that Ms. Buchanan wanted to have imposed on the Petition. Discussion ensued on what Ms. Buchanan's intentions were. Ms. Swingle commented that Ms. Buchanan had stated in her written submittal that if her proposed conditions were not part of the Petition, she wanted a contested case.

Chair Wong asked if Ms. Swingle intended to intervene. Ms. Swingle replied that she did not want to intervene.

Vice Chair Cabral requested clarification on what possible actions the Commission could take on this docket. Chair Wong directed Ms. Erickson to recite Hawai'i Administrative Rules 15-15-100.

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Chair Wong stated that since there was no one else present requesting an intervention, the docket proceedings would continue and called for Petitioner to begin its presentation.

PETITIONER PRESENTATION

Ms. Lim provided a brief history and background summary on the Petition and described how she would be making her presentation using a PowerPoint presentation and why the Declaratory Order should be granted.

Vice Chair Scheuer requested clarification on how long the proceedings were projected to go into the evening due to flight time concerns for some Commissioners. Chair Wong stated that the plan was to continue till 5:45 p.m. before recessing for the day. Vice Chair Scheuer expressed his concerns about allowing enough time before recessing for the day to determine whether or not it was necessary for the cultural expert to appear on Thursday. Chair Wong acknowledged Vice Chair Scheuer's remark.

Ms. Lim stated that she had four witnesses to present and began her presentation.

Petitioner Witnesses

1. Daniel Clegg- Monsanto Company

Mr. Clegg shared his personal and professional background and described his role with Monsanto Company, and provided organization information on Monsanto and its business mission; and why the IAL designation was being sought.

County had no questions. Ms. Apuna, Commissioners Cabral, Scheuer, Chang, Okuda and Ohigashi requested clarification on Mr. Clegg's testimony. Ms. Lim further clarified that tax credits for the Petition Area had expired in the last tax year and Mr. Murakami clarified that Land Court was where the recording of land use related matters were done. Ms. Lim deferred Commissioner Ohigashi's question regarding community plans to Petitioner's Witness, Tom Schnell, and stated that the IAL Petition was being voluntarily brought before the Commission.

Vice-Chair Scheuer further asked whether Mr. Clegg was aware if water credits had been received by Monsanto in exchange for a land transaction involving the Board of Water Supply. Mr. Murakami responded that no credits had been sought or received as a result of the transaction.

There were no further questions for Mr. Clegg.

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Chair Wong declared a recess at 5:10 p.m. and reconvened the proceedings at 5:20 p.m. Ms. Lim called her next witness, Tom Schnell.

2. Tom Schnell- PBR Hawaii- Expert Witness- Land Use Planning

Mr. Schnell was qualified and accepted as an expert witness in the field of land use planning and described his company's work in preparing the IAL Petition for Monsanto Company.

Commissioners Cabral, Scheuer, Chang, and Okuda requested clarification on Mr. Schnell's testimony. Chair Wong halted questioning and stated that, due to time constraints, he would like to take the public testimony of the DOA out of order.

There were no objections to taking DOA out of order.

Department of Agriculture

Earl Yamamoto

Mr. Yamamoto stated that DOA believed that the Petition Area met all the criteria to merit an IAL designation; with the exception of the area around *Pu`u Uala*.

Commissioners Okuda and Cabral requested clarification on Mr. Yamamoto's testimony.

There were no further questions for Mr. Yamamoto.

Chair Wong declared a recess at 5:48 p.m. and stated that the proceeding would reconvene in the DHHL/OHA conference room at 8:00 a.m., October 19, 2017 with the continuation of questioning of Mr. Schell.