

LAND USE COMMISSION
MEETING MINUTES

April 23, 2019 – 9:30 a.m.
Kaneohe Bay View Golf Course
Bayview Banquet Hall
45-285 Kaneohe Bay Dr, Kaneohe, HI 96744

COMMISSIONERS PRESENT: Nancy Cabral
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Dawn Chang
Edmund Aczon

COMMISSIONERS EXCUSED: Lee Ohigashi
Arnold Wong
(There are 8 sitting
Commissioners

C STAFF PRESENT: Daniel Orodener, Executive Officer
Randall Nishiyama Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the April 3, 2019 meeting minutes. There were none. Commissioner Mahi moved to approve the minutes and Commissioner Cabral seconded the motion.

The minutes were unanimously approved by voice vote (6 ayes-0 nays- 2 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenerker 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.
 - APR-24 at HNL Airport for DBA A17-804 Hawaii Memorial Park (if needed)
 - MAY 7- A06-767 Waikoloa Mauka Adoption of Order
 - MAY 8- A94-706 Ka`ono`ulu Ranch Evidentiary Hearing
 - MAY 22-23- OSC action for A06-770 Shopoff and A02-737 U of N Bencorp
 - JUN 5-A18-803 Kealia Properties LLC- FEIS acceptance
 - JUN 6- IAL site visit/mtg for unidentified North Shore property- DR19-??
 - JUN27-Adoption of Orders- OSC action for A06-770 Shopoff and A02-737 U of N Bencorp
 - JUL 10-11 A87-610 Waiawa
 - HCPO- will be on Maui SEP 11-13- details to follow later this year

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

HEARING AND ACTION

A17-804 HAWAIIAN MEMORIAL LIFE PLAN, LTD.

To Consider the Acceptance of the Final Environmental Impact Statement for the Petition To Amend The Conservation Land Use District Boundary Into The Urban Land Use District for Approximately 53.449 acres of Land at Kāne`ohe, Island of O`ahu, State of Hawai`i TMK (1) 4-5-033: por . 001

APPEARANCES

Benjamin Matsubara, Esq. and Curtis Tabata, Esq. represented Hawaii Memorial Life Plan, Ltd., ("HMP")

Jay Morford, President, HMP

Scott Ezer, HHF Planners for HMP

Kathy Sokugawa, Acting Director, -City and County of Honolulu Department of Planning and Permitting ("DPP")

Eugene Takahashi, DPP

Dina Wong, DPP

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Rodney Funakoshi, Planning Program Administrator, OP

Lorene Maki, Planner, OP

Chair Scheuer provided a summary of what the LUC's mission and purpose was to the audience before updating the record and explained the procedures to be followed for the proceedings. There were no questions or comments about the procedures.

Chair Scheuer asked if Petitioner had reviewed and was agreeable to the Commission's reimbursement policy. Mr. Matsubara acknowledged that Petitioner was aware of and would comply with the Commission's reimbursement policy.

There were no other questions, comments or objections to the procedures.

DISCLOSURES

Commissioner Chang disclosed that she had performed consulting work for Hawaiian Memorial Park in 2010, but believed that she could remain fair and impartial during the proceedings.

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

Commissioner Mahi disclosed that he was a resident of the Koolau-poko District and was a member of the Koolau-poko Hawaiian Civic Club but felt he could remain fair and impartial during the proceedings.

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

Commissioner Okuda disclosed that he had dealt with Hawaiian Memorial Park regarding funeral, inurnment and interment arrangements for family members and was also familiar with Tom Fee, a Principal of HHF, the planning firm involved with this case; but believed that he could remain fair and impartial during the proceedings on this matter.

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

Commissioner Aczon disclosed that he had limited involvement with Hawaiian Memorial Park but felt that he could be fair and impartial during the proceedings.

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

Commissioner Cabral stated that she did not have any disclosures.

Chair Scheuer described his role with the Hawaiian Islands Land Trust and his awareness of some preliminary business discussions occurring between Hawaiian Memorial Park and the Hawaiian Islands Land Trust; but believed that he could remain fair and impartial during the proceedings.

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

There were no other disclosures.

Chair Scheuer recognized and granted DPP's request to allow Ms. Sokugawa to provide testimony to the Commission before the Public so she could attend another hearing for DPP matters.

Ms. Sokugawa stated that DPP had no objections to the Commission accepting the FEIS and shared how DPP had reviewed whether the proposed project conformed to the Koolaupoko Sustainable Community Plan and found no irregularities. Mr. Matsubara requested clarification on how the DPP policy for accepting FEIS was applied in this case. Ms. Sokugawa shared how the policy, although not regulatory, was used as a guideline. Commissioner Okuda commented that the Commission had the discretion to decide on whether to accept the FEIS

Chair Scheuer called for Public Witnesses

Due to the large amount of public witnesses, the minutes will provide a list of the witnesses in the order they testified. ("Accept" notation indicates that testimony was in favor of the LUC accepting the FFEIS. "Reject" notation indicates that testimony was against the LUC accepting the FFEIS. "Other" notation indicates that the testimony was unclear on accepting or denying the FFEIS.)

Please refer to the transcripts for further details of public testimony. Only comments and/or questions asked of testifiers are noted. No notation indicates that no questions were posed to the testifier.

PUBLIC WITNESSES:

1. Alice Hewett (testimony read by Mahealani Cypher)- Accept
Mr. Matsubara stated his wishes that Ms. Hewett feel better soon.
2. Anna Lobish- Accept
3. Dean Hazama- Accept
4. Grant Yoshimori- Reject
Mr. Matsubara requested clarification on Mr. Yoshimori's concerns about the environmental threat to the damselfly and how the FEIS failed to address this matter.
5. Mel Kalahiki- Accept
6. Pat Newalu-Accept
Commissioner Okuda disclosed that Ms. Newalu had assisted his family's burial needs.
7. Mary Piette- Reject
8. Rev. Barbara Grace Ripple- Reject

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

Commissioner Okuda stated that the Commission was addressing acceptance of the FEIS and assured Reverend Ripple that the Commission would dutifully perform its work.

9. Rev. Sam Cox- Reject

Commissioner Chang requested clarification on the amount of Pohainani Residents in opposition to proposed project. Reverend Cox responded that approximately 60-70 residents who attended a meeting on this subject were opposed.

10. Chuck Burrows- Accept

Commissioner Chang asked if Mr. Burroughs had been consulted for the Cultural Impact Assessment (“CIA”) and had attended the Pohainani meeting on this matter. Mr. Burroughs responded that he had not been interviewed but had spoken to the interviewers and had been involved in organizing the meeting at the Pohainani facility.

11. Rich McCreedy- Reject

Chair Scheuer requested clarification on why Mr. McCreedy felt that the FEIS was inadequate. Mr. McCreedy described portions of the FEIS that he felt were not given enough attention.

Chair Scheuer declared a recess.

The Commission went into recess at 10:28 a.m. and reconvened at 10:38 a.m.

12. Dudley Diaz-Reject

Commissioner Chang requested clarification on whether Mr. Diaz had read the FEIS and what property he owned in the area. Mr. Diaz responded that he had not read the FEIS and described where his property was.

Commissioner Aczon asked whether Mr. Diaz opposed acceptance of the FEIS. Mr. Diaz responded that he did.

13. Joy Kimura- Accept

14. Rene Mansho- Accept

15. Nathaniel Kinney- Accept

Commissioner Chang asked if Mr. Kinney had read the FEIS. Mr. Kinney responded that he had read portions of it.

Commissioner Okuda requested clarification on what portions of the FEIS Mr. Kinney had read. Mr. Kinney responded that he had reviewed the economic benefits portion of the FEIS because of his concerns about jobs.

16. Julianne McCreedy- Reject

Commissioner Chang inquired whether Ms. McCreedy was associated with the Hui Pikoiloa group, had read the FFEIS and disagreed with it. Ms. McCreedy responded that she was a member of the group and had read and opposed the FEIS.

17. Mahealani Cypher- Accept

Commissioner Chang asked if Ms. Cypher had read the FEIS and what role(s) she had in the FEIS information collection process. Ms. Cypher replied that she had read the FEIS and described the various roles she had and community activities she was involved with while the FEIS was underway.

18. Mo Radke;-Accept

Commissioner Chang inquired whether HMP had approached the local Neighborhood Board. Mr. Radke, as Neighborhood Board Member, acknowledged that they had.

19. Alicia Maluafiti- Accept

20. Puanani Akaka;(also provided testimony for Ellen Akaka)

Ellen Akaka's testimony shared concerns about flooding and inadequate detention basins, reject.

Commissioner Cabral requested clarification on what agencies came to investigate her concerns. Ms. Akaka responded that no investigative studies were done, and only routine clean-out of existing drainage systems had occurred.

Puanani Akaka stated that she opposed the FEIS.

Commissioner Chang requested clarification on what grounds Ms. Akaka was opposing the FEIS on and whether she had read the FEIS. Ms. Akaka responded that she had read the FEIS and disagreed with the conclusions since she felt that the studies were inadequate.

21. Lianne Chang- Reject

Mr. Matsubara requested clarification on whether Dr. Chang had been interviewed for the CIA. Dr. Chang responded that she had been and had marked gathering areas on the map used in the study.

Commissioner Chang asked if Dr. Chang frequently gathered cultural materials in the area and had read the FEIS. Dr. Chang responded that she gathered in the area quite often and had only read portions of the FEIS relative to her concerns.

Commissioner Okuda reviewed the rules for accepting an FEIS with Dr. Chang and questioned whether enough information had been provided in the FEIS. Dr. Chang responded that she felt that more information on area upkeep/maintenance and access to the gathering areas should have been included.

Chair Scheuer requested clarification on gathering areas for ferns and described how conditions within the decision and order could address concerns about access. Dr. Chang described the need for shady areas where fern could grow with the desired colors needed for gathering and acknowledged Chair Scheuer comments on conditions.

22. Perry Asato – Reject (Mr. Asato could not testify due to laryngitis—Julianne McCreedy read his testimony)

23. Winston Welch- Outdoor Circle Representative-Reject

Commissioner Okuda shared legal information regarding FEIS preparations and inquired whether Mr. Welch felt that violations had occurred. Mr. Welch responded that he was sharing his concerns about environmental concerns like phosphate discharge and the preservation of conservation land and was not contesting legalities.

There were no more public testifiers. Chair Scheuer stated that the public testimony portion of the meeting was officially closed and declared a recess.

The Commission went into recess at 11:50 a.m. and reconvened at 12:40 p.m.

Chair Scheuer called for the Petitioner to make its presentation

PRESENTATION

Petitioner

Mr. Matsubara made his presentation to the Commission and argued why the LUC should accept the Petitioner's Final Environmental Impact Statement ("FEIS") and offered his first witness.

Petitioner Witnesses

1. Jay Morford, President, Hawaiian Memorial Park Life Plan

Mr. Morford provided his professional background and described his organization's business structure, history and why the HMP proposed project was important to its future; how a conservation easement was being worked on with the Hawaiian Islands Land Trust on the property and how important the Land Use Commission acceptance of the Final Environmental Impact Statement was to HMP.

AGENCY COMMENTS/QUESTIONS

DPP and OP had no questions.

COMMISSIONER QUESTIONS

Commissioner Cabral requested clarification on the ownership structure of the corporate entity involved with proposed project. Mr. Morford stated that the parent company was based in Texas and described how the local portion of the company interfaced with the larger Service Corporation International ("SCI") entity.

Commissioner Chang requested clarification on how the stewardship of the cultural preserve area would be handled. Mr. Morford replied that a Memorandum of Understanding ("MOU") was in place with the Koolaupoko Hawaiian Civic Club to handle this matter; and that the Hawaiian Island Lands Trust would have an overall umbrella conservation easement over the property. Mr. Morford deferred Commissioner Chang's question on uses within a conservation district as opposed to an urban district to another witness.

Commissioner Okuda requested further clarification on the corporate structure of SCI; allowable uses of conservation areas, alternative arrangements for human remains; and anticipated revenue projections in different business scenarios. Mr. Morford described how 100% of HMP stock was owned and acquired by its parent company; and provided his perspective of what SCI's understanding was regarding conditions, requirements, and future obligations it had to observe as the new owner of the Petition Area. Mr. Morford commented that John Farias had advised him that cemetery operations were a permissible use in a conservation district and described how he had read various reports for the FEIS; and dealt with estimating operational

profitability/revenues in his corporate capacity. Mr. Morford deferred Commissioner Okuda's question on alternative use considerations to another witness.

REDIRECT

Mr. Matsubara asked Mr. Morford to clarify the economic benefits of expanding the current HMP facility; anticipated construction costs involved with the proposed project; and operational concerns involved with the expansion. Mr. Morford provided his understanding of how HMP's business would perform if it could expand; what costs were projected for the proposed expansion and how HMP operations would change if the expansion occurred.

There were no further questions for Mr. Morford.

Mr. Morford was excused; and Mr. Tabata offered Scott Ezer as Petitioner's second witness to describe the preparation of the FEIS and stated that there were various experts that had contributed to the FEIS present to respond to any specific questions that the Commission might have in a particular subject.

Mr. Tabata clarified that Mr. Morford and Mr. Ezer were the two witnesses that would be offered for their planned presentation.

2. Scott Ezer, Principal, Helber Hastert & Fee Planners ("HHF")

Mr. Ezer provided his educational and professional background and described the proposed project and his role in preparing Petitioner's FEIS. Mr. Ezer described the studies and data collection that was involved in the FEIS preparation process and commented that he had received late correspondence from the Department of Land and Natural Resources ("DLNR") – Department of Forestry and Wildlife ("DOFAW") and other parties/agencies that failed to be included in the FEIS since they arrived after the established deadline to be included in the FEIS.

AGENCY COMMENTS/QUESTIONS

County

There were no questions/comments from County.

OP

Ms. Apuna requested clarification on what other agency letters were received late and whether it was possible to get copies of them and the responses to them. Mr. Ezer replied that DOT, DPP-Transit Services and DLNR- Aquatic Resources responses were late and that copies could be provided to OP>

There were no further questions from Ms. Apuna.

COMMISSIONER QUESTIONS

Commissioner Chang requested clarification on the proposed cultural preserve and on what anticipated activities would be inconsistent with the conservation district. Mr. Ezer described how Petitioner had worked with the Koolaupoko Hawaiian Civic Club to set aside a portion of the cultural preserve for traditional burials and create more buffer space between the HMP and Pohainani facilities; and how HMP was working with the Hawaiian Islands Land Trust on the conservation easement. Mr. Ezer deferred questions on the sampling strategies used for the archaeological inventory survey to another witness.

Commissioner Okuda requested clarification on whether other cemetery practices were studied for the FEIS and what alternatives were discussed and considered prior to deciding to expand operations. Mr. Ezer described the efforts made to capture information about other cemeteries and stated that the FEIS had not discussed alternatives; and had included information on derived revenue in the FEIS.

The Commission went into recess at 1:42 p.m. and reconvened at 1:55 p.m.

Commissioner Chang requested clarification on how space within the Petition would be utilized and what the capacity of the HMP facility would be if expansion was approved. Mr. Ezer described how the Petition Area space would be utilized and provided his estimate of the facility capacity and stated that no further expansions would be sought in the future if the current Petition was granted.

Commissioner Cabral requested clarification on how “damsel fly” preservation concerns; area parking and distance between HMP and the Pohainani facilities would be addressed. Mr. Ezer described how the “damsel fly” concerns would be handled; how trespassing problems and parking mitigation/resolution measures were under consideration and why the measurement between the HMP and Pohainani facilities was incorrectly portrayed since there was sufficient buffer space.

Commissioner Okuda requested clarification on how concerns about runoff contamination during construction would be addressed. Mr. Ezer described the studies that had been done and how best management practices (“BMPs”) would be applied during the construction period and had been mentioned in the FEIS.

Chair Scheuer requested clarification on concerns mentioned in the public testimony about Conservation District protections via the use of zoning or easements; considerations made for alternatives to categorize/prioritize and apply them to accomplish established objectives; the handling of and responses to the late FEIS comments; and stormwater/“road sweat” conditions. Mr. Ezer shared his understanding on the differences between conservation zoning and easements protections; how various alternative measures were developed and assessed; how late

FEIS comments were processed; and what environmental protective measures would be put in place.

Commissioner Chang requested clarification on access to cultural areas within the Petition Area. Mr. Ezer described how community outreach during the CIA process included marking maps to identify access points to specific areas and control trespassing.

REDIRECT

Mr. Tabata requested Mr. Ezer further describe how project alternatives were assessed and evaluated. Mr. Ezer provided his recollection of how a “no action” alternative was included and evaluated among other considerations.

There were no further questions for Mr. Ezer.

Mr. Matsubara stated that he would like to offer two additional witnesses to address questions from the Commission that he felt required further clarification. Chair Scheuer allowed the additional witnesses to testify.

Mr. Matsubara called Petitioner’s next witness to address AIS questions.

3. Trisha Kehalani Watson- Expert in Preparation of Archaeological Inventory Surveys and Cultural Impact Analyses

Ms. Watson provided her qualifications and experience/work background to the Commission and described how archaeological information for the Petition Area was gathered and processed.

AGENCY COMMENTS/QUESTIONS

DPP and OP had no questions.

COMMISSIONER QUESTIONS

Commissioner Chang requested clarification on how the archaeological trenching for the area was performed; how stewardship duties would be performed; and how access points and trespassing concerns were addressed. Ms. Watson described how she had coordinated with SHPD to ensure that her discovery protection/management protocols and data recovery plans were appropriate; how the Koolaupoko Hawaiian Civic Club was provided guidance to handle the stewardship of the cultural preserve; and how trespassing would be controlled.

REDIRECT

None

Mr. Matsubara requested that the Commission consider Ms. Watson's testimony to be as an "expert witness" in the preparation of archaeological surveys and cultural impact analyses. There was no objection to accepting Ms. Watson as an expert witness. There were no further questions for Ms. Watson.

Mr. Tabata called Petitioner's next witness to address market and economic impact questions.

4. Tom Holliday- Director CBRE

Mr. Holliday provided his background information and provided his understanding of alternative burial types and described the economic factors involved in the burial industry.

AGENCY COMMENTS/QUESTIONS

DPP and OP had no questions.

REDIRECT

None

COMMISSIONER QUESTIONS

Commissioner Okuda requested clarification on whether revenue calculations included studying what possible HMP policy changes such as to allow additional urns to be added to existing niches or other business practice changes that could have been considered as alternatives to expansion. Mr. Holliday described how his revenue calculations were directed more towards the economic benefits derived from the proposed project and not by exploring alternative ways to generate revenue by business practice changes

REDIRECT

None

Mr. Matsubara requested clarification on procedural events that he could expect next. Chair Scheuer replied that he would next hear comments from DPP and OP.

DPP

Mr. Takahashi stated that DPP had nothing further to add to Ms. Sokugawa's earlier comments.

OP

Ms. Apuna described how OP had reviewed and determined its position on the Petition and stated that OP recommended acceptance of the FEIS.

COMMISSION QUESTIONS

Commissioner Okuda asked if OP felt there had been adequate discussion on alternatives and surface runoff studies in the FEIS. Ms. Apuna responded that the OP had reviewed the alternatives and found them reasonable and that increasing capacity by policy/procedural guideline changes might not be a reasonable alternative due to existing contract arrangements.

Commissioner Okuda also requested clarification on whether the FEIS sufficiently addressed surface runoff. Ms. Apuna responded that the FEIS had addressed surface runoff with the use BMPs which satisfied OP.

There were no further question for Ms. Apuna.

FINAL REMARKS

Mr. Matsubara argued why the Commission should accept the FEIS and shared the statutory and administrative rules that the FEIS complied with; and summarized how the content of the FEIS had adequately addressed the issues raised during its preparation.

DECISION MAKING

Chair Scheuer entertained a motion on the matter.

Commissioner Cabral moved to find that the Petitioner's Final Environmental Impact Statement complies with the content requirements for an FEIS and is accepted pursuant to HRS Chapter 343, and HAR Chapter 11-200, and that the Commission authorizes the Executive Officer to notify and submit a record of this acceptance to the applicant and the Office of Environmental Quality Control by the May 1, 2019 deadline for Commission action. Commissioner Aczon seconded the motion.

Chair Scheuer opened the floor to discussion.

Commissioner Cabral spoke in favor of the Motion and described why she felt the FEIS was acceptable.

Commissioner Aczon stated that he was satisfied that the FEIS was well vetted.

Commissioner Chang stated that she appreciated the Community's input and how SHPD had been included in the process; and would be voting in favor of accepting the FEIS.

Commissioner Okuda stated that he would not be voting in favor of accepting the EIS and stated that his reasons for not accepting the FEIS were 1) the justification for

expansion and alternatives were not sufficiently convincing to him and 2) the impacts of surface runoff reports did not contain enough information.

Commissioner Mahi shared his reasons for supporting the acceptance of the FEIS.

Chair Scheuer shared why he felt the FEIS was acceptable.
There was no further discussion.

Chair Scheuer had Mr. Orodener poll the Commission.

The Commission voted as follows:

Ayes: Commissioners Cabral, Aczon, Mahi, Chang, and Chair Scheuer.

Nays: Commissioner Okuda.

The Motion passed 5-1 with 2 excused.

Chair Scheuer asked if there was any further business. There was none.
The Commission adjourned at 3:15 p.m.