

LAND USE COMMISSION  
MEETING MINUTES  
August 29, 2019 – 09:00 a.m.

**The Meeting was held at the following Video Conference Centers simultaneously:  
The Main Meeting Locale was on Honolulu, Oahu for various administrative matters  
and on Hawai`i for A18-804 BARRY FAMILY TRUST (HAWAI`I)**

**Video Conference Centers:**

**O`ahu-** Kalanimoku Bldg., 1151 Punchbowl St., Basement, Honolulu, Hawai`i, 96813

**Hawai`i-** Hilo State Office Bldg., 75 Aupuni Street, Hilo, Hawai`i, 96720

**Kaua`i-** Kaua`i State Office Bldg., 3060 Eiwa Street, Lihue, HI, 96766

COMMISSIONERS PRESENT: Edmund Aczon (on O`ahu)  
Aaron Mahi (on O`ahu)  
Jonathan Scheuer (on O`ahu)  
Dawn Chang (on O`ahu)  
Gary Okuda (on O`ahu)  
Nancy Cabral (on Hawai`i)  
Dan Giovanni (on Kaua`i)

COMMISSIONERS EXCUSED Lee Ohigashi  
Arnold Wong

LUC STAFF PRESENT: Daniel Orodener, Executive Officer (on Maui)  
Lori Tanigawa, Deputy Attorney General (on Oahu)  
Scott Derrickson, Staff Planner (on Kaua`i)  
Riley Hakoda, Staff Planner/Chief Clerk (on Hawai`i)  
Ariana Masuoka, Secretary (on O`ahu)

COURT REPORTER: Jean McManus (on O`ahu)

**CALL TO ORDER**

Chair Scheuer called the meeting to order at 09:03 a.m.

## **APPROVAL OF MINUTES**

Chair Scheuer asked if there were any public comments and any corrections or additions to the July 25 and August 8, 2019 meeting minutes. There were none. Commissioner Okuda moved to approve the minutes and Commissioner Cabral seconded the motion.

The minutes were unanimously approved by voice vote (7 ayes-0 nays- 2 excused).

Chair Scheuer asked if there were any corrections or additions to the August 14-15, 2019 meeting minutes. There were none. Commissioner Okuda moved to approve the minutes and Commissioner Aczon seconded the motion.

The minutes were unanimously approved by voice vote (7 ayes-0 nays- 2 excused).

Chair Scheuer called for the tentative meeting schedule.

## **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.

HCPO- will be on Maui SEP 11-13- with no LUC meeting on the 13<sup>th</sup>

SEP 25-26- A19-809 Lanai Resorts and A04-751 Pulelehua (Maui overnight) & staff reports for A94-706 Ka`ono`ulu Ranch, A97-721 Makena ATC and A89-642 C. Brewer

- OCT 9-10- SP09-403 Waimanalo Gulch Sanitary Landfill
- OCT23- Videoconference to adopt form of the orders for A02-767 U of N Bencorp and SP09-403 Waimanalo Gulch
- OCT24- A17-804 Hawaiian Memorial Park
- NOV 6-7 overnight SP19-19-410 Sacred Earth Assembly

- NOV 20- DR19-66 Pomaikai Partner and A87-610 Waiawa (Oahu)
- NOV 21- A02-737 U of N Bencorp and A90-660 HHFDC (Hawai'i) at NELHA
- DEC 4-5-A11-791 Hokua Place (Kaua'i)
- DEC18-19 – A18-804 Hawaiian Memorial Life Plan (Oahu)
- JAN 8-9, 2020 – To be determined
- Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Scheuer stated that the next two agenda items were discussion and action items on the adjustment of the Executive Director's contract and the delay in processing of proposed LUC Administrative Rule changes and called for Public Witness testimony on both items.

#### PUBLIC TESTIMONY

1. David Arakawa- Land Use Research Foundation (LURF) representative (on O`ahu)

Mr. Arakawa stated that he wanted to testify after information on the administrative rules delay was provided and described his frustration with being unable to locate the meeting locale and why he felt that the agenda inadequately described what the LUC would be addressing during its meeting. Discussion ensued on how the Commission could best accommodate public testimony on the administrative matters and other public witnesses who wished to testify on the administrative rules were identified to be included.

Chair Scheuer determined that Mr. Orodener would provide information on what the status of the approval of the LUC administrative rules was before accepting public testimony on them and then the Commission would address the Executive Director's contract.

#### AGENDA ITEM V- Administrative Rules

Chair Scheuer requested the administrative rules report. Mr. Orodener described how the delay with the administrative rules had ended and shared that the administrative rules had been signed by the DBEDT Director and were currently awaiting the Governor's approval so no action by the Commission was necessary.

There were no further comments or questions on Mr. Orodener's report.

Mr. Arakawa began his testimony and described the concerns that LURF had with various portions of the revised administrative rules and how LURF would continue to work with the LUC on future issues.

Chair Scheuer asked if the Commission had any questions.

Commissioner Cabral thanked Mr. Arakawa for his input.

Commissioner Okuda disclosed that he had known Mr. Arakawa since 1981 and requested clarification on various aspects of Mr. Arakawa's testimony. Mr. Arakawa provided his understanding of how his organization could participate in the administrative rules review process. Discussion ensued to clarify how Mr. Arakawa's understanding of the process complied with the procedures that had been used to advance the revised administrative rules forward.

Commissioner Aczon requested clarification of the administrative rules process since there appeared to be a misunderstanding of whether changes to the rules were still possible.

An exchange of perspectives occurred between the Chair and various Commissioners with Mr. Arakawa. Chair Scheuer attempted to restore order to the proceedings and directed Mr. Arakawa to comply with meeting protocol in accordance with HRS 92-3 and HAR 15-15-14. Mr. Arakawa disregarded Chair Scheuer's directions and continued to voice his opinions and became argumentative. Chair Scheuer called a recess and directed Mr. Orodener to have Mr. Arakawa removed from the meeting room.

The Commission went into recess at 9:31 a.m. and reconvened at 9:35 a.m.

Mr. Arakawa remained in the meeting room and was again asked to remove himself by Chair Scheuer. Chair Scheuer cited the statute and rule authorities that provided for the Chair to direct the removal of an audience member and dismissed Mr. Arakawa. Mr. Arakawa complied with the directive under protest.

Chair Scheuer reconvened the proceedings and called for the next witness.

2. Henry Curtis- Life of the Land representative (on O`ahu)

Mr. Curtis shared his opinions on the Administrative Rules and described how he supported the rule changes and why he had concerns about how they would apply in practice.

There were no questions for Mr. Curtis.

3. Dwight Vincente (on Hawai`i)

Mr. Vincente shared why he felt the Administrative Rules did not apply to ceded lands and questioned the jurisdiction of the Commission.

There were no questions for Mr. Vincente.

4. Ken Church (on Hawai`i)

Mr. Church provided his perspective of the Administrative Rules and how he interpreted them.

There were no questions for Mr. Church.

There were no other public witnesses.

Chair Scheuer shared how he felt the Administrative Rules had to align with case law and statutes in providing the operating guidelines for conducting business and recognized Commissioner Aczon.

Commissioner Aczon requested procedural clarification on Mr. Arakawa's allegations about the status of the Administrative Rules. Discussion ensued on how untimely the comments were relative to where the rules were in the approval process. Ms. Tanigawa offered her assistance if the Commission needed it. Mr. Orodener described the process involved with Administrative Rule changes or updates for the Commission to consider.

Chair Scheuer summarized the discussion on Mr. Arakawa's comments and restated why he had Mr. Arakawa leave the proceedings when he failed to abide by and cooperate with the established protocol and meeting procedures defined by HRS 92-3 and HAR 15-15-14. Chair Scheuer moved on to the next agenda item addressing the adjustment of the Executive Director's contract.

#### AGENDA ITEM VI- Adjustment of Executive Director's Contract

Chair Scheuer described how the Commission had met on August 15, 2019 to address the Executive Director's contract adjustment and had determined that a 5% pay increase was appropriate and asked if Mr. Orodener had any questions. Mr. Orodener asked if the pay increase was retroactive to the start of the new fiscal year (July 1, 2019 for FY2020). Chair Scheuer acknowledged that it was.

There was no discussion.

Commissioner Cabral stated her support for the adjustment and moved that the Commission grant the increase. Commissioner Aczon seconded the Motion.

Commissioners Okuda and Mahi spoke in favor of the motion and provided their reasons for supporting the Motion. Chair Scheuer summarized what the Commission would consider on this matter.

There was no discussion and by voice vote, the Commission voted to approve a 5% pay increase and renew the Executive Director's contract.

Chair Scheuer stated that the proceedings on Oahu were concluded at 9:54 a.m. and that the next agenda item was an action item on Docket No. A18-804 Barry Family Trust (Hawai'i); ("BFT") and assigned Vice Chair Cabral to be the presiding officer to handle the Hawai'i County matter which had been scheduled for 9:30 a.m.

Vice Chair Cabral agreed to be the Hawai'i County Presiding Officer.

#### **HAWAI'I COUNTY PORTION OF THE AUGUST 29, 2019 LUC MEETING**

Vice Chair Cabral called the Hawaii County portion of the August 29, 2019 meeting to order at 9:34 a.m. and stated that the next agenda item would be the **A18-806 BARRY FAMILY TRUST (HAWAI'I)'s MOTION FOR ISSUANCE OF ANTICIPATED NEGATIVE DECLARATION OR ANTICIPATED FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

#### **ACTION**

##### **A18-804 Barry Family Trust (HAWAI'I)**

##### **APPEARANCES**

Derek Simon, Esq. attorney for Petitioner (BFT) (on O`ahu)

Duane Kanuha, County of Hawaii Planning Department (County) (on Hawai'i)

Dan Patel Esq., Deputy Corporation Counsel, represented County (on Hawai'i)

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP) (On O`ahu)

Aaron Setogawa, Planner, OP (on O`ahu)

Presiding Officer Cabral updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Presiding Officer Cabral called for Public Witnesses

##### **PUBLIC WITNESSES:**

1. Dwight Vincente (on O`ahu)

Mr. Vincente stated that he represented the Hawaiian Kingdom and described why the Commission had no jurisdiction over the land area involved in the docket.

There were no questions for Mr. Vincente.

There were no other public witnesses.

Presiding Officer Cabral disclosed that she was familiar with the Petition Area from an earlier business transaction; but felt that she could impartially and fairly participate in the proceedings. There were no objections to Presiding Officer Cabral's continued participation.

Presiding Officer Cabral called for Petitioner's presentation.

Mr. Simon provided an update on the progress that had been made since the last Commission appearance and argued why Petitioner's Motion should be granted.

County stated that it had no objection to the Motion.

OP had no questions for Mr. Simon.

Presiding Officer Cabral asked if the Commission had any questions.

Commissioner Chang requested clarification on what procedural administrative rules Mr. Simon had observed to process his Petition and whether cultural and marine resources were impacted. Mr. Simon described how he had prepared the Petition with attention to both the existing and anticipated new administrative rules to avoid any possible problems and what cultural and marine resource issues he had to deal with.

Commissioner Okuda requested clarification on how surrounding parcels had been designated agriculture, why the Barry's land had not been included in the designation and how the Petitioner would utilize the Petition Area for agriculture. Mr. Simon provided his perspective of how the Barry parcel was overlooked for agricultural designation and described how Mrs. Barry was performing agricultural pursuits on the property.

Presiding Officer Cabral requested clarification on the property description, features and boundaries of the Petition Area. Mr. Simon confirmed the boundaries and landmarks within the Petition Area and described how access to the ocean was available in a different portion of the coastline.

Presiding Officer Cabral asked if County and OP had any final comments or questions.

Mr. Patel stated that County had no further comments.

Ms. Apuna stated that OP had no objection to Petitioner's Motion.

Presiding Officer Cabral sought the pleasure of the Commission.

Commissioner Mahi moved to adopt the motion and Commissioner Okuda seconded the motion.

#### Discussion

Commissioner Chang stated that she was voting in favor of the motion based on the representations of Petitioner's counsel.

Commissioner Okuda described how he felt the record supported a Findings of No Significant Impact (FONSI) and why he would support the Motion.

Commissioner Aczon stated that he also supported the Motion but wanted to make a friendly amendment that Petitioner work with LUC staff to put together all the necessary documents required by OEQC under HAR §11200.1-5 and -19 for publication and public review for an environmental assessment.

Presiding Officer Cabral asked if Commissioners Mahi and Okuda had any objections to the friendly amendment. Both Commissioners Mahi and Okuda approved of the friendly amendment.

Chair Scheuer stated that he agreed with Commissioner Okuda's comments and added his appreciation for Petitioner's attempt to abide by HRS Chapter 205.

Presiding Officer Cabral spoke in favor of the Motion as amended and shared her reasons for voting in support, and then had Mr. Orodenker poll the Commission.

The motion was unanimously approved (7 ayes-0 nays- 2 excused).

Presiding Officer Cabral asked if there was any more Hawaii County business. There was none.

Presiding Officer Cabral adjourned the Hilo, Hawai`i portion of the meeting at 10:30 a.m. and returned control of the proceedings to Chair Scheuer.

Chair Scheuer assumed control of the proceedings in Honolulu meeting at 10: 30 a.m. and stated that there was no further business to address and adjourned the meeting.