

LAND USE COMMISSION

STATE OF HAWAII

November 22, 2016

Airport Conference Center

400 Rodgers Boulevard, Suite 700, Room #3

Honolulu, Hawaii 96819

Commencing at 9:00 a.m.

I. Call to order

II. Adoption of Minutes
(October 13, 2016)

III. Tentative Meeting Schedule

IV. Adoption of Order
A81-525 Y-0 Limited Partnership (Hawaii)
Motion for an Order Regarding Satisfaction of
Affordable Housing Condition

V. Action
DR16-57 University of Hawaii Community Colleges
(Kauai)
To consider Petition for a Declaratory Order to
waive the requirement contained in HAR
15-15-50(c)(20) that Petitioner submit a
schedule and a map for development of the
project in increments in order that Petitioner
may request the Commission to redistrict the
Petition Area as set forth in HAR 15-15-78(a)(1)

VI. Adjournment

1 APPEARANCES:

2 EDMUND ACZON, Chairperson
3 JONATHAN SCHEUER, Vice Chair
4 ARNOLD WONG, Vice Chair

5 COMMISSIONERS:

6 NANCY CABRAL
7 LINDA ESTES
8 GARY OKUDA
9 KENT HIRANAGA
10 AARON MAHI

11 DIANE ERICKSON, ESQ., Deputy Attorney General

12 STAFF:
13 DANIEL ORODENKER, Executive Officer
14 RILEY HAKODA, Staff Planner/Chief Clerk
15 SCOTT DERRICKSON, Staff Planner

16 WILLIAM YUEN, ESQ. for Petitioner RCFC Kaloko
17 Heights, LLC

18 EARL MATSUKAWA for Petitioner University of
19 Hawaii Community Colleges

20 DAWN APUNA, ESQ., Deputy Attorney General for State
21 Office of Planning
22 LORENE MAKI, Planner

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1 CHAIRPERSON ACZON: This is the November 22,
2 2016 Land Use Commission Meeting.

3 The first order of business is the adoption
4 of the October 13th, 2016 minutes. Are there any
5 corrections or comments on them? If not, is there a
6 motion to adopt?

7 COMMISSIONER ESTES: So move.

8 COMMISSIONER MAHI: I second.

9 CHAIRPERSON ACZON: Motion has been made by
10 the Commissioner Estes and seconded by Commissioner
11 Mahi to adopt the minutes. All in favor, say aye.

12 COMMISSIONERS: Aye.

13 CHAIRPERSON ACZON: Any opposed?

14 VICE CHAIR SCHEUER: Abstain.

15 COMMISSIONER CABRAL: I have a question.
16 And there was the minutes came out and then like a
17 sheet with some corrections came. So we're adopting
18 the minutes with those corrections?

19 CHAIRPERSON ACZON: Yes.

20 COMMISSIONER CABRAL: Okay. Thank you. I
21 agree.

22 CHAIRPERSON ACZON: The minutes are adopted
23 with one abstention.

24 The next agenda is the tentative meeting
25 schedule. Mr. Orodenker.

1 EXECUTIVE OFFICER: Thank you, Mr. Chair.

2 Well, Commissioners, it's going to be a very
3 busy winter for us. The schedule is full.

4 On December 8 we will be on Maui, Maui Arts
5 and Cultural Center just -- that's for the remand,
6 just the hearings officer. That's not for the entire
7 Commission.

8 December 21st and 22nd is probably our last
9 opening day.

10 January 18th and 19th, we're looking at
11 Kaonoulu Ranch, EIS acceptance and Hanaula Partners
12 as well. There's another -- what was the other one,
13 Scott? I'm sorry, it's not on here but we just --
14 yesterday we discovered we have another item --

15 SCOTT DERRICKSON: Waikapu Country Town.

16 EXECUTIVE OFFICER: Waikapu Country Town.

17 So we'll be on Maui.

18 On January 25th and 26th, we'll be --
19 hopefully adopting the order for those EISs.

20 We'll also be on Kauai for the Island School
21 Kauai -- and Kauai Community College, EIS
22 exception -- acceptance.

23 On February 8th and 9th, we'll be on Kauai
24 for a 201H project Lima Ola. That will be an
25 evidentiary hearing.

1 On February 22nd and 23rd, we'll be making a
2 decision on Lima 01a and we'll be on Kauai and also
3 for the adoption of order for Lima 01a and we'll also
4 be hearing the OP declaratory ruling request for a
5 solar product.

6 On March 8th, the LUC decision and hearings
7 officer recommended D&O Lanai remand exceptions and
8 comments hearing will be held assuming that the --

9 VICE CHAIR SCHEUER: Assuming that the
10 decision -- draft decision and order is completed.

11 EXECUTIVE OFFICER: We're pushing our
12 hearings officer. We've got a real brand new whip
13 with metal tips on the end.

14 On March 22nd, that will be when we'll adopt
15 the order for the Lanai remand.

16 On April 12th and 13th, we'll be hearing the
17 Kaonoulu Ranch motion to amend on Maui.

18 April 26th and 27th is to be determined as
19 well as May.

20 On May 24th and 25th, we're anticipating the
21 Waimanalo Gulch special permit.

22 June 14th and 15th, we'll be on Maui for the
23 Waikapu Country Town EIS acceptance and adoption of
24 order potentially.

25 On June 28th and 29th, we anticipate a

1 number of Big Island motions to be heard. That's it.

2 CHAIRPERSON ACZON: Thank you, Mr.

3 Orodenker.

4 Commissioners, do you have any questions?

5 Thank you.

6 The next item on the agenda is an action on
7 Docket No. 81-525 Y-0 Limited Partnership to adopt
8 the form of the order on the Motion for an Order
9 Regarding Satisfaction of Affordable Housing
10 Condition.

11 Will the Petitioner please identify itself
12 for the record?

13 MR. YUEN: William Yuen on behalf of
14 Petitioner RCFC Kaloko Heights, LLC.

15 CHAIRPERSON ACZON: Thank you.

16 Let me update the record.

17 On October 13, 2016, the Commission
18 unanimously voted 8 in favor, 1 excused to amend the
19 existing Condition No. 1 in the original Order
20 whether adopting the language contained in
21 Petitioner's Exhibit 1 filed on October 13, 2016 with
22 the Commission; with all other aspects of the
23 original Motion being denied.

24 On November 14, 2016, the Commission mailed
25 an Agenda Notice for the November 22nd, 2016 LUC

1 meeting to the Parties and Statewide, Hawaii, Kauai
2 and Oahu mailing lists.

3 On November 21st, 2016, the Commission
4 received Hawaii County's Notice of Nonappearance for
5 the November 22nd, 2016 meeting.

6 Is there anyone in the audience who desires
7 to provide public testimony in this matter? None.

8 Commissioners, before you is the form of the
9 Order in Docket No. A81-525. The form of the Order
10 is the form submitted by the Petitioner with
11 technical, non-substantive changes. The Chair will
12 entertain a motion to approve the form of the Order
13 in this matter. Commissioners, what is your
14 pleasure?

15 COMMISSIONER CABRAL: I'd like to move to
16 approve.

17 CHAIRPERSON ACZON: Is there a second?

18 COMMISSIONER ESTES: Second.

19 CHAIRPERSON ACZON: The motion has been made
20 by Commissioner Cabral and seconded by Commissioner
21 Estes. Any discussion? If there's no further
22 discussion, Mr. Orodener, please poll the
23 Commission.

24 EXECUTIVE OFFICER: Thank you, Mr. Chair.
25 The motion is to approve the order. Commissioner

1 Cabral.

2 COMMISSIONER CABRAL: Yes.

3 EXECUTIVE OFFICER: Commissioner Estes.

4 COMMISSIONER ESTES: Yes.

5 EXECUTIVE OFFICER: Commissioner Mahi.

6 COMMISSIONER MAHI: Aye.

7 EXECUTIVE OFFICER: Commissioner Wong.

8 COMMISSIONER WONG: Aye.

9 EXECUTIVE OFFICER: Commissioner Scheuer.

10 VICE CHAIR SCHEUER: Aye.

11 EXECUTIVE OFFICER: Commissioner Chang is
12 absent. Commissioner Hiranaga.

13 COMMISSIONER HIRANAGA: Aye.

14 EXECUTIVE OFFICER: Commissioner Okuda.

15 COMMISSIONER OKUDA: Yes.

16 EXECUTIVE OFFICER: Chair Aczon.

17 CHAIRPERSON ACZON: Aye.

18 EXECUTIVE OFFICER: Thank you, Mr. Chair,
19 the vote passes unanimously.

20 CHAIRPERSON ACZON: Thank you.

21 MR. YUEN: Thank you.

22 CHAIRPERSON ACZON: Congratulations.

23 Can we have the next . . . okay. The next
24 agenda item is an action meeting on Docket No.
25 DR16-57 to consider a Petition for a Declaratory

1 Order to waive the requirement contained in HAR
2 15-15-50(c)(19). The Petitioner submit a schedule
3 and a map for development of the project in
4 increments in order that Petitioner may request the
5 Commission to restrict the entire property as set
6 forth in HAR 15-15-78(a)(1).

7 Will the Petitioner, County and Office of
8 Planning please identify themselves for the record.

9 MR. MATSUKAWA: I'm Earl Matsukawa with
10 Wilson Okamoto Corporation. I'm the agent for the
11 University of Hawaii Community Colleges in the
12 petition.

13 MS. APUNA: Good morning, Deputy Attorney
14 General Dawn Apuna on behalf of the State Office of
15 Planning. Here with me today is Lorene Maki.

16 CHAIRPERSON ACZON: Thank you.

17 Let me update the record.

18 On November 4, 2016, the Commission received
19 the Petition for Declaratory Order.

20 On November 14, 2016, the Commission mailed
21 an Agenda Notice for the November 22nd, 2016 LUC
22 meeting to Parties and Statewide, Hawaii, Kauai and
23 Oahu mailing lists.

24 On November 18, 2016, the Commission
25 received Kauai County's Statement of No Opposition

1 and Non-Appearance to Petitioner State of Hawaii,
2 University of Hawaii Community College's Petition for
3 Declaratory Order.

4 On November 21, 2016, the Commission
5 received OP's Response to Petitioner University of
6 Hawaii Community College's Petition for Declaratory
7 Order.

8 Mr. Matsukawa, has our staff informed you of
9 the Commission's policy regarding the reimbursement
10 of hearing expenses? If so, could you state your
11 client's position with respect to this policy?

12 MR. MATSUKAWA: Could you repeat that?

13 CHAIRPERSON ACZON: Has our staff informed
14 you of the Commission's policy regarding the
15 reimbursement of hearing expenses? If so, please
16 state your client's position with respect to that --

17 MR. MATSUKAWA: We accept that.

18 CHAIRPERSON ACZON: Thank you.

19 Here is our procedure for today.

20 First, we will call for those individuals
21 desiring to provide public testimony on DR16-57 to
22 identify themselves. All such individuals will be
23 called in to our witness box where they will be sworn
24 in prior to their testimony.

25 After receipt of public testimony, LUC staff

1 will provide a map orientation.

2 Are there any individuals who would like to
3 present public testimony on this docket? Thank you.

4 Mr. Derrickson, please provide the
5 Commission with the map orientation.

6 SCOTT DERRICKSON: Aloha kakou,
7 Commissioners. I'm just going to give you a brief
8 orientation about where this project sits in relation
9 to the rest of the island of Kauai.

10 This is the parcel, parcels here. They're
11 in a area called Hanamaulu Mauka, roughly to the line
12 to the west of Lihue Town which is over here and then
13 Koloa Poipu is down this way farther. The main
14 highway, Kaumualii Highway runs adjacent to the
15 parcel.

16 We also have another DBA that we're going to
17 be hearing at the same time in the near future,
18 Island School and that's adjacent to this project
19 right here.

20 And the entire parcel is roughly just under
21 150 acres. There are two small exclusion areas, one
22 of which is an old plantation cemetery. Kukui Grove
23 Shopping Center is right here, main employment area.
24 Hospital is up in this area.

25 And that's about it. You have any

1 questions?

2 CHAIRPERSON ACZON: Any questions regarding
3 the map orientation? Thank you, Mr. Derrickson.

4 Mr. Matsukawa, please proceed with your
5 presentation.

6 MR. MATSUKAWA: The University of Hawaii
7 Community Colleges is requesting that the -- forego
8 the need for the phasing plan at this point. They
9 will proceed to develop the campus as the community
10 grows, as the demand grows and as they can secure
11 public funding for the development projects. And
12 that's basically for this request for declaratory
13 order.

14 CHAIRPERSON ACZON: Commissioners, do you
15 have any questions for the petitioner? Vice Chair
16 Scheuer.

17 VICE CHAIR SCHEUER: Good morning. I'm
18 sorry, the cemetery exclosure is within the
19 University of Hawaii parcel?

20 MR. MATSUKAWA: Yes, right here.

21 VICE CHAIR SCHEUER: Okay. Has there been
22 consultation with the Kauai Island Burial Council
23 during the course of your work?

24 MR. MATSUKAWA: We have done section 60
25 consultation with SHPD. The cemetery will not be

1 anywhere disturbed. That's not part of the UH KCC
2 Campus.

3 VICE CHAIR SCHEUER: Will there be
4 development along the edges of the cemetery?

5 MR. MATSUKAWA: There will need to be a
6 historic preservation plan if they get anywhere near
7 the cemetery.

8 VICE CHAIR SCHEUER: Okay. I would just --
9 I served three years on the Oahu Island Burial
10 Council. One of my fellow colleagues served many
11 more years than that. We saw many instances in which
12 the current physical observable boundaries of
13 cemeteries did not actually match where burials were.
14 The burials often go outside those known boundaries.

15 I would strongly encourage the applicant to
16 do early consultation, not just with SHPD but with
17 the Island Burial Council.

18 MR. MATSUKAWA: I will advise them.

19 CHAIRPERSON ACZON: Anybody else?
20 Commissioners, any questions? Thank you.

21 Does OP wish to offer any public witness
22 testimony at this time? Ms. Apuna?

23 MS. APUNA: No.

24 CHAIRPERSON ACZON: Thank you.

25 Commissioners, do you have any final

1 comments or questions for Petitioner or OP? None.

2 Commissioners, according to the Commission's
3 administrative rules, section 15-15-100, within 90
4 days after receipt of petitioner for declaratory
5 order, Commission shall either deny the petition in
6 writing stating the reasons for the denial, issue a
7 declaratory order or set the matter for hearing as
8 provided in section 15-15-103 of the Commission
9 rules. In addition, section 15-15-102 of the
10 Commission rules provides that the Commission, for
11 good cause, may refuse to issue a declaratory order
12 by giving specific reasons.

13 The Commission may so refuse where the
14 question is speculative or purely hypothetical and
15 does not involve existing facts or facts that can be
16 expected to exist in the near future.

17 The Petitioner's interest is not -- number
18 two, the Petitioner's interest is not of the type
19 that would give the petitioner standing to maintain
20 an action if the petitioner were to seek judicial
21 relief.

22 Third, the issuance of the declaratory order
23 may affect the interest of the Commission in a
24 litigation that is pending or may reasonably be
25 excepted to arise.

1 Or number four, the matter is not within the
2 jurisdiction of the Commission.

3 Commissioners, what's your pleasure on this
4 matter? Commissioner Estes.

5 COMMISSIONER ESTES: I'll make the motion.
6 I move to waive the requirement that the petitioner
7 submit a schedule and a map for development of a
8 project in increments under section 15-15-50(c)(20)
9 Hawaii Administrative Rules for good cause shown.

10 CHAIRPERSON ACZON: Is there any second?

11 COMMISSIONER WONG: Second.

12 CHAIRPERSON ACZON: A motion has been made
13 by Commissioner Estes and seconded with Commissioner
14 Wong. Any discussion? None.

15 If there's no further discussion, Mr.
16 Orodenker, please poll the Commission.

17 EXECUTIVE OFFICER: Thank you, Mr. Chair.
18 The motion is to waive the requirements of section
19 15-15-50(c)(20) of Hawaii Administrative Rules.

20 Commissioner Estes?

21 COMMISSIONER ESTES: Yes.

22 EXECUTIVE OFFICER: Commissioner Wong?

23 COMMISSIONER WONG: Aye.

24 EXECUTIVE OFFICER: Commissioner Mahi.

25 COMMISSIONER MAHI: Aye.

1 EXECUTIVE OFFICER: Commissioner Scheuer.

2 VICE CHAIR SCHEUER: Aye.

3 EXECUTIVE OFFICER: Commissioner Chang is
4 absent. Commissioner Hiranaga.

5 COMMISSIONER HIRANAGA: Aye.

6 EXECUTIVE OFFICER: Commissioner Okuda.

7 COMMISSIONER OKUDA: Yes.

8 EXECUTIVE OFFICER: Commissioner Cabral.

9 COMMISSIONER CABRAL: Yes.

10 EXECUTIVE OFFICER: Chair Aczon.

11 CHAIRPERSON ACZON: Aye.

12 EXECUTIVE OFFICER: Thank you, Mr. Chair,
13 the motion carries unanimously.

14 CHAIRPERSON ACZON: Thank you.
15 Congratulations.

16 Are there any other further business for the
17 Commission, Mr. Orodénker?

18 EXECUTIVE OFFICER: No, Mr. Chair.

19 I just would caution everyone to examine the
20 schedule that we handed out. It's going to be a very
21 heavy schedule and some of those projects are 2 or 1
22 H projects are situations where we only have 30 to 45
23 days to render a decision. So we appreciate
24 everyone's help with that. Thank you.

25 CHAIRPERSON ACZON: Thank you.

1 There being no further business, I declare
2 this meeting adjourned.

3 (Concluded at 9:17 a.m.)

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1 CERTIFICATE

2 STATE OF HAWAII)
3 COUNTY OF HONOLULU) SS.

4 I, PRISCILLA GONZAGA, CSR #127, do hereby
5 certify:

6 That on November 22, 2016, the proceedings
7 contained herein was taken down by me in machine
8 shorthand and thereafter reduced to typewriting under
9 my supervision; that the foregoing represents, to the
10 best of my ability, a true and correct copy of the
11 proceedings had in the foregoing matter.

12 I further certify that I am not of counsel
13 for any of the parties hereto, nor in any way
14 interested in the outcome of the cause named in this
15 caption.

16 Dated this 5th day of December, 2016 in
17 Honolulu, Hawaii.

18
19
20 /s/ Priscilla Gonzaga

21 Priscilla Gonzaga, CSR #127
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