

LAND USE COMMISSION

STATE OF HAWAII

December 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  
(November 22, 2016)

III. Tentative Meeting Schedule

IV. Action  
DR16-58 County of Kauai Housing Agency (Kauai)  
To consider Petition for a Declaratory Order  
Regarding the Waiver of Section 15-15-50(c)(20)  
Of the Hawaii Administrative Rules, in Relation  
to a Petition to be filed under Hawaii Revised  
Statutes Section 201H-38 for Reclassification of  
Land situated at Eleele, Kauai, Hawaii,  
consisting of approximately 75 acres, Tax Map  
Key No. (4)2-1-001:054

V. Adjournment

1 APPEARANCES:

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

5 COMMISSIONERS:

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

12 DIANE ERICKSON, ESQ., Deputy Attorney General

13 STAFF:

14 DANIEL ORODENKER, Executive Officer  
15 RILEY HAKODA, Staff Planner/Chief Clerk  
16 SCOTT DERRICKSON, Staff Planner

17 JAMES MEE, ESQ.

18 SARAH SIMMONS, ESQ., For County of Kauai Housing  
19 Agency

20 DAWN APUNA, ESQ., Deputy Attorney General for State  
21 Office of Planning

22

23

24

25

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

3                   The first order of business, the adoption of  
4   the November 22nd, 2016 minutes. Are there any  
5   corrections or comments on them? If not, is there a  
6   motion to adopt the minutes?

7                   COMMISSIONER ESTES: So move.

8                   COMMISSIONER MAHI: I second.

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

13                  COMMISSIONERS: Aye.

14                  CHAIRPERSON ACZON: Any opposed?

15                  The minutes are adopted unanimously.

16                  The next agenda item is the tentative  
17   meeting schedule. Mr. Orodener.

18                  EXECUTIVE OFFICER: Thank you, Mr. Chair.

19                  We have a very busy upcoming year, at least  
20   for the first half.

21                  On January 18, we will be on Maui for  
22   Waikapu Country Town EIS acceptance or rejection.

23                  January 19 to consider an intervenor on  
24   Kauai.

25                  On January 25th, we will be . . . we will be

1 on Maui again for a motion to adopt the order from  
2 Waikapu Country Town.

3 February 8th and 9th, we will be on Kauai  
4 for Lima Ola 201H project evidentiary hearing.

5 February 22nd, we will be -- again, be on  
6 Kauai for Lima Ola adoption of the order and  
7 declaratory ruling on solar project on Kauai.

8 March 8th, we will be looking at the  
9 Kaonoula Ranch EIS and Honuaula Partners on Maui.

10 March 22nd and 23rd -- this should be March  
11 8th and 9th. March 22nd to 23rd, we'll be on Kauai  
12 for Island Schools and Kauai Community College and  
13 adoption of the order for Kaonoula Ranch.

14 April 12th and 13th, we will be reviewing  
15 hopefully the hearings officer's recommended decision  
16 on the Lanai remand. And we want to thank our vice  
17 chair and -- for working so hard on this. His time  
18 has gone way over what we expected to pay him for.

19 VICE CHAIR SCHEUER: And that's double of my  
20 rate.

21 EXECUTIVE OFFICER: April 26 and 27th, we  
22 will be once again on Maui for the Kaonoula Ranch  
23 motion to amend and adoption of order on Lanai  
24 remand.

25 May 10th and 11th is kindly to be

1 determined.

2 May 24th to 25th, we are expecting the  
3 Waimanalo Gulch special permit to come back to us for  
4 rehearing.

5 June 14th and 15th will be adoption of  
6 order.

7 And June 28th and 29th, we expect to be on  
8 the Big Island. So fasten your seat belts.

9 CHAIRPERSON ACZON: Thank you, Mr.  
10 Orodenker. Commissioners, do you have any questions  
11 about the schedules? Thank you.

12 VICE CHAIR WONG: Mr. Chair.

13 CHAIRPERSON ACZON: Go ahead, Commissioner  
14 Wong.

15 VICE CHAIR WONG: Wanted to add to the  
16 agenda after item number 4, an executive session to  
17 consult with the Board's attorney on questions and  
18 issues pertaining to the Board's power and duties,  
19 privilege, immunities and liabilities regarding  
20 recent events in the media.

21 CHAIRPERSON ACZON: Is there a second on  
22 that one?

23 COMMISSIONER CABRAL: I'll second.

24 CHAIRPERSON ACZON: It's been moved by  
25 Commissioner Wong and seconded by Commissioner

1 Cabral. We'll go in executive session. Those in  
2 favor, say aye.

3 COMMISSIONERS: Aye.

4 CHAIRPERSON ACZON: Opposed. Motion  
5 carried. So we will -- we'll take care up to the  
6 agenda items.

7 Okay. The next agenda item is an action  
8 meeting on Docket No. DR16-58. County of Kauai  
9 Housing Agency. To consider petition for a  
10 Declaratory Order Regarding the Waiver of Section  
11 15-15-50 (c)(20) of the Hawaii Administrative Rules,  
12 in relation to a Petition to be filed under Hawaii  
13 Revised Statutes Section 201H-38 for Reclassification  
14 of Land situated at Eleele, Kauai, Hawaii consisting  
15 of approximately 75 acres, Tax Map Key No. (4)2-1-001  
16 lot 54.

17 Will the Petitioner and Office of Planning,  
18 please identify themselves for the record.

19 MR. MEE: Good morning, Mr. Chairman and  
20 members of the Commission. I'm James Mee of the law  
21 firm of Ashford & Wriston. And Sarah Simmons,  
22 another attorney with our firm, is also present with  
23 me today. We're appearing on behalf of the  
24 Petitioner, the County of Kauai Housing Agency.

25 CHAIRPERSON ACZON: Thank you.

1 MS. APUNA: Good morning, Chair and  
2 Commissioners. Dawn Apuna, Deputy Attorney General.

3 CHAIRPERSON ACZON: Good morning.

4 On December 7th, 2016, the Commission  
5 received the Petition for Declaratory Order.

6 On December 12, 2016, the Commission mailed  
7 an Agenda Notice for the December 22nd, 2016 LUC  
8 meeting to Parties and Statewide, Kauai and Oahu  
9 mailing lists.

10 On December 14th, 2016, the Commission  
11 received OP's response to Petitioner County of Kauai  
12 Housing Agency's Petition for Declaratory Order.

13 On December 20th, 2016, the Commission  
14 received Kauai County's Statement of No Opposition  
15 and Non-Appearance to Petitioner County of Kauai  
16 Housing Agency's Petition for Declaratory Order.

17 Here is our procedure for today.

18 First, we will call for those individuals  
19 desiring to provide public testimony on DR16-58 to  
20 identify themselves. All such individuals will be  
21 called in turn to our witness box where they will be  
22 sworn in prior to their testimony.

23 After receipt of public testimony, the  
24 Commission will hear Petitioner's presentation and  
25 the public testimonies of OP.

1           Are there any questions in regard to our  
2   procedures for today?

3           COMMISSIONER OKUDA: Mr. Chair.

4           CHAIRPERSON ACZON: Commissioner Okuda.

5           COMMISSIONER OKUDA: Yeah. I'd like to  
6   disclose not necessarily a conflict of interest but  
7   the fact that our law firm and myself represent the  
8   late Palani Vaughan in a lawsuit against Alexander &  
9   Baldwin which the Ashford & Wriston firm represents  
10   Alexander & Baldwin. I don't believe our  
11   representation in that case affects any of this. I  
12   also have known personally a number of the Ashford &  
13   Wriston partners for decades.

14          CHAIRPERSON ACZON: Thank you. Is there any  
15   objection for Commissioner Okuda's participation?  
16   Mr. Mee?

17          MR. MEE: No objection from the Petitioner.

18          CHAIRPERSON ACZON: Ms. Apuna?

19          MS. APUNA: No objection.

20          CHAIRPERSON ACZON: Thank you.

21          Is there anyone in the audience who desire  
22   to provide public testimony in this matter? A  
23   three-minute limit on testimony will be enforced.

24          EXECUTIVE OFFICER: Mr. Chair, we don't have  
25   anyone signed up to testify.



1 CHAIRPERSON ACZON: Thank you.

2 Mr. Mee, please proceed with your  
3 presentation.

4 MR. MEE: Thank you, Mr. Chairman and  
5 Members of the Commission.

6 As you know probably, we're in the process  
7 of preparing a 201H petition for a public affordable  
8 housing project at Eleele on Kauai to be known as the  
9 Lima Ola project. And our filing date for that  
10 petition under the rules for 201H is going to be  
11 February 6th. The hearings on that will start soon  
12 thereafter.

13 The reason that we're here today is that in  
14 a petition for reclassification, one of the  
15 requirements in terms of what you put in the petition  
16 is essentially setting forth the increments if your  
17 project is going to go more than ten years. As we've  
18 set forth in our petition and also in the master plan  
19 which gets into that in more detail, this affordable  
20 housing project on Kauai, we think -- well, we know  
21 is going to go more than ten years. But the county  
22 really, it's difficult for them to predict what the  
23 process is going to be because much of it is  
24 dependent on various sources of housing funds that  
25 we'll get from different parts of federal, state,

1 county government, also from perhaps private  
2 developers. So we're asking for a waiver of that  
3 requirement in our petition. We think that it's  
4 warranted in this case.

5 The property will be used for affordable  
6 housing. It's already been dedicated and set aside  
7 in perpetuity for that. So this is more just to give  
8 the county flexibility in terms of how they develop  
9 the basis.

10 The county is already into phase 1 in terms  
11 of the funding. If the approval is given by the  
12 Commission to the petition for reclassification, then  
13 they'll be moving ahead with that. But that first  
14 phase is going to take perhaps four to five years to  
15 do. And the thought is that while they're doing one  
16 phase, they'll be working on raising the funds for  
17 the next.

18 So essentially, we're asking the Commission  
19 to waive this rule so we can have more flexibility in  
20 terms of the timetable.

21 So I understand there's no opposition from  
22 the County of Kauai Planning Agency. And also I mean  
23 OP can make their presentation. But I think that's  
24 our position. We're certainly -- I'm open to any  
25 questions the Commissioners might have.

1 CHAIRPERSON ACZON: Thank you.

2 Commissioners, do you have any questions for  
3 Mr. Mee? Commissioner Chang.

4 COMMISSIONER CHANG: Yes. Good morning, Mr.  
5 Mee. I just want to confirm that the waiver of this  
6 rule requirement would not otherwise waive other  
7 regulatory environmental review processes.

8 MR. MEE: That's correct, Commissioner. I  
9 mean we'd still be responsible for fulfilling all of  
10 the other requirements.

11 COMMISSIONER CHANG: All right. Thank you.

12 CHAIRPERSON ACZON: Anybody else,  
13 Commissioners? Okay.

14 Does OP wish to offer any public testimony  
15 at this time?

16 MS. APUNA: OP would just like to state that  
17 no opposition to the petition.

18 CHAIRPERSON ACZON: Thank you.

19 Any questions for Ms. Apuna? Commissioners?  
20 Okay. We're going -- the Commissioners, do you have  
21 any final comments or questions for Petitioner or OP?

22 According to Commission's administrative  
23 rules, section 15-15-100, within 90 days after  
24 receipt of petition for declaratory order, the  
25 Commission shall either deny the petition in writing

1 stating the reasons for the denial, issue a  
2 declaratory order or set the matter for hearing as  
3 provided in section 15-15-103 of the Commission  
4 rules. In addition to section 15-15-102 of the  
5 Commission rules provide that the Commission, for  
6 good cause, may refuse to issue a declaratory order  
7 by giving specific reasons.

8 The Commission may so refuse where:

9 (1) the question is speculative or purely  
10 hypothetical and does not involve existing facts, or  
11 facts that can be expected to exist in the near  
12 future.

13 Second, the petitioner's interest is not of  
14 the type that would give the petitioner standing to  
15 maintain an action if the petitioner were to seek  
16 judicial relief;

17 Third, the issuance of the declaratory order  
18 may affect the interest of the Commission in a  
19 litigation that is pending or may reasonably be  
20 expected to arise;

21 Or number 4, the matter is not within the  
22 jurisdiction of the Commission.

23 Commissioners, what's your pleasure on this  
24 matter?

25 COMMISSIONER ESTES: I have a motion.

1 CHAIRPERSON ACZON: Commissioner Estes.

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

7 COMMISSIONER CHANG: I second.

8 CHAIRPERSON ACZON: Okay. A motion has been  
9 made by Commissioner Estes and seconded by  
10 Commissioner Chang. Any discussion? Commissioners?  
11 Hearing none, if there's no further discussion, Mr.  
12 Orodenker, please poll the Commission.

13 EXECUTIVE OFFICER: Thank you, Mr. Chair.

14 The motion is to grant the motion to waive  
15 the requirements of section 15-15-50(c)(20) of the  
16 Hawaii Administrative Rules. Commissioner Estes.

17 COMMISSIONER ESTES: Yes.

18 EXECUTIVE OFFICER: Commissioner Chang.

19 COMMISSIONER CHANG: Yes.

20 EXECUTIVE OFFICER: Commissioner Mahi.

21 COMMISSIONER MAHI: Aye.

22 EXECUTIVE OFFICER: Commissioner Wong.

23 COMMISSIONER WONG: Aye.

24 EXECUTIVE OFFICER: Commissioner Scheuer.

25 COMMISSIONER SCHEUER: Aye.

1 EXECUTIVE OFFICER: Commissioner Hiranaga.

2 COMMISSIONER HIRANAGA: Aye.

3 EXECUTIVE OFFICER: Commissioner Okuda.

4 COMMISSIONER OKUDA: Yes.

5 EXECUTIVE OFFICER: Commissioner Cabral.

6 COMMISSIONER CABRAL: Aye

7 EXECUTIVE OFFICER: Chair Aczon.

8 CHAIRPERSON ACZON: Yes.

9 EXECUTIVE OFFICER: Thank you, Mr. Chair.

10 The motion passes unanimously.

11 CHAIRPERSON ACZON: Thank you, Mr.

12 Orodenker. Congratulations.

13 MR. MEE: Thank you all and happy holidays.

14 I appreciate your meeting today. I know it's a busy  
15 time of the year.

16 CHAIRPERSON ACZON: That's okay.

17 MR. MEE: Thank you very much.

18 COMMISSIONER CABRAL: Well, it's really nice  
19 to have something that nobody objects to. That's the  
20 present.

21 VICE CHAIR SCHEUER: I could reconsider if  
22 you want.

23 COMMISSIONER CABRAL: You would, you would.

24 MR. MEE: We're just hoping it stays that  
25 way. Okay. Thank you very much.

1 CHAIRPERSON ACZON: Thank you.

2 Ms. Apuna, go ahead.

3 MS. APUNA: Yes. I'd like to ask, because  
4 we're on an expedited schedule, when you might expect  
5 that position statements and witness list might be  
6 due based on the --

7 CHAIRPERSON ACZON: Mr. --

8 EXECUTIVE OFFICER: Thank you. We are  
9 calmly awaiting -- I think I believe it's tomorrow is  
10 the deadline for filing for intervention.

11 SCOTT DERRICKSON: We got an e-mail  
12 following yesterday with the notification that it's  
13 been mailed out to all the parties.

14 EXECUTIVE OFFICER: So we'll be holding a  
15 hearing on the intervention. I believe it was  
16 January 18th --

17 SCOTT DERRICKSON: 19.

18 EXECUTIVE OFFICER: 19th. And that's when  
19 we'll set the schedule for submission.

20 MS. APUNA: Thank you.

21 CHAIRPERSON ACZON: Thank you.

22 Our next agenda is Mr. Wong. Go ahead.  
23 Your motion.

24 VICE CHAIR WONG: Yeah. I wanted to make --  
25 to move to executive session for the rights,

1 privilege and other issues regarding the recent media  
2 events.

3 CHAIRPERSON ACZON: Is there any second?

4 COMMISSIONER MAHI: I'll second.

5 CHAIRPERSON ACZON: It's been moved by  
6 Commissioner Wong and seconded by Commissioner Mahi  
7 to go on executive session. Those in favor, say aye.

8 COMMISSIONERS: Aye.

9 CHAIRPERSON ACZON: Opposed. Motion  
10 carried. Let's clear the room.

11 (Commission went into executive session.)

12 CHAIRPERSON ACZON: We have consulted with  
13 our attorney regarding the appropriate manner in  
14 response to the newspaper editorial. The Commission  
15 has voted to authorize the staff to respond to an  
16 article about the LUC in the Star Advertiser on  
17 December 20, 2016. Everybody --

18 COMMISSIONERS: That's fine.

19 CHAIRPERSON ACZON: Is there any other  
20 business? I want to wish everybody a Merry Christmas  
21 and a prosperous New Year and we'll see you next  
22 year. And we're adjourned.

23 (Concluded at 10:14 a.m.)

24 --oo0oo--

25



## 1 CERTIFICATE

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

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

6 That on December 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 12th day of January 2017 in  
17 Honolulu, Hawaii.

18  
19  
20 /s/ Priscilla Gonzaga

21 Priscilla Gonzaga, CSR #127  
22  
23  
24  
25