

LAND USE COMMISSION  
MEETING MINUTES  
January 13, 2016- 9:30 a.m.  
Conference Rooms A & B - 2<sup>nd</sup> Floor  
State Building, 3060 Eiwa Street  
Lihue, HI 96766

COMMISSIONERS PRESENT: Edmund Aczon  
Chad McDonald  
Arnold Wong  
Kent Hiranaga  
Aaron Mahi  
Jonathan Scheuer  
Linda Estes  
Nancy Cabral

COMMISSIONERS EXCUSED:  
(There are currently 8 seated Commissioners out of 9 positions)

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 Aczon called the meeting to order at 9:38 a.m. and recognized former LUC Commissioner Dennis Esaki.

**APPROVAL OF MINUTES**

Chair Aczon asked if there were any corrections or additions to the December 7, 2015 and December 10, 2015 minutes. There were no corrections or comments. Commissioner Estes moved to approve the minutes. Commissioner Mahi seconded the motion. The minutes were unanimously approved by voice vote (8-0).

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The January 27<sup>th</sup>, 2016 meeting is a videoconference to adopt the form of the order for the Kauai Special Permit via videoconference.
- The February 10-11<sup>th</sup>, 2016 meeting is planned for a hearing on the 201H Ma`alaea Plantation docket on Maui and DR08-36 on Oahu.
- The February 24-25, 2016 meetings are planned for a site visit for the Ma`alaea Plantation docket.
- The March 9, 2016 meeting is for a follow-up status report for SP09-403 Waimanalo Gulch Sanitary Landfill.
- Pending dockets SP92-381 Waikaloa Development and A89-676 Queen Liliuokalani Trust are awaiting scheduling.
- Any questions or conflicts, please contact LUC staff.

Commissioner Scheuer suggested that the Commission do the site visit to Maalaea in the afternoon to experience the windy conditions in the area. Mr. Orodener responded that LUC staff would attempt to schedule it at that time. There were no other questions or comments on the tentative meeting schedule.

## **ACTION--SP15-407 SOLARCITY CORPORATION, (Kaua`i)**

Chair Aczon stated that this was a meeting on Docket No. **SP15-407 SOLARCITY CORPORATION, (Kaua`i)** To consider a Special Permit for real property situated at Kapaia, Hanamaulu, Lihue, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 3-8-002:002 (por).

### APPEARANCES

Ben Matsubara, Esq. and Curtis Tabata, Esq., for Petitioner Solarcity PV, LLC("LLC")  
Jodi Higuchi, Esq., for Kaua`i County Planning Department ("County")  
Ka`aina Hall, Deputy Planning Director, County  
Bryan Yee, Esq. for State Office of Planning ("OP")  
Rodney Funakoshi, Land Use Administrator, OP

## **PUBLIC TESTIMONY- DOCKET NO. SP15-405**

Chair Aczon asked if there were any Public Witnesses who wished to testify.

### PUBLIC WITNESSES

#### 1. Llen Rachap

Mr. Rachap stated that he was a 16 year resident of Kaua`i and described why he supported the SP15-407 Petition.

There were no other public witnesses.

Chair Aczon updated the record, and described the procedures for the hearing. There were no questions or comments on the procedures

Chair Aczon called for Petitioner to make its presentation.

## PRESENTATIONS

### Petitioner

Mr Matusbara provided a background history and summary of the special permit procedure and the Petition; and Mr. Tabata described the features of the proposed solar facility project. They also described why the Petitioner submitted the Special Permit Application; and argued why the Commission should grant the Petition; and why the Applicant's proposed Findings of Fact, Conclusions of Law and Decision and Order should be positively considered.

Commissioner Wong requested clarification on how the "battery pack" system would operate and what security, fire containment and fire prevention measures would be in effect. Mr Tabata described how the applicant intended to secure the project area, and what design features were planned to contain and prevent fires.

Commissioner Cabral requested clarification on how the possible battery leakage problems would be handled, how much disturbance to the Petition Area land surface would occur, and what kind of agricultural use was planned. Mr. Tabata described how battery leakage would be handled, and stated that sheep would be grazed on the Petition Area surface with minimal disturbance to the Petition Area land surface.

Commissioner Scheuer requested clarification on what efforts there had been to address the historic/cultural and traditional practices of the Petition Area. Mr. Tabata described how the Applicant had addressed those matters after it had been determined that the Petition Area had been in sugar cane production for over a hundred years.

Commissioner Wong requested clarification on what considerations had been made for flora/fauna and endangered species concerns. Mr. Tabata described the mitigation measures taken in association with the panels that would be used and other actions to protect endangered species.

Chair Aczon asked if the Commissioners had any further questions. There were none.

## COUNTY

Chair Aczon asked if County had any comments. Ms. Higuchi replied that County had no objections to the proposed Findings of Fact, Conclusions of Law and Decision and Order submitted by the Applicant.

Commissioner Scheuer requested clarification from County on why a letter of credit rather than a performance bond had been required of the Applicant and why County was the approving authority to extend the permit beyond 35 years. Mr. Hall shared how County had assessed the financial situation of the Applicant and decided that a letter of credit was sufficient; and how County had determined that it should be the approving authority to grant a permit extension.

Commissioner McDonald asked if the County had considered using IAL designation for the Petition Area land. Mr. Hall commented that the County had already conducted an Important Agricultural Land (IAL) assessment of the island, but would need to check on why this particular area had not been designated IAL.

## OP

Chair Aczon asked if OP had any comments. Mr. Yee presented OP's position on the Petition and described how OP generally supported the Application and what concerns OP had.

Commissioner Estes requested clarification about the basis for OP's concerns regarding Fish & Wildlife (USFW). Mr. Yee described the results of OP's communication with the USFW and stated that he was not able to speak with respect to the County's involvement.

Commissioner Scheuer requested further clarification of the condition to delegate the LUC authority to the County. Mr. Yee stated that OP did not support reducing the LUC's authority in such matters.

Chair Aczon declared a recess at 10:45 a.m. and reconvened the meeting at 10:55 a.m.

Chair Aczon sought the pleasure of the Commission. Commissioner Estes moved to grant the special permit with modifications suggested by OP and LUC staff. Commissioner Wong seconded the motion.

## Discussion

Commissioner Scheuer stated that he was in favor of the motion and described why he supported Commissioner Estes' motion.

There were no further questions or discussion.

The Commission unanimously voted to grant the Petition (8-0- There are currently 8 seated Commissioners).

Chair Aczon thanked the Applicant and County for providing a complete and detailed record to the Commission; and to OP for providing its comments.

Commissioner Wong remarked that Mr. Yee would be moving on to another post and thanked him for his services to the LUC. The Commission applauded Mr. Yee.

### **EXECUTIVE SESSION**

Chair Aczon stated that the next agenda item was an Executive Session to consult with Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to 201H Hawaii Revised Statute hearings.

There was no motion to enter into Executive Session.

There being no further business, the meeting was adjourned by Chair Aczon at 11:02 a.m.