

LAND USE COMMISSION
MEETING MINUTES

November 8, 2017

9:30 a.m.

County of Kaua`i Moikeha Building Conference Room 2A/2B
4444 Rice Street, Lihu`e, Kaua`i, Hawai`i, 96766

COMMISSIONERS PRESENT: Jonathan Scheuer
Linda Estes
Nancy Cabral
Dawn Chang
Lee Ohigashi
Aaron Mahi
Arnold Wong

COMMISSIONERS EXCUSED: Edmund Aczon
Gary Okuda

LUC STAFF PRESENT: Daniel Orodenker, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

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

APPROVAL OF MINUTES

Chair Wong asked if there were any corrections or additions to the October 18-19, 2017 meeting and site visit minutes. There were no corrections or comments. Commissioner Estes moved to approve the October 18-19, 2017 minutes. Commissioner Mahi seconded the motion. The minutes were unanimously approved by voice vote (7-0-2 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker 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.

- NOV 21- Hono`uli`uli Special Permits on Oahu, Adopt SP17-408 AES Lawai Solar, A17-804 Hawaii Memorial Park-EIS Accepting Authority
- DEC 6- 7- A15-798 Waikapu (Maui) and Adopt SP17-409 Hono`uli`uli Special Permit
- JAN 10- A15-798 Waikapu (Maui) cont., A04-751 Pulelehua (Maui Land & Pine)- Motion to Amend
- JAN 24- Status reports A00-791 Lanihau and A10-788 HHFDC (NELHA in Kona)

Any questions or conflicts, please contact LUC staff.

ADOPTION OF ORDER

DR17-59 MONSANTO COMPANY, a Delaware corporation

To Consider Declaratory Order to Designate Important Agricultural Lands for approximately 1,550 acres at Kunia, O`ahu identified by TMK Nos. (1) 9-2-001-001 (por.); (1) 9-2-001-005; and (1) 9-2-004-009

APPEARANCES

Mark Murakami, Esq., attorneys for Petitioner Monsanto Company

Dan Clegg, Monsanto Company Representative

City and County of Honolulu Department of Planning and Permitting (DPP)

provided notice that they would not be appearing.

Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)

Rodney Funakoshi, Land Use Administrator, OP

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

Chair Wong called for Public Witnesses and swore each witness in before hearing their testimony.

PUBLIC WITNESSES:

1. Felicia Cowden

Ms. Cowden asked why the DR17-59 Oahu Docket was being heard on Kaua`i and for clarification of the IAL process. Chair Wong had Mr. Orodener explain that the decision to approve the docket had already been made and that this was the administrative adoption of the form of the order to complete the proceedings on the matter; and described the IAL designation process.

There no other public witnesses.

Chair Wong called for the Parties to make their presentations.

CLOSING ARGUMENTS

None

Commissioner Ohigashi moved to adopt the order. Commissioner Chang seconded the motion.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of adopting the form of the order. (7-0-2 excused).

Chair Wong declared a recess at 9:39 a.m. and reconvened the meeting at 9:40 a.m. and moved on to the next agenda item.

HEARING AND ACTION

A17-803 KEALIA PROPERTIES, LLC- (Kaua`i)

To Consider Petitioner's Motion to Designate the Land Use Commission as Approving Authority for Environmental Statement Under HRS Chapter 343 and For Authority to Prepare Environmental Impact Statement Preparation Notice.

Chair Wong called for the Parties identify themselves.

APPEARANCES

Curtis Tabata, Esq. and Benjamin Matsubara, Esq., Counsel for Kealia Properties, LLC ("KP")

Jodi Higuchi, Esq. Deputy Corporation Counsel, for County Planning Department ("County")

Jay Cua, Planner, County

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

Rodney Funakoshi, Land Use Administrator, OP

Chair Wong updated the record, and described the procedures for the hearing. Chair Wong asked if Petitioner had been made aware of and was agreeable to the LUC's hearing expenses reimbursement policy. Mr. Tabata acknowledged that Petitioner was

aware of and would comply with the reimbursement policy. There were no questions or comments on the procedures

Chair Wong called for Public Witnesses and swore each witness in before hearing their testimony.

PUBLIC WITNESSES:

1. Timothy Reis

Mr. Reis requested clarification on the process involved with the proposed project and the environmental impact statement. Mr. Tabata described how the environmental impact statement (EIS) information was being gathered and took Mr. Reis' contact information to provide follow up information.

Commissioner Scheuer commented that the Commission's action was limited in scope to agree to be the accepting authority for the EIS at this meeting.

There were no other witnesses.

PRESENTATION

Petitioner

Mr. Tabata made his presentation to the Commission and argued why the LUC should be the accepting authority for the Environmental Impact Statement (EIS) and why an EIS was warranted; and described the reasons why his motion should be granted.

Commissioner Chang requested clarification on whether the EIS would include an Archaeological Inventory Survey and Cultural Impact Assessment. Mr. Tabata responded that the EIS would address the issues that the State Historic Preservation Division (SHPD) would be concerned with.

AGENCY COMMENTS

County

The County stated that it had no objection to the motion.
There were no questions for County.

OP

Ms. Apuna stated that OP had no objection to the motion.
There were no questions for Ms. Apuna.

There were no further questions.

DECISION MAKING

Commissioner Estes moved to approve the Petition. Commissioner Mahi seconded the motion.

Commissioner Ohigashi offered a friendly amendment to include that the motion would:

- 1) Identify the Commission as the “accepting authority,” to review and accept the applicant’s proposed actions pursuant to Chapter 343, HRS; and,
- 2) Direct the Petitioner to prepare an EISPN because the Commission determined, based on its judgment and experience, that under Chapter 343-5(e), HRS, the proposed action may have significant effects requiring the preparation of a full environmental impact statement.
- 3) Authorize the Executive Officer to notify and submit a record of the Commission’s decision to Kealia and OEQC by the November 15, 2017, deadline. It was further recommended that the motion specify that the Commission authorizes the Chair to sign any Order on this matter on behalf of the Commission.

Commissioners Estes and Mahi had no objection to the friendly amendment.

Commissioner Scheuer requested clarification that the specifics of the motion and its friendly amendment just addressed the LUC’s role as accepting authority and not the approval of the EIS. Chair Wong acknowledged that the motion was limited to the LUC’s being the accepting authority.

There was no further discussion.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion with the friendly amendment. (7-0-2 excused).

Chair Wong declared a recess at 9:59 a.m. and reconvened the meeting at 10:10 a.m. and moved on to the next agenda item.

HEARING AND ACTION

SP17-408-AES LAWA'I SOLAR, LLC, (Kaua'i), a Delaware limited liability company, To Consider Petition for a State Land Use Permit, a Class IV Zoning Permit, and a Special Permit for real property situated at Kōloa and Lāwa'i, Kona, Kaua'i, Hawai'i, identified by

Kaua'i Tax Map Key No. (4) 2-6-003:001 (por.).

APPEARANCES

Curtis Tabata, Esq. and Benjamin Matsubara, Esq., represented AES Lāwa'i Solar, LLC, ("AES")

Jodi Higuchi, Esq., Deputy Corporation Counsel, represented County of Kaua'i Planning Department ("County")

Ka'aina Hull, Deputy Director, County

Dale Cua, Planner, County

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

Rodney Funakoshi, OP

Chair Wong updated the record and explained the procedures to be followed for the proceedings.

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

DISCLOSURES

Commissioner Scheuer disclosed that he had been a consultant for the Department of Hawaiian Home Lands (DHHL) in negotiations with the Kaua'i Island Utility Cooperative (KIUC). Chair Wong asked the Parties if there was any objection to Commissioner Scheuer's continued participation. There were no objections.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES

None

PRESENTATION

Petitioner

Mr. Tabata made his presentation to the Commission and argued why the Special Permit should be granted.

Commissioners Cabral, Ohigashi, Chang and Scheuer requested clarification on Mr. Tabata's presentation.

County

Ms. Higuchi stated that County was in support of the permit and recommended approval with conditions.

There were no questions for Ms. Higuchi.

OP

Ms. Apuna stated that OP had reviewed the permit and recommended the deletion of Conditions 22 and 23; and that the Commission approve the permit with those changes.

DECISION MAKING

Chair Wong entertained a motion.

Commissioner Cabral moved to approve the Special Permit application for AES Lāwa'i Solar, LLC subject to the conditions as recommended by the Kaua'i Planning Commission in their Findings of Fact, Conclusions of Law, and Decision and Order dated September 26, 2017; with the following changes:

- deletion of conditions 22 and 23 as requested by OP;
- amendment to Condition 7 to require LUC approval of any time extensions to the Special Permit;
- amendment to Condition 18 to clarify that any relief would be granted by the County Planning Commission;
- amendment to Condition 14 to require Petitioner's submittal of a SHPD-approved Archaeological Monitoring Plan before work begins; and,
- request staff to make any changes for renumbering, grammar, spelling, Hawaiian diacriticals, and clarity that is necessary

Discussion

Chair Wong stated that he would be voting in favor of the motion and described his support of alternative energy sources.

Commissioner Scheuer stated that he also was voting in favor of the motion and expressed his appreciation to all concerned with the special permit application effort.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion. (7-0-2 excused).

Chair Wong declared at recess at 10:59 a.m. and reconvened the meeting at 11:01 a.m.

Discussion ensued regarding the remaining items on the agenda.

Commissioner Ohigashi moved to amend the agenda and to have the Executive Session that was scheduled for November 9, 2017 rescheduled to start at 12:30 p.m. on November 8, 2017. Commissioner Mahi seconded the motion. By unanimous voice vote (7-0-2 excused), the Commission voted to amend the agenda and begin the Executive Session as proposed.

The Commission went into recess at 11:03 a.m. and reconvened at 12:30 p.m.

Commissioner Chang moved to enter into Executive Session. Commissioner Scheuer seconded the motion. By unanimous voice vote (7-0-2 excused), the Commission voted to enter into Executive Session.

The Commission reconvened in regular session at 2:30 p.m.

There being no further business, Chair Wong adjourned the meeting at 2:30 p.m.

