

LAND USE COMMISSION
MEETING MINUTES
November 21, 2017 – 9:30 a.m.
**Airport Conference Center, Meeting Room IIT#3
400 Rodgers Boulevard, Suite 700,
Honolulu, HI 96819**

COMMISSIONERS PRESENT: Arnold Wong
Nancy Cabral
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Dawn Chang

COMMISSIONERS EXCUSED: Edmund Aczon
Lee Ohigashi
Linda Estes

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Russell Suzuki, First 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 November 8th, 2017 meeting minutes. There were none. Commissioner Scheuer moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (6 ayes-0 nays- 3 excused).

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.
 - DEC 6- 7- A15-798 Waikapu (Maui) and Adopt Hono'uli'uli Special Permit
 - JAN 10- A04-751 Pulelehua- Maui Land and Pine-Motion to Amend; and residual business (if any) A15-798 Waikapu Town (Maui)

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

ADOPTION OF ORDER

SP17-408-AES LAWA'I SOLAR, LLC, (Kaua'i).

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. represented AES Lāwa'i Solar, LLC, ("AES")

County of Kaua'i notified the LUC they would not be in attendance at the hearing.

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

Lorene Maki, Planner, OP

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

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

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

There were no closing arguments.

Chair Wong entertained a motion.

Commissioner Cabral moved to adopt the order. Commissioner Mahi seconded the motion.

Commissioner Okuda stated that he had reviewed the record and the November 8, 2017 meeting transcripts regarding this docket. Chair Wong acknowledged Commissioner Okuda's comment.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of adopting the form of the order. (6-0-3 excused).

Chair Wong declared a recess at 9:37 a.m. and reconvened the meeting at 9:40 a.m. and moved on to the next agenda item.

HEARING AND ACTION

A17-804 HAWAII MEMORIAL LIFE PLAN, LTD.

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.

APPEARANCES

Curtis Tabata, Esq. represented Hawaii Memorial Life Plan, Ltd., ("HMP")
Eugene Takahashi, Acting Section Chief, -City and County of Honolulu Department of Planning and Permitting ("DPP")
Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")
Lorene Maki, OP

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

Chair Wong asked if Petitioner was aware of and agreeable to the Commission's reimbursement policy. Mr. Tabata acknowledged that Petitioner was aware of and would comply with the Commission's reimbursement policy.

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

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

DISCLOSURES

Commissioner Okuda disclosed that he had communicated and dealt with Hawaiian Memorial Park regarding funeral, inurnment and interment arrangements for family members; but believed that he could remain fair and impartial during the proceedings on this matter.

There were no objections to Commissioner Okuda's continued participation.

Commissioner Chang disclosed that she had performed consulting work for Hawaiian Memorial Park 5-7 years ago, but believed that she could remain fair and impartial during the proceedings.

There were no objections to Commissioner Chang's continued participation.

Commissioner Scheuer described his role with the Hawaiian Island Land Trust and his awareness of some preliminary business discussions occurring between Hawaiian Memorial Park and the Hawaiian Island Land Trust; but believed that he could remain fair and impartial during the proceedings.

There were no objections to Commissioner Scheuer's continued participation.

Chair Wong disclosed that his family members had used Hawaiian Memorial's cemetery services; but felt that he could remain fair and impartial during the proceedings.

There were no objections to Chair Wong's continued participation.

There were no other disclosures.

Chair Wong called for the Petitioner to make its presentation

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.

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.

Commissioner Chang moved to enter into Executive Session. Commissioner Scheuer seconded the motion. By unanimous voice vote (6-0-3 excused), the Commission voted to enter into Executive Session 09:49 a.m. and reconvened the meeting at 10:00 a.m.

DECISION MAKING

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

Commissioner Okuda requested clarification on whether Commissioner Mahi's 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 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.

Commissioner Mahi acknowledged his agreement with Commissioner Okuda's understanding of the motion. Commissioner Cabral also acknowledged and agreed with Commissioner Okuda's understanding of the motion.

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. Orodenker poll the Commission.

The Commission unanimously voted in favor of the motion with the friendly amendment. (6-0-3 excused).

Chair Wong declared a recess at 10:03 a.m. and reconvened the meeting at 10:05 a.m. and moved on to the next agenda item.

HEARING AND ACTION

SP17-409 HONO‘ULI‘ULI WASTEWATER TREATMENT PLANT- Secondary Treatment and Support Facility – State Special Use Permit No. 2017/SUP-2

APPEARANCES

Guy Inouye, Branch Chief, Hono‘uli‘uli Wastewater Treatment Plant (“HWWTP”)

Jim Niermann, R. M. Towill Consultant for HWWTP

Eugene Takahashi, Acting Section Chief, -City and County of Honolulu Department of Planning and Permitting (DPP)

Jeffery Lee, Planner, DPP

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

Lorene Maki, 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.

Chair Wong called for Public Witnesses

PUBLIC WITNESSES:

None

Chair Wong called for Petitioner to make its presentation.

PRESENTATION

Petitioner

Mr. Niermann made his presentation to the Commission and argued why the Special Permit should be granted. Mr. Niermann and Mr. Inouye responded to requests for clarification on Petitioner’s presentation from Commissioners Cabral, Chang and Scheuer.

Chair Wong stated that he had failed to get acknowledgment from Mr. Niermann and Mr. Inouye that the testimony they were providing to the Commission was truthful. Mr. Niermann and Mr. Inouye affirmed that their testimonies were truthful.

County

Mr. Takahashi stated that County was in support of the permit and recommended approval.

There were no questions for Mr. Takahashi.

OP

Ms. Apuna stated that OP had reviewed the permit and expressed its support for the expansion of the HWWTP to accommodate secondary treatment and support facilities. OP acknowledged Petitioner's plans to file both a motion to amend the Findings of Fact, Conclusions of Law, and Decision and Order issued in Docket No. A88-627 to bifurcate TMK: 9-1-069: 3 from the original reclassification and a district boundary amendment petition to reclassify the Petition Area to the State Land Use Urban District.

There were no questions for Ms. Apuna.

DECISION MAKING

Chair Wong entertained a motion.

Commissioner Okuda moved to approve the Special Permit application for the HWWTP. Commissioner Mahi seconded the motion.

Discussion

Commissioner Okuda described the reasons why he had moved to approve the Special Permit application and why it should not be a precedent for other permits.

Commissioner Scheuer described his disappointment with the need to approve a Special Permit in lieu of a District Boundary Amendment ("DBA") for the HWWTP since it appeared that there was sufficient time to be more efficient in this matter.

Chair Wong declared a recess at 10:45 a.m. and reconvened the proceedings at 10:47 a.m.

Chair Wong echoed Commissioner Scheuer's disappointment that a DBA had not been pursued earlier.

Commissioner Cabral expressed her concerns about the compatibility of the landscaping of the proposed project with areas beyond the project boundaries.

Commissioner Okuda stated that he wished to clarify that his motion:

1. Required that the metes and bounds map and description be signed and stamped by a registered professional land surveyor and that copies of the map and description be provided to the LUC;
2. Required the submittal and approval of a TIAR to the DOT, Highways Division;
3. Required Petitioner to obtain the approval of the LUC for any time extension to the deadline by which Petitioner is to apply for a State Land Use District Boundary Amendment with the LUC and to file a motion to amend the Findings of Fact, Conclusions of Law, and Decision and Order issued in Docket No. A88-627;-
4. Added an additional condition to require Petitioner to cease all work and immediately contact the SHPD and O'ahu Burial Council in the event historic or cultural resources are identified during demolition and/or construction activities and to obtain an archaeological clearance from the SHPD if required;
5. Required Petitioner to obtain the approval of the LUC for any time extension to the deadline by which Petitioner is to establish the Project;
6. Authorized staff to make non-substantive changes to the conditions, as appropriate, regarding formatting, style, and other modifications to ensure consistency; and
7. Authorized the Chair to sign the Order in this matter on behalf of the Commission.

Commissioner Mahi stated that he agreed with Commissioner Okuda's clarification.

There was no further discussion.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of the motion. (6-0-3 excused)

Commissioner Cabral moved to enter into Executive Session. Commissioner Mahi seconded the motion. By unanimous voice vote (6-0-3 excused), the Commission voted to enter into Executive Session.

The Commission entered Executive Session at 10:59a.m.

(Commissioner Scheuer excused himself from the meeting with the approval of the Chair at 11:03 a.m. and did not return.)

EXECUTIVE SESSION

To consult with the Commission's attorney regarding the Commission's duties, rights, responsibilities and obligations under chapter 343, HRS and section 91-8, HRS.

The Commission reconvened in regular session at 12:20 p.m.

There being no further business to address, Chair Wong adjourned the meeting at 12:20 p.m.