

LAND USE COMMISSION
MEETING MINUTES
August 8, 2018 – 9:00 a.m.
Airport Conference Center, Meeting Room IIT#2
400 Rodgers Boulevard, Suite 700,
Honolulu, HI 96819

COMMISSIONERS PRESENT: Lee Ohigashi
Arnold Wong
Nancy Cabral
Aaron Mahi
Jonathan Scheuer
Gary Okuda
Edmund Aczon

COMMISSIONERS EXCUSED: Dawn Chang
(There are currently 8 seated
Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Randall Nishiyama, Deputy Attorney
General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:00 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the July 11, 2018 and the July 25, 2018 minutes. There were none. Commissioner Aczon moved to approve both meeting dates minutes and Commissioner Cabral seconded the motion. Chair Scheuer confirmed that the motion included both meeting dates. Commissioner Aczon confirmed the dates included in his motion.

The minutes were unanimously approved by voice vote (7 ayes-0-1 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.

AUG 22-23(Hawai`i)

- A06-767 Waikoloa Mauka- Motion to Continue and OSC

SEP12- (Hawai`i)

- A06-767 Waikoloa OSC (if necessary), DR18-62 Adopt form of the Order.

SEP 13- (Maui)

- A05-755 Hale Mua OSC (Maui)

SEP 27- (Hawai`i)

- SP90-374 PR Mauna Kea - Motion to Extend Time (Hawai`i)

(The balance of future meeting dates are heavily reliant on Commission decisions in September and LUC staff will update the schedule to reflect the appropriate timetable of meetings.)

- Any questions or concerns- please contact LUC staff.

There were no questions. Chair Scheuer moved on to the first agenda item.

HEARING AND ACTION

DR18-62 Kualoa Ranch, Inc. (A Hawai`i Corporation)

To Consider Declaratory Order to Designate Important Agricultural Lands for approximately 761.55 acres at O`ahu, Hawai`i identified by TMK Nos. (1) 4-9-002:001 (por.); (1) 4-9-004:002 (por.); (1) 4-9-005:001 (por.); (1) 5-1-001:001 (por.), 016 (por.), 025 (por.); (1) 5-1-004:001 (por.); and (1) 5-1-007:001 (por.).

APPEARANCES

Calvert Chipchase, Esq. and Jacob Garner, Esq., attorneys for Petitioner Kualoa Ranch, Inc. ("KR")

(City and County of Honolulu Department of Planning and Permitting (DPP) advised the LUC via email that they would not be appearing.)

LUC Meeting Minutes (*Please refer to LUC transcript for more details on this matter*)

August 8, 2018

Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)
Rodney Funakoshi, Land Use Administrator, OP
Lorene Maki, Planner, OP
Earl Yamamoto, Planner, Department of Agriculture (“DOA”)

Chair Scheuer updated the record and described the procedures for the proceedings and asked if Petitioner had been made aware of and was agreeable with the Commission’s policy on reimbursement. Mr. Chipchase replied that Petitioner had no objections to the Commission’s policy and would comply.

Chair Scheuer declared that the documents submitted by DOA, OP and Petitioner would become part of the record and asked whether DPP had provided notice of their participation in this LUC meeting or submitted any filings on this docket. Mr. Orodener replied that he had just received an email notifying LUC staff that DPP would not be appearing and another email containing DPP’s Position Statement on Docket No. DR18-62. Mr. Chipchase stated that he objected to the Commission considering DPP’s Position Statement due to its late submittal. Chair Scheuer acknowledged Mr. Chipchase’s request and Commissioner Okuda commented that the filing should be excluded since it was untimely and improperly filed. Chair Scheuer agreed and ruled that the DPP statement had been submitted improperly and too late for consideration by the Commission; and would not be part of the record.

DISCLOSURES

Commissioners Okuda and Mahi disclosed their relationships with Petitioner representative John Morgan and stated that their past and current relationships would not impact their decision making and that they could remain impartial during the proceedings. Commissioner Okuda also disclosed that he had a professional relationship with Mr. Chipchase as a fellow attorney and knew his mentor, Phil Reese, but that would also not impact his impartiality and decision making.

There were no other disclosures.

Chair Scheuer also inquired if OP and DOA might have any objections to Commissioners Okuda and Mahi’s continued participation. There were no objections to their continued participation in the proceedings.

Chair Scheuer called for Public Testimony.

PUBLIC TESTIMONY

None.

PETITIONER PRESENTATION

Mr. Chipchase provided a brief history and background summary on the Petition and described how he would be making his presentation on why the Declaratory Order should be granted.

Mr. Chipchase stated that he had four witnesses.

Petitioner Witnesses

1. David Morgan- KR Director of Strategic Planning

Mr. Morgan shared his personal and professional background and described his role with KR, and provided organizational information on KR's history, community involvement and current and long-term operational plans.

DOA and OP had no questions.

Commissioners Aczon and Okuda requested clarification on Mr. Morgan's testimony regarding how the DPP's IAL plan and how DOA's comments were perceived in comparison to the proposed IAL plan. Mr. Chipchase commented that his other witnesses could specifically address how DPP's IAL plan compared to the proposed Petition's plan. Chair Scheuer acknowledged Mr. Chipchase's remarks and allowed Mr. Morgan to provide his perception of the proposed DPP IAL plan and the DOA comments.

There were no further questions for Mr. Morgan.

2. Taylor Kellerman- KR Director of Diversified Agriculture and Land Stewardship

Mr. Kellerman provided his personal and professional background and described his role in the KR operation and described how KR agricultural operations were routinely conducted and how the agricultural/ranch/aquaculture components interfaced with on-site tour operations and the local business community.

DOA and OP had no questions.

Commissioners Cabral, Aczon, Ohigashi, Mahi and Scheuer requested clarification on agricultural jobs, crop and herd yields, how agricultural operations could be conducted without conflicts with the tour/visitor elements, and how the proposed IAL lands justified being designated IAL.

Chair Scheuer declared a recess at 9:56 a.m. and reconvened the meeting at 10:06 a.m.

Chair Scheuer asked if there were any further questions for Mr. Kellerman.

Commissioner Aczon requested further clarification on how Petitioner's IAL proposal differed from the DPP plan. Mr. Chipchase explained why he felt it was important to hear Mr. Kellerman's comments on how the Petitioner utilized the Petition Area in a multi-faceted manner. Mr. Kellerman shared his perspective on what the differences between the two IAL plans were.

There was a brief discussion to clarify what references would be used during Petitioner's presentation. Mr. Chipchase stated that the PowerPoint presentation, Tom Schnell's resume and Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order had been submitted to the Commission for the record at the beginning of the meeting.

There were no further questions for Mr. Kellerman.

3. Tom Schnell- PBR Hawaii- Expert Witness- Land Use Planning

Mr. Schnell was qualified and accepted as an expert witness in the field of land use planning after a brief discussion.

During the discussion, Commissioner Okuda shared his opinion of why the Commission should acknowledge and accept Mr. Schnell as an expert witness and made a motion to do so. Commissioner Aczon seconded the motion to qualify Mr. Schnell as an expert witness. Commissioner Ohigashi expressed his concern whether the documents that Mr. Chipchase had referred to during Mr. Kellerman's testimony had been accepted into the record. Chair Scheuer confirmed that he had stated that all documents handed in by the Petitioner, OP and DOA would become a part of the record earlier and that DPP's late submittal would be excluded.

Mr. Schnell described his company's work in preparing the IAL Petition for KR, and why the IAL designation was appropriate for the Petition Area.

OP and DOA had no questions for Mr. Schnell.

Commissioner Aczon thanked Mr. Schnell for his testimony. Commissioners Wong and Cabral, Ohigashi and Okuda requested clarification on various details of Mr. Schnell's testimony regarding map designations, his firm's involvement in DPP IAL planning; and Land Study Bureau ratings and their use.

Mr. Chipchase provided additional clarification regarding the exhibit map designations for Commissioner Cabral.

There were no further questions on Mr. Schnell's testimony. Mr. Chipchase called his final witness, John Morgan.

4. John Morgan- CEO, President and General Manager, Kualoa Ranch

Mr. Morgan shared his personal and professional background and described his role with KR, and provided organizational information on KR's daily operational plans and reasons why the IAL designation was important to the long-term sustainability of the ranch's business.

DOA had no questions for Mr. Morgan.

OP requested clarification on how Mr. Morgan perceived OP's two proposed conditions and whether carrying capacity for both agriculture and tourist operations had been reached. Mr. Morgan described how Kualoa Ranch would abide by the proposed conditions and how additional operational and visitor capacities could be accommodated by ranch operations.

Commissioners Okuda, Scheuer, and Cabral requested clarification on John Morgan's family history and connection to the Petition Area, what the motivation was for seeking IAL designation, and why Petitioner's effort to continue its agricultural operations on Oahu was appreciated.

There were no further questions for Mr. Morgan.

Mr. Chipchase provided additional clarification on how the Petitioner and OP had worked on the proposed OP revised condition.

Chair Scheuer described how the remainder of the proceedings would progress and declared a recess at 11:03 a.m. Chair Scheuer reconvened the proceedings at 11:13 a.m.

OP

Chair Scheuer inquired whether OP had any public testimony. Ms. Apuna described OP's reasons for recommending approval of the Petition and stated that Mr. Funakoshi would summarize OP's position.

Mr. Funakoshi described why OP supported the proposed Petition and why an amendment to OP's proposed condition stating that any Special Permit or modification application be provided to OP and DOA for review and recommendations relative to impacts and consistency with the objectives and policies in the Hawai'i Revised Statutes was necessary.

Petitioner and DOA had no questions for OP.

Commissioner Okuda thanked DOA and OP for their input in the proceedings and questioned OP on what statutory authority granted the LUC the power to impose OP's proposed condition. Mr. Funakoshi provided his perspective on why OP had proposed the amended condition in its revised comments. Ms. Apuna stated that she could not provide a statutory authority reference.

Commissioner Wong moved for an Executive Session to consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. Commissioner Okuda seconded the Motion. By voice vote, the Commission unanimously (7-0-1 excused) voted to enter Executive Session at 11:25 a.m. The Commission exited Executive Session and reconvened into regular session at 11:39 a.m.

Chair Scheuer asked if the Commissioners had any further questions for Mr. Funakoshi. There were no further questions for Mr. Funakoshi.

Chair Scheuer asked if Ms. Apuna had anything further to add. Ms. Apuna stated that Petitioner had been agreeable to OP's proposed condition amendment during their discussions

Commissioner Okuda shared his opinion of what the term "condition" meant to him as it related to the Decision and Order and how it should be applied in a declaratory ruling.

Chair Scheuer asked if the Department of Agriculture had any comments.

DOA

Earl Yamamoto, DOA representative, stated that DOA supported the Petition and described why it took that position and what concerns it had regarding activities requiring a Special Permit.

There were no questions for Mr. Yamamoto.

FINAL COMMENTS/REMARKS

Commissioner Aczon requested clarification whether DPP had been invited to the LUC meeting. Chair Scheuer replied that DPP had been invited to the site visit and the August 8, 2018 IAL proceedings but did not appear. Chair Scheuer added that DPP had also submitted untimely testimony after the start of the meeting. Commissioner Aczon requested that the record reflect that DPP was absent from the meeting.

Chair Scheuer noted that the record would reflect DPP's absence from the proceedings.

There were no further questions or comments.

ACTION

Commissioner Aczon moved that the Commission grant the Petition for IAL designation subject to the following conditions:

- 1) Petitioner shall comply with representations made to the Commission with respect to not claiming any credits described in HRS §205-45(h) with respect to the Petition Area.
- 2) Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

Commissioner Mahi seconded the motion.

DISCUSSION

Commissioners Cabral, Okuda, Aczon, Wong and Scheuer expressed their reasons for supporting the motion. Commissioner Okuda commented on how the term "condition" was more instructional in the context of the motion and did not require complying with or performing a specific conditional action.

There was no further discussion.

Chair Scheuer had Mr. Orodener poll the Commission.

The Commission voted unanimously in favor of the motion. (7-0-1 excused).

Chair Scheuer declared a recess at 11:55 a.m. and reconvened the meeting at 11:58 a.m.

Chair Scheuer stated that the next agenda item was to designate the Executive Officer to conduct public hearings for the adoption of administrative rules pursuant to section 15-15-109 (a).

Commissioner Wong moved and Commissioner Ohigashi seconded the motion to designate the Executive Officer to conduct public hearings. By voice vote, the Commissioner unanimously (7-0-1 excused) voted in favor of the motion.

There being no further business to address, Chair Scheuer adjourned the meeting at 12:01 p.m.

