

LAND USE COMMISSION  
MEETING MINUTES  
November 28, 2018 a.m.  
Natural Energy Laboratory Hawai`i Authority (NELHA)  
73-987 Makako Bay Drive Kailua Kona, Hawai`i 96740-2637  
Hale `Iako Training Room #119

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

COMMISSIONERS EXCUSED: None  
(8 Seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Patricia Ohara, 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 9:30 a.m.

**APPROVAL OF MINUTES**

Chair Scheuer asked if there were any corrections or additions to the November 14, 2018 meeting minutes. There were none. Commissioner Aczon moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (8 ayes-0 nays- 0 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.

November 29, 2018- Continued business on Docket No. A07-773

Emmanuel Lutheran and Adoption of Order for A05-755 Hale  
Mua

December 13, 2018- at Honolulu International Airport Conference Room

- A06-763 Kapolei Development –(O`ahu) – Extend Time

January 9, 2019- IAL Site visits on Oahu

January 10, 2019 (Hawai`i) at NELHA

- Status Reports- A10-788 HHFDC and A00-730 Lanihau
- OSC A06-770 Shopoff Group
- A18-805 Church – Motion to Accept FONSI

January 23, 2019- (Maui) at Courtyard Marriott- North Shore

- DR18-63 Malaekahana

February 6-7, 2019 – (Kaua`i) Kealia Properties

February 20-21, 2019- open

March 13-14, 2019- at Honolulu International Airport Conference  
Room- A18-804 Hawaii Memorial Park

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Scheuer provided a brief informational background on what the mission of the Land Use Commission was, and how the Commissioners serve on a voluntary basis for the benefit of the public.

Chair Scheuer stated that the next agenda item was a hearing and action on A06-767 Waikoloa Mauka (Hawai`i).

### **HEARING AND ACTION**

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

November 28, 2018

A06-767 WAIKOLOA MAUKA LLC, (HAWAI'I)

Hear evidence, deliberate and take action on order to show cause issued June 4, 2018

APPEARANCES

Steven Lim Esq. represented Petitioner Waikoloa Highlands Inc. (WHI)

Valery Grigoryants, WHI (Russian-speaking WHI Representative using Interpreter)

Irina McGriff, Interpreter for WHI

Natalia Batichtcheva, WHI

Joel La Pinta, WHI

Ron Kim Esq., Deputy Corporation Counsel, County of Hawaii Planning Department  
(County)

Jeff Darrow, Program Manager, represented County

Additional Members of County of Hawai'i, Department of Housing and Community  
Development in attendance (DHCD)

Neil Gyotoku, DHCD

Ann Bailey, DHCD

Dwayne Osaka, DHCD

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, Planning Program Administrator, OP

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

PUBLIC WITNESSES:

1. Darlene Osorio – Representative for Ikaika Ohana (non-profit agency)

Ms. Osorio provided a printed folder of information on UHC Communities for the Commission to review, described her organizational role and shared her concerns about the lack of affordable housing in the area and how her organization was attempting to remedy the situation.

Mr. Lim requested clarification of Ms. Osorio concerns and interest in the development of the Petition Area. Ms. Osorio described how initial discussions had begun with WHI and why WHI's 11 acre parcel was attractive to her organization since it was clear of unexploded ordnance.

County commented that it recognized the need for affordable housing and thanked Ms. Osorio for her efforts.

OP had no comments.

Commissioner Wong asked when discussions with WHI were initiated. Ms. Osorio replied that they had just started a few weeks ago.

Commissioner Ohigashi inquired what the UHC Communities folder materials were. Ms. Osorio explained that the folder contained information on the “for profit” arm of her organization and to demonstrate that her organization was part of an active business involved in development.

There were no further questions for Ms. Osorio.

2. Julia Alos-

Ms. Alos provided written testimony and shared her concerns about the lack of development of the Petition Area and Petitioner’s failure to meet obligations to provide needed infrastructure improvements.

Mr. Lim requested clarification of Ms. Alos concerns regarding development of the Petition Area. Ms. Alos reiterated the items of concern that she had testified on and stated that if the Petition Area were not reverted, she would like the promised traffic improvements and roundabout be given top priority for completion.

County and OP had no questions.

Commissioner Cabral expressed her appreciation for Ms. Alos’ testimony.

Commissioner Chang inquired how long Ms. Alos had been a resident and whether she had observed any improvements in the Petition Area during her residency. Ms. Alos responded that she was an 18 year resident and had not observed any improvement activity on the Petition Area during that period.

Commissioner Mahi inquired whether Ms. Alos was assured that the improvements would be done. Ms. Alos replied that she was unsure that Petitioner would comply and that it would require a “fast track” approach to complete the project.

There were no further questions for Ms. Alos.

There were no other public witnesses.

## EXHIBITS

Chair Scheuer called for the Parties to offer their exhibits into evidence.

Petitioner

Mr. Lim offered Petitioner's Exhibit "65"-(various printed materials related to the County's Affordable Housing Release Agreement).

Chair Scheuer noted that other additional exhibits had been filed by Petitioner with the Commission. Mr. Lim stated that he would like to have his other exhibits that were filed with his second supplemental statement of position filing accepted as well.

Mr. Kim stated that there were no objections to Petitioner's exhibits by County except for Petitioner's Exhibit "65". Mr. Kim noted that the warranty deed included in Petitioner's filing differed from County's records. Commissioner Ohigashi questioned whether County would be filing its copy of the warranty deed with the Commission. Mr. Kim responded that he had filed it and had just received the warranty deed earlier in the week at his office and had not had time to process them; and had only just received Petitioner's Exhibit "65".

Chair Scheuer asked OP if it had any objections.

Ms. Apuna stated that she objected to portions of Petitioner's Second Supplemental Position Statement (Part II, arguments in support, pages 5-23) and Petitioner Exhibits 46-54 and argued why the Commission should deny them being entered into the record.

Commissioners Okuda, Ohigashi, Aczon, and Chair Scheuer requested clarification on whether actual prejudice had been suffered by OP, what relevance the exhibits had, what administrative rules might apply, what was needed to complete the record, and when the evidentiary portion of the hearing would end.

Chair Scheuer expressed that his reasoning for allowing the evidentiary portion to remain open was for the purpose of hearing arguments related to the late request of Petitioner to question an OP representative and to receive the briefs requested by the Chair at the October 24-25, 2018 meeting.

Mr. Lim provided his perception on the relevance of his exhibits and what administrative rules provided for allowing his exhibits to be offered for the record.

Commissioners Okuda, Ohigashi, Wong, and Mahi sought additional clarification on relevance, protection, claims of discriminatory enforcement and prejudicial treatment, the need for new exhibits, and the need to include other unrelated cases as exhibits. Commissioner Okuda stated that upon review against the standards set by Mahiai vs. Suwa, he felt that the proposed exhibit evidence was irrelevant and withdrew his earlier comment to admit all the exhibits. Mr. Ohigashi questioned whether Petitioner would be given an opportunity to

respond to OP's objections. Commissioners Wong and Mahi requested clarification on why additional exhibits were necessary and how they were applicable to the current proceedings. Mr. Lim described why he felt his actions were justified and argued why his additional new exhibits should be allowed.

Discussion ensued to determine how Mr. Lim would proceed with his presentation relative to the ongoing proceedings.

Commissioner Chang requested clarification on what Mr. Lim was attempting to demonstrate using his exhibits. Mr. Lim further expressed his reasons for submitting his exhibits. Chair Scheuer commented that Mr. Lim had used "Russian" and "Armenian" in his presentation and requested clarification on what distinction needed to be recognized. Mr. Lim responded that it was in reference to citizenship and ethnicity and could be considered as the same.

Chair Scheuer stated that Petitioner should conclude its response to OP's objection.

Mr. Lim argued that his exhibits should be allowed since the evidentiary portion of the proceedings were still open and that the evidentiary rules are less rigid in administrative hearings.

Commissioner Chang requested clarification on Mr. Lim's argument. Commissioner Wong moved for an Executive Session to consult with the board's attorney on the LUC's duties, powers, etc. on this matter. Commissioner Aczon seconded the motion and noted that OP had not finished responding to Mr. Lim.

Chair Scheuer recognized Ms. Apuna to respond to Mr. Lim's offering of exhibits to the record. Ms. Apuna argued that the exhibits being offered were readily available and could have been produced earlier, and that filing them when he did was untimely.

Chair Scheuer confirmed that Ms. Apuna had completed her response and addressed the motion for Executive Session.

By a verbal vote, the Commission unanimously voted to enter Executive Session (8-0-0).

The Commission entered Executive Session at 10:37 a.m. and reconvened in regular session at 11:11 a.m.

Chair Scheuer requested clarification from OP on what exhibits were being objected to. Ms. Apuna stated that OP objected to Petitioner Exhibits 46-54. Mr. Lim argued that Exhibits "46"- "47" should be allowed based on relevance to the proceedings. Ms. Apuna contested Mr. Lim's argument and provided her reasoning for not allowing them into the record.

Chair Scheuer referred to HAR§15-15-63 regarding evidence and stated that the Chair or the Commission could admit the exhibits and initiated a discussion on the matter. Commissioners Mahi, Chang, and Wong verbally responded that they deferred the Chair to decide on the admissibility of exhibits.

Commissioners Okuda, Ohigashi, Cabral, and Aczon did not object to the Chair's deciding on admission of exhibits. Chair Scheuer categorized the exhibits and stated which ones would not be admitted and provided the reasoning for denying them. Chair Scheuer admitted Petitioner Exhibits "53d" and "54d" (those portions of the minutes relevant to A06-767 Waikoloa Mauka). Chair Scheuer also admitted "57, "62", "63a", "63b", and qualified that he recognized that although they supported explaining the ownership structure of WHI, they were unnotarized and unsworn documents. (all other Exhibits "46"- "64" that are not noted as being admitted were excluded from the record).

Discussion ensued to confirm what exhibits had been admitted. Chair Scheuer stated what exhibits had been allowed and noted that exhibit "65" had yet to be addressed due to its late submittal. Mr. Lim argued why "65" should be allowed.

Chair Scheuer admitted "65" to the record and noted that it was a late submittal.

Commissioner Ohigashi requested clarification on whether the copies of the County's documents included in Petitioner's Exhibit "65" were the same as what County possessed.

Chair Scheuer recognized Mr. Kim's offer to respond.

Mr. Kim stated that County had no objection to Petitioner's Exhibit "65" and described County's position on the matter.

County

Mr. Kim stated that he had no further exhibits to offer.

OP

Ms. Apuna stated that OP had no further exhibits to offer.

PRESENTATIONS

**HEARING AND ACTION**

**A06-767 WAIKOLOA MAUKA LLC, (HAWAII)**

Hearing on Motion for Issuance of A Subpoena To An Authorized Representative of the State of Hawai'i Office of Planning, In the Matter of the Petition of Waikoloa Mauka LLC

Chair Scheuer described the procedures for hearing the motion and called Petitioner to make their presentation regarding its motion for issuance of a subpoena to have a witness from OP to appear.

Mr. Lim stated that he would like to reserve time for rebuttal and argued why he had made the motion for issuance of subpoena. Mr. Kim argued why the motion for subpoena was not relevant and should be denied. Ms. Apuna stated that OP opposed the subpoena and argued why the motion should be denied. Mr. Lim restated why his motion should be granted and stated that he was providing administrative notice why other orders to show cause (OSC) and his exhibits "48"-"54" should be included.

Chair Scheuer requested clarification on what Mr. Lim's request for administrative notice was asking for and stated that he was denying the request for the Commission to take administrative notice as requested by Mr. Lim since it was a re-stated request to admit exhibits that were previously excluded.

Chair Scheuer directed the Commission's attention to the motion for issuance of subpoena and allowed Commissioner questions.

Commissioner Okuda requested clarification of Mr. Lim's position on the Motion. Mr. Lim described his offer of proof of why an OP witness was necessary and how his foreign investors were being treated.

Commissioner Chang requested further clarification on why Mr. Lim needed to have OP's testimony. Mr. Lim argued why OP's testimony would be relevant to the proceedings.

There were no further questions or comments on the Motion. Chair Scheuer sought the pleasure of the Commission.

Commissioner Okuda commented that he was inclined to defer deciding on the motion to the Chair. Chair Scheuer conferred with Ms. Ohara and stated that since a hearing had been requested on this matter, the Commission needed to decide on the motion.

Commissioner Okuda responded that he would move that the motion for issuance of a subpoena be denied. Commissioner Wong seconded the motion. There was no further discussion. Chair Scheuer directed Mr. Orodener to poll the Commission. The Commission unanimously voted to deny the Motion for

Issuance of A Subpoena To An Authorized Representative of the State of Hawai'i Office of Planning, In the Matter of the Petition of Waikoloa Mauka LLC (8-0-0). Chair Scheuer declared a recess at 11:43 a.m. and reconvened the hearing at 12:30 p.m.

Chair Scheuer moved on to the next agenda item.

**CONTINUED HEARING AND ACTION**  
**A06-767 WAIKOLOA MAUKA LLC, (HAWAII)**

Hear evidence, deliberate and take action on order to show cause issued June 4, 2018

Chair Scheuer noted that he had denied in part and granted in part Petitioner's subpoena for a County Housing Agency witness to appear before the Commission. Chair Scheuer asked Mr. Lim who would be testifying. Mr. Lim identified Neil Gytoku as his witness.

Petitioner's County Witness

1. Neil Gytoku, Housing Administrator, DHCD

Disclosure:

Commissioner Cabral disclosed that her company receives rental income from Mr. Gytoku's agency, but that it would not impact her ability to remain fair and impartial during the proceedings. There were no objections to Ms. Cabral's continued participation.

Mr. Gytoku described his role at his agency and what had transpired during his term as DHCD Administrator relative to his agency's attempt to work with WHI to satisfy its affordable housing condition.

Mr. Kim requested clarification on the details of the DHCD's involvement with the WHI affordable housing effort; and requested specifics on the planned development and validity of the deed for the property; and what the non-profit status of the entities involved in the ownership of the approximately 11 acres conveyed to the County by Petitioner were. Mr. Gytoku described the events and circumstances surrounding the DHCD/WHI affordable housing negotiations and could not answer how the deed for the conveyed property was altered while in County custody.

Mr. Apuna had no questions.

Commissioners Wong, Okuda, Chang, and Ohigashi requested clarification on when discussions began regarding conveyance of the land to the County, whether the

most recent correspondence from the County of Hawaii Mayor's office correctly identified the County's position that the affordable housing condition had not been fulfilled; and how Petitioner's Exhibit "65" and "11" provided evidence that supported the testimony provided. Mr. Gyotoku stated that discussions about affordable housing began around 2015 and that they were preliminary and only involved conceptual drawings and recounted the number of recent meetings that had occurred; and that Mayor Kim's letter correctly reflected the County's position on the non-fulfillment of the affordable housing condition. Mr. Gyotoku also described how the deed for the conveyed property may have been recorded and how his agency was investigating how the deed had been processed and how the release from the affordable housing requirement had been obtained.

Commissioner Ohigashi requested clarification on whether County had submitted any exhibits to support Mr. Gyotoku's testimony.

Discussion ensued to determine the status of County's exhibits. Mr. Kim stated that he had submitted the November 9, 2018 Mayor's letter to the LUC in response to the Chair's directions from the October 24-25, 2018 meeting, but had not offered it as an exhibit.

Chair Scheuer declared a recess at 12:58 p.m. and reconvened the meeting at 1:00 p.m.

Chair Scheuer summarized what information he had requested from the County to provide and that the letter would be admitted as County Exhibit "1". There were no objections to County's exhibit "1". Discussion ensued on how exhibits filed with other County submittals would be made part of the record. Chair Scheuer stated that the exhibits would be appropriately numbered and noted that there had been no objections from the Parties as to how the County's exhibits were to be identified.

Commissioner Ohigashi resumed questioning Mr. Gyotoku on why the County had changed its position regarding the release of the affordable housing agreement. Mr. Gyotoku described how the County had determined that a "for-profit" LLC entity had been incorrectly involved in the conveyance of the WHI property; and the reasons why the County now felt that the release agreement was void.

Commissioner Aczon requested clarification on Ms. Osorio's involvement with the affordable housing efforts of WHI. Mr. Gyotoku described Ms. Osorio's role in the affordable housing discussions. Mr. Lim described Petitioner's efforts with dealing with the 11.7 acre land parcel conveyance and in seeking to move forward on its housing project.

Commissioner Cabral requested clarification on the County's processing of documents using incorrect "for-profit" entities in regards to the release of the affordable housing agreement. Mr. Gytoku stated that County had copies of the documents involved with the acquisition of the property and could produce them upon request.

Commissioners Okuda, Chang, Aczon and Chair Scheuer requested clarification on how the County perceived the release agreements as valid, then determined they were "void", the sequence of discovery involved during the transaction, the determination that Plumeria at Waikoloa LLC was a "for-profit" buyer of the property, what triggered the letter rescinding the affordable housing agreement from the Mayor's office and whether Mr. Stephan Martirosian had any involvement in the transaction.

#### REDIRECT

Mr. Lim described various scenarios that he thought might satisfy the WHI affordable housing agreement for Mr. Gytoku to consider. Mr. Gytoku described the difficulties that he would be confronted with due to the "void" release of the WHI agreement and subsequent sales of the property. Mr. Lim shared that Petitioner was currently involved in discussions to resolve the situation.

Commissioner Wong requested clarification on what the Pua Melia project involved.

Mr. Gytoku provided his understanding of the 201h affordable housing proposals under consideration and what commercial components would be situated nearby.

Mr. Lim stated that he had concluded his presentation.

Chair Scheuer reviewed the sequence of the proceedings for the remainder of the day. Commissioner Chang requested clarification on whether Mr. Gytoku was the last witness. Chair Scheuer responded that Mr. Gytoku was the last witness and that the Parties would be presenting their briefs as requested by the Commission; responding to questions on their briefs, delivering closing arguments and then the Commission would deliberate.

There were no further questions or comments. Chair Scheuer declared a recess at 1:25 p.m. and reconvened the meeting at 1:38 p.m.

Chair Scheuer called for the oral presentations by the Parties on their briefs.

## PETITIONER

Mr. Lim stated that he rested on his briefs with the exception of how the Bridge Aina Lea and HRS §205-4g applied to this case; and how a 5 part test applied to OSCs. Mr. Lim provided his perspective on how the Commission should proceed in OSC matters and made an oral motion that the LUC dismiss the OSC under its consideration.

Chair Scheuer declared a recess at 1:44 p.m. and reconvened the meeting at 1:50 p.m.

Chair Scheuer stated that Mr. Lim's oral motion to dismiss the OSC seemed to seek the same relief as what the Commission was addressing in its proceedings, and since County and OP had not had a their chance yet, he would withhold deciding on it. Mr. Lim argued why his motion was worthy of consideration and ended his presentation.

## COUNTY

Mr. Kim stated that County would also stand on its brief and provided his perception of how HRS §205- 4g set the mechanism for the OSC action.

Chair Scheuer asked if the Commission had any questions for the County. Commissioner Okuda asked to question Petitioner. Chair Scheuer allowed the questioning of Mr. Lim before questions for the County were entertained.

Commissioner Okuda read a passage and requested clarification from Mr. Lim on whether a passage he read was an accurate statement of the law on how HRS §205- 4g applied in a different case. Mr. Lim argued how he perceived what was read differently.

Commissioner Chang requested clarification on what Mr. Lim was orally arguing since it appeared to differ from the written response to Commission's original questions. Mr. Lim described how, upon further consideration of HRS §205- 4g, and in an "evolving situation", he had a different perspective of how the Commission should respond to OSC matters and weigh the matter of "substantial commencement".

Commissioner Okuda requested clarification on Mr. Lim's "plain language" interpretation of the Supreme Court decision and its application to HRS §205- 4g. Mr. Lim shared his perspective of the "plain language" and agreed to disagree on how it applied to HRS §205- 4g.

Commissioner Chang requested clarification on Mr. Lim's position regarding non-compliance with infrastructure and build-out conditions (Conditions 2 and 3). Mr. Lim provided his perception of what alternatives the Commission could take rather than revert the land use designation of the Petition Area.

Chair Scheuer asked if there were any further questions for Petitioner or County. There were none.

Chair Scheuer called for OP's presentation.

OP

Ms. Apuna stated that OP rested on its written briefs and commented on the issues that Mr. Lim had orally brought up during his presentation. Ms. Apuna argued how the LUC had the authority to act on OSC matters based on Condition 3 as written, HAR §15-15-79 and HRS §205- 4g.

Commissioner Ohigashi requested clarification on "good cause" if there had been no substantial commencement. Ms. Apuna described what Petitioner could have done to demonstrate that it was moving forward with its project and what type of factors could be considered "good cause" for not complying with representations or conditions; and what actions Petition could have taken to avert being involved in OSC proceedings. Mr. Kim stated that County struggled with how "good cause" applied in the OSC proceedings.

Chair Scheuer asked if there were any further questions for OP. There were none. Chair Scheuer declared a recess at 2:21 p.m. and reconvened the meeting at 2:31 p.m.

Chair Scheuer called for closing arguments and stated that each Party had 15 minutes.

PETITIONER

Mr. Lim requested a ruling on his oral motion to dismiss the OSC. Chair Scheuer responded that the oral motion was in line with what the proceedings were seeking to determine and that the Commission would move forward with its proceedings.

Mr. Lim argued why the Petition Area should not be reverted to its former land use designation and requested that Petitioner be afforded an opportunity to continue to move forward and for the LUC to keep the OSC pending as an enforcement tool.

## COUNTY

Mr. Kim stated that Petitioner failed to demonstrate timely progress and substantial commencement; and described the elements of “good cause” that were considered by the County, and what the County would like to have had happen if Petitioner had complied; or alternative actions that it was willing to consider if the land use reversion was deferred.

Mr. Kim stated that County deferred to the Commission’s authority and decision-making in this matter and what expectations it had if a reversion occurred.

## OP

Ms. Apuna argued how Petitioner had failed to comply with Conditions 2, 6, 9, 11, 15, 20 and 21 and failed to take timely appropriate action to avert an OSC. Ms. Apuna summarized her presentation and stated that OP had no objection if the LUC reverted the Petition Area’s land use designation.

Chair Scheuer declared that the evidentiary portion of the hearing was closed and that the Commission would enter into formal deliberation. Chair Scheuer confirmed that all Commissioners present had reviewed the record and were prepared to deliberate. The Commissioners unanimously responded that they had reviewed the record and were ready to deliberate.

## DELIBERATIONS

Commissioners Wong, Ohigashi, Okuda, Mahi, Chang, Cabral and Chair Scheuer shared their viewpoints on the Petition Area ownership issues, substantial commencement and “good cause” issues, the performance of the Petitioner and County, the need for affordable housing, how the evidence in the case was weighed, what representations and conditions were not met and for what reasons, the legal authorities and rules/statutes/Constitutional concerns that need to be considered, and how difficult a decision this case posed.

Chair Scheuer sought the pleasure of the Commission.

Commissioner Mahi moved and Commissioner Wong seconded a motion noting that a violation of Conditions had occurred and that there had not been a substantial commencement of use of the land and that the Petition Area should be reverted back to its former agricultural land use designation.

Commissioner Wong stated that he was seconding the motion since there had been no substantial commencement of use of the land; and despite a conveyance of property, the affordable housing requirement had not been met.

#### Discussion

Commissioner Aczon described how he weighed the evidence and was in favor of the motion. Commissioner Ohigashi stated that he agreed with Commissioner Okuda that no substantial commencement had occurred and questioned what might happen if the property was reverted. Commissioner Okuda requested that his earlier comments from during deliberation be incorporated for his decision making and why he was in favor of the motion.

Chair Scheuer asked Mr. Orodener to poll the Commission. The Commission voted as follows: Ayes- Commissioners Mahi, Wong, Chang, Aczon, Okuda, Cabral and Chair Scheuer. Nay-Commissioner Ohigashi. The motion passed by a vote of 7-1-0 excused (8 seated Commissioners).

Chair Scheuer stated that the Commission would reconvene at 9:30 a.m., November 28, 2018, on Maui at the Malcolm Center and declared a recess at 3:47 p.m.