

LAND USE COMMISSION
MEETING MINUTES

February 6, 2019 – 10:00 a.m.
Courtyard by Marriott Oahu North Shore
55-400 Kamehameha Hwy, Laie, HI 96762

COMMISSIONERS PRESENT: Edmund Aczon
Nancy Cabral
Dawn Chang
Jonathan Scheuer
Lee Ohigashi
Aaron Mahi

COMMISSIONERS EXCUSED: Arnold Wong
Gary Okuda

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Randall Nishiyama, Deputy Attorney General
Rasmi Agrahari, Staff Planner
Bert Saruwatari, Staff
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 10:00 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the January 9-10, 2019 site visit and January 23-24, 2019 meeting minutes. There were none. Commissioner Aczon moved to approve both sets of the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (6 ayes-0 nays- 2 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.

FEB 20-21- Maui overnight- A11-794 Kihei HS- evening status report and A94-706 Ka`ono`ulu Intervenor Motion/Status Report

MAR13-14- TBD

MAR 27- @Kona-NELHA- A00-730 Lanihau, A10-788 HHFDC status reports

MAR 28-- @Kona-NELHA – A06-767 Waikoloa Mauka Adoption of Order, A06-770 Shopoff Status Report, A02-737 U of N Bencorp Motion to Rescind

APR 10-11 TBD (APR 10 could be for A87-610 Waiawa but likely to move to later date)

APR 23-24 (note TUES-WED skdl) HNL (Kaneohe Bayview GC) DBA A17-804 Hawaii Memorial Park

NO MTG- MAY 8-9

MAY 22- Kauai overnight – A17-803 Kealia

MAY 23- Kauai overnight – A11-791 Hokua Place

JUN 12-13- HNL- SP09-403 Waimanalo Gulch Sanitary Landfill

JUN 26-27- TBD

Any questions or conflicts, please contact LUC staff.

There were no questions.

Chair Scheuer announced that the Commission would next address Docket No. DR18-63 MĀLAEKAHANA WEST HUI, LLC -(Oahu)

HEARING AND ACTION

DR18-63 MĀLAEKAHANA WEST HUI, LLC -(Oahu)

- Consider Petition for Declaratory Order to designate Important Agricultural Lands for approximately 230.33 acres at Malaekahana, Laie, O‘ahu, Hawai‘i identified by TMK Nos.5-6-006:018 (por.)

APPEARANCES

Kalani Morse, Esq., attorney for Petitioner Malaekahana West Hui, LLC (“MWH”)

Aaron Campbell- MWH Representative

Raymond Young, Planner, City and County of Honolulu Department of Planning and Permitting (DPP) (arrived at 10:18 a.m.)

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

Rodney Funakoshi, Land Use Administrator, OP

Noah Ching, 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. Morse replied that Petitioner had no objections to the Commission's policy and would comply. There were no questions or comments regarding the procedures.

Chair Scheuer declared that the documents submitted by DOA, OP, DPP and Petitioner would become part of the record. There were no objections to this action.

Chair Scheuer called for Public Testimony.

PUBLIC TESTIMONY

None.

PETITIONER PRESENTATION

Mr. Morse introduced and qualified his first witness Tom Schnell.

Petitioner Witnesses

1. Thomas Schnell- Principal- PBR Hawaii (PBR)

Mr. Schnell provided printed copies of his PowerPoint presentation and was qualified as an expert witness in land use planning. Mr. Schnell provided a brief history and background summary on his firm's role in preparing the Petition and shared information regarding the Petition Area, how it met IAL criteria and what his understanding was of the voluntary IAL process.

DPP had no questions for Mr. Schnell.

OP requested clarification on how the roles of dryland taro production and the use of steeper topography within the Petition Area contributed to meeting the 8 IAL criteria; and on how Petitioner utilized various tax credit provisions and lease terms. Mr. Schnell deferred the dryland taro and lease/tax credit questions to Mr. Campbell and provided his understanding on how the steeper slopes were assessed.

DOA had no questions.

Commissioners Chang, Aczon, Cabral and Chair Scheuer requested clarification on various portions of Mr. Schnell's presentation. Mr. Schnell provided further details on where Land Court designated lands were in relation to the Petition Area, how flooding restricted use of certain land areas, why only a portion of all the landowner's land was being voluntarily committed to IAL designation; what the future held for the remaining non-IAL land; and how the dryland taro cultivation and other unique crops met IAL criteria. Mr. Schnell deferred detailed agricultural operation questions to Mr. Campbell to respond to.

There was no re-direct. There were no further questions on Mr. Schnell's testimony.

Chair Scheuer declared a recess at 10:44 a.m. and reconvened the meeting at 10:54 a.m.

Mr. Morse called his second witness.

2. Aaron Campbell- MWH Representative

Mr. Campbell shared his personal and professional background and described his role with MWH, and provided organizational information on MWH's history, community involvement and current and long-term operational plans. Mr. Campbell also described the various considerations that motivated MWH to move forward with its efforts to voluntarily designate IAL land.

DPP requested clarification on the local products that were cultivated and how they were branded.

OP requested clarification on the dryland taro production within the Petition Area.

DOA had no questions.

Commissioners Chang, Aczon, Cabral and Chair Scheuer requested clarification on various portions of Mr. Campbell's testimony. Mr. Campbell described how he operated his business under a conditional use permit (CUP) minor, and why he decided to seek voluntary IAL designation; how he was authorized to manage the affairs of the MHW organization, how portions of land being used for wind farms were included in the Petition Area, and how all land area was dedicated to agricultural farming.

Commissioner Ohigashi requested clarification from LUC Staff on whether the proposed Petition would, if granted, conflict with Land Court authorities. Mr. Nishiyama responded that he did not know.

There were no further questions for Mr. Campbell; and there was no redirect.

Mr. Morse concluded his presentation and summarized his request to have his Petition granted.

Chair Scheuer called for County to make its presentation.

COUNTY

Mr. Young stated that DPP would stand on its comments and provided details of the next meeting of the County's Agricultural Development Task Force (ADTF).

Mr. Morse asked if any of the ADTF meetings include discussions on DR18-63. Mr. Young replied that they did not.

OP and DOA had no questions.

Commissioners Chang, Ohigashi, Aczon and Chair Scheuer requested clarification on Mr. Young's comments. Mr. Young provided his understanding of the types of discussions and recommendations that DPP was aware of or involved in regarding the City and County IAL process; and stated that he was not aware of any inaccuracies or flaws in the Petition before the Commission.

There were no further questions for Mr. Young. Chair Scheuer called for OP to make its presentation. (Mr. Orodener excused himself from the meeting at 11:24 a.m. with the permission of the Chair to testify before the Legislature and Mr. Saruwatari assumed Mr. Orodener's position for the remainder of the meeting.)

OP

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 provided the rationale for OP's position statement.

Petitioner, County and DOA had no questions for OP.

Ms. Apuna re-summarized why OP supported the Petition.

Chair Scheuer asked if there were any further questions OP. There were none.

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

DOA

Noah Ching, DOA representative, stated that DOA would stand on its written comments.

There were no questions for Mr. Ching.

Commissioner Cabral thanked Mr. Ching for his statement.

FINAL COMMENTS/REMARKS

Mr. Morse recalled Mr. Campbell to provide further clarification on his authority within the MHW LLC and on his ability to bind the organization to its representations. Mr. Campbell described his relationship within the LLC organization and shared how the LLC members were briefed by legal counsel and he regarding this voluntary IAL matter.

Commissioner Chang asked if Petitioner was still interested in moving forward despite comments made by DPP. Mr. Campbell responded that he was.

There were no further questions or comments for Mr. Campbell.

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 or Land Court; as applicable.

Commissioner Mahi seconded the motion.

DISCUSSION

Commissioners Ohigashi, Aczon, Cabral and Chair Scheuer expressed their thoughts and concerns regarding the motion.

There was no further discussion.

Chair Scheuer had Mr. Saruwatari poll the Commission.

The Commission voted unanimously in favor of the motion. (6-0-2 excused).

There being no further business to address, Chair Scheuer adjourned the meeting at 1153 a.m.